

## **[Act 7 of 1997] EXAMINATIONS AND ASSESSMENT ACT 7 OF 1997**

[ASSENTED TO 17 NOVEMBER 1997] [DATE OF COMMENCEMENT: 24 DECEMBER 1997]

[Except sec 5(2): to be proclaimed]

*(English text signed by the Premier)*

**as amended by**

Examinations and Assessment Amendment Act 7 of 1998

### **ACT**

**To provide for an efficient and equitable system for the examination and assessment of learners in the Province, the establishment of an Examinations and Assessment Board to enable public scrutiny of and participation in the development of such a system, and matters connected therewith.**

#### **1 Definitions**

In this Act, unless the context indicates otherwise -

**"Board"** means the Examinations and Assessment Board established in terms of section 6;

**"Constitution"** means the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996);

**"Council"** means the Gauteng Education and Training Council established in terms of section 32(1) of the School Education Act (Gauteng) 1995, (Act 6 of 1995);

**"Department"** means the Gauteng department responsible for education;

**"Director"** means the most senior Departmental officer whose specific responsibility is the implementation of examination and assessment policy;

**"Executive Committee"** means the Executive Committee of the Board;

**"Head of Department"** means the most senior officer employed in the Department;

**"legislature"** means the legislature of the Province of Gauteng;

**"MEC"** means Member of the Executive Council responsible for education matters in the province;

**"member"** means a member of the Board;

**"national legislation"** means an Act of Parliament or delegated legislation made in terms of an Act of Parliament and approved by the National Council of Provinces as contemplated by section 146(6) of the Constitution;

**"nominated member"** means a member nominated in terms of section 6(2)(a) or (b); and

**"Province"** means the Province of Gauteng.

## **2 Application of Act**

Subject to the Constitution, the South African Qualifications Authority Act, 1995 (Act 58 of 1995), the South African Certification Council Act, 1986 (Act 85 of 1986) and any applicable norms and standards prescribed in national legislation, this Act shall apply to the development and implementation of examination and assessment policy in the Province.

## **3 Principles underpinning examinations and assessment**

The following principles shall underpin examination and assessment policy and the implementation thereof in the Province:

- (a) Every learner has the right to fair and reasonable examination and assessment practices.
- (b) Every interested person has the right to information about the examination and assessment policies and plans of the Department subject to the following -
  - (i) the Department may not release any information the disclosure of which may affect the security required in the administration of examination and assessment procedures and instruments; and
  - (ii) the Department may refuse to release information when to do so will hamper the effective and efficient administration of examination and assessment procedures and instruments.
- (c) Representatives of stakeholders in education in the Province must be consulted with regard to examination and assessment policy.

## **4 General powers of Member of Executive Council**

The Member of the Executive Council must determine examination and assessment policy in the Province.

## **5 Duties and functions of Department**

- (1) The Head of Department must be responsible for the implementation of examination and assessment policy in the Province, and -
  - (a) must ensure that the implementation of examination and assessment policy is guided by the principles set out in section 3;
  - (b) must deliver annually to the Board in writing the management strategy of the Department with regard to the implementation of examination and assessment policy in the Province; and

- (c) may issue rules by Notice in the *Provincial Gazette* concerning the implementation of any aspect of examination and assessment policy.
- (2) The Head of Department may not issue any rules in terms of subsection (1)(c) unless at three weeks prior to the publication of the Notice contemplated by that subsection, he or she has delivered a copy of the Notice to the Board.  
  
[Date of commencement of subsection (2) to be proclaimed.]
- (3) The Director must, at each meeting of the Board, report on the current state of implementation of examination and assessment policy in the Province.
- (4) The Director must report to the Board on any further matters in respect of which the Board has, in terms of paragraph (d) of section 10(1), instructed him or her to report.

## **6 Establishment of Board**

- (1) The Member of the Executive Council must, within six months of the commencement date, establish a body known as the Examinations and Assessment Board.
- (2) The following persons must be appointed by the Member of the Executive Council as members of the Board after consultation with the Council -
  - (a) one person nominated by the Council;
  - (b) nine persons selected from persons nominated in accordance with subsection (3) by organisations representing stakeholders in education and training in the province;
  - (c) five persons whom the Member of the Executive Council in his or her discretion appoints as members of the Board; and
  - (d) the Head of Department and the Director.
- (3) The Member of the Executive Council must -
  - (a) within 30 days of the commencement date, and thereafter at least 60 days before the end of each term of office of the members of the Board, publish a Notice in the *Provincial Gazette* inviting nominations for members of the Board as contemplated in subsection (2)(b), and indicating the form which these nominations must take;
  - (b) state in the Notice contemplated in paragraph (a) the closing date for the submission of nominations in terms of paragraph (a), which date shall be 30 days from the date on which the Notice is published; and
  - (c) make his or her appointments in terms of subsection (2)(b) by Notice in the *Provincial Gazette* published within 30 days of the closing date for

the submission of nominations in terms of paragraph (a).

- (4) Persons appointed in terms of paragraphs (a) to (c) of subsection (2) must be persons who are, by virtue of their experience or expertise, able to make a valuable contribution to examination and assessment policy in the Province.
- (5) Members of the Board must, for the performance of their duties on the Board, be accountable to the MEC.

## **7 Term of office of members of Board and appointment of new members of Board**

Subject to section 8, the term of office of a member appointed in terms of paragraphs (a) to (c) of section 6(2) shall be two years.

## **8 Withdrawal of appointment of member by Member of Executive Council and the filling of vacancies on the Board**

- (1) The Member of the Executive Council for Education may, after consultation with the Board, withdraw the appointment of a member -
  - (a) if the member so requests;
  - (b) if the Board has passed a resolution requesting the Member of the Executive Council to withdraw the appointment of the member and -
    - (i) the member has failed to attend three consecutive meetings of the Board without valid cause;
    - (ii) the member fails to perform his or her functions as a member of the Board; or
    - (iii) the conduct of the member has been prejudicial to the best interests of the Board.
- (2) The Member of the Executive Council may not withdraw the appointment of a member unless he or she has given the member an opportunity to make representations relating to such withdrawal.
- (3) Vacancies on the Board must be filled as follows -
  - (a) a vacancy relating to the withdrawal of the appointment of a member contemplated in section 6(2)(a) must be filled by appointment by the Member of the Executive Council on recommendation of the Council;
  - (b) a vacancy relating to the withdrawal of the appointment of a member contemplated in paragraphs (b) or (c) of section 6(2) must be filled by appointment by the Member of the Executive Council after consultation with the Council.

- (4) The term of office of a member appointed to fill a vacancy on the board shall end when the term of office of the member whose withdrawal caused the vacancy would have ended.

## **9 Co-option of members by Board**

- (1) The Board may, with the consent of the Member of the Executive Council, co-opt any person as a member to assist it in the performance of its functions and duties.
- (2) The Board may at any time terminate the membership of a person co-opted in terms of subsection (1).
- (3) Co-opted members shall be non-voting members of the Board.

## **10 Functions and duties of Board**

- (1) In addition to any other functions and duties assigned to it by law, the Board -
  - (a) may make recommendations to the Member of the Executive Council concerning examination and assessment policy in the Province and to the Head of Department concerning the implementation thereof;
  - (b) may make recommendations to the Member of the Executive Council on any other matter referred to it by the Member of the Executive Council;
  - (c) may make recommendations to the Head of Department on any other matter referred to it by the Head of Department;
  - (d) may instruct the Director to report to it on any matter relating to the implementation of examinations and assessment policy in the Province;
  - (e) may bring to the notice of the Member of the Executive Council or Head of Department any matter concerning examinations and assessment in the Province;
  - (f) may make its own rules regulating its meetings and the meetings of the executive Committee, and the procedures at such meetings, including the quorum for such meetings;
  - (g) must publish an annual report on examination and assessment policy in the Province and the implementation thereof; and
  - (h) must produce a report on any matter relating to examination and assessment policy in the Province if requested to do so by the Member of the Executive Council.
- (2) The Board may delegate any of its powers to its Executive Committee, but no delegation of a function by the Board shall divest it of the power to perform that function itself.

## **11 Recommendations of Board**

- (1) If the Member of the Executive Council decides not to implement a recommendation made by the Board in terms of paragraphs (a) or (b) of section 10(1), he or she must provide the Board with written reasons for his or her decision, and table such reasons before the Standing Committee on Education of the Legislature.
- (2) If the Head of Department decides not to implement a recommendation made by the Board in terms of paragraphs (a) or (c) of section 10(1), he or she must provide the Board with written reasons for his or her decision, and table such reasons before the Standing Committee on Education of the Legislature.

## **12 Office bearers, executive committee and administrative officer of Board**

- (1) At the first meeting of the Board, it must elect the following office bearers -
  - (a) a Chairperson;
  - b) a Vice-chairperson; and
  - (c) a Treasurer.
- (2) The Head of Department must preside over the election of a Chairperson of the Board, whereupon the Chairperson must take over the chairing of the meeting.
- (3) The office bearers elected in terms of subsection (1) shall be members of the Executive Committee of the Board.
- (4) At the first meeting of the Board, it may elect a maximum of two additional members of the Executive Committee.
- (5) The Head of Department must appoint a person designated in terms of section 14 as administrative officer for the Board and the Executive Committee.
- (6) The administrative officer must attend and keep minutes of meetings of the Board and the Executive Committee.
- (7) When the Executive Committee takes any decision in terms of a function delegated to it by the Board in terms of section 10(2), it must report that decision to the Board at the first meeting of the Board after the decision was taken.

## **13 Finances of Board**

- (1) The Board must be funded from money appropriated for this purpose by the Legislature.
- (2) The Director must -

- (a) control, in accordance with the directions of the Head of Department, all funds of the Board; and
- (b) keep such books, records and statements as may be required by the Head of Department.

#### **14 Designation of staff by Department**

The Head of Department must designate such persons in the service of the Department as he or she deems necessary to assist the Board in the performance of its functions and duties.

#### **15 Meetings of Board**

- (1) The Board must meet at least four times a year.
- (2) The Executive Committee must meet at least four times a year.
- (3) The proceedings of the Board or of the Executive Committee shall not be invalid by reason only of the fact that there is a vacancy in the Board or the Executive Committee.

#### **16 Review of Board**

The existence and composition of the Board, and the harmonisation of its work with other existing and emerging structures which address examination and assessment policy and implementation, must be reviewed annually by the Legislature in the light of developments in national policy and legislation.

#### **16A Delegation**

- (1) The Member of the Executive Council may, subject to such conditions as he or she may determine, delegate to the Head of Department or any other person employed by the Department-
  - (a) any power conferred upon the Member of the Executive Council under this Act, except the power to make regulations and the power to determine examination and assessment policy in the Province; and
  - (b) any duty of the Member of the Executive Council in terms of this Act.
- (2) The Head of Department may, subject to such conditions as he or she may determine, delegate to any person employed in the Department-
  - (a) any power conferred upon the Head of Department under this Act, or delegated to him or her in terms of subsection (1)(a); and
  - (b) any duty of the Head of Department in terms of this Act or delegated to him or her in terms of subsection (1)(b).

- (3) Any delegation under subsection (1) or (2) does not prevent the Member of the Executive Council or the Head of Department from exercising such power or performing such duty.

Section 16A inserted by section 2 of Act 7 of 1998 with effect from 12 October 1998]

## **17 Regulations**

The Member of the Executive Council may make regulations to promote the objects of this Act.

- 17A** (1) The Member of the Executive Council may make regulations as to -
- (a) security arrangements necessary for the effective administration of any examination including any assessment procedure or instrument;
  - (b) authorised and unauthorised possession of material to be used in any examination, including any assessment procedure or instrument;
  - (c) authorised and unauthorised access to material to be used in any examination including any assessment procedure or instrument;
  - (d) the abuse of material to be used in any examination including an assessment procedure or instrument, to obtain financial or other benefits; and
  - (e) any other irregularity relating to the administration of any examination including any assessment procedure or instrument.
- (2) The Member of the Executive Council may make regulations that place obligations on public schools regarding the registration of learners enrolled at public schools for examinations conducted by the Department.
- (3) Regulations made under subsection (1) of this section and section 17 may prescribe in respect of any contravention thereof or failure to comply therewith a penalty of a fine or imprisonment not exceeding two years.

[Section 17A inserted by section 1 of Act 7 of 1998 with effect from 12 October 1998.]

## **18 Short title and commencement**

- (1) This Act shall be called the Examinations and Assessment Act, 1997, and subject to subsection (2) shall come into operation on a date fixed by the Premier by proclamation in the *Provincial Gazette*.
- (2) Section 5(2) shall come into operation on a different date fixed by the Premier by proclamation in the *Provincial Gazette*.



**[Act 7 of 1998] EXAMINATIONS AND ASSESSMENT AMENDMENT ACT 7 OF 1998**

[ASSENTED TO 7 OCTOBER 1998] [DATE OF COMMENCEMENT: 12 OCTOBER 1998]

*(English text signed by the Premier)*

**ACT**

**To amend the Examinations and Assessment Act, 1997 (Act 7 of 1997), so as to make provision for additional powers of the Member of the Executive Council to make regulations; to make provision for the delegation of certain powers and duties; and to provide for matters incidental thereto.**

**1 and 2**

Insert respectively sections 17A and 16A (in that order) in the Examinations and Assessment Act 7 of 1997.

**3 Short title**

This Act shall be called the Examinations and Assessment Amendment Act, 1998.