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GENERAL NOTICE

NOTICE 1587 OF 1995

SCHOOL EDUCATION BILL, 1995

The School Education Bill is hereby published by the MEC for Education for comments in terms of Rule 130 of the Standing Rules of the Pretoria-Witwatersrand-Vereeniging Provincial Legislature.

Members of the Public are invited to submit their comments by 26 May 1995 to—

The Office of the MEC for Education
30 Simmonds Street
Johannesburg
2000.

Translations from the English original are available in Afrikaans, Sesotho sa Leboa and isiZulu at the above address.

SCHOOL EDUCATION BILL

To provide for the provision and
control of education in schools,
and matters connected therewith

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CHAPTER 1

INTERPRETATION

Definitions and application

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

"centres of learning" includes centres for the development and promotion of particular aptitudes of learners, and centres at which part-time classes are provided for education;

"commencement date" means the date fixed under section 108;

"Constitution" means the Constitution of the Republic of South Africa, 1993 (Act No. 200 of 1993);

"Council" means the Education and Training Council established in terms of section 31;

"department" means the department in the administration of the Province responsible for education;

"district council" means a district education and training council established in terms of section 38(1);

"district director" means the officer of the department responsible for the administration of education in a particular educational district;

"education" means instruction, teaching or training provided to learners in terms of this Act;

"educational auxiliary service" includes any service necessary —

- (i) to provide for the health and welfare of learners;
- (ii) to have learners transported;
- (iii) to supplement educational programmes; or
- (iv) to continue the activities of schools or centres of learning;

"educational district" means an educational district contemplated in section 6;

"educational region" means an educational region contemplated in section 6;

"educator" means a principal or any person who teaches, educates or trains learners or provides professional therapy at any school or centre of learning;

"Executive Council" means the Executive Council of the Province;

"farm school" means a state-aided school situated on a farm as contemplated in section 8(9) of the Education and Training Act, 1979 (Act No. 90 of 1979);

"financial head" means the member of the Executive Council of the Province who is responsible for financial affairs;

"first level" means that level which may be completed in the first year of school attendance contemplated in section 10(1);

"governing body" means a governing body for a public school, established under section 25 or deemed to be so established under section 96;

"government department" means a department in the national government or in any provincial government;

"Head of Department" means the most senior official in the department;
"language policy" of a public school, as contemplated in section 17, includes matters relating to —

- (i) the language or languages in which learning and teaching take place;
- (ii) the language or languages which may be studied at the school;
- (iii) the language or languages in which the school communicates with educators, learners and parents of learners;
- (iv) the support the school offers to learners whose language of choice is not one in which learning and teaching take place at the school;

"learner" means any person receiving education in a school in terms of this Act;

"level" means that part of an educational programme in a school, or of any other educational programme which the Member of the Executive Council may deem to be equivalent, which a learner may complete in one school year;

"Member of the Executive Council" means the member of the Executive Council of the Province who is responsible for matters relating to education;

"model C school" means a state-aided school as defined in the Education Affairs Act (House of Assembly), 1988 (Act No. 70 of 1988);

"negotiating forum" means the centralised negotiating forum established under section 101;

"official language" means a language referred to in section 3(1) of the Constitution or a sign language recognised under section 19;

"ordinary school" means a school other than a school for specialised education;

"parent" includes guardian;

"prescribed" means prescribed by regulation;

"principal" means the person appointed to the post of principal at a school, or a person acting in that post;

"private school" means a school other than a public school;

"Provincial Legislature" means the Provincial Legislature of the Province;

"public school" means a state school, a state-aided school, a school contemplated in section 100 or a farm school;

"religious policy" of a public school, as contemplated in section 20, includes matters relating to —

- (i) the amount, form and content of religious instruction classes offered at the school; and

- (ii) the religious practices which are conducted at the school.

"school" means any institution for the education of learners;

"school attendance officer" means a school attendance officer appointed under section 11 or deemed so to have been appointed under section 95;

"school for specialised education" means a school providing primarily specialised education;

"specialised education" means education of a specialised nature provided to address the needs of learners who —

- (i) cannot benefit sufficiently from the teaching provided in the ordinary course of education;
- (ii) require specialised education to facilitate their adaptation in the community; or
- (iii) should not attend an ordinary class in an ordinary school, because such attendance is not in their best interests or not in the best interests of the other learners in such class,

and includes —

- (a) the psychological, medical, dental, paramedical and therapeutic treatment of, including the performance of operations on, such learners;
- (b) the provision of artificial medical aids and apparatus to such learners;
- (c) the care of such learners in a hospital, hostel or other institution;
- (d) the provision of transport, escort and such other services as the Member of the Executive Council may deem necessary for such learners; and
- (e) the provision of guidance to the parents of such learners including the parents of such learners who are not yet subject to compulsory school attendance, with a view to the instruction, teaching, training or treatment of such learners;

"specialist council" means a specialist advisory council established under section 43;

"state school" means a school established under section 46 or a school deemed so to be established in terms of section 62(1)(a), 71(1)(a) or 97;

"state-aided school" means a school established, or declared to be a state-aided school under section 49, or deemed so to have been established or declared under section 99;

"this Act" includes regulations made under this Act and regulations contemplated in section 107(3);

"Treasury" means the authority responsible for the financial affairs of the Province.

Application

2. Subject to the Constitution, this Act shall apply in relation to school education in the Province.

CHAPTER 2

MEMBER OF THE EXECUTIVE COUNCIL AND DEPARTMENT

Control of school education in the Province

3. As from the commencement date, school education in the Province shall be controlled by the department, acting in accordance with the policy determined by the Member of the Executive Council.

Directive principles of school education policy

4. (1) The Member of the Executive Council shall determine school education policy in the Province within the framework of the following principles:
 - (a) Every person shall have the right to basic education and to equal access to schools and centres of learning.
 - (b) Every learner shall have the right to instruction in the language of his or her choice where this is reasonably practicable.

- (c) No learner or educator shall be unfairly discriminated against by the department, a state-aided school or a private school which receives a subsidy in terms of section 68.
- (d) There shall be a duty on the department to foster the advancement of persons or groups or categories of persons previously disadvantaged by unfair discrimination, in order to enable their full and equal enjoyment of educational rights.
- (e) There shall be a duty on the department to combat sexual harassment at schools and centres of learning.
- (f) Every learner and educator shall have the right to freedom of conscience, religion, thought, belief, opinion, speech and expression and the education process shall promote a culture of tolerance.
- (g) Every learner and educator shall have the right to peaceful assembly and demonstration and shall have the right to freedom of association.
- (h) Every person shall have the right of access to all information held by the department or the governing body of a school in so far as such information is required for the exercise or protection of his or her rights.
- (i) There shall be democratic and decentralised governance of public schools and school education.
- (j) The structures of democratic governance in school education should be constituted with due regard to the racial and gender demographics of the Province.
- (k) Education policy shall be aimed at achieving cost efficient and effective use of educational resources, eliminating wastage, inefficiency, maladministration and corruption.
- (l) Educational policy shall be aimed at improving the quality and availability of educational opportunities and resources to the people of the Province.
- (m) The education process shall be aimed at fostering independent and critical thought.

- (2) The principles set out in subsection (1) may be referred to by a court of law when interpreting any provision of this Act.
- (3) The Member of the Executive Council shall by notice in the *Provincial Gazette* publish details of any steps he or she intends to take in terms of subsection (1).
- (4) The Head of Department shall take such steps as may be necessary to implement the policy determined by the Member of the Executive Council.

General powers of Member of Executive Council

- 5. In addition to the other powers assigned to him or her by this Act, the Member of the Executive Council shall have the following powers:
 - (a) The Member of the Executive Council may out of money appropriated by the Provincial Legislature for this purpose and in order to further the objects of this Act —
 - (i) establish and maintain centres of learning;
 - (ii) establish and maintain hostels, clinics, educators' quarters and other accessories in connection with schools;
 - (iii) provide such equipment and erect such buildings as he or she may deem necessary or expedient for the administration of this Act;
 - (iv) make provision for such educational auxiliary services as he or she may deem necessary; and
 - (v) provide, on such basis and subject to such conditions as he or she may determine, financial or other material aid or financial as well as other material aid to a learner admitted to a public school.
 - (b) Subject to the provisions of this Act, the Member of the Executive Council may, after giving reasonable notice and furnishing reasons to all interested parties, close any centre of learning, hostel, clinic, educators' quarters or other accessory in connection with schools or discontinue any educational auxiliary service referred to in paragraph (a).

- (c) In order to further the objects of this Act, the Member of the Executive Council may enter into agreements with other government departments and with non-governmental organisations, but no agreement placing financial obligations on the department shall be entered into without the concurrence of the financial head.
- (d) Subject to any norms and standards set by the appropriate national body, the Member of the Executive Council may certify, and withdraw the certification of —
 - (i) the syllabi of, and conditions for admission to, courses at any school or centre of learning; and
 - (ii) the content of, and conditions for admission to, educational and training programmes at any school or centre of learning.
- (e) Subject to any norms and standards set by the appropriate national body, the Member of the Executive Council may accredit institutions providing courses and programmes for the training of educators and may withdraw the accreditation of any such institution.
- (f) The Member of the Executive Council may determine the school calendar, school holidays, school religious holidays and the minimum length of the school day.
- (g) Different syllabi, conditions for admission, contents of educational and training programmes, school calendars, school holidays, school religious holidays and lengths of the school day may be certified or determined, as the case may be, in respect of different schools and centres of learning.

Educational districts and regions

- 6. (1) The Member of the Executive Council may divide the area of the Province into educational regions, and each such region into educational districts, for the purpose of the administration of matters relating to education in the Province.
- (2) The Member of the Executive Council may amend the boundaries of any educational region or of any educational district.

Inquiry at instance of Member of Executive Council

7. (1) If it is in the interests of education in the Province, the Member of the Executive Council may appoint any appropriate person to conduct an inquiry within written terms of reference.
- (2) A person who conducts an inquiry in terms of subsection (1) may —
 - (a) enter the grounds of any school or centre of learning at any reasonable time as long as he or she has given to the person in charge of such school or centre of learning reasonable prior notice of his or her intention to enter the grounds;
 - (b) if he or she has reason to believe that any person is able to give evidence on any matter relevant to the inquiry, direct that person to appear before him or her at a stated time and place to answer his or her questions;
 - (c) question, under oath or otherwise, any person referred to in paragraph (b);
 - (d) if he or she has reason to believe that any person is able to produce any article, document, book, video or audio recording relevant to the inquiry, order that person to deliver to him or her that article, document, book, video or audio recording;
 - (e) examine and make copies of any document, book, video or audio recording referred to in paragraph (d); and
 - (f) attach any article, document, book, video or audio recording referred to in paragraph (d) if, in his or her opinion, it may provide evidence of any offence or irregularity.
- (3) A person appointed under subsection (1) who is not in the fulltime employment of the State may be paid, out of money appropriated for this purpose by the Provincial Legislature, such allowances as the Member of the Executive Council may, with the concurrence of the financial head, determine.
- (4) Any person who without just cause —
 - (a) hinders or obstructs a person conducting an inquiry in the performance of his or her functions under this section;

- (b) fails to appear in accordance with a direction issued under subsection (2)(b), at the time and place in question;
- (c) refuses to answer a question put to him or her under subsection (2)(c);
- (d) deliberately gives a false answer to a question put to him or her under subsection (2)(c);
- (e) fails to produce any article, document, book, video or audio recording as ordered under subsection (2)(d); or
- (f) prevents any other person from appearing in accordance with a direction issued under subsection (2)(b), at the time and place in question;

shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

Submission of information

8. (1) The Head of Department may direct any person employed at any school or centre of learning in writing to submit to him or her, within the period mentioned in the direction, such information at the disposal of such person as he or she may reasonably require in connection with the affairs of the school or centre of learning.
- (2) For the purposes of gathering information in connection with education in the Province, the Head of Department and any person authorised in writing by him or her shall have the same powers as a person who conducts an inquiry under section 7.

CHAPTER 3

SCHOOLING

Admission to public schools

9. (1) Subject to this Act, the Member of the Executive Council may make regulations as to the admission of learners to public schools.

- (2) Admission requirements for public schools shall not unfairly discriminate on grounds of race, ethnic or social origin, colour, sexual orientation, religion, conscience, belief, culture or language.

Compulsory school attendance

10. (1) Attendance at a school during school hours shall be compulsory for a person from the first school day of the year in which he or she reaches the age of 7 years until —

(a) in the case of a person with specialised education needs —

- (i) the last school day of the year in which he or she reaches the age of 18 years;
- (ii) he or she has completed the specialised education programme he or she is following; or
- (iii) he or she, in the opinion of the Head of Department, is ready to leave school; and

(b) in the case of any other person —

- (i) the last school day of the year in which he or she reaches the age of 15 years; or
- (ii) the day on which he or she completes the ninth level,

whichever is the earlier.

(2) (a) Notwithstanding the provisions of subsection (1), the Member of the Executive Council may, if the department lacks the material or administrative resources to provide for compulsory school attendance in accordance with subsection (1), by notice in the *Provincial Gazette* provide that in the calendar year in which the notice is issued or in the following calendar year, compulsory school attendance shall not apply to learners who fall within age-groups which are specified in the notice.

(b) No notice referred to in paragraph (a) shall be valid unless it has been ratified by resolution of the Provincial Legislature.

- (c) No notice may be issued under paragraph (a) after 31 December 1998.
- (3) Notwithstanding the provisions of subsection (1), the Member of the Executive Council may require that attendance at a school for specialised education during school hours shall be compulsory for any person with specialised educational needs whose age is greater than 3 years, if he or she has reason to believe that it would be in the best interests of the child concerned.
- (4) Notwithstanding the provisions of subsection (1), the Member of the Executive Council may exempt a learner entirely, partially or conditionally from compulsory school attendance if it is in the best interests of the learner.

Appointment of school attendance officers

11. (1) The Head of Department may appoint school attendance officers.
- (2) A school attendance officer shall be provided with a certificate, signed by the Head of Department, declaring that he or she has been appointed as a school attendance officer under this section.

Functions of school attendance officers

12. (1) In order to ensure that compulsory school attendance is being complied with, a school attendance officer may, subject to subsections (2), (3), (4) and (5) —
- (a) at any reasonable time during school hours enter upon and search any premises if he or she has reasonable grounds to believe that a person who is subject to compulsory school attendance is on those premises; and
- (b) question any person who in his or her opinion may be able to give information regarding the absence from school of a person who is subject to compulsory school attendance.

- (2) Save as provided in subsection (4), a search referred to in subsection (1)(a) shall be conducted only under a search warrant issued by a magistrate, if it appears to such magistrate from information on oath that there are reasonable grounds for believing that a person who is subject to compulsory school attendance is present during school hours on any premises within his or her area of jurisdiction.
- (3) A search warrant issued under subsection (2) shall authorize a school attendance officer to enter and to search any premises identified in the warrant.
- (4) A school attendance officer may without a search warrant search any premises for the purpose of establishing whether a person who is subject to compulsory school attendance is present on such premises during school hours —
- (a) if the person in control of such premises consents to the search; or
 - (b) if he or she on reasonable grounds believes that —
 - (i) a search warrant will be issued to him or her under subsection (2) if he or she applies for such warrant; and
 - (ii) the delay in obtaining such warrant would defeat the object of the search.
- (5) A school attendance officer shall not perform a function under this section, unless he or she is, while he or she is performing that function, in possession of his or her certificate referred to in section 11(2) which shall be produced by him or her to any person affected by the performance of that function.

Duties of principals relating to school attendance

13. (1) Where a learner is repeatedly absent from school without reasonable cause, the principal or an educator designated by him or her shall consult jointly with the learner, his or her parents and an appropriate officer of the Provincial department responsible for Welfare, in order to reach an agreement on the appropriate measures to remedy the problem.

- (2) Where it is impossible to reach an agreement contemplated in subsection (1) or where after reaching such an agreement there is no material improvement in the school attendance of the learner, the principal shall report the matter to the Head of Department.

Offences relating to compulsory school attendance

14. (1) If a parent of any person who is subject to compulsory school attendance in terms of section 10(1) fails, without reasonable cause and after a written warning by the Head of Department, to cause such person to attend an appropriate school regularly, he or she shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three months.
- (2) Any person who, during school hours, employs a person who is subject to compulsory school attendance in terms of section 10(1), shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three months.
- (3) Any person who hinders or obstructs a school attendance officer in the performance of his or her functions under section 12 shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

Age requirements

15. (1) The Member of the Executive Council may make regulations prescribing the age requirements in respect of the different categories of schools.
- (2) Notwithstanding the provisions of any regulations made under subsection (1), the Member of the Executive Council shall have the power to allow a learner to attend a school even if he or she does not satisfy the age requirements prescribed in respect of the school concerned.
- (3) No regulation made under subsection (1) may reduce below 21 years the age at which learners cease to be entitled to attend a school.

School fees

16. No learner shall be refused admission at a public school on the grounds that his or her parent has not paid the school fees contemplated in sections 47(2) or 52.

Language policy of public schools

17. (1) The language policy of a public school shall be made by the governing body of the school concerned after consultation with the department and subject to the approval of the Member of the Executive Council.

(2) The language policy of a public school shall be developed within the framework of the following principles:

(a) The education process should aim at the development of a national democratic culture of respect for the country's diverse language communities.

(b) Within practical limits, a learner shall have the right to language choice in education.

(c) School language policy should be designed to facilitate the maximum participation of learners in the learning process.

(d) Special measures should be taken to enable a learner to become competent in the languages of learning of his or her school, and where practicable, to enable a learner to use his or her language of choice where it differs from the languages of learning of his or her school;

(e) School language policies should be co-ordinated at a district level and should take into account the availability of human and material resources.

(f) On completion of the ninth level of education a learner should have acquired satisfactory standards of competence in at least two of the official languages.

(g) Special measures should be taken to promote the status and use of official languages which have previously been neglected or discriminated against by education authorities in the Province.

(h) There shall be a duty on all public schools and on the department to ensure that educators acquire the special skills necessary for teaching in a multilingual educational environment.

- (3) If, at any time, the Member of the Executive Council has reason to believe that the language policy of a public school does not comply with the principles set out in subsection (2), the Member of the Executive Council may, after consultation with the governing body of the school concerned, direct that the language policy of the school shall be reformulated in accordance with subsections (1) and (2).

Language and discrimination

18. (1) Language competence testing shall not be used as an admission requirement to a public school.
- (2) Learners at public schools shall be encouraged to make use of the range of official languages.
- (3) No learner at a public school or a private school which receives a subsidy in terms of section 68 shall be punished for expressing himself or herself in a language which is not a language of learning of the school concerned.
- (4) (a) Every learner at a public school, or at a private school which receives a subsidy in terms of section 68, shall have the right not to be penalised for expressing himself or herself in a language which is not a language of learning of the school concerned.
- (b) The right contemplated in paragraph (a) may be limited in circumstances where such limitation is reasonable and justifiable in an open and democratic society based on freedom and equality and committed to multilingualism.

Recognition of sign languages

19. (1) The Member of the Executive Council may by notice in the *Provincial Gazette* recognise any sign language which in his or her opinion is used by a significant proportion of people communicating in a sign language in the Province.
- (2) For the purposes of any matter related to school education in the Province, any sign language recognised under subsection (1) shall have the status of an official language.

Religious policy of public schools

20. (1) The religious policy of a public school shall be made by the governing body of the school concerned after consultation with the department, and subject to the approval of the Member of the Executive Council.
- (2) The religious policy of a public school shall be developed within the framework of the following principles:
- (a) The education process should aim at the development of a national democratic culture of respect for our country's diverse cultural and religious traditions.
 - (b) Freedom of conscience and of religion shall be respected at all public schools.
- (3) If, at any time, the Member of the Executive Council has reason to believe that the religious policy of a public school does not comply with the principles set out in subsection (2), the Member of the Executive Council may, after consultation with the governing body of the school concerned, direct that the religious policy of the school shall be reformulated in accordance with subsections (1) and (2).

Freedom of conscience

21. (1) No person employed at any public school shall attempt to indoctrinate learners into any particular belief or religion.
- (2) No person employed at any public school or private school shall in the course of his or her employment denigrate any religion.
- (3) (a) Every learner at a public school, or at a private school which receives a subsidy in terms of section 68, shall have the right not to attend religious education classes and religious practices at that school.
- (b) The right conferred by paragraph (a) on a learner at a private school which receives a subsidy in terms of section 68, may be limited where such limitation is justifiable in an open and democratic society based on freedom and equality and is necessary to preserve the religious character of the private school concerned.

- (c) Except as is provided for in paragraph (b) no person employed at a public school, or at a private school which receives a subsidy in terms of section 68, shall in any way discourage a learner from choosing not to attend religious education classes or religious practices at that school.
- (4) No person employed at a public school shall be obliged or in any way unduly influenced to participate in any of the religious education classes or religious practices at that school.

Control, expulsion, suspension and discipline of learners

- 22. (1) No person shall administer corporal punishment to a learner at any public school or private school.
- (2) Subject to subsection (1), the control, expulsion, suspension and punishment of learners at public schools and hostels shall be as prescribed.
- (3) Any person who intentionally or negligently contravenes subsection (1) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding six months.

Rights of parents to information

- 23. (1) Every parent shall have the right of access to any information held by the department, a public school or a private school if such information concerns a learner who is his or her child.
- (2) The right contemplated in subsection (1) shall not apply in circumstances where withholding access to the relevant information is reasonable and justifiable in an open and democratic society based on freedom and equality.

Duties of learners with respect to public school property

- 24. (1) Every learner at a public school shall take good care of the property of the school or of the department which is placed at his or her disposal, and shall return it to his or her school at the end of the school year.
- (2) The parents of a learner at a public school shall be liable for any damage to or loss of school or departmental property in respect of which the learner concerned is liable to the department or to the school concerned.

CHAPTER 4

PUBLIC SCHOOL GOVERNANCE

Governing bodies of public schools and hostels

25. (1) For the purpose of promoting the participation of the people of the Province in the governance of public schools, the Member of the Executive Council shall establish a governing body for every such school.
- (2) The Member of the Executive Council may, instead of establishing a governing body for each of two or more public schools, establish one governing body for such schools: Provided that no single governing body shall have powers over a state school and a state-aided school.
- (3) If, in the opinion of the Member of the Executive Council, it is not expedient to place a hostel under the supervision of the governing body of a particular school, the Member of the Executive Council may establish a governing body for one or more of such hostels.

Composition of governing bodies

26. (1) The principal of a public school shall be a member of the governing body of that school.
- (2) A majority of members of a governing body of a public school shall be parents of learners at that school.
- (3) The disabled community served by a public school for specialised education shall be represented on the governing body of that school.
- (4) Learners may be represented only on the governing body of a public school which provides education at a level higher than the seventh level.
- (5) (a) The Member of the Executive Council may make regulations as to the further composition of the governing bodies of public schools and hostels.
- (b) Regulations may exclude certain categories of representatives on the governing body of a public school from participation in certain categories of school business as long as there is a reasonable basis for such exclusion.

Powers of governing bodies

27. (1) The governing body of a public school shall be the official mouthpiece of the parents of learners, the educators and the learners of the school on matters other than those relating to the professional administration of the school.
- (2) A governing body may describe itself as a governing body, a school board, a parents' teachers' association or a parents' teachers' students' association.
- (3) The Member of the Executive Council shall make regulations setting out the powers of the governing body of a public school within the framework of the following principles:
- (a) State involvement in school governance should be limited to the minimum level required for legal accountability.
 - (b) The powers of governing bodies should reflect their capacity to render effective service.
 - (c) The professional administration of a school falls within the ambit of the principal and his or her staff.
- (4) Regulations made under subsection (3) may allocate different powers to different governing bodies or different categories of governing bodies, as long as there is a reasonable and equitable basis for such allocation of different powers.

Capacity building of governing bodies

28. (1) For the purposes of promoting efficiency and active participation in decentralised school and hostel governance, the Member of the Executive Council may institute courses and training programmes for the training of members of governing bodies.
- (2) The Member of the Executive Council may recommend that any governing body send members on particular courses or training programmes established in terms of subsection (1) and may, with the concurrence of the financial head, approve that the subsistence and travelling expenses of any such members relating to the attendance at such courses or training programmes shall be paid by the department.

Inability of governing body to perform its functions

29. (1) If a governing body of a public school, in the reasonable opinion of the Member of the Executive Council, is unable to perform the functions allocated to it under this Act, the Member of the Executive Council may, after consultation with the governing body concerned, by notice in the *Provincial Gazette* dissolve the governing body, and may authorize one or more persons to exercise any or all of the powers of the governing body during a period, not longer than one year, set out in the notice.
- (2) The Member of the Executive Council may by notice in the *Provincial Gazette* curtail or extend the period authorized under subsection (1), but the period may not be extended so that it is longer than one year.
- (3) A power exercised by a person or persons authorized under subsection (1), shall be deemed to have been exercised by the governing body concerned.
- (4) Within one year of the notice referred to in subsection (1), the Member of the Executive Council shall ensure that a new governing body of the school concerned is constituted in terms of this Act.

Regulations relating to governing bodies

30. The Member of the Executive Council may make regulations as to —
- (a) the qualifications for election of, the terms of office of, and the vacation of office by, members of governing bodies, and the filling of incidental vacancies in governing bodies;
 - (b) the manner of election, and the powers and functions, of officers of governing bodies;
 - (c) the convening of, procedure and rules at, and quorum for, meetings of governing bodies and the keeping of minutes of such meetings;
 - (d) the reconstitution of governing bodies; and
 - (e) the designation of persons employed by the department to perform the work relating to the performance of the functions of governing bodies.

CHAPTER 5

DEMOCRATIC GOVERNANCE OF EDUCATION

Establishment of Education and Training Council

31. (1) The Member of the Executive Council shall, within six months of the commencement date, establish a body to be known as the Education and Training Council.

(2) Every district council established under section 38 shall be represented on the Council.

(3) Every specialist council established under section 43 shall be represented on the Council.

(4) At the first meeting of the Council, the Council shall elect one of its members as the chairperson of the Council.

(5) The administrative functions of the Council shall be performed by a person or persons employed by the department.

(6) A member of the Council, or a member of a committee established by the Council under section 36(1), who is not in the full-time employment of the State may be paid, out of money appropriated for this purpose by the Provincial Legislature, such allowances as the Member of the Executive Council may, with the concurrence of the financial head, determine.

(7) Subject to the provisions of this Act, the Member of the Executive Council may make regulations as to —

(a) the composition of the Council;

(b) the qualifications and terms of office of, and the vacation of office by members of the Council, and the filling of vacancies; and

(c) the appointment and functions of an executive committee for the Council.

Head of Department reports to Council

32. (1) The Head of Department shall report quarterly, in writing, on the state of education in the Province, to the executive committee of the Council.
- (2) The executive committee of the Council shall table every report of the Head of Department at the first meeting of the Council after the report was received.

General functions of Council

33. (1) The Council shall make recommendations to the Member of the Executive Council concerning the provision of legislation relating to education in the Province.
- (2) The Council shall make recommendations to the Member of the Executive Council on any matter regarding education in the Province referred to it by the Member of the Executive Council or which the Council wishes to bring to the attention of the Member of the Executive Council.
- (3) The Council shall perform such other functions as may be assigned to it by or under this Act, or any other law.
- (4) The Council shall determine its own rules regulating its meetings and procedures at such meetings.
- (5) No act of the Council shall be invalid merely on account of a vacancy on the Council.

Recommendations of Council

34. If the Member of the Executive Council decides not to implement a recommendation made by the Council in terms of section 33(1) or (2), he or she shall provide the Council with written reasons for his or her decision.

Functions of Council with respect to legislation

35. (1) No Bill relating to education in the Province shall be introduced in the Provincial Legislature unless it has been submitted to the Council at least 30 days before such introduction.
- (2) No regulations may be made by the Member of the Executive Council under this Act unless a draft of such regulations has been submitted to the

Council for its comments, and the Member of the Executive Council has given consideration to the comments of the Council on such draft and has submitted to the Council his or her written response to such comments.

- (3) The provisions of subsections (1) and (2) shall not apply until the Council has been established under section 31.
- (4) The Council may delegate the power to comment contemplated in subsection (2), either generally or in specific cases, to a committee of the Council established under section 36.
- (5) For the purposes of satisfying the requirements of subsection (2), the Member of the Executive Council may direct the relevant administrative officer of the Council to convene, on 10 days' notice, a special meeting of the Council, or of any committee of the Council to which the Council has delegated its powers over the regulations in question.
- (6) Unless the comments contemplated in subsection (2) are forwarded to the Member of the Executive Council within seven days of the meeting at which the Council or its committee considered the draft regulations, the Member of the Executive Council may make the regulations concerned without considering or responding to such comments.
- (7) The provisions of subsection (2) shall not apply —
 - (a) to any amendments to draft regulations made by the Member of the Executive Council after considering the comments of the Council or its committee on such draft regulations; or
 - (b) in cases where the Member of the Executive Council certifies, in the notice in the *Provincial Gazette* in which the regulations are published, that he or she has reason to believe that there is so urgent a need for the regulations to be put in effect that the delay occasioned by the procedures of that subsection cannot be justified.
- (8) The Member of the Executive Council may not issue a notice under subsection (7)(b) unless he or she has informed the chairperson of the Council of his or her intention to do so.

Committees of Council

36. (1) The Council may, with the prior approval of the Member of the Executive Council, establish committees to assist it in the performance of its functions.
- (2) The composition of committees established under subsection (1) shall provide for adequate representation of educational districts within the Province.
- (3) The Council may assign any of its functions to such a committee, but shall not be divested of such functions and may amend or rescind any decision of such a committee.
- (4) The Council may dissolve any committee established under subsection (1).

Annual report of Council

37. (1) The Council shall, before the 31st of March of each year, present the Member of the Executive Council with a report on its activities of the previous calendar year.
- (2) After receiving the annual report of the Council, the Member of the Executive Council shall table it in the Provincial Legislature within 14 days of the next day on which the Provincial Legislature is sitting.

Establishment of district education and training councils

38. (1) The Member of the Executive Council may establish a district education and training council for each educational district in the Province.
- (2) At the first meeting of a district council it shall elect one of its members as chairperson.
- (3) The administrative functions of a district council shall be performed by a person or persons employed by the department.
- (4) A member of a district council, or a member of a committee established by a district council under section 42, who is not in the full-time employment of the State may be paid, out of money appropriated for this purpose by the Provincial Legislature, such allowances as the Member of the Executive Council may, with the concurrence of the financial head, determine.

- (5) Subject to the provisions of this Act, the Member of the Executive Council may make regulations as to —
- (a) the composition of a district council; and
 - (b) the qualifications and terms of office of, and the vacation of office by, members of a district council, and the filling of vacancies.

District director reports to district council

39. A district director shall report quarterly, in writing, on the state of education in his or her district, to the district council of his or her district.

General functions of district council

40. (1) A district council shall make recommendations to the relevant district director on any matter regarding education in the district referred to it by the district director or which the district council wishes to bring to the attention of the district director.
- (2) A district council shall perform such other functions as may be assigned to it by or under this Act or any other law.
 - (3) A district council shall determine its own rules regulating its meetings and procedures at such meetings.
 - (4) No act of a district council shall be invalid merely on account of a vacancy on the district council.

Recommendations of district council

41. (1) The district director shall refer the recommendation of a district council to the appropriate authority within the department.
- (2) Where the department decides not to implement the recommendation of a district council, it shall notify the district director of the reasons for its decision, and the district director shall provide the district council with these reasons in writing.

Committees of district council

42. (1) A district council may, with the prior approval of the Member of the Executive Council, establish committees to assist it in the performance of its functions.
- (2) A district council may assign any of its functions to such a committee, but shall not be divested of such functions, and may amend or rescind any decision of such a committee.
- (3) A district council may dissolve any committee established under subsection (1).

Establishment of specialist councils

43. (1) The Member of the Executive Council may, after consultation with the Council, establish specialist advisory councils to advise him or her on matters within specified terms of reference.
- (2) The Member of the Executive Council may make regulations as to —
 - (a) the composition of a specialist council;
 - (b) the qualifications and term of office of members of a specialist council and the filling of vacancies on a specialist council; and
 - (c) the appointment and functions of an executive committee of a specialist council.
- (3) At the first meeting of a specialist council it shall elect one of its members as chairperson.
- (4) The administrative functions of a specialist council shall be performed by a person or persons employed by the department.
- (5) A member of a specialist council who is not in the full-time employment of the State may be paid, out of money appropriated for this purpose by the Provincial Legislature, such allowances as the Member of the Executive Council may, with the concurrence of the financial head, determine.

Powers and functions of specialist councils

44. (1) A specialist council shall make recommendations to the Member of the Executive Council concerning legislation relating to matters falling within its terms of reference.
- (2) A specialist council shall make recommendations to the Member of the Executive Council on any matter falling within its terms of reference referred to it by the Member of the Executive Council or which the specialist council wishes to bring to the attention of the Member of the Executive Council.
- (3) A specialist council shall perform such other functions as may be assigned to it by or under this Act or any other law.
- (4) A specialist council shall determine its own rules regulating its meetings and procedures at such meetings.
- (5) No act of a specialist council shall be invalid merely on account of a vacancy on the specialist council.

Recommendations of specialist council

45. If the Member of the Executive Council decides not to implement a recommendation made by a specialist council in terms of section 44(1) or (2), he or she shall provide the specialist council with written reasons for his or her decision.

CHAPTER 6

STATE SCHOOLS

Establishment and closure of state schools

46. (1) The Member of the Executive Council may out of money appropriated by the Provincial Legislature for this purpose establish and maintain state schools.
- (2) If the Member of the Executive Council considers it necessary, he or she may, after consultation with the governing body of a state school, by notice in the *Provincial Gazette* declare that the state school concerned shall be closed from a date mentioned in such notice.

- (3) The notice contemplated in subsection (2) shall set out the reasons of the Member of the Executive Council for deciding to close the state school.
- (4) The governing body of a state school which is aggrieved by the decision of the Member of the Executive Council to close that school may, within 30 days after receiving a notice contemplated in subsection (2), appeal to the Executive Council, in writing, setting out the grounds of the appeal.
- (5) The Member of the Executive Council shall not take part in the deliberations of the Executive Council in respect of an appeal brought under subsection (4).
- (6) The Executive Council shall consider an appeal contemplated in subsection (4) and may confirm or set aside the decision of the Member of the Executive Council.
- (7) The Executive Council shall as soon as may be practicable —
 - (a) notify the appellant governing body of its decision; and
 - (b) provide the appellant governing body with written reasons for its decision.
- (8)
 - (a) If an appeal under subsection (4) is dismissed by the Executive Council the state school shall be closed 30 days after the date on which the appellant governing body is notified of the decision of the Executive Council.
 - (b) If no such appeal has been lodged within the 30 days provided for in subsection (4) the state school shall be closed on the expiry of those 30 days.

Schooling at state schools

47. (1) All learners shall be entitled to be provided with an adequate standard of free education from the first level to the ninth level at state schools.
- (2) The Member of the Executive Council may by notice in the *Provincial Gazette* determine school fees to be paid by parents of learners in respect of education at a level higher than the ninth level at any state school.

- (3) The Member of the Executive Council may, by notice in the *Provincial Gazette*, determine boarding fees to be paid by parents of learners in respect of board provided to such learners at any state school.
- (4) Different fees may be determined under subsections (2) and (3) in respect of different categories of learners, as long as there is a reasonable and equitable basis for such differentiation.
- (5) The Member of the Executive Council may, with the concurrence of the financial head, exempt any learner or category of learners at a state school wholly or partly from the payment of fees determined under subsections (2) and (3).

School funds at state schools

48. (1) The governing body of a state school shall establish a school fund and may solicit contributions to be paid into such school fund.
- (2) All money received by a state school shall be paid into the school fund of the school concerned.
- (3) The governing body of a state school shall, in accordance with the instructions issued by the Head of Department —
 - (a) keep records of money received and spent by the state school, and of the assets, liabilities and financial transactions of the state school; and
 - (b) as soon as practicable, but not later than three months after the end of each financial year, which shall be the last day of March in each year, draw up annual financial statements which indicate, with suitable particulars, money received and expenditure incurred by the state school during, and its assets and liabilities at the end of, the financial year concerned.
- (4) The records and financial statements referred to in subsection (3) shall be audited by a person registered as an accountant and auditor in terms of the Public Accountants' and Auditors' Act, 1991 (Act No. 80 of 1991), or another person approved by the Member of the Executive Council, and appointed by the governing body.
- (5) A governing body shall within six months after the end of each financial year submit a copy of the annual financial statements, audited in terms of subsection (4), to the Head of Department.

- (6) Any parent of a learner at a state school and any educator employed at a state school shall be entitled, on request, to be furnished by the governing body with a copy of the latest audited financial statements of the school concerned.
- (7) Where the Member of the Executive Council is of the opinion that there are insufficient amounts in the school fund of a state school to warrant the auditing of the financial statements of that school, he or she may exempt the governing body of that school from complying with the provisions of subsections (4) to (6) on such conditions as he or she may determine.
- (8) The Member of the Executive Council may, at any time, withdraw any exemption he or she has granted in terms of subsection (7).

CHAPTER 7

STATE-AIDED SCHOOLS

Declaration and establishment of state-aided schools

- 49. (1) In order to ensure the provision or the continued provision of education at a private school, the Member of the Executive Council may, by notice in the *Provincial Gazette*, declare such a school to be a state-aided school with effect from a date mentioned in the notice.
- (2) No private school shall be declared to be a state-aided school under subsection (1), except with the concurrence of the owner of that school and the financial head.
- (3) The Member of the Executive Council may, on such conditions as he or she may determine, declare a state school to be a state-aided school with effect from a date mentioned in the notice.
- (4) The Member of the Executive Council may establish a state-aided school.
- (5) A state-aided school shall be managed and controlled in terms of this Act.

Status and patrimonial power of state-aided schools

- 50. (1) A state-aided school shall be a juristic person.

- (2) A state-aided school shall not without the approval of the Member of the Executive Council let, sell or otherwise alienate its immovable property or grant to any person any real right therein or servitude thereon.
- (3) A state-aided school shall appropriate money or other goods donated or bequeathed to or received in trust by that school, in accordance with the conditions of the donation, bequest or trust concerned.
- (4)
 - (a) For the purposes of the Rating of State Property Act, 1984 (Act No. 79 of 1984), a state-aided school shall be deemed to be a governmental institution as defined in section 1(1) of that Act.
 - (b) The State shall be liable for the payment of rates which are levied by a local authority on the value of the immovable property of a state-aided school.

Control of state-aided schools

51. Subject to the provisions of this Act, the control and executive authority of a state-aided school shall vest in its governing body.

School fees at state-aided schools

52. (1) The parent of a learner admitted to a state-aided school shall pay such school fees and, if such learner is provided with board, such boarding fees, as the governing body of the school or hostel, may determine.
- (2) Different fees may be determined in terms of subsection (1) in respect of different categories of learners, as long as there is a reasonable and equitable basis for such differentiation.
- (3) The Member of the Executive Council may, with the concurrence of the governing body of the state-aided school concerned, exempt any learner or any category of learners at such state-aided school wholly or partly from the payment of fees determined under subsection (1).

Consequences of declaration of private school as state-aided school

53. (1) As from the date on which a private school is declared to be a state-aided school under section 49(1) —
- (a) there shall no longer vest in the previous owner any rights, powers, duties or functions in respect of the school concerned;

- (b) the rights and obligations of the owner, in connection with the school concerned, shall vest in the state-aided school itself;
 - (c) the ownership and control of movable and immovable property which immediately prior to that date vested in the previous owner and which relates to the school concerned, shall devolve upon the state-aided school unless otherwise agreed upon in terms of section 49(2);
 - (d) the administrative records and other documents which related to the school concerned, shall be transferred to the state-aided school; and
 - (e) the control and executive power of the state-aided school concerned shall vest in its governing body which shall be constituted in accordance with sections 25 and 26.
- (2) Immovable property devolving upon the state-aided school in terms of subsection (1)(c), shall be transferred to the state-aided school 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 referred to in subsection (1)(c) is registered, shall, on submission to him or her of the title deed concerned, make such endorsements on that title deed and such entries in his or her registers as may be required to register the transfer concerned.
 - (4) The declaration of a private school as a state-aided school shall not affect anything legally done by the owner concerned prior to the declaration.

Consequences of declaration of state school as state-aided school

54. (1) As from the date on which a state school is declared to be a state-aided school under section 49(3) —
- (a) the ownership and control of movable and immovable property and all rights which immediately prior to that date vested in the State or the governing body concerned and which relate to the school concerned, shall devolve upon the state-aided school concerned on such terms and conditions as the Member of the Executive Council with the concurrence of the financial head may determine: Provided that if at any subsequent time, immovable property so vested is in the opinion of the Member of the

Executive Council not being utilised in the best interests of education in the Province, the Member of the Executive Council may direct that such immovable property shall revert to the State on payment of such compensation as is required by section 28(3) of the Constitution;

- (b) the liabilities and obligations which immediately prior to that date vested in the State, shall vest in the state-aided school concerned;
 - (c) the administrative records and other documents which related to the state school, shall be transferred to such state-aided school; and
 - (d) the control and executive power of the state-aided school concerned shall vest in its governing body constituted in accordance with the provisions of sections 25 and 26.
- (2) Immovable property devolving upon the state-aided school or reverting to the State in terms of subsection (1)(a), shall be transferred to the state-aided school or the State, as the case may be, without payment of transfer duty, stamp duty or other money or costs, but subject to any term or condition contemplated in subsection (1)(a) and 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 referred to in subsection (1)(a) is registered, shall, on submission to him or her of the title deed concerned, make such endorsements on that title deed and such entries in his or her registers, as may be required to register the transfer concerned.
- (4) The declaration of a state school as a state-aided school shall not affect anything legally done by the State or the governing body prior to the declaration.

Subsidies to state-aided schools

55. (1) The Member of the Executive Council may, out of money appropriated for this purpose by the Provincial Legislature, grant a subsidy to a state-aided school subject to such conditions as he or she may determine.

- (2) The Member of the Executive Council may impose different conditions in respect of subsidies granted under subsection (1) to different state-aided schools, as long as there is a reasonable and equitable basis for such different conditions.

Loans to state-aided schools

56. (1) Subject to the provisions of this Act, the Member of the Executive Council may, with the concurrence of the financial head, out of money appropriated by the Provincial Legislature for this purpose, grant a loan to a state-aided school for —
- (a) the erection of buildings and the acquisition of equipment of a permanent nature;
 - (b) the acquisition of land, including land on which buildings have been erected, or rights to or interests in land, and the payment of survey and transfer costs in connection with such acquisition;
 - (c) the payment of capital expenditure on the fencing and improvement of the land of the state-aided school; or
 - (d) the repayment of any loan, excluding a loan granted out of money appropriated by the Provincial Legislature, lawfully raised by such state-aided school, for any purpose mentioned in paragraph (a), (b) or (c).
- (2) Any application by a state-aided school for a loan contemplated in subsection (1) shall be addressed in writing to the Head of Department and shall state the purpose of the loan.
- (3) Upon receipt of any such application the Head of Department may call for such estimates, plans, specifications, reports, returns and other documents or information, and cause such inspections to be carried out, as he or she may consider necessary in order to determine whether the application should be granted.

Repayment of loans by state-aided schools

57. (1) A loan granted by the Member of the Executive Council to a state-aided school in terms of section 56, together with interest due thereon at a rate determined by the financial head, shall be repaid within a period determined by the Treasury before the granting of the loan.

- (2) Subject to subsection (3), the Treasury may extend the period referred to in subsection (1).
- (3) A loan referred to in subsection (1) together with the interest due thereon shall be repaid within a period of 40 years from the date of first repayment referred to in subsection (4).
- (4) The first repayment of an instalment of a loan referred to in subsection (1) shall be made on a date determined by the Treasury before the granting of the loan, which date shall not be later than three years after the date on which the loan or first portion thereof was paid out.
- (5) During the period from the date on which the loan referred to in subsection (1), or the first portion thereof, was paid out, to the date of the first repayment referred to in subsection (4), interest at a rate determined by the financial head shall be payable on the loan or first portion thereof.
- (6) The state-aided school to which a loan has been granted under section 56 shall, on the date of the first repayment referred to in subsection (4), and thereafter on the first day of January and on the first day of July in every year, repay the loan in instalments to the Treasury, and the instalments shall continue to be payable until the capital amount of the loan together with interest due thereon has been repaid: Provided that the Treasury may, if in its opinion special circumstances exist, grant an extension of time in respect of the repayment on one or more of such instalments.
- (7) The instalments of a loan referred to in this section shall each amount to one half of the annual payment required to redeem the capital amount of the loan, together with interest due thereon, within the period determined by the Treasury under subsection (1).

Security for repayment of loans

58. (1) All the movable and immovable property of a state-aided school shall, from the date on which a loan or the first portion thereof is paid out under section 57 to the state-aided school concerned, and subject to any prior security or hypothecation, serve as security for the repayment of the amount due in respect of the loan, costs and interest.
- (2) The Member of the Executive Council may, with the concurrence of the financial head, at any time in writing waive the preference which is granted by virtue of subsection (1), in favour of the holder of a later bond over the immovable property of a state-aided school, if he or she is of the opinion that the sum of the amounts due in respect of the loan, costs and

interest and the amount secured by the bond does not exceed the value of the movable and immovable property of the state-aided school.

Financial statements of state-aided schools

59. (1) The financial year of a state-aided school shall end on the last day of March in each year.
- (2) The provisions of section 48(3) to (6) shall apply *mutatis mutandis* to all state-aided schools, and in such application any reference to a state school shall be construed as a reference to a state-aided school.

Failure to comply with conditions of subsidy

60. (1) If a condition subject to which a subsidy was granted under section 55(1) has not been complied with, the Member of the Executive Council may —
- (a) terminate or reduce the subsidy from a date determined by him or her; or
 - (b) by notice in the *Provincial Gazette*, with the concurrence of the financial head, withdraw the declaration under section 49(3) of a state school as a state-aided school from a date determined by him or her.
- (2) The Member of the Executive Council shall not take action under subsection (1) unless he or she has informed the governing body of the state-aided school of his or her intention so to act and the reasons therefor, and has granted the governing body concerned an opportunity to make representations to him or her relating to such action.

Declaration of state-aided school as state school

61. (1) The Member of the Executive Council may, with the concurrence of the financial head, enter into an agreement with the governing body of a state-aided school in terms of which such a school is declared to be a state school.
- (2) If an agreement has been entered into under subsection (1), the Member of the Executive Council may by notice in the *Provincial Gazette* declare the state-aided school concerned to be a state school with effect from a date mentioned in the notice.

Effect of declaration as state school or of withdrawal of declaration as state-aided school

62. (1) As from the date mentioned in a notice contemplated in section 60(1)(b) or 61(2) —

- (a) the school concerned shall cease to be a juristic person and shall be deemed to be a state school established under section 46(1);
- (b) the rights and obligations of the school concerned shall vest in the State;
- (c) the ownership and control of movable and immovable property which immediately prior to that date vested in the school concerned shall vest in the State; and
- (d) the governing body of the school concerned shall have the powers, duties and functions of a governing body of a state school.

(2) Immovable property vested in the State in terms of subsection (1)(c), shall be transferred to the State without payment of transfer duty, stamp duty or any 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 referred to in subsection (2) is registered, shall, on submission to him or her of the title deed concerned, make such endorsements on that title deed and such entries in the register of deeds as may be required to effect the transfer concerned.

(4) Neither the declaration of a state-aided school as a state school nor the withdrawal of the declaration of a school as a state-aided school shall affect anything legally done by the school concerned, or by its governing body, prior to the declaration or withdrawal.

Closure of state-aided schools

63. The provisions of sections 46(2) to (8) shall apply *mutatis mutandis* to the closure of a state-aided school, and in such application any reference to a state school shall be construed as a reference to a state-aided school.

Effects of closure of state-aided school

64. (1) As from the date on which a state-aided school is closed all assets and liabilities of such school shall, subject to the conditions of a donation, bequest or trust contemplated in section 50(3), vest in the State.
- (2) The Member of the Executive Council shall appoint a person to administer the affairs of the state-aided school concerned.
- (3) Immovable property vesting in the State in terms of subsection (1) shall be transferred to the State without payment of transfer duty, stamp duty or other money or costs.
- (4) The officer in charge of a deeds registry or other office where the immovable property referred to in subsection (3) is registered, shall, on submission to him or her of the title deed concerned, make the necessary endorsements on that title deed and entries in his or her registers.

CHAPTER 8

PRIVATE SCHOOLS

Registration of private schools

65. (1) No person shall establish, conduct or maintain a private school unless that private school is registered in terms of this Act.
- (2) No private school shall be registered unless it complies with the prescribed requirements.
- (3) Any person may apply in writing, in the prescribed form, to the Head of Department for the registration of a private school which he or she intends to establish, conduct or maintain.
- (4) An applicant for the registration of a private school shall furnish such particulars in connection with his or her application as the Head of Department may require.
- (5) The Head of Department may grant an application contemplated in subsection (3) if he or she is of the opinion that the prescribed requirements have been complied with.

- (6) If the Head of Department grants such application, he or she shall register the private school in question and issue to the applicant a registration certificate in such form as he or she may determine.
- (7) If the Head of Department refuses such application, he or she shall notify the applicant in writing of the refusal, and the reasons for the refusal.
- (8) An applicant who is aggrieved by the refusal of the Head of Department to grant his or her application brought under subsection (3) may, within 30 days after receiving notice of such refusal, appeal to the Member of the Executive Council, in writing, setting out the grounds of the appeal.
- (9) The Member of the Executive Council shall consider an appeal contemplated in subsection (8) and may confirm, vary or set aside the decision of the Head of Department.
- (10) The Member of the Executive Council shall as soon as may be practicable —
 - (a) notify the appellant of his or her decision; and
 - (b) provide the appellant with written reasons for his or her decision.
- (11) Any person who contravenes a provision of subsection (1) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding one year.

Lapsing or withdrawal of registration of private schools

66. (1) The registration of a private school shall lapse under the prescribed circumstances.
- (2) The registration of a private school may be withdrawn by the Head of Department under the prescribed circumstances.
 - (3) No withdrawal of the registration of a private school shall be valid unless —
 - (a) the owner of such private school has been granted an opportunity to make written representations to the Head of Department giving reasons why the registration of the private school should not be withdrawn prior to any decision to withdraw the registration of the private school;

- (b) the owner of such private school has been furnished by the Head of Department with a notice of such withdrawal together with written reasons for his or her decision to withdraw the registration of the private school; and
 - (c) an appeal under subsection (4) has been dismissed or no such appeal has been lodged within the 30 days provided for.
- (4) The owner of a private school who is aggrieved by the withdrawal of registration of his or her private school under subsection (2) may, within 30 days after receiving notice of such withdrawal, appeal to the Member of the Executive Council in writing, setting out the grounds of appeal against the withdrawal.
- (5) The Member of the Executive Council shall consider an appeal contemplated in subsection (4) and may confirm, vary or set aside the decision of the Head of Department.
- (6) The Member of the Executive Council shall as soon as may be practicable —
- (a) notify the appellant of his or her decision; and
 - (b) provide the appellant with written reasons for his or her decision.

Discrimination at private schools

67. Admission requirements for private schools shall not directly or indirectly discriminate unfairly on grounds of race.

Subsidies to registered private schools

68. (1) A registered private school may annually, on or prior to the prescribed date, apply to the Head of Department in writing for the prescribed subsidy.
- (2) The Head of Department may grant or refuse an application referred to in subsection (1) but no subsidy shall be granted to a private school —
- (a) which does not comply with the prescribed conditions for receiving a subsidy; or
 - (b) that is operated for profit unless the Member of the Executive Council has consented to the grant of such subsidy.

- (3) If, in the opinion of the Head of Department, a condition subject to which a subsidy has been granted under subsection (2) has not been complied with, the Head of Department may terminate or reduce the subsidy from a date determined by him or her.
- (4) The Head of Department shall not terminate or reduce a subsidy under subsection (3) unless he or she has granted the owner of the private school concerned an opportunity to make written representations to him or her giving reasons why the subsidy should not be reduced or terminated, as the case may be.

Financial statements of private schools

69. (1) The financial year of a private school shall end on the last day of March of each year.
- (2) The provisions of sections 48(3) to (6) shall apply *mutatis mutandis* to all state-aided schools, and in such application any reference to —
- (a) a state school shall be construed as a reference to a private school; and
 - (b) a governing body shall be construed as a reference to the owner of a private school.

Declaration of private schools as state schools

70. (1) The Member of the Executive Council may, with the concurrence of the financial head, enter into an agreement with the owner of a private school in terms of which the school concerned is declared to be a state school.
- (2) If an agreement has been entered into under subsection (1), the Member of the Executive Council may by notice in the *Provincial Gazette* declare the private school concerned to be a state school with effect from a date mentioned in the notice.

Consequences of declaration as state school

71. (1) As from the date mentioned in the notice contemplated in section 70(2) —
- (a) the school concerned shall be deemed to be a state school established under section 46(1);

- (b) the powers, duties, rights and obligations of the previous owner, in connection with the school concerned, shall vest in the State; and
 - (c) the ownership and control of movable and immovable property which immediately prior to that date vested in the owner concerned, and which relates to the school concerned, shall vest in the State, unless otherwise agreed upon in terms of section 70(1).
- (2) Immovable property vested in the State in terms of subsection (1)(c), shall be transferred to the State without payment of transfer duty, stamp duty or any 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 referred to in subsection (2) is registered, shall, on submission to him or her of the title deed concerned, make such endorsements on that title deed and such entries in the register of deeds as may be required to effect the transfer concerned.
 - (4) The declaration of a private school to be a state school shall not affect anything legally done by the owner concerned prior to the declaration.

Regulations relating to registered private schools

72. (1) The Member of the Executive Council may make regulations as to —

- (a) the admission of learners of a registered private school to examinations conducted by or under the supervision of the department;
 - (b) the keeping of registers or other documents by a registered private school;
 - (c) the manner in which any subsidy shall be payable to a registered private school; and
 - (d) any other matter relating to registered private schools which shall or may be prescribed in terms of this Act.
- (2) Different regulations may be made under subsection (1) in respect of different registered private schools.

CHAPTER 9**SPECIALISED EDUCATION****Accommodation of learners with specialised education needs in ordinary schools**

73. Every public school shall, as far as is reasonably possible, attempt to accommodate the specialised education needs of any learner who attends such school.

Admission of learners to schools for specialised education

74. (1) Subject to the provisions of any other law, the Head of Department may, at the request of the parent of a learner, approve that the learner be admitted to a school for specialised education.
- (2) The Head of Department shall not grant his or her approval under subsection (1) unless —
- (a) he or she is of the opinion that the learner concerned has specialised education needs; and
 - (b) those needs cannot be accommodated in an ordinary school which the learner concerned can attend.
- (3) If the specialised education needs of a learner cannot be accommodated in the school which the learner currently attends, but can be accommodated at another ordinary school which the learner can attend, the Head of Department may direct that the learner be admitted to that ordinary school.

Assessments to identify learners with specialised education needs

75. If the Head of Department believes that a learner who is subject to compulsory school attendance has specialised education needs which cannot be accommodated at the school which he or she attends, the Head of Department may, after consultation with the parents of the learner, arrange that the learner be assessed in order to determine whether he or she has such needs.

Action in case of learners with specialised education needs

76. (1) The Head of Department shall make the results of an assessment under section 75 available to, and discuss them with, the parent of the learner.
- (2) If the Head of Department, after satisfying the requirements of subsection (1), believes that the learner has specialised education needs which cannot be accommodated at the school which he or she attends, the Head of Department shall notify the parent of the learner in writing —
- (a) that he or she has found that the learner has specialised education needs for which he or she should receive specialised education, and of the reasons for this finding; and
 - (b) that the parent may within 30 days from the date of receipt of the notification, appeal to the Member of the Executive Council against the finding.
- (3) The Member of the Executive Council shall consider an appeal contemplated in subsection (1), and may confirm, vary or set aside the finding of the Head of Department.

Placement of learners with specialised education needs

77. (1) Unless —

- (a) the parent of a learner found to have specialised education needs in terms of section 76, within the period determined by the Head of Department, takes such steps as the Head of Department, after consultation with the parent, determines as adequate to ensure that the learner receives suitable education or treatment; or
 - (b) the Head of Department at any time after that period is of the opinion that the learner is receiving suitable education or treatment,
- the Head of Department may after consultation with the parent designate a school for specialised education, or an ordinary school capable of accommodating the learner's specialised education needs, at which the learner shall be placed.

- (2) If the Head of Department has designated a school under subsection (1) and the parent concerned fails to send the learner to that school within the period determined by the Head of Department, the Head of Department may cause the learner to be taken to the school concerned.
- (3) If a learner is placed in terms of this section, the department shall, from money appropriated for this purpose by the Provincial Legislature, on behalf of the parent of the learner concerned, pay to the school at which the learner has been placed, an amount equal to the increase in school fees for which the parent becomes liable because of such placement.

Additional powers of children's court

78. (1) A children's court may, in the case of a learner in respect of whom it has made an order in terms of section 15 (1) of the Child Care Act, 1983 (Act No. 74 of 1983), direct that the case be referred to the Head of Department in order to determine whether the learner has specialised education needs.
- (2) If the Head of Department finds that a learner referred to him or her under subsection (1) has specialised education needs, the Head of Department may approve that the learner be admitted to a public school for specialised education for the periods during which it provides specialised education.

Transfer of learners with specialised education needs

79. The Head of Department may, after consultation with the parent of a learner attending a public school for specialised education, transfer that learner to another public school for specialised education.

Exemption from attendance of school for specialised education

80. The Head of Department may, after consultation with the parent of a learner attending a public school for specialised education, exempt such learner from attendance at a school for specialised education if he or she is of the opinion that it is in the best interests of the learner that he or she should be so exempted.

CHAPTER 10

EDUCATORS

The employer of educators at public schools

81. (1) The department shall be the employer of all educators at state schools and all educators in posts at state-aided schools for which a subsidy in terms of section 55(1) must be utilised by virtue of the conditions imposed in terms of that section.
- (2) A state-aided school shall be the employer of any educator employed at that school, other than an educator covered by subsection (1).

Equality of educators at public schools

82. (1) In the appointment, promotion and remuneration of educators by the department and by state-aided schools, there shall be no unfair discrimination based on race, age, gender, sex, disability, ethnic or social origin, colour, sexual orientation, religion, conscience, belief, culture or language.
- (2) In the appointment, promotion and remuneration of educators by the department there shall be no unfair discrimination between or among educators who were employed by different departments recognised under laws repealed by this Act.
- (3) Subsections (1) and (2) shall not prevent the implementation of measures designed to assist educators who have been previously prejudiced by unfair discrimination in the context of their employment by the State.

Right of educators to information at public schools

83. (1) Every educator employed by the department or a state-aided school shall have the right of access to all information held by the department or a state-aided school relating to his or her employment.
- (2) The right in subsection (1) shall not apply in circumstances where withholding access to the relevant information is reasonable and justifiable in an open and democratic society based on freedom and equality.

Political rights of educators at public schools

84. (1) The freedom of association of all educators shall be respected by the department and by state-aided schools.
- (2) Educators at public schools shall be entitled to be members of political parties.
- (3) A culture of tolerance shall be encouraged at all public schools.
- (4) No educator employed at a public school shall use his or her position as an educator, to advance or to attempt to advance the interests of any political party.

Responsibilities of educators

85. (1) An educator shall —

- (a) try to promote the intellectual and personal development of learners;
- (b) try to instill in learners a desire to learn;
- (c) try to foster in learners a culture of human rights;
- (d) act in a just and impartial manner in his or her dealings with learners; and
- (e) take the appropriate measures to attain and maintain a high level of professionalism.

Responsibilities of principals

86. (1) The principal of a school shall ensure that educational services of quality are provided in that school.
- (2) The principal, after consultation with his or her staff, shall be responsible for the educational activities at a school, the professional administration of the school and the implementation of the policy by which the school is governed.

Provincial educator policy

87. (1) The Member of the Executive Council shall be responsible for formulating provincial policy on:

- (a) employment of educators;
- (b) transfer and secondment of educators;
- (c) assessment and promotion of educators;
- (d) language requirements for entry into the teaching profession;
- (e) registration of educators with the department;
- (f) design of educator development programmes;
- (g) contracting for the provision of in-service education and training;
- (h) allocation of funds for educator development;
- (i) collection and publication of data relating to educator policy; and
- (j) all other matters relating to provincial educators.

(2) The provincial policy contemplated in subsection (1) shall be formulated subject to national guidelines and the principles set out in section 4(1).

CHAPTER 11

RURAL EDUCATION

Continued existence of certain farm schools

88. Notwithstanding the repeal of the Education and Training Act, 1979 (No. 90 of 1979) by this Act, a farm school which existed immediately prior to the commencement date shall, subject to the provisions of this chapter, continue to exist as though that Act had not been repealed.

Access to farm schools

89. (1) The owner or occupier of land on which a farm school is situated shall not deny access to such school to any official of the department performing duties at the school relating to his or her employment, any educator teaching at the school or any learner studying at the school.
- (2) The owner or occupier of land over which access is reasonably required by an official, an educator or a learner for the purposes of travelling to a farm school shall not deny such official, educator or learner such access.
- (3) Any person who knowingly contravenes a provision of subsection (1) or (2) shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three months.
- (4) Any person who as a condition for admission of a learner to a farm school, or as consideration for attending such school, requires such learner or his or her parent at any time to render any service, whether for remuneration or otherwise, shall be guilty of an offence and liable on conviction to a fine or to imprisonment for a period not exceeding three months.

Remuneration of educators at schools in rural areas

90. (1) An educator at a school situated in a rural area or a peri-urban area shall be entitled to the same remuneration and benefits as he or she would earn were he or she employed by the department at a school in an urban area.
- (2) Notwithstanding the provisions of section 82, the Member of the Executive Council may, with the concurrence of the financial head, provide for the payment of supplementary remuneration and benefits to educators employed at schools in rural areas or peri-urban areas.

Adjustment of subsidies to farm schools

91. The Member of the Executive Council may, with the concurrence of the financial head, and after hearing the owner of a farm school the governing body of the farm school concerned, adjust, alter or withdraw the aid given to the farm school concerned.

Declaration of farm schools to be state schools or state-aided schools

92. (1) The Member of the Executive Council may, after consultation with the owner of a farm school and the governing body of the farm school concerned, and with the agreement of the financial head, by notice in the

Provincial Gazette declare any farm school to be a state school or a state-aided school.

- (2) The owner of any farm school which is the subject of a declaration under subsection (1) shall be paid by the State such compensation as is required by section 28(3) of the Constitution in respect of any movable and immovable property which he or she owned immediately prior to such declaration and which vests in the State by virtue of the declaration.
- (3) The provisions of section 71 shall apply *mutatis mutandis* to the declaration of a farm school as a state school under subsection (1).
- (4) The provisions of section 53 shall apply *mutatis mutandis* to the declaration of a farm school as a state-aided school under subsection (1).
- (5) No transfer of property, whether movable or immovable, in terms of this section shall be regarded as an expropriation for the purposes of section 103.

Closure of farm schools

93. (1) The Member of the Executive Council may close any farm school if the conditions at such farm school constitute a material threat to the health or welfare of learners or educators at that school.
- (2) Any farm school closed under subsection (1) shall not remain closed unless adequate alternative provision has been made for the education of learners attending such school within a period of two weeks from the date of closure of the school.
- (3) The Member of the Executive Council may, with the concurrence of the governing body of any farm school, enter into an agreement with the owner of the farm school concerned which provides for the closure of the school on such terms and conditions as may be agreed upon.
- (4) No farm school shall be closed otherwise than in accordance with subsections (1) or (3).

CHAPTER 12**TRANSITIONAL PROVISIONS****Transitional provisions relating to centres of learning and accessories**

94. Any centre of learning, hostel, clinic, educators' quarters or other accessory in connection with schools established, or deemed to have been established, under the provisions of an Act repealed by this Act, and which existed immediately prior to the commencement date, shall be deemed to have been established in terms of section 5(a).

Transitional provisions relating to school attendance officers

95. Any school attendance officer appointed or deemed to have been appointed under the provisions of an Act repealed by this Act, and who held an appointment immediately prior to the commencement date, shall be deemed to have been appointed under section 11.

Transitional provisions relating to governing bodies

96. Any management council, board of management, local or domestic council, committee, board or other body for the control or management of a public school or hostel, established or deemed to have been established under the provisions of an Act repealed by this Act, and which existed immediately prior to the commencement date, shall be deemed to be a governing body established in terms of section 25.

Transitional provisions relating to state schools

97. A state school or a departmental school established or deemed to have been established under the provisions of an Act repealed by this Act, and which existed immediately prior to the commencement date, shall be deemed to be a state school established under section 46(1).

Transitional provisions relating to private schools

98. A private school registered or deemed to have been registered under the provisions of an Act repealed by this Act, and which existed immediately prior to the commencement date, shall be deemed to be a private school registered in terms of section 65(6).

Transitional provisions relating to model C schools

99. A model C school which existed immediately prior to the commencement date, shall be deemed to be a state school which has been declared to be a state-aided school in terms of section 49(3).

Transitional provisions relating to state-aided schools

100. The provisions of sections 88 and 92 shall apply *mutatis mutandis* to a state-aided school, other than a model C school, which was established or deemed to have been established under a law repealed by this Act and which existed immediately prior to the commencement date.

Negotiating forums

101. (1) For the purposes of facilitating negotiations between the department and governing bodies as contemplated in section 247(1) of the Constitution, the Member of the Executive Council may by notice in the *Provincial Gazette* establish a centralised negotiating forum at which negotiations over the alteration of the rights, powers and functions of such bodies shall take place.

- (2) The notice establishing the negotiating forum may provide that the negotiating forum shall be divided into different chambers.
- (3) The notice establishing the negotiating forum shall —
- (a) state a date, not less than 30 days from the date of the notice, on which the first meeting of the negotiating forum, or of each chamber of the negotiating forum, shall take place;
 - (b) state the place at which the first meeting of the negotiating forum, or of each chamber of the negotiating forum, shall take place;
 - (c) if the negotiating forum has been divided into chambers, state which governing bodies or categories of governing bodies will fall within the jurisdiction of each chamber; and
 - (d) state the manner in which governing bodies may be represented at meetings of the negotiating forum or chambers of the negotiating forum.

- (4) The Member of the Executive Council may by notice in the *Provincial Gazette* make rules regulating meetings of the negotiating forum or chambers of the negotiating forum.
- (5) All governing bodies shall be bound by any decision taken at a meeting of the negotiating forum.
- (6) Any governing body within the jurisdiction of a chamber of the negotiating forum shall be bound by any decision taken at a meeting of that chamber.

CHAPTER 13

GENERAL

Indemnities

102.(1) No contract shall exclude any liability of —

- (a) the department;
- (b) a state-aided school;
- (c) the owner of a private school;
- (d) the owner of a farm school; or
- (e) any person employed at any school,

to any learner or to his or her parent arising out of circumstances related to the education of the learner concerned.

(2) Any contractual provision contrary to subsection (1) shall be invalid.

Expropriation

103.(1) The Member of the Executive Council may, if it is in the public interest to do so, expropriate land and any real rights in or over land for any purpose related to school education in the Province.

(2) The owner of any land or real rights in or over land expropriated in terms of subsection (1) shall be entitled to payment of such compensation in respect of such land or rights as is required by section 28(3) of the Constitution.

- (3) The provisions of the Expropriation Act (Act No. 63 of 1975), other than those relating to compensation, shall apply to any expropriation effected under this section.

Delegation of powers and assignment of duties

104.(1) The Member of the Executive Council may, subject to such conditions as he or she may determine —

- (a) delegate any power conferred upon him or her under this Act, except the power to make regulations and the power to decide an appeal lodged with him or her in terms of this Act; and

- (b) assign any of his or her duties in terms of this Act,

to the Head of Department or a person employed by the department.

(2) The Head of Department may, subject to such conditions as he or she may determine —

- (a) delegate any of his or her powers under this Act or delegated to him or her in terms of subsection (1)(a); and

- (b) assign any of his or her duties in terms of this Act or assigned to him or her in terms of subsection (1)(b),

to a person employed by the department.

(3) A delegation or assignment under subsection (1) or (2) shall not prevent the Member of the Executive Council or Head of Department, as the case may be, from exercising such power or performing such duty, as the case may be, himself or herself.

Limitation of proceedings

105. No legal proceedings shall be instituted against the State or a body or person in respect of an alleged act in terms of this Act or an alleged omission to do anything which in terms of this Act should have been done, unless the legal proceedings are instituted within a period of 12 months after the date on which the plaintiff or the applicant became aware of the alleged act or omission, or after the date on which it could reasonably have been expected that the plaintiff or applicant would have become aware of the alleged act or omission, whichever date is the earlier.

Regulations

106.(1) The Member of the Executive Council may make regulations as to —

- (a) any matter which shall or may be prescribed by regulation under this Act; and
 - (b) any matter which the Member of the Executive Council may deem necessary or expedient to prescribe in order to achieve the objects of this Act.
- (2) Regulations as to any fees or allowances payable by or to any person or relating to the control of money shall not be made without the concurrence of the financial head.
- (3) Different regulations may be made under subsection (1) in respect of different schools or different categories of schools, as long as there is a reasonable and equitable basis for such differentiation.
- (4) Regulations made under subsection (1) may prescribe in respect of any contravention thereof or failure to comply therewith, a penalty of a fine or imprisonment not exceeding three months.

Repeal of laws, and savings

107.(1) Subject to the provisions of this section, the laws listed in column one of the Schedule are hereby repealed to the extent set out in column three of that Schedule and to the extent that they are of force in the Province.

- (2) Anything done or deemed to have been done in terms of a provision of a law repealed by subsection (1) and which may or shall be done in terms of this Act, shall be deemed to have been done in terms of the corresponding provision of this Act.
- (3) All regulations, notices and directives made or issued under any law repealed by subsection (1) and which were in force immediately prior to the commencement date shall, notwithstanding such repeal, remain in force except in so far as they are inconsistent with the provisions of this Act, until repealed, withdrawn or amended by the Member of the Executive Council by regulation, notice or directive in terms of this Act.

Short title and commencement

108. This Act shall be called the School Education Act, 1995, and shall come into operation on a date fixed by the Premier by proclamation in the *Provincial Gazette*.

**SCHOOL EDUCATION BILL
SCHEDULE OF LAWS TO BE REPEALED**

No and year of law	Title	Extent of repeal
Act No. 47 of 1963	Coloured Persons Education Act, 1963	The whole, excluding sections 1A, 26 and 28 to 31, except in so far as it relates to colleges of education.
Act No. 61 of 1965	Indians Education Act , 1965	The whole, excluding sections 1B, 3B, 26, 28, 29, 31 and 33(1)(g), except in so far as it relates to technical colleges and colleges of education.
Act No. 60 of 1967	Indians Education Amendment Act, 1967	The whole.
Act No. 76 of 1967	Coloured Persons Education Amendment Act, 1967	The whole.
Act No. 92 of 1970	General Law Further Amendment Act, 1970	Section 13
Act No. 53 of 1973	Coloured Persons Education Amendment Act, 1973	The whole.
Act No. 62 of 1973	General Law Amendment Act, 1973	Section 31.
Act No. 94 of 1974	Second General Law Amendment Act, 1974	Section 39.

Act No. 29 of 1976	Coloured Persons Education Amendment Act, 1976	The whole.
Act No. 95 of 1976	Second Coloured Persons Education Amendment Act, 1976	The whole.
Act No. 39 of 1979	Indians Education Amendment Act, 1979	The whole.
Act No. 50 of 1979	Coloured Persons Education Amendment Act, 1979	The whole.
Act No. 90 of 1979	Education and Training Act, 1979	The whole excluding sections 1A, 3, 4, 31, 32, 43 and 44(1)(h), except in so far as it relates to technical colleges and colleges of education.
Act No. 15 of 1980	Coloured Persons Education Amendment Act, 1980	The whole.
Act No. 52 of 1980	Education and Training Amendment Act, 1980	The whole.
Act No. 9 of 1981	Indians Education Amendment Act, 1981	The whole.
Act No. 10 of 1981	Education and Training Amendment Act, 1981	The whole.
Act No. 85 of 1983	Coloured Persons Education Amendment Act, 1983	The whole.
Act No. 74 of 1984	Education and Training Amendment Act, 1984	The whole.

Act No. 78 of 1984	Indians Education Amendment Act, 1984	The whole.
Act No. 64 of 1985	Indians Education Amendment Act, 1985	The whole.
Act No. 71 of 1985	Universities for Blacks, Technikons (Education and Training) and Education and Training Amendment Act, 1985	Section 36.
Act No. 76 of 1985	Coloured Persons Education Amendment Act, 1985	The whole.
Act No. 3 of 1986	Universities and Technikons for Blacks, Tertiary Education (Education and Training) and Education and Training Amendment Act, 1986	Sections 19 to 24.
Act No. 100 of 1986	Education Amendment Act (House of Delegates), 1986	Sections 1 to 7.
Act No. 104 of 1986	Private Schools Act (House of Assembly), 1986	The whole, excluding section 1A.
Act No. 95 of 1987	Education Laws (Education and Training) Amendment Act, 1987	Sections 5 to 13.
Act No. 31 of 1988	Education Laws (Education and Training) Amendment Act, 1988	Sections 9 to 18.
Act No. 70 of 1988	Education Affairs Act (House of Assembly), 1988	The whole, excluding sections 3 and 65.

Act No. 35 of 1989	Education and Training Amendment Act, 1989	The whole.
Act No. 42 of 1990	Education and Training Amendment Act, 1990	The whole.
Act No. 60 of 1990	Private Schools Amendment Act (House of Assembly), 1990	The whole.
Act No. 88 of 1991	Education Affairs Amendment Act (House of Assembly), 1991	The whole.
Act No. 100 of 1991	Education and Training Amendment Act, 1991	The whole.
Act No. 39 of 1992	Education Affairs Amendment Act (House of Assembly), 1992	The whole.
Act No. 55 of 1992	Education and Training Amendment Act, 1992	The whole.
Act No. 106 of 1992	Education and Training Second Amendment Act, 1992	The whole.
Act No. 112 of 1992	Coloured Persons Education Amendment Act (House of Representatives), 1992	The whole.
Act No. 113 of 1992	Coloured Persons Education Second Amendment Act (House of Representatives), 1992	The whole.

Act No. 114 of 1992	Indians Education Amendment Act (House of Delegates), No. 114 of 1992	The whole.
Act No. 36 of 1993	Education Affairs Amendment Act (House of Assembly), 1993	The whole.
Act No. 50 of 1993	Indians Education Amendment Act (House of Delegates), 1993	The whole.
Act No. 132 of 1993	General Law Fourth Amendment Act, 1993	Section 15.
Act No. 139 of 1993	Education Laws Amendment Act (House of Assembly), 1993	Section 1.
Act No. 162 of 1993	Education Affairs Second Amendment Act (House of Assembly), 1993	The whole.

**MEMORANDUM IN TERMS OF RULE 132 OF THE STANDING RULES
OF THE PROVINCIAL LEGISLATURE
ON THE SCHOOL EDUCATION BILL, 1995**

(i) Introduction and reasons for the Bill

The School Education Bill represents the first initiative of the Provincial Government to transform education provision through legislation. It will be succeeded by further Bills dealing with adult basic education and training, early childhood development, colleges of education and technical colleges.

Although the Bill deals centrally with School Education, it gives scope for action on one major issue beyond the central theme: the establishment of a consultative structure - the Education and Training Council - which may advise the Member of the Executive Council for Education on all aspects of education policy and implementation.

Generally, however, the intention of the Bill is to provide a legislative framework for the provision, on an equitable and deracialised basis, of compulsory and post-compulsory education in schools.

(ii) Social impact statement

The major innovations in the Bill which carry implications for social change are:

(aa) All schools in the Province will be governed by a single law, which will replace school legislation based on racial segregation.

(bb) Human rights, as they apply to education, are given a central place in the Bill. These include —

- (1) rights relating to language (including sign language) and religion, as well as freedom of conscience;
- (2) political rights of educators;
- (3) rights to information, consultation and negotiation; and
- (4) rights relating to administrative justice.

(cc) The right to free and compulsory schooling is established, irrespective of race. School fees may not be used to exclude learners. The Bill prohibits unfair discrimination in the admission policies of schools.

- (dd) Democratic governing bodies must be established for all public schools.
- (ee) Consultative councils must be established at provincial and district levels, and specialist councils may be established when necessary. These councils will give stakeholders in education regular access to information about policy changes. The provincial council will have the power to insist that the Member of the Executive Council for Education give a written response if their recommendations are not accepted.
- (ff) Rural schools are given special attention. For example, the right of physical access to farm schools is entrenched in the Bill for learners, educators and department officials.
- (gg) Learners with specialised educational needs are given special attention in the Bill. Where possible, specialised education must be provided in ordinary schools. The parents' right to be consulted is affirmed. Also, in any school for specialised education, the disabled community served by the school must be represented in the school governing body.
- (hh) The Bill outlines the responsibilities of teachers and principals with regard to the culture of learning and teaching.
- (ii) The duties of the department are outlined in numerous sections. The department has, for example, a duty to combat sexual harassment in schools.

(iii) Financial implications

- (aa) The most central financial implication of the Bill is the provision of free and compulsory basic education for nine years at state schools in the province. This is qualified in a number of ways. Firstly, the Member of the Executive Council has the power to phase in compulsory education from the date of commencement to 31 December 1998. Secondly, state-aided and private schools are established as alternative categories of school. Thirdly, state schools may solicit contributions from parents to school funds.
- (bb) Immovable property vested in state-aided schools which is "not being used in the best interests of education in the Province" may revert to the state without payment of compensation.

(cc) The Member of the Executive Council for Education may determine conditions for the granting of subsidies to state-aided schools and private schools.

(dd) The Member of the Executive Council for Education may, if it is the public interest, expropriate land and real rights over land "for any purpose related to school education in the Province" (section 103(1)). Payment of compensation, however, will be as required by the Constitution of the Republic of South Africa, and will not be subject to the provisions of the Expropriation Act (Act No. 63 of 1975).

(ee) Extraordinary expenditure, such as that incurred by the declaration of a state-aided school as a state school, will be made only with the concurrence of the Member of the Executive Council responsible for financial affairs.

(iv) Organisations consulted

On 3 April 1995, the Member of the Executive Council for Education presented a draft copy of the Bill to the Education and Training Forum for comment. This Forum comprises a wide range of educational stakeholder organisations. The Forum presented a comprehensive and constructive response to the draft, which led to numerous changes in the text. Major changes are outlined below:

(aa) Section 7(2)(a) was redrafted, in order to ensure that reasonable prior notice is given before a person conducting an inquiry may enter the grounds of a school or centre of learning.

(bb) The phrase "without just cause" was added in section 7(4). This is designed to protect a person from criminal liability, for example in circumstances where questioning under subsection (2) might jeopardise his or her constitutional right against self-incrimination.

(cc) Section 10 was redrafted. The ages between which school attendance is established as compulsory (for learners other than learners with specialised educational needs) are now 7 and 15, not 6 and 14.

- (dd) Section 12 was redrafted in two ways. Firstly, children cannot now be taken into custody by a school attendance officer. Secondly, a school attendance officer will generally need a search warrant issued by a magistrate before she or he can enter and search premises where a person subject to compulsory school attendance is thought to be present.
- (ee) Section 17 was redrafted in two ways. Firstly, section 17(2)(d) now provides that special measures should be taken in public schools to enable learners to become competent in the languages of learning of their schools. Secondly, section 17(3) now provides that the Member of the Executive Council for Education may only require a public school's governing body to reformulate the language policy of the school after consultation with the governing body.
- (ff) Section 20(3) was redrafted to provide that the Member of the Executive Council for Education may only require a public school's governing body to reformulate the religious policy of the school after consultation with the governing body.
- (gg) Section 21(4) was added to attend to the concerns of religious schools. Subsection (3) limits the right of a learner at a private school not to attend religious education classes and religious practices, provided that this limitation is justifiable.
- (hh) Section 35(1) now gives the Education and Training Council more time - 30 days rather than 20 - to comment on Bills relating to education before they are placed before a standing committee of the Provincial Legislature.

(v) **Clause-by-clause explanations**

Chapter 1

- s 1: Most of the definitions are self-explanatory.

Note that the "financial head" is the Member of the Executive Council responsible for financial affairs.

The Bill refers to "learners" rather than to "students" or to "pupils", and to "educators" rather than to "teachers". The one area of discrepancy relates to the optional naming of governing bodies as Parents' Teachers' Students' Associations. This is necessary for historical reasons.

s 2: This section sets out the application of the Act.

Chapter 2

s 3: The section provides that school education in the Province shall be controlled by the provincial education department acting in accordance with the policy determined by the Member of the Executive Council.

s 4: Subsection (1) sets out a framework of principles within which departmental policy is to be structured. The principles are to be used by the Member of the Executive Council and the department as a guide to policy and can be used by a court to assist in the interpretation of the Act or a regulation made under the Act.

s 5: The section grants a range of powers to the Member of the Executive Council which are, for the most part, self-explanatory. Subsection (c) provides for the possibility of agency agreements between the department and other government departments as well as for agreements between the department and non-governmental organisations.

s 6: The section provides for the division of the Province into educational districts and regions.

s 7: Where the Member of the Executive Council believes it is in the interests of education he or she may appoint a person to conduct an inquiry within written terms of reference. The section sets out the powers of a person conducting an inquiry and creates certain criminal offences relating to the conduct of inquiries. Note, the proviso "without just cause" in subsection (4) which will protect a person from criminal liability, inter alia in circumstances where questioning under subsection (2) might jeopardise his or her constitutional right against self-incrimination.

s 8: The section relates to the regular gathering of information from schools and other centres of learning for the administration of the education system. The section does not contain any criminal provisions. It was thought that internal departmental sanctions would suffice for its enforcement.

Chapter 3

- s 9:** The section prohibits discrimination in the requirements for admission to public schools.
- s 10:** The scope of compulsory education is set out in subsection (1). Note that the ninth level is the equivalent of standard 7.

Subsection (2) allows the Member of the Executive Council to phase in compulsory education gradually over the next five years if the department lacks the material and administrative resources for full implementation of compulsory education policy. The Member of the Executive Council can, by notice, set out age-groups of students who will not be subject to compulsory education in the year of the notice, or in the following year. The notice must be ratified by the Provincial Legislature. The effect of subsection 2(c) is that the phasing in period must be completed by the start of the year 2000.

- s 11:** The section provides for the appointment of school attendance officers to enforce compulsory education policy.
- s 12:** The section sets out the powers of a school attendance officer. The provision for search warrants is necessary to avoid contraventions of the Bill of Rights.
- s 13:** The section sets up a procedure which attempts to solve problems related to poor school attendance through the cooperation of principals, welfare officials, parents and learners.
- s 14:** The section makes parents responsible for ensuring that their children who are subject to compulsory education attend school. It places a criminal prohibition on the employment during school hours of children subject to compulsory education and it prevents persons from interfering with the performance by a school attendance officer of his or her duties.
- s 15:** The section allows the Member of the Executive Council to make regulations setting age limits for schools. The regulations must allow learners access to the school system until they are 21 years old. The Member of the Executive Council is given the power to grant exemptions in respect of age limits.

s 16: The section prevents learners from being excluded from state schools or state-aided schools on the grounds of non-payment of fees.

s 17: The section sets out the manner in which the language policy of a public school will be made. Note that the Member of the Executive Council retains a veto on the choice of language policy of a school. Subsection (2) sets out a framework of principles within which language policy is to be developed. The principles are a set of guidelines and do not create any rights. Subsection (3) allows the Member of the Executive Council to cause governing bodies to reformulate their school language policies where these no longer comply with the principles.

s 18: The section creates several rights relating to language and discrimination. Subsection (3) prohibits absolutely the punishment of learners for using languages other than a language of learning of the school. Subsection (4)(a) prevents learners from being penalised for using languages other than a language of learning of the school. This right is capable of limitation in terms of subsection (4)(b).

s19: The section gives recognised sign languages the status of official languages. Thus sections 16 and 17 should be read as conferring rights on sign languages as well as the official languages recognised in the Constitution.

s 20: The section sets out the manner in which the religious policy of a public school shall be made. The Member of the Executive Council retains a veto on the choice of religious policy of a school, and the veto can be used to ensure that there has been satisfactory consultation over school religious policy. Subsection (2) sets out a framework of principles within which religious policy is to be developed. The principles are a set of guidelines and do not create any rights. Subsection (3) allows the Member of the Executive Council to cause governing bodies to reformulate their school religious policies where these no longer comply with the principles.

s 21: The section sets out rights of conscience in school education. Note that it is only in respect of private schools which receive a state subsidy that the right not to attend religious practices and religious education classes may be limited under subsection (3)(b). In state and state-aided schools this right is absolute.

- s 22:** Subsection (1) prohibits corporal punishment at all schools, including private schools. Subsection (3) makes it a criminal offence to administer corporal punishment at schools, and provides that negligent ignorance of the law will be no defence in these cases. Subsection (2) allows the Member of the Executive Council to make regulations governing the control, expulsion, suspension and punishment of learners.
- s 23:** The section confers on parents a greater right to information than that provided by section 23 of the Constitution in that parents do not need to show that they require the information for the enforcement of their rights.
- s 24:** Subsection (1) places duties on learners with respect to school property. Subsection (2) makes the parents of a learner liable to the school for any actionable damage to school property which was caused by the learner.

Chapter 4

- s 25:** The section provides for the establishment of a governing body for every farm school, state school and state-aided school.
- s 26:** The section deals with the composition of governing bodies. Note in particular that parents must constitute a majority of members on a governing body (subsection (2)). Note also the exclusion of learners from the governing bodies of primary schools (subsection (4)).
- s 27:** The section provides for the powers of governing bodies. Subsection (3) sets out a framework of principles within which the Member of the Executive Council must make regulations setting out the powers of governing bodies. The regulations can grant different powers to different governing bodies (subsection (4)).
- s 28:** The section provides for capacity building of governing bodies.
- s 29:** The section is designed to provide for situations where governing bodies do not function. The Member of the Executive Council is given a power to dissolve non-functioning governing bodies and to appoint persons to exercise their powers for a period of up to one year. Within a year of the dissolution of a governing body under this section the Member of the Executive Council must ensure that a new governing body for the school is reconstituted in terms of the Act.

s 30: The section gives the Member of the Executive Council the power to make regulations concerning governing bodies.

Chapter 5

s 31: The section creates a statutory body, the Education and Training Council ("the Council"). The Member of the Executive Council is given the power to determine the composition of the Council by regulation (subsection (7)). Note that the Council must have representatives of each district council established under section 38 and of each specialist council established under section 43.

s 32: The section provides that the Head of Department must report quarterly to the Council.

s 33: The section sets out the general functions of the Council.

s 34: The section ensures that the Council will be provided with reasons for any decision of the Member of the Executive Council which goes against a recommendation that it has made.

s 35: The section is designed to ensure that the Council has the opportunity of considering and commenting on draft legislation and draft regulations before they become law. Subsection (1) deals with draft Bills relating to education. No special provision is made for the comments of the Council to be considered because the ordinary rules of the Provincial Legislature will provide adequate scope for the Council to ensure that it has the opportunity of making representations to the Legislature.

The remainder of the section deals with regulations. Ordinarily, draft regulations must be placed before the Council and the comments of the Council must be considered by the Member of the Executive Council before the regulations become law (subsection (2)). The Member of the Executive Council has the power to have meetings of the Council called on 10 days' notice to consider draft regulations (subsection (5)). The comments of the Council need not be considered by the Member of the Executive Council unless he or she receives them within seven days of the meeting of the Council which considered the draft regulations (subsection (6)). Amendments to draft regulations made after consideration of comments of the Council do not need to be resubmitted to the Council (subsection (7)(a)). The Council can delegate to a committee its powers to consider and to comment on draft regulations (subsection (4)). Where there is sufficient urgency, the regulations can be made before the Council has

considered them in draft (subsection (7)(b)), but not unless the Member of the Executive Council has notified the chairperson of the Council. The chairperson can then decide to call a meeting to consider the regulations if he or she believes that it is necessary to do so (subsection (5)), and the Member of the Executive Council may amend the regulations on the basis of comments received from the Council even if they have already been promulgated.

- s 36: The section provides for the establishment of committees of the Council. Note that the committees must provide for adequate representation of the districts. It is envisaged that a range of sectoral and special interest committees will be established by the Council. It was decided not to constitute these committees independently of the Council to ensure that their operations were integrated into those of the Council. Similarly, the identification of specific committees has been left to the Council and the Member of the Executive Council so as to provide for flexibility.
- s 37: The section obliges the Council to prepare an annual report which must be tabled in the Provincial Legislature by the Member of the Executive Council.
- s 38: The section provides for the establishment of district councils.
- s 39: The section provides that the district director must report quarterly to a district council.
- s 40: The section sets out the general functions of district councils.
- s 41: The section provides that the district director must refer recommendations of a district council to the department and must provide the district council with reasons if the department decides not to implement a recommendation of the district council.
- s 42: The section provides for the establishment of committees of district councils.
- s 43: The section provides for the establishment of specialist councils to advise the Member of the Executive Council directly. The specialist councils will give advice on matters relating to sectoral issues. They will be integrated into the Council by the operation of section 31(3) but it was felt that they ought to have an independent route to the Member of the Executive Council so that their concerns were not suppressed in the general forum of the Council.

s 44: The section provides that a specialist council shall make recommendations to the Member of the Executive Council.

s 45: The section obliges the Member of the Executive Council to give reasons if he or she decides not to implement a recommendation of a specialist council.

Chapter 6

s 46: The section provides for the establishment of state schools by the Member of the Executive Council, and for their closure. Note that the Member of the Executive Council must consult the governing body over closure of a state school, but the final decision remains the Member of the Executive Council's (subsection (2)). Provision is made for an appeal against the decision of the Member of the Executive Council to the full Executive Council (subsection (4)). The Member of the Executive Council may play no part in the deliberations of the Executive Council over such appeal (subsection (5)).

s 47: The department commits itself to providing at state schools an adequate level of education to all learners free of charge (subsection (1)). Boarding fees (subsection (3)) and school fees for post-compulsory education (subsection (2)) may be charged at state schools.

s 48: The section provides for the establishment of school funds at state schools to supplement the quality and/or levels of free education provided by the department. The funds are to be audited (subsection (4)) and all educators and parents are entitled to be provided with copies of the latest audited statements (subsection (6)). The Member of the Executive Council may exempt a governing body from the duty to have its statements audited if the amounts in the school fund do not warrant the expense of an audit (subsection (7)).

Chapter 7

Most of Chapter 7 was taken from the Education Affairs Act (House of Assembly) 1988. This was done because of the constitutional protection of aspects of the state-aided schooling regime. All new provisions will be identified in the section-by-section commentary which follows.

- s 49: The section is taken from the Education Affairs Act. Note that there are three ways in which a state-aided school may come into existence: the conversion of a private school into a state-aided school (subsections (1) and (2)), the conversion of a state school into a state-aided school (subsection (3)) and the direct establishment of a state-aided school by the Member of the Executive Council (subsection (4)).
- s 50: The section is taken from the Education Affairs Act. Note that the state-aided school, and not the governing body of the school, is given juristic personality.
- s 51: The section is taken from the Education Affairs Act and provides that the control of a state-aided school vests in its governing body.
- s 52: The section is new and provides for school and boarding fees at state-aided schools.
- s 53: The section is new and is inserted because the Education Affairs Act did not adequately regulate the consequences of declaring a private school to be a state-aided school.
- s 54: The section is taken substantially from the Education Affairs Act and regulates the consequences of declaring a state school to be a state-aided school. Note that section 54(1)(a) differs from its predecessor in that it provides for the reversion to the state of any immovable property of a state-aided school when that property is, in the opinion of the Member of the Executive Council, not being used in the "best interests of education in the Province". It also provides for payment of compensation to the state-aided school where this is required by the Constitution.
- s 55: The section is taken from the Education Affairs Act and provides for subsidies to state-aided schools. The conditions contemplated by this section can be used for any purpose (including the provision of subsidised posts).
- s 56: The section is taken from the Education Affairs Act and provides for loans to state-aided schools.
- s 57: The section is taken from the Education Affairs Act and regulates the repayment of loans by state-aided schools.

- s 58: The section is taken from the Education Affairs Act and provides for security for loans.
- s 59: The section regulates the financial reporting at state-aided schools. See comments on section 48 (financial statements of state schools).
- s 60: The section is taken substantially from the Education Affairs Act and it provides the department with controls over the failure of a state-aided school to implement the conditions on which subsidies have been granted. Subsection (2) was inserted to provide for consideration of written representations prior to any decision to reduce a subsidy or to withdraw the declaration as a state-aided school. The subsection was designed to satisfy the requirements of section 24 of the Constitution (the administrative justice clause).
- s 61: The section is taken substantially from the Education Affairs Act and provides for the declaration of a state-aided school to be a state school.
- s 62: The section is taken from the Education Affairs Act and sets out the effects of a reversion of a state-aided school to a state school.
- s 63: See comments in respect of section 46 (closure of state schools).
- s 64: The section sets out the effects of closure of a state-aided school and is taken substantially from the Education Affairs Act.

Chapter 8

- s 65: Subsection (1) effectively prevents anyone from operating a school other than a public school unless the school concerned is registered as a private school (see the definition of "private school" in section 1). Note that it is an offence to operate an unregistered private school (subsection (11)).

Subsection (2) provides that the Member of the Executive Council will make regulations setting out the requirements for registration. Subsections (3) to (10) set out detailed procedures relating to applications for registration of private schools and were designed to satisfy the requirements of section 24 of the Constitution.

- s 66: Subsections (1) and (2) provide for the Member of the Executive Council to make regulations governing the withdrawal or lapsing of the registration of a private school. Subsections (3) to (6) set out detailed procedures relating to the withdrawal of registrations of private schools and were designed to satisfy the requirements of section 24 of the Constitution.
- s 67: The section prohibits private schools from discriminating on racial grounds in their admission requirements.
- s 68: The section regulates the provision of subsidies to private schools. Note the provision in subsection (2)(b) relating to private schools which are operated for a profit. Note also the provision in subsection (4) for consideration of written representations prior to any decision to reduce or to terminate a subsidy granted to a private school. The subsection was designed to satisfy the requirements of section 24 of the Constitution.
- s 69: This section regulates the financial reporting of private schools. See the comments on section 48 (financial statements of state schools).
- s 70: The section provides for the declaration of a private school to be a state school. There is no provision in this chapter for the declaration of private schools as state-aided schools because this is covered in section 49(1).
- s 71: The section sets out the consequences of the declaration of a private school to be a state school.
- s 72: The section provides for regulations in respect of private schools.

Chapter 9

- s 73: The section provides that ordinary schools shall try to accommodate the specialised education needs of learners at such schools.
- s 74: The section sets out the requirements for admission of learners to schools for specialised education. Note that if the Head of Department believes that the learners' needs can be accommodated at another ordinary school which he or she can attend, the Head of Department can direct the learner to be admitted at that ordinary school rather than at a school for special education.
- s 75: The section provides for the assessment of learners.

- s 76: The section deals with the results of an assessment. It differs from the corresponding provisions in the Acts to be repealed in that the Head of Department must make assessment results available to parents and must discuss them with parents (subsection (1)).
- s 77: The section sets out the procedures relating to learners who have been assessed as having special education needs. Note that provision is made for the Head of Department to consult with parents of the learners concerned (subsection (1)(a)). Note also that the Department becomes financially responsible for any increased school fees which are imposed on parents of a learner who is placed at a school under this section (subsection (3)).
- s 78: The section refers to orders made by the Children's Court placing a child in the custody of a person or institution other than his or her parents.
- s 79: The section provides for the transfer of learners to another public school for specialised education.
- s 80: The section provides for the exemption of learners from the obligation to attend a school for specialised education.

Chapter 10

- s 81: The section establishes which educators are employed by the department and which educators are employed by state-aided schools.
- s 82: The section sets out the equality rights of educators at public schools but protects affirmative action measures (subsection (3)). Note that the section provides explicitly for the removal of inequalities which are the product of different practices in the different historically segregated education departments.
- s 83: The section provides educators at public schools with access to information relating to their employment held by the department or by a state-aided school. The right can be limited only in the exceptional circumstances outlined in subsection (2).
- s 84: The section provides for the political rights of educators at public schools.
- s 85: The section sets out the responsibilities of educators.

- s 86: The section sets out the responsibilities of principals.
- s 87: The section provides that the Member of the Executive Council will, subject to the directive principles (section 3) and to national guidelines, formulate provincial educator policy. Subsection (1) sets out a range of matters which will fall within provincial educator policy. Note that subsection (1) does not provide a closed list of matters (subsection (1)(j)).

Chapter 11

- s 88: The section is necessary to preserve aspects of the status quo while the department proceeds to transform the system of farm schools to bring it into line with the Act. It is not possible to transform farm schools into, for example, state schools with a single all-embracing provision because that would result in a constitutional obligation on the department to pay compensation to the present owners of farm schools. The financial implications of this obligation need to be determined before the obligation is incurred by the department.
- s 89: The section ensures that all learners, educators and officials of the department have access to farm schools (subsection (1)). Subsection (2) ensures access over land which it is necessary to cross to reach a farm school. There is a possibility that this subsection may be treated by courts as an expropriation of a servitude from the owners of such land and thus subject to the payment of compensation to those owners in terms of the provisions of section 28(3) of the Constitution. Subsections (1) and (2) will, *inter alia*, protect learners, educators and officials from charges under the Trespass Act or the Prevention of Illegal Squatting Act where these charges relate to their presence on land in connection with education.

Subsection (3) criminalises a contravention of subsections (1) and (2). Subsection (4) prevents farmers from extracting labour from learners or parents as a condition of admission to farm schools. Any farmer who contravenes subsection (4) is guilty of an offence.

- s 90: The section guarantees the equality rights of educators at rural schools (which will not be limited to farm schools, but will include all schools in rural areas) relative to educators employed in urban areas and provides also for the possibility of paying incentives to educators at rural schools.

s 91: The section provides for the adjustment of subsidies to farm schools.

s 92: The section provides a mechanism through which farm schools can be brought into the mainstream of the school education system. It empowers the Member of the Executive Council to declare any farm school to be a state school or a state-aided school. The owner of the farm school and the governing body must be consulted but the final decision rests with the Member of the Executive Council (subsection (1)). The owner of a farm school which is declared a state school or a state-aided school must be compensated in accordance with the Constitution (subsection (2)) but the Member of the Executive Council need not follow the procedures of the Expropriation Act (subsection (5)). The consequences that flow from the declaration of a farm school to be a state school are identical to those that flow from the declaration of any private school to be a state school (subsection (3) read with section 71). The consequences that flow from the declaration of a farm school to be a state-aided school are identical to those that would flow from the declaration of any private school to be a state-aided school (subsection (4) read with section 53).

s 93: Farm schools may be closed by the Member of the Executive Council to avoid conditions that constitute material threats to the health or welfare of educators or learners (subsection (1)), but unless adequate alternative provision for the education of the learners is made within two weeks the school will automatically reopen (subsection (2)).

The Member of the Executive Council may, with the consent of the governing body of a farm school, make an agreement with the owner to close the farm school (subsection (3)). An owner of a farm school cannot close that school without the consent of the Member of the Executive Council and the governing body (subsection (4)).

Chapter 12

s 94: The section ensures that existing centres of learning are treated on the same basis as those established under the Act.

s 95: The section preserves the appointment of existing school attendance officers.

s 96: Existing governing bodies are treated on the same basis as governing bodies established under the Act.

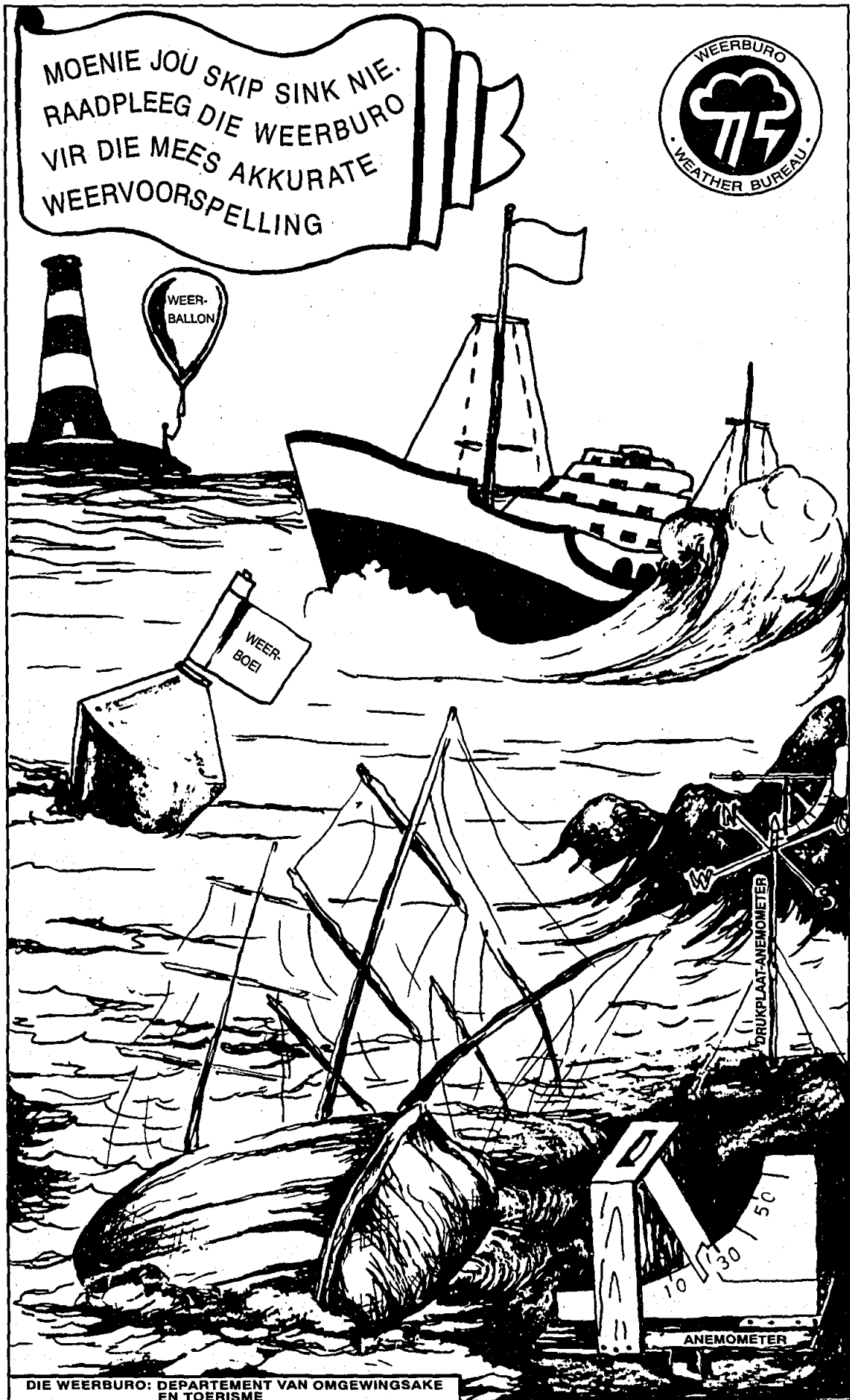
- s 97: Existing departmental schools are treated as state schools established under the Act.
- s 98: Existing registered private schools are treated on the same basis as private schools registered under the Act.
- s 99: Existing Model C schools become state-aided schools under the Act.
- s 100: The status quo in respect of state-aided schools other than model C schools is preserved so that the schools in question can be brought into the mainstream of the education system on a controlled basis. These are schools which continue to be privately owned and the financial considerations discussed in respect of section 88 and farm schools apply with equal force to these schools. (See the discussion of sections 88 and 92 above.)
- s 101: The purpose of this section is to provide for a centralised negotiating forum at which the constitutionally required negotiations over the powers of governing bodies of schools can take place.

Chapter 13

- s 102: The section invalidates any indemnity forms which schools require parents to sign. The effect of the section may be to encourage private schools and state-aided schools to insure themselves against liability and to pass on the cost of such insurance to all parents in the form of increased fees. This seems fairer than requiring individual parents to bear the cost of accidents in which their children are injured at school.
- s 103: The section empowers the Member of the Executive Council to expropriate land for educational purposes.
- s 104: The Member of the Executive Council and the Head of Department are given the power to delegate to any person employed by the department most of the powers they exercise by virtue of the Act, but the Member of the Executive Council cannot delegate the power to make regulations or to hear appeals in terms of the Act.
- s 105: Legal proceedings arising out of this Act must be instituted within one year of the date on which the cause of action arose or of the date on which the plaintiff or applicant became aware or ought to have become aware of the existence of the cause of action.

- s 106: The section empowers the Member of the Executive Council to make regulations.
- s 107: The section repeals the laws listed on the Schedule but preserves the regulations made under those laws.
- s 108: The section provides for the short title and the commencement date.





Use it

Don't abuse  it

water is for everybody



Werk mooi daarmee

Ons leef  daarvan

water is kosbaar

Please keep our country,
South Africa, clean!



Help om ons land, Suid-Afrika,
skoon te hou!

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