

19 Annual report

(1) The CHE must, within six months after the end of each financial year, submit a report to the Minister on the performance of its functions during the past financial year.

[Sub-s. (1) substituted by s. 2 of Act 55 of 1999 (wef 19 November 1999).]

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

**CHAPTER 3
PUBLIC HIGHER EDUCATION INSTITUTIONS (ss 20-25)**

20 Establishment of public higher education institutions

(1) The Minister may, after consulting the CHE, by notice in the *Gazette* and from money appropriated for this purpose by Parliament-

- (a) establish a public university, public university college or a public higher education college; or
- (b) with the concurrence of the council of a public higher education institution, convert that institution, or a subdivision of that institution, into a public university or a public university college.

[Sub-s. (1) substituted by s. 5 (a) of Act 9 of 2016 (wef 22 September 2017).]

(2) The Minister may, after consultation with the CHE and with the concurrence of the governance body of a private education institution, by notice in the *Gazette* and from money appropriated for this purpose by Parliament, declare an institution, or subdivision of an institution to be a public university, public university college or public higher education college.

[Sub-s. (2) deleted by s. 4 (a) of Act 23 of 2001 (wef 2 November 2001) and inserted by s. 5 (b) of Act 9 of 2016 (wef 22 September 2017).]

(3) The notice contemplated in subsection (1) must determine-

- (a) the date of establishment of the institution;
- (b) the type and name of the institution; and
- (c) the physical location and official address of the institution.

(4) Every public higher education institution established, merged, converted, deemed to have been established or declared as a public higher education institution under this Act, is a juristic person.

[Sub-s. (4) substituted by s. 3 of Act 63 of 2002 (wef 19 December 2002) and by s. 5 (c) of Act 9 of 2016 (wef 22 September 2017).]

(5) Notwithstanding subsection (4), a public higher education institution may not, without the concurrence of the Minister, dispose of or alienate in any manner, any immovable property acquired with the financial assistance of the State or grant to any person any real right therein or servitude thereon.

(5A) The Minister may, in the notice contemplated in subsection (1) and with the concurrence of the council of another public higher education institution, determine-

- (a) certain functions which the newly established or converted public higher education institution must perform under the supervision of the other public higher education institution; and
- (b) the terms, conditions and period applicable to such supervision.

[Sub-s. (5A) inserted by s. 5 (d) of Act 9 of 2016 (wef 22 September 2017).]

(6) The Minister must in the notice contemplated in subsection (1) establish an interim council for a period not exceeding six months, to perform the functions relating to the governance of the institution, except the making of an institutional statute.

[Sub-s. (6) added by s. 4 (b) of Act 23 of 2001 (wef 2 November 2001).]

(7) The Minister may extend the period referred to in subsection (6) once for a further period not exceeding six months.

[Sub-s. (7) added by s. 4 (b) of Act 23 of 2001 (wef 2 November 2001).]

(8) The members of the interim council contemplated in subsection (6) are appointed by the Minister and consist of-

- (a) the chairperson; and

(b) four other members.

[Sub-s. (8) added by s. 4 (b) of Act 23 of 2001 (wef 2 November 2001).]

(9) The interim council must co-opt three members of the interim management contemplated in subsection (10) (a) and these co-opted members have no voting powers.

[Sub-s. (9) added by s. 4 (b) of Act 23 of 2001 (wef 2 November 2001).]

(10) Apart from the functions contemplated in subsection (6), the interim council must in particular-

- (a) appoint an interim body to manage the day-to-day activities of the institution;
- (b) ensure that a council is constituted in terms of the standard institutional statute contemplated in section 33 (3); and
- (c) ensure that such other structures as may be determined in the standard institutional statute contemplated in section 33 (3) are constituted.

[Sub-s. (10) added by s. 4 (b) of Act 23 of 2001 (wef 2 November 2001).]

(11) Any decision of the interim council which may affect the right of any structure of the public higher education institution, may only be taken after consultation with such structure.

[Sub-s. (11) added by s. 4 (b) of Act 23 of 2001 (wef 2 November 2001).]

21 Declaration of education institutions as public higher education institutions

(1) The Minister may, after consulting the CHE and by notice in the *Gazette*, declare any education institution providing higher education as-

- (a) a university, university college or higher education college; or
[Para. (a) substituted by s. 6 (a) of Act 9 of 2016 (wef 22 September 2017).]
- (b) an incorporated subdivision of a university, university college or higher education college.
[Para. (b) substituted by s. 4 (a) of Act 63 of 2002 (wef 19 December 2002) and by s. 6 (a) of Act 9 of 2016 (wef 22 September 2017).]

(2) The notice contemplated in subsection (1) must determine-

- (a) the date on which the education institution becomes a university, university college or higher education college or a subdivision of a university, university college or higher education college, as the case may be;
[Para. (a) substituted by s. 6 (b) of Act 9 of 2016 (wef 22 September 2017).]
- (b) the name of the university, university college or higher education college; and
[Para. (b) substituted by s. 6 (b) of Act 9 of 2016 (wef 22 September 2017).]
- (c) the physical location and the official address of the university, university college or higher education college.
[Para. (c) substituted by s. 6 (b) of Act 9 of 2016 (wef 22 September 2017).]

(3) The Minister may act under subsection (1) only-

- (a) after consulting-
 - (i) the governing body of the education institution, if it is a public institution;
 - (ii) the council of the existing public higher education institution, if the education institution is to be declared a subdivision of such existing public higher education institution; or
 - (iii) the responsible Minister, Member of the Executive Council or authority, if the education institution is administered, controlled or funded by an organ of state other than the Department of Education; and
- (b) after having-
 - (i) published a notice in one or more newspapers circulating in the area in which the education institution provides higher education, containing the reasons for the declaration referred to in subsection (1), in all the official languages used as media of instruction by the education institution concerned;
[Sub-para. (i) substituted by s. 4 (b) of Act 63 of 2002 (wef 19 December 2002).]
 - (ii) given any interested persons an opportunity to make representations; and
 - (iii) considered such representations;
- (c) if it is a private institution, with the concurrence of the owner of the education institution and the Minister of Finance.

(3A) Section 20 (6) to (11), with the changes required by the context, applies to a declaration referred to in subsection (1) (a).

[Sub-s. (3A) inserted by s. 5 of Act 23 of 2001 (wef 2 November 2001).]

(4) Nothing contained in this Act or any other law may be regarded as obliging the Minister to declare an education institution to be a public higher education institution in terms of this section.

(5) (a) Notwithstanding sections 197 and 197A of the Labour Relations Act, 1995 (Act 66 of 1995), the contracts of employment between the education institution (herein referred to as 'the old employer') and its employees are transferred automatically to the declared higher education institution (herein referred to as 'the new employer') as from the date of the declaration contemplated in subsection (1), but any redeployment of an employee as a consequence of the declaration is subject to applicable labour legislation.

(b) If an education institution is declared a higher education institution as contemplated in subsection (1), all the rights and obligations between the old employer and each employee at the time of the declaration continue in force as if they were rights and obligations between the new employer and each employee and anything done before the declaration by or in relation to the old employer is deemed to have been done by or in relation to the new employer.

(c) A declaration referred to in subsection (1) does not interrupt the employee's continuity of employment.

(d) The provisions of this subsection do not affect the liability of any person to be disciplined for, prosecuted for, convicted of, and sentenced for any offence or misconduct.

(e) An employee or a student is subject to the disciplinary codes and rules applicable to the higher education institution as from the date of the declaration contemplated in subsection (1), but if any enquiry into incapacity or any proceedings in respect of a charge of misconduct had been instituted or commenced against any employee or student before the date of the declaration, such enquiry or proceedings continue in terms of the codes and rules applicable to the education institution immediately prior to the declaration.

[Sub-s. (5) substituted by s. 4 (c) of Act 63 of 2002 (wef 19 December 2002).]

(6) Notwithstanding subsection (5) (a), the old employer may undertake rationalisation of its workforce according to operational requirements in accordance with section 189 of the Labour Relations Act, 1995 (Act 66 of 1995), prior to the date of the declaration contemplated in subsection (1).

[Sub-s. (6) added by s. 4 (c) of Act 63 of 2002 (wef 19 December 2002).]

(7) If an education institution is declared a higher education institution as contemplated in subsection (1), the higher education institution-

- (a) continues with all academic programmes offered by the education institution under the rules applicable to the education institution immediately before the date of the declaration, until such programmes and rules are amended or restructured by its council; and
- (b) awards a degree, diploma or certificate to a student who qualifies before or after the date of the declaration in its own name, but if the student started the course before the date of the declaration, such degree, diploma or certificate must also reflect the name of the education institution as it was before the declaration.

[Sub-s. (7) added by s. 4 (c) of Act 63 of 2002 (wef 19 December 2002).]

22 Consequences of declaration as public higher education institutions

(1) From the date determined in terms of section 21 (2) (a)-

- (a) the education institution is deemed to be a public higher education institution established under this Act or a subdivision of such public higher education institution, as the case may be;
- (b) the assets, liabilities, rights and obligations of the education institution devolve upon the public higher education institution; and
- (c) any agreement lawfully entered into by or on behalf of the education institution is deemed to have been concluded by the public higher education institution.

(2) Immovable property devolving upon the public higher education institution in terms of subsection (1) (b) must, subject to the concurrence of the Minister of Finance, be transferred to

such institution without payment of transfer duty, stamp duty or other money or costs, but subject to any existing right, encumbrance, duty or trust on or over that property.

(3) The officer in charge of a deeds office or other office where the immovable property contemplated in subsection (2) is registered must, on submission of the title deed and on application by the public higher education institution, make such endorsements on that title deed and such entries in the registers as may be required to register the transfer concerned.

(4) The declaration of an education institution as a public higher education institution under section 21 (1) does not affect anything lawfully done by the education institution prior to the declaration.

(5) All funds which, immediately prior to the date determined in terms of section 21 (2) (a), were vested in the education institution by virtue of a trust, donation or bequest must be applied by the public higher education institution in accordance with the trust, donation or bequest, as the case may be.

(6) Notwithstanding subsection (2), any fees charged by the Registrar of Deeds resulting from such transfer must be paid in full or in part from funds appropriated by Parliament for that purpose.

23 Merger of public higher education institutions

(1) Subject to subsection (2), the Minister may, after consulting the CHE and by notice in the *Gazette*, merge two or more public higher education institutions into a single public higher education institution.

(2) Before making a decision under subsection (1), the Minister must-

- (a) give written notice to the councils of the public higher education institutions concerned of the intention to merge the institutions and the reasons for the intended merger;
- (b) publish a notice giving the reasons for the intended merger in one or more newspapers circulating in the area in which the public higher education institutions concerned are situated;
- (c) give the councils of the public higher education institutions concerned and any other interested persons an opportunity to make representations within at least 90 days of the date of the notice referred to in paragraph (b); and
- (d) consider the representations contemplated in paragraph (c).

[Sub-s. (2) amended by s. 5 (a) and (b) of Act 63 of 2002 (wef 19 December 2002) and substituted by s. 7 of Act 9 of 2016 (wef 22 September 2017).]

(2A) Notwithstanding sections 197 and 197A of the Labour Relations Act, 1995 (Act 66 of 1995), the contracts of employment between the public higher education institution (herein referred to as 'the old employer') and its employees are transferred automatically to the merged single public higher education institution (herein referred to as 'the new employer') as from the date of the merger contemplated in subsection (1), but any redeployment of an employee as a consequence of the merger is subject to applicable labour legislation.

[Sub-s. (2A) inserted by s. 5 (c) of Act 63 of 2002 (wef 19 December 2002).]

(2B) If two or more public higher education institutions are merged into a single public higher education institution as contemplated in subsection (1), all the rights and obligations between the old employers and each employee at the time of the merger continue in force as if they were rights and obligations between the new employer and each employee and anything done before the merger by or in relation to the old employers is considered to have been done by or in relation to the new employer.

[Sub-s. (2B) inserted by s. 5 (c) of Act 63 of 2002 (wef 19 December 2002).]

(2C) A merger referred to in subsection (1) does not interrupt the employee's continuity of employment.

[Sub-s. (2C) inserted by s. 5 (c) of Act 63 of 2002 (wef 19 December 2002).]

(2D) The provisions of subsections (2A) to (2F) do not affect the liability of any person to be disciplined for, prosecuted for, convicted of and sentenced for any offence or misconduct.

[Sub-s. (2D) inserted by s. 5 (c) of Act 63 of 2002 (wef 19 December 2002).]

(2E) An employee or a student is subject to the disciplinary codes and rules applicable to the new single public higher education institution as from the date of the merger contemplated in subsection (1), but if any enquiry into incapacity or any proceedings in respect of a charge of misconduct had

been instituted or commenced against any employee or student before the date of the merger, such enquiry or proceedings continue in terms of the codes and rules applicable to the relevant public higher education institution immediately prior to the merger.

[Sub-s. (2E) inserted by s. 5 (c) of Act 63 of 2002 (wef 19 December 2002).]

(2F) Until the new single public higher education institution has made disciplinary codes or rules, the disciplinary codes and rules of the respective old public higher education institutions are applicable to the respective employees and students.

[Sub-s. (2F) inserted by s. 5 (c) of Act 63 of 2002 (wef 19 December 2002).]

(2G) Notwithstanding subsection (2A), the old employer may undertake rationalisation of its workforce according to operational requirements in accordance with section 189 of the Labour Relations Act, 1995 (Act 66 of 1995), prior to the date of the merger contemplated in subsection (1).

[Sub-s. (2G) inserted by s. 5 (c) of Act 63 of 2002 (wef 19 December 2002).]

(2H) If two or more public higher education institutions are merged into a single public higher education institution as contemplated in subsection (1), the new single public higher education institution-

- (i) continues with all academic programmes offered by the old higher education institutions under the rules applicable to the respective higher education institutions immediately before the date of the merger, until such programmes and rules are amended or restructured by the new council; and
- (ii) awards a degree, diploma or certificate to a student who qualifies before or after the date of the merger in its own name, but such degree, diploma or certificate must also reflect the name of the education institution at which the student was registered immediately before the date of the merger if the student was so registered.

[Sub-s. (2H) inserted by s. 5 (c) of Act 63 of 2002 (wef 19 December 2002).]

(3) (a) The single public higher education institution contemplated in subsection (1) is deemed to be a public higher education institution established under section 20.

(b) The Minister must, after consultation with the councils of the public higher education institutions that are to be merged, determine by notice contemplated in section 23 (1)-

- (i) the date of establishment of the institution;
- (ii) the type and name of the institution; and
- (iii) the physical location and official address of the institution.

[Sub-s. (3) substituted by s. 5 (d) of Act 63 of 2002 (wef 19 December 2002).]

(4) Section 22 (1) (b) to (6), with the changes required by the context, applies to a merger referred to in subsection (1).

(5) The Minister must in the notice contemplated in subsection (1) establish an interim council for a period not exceeding six months, to perform the functions relating to the governance of the single public higher education institution contemplated in subsection (1), except the making of an institutional statute.

[Sub-s. (5) added by s. 6 of Act 23 of 2001 (wef 2 November 2001).]

(6) The Minister may extend the period referred to in subsection (5) once for a further period not exceeding six months.

[Sub-s. (6) added by s. 6 of Act 23 of 2001 (wef 2 November 2001).]

(7) The members of the interim council contemplated in subsection (5) are appointed by the Minister and consist of-

- (a) the chairperson; and
- (b) a minimum of six members and a maximum of eight members.

[Para. (b) substituted by s. 5 (e) of Act 63 of 2002 (wef 19 December 2002).]

[Sub-s. (7) added by s. 6 of Act 23 of 2001 (wef 2 November 2001).]

(8) The members contemplated in subsection (7) (b)-

- (a) must be appointed by the Minister from nominations received from the public higher education institutions concerned; and
- (b) may not include any member of staff, or student, from the public higher education institutions concerned.

[Sub-s. (8) added by s. 6 of Act 23 of 2001 (wef 2 November 2001) and substituted by s. 5 (f) of Act 63 of 2002 (wef 19 December 2002).]

(9) The interim council must co-opt three members of the interim management contemplated in subsection (10) (a) and these members have no voting powers.

[Sub-s. (9) added by s. 6 of Act 23 of 2001 (wef 2 November 2001).]

(10) Apart from the functions contemplated in subsection (5) the interim council must in particular-

- (a) appoint an interim body to manage the day-to-day activities of the institution;
- (b) ensure that a council is constituted in terms of the standard institutional statute contemplated in section 33(3); and
- (c) ensure that such other structures as may be determined in the standard institutional statute contemplated in section 33(3) are constituted.

[Sub-s. (10) added by s. 6 of Act 23 of 2001 (wef 2 November 2001).]

(11) Any decision of the interim council which may affect the right of any structure of the public higher education institution, may only be taken after consultation with such structure.

[Sub-s. (11) added by s. 6 of Act 23 of 2001 (wef 2 November 2001).]

(12) Upon a written request by the Minister and within 60 days thereof, each of the public higher education institutions referred to in subsection (1) must provide the Minister with no fewer than four nominations for appointment of the members as contemplated in subsection (8) (a).

[Sub-s. (12) added by s. 5 (g) of Act 63 of 2002 (wef 19 December 2002).]

(13) Notwithstanding subsection (8), if any of the public higher education institutions fail to provide the nominations in terms of subsection (12), the Minister may appoint the members referred to in subsection (7) (b) from the nominations received from the other institution concerned, or at his or her discretion.

[Sub-s. (13) added by s. 5 (g) of Act 63 of 2002 (wef 19 December 2002).]

24 Incorporation of subdivisions of public higher education institutions

(1) The Minister may, after consulting the CHE and by notice in the *Gazette*, incorporate a subdivision of a public higher education institution with another public higher education institution.

(2) The assets, liabilities, rights and obligations of the subdivisions concerned devolve upon the public higher education institution with which the subdivision has been incorporated in a manner agreed by the councils of the public higher education institutions concerned or failing such agreement, in a manner determined by the Minister after consulting such councils.

(3) Sections 22 (2) to (6) and 23 (2) to (2H), with the changes required by the context, apply to an incorporation referred to in subsection (1).

[Sub-s. (3) substituted by s. 2 of Act 38 of 2003 (wef 15 December 2003).]

[S. 24 substituted by s. 6 of Act 63 of 2002 (wef 19 December 2002).]

25 Closure of public higher education institutions

(1) The Minister may, after consulting the CHE and by notice in the *Gazette*, close a public higher education institution.

(2) If a public higher education institution is closed under subsection (1), all assets and liabilities of such public higher education institution must after closure be dealt with according to law by the Minister and any assets remaining after payment of all liabilities vest in the Minister.

(3) Sections 22 (2) to (6) and 23 (2), with the changes required by the context, apply to a closure referred to in subsection (1).

CHAPTER 4

GOVERNANCE OF PUBLIC HIGHER EDUCATION INSTITUTIONS (ss 26-380)

26 Institutional governance structures

(1) Every public higher education institution may appoint a chancellor as its titular head.

(2) Every public higher education institution must establish the following structures and offices:

- (a) A council;

- (b) a senate;
- (c) a principal;
- (d) a vice-principal;
- (e) a students' representative council;
- (f) an institutional forum; and
- (g) such other structures and offices as may be determined by the institutional statute.

(3) Subject to subsection (4), a structure referred to in subsection (2) (a), (b), (e), (f) and (g) must elect a chairperson, vice-chairperson and other office-bearers from among its members in the manner determined by the institutional statute.

[Sub-s. (3) substituted by s. 3 (a) of Act 55 of 1999 (wef 19 November 1999) and by s. 7 of Act 23 of 2001 (wef 2 November 2001).]

(4) Notwithstanding the provisions of subsection (3)-

- (a) the principal is the chairperson of the senate;
- (b) the registrar of the public higher education institution appointed by the council, is the secretary to the council; and
- (c) the chairperson and the vice-chairperson of the council may not be elected from members contemplated in section 27 (4) (a), (b), (d), (e), (f) and (g).

[Sub-s. (4) added by s. 3 (b) of Act 55 of 1999 (wef 19 November 1999).]

27 Council of public higher education institution

(1) The council of a public higher education institution must govern the public higher education institution, subject to this Act and the institutional statute.

[Sub-s. (1) substituted by s. 8 (a) of Act 23 of 2001 (wef 2 November 2001).]

(2) Subject to the policy determined by the Minister as contemplated in section 3, the council, with the concurrence of the senate, must-

- (a) determine the language policy of the public higher education institution concerned;
- (b) publish the policy; and
- (c) make the policy available on request.

[Sub-s. (2) substituted by s. 8 (a) of Act 9 of 2016 (wef 22 September 2017).]

(3) The council, after consultation with the students' representative council, must provide for and establish a suitable structure to advise on the policy for student support services within the public higher education institution.

[Sub-s. (3) substituted by s. 8 (b) of Act 9 of 2016 (wef 22 September 2017).]

(4) The council of a public higher education institution must consist of not more than 30 members, made up of-

- (a) the principal;
- (b) the vice-principal or vice-principals;
- (c) not more than five persons appointed by the Minister;
- (d) a member or members of the senate elected by the senate;
- (e) an academic employee or academic employees of the public higher education institution, elected by such employees;
- (f) a student or students of the public higher education institution, elected by the students' representative council;
- (g) an employee or employees other than academic employees, elected by such employees of the public higher education institution; and
- (h) such additional persons as may be determined by the institutional statute.

[Sub-s. (4) substituted by s. 7 of Act 63 of 2002 (wef 19 December 2002).]

(5) The number of persons contemplated in subsection (4) (b), (d), (e), (f), (g) and (h) and the manner in which they are elected, where applicable, must be determined by the institutional statute.

[Sub-s. (5) substituted by s. 7 of Act 63 of 2002 (wef 19 December 2002).]

(5A) The eligibility criteria for nomination and election as a member of a council of a public higher education institution referred to in subsection (4) must be determined by the institutional statute.

[Sub-s. (5A) inserted by s. 1 of Act 23 of 2012 (wef 19 December 2012).]

(5B) Any person who has been a member of a council of a public higher education institution-

- (a) under circumstances contemplated in sections 49B (1) (a) and 49E; and
- (b) against whom an independent assessor has made an adverse finding in the report contemplated in section 47 (1) (b),

shall not be eligible for appointment, election, re-appointment or re-election as a member of a council of any public higher education institution.

[Sub-s. (5B) inserted by s. 1 of Act 23 of 2012 (wef 19 December 2012) and substituted by s. 8 (c) of Act 9 of 2016 (wef 22 September 2017).]

(6) At least 60 per cent of the members of a council must be persons who are not employed by, or students of, the public higher education institution concerned.

(7) A member of a council or a member of a committee of a council or a person with delegated functions in terms of section 68 (2)-

- (a) must be a person with knowledge and experience relevant to the objects and governance of the public higher education institution concerned;
- (b) must participate in the deliberations of the council or the committee of the council, or exercise any delegated function in the best interests of the public higher education institution concerned;

[Para. (b) substituted by s. 8 (e) of Act 9 of 2016 (wef 22 September 2017).]

- (c) must before he or she assumes office, and annually for as long as he or she continues to hold such office, declare any business, commercial or financial activities undertaken for financial gain that may raise a conflict or a possible conflict of interest with the public higher education institution concerned;

[Para. (c) substituted by s. 8 (e) of Act 9 of 2016 (wef 22 September 2017).]

- (d) may not place himself or herself under any financial or other obligation to any individual or organisation that might seek to influence the performance of any function of the council; and

- (e) (i) may not have a conflict of interest with the public higher education institution concerned;

- (ii) may not have a direct or indirect financial, personal, or other interest in any matter to be discussed at a meeting, or in regard to which he or she is to make a decision in terms of a delegated function, and which entails or may entail a conflict or possible conflict of interest with the public higher education institution concerned;

[Sub-para. (ii) substituted by s. 8 (f) of Act 9 of 2016 (wef 22 September 2017).]

- (iii) must, before the meeting of the council or the committee concerned and in writing, inform the chairperson of that meeting of the existence of a conflict or possible conflict of interest.

[Sub-para. (iii) substituted by s. 8 (f) of Act 9 of 2016 (wef 22 September 2017).]

[Sub-s. (7) substituted by s. 1 (a) of Act 21 of 2011 (wef 14 December 2011) and amended by s. 8 (d) of Act 9 of 2016 (wef 22 September 2017).]

(7A) Any person may, in writing, inform the chairperson of a meeting of the council or a committee of the council concerned, before that meeting, of a conflict or possible conflict of interest of a member of the council or of a committee of the council with the public higher education institution concerned of which such person may be aware.

[Sub-s. (7A) inserted by s. 1 (b) of Act 21 of 2011 (wef 14 December 2011) and substituted by s. 8 (g) of Act 9 of 2016 (wef 22 September 2017).]

(7B) A member referred to in subsections (7) (e) and (7A) is obliged to recuse himself or herself from the meeting during the discussion of the matter and the voting thereon.

[Sub-s. (7B) inserted by s. 1 (b) of Act 21 of 2011 (wef 14 December 2011).]

(7C) In the event that any member of a committee of the council or any employee, with delegated functions in terms of section 68 (2), has a conflict or possible conflict of interest as contemplated in this section in respect of a matter to be considered, the committee or the employee concerned may not take part in any consideration or a decision on the matter but must refer the matter for decision by council, having noted the member's or the employee's interest in the matter.

[Sub-s. (7C) inserted by s. 1 (b) of Act 21 of 2011 (wef 14 December 2011) and substituted by s. 8 (h) of Act 9 of 2016 (wef 22 September 2017).]

(7D) A member of the council or a member of a committee of the council who contravenes subsection (7) (c), (d) or (e), (7A) or (7B), after Council has followed a due process, may be-

- (a) suspended from attending a meeting; or
- (b) disqualified as a member of the council or a member of a committee of the council.

[Sub-s. (7D) inserted by s. 1 (b) of Act 21 of 2011 (wef 14 December 2011).]

(7E) The council must-

- (a) having regard to the provisions of subsections (7A) to (7D), (9) and section 34 and after consultation with the institutional forum, adopt a code of conduct to which all the members of the council, all the members of committees of the council and all other persons who exercise functions of the council in terms of delegated authority must subscribe in writing;

[Para. (a) substituted by s. 8 (i) of Act 9 of 2016 (wef 22 September 2017).]

- (b) determine rules and procedures in terms of section 32 for an annual declaration-

- (i) by each member of the council, each member of a council committee and each person who exercises functions of the council in terms of delegated authority;
- (ii) of his or her financial interests and fiduciary roles, the latter to include but not be limited to offices, directorships of companies, memberships of close corporations and trusteeships held; and
- (iii) of the financial interests and fiduciary roles of the members of his or her immediate family.

[Sub-s. (7E) inserted by s. 1 (b) of Act 21 of 2011 (wef 14 December 2011).]

(8) If 75 per cent or more of the members of the council of a public higher education institution resign at a meeting of council, it is deemed that the council has resigned.

[Sub-s. (8) added by s. 8 (b) of Act 23 of 2001 (wef 2 November 2001).]

(9) If a council resigns as contemplated in subsection (8) a new council must be constituted in terms of the institutional statute of the public higher education institution concerned by the administrator appointed in accordance with section 49G within a period of six months following the administrator's appointment.

[Sub-s. (9) added by s. 8 (b) of Act 23 of 2001 (wef 2 November 2001) and substituted by s. 8 (j) of Act 9 of 2016 (wef 22 September 2017).]

28 Senate of public higher education institution

(1) The senate of a public higher education institution is accountable to the council for the academic and research functions of the public higher education institution and must perform such other functions as may be delegated or assigned to it by the council.

(2) The senate of a public higher education institution must consist of-

- (a) the principal;
- (b) the vice-principal or vice-principals;
- (c) academic employees of the public higher education institution;
- (d) employees of the public higher education institution other than academic employees;
- (e) members of the council;
- (f) members of the students' representative council; and
- (g) such additional persons as may be determined by the institutional statute.

(3) The number of persons contemplated in subsection (2) (b), (c), (d), (e), (f) and (g) and the manner in which they are appointed or elected, as the case may be, must be determined by the institutional statute.

[Sub-s. (3) substituted by s. 9 of Act 23 of 2001 (wef 2 November 2001).]

(4) The majority of members of a senate must be academic employees of the public higher education institution concerned.

29 Committees of council and senate

(1) The council and the senate of a public higher education institution may each establish committees to perform any of their functions and may appoint persons, who are not members of the council or the senate, as the case may be, as members of such committees.

(2) The council and the senate are not divested of responsibility for the performance of any function delegated or assigned to a committee under this section.

(3) The council and the senate of a public higher education institution may jointly nominate committees, to be known as joint committees, to perform functions that are common to the council and the senate.

(4) The composition, manner of election, functions, procedure at meetings and dissolution of a committee and a joint committee are determined by the institutional statute or institutional rules.

[Sub-s. (4) substituted by s. 10 of Act 23 of 2001 (wef 2 November 2001).]

30 Principal of public higher education institution

The principal of a public higher education institution is responsible for the management and administration of the public higher education institution.

31 Institutional forum

(1) The institutional forum of a public higher education institution must-

- (a) advise the council on issues affecting the institution, including-
 - (i) the implementation of this Act and the national policy on higher education;
 - (ii) race and gender equity policies;
 - (iii) the selection of candidates for senior management positions;
 - (iv) codes of conduct, mediation and dispute resolution procedures; and
 - (v) the fostering of an institutional culture which promotes tolerance and respect for fundamental human rights and creates an appropriate environment for teaching, research and learning; and
- (b) perform such functions as determined by the council.

(1A) The council must-

- (a) consider the advice given by the institutional forum; and
- (b) provide written reasons if the advice is not accepted.

[Sub-s. (1A) inserted by s. 9 of Act 9 of 2016 (wef 22 September 2017).]

(2) The institutional forum of a public higher education institution must consist of a representative or representatives of-

- (a) the management, as determined by the institutional statute;
 - [Para. (a) substituted by s. 11 (a) of Act 23 of 2001 (wef 2 November 2001).]
- (b) the council;
- (c) the senate;
- (d) the academic employees;
- (e) the employees other than academic employees;
- (f) the students; and
- (g) any other category determined by the institutional statute.

[Sub-s. (2) amended by s. 8 of Act 63 of 2002 (wef 19 December 2002).]

(3) The number of persons contemplated in subsection (2) and the manner in which they are appointed or elected, as the case may be, are determined by the institutional statute.

[Sub-s. (3) substituted by s. 11 (b) of Act 23 of 2001 (wef 2 November 2001).]

32 Institutional statutes and institutional rules

(1) The council of a public higher education institution may make-

- (a) an institutional statute, subject to section 33, to give effect to any matter not expressly prescribed by this Act; and

[Para. (a) substituted by s. 12 of Act 23 of 2001 (wef 2 November 2001).]

- (b) institutional rules to give effect to the institutional statute.

(2) An institutional statute or institutional rules in connection with-

- (a) the composition of the senate may not be amended or repealed except after consultation with such senate;

- (b) the academic functions of the public higher education institution concerned, including the studies, instruction and examinations of students and research, may not be made, amended or repealed except with the concurrence of the senate of such institution;
- (c) the composition of the students' representative council may not be amended or repealed except after consultation with such students' representative council; and
- (d) the disciplinary measures and disciplinary procedures relating to students, may not be made except after consultation with the senate and the students' representative council of the public higher education institution concerned.

33 Institutional statutes to be approved or made by Minister

(1) Any institutional statute must be submitted to the Minister for approval, and if so approved must be published by notice in the *Gazette* and comes into operation on the date mentioned in such notice.

(2) The Minister must table any institutional statute made under section 32 in Parliament as soon as reasonably practicable after it has been published as contemplated in subsection (1).

(3) The Minister must make a standard institutional statute, which applies to every public higher education institution that has not made an institutional statute until such time as the council of such public higher education institution makes its own institutional statute under section 32.

34 Appointment and conditions of service of employees of public higher education institutions

(1) The council of a public higher education institution must appoint the employees of the public higher education institution.

(2) Notwithstanding subsection (1) the principal, any vice-principal and the academic employees of the public higher education institution must be appointed by the council after consultation with the senate.

[Sub-s. (2) substituted by s. 10 (a) of Act 9 of 2016 (wef 22 September 2017).]

(3) The council must determine the conditions of service, disciplinary provisions, privileges and functions of the employees of the public higher education institution, subject to the applicable labour law.

(4) An employee must in writing-

- (a) (i) before he or she assumes office; and
- (ii) whenever a new interest arises,

declare any business, commercial or financial activities undertaken for financial or other gain that may raise a conflict or a possible conflict of interest with the public higher education institution concerned; and

[Para. (a) substituted by s. 10 (b) of Act 9 of 2016 (wef 22 September 2017).]

- (b) notify the public higher education institution concerned of any conflict or possible conflict of interest before such public higher education institution procures any goods or services from the employee or an organisation within which the employee holds an interest.

[Sub-s. (4) added by s. 2 of Act 21 of 2011 (wef 14 December 2011).]

(5) An employee may not conduct business directly or indirectly with the public higher education institution at which he or she is employed that entails or may entail a conflict of interest with the public higher education institution unless the council of such public higher education institution is of the opinion, and takes a decision, that-

- (a) the goods, product or service in question are unique;
- (b) the supplier is a sole provider; and
- (c) it is in the best interest of the institution.

[Sub-s. (5) added by s. 2 of Act 21 of 2011 (wef 14 December 2011) and amended by s. 10 (c) of Act 9 of 2016 (wef 22 September 2017).]

(6) An employee may not on behalf of the public higher education institution concerned contract with himself or herself or his or her relative or any entity in which the employee or any relative has a direct or indirect financial, personal, fiduciary or other interest.

[Sub-s. (6) added by s. 2 of Act 21 of 2011 (wef 14 December 2011) and substituted by s. 10 (d) of Act 9 of 2016 (wef 22 September 2017).]

(7) Contracting referred to in subsection (6) relates to conduct that is aimed at receiving any direct or indirect financial, personal, fiduciary or other gain that does not form part of the employment relationship contemplated in subsection (1).

[Sub-s. (7) added by s. 2 of Act 21 of 2011 (wef 14 December 2011) and substituted by s. 10 (d) of Act 9 of 2016 (wef 22 September 2017).]

35 Students' representative council

The establishment and composition, manner of election, term of office, functions and privileges of the students' representative council of a public higher education institution must be determined by the institutional statute and the institutional rules.

[S. 35 substituted by s. 13 of Act 23 of 2001 (wef 2 November 2001).]

36 Disciplinary measures

Every student at a public higher institution is subject to such disciplinary measures and disciplinary procedures as may be determined by the institutional statute or the institutional rules.

[S. 36 substituted by s. 14 of Act 23 of 2001 (wef 2 November 2001).]

37 Admission to public higher education institutions

(1) Subject to this Act, the council of a public higher education institution, after consulting the senate of the public higher education institution, determines the admission policy of the public higher education institution.

(2) The council must publish the admission policy and make it available on request.

(3) The admission policy of a public higher education institution must provide appropriate measures for the redress of past inequalities and may not unfairly discriminate in any way.

(4) Subject to this Act, the council may, with the approval of the senate-

- (a) determine entrance requirements in respect of particular higher education programmes;
- (b) determine the number of students who may be admitted for a particular higher education programme and the manner of their selection;
- (c) determine the minimum requirements for readmission to study at the public higher education institution concerned; and
- (d) refuse readmission to a student who fails to satisfy such minimum requirements for readmission.

38 Co-operation between public higher education institutions

(1) Public higher education institutions may co-operate with each other in any manner to achieve the optimal utilisation of resources and the performance of their functions.

(2) Public higher education institutions may establish regional or national structures to assist and facilitate the co-operation contemplated in subsection (1).

(3) The Minister may provide financial incentives to such structures and to public higher education institutions participating in such structures to achieve the aims of such co-operation.

38A

[S. 38A added by s. 3 of Act 38 of 2003 (wef 15 December 2003), substituted by s. 2 of Act 23 of 2012 (wef 19 December 2012) and repealed by s. 11 of Act 9 of 2016 (wef 22 September 2017).]

38B

[S. 38B added by s. 3 of Act 38 of 2003 (wef 15 December 2003), substituted by s. 3 of Act 23 of 2012 (wef 19 December 2012) and repealed by s. 11 of Act 9 of 2016 (wef 22 September 2017).]

38C

[S. 38C added by s. 3 of Act 38 of 2003 (wef 15 December 2003), amended by s. 4 of Act 23 of 2012 (wef 19 December 2012) and repealed by s. 11 of Act 9 of 2016 (wef 22 September 2017).]

38D to 38G

[Ss. 38D to 38G added by s. 3 of Act 38 of 2003 (wef 15 December 2003) and repealed by s. 11 of Act 9 of 2016 (wef 22 September 2017).]

38H

[S. 38H added by s. 3 of Act 38 of 2003 (wef 15 December 2003), substituted by s. 5 of Act 23 of 2012 (wef 19 December 2012) and repealed by s. 11 of Act 9 of 2016 (wef 22 September 2017).]

38I

[S. 38I added by s. 3 of Act 38 of 2003 (wef 15 December 2003), substituted by s. 6 of Act 23 of 2012 (wef 19 December 2012) and repealed by s. 11 of Act 9 of 2016 (wef 22 September 2017).]

38J to 38O

[Ss. 38J to 38O added by s. 7 of Act 23 of 2012 (wef 19 December 2012) and repealed by s. 11 of Act 9 of 2016 (wef 22 September 2017).]

CHAPTER 5 FUNDING OF PUBLIC HIGHER EDUCATION (ss 39-41)

39 Allocation of funds by Minister

(1) The Minister must, after consulting the CHE and with the concurrence of the Minister of Finance, determine the policy on the funding of public higher education, which must include appropriate measures for the redress of past inequalities, and publish such policy by notice in the *Gazette*.

(2) The Minister must, subject to the policy determined in terms of subsection (1), allocate public funds to public higher education on a fair and transparent basis.

(3) The Minister may, subject to the policy determined in terms of subsection (1), impose-

- (a) any reasonable condition in respect of an allocation contemplated in subsection (2); and
- (b) different conditions in respect of different public higher education institutions, different instructional programmes or different allocations, if there is a reasonable basis for such differentiation.

(3A) If the council of a public higher education institution fails to comply with any-

- (a) provision of this Act under which an allocation from money appropriated by Parliament is paid to the institution; or
- (b) condition subject to which any such allocation is paid to such institution, the Minister may in writing request such council to comply with the provision or condition within a specified period.

[Sub-s. (3A) inserted by s. 12 of Act 9 of 2016 (wef 22 September 2017).]

(3B) If such council thereafter fails to comply with the provision or condition within the specified period as contemplated in subsection (3A), the Minister-

- (a) may withhold payment of any commensurate portion of any allocation appropriated by Parliament in respect of the public higher education institution concerned; and
- (b) must in writing inform the council concerned of his decision.

[Sub-s. (3B) inserted by s. 12 of Act 9 of 2016 (wef 22 September 2017).]

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

- (a) give notice in writing to the council of the public higher education institution concerned of the intention so to act;
- (b) give such council a reasonable opportunity to make representations; and
- (c) consider such representations.

[Sub-s. (3C) inserted by s. 12 of Act 9 of 2016 (wef 22 September 2017).]

(3D) The Minister must table a report in Parliament, regarding any action taken under subsection (3B), within a period of 30 days of the action.

[Sub-s. (3D) inserted by s. 12 of Act 9 of 2016 (wef 22 September 2017).]

(4) The policy referred to in subsection (1) may discriminate in a fair manner between students who are not citizens or permanent residents of the Republic and students who are citizens or permanent residents of the Republic.

[Sub-s. (4) added by s. 4 of Act 55 of 1999 (wef 19 November 1999).]

40 Funds of public higher education institutions

- (1) The funds of a public higher education institution consist of-
- (a) funds allocated by the Minister in terms of section 39;
 - (b) any donations or contributions received by the institution;
 - (c) money raised by the institution;
 - (d) money raised by means of loans and overdrafts;
[Para. (d) substituted by s. 4 (a) of Act 54 of 2000 (wef 22 November 2000).]
 - (e) income derived from investments;
 - (f) money received for services rendered to any other institution or person;
 - (g) money payable by students for higher education programmes provided by the institution, but the council may discriminate in a fair manner between students who are not citizens or permanent residents of the Republic and students who are citizens or permanent residents of the Republic when the amount payable is determined;
[Para. (g) substituted by s. 5 of Act 55 of 1999 (wef 19 November 1999).]
 - (h) money received from students or employees of the institution for accommodation or other services provided by the institution; and
 - (i) other receipts from whatever source.

(2) (a) Subject to paragraph (b), a public higher education institution may only with a resolution of its council, not taking into account any vacancy that may exist, enter into a loan or an overdraft agreement.

(b) A resolution contemplated in paragraph (a) must be approved by the Minister if the sum of the borrowing it authorises plus the borrowing previously approved but not yet taken up, plus the institution's short-term and long-term debt at that date exceeds-

- (i) such amount as the Minister has determined for such institution; or
- (ii) in the absence of such determination, five per cent of the average annual income of the public higher education institution during the two years immediately preceding the date of such resolution.

[Para. (b) substituted by s. 9 of Act 63 of 2002 (wef 19 December 2002).]
[Sub-s. (2) added by s. 4 (b) of Act 54 of 2000 (wef 22 November 2000).]

(3) (a) Subject to paragraph (b), a public higher education institution may only with a resolution of its council, not taking into account any vacancy that may exist, embark on any-

- (i) construction of a permanent building or other immovable infrastructural development;
- (ii) purchasing of immovable property; or
- (iii) long-term lease of immovable property.

(b) Any action contemplated in paragraph (a) must be approved by the Minister if the value of such development or property exceeds five per cent of the average income of that public higher education institution received during the two years immediately preceding such action.

[Sub-s. (3) added by s. 4 (b) of Act 54 of 2000 (wef 22 November 2000).]

41 Records to be kept, external audit and information to be furnished by council

[Heading substituted by s. 13 (a) of Act 9 of 2016 (wef 22 September 2017).]

(1) The council of a public higher education institution must in the manner prescribed by the Minister-

- (a) keep records of all its proceedings; and
- (b) in respect of the public higher education institution concerned as a whole-
 - (i) ensure the implementation of an external audit in accordance with accepted audit principles and standards on an annual basis; and
 - (ii) keep complete accounting records of all assets, liabilities, income and expenses and any other financial transactions;

[Para. (b) substituted by s. 13 (b) of Act 9 of 2016 (wef 22 September 2017).]

(2) The council of a public higher education institution must by a date and in the manner prescribed by the Minister, provide the Minister with such information, in such format, as the Minister may prescribe.

[Sub-s. (2) substituted by s. 13 (c) of Act 9 of 2016 (wef 22 September 2017).]

[S. 41 amended by s. 5 of Act 54 of 2000 (wef 22 November 2000) and substituted by s. 10 of Act 63 of 2002 (wef 19 December 2002).]