

QUALITY MANAGEMENT SYSTEM

**TR-001A-CCT
Council
terms of reference**

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TR-001A-CCT

COUNCIL TERMS OF REFERENCE

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1. LEGISLATIVE FRAMEWORK AND BEST PRACTICE REGULATIONS

Key principles contained in the following legislation and best practices were applied to develop this Terms of Reference:

- a) Continuing Education and Training Colleges Act No.16 of 2006, (as amended) (the Act)(formerly the FET Act);
- b) Public Finance Management Act, 1999 (Act No 1 of 1999, as amended by Act 29 of 1999)(PFMA);
- c) National Treasury Regulations of March 2005; and
- d) King III Code of Governance Principles of 2009.

2. PURPOSE

In terms of section 9.1 of the Act, every Public College must establish a Council.

The purpose of this Terms of Reference is to address the authority, responsibility and scope of the Council.

3. APPLICATION

This Terms of Reference is issued under the authority of the Accounting Officer of the College and is applicable to the Council of the College of Cape Town and the members of Council.

4. DEFINITIONS, ACRONYMS AND ABBREVIATIONS

For the purpose of this Terms of Reference, unless the context indicates otherwise, the following definitions, acronyms and abbreviations are set out for the terms indicated:

- 4.1 **“Academic Board”** - means the body responsible for all the teaching, learning, research and academic functions of the College as contemplated in [section 11 of the Act](#).
- 4.2 **“Accounting Officer”** – is the College Principal.
- 4.3 **“Act”** – is the Continuing Education and Training Colleges Act No.16 of 2006, as amended.
- 4.4 **“College”** – is the College of Cape Town.
- 4.5 **“Council”** - is the governing structure of the College of Cape Town.
- 4.6 **“Days”** - shall be construed as calendar days unless qualified by the word "business", in which instance a "business day" will be any day other than a Saturday, Sunday or public holiday as gazetted by the government of the Republic of South Africa from time to time.
- 4.7 **“Department”**; **“DHET”** – is the Department of Higher Education and Training.
- 4.8 **“External Auditor”** – is a person registered as an auditor in terms of the Independent Regulatory Board of Auditors.
- 4.9 **“Minister”** – is the Minister of the Department of Higher Education and Training.
- 4.10 **“TVET”** – is Technical and Vocational, Education and Training.
- 4.11 **“VCET”** – is Vocational and Continuing Education and Training.

5. AUTHORITY

- 5.1 The Council governs the College.
- 5.2 The Council must perform all the functions, including the development of a College statute, which is necessary to govern the College, subject to the Act and any applicable national or provincial law.
- 5.3 The Council will not perform any management functions or assume any management responsibilities.
- 5.4 A member of Council holds office for a period of five years: Provided that such a member:

- a) remains eligible to be a member of Council; and
 - b) may not serve for more than two consecutive terms of office.
- 5.5 The Council may not establish or create any juristic person in terms of any other legislation or common law.
- 5.6 The members of Council must participate in the deliberations of the Council in the best interest of the College.

6. COMPOSITION

- 6.1 In accordance with Section 10(4) of the Act, the Council of the College consists of:
- a) the Accounting Officer;
 - b) five external persons appointed by the Minister;
 - c) one member of the Academic Board elected by the Academic Board;
 - d) one external member representing donors;
 - e) one lecturer of the College, elected by the lecturers of the College;
 - f) one member of the support staff of the College, elected by the support staff; and
 - g) two students of the College, elected by the student representative Council of the College.
- 6.2 A chairperson, Vice chairperson and other office-bearers must be elected from amongst its members, for a period not exceeding three years.
- 6.3 Nominations for chairperson, Vice chairperson and secretary of the Council must be in writing and directed to the electoral officer. Voting is by secret ballot.
- 6.4 The chairperson, Vice chairperson or other office-bearers of the Council may not be students or members of the staff of the College, but the secretary may be a member of staff.
- 6.5 The Council must, in consultation with the Minister, appoint four additional external persons with financial, human resources and legal skills as members of the Council. The manner in which these members are to be elected, must, where applicable, be determined by the Minister by notice in the *Gazette* and must, in so far as it is practically possible, ensure that –
- a) the functions of the Council are performed according to the highest professional standards;
 - b) the Council is broadly representative of the Continuing Education and Training system and related interests;
 - c) the members have a thorough knowledge and understanding of the Continuing Education and Training sector;
 - d) the members appreciate the role of Continuing Education and Training in reconstruction and development; and
 - e) the Council is broadly representative of the community served by the College in respect of race, gender and disability.
- 6.6 At least 60 per cent of the members of a Council must be external persons who are not –
- a) students or support staff of the College;
 - b) employed by the Minister;
 - c) employed by the College.

- 6.7 The members of Council must be persons with knowledge and experience relevant to the objects and governance of the College.
- 6.8 Termination of membership and filling of vacancies:
- 6.8.1 A member's term of office of the Council terminates if –
- a) he or she tenders a written resignation;
 - b) the Minister or entity who appointed or elected the member to the Council terminates the membership in writing;
 - c) he or she is absent from three consecutive meetings without leave of the Council;
 - d) he or she is declared insolvent;
 - e) he or she is removed from an office of trust by a court of law or is convicted of an offence for which the sentence is imprisonment without the option of a fine; or
 - f) he or she is incapacitated to perform his or her functions.
- 6.8.2 The Council has the power to suspend and take disciplinary action against a member.
- 6.8.3 If 75 percent or more of the members of the Council resign, the Council is deemed to have resigned.
- 6.8.4 If the Council resigns as contemplated above, a new Council must be constituted in terms of the Act.
- 6.8.5 Whenever any vacancy occurs, section 10 of the Act must apply with the necessary changes thereto.
- 6.8.6 Any member appointed to fill a vacancy must serve only the remainder of the term of office.
- 6.8.7 Investigation at College, and appointment of Administrator
- a) The Minister may appoint a person to conduct an investigation at a College if the Council of the College requests the appointment of such a person or if –
 - b) circumstances arise at the College that -
 - i. involve financial or other maladministration of a serious nature; or
 - ii. seriously undermine the effective functioning of the College; and
 - iii. the Council of the College has failed to resolve such circumstances; and
 - iv. the appointment is in the interests of Continuing Education and Training in an open and democratic society.
 - c) If an audit of the financial records of the College, or an investigation by the Administrator reveal financial or other maladministration of a serious nature at the College or the serious undermining of the effective functioning of the College, the Minister may, after consultation with the Council of the College concerned, if practicable, and despite any other provision of the Act, appoint a person as Administrator to take over the authority of the Council or the management of the College and such person may perform all the functions relating to governance or management on behalf of the College for a period determined by the Minister, which period may not exceed two years. The Minister may extend this period once for a further period not exceeding six months.
 - d) If an administrator is appointed in terms of section 46(4) of the Act, the Council is deemed to have resigned and the Administrator must -

- i. take over the authority of the Council;
- ii. perform the Council's functions relating to governance; and
- iii. ensure that a new Council is constituted.

7. MEETINGS

- 7.1 The Council has at least four ordinary meetings during each academic year.
- 7.2 Notice of any motion for consideration at the next ordinary meeting of the Council must be in writing and must be lodged with the secretary at least 21 days before the date determined by the Council for such meeting, provided that any matter of an urgent nature may, without prior notice, by consent of the chairperson and a majority of the members present, be considered at such meeting.
- 7.3 At least 5 days prior to the date of an ordinary meeting, the secretary distributes an agenda and gives due notice to each member of all the matters to be dealt with at such meeting and states the time and place of such meeting.
- 7.4 A special meeting may be called at any time by the chairperson.
- 7.5 A special meeting must be called by the chairperson at the request in writing of at least five members, if the objective of such meeting is clearly stated in the request, provided that at least seven days' notice of a special meeting is given.
- 7.6 No business other than that for which the special meeting was called may be transacted at such meeting.
- 7.7 An emergency meeting may be called by the chairperson or, in his or her absence, by the Accounting Officer at any time.
- 7.8 Notice of an emergency meeting may be given in any manner convenient under the circumstances.
- 7.9 The objective of an emergency meeting must be stated to members and no business other than that stated may be transacted at such meeting.
- 7.10 The following Council meeting procedures will be in force:
 - a) Except where otherwise provided in this Terms of Reference, all acts or matters authorised or required to be done or decided by the Council or its committees, and all questions that may come before it, are done or decided by the majority of the members present at any meeting, provided that the number present at any meeting is at least half plus one of the total number of members of the Council or its committees holding office on the date of such meeting.
 - b) In the absence of the chairperson and the vice-chairperson of the Council, the members present must elect one of their members to preside at such meeting.
 - c) The first act of an ordinary meeting, after being constituted, is to read and confirm, by the signature of the chairperson, the minutes of the last preceding ordinary meeting and of any special meeting subsequently held, provided that the meeting may consider the minutes as read if a copy thereof was previously sent to every member of the Council, provided further

that objections to the minutes of a meeting are raised and decided before confirmation of the minutes.

- d) A member of the Council may not, without the consent of the meeting, speak more than once to a motion or to any amendment and the mover of any motion or any amendment has the right of reply.
- e) Every motion or amendment must be seconded and, if so directed by the chairperson, must be in writing.
- f) A motion or an amendment seconded as contemplated in subsection (6).10(e) may not be withdrawn except with the consent of the meeting.
- g) The chairperson has a deliberative vote on any matter and, in the event of an equality of votes, also a casting vote.
- h) If so decided by the meeting, the number of members voting for or against any motion must be recorded in the minutes or, if so requested by any member, the chairperson must direct that such votes be recorded.
- i) When a majority of the members of the Council reach agreement on a matter referred to them by the chairperson by letter or electronic means, without a meeting having been convened, and convey such resolution by letter or electronic means, such resolution is equivalent to a resolution of the Council and must be recorded in the minutes of the next succeeding ordinary meeting.
- j) The views of a member of the Council who is unable to attend a meeting may be submitted to the meeting in writing but may not count as a vote of such member.
- k) The ruling of the chairperson on a point of order or procedure is binding unless immediately challenged by a member, in which event such ruling must be submitted without discussion to the meeting whose decision is final.

7.11 Conflict of interest of members of Council :

7.11.1 A member of Council:

- a) may not have a conflict of interest with the College;
- b) must, before he or she assumes office, declare any business-commercial or financial activities undertaken for financial gain that may raise a possible conflict of interest with the College;
- c) may not place himself or herself under any financial or other obligation to any individual or organisation that might seek to influence the performance of any function of the Council.

7.11.2 A member of the Council who has a direct or indirect financial, personal or other interest in any matter which is to be discussed at a meeting and which entails or may entail a conflict or possible conflict of interest must, before or during such meeting, before discussion of the matter, declare the interest.

7.11.3 Any person may, in writing, inform the chairperson of a meeting, before a meeting, of a conflict or possible conflict of interest of a member of the Council of which such person may be aware.

7.11.4 The member of Council referred to in 7.11.2 and 7.11.3 is obliged to recuse himself or herself from the meeting during the discussion of the matter and the voting thereon.

7.12 Minutes of Council and committee meetings:

- a) The secretary of the Council keeps the minutes of each meeting of the Council and includes such minutes in the agenda of the next Council meeting when the agenda is sent out;
- b) The minutes of all committee meetings must be included in the agenda of the next ordinary meeting of the Council following the respective committee meetings; and
- c) The members of the Council must be provided with copies of the minutes.

7.13 Drafting, amending or rescinding statute:

- a) No motion to draft, amend or rescind a statute or a rule is of force and effect unless adopted by at least 75 per cent of all members of the Council present at the meeting, provided that a quorum is present at such meeting.

8. RESPONSIBILITIES

In accordance with Sections 10(1) to 10(3) of the Act, the Council must perform the following functions:

8.1 The Council must, with the concurrence of the Academic Board:

- a) develop a strategic plan for the College which must:
 - i. incorporate the mission, vision, goals and planning for funding of the College;
 - ii. address past imbalances and gender and disability matters;
 - iii. include safety measures for a safe learning environment for students, lecturers and support staff; and
 - iv. be approved by the Minister.
- b) determine the language policy of the College, subject to the approval of the Minister;
- c) ensure that the College complies with accreditation requirements necessary to provide learning programmes in terms of standards and qualifications as registered on the National Qualifications Framework; and
- d) subject to applicable policy determined by the Minister, determines the student admission policy of the College.

8.2 The Council may, subject to applicable policy, and with the approval of the Director General and after consultation with the Academic Board –

- a) determine admission requirements in respect of particular Continuing Education and Training programmes;
- b) determine the number of students who may be admitted for a particular Continuing Education and Training programme and the manner of their selection;
- c) determine the minimum requirements for readmission to study at the College in question; and
- d) refuse the readmission of a student who fails to satisfy the minimum requirements for readmission.

8.3 The Council must take the necessary steps within its available resources to ensure that the College is accessible to disabled students.

8.4 The Council, after consultation with the student representative Council, must provide for a suitable structure to advise on policy for student support services within the College.

8.5 The Council approves tuition fees, accommodation fees and any other fees payable by students.

8.6 The Council approves the annual budget of the College.

8.7 Appointment of staff:

Section 20 of the Act, states that:

- a) the staff of public Colleges consists of persons appointed by—
 - i. the Minister in terms of the Public Service Act in posts established on the organisational structure of the Department and identified as posts to the respective Colleges; and
 - ii. the Council in posts established in addition to posts contemplated in section 20(1)(a).
- b) The staff contemplated in section 20(1)(a) must—
 - i. report to the Council in respect of matters and functions allocated to them by the Council in terms of this Act; and
 - ii. report to the Minister as the employer for all employment purposes.
- c) Subject to this Act, the Labour Relations Act, the Basic Conditions of Employment Act, the Employment Equity Act and any other applicable law, the Council—
 - i. may establish posts contemplated in section 20(1)(b) for staff, other than the management staff, which posts are additional to the posts contemplated in section 20(2)(a);
 - ii. may appoint staff in those posts;
 - iii. must remunerate staff from the funds received by the public College in question from sources other, than the money received in terms of section 22;
 - iv. must determine the functions, conditions of service and privileges of the staff contemplated in section 20(4)(a); and
 - v. must pay remuneration to the staff contemplated in section 20(4)(a) that may not be less than the remuneration paid to a comparable appointment made in terms of the Public Service Act contemplated in section 20(1)(a).
- d) When presenting the annual financial reports contemplated in section 25 of the Act, the Council must provide sufficient details of any posts envisaged in terms of subsection (4)(a), including the estimated cost relating to the employment of staff in those posts and the manner in which it is proposed that the cost will be met.
- e) The staff contemplated in subsections 20(2) and 20(4) of the Act must be employed in compliance with the basic values and principles referred to in section 195 of the Constitution of the Republic of South Africa, 1996, and factors to be taken into account when making appointments include, but are not limited to:
 - i. the ability of the candidates;
 - ii. the principle of equity;
 - iii. the need to redress past injustices; and
 - iv. the need for representation.

8.8 Committees of Council:

- a) The Council may:
 - i. establish a committee to assist it in the performance of its functions; and
 - ii. appoint a person who is not a member of the Council as member of the committee.
- b) The chairperson of a committee must be a member of the Council.
- c) The Council is not divested of the responsibility for the performance of any function delegated to a committee.

The Council must determine the:

 - i. composition of a committee;
 - ii. functions of a committee;
 - iii. procedure at meetings; and
 - iv. dissolution of a committee.

8.9 Financial records and statements of the Colleges:

- a) The Council must, in the manner determined by the Minister:
 - i. keep records of all its proceedings;
 - ii. keep complete accounting records of all assets, liabilities, income and expenses and any other financial transactions of the College as a whole, of its substructures and of other bodies operating under its auspices; and
 - iii. implement internal audit and risk management systems which are not inferior to the standards contained in the PFMA.
- b) The Council must appoint an External Auditor to audit the records and financial statements referred to in this section.
- c) The Council must, in respect of the preceding financial year, and by a date or dates determined by the Minister, provide the Minister with:
 - i. a report on the overall management and governance of the College;
 - ii. a report on the overall performance of students on the programmes offered by the College;
 - iii. a duly audited statement of comprehensive income, statement of financial position and cash flow statement.
- d) The Council must provide the Minister with such additional information as the Minister may require.
- e) The Council must on an annual basis review both the acceptance and expenditure registers for gifts, donations and sponsorship, inclusive of any donations of immovable property.

9. REMUNERATION

Members of Council will be remunerated in accordance with approved College policies as approved by Council.

10. ADOPTION OF TERMS OF REFERENCE

This Terms of Reference is effective from the date on which it is adopted by the Council.

11. AVAILABILITY OF TERMS OF REFERENCE

A copy of this Terms of Reference and other relevant documentation should be made available on the College website.

12. ANNUAL REVISION OF TERMS OF REFERENCE

This Terms of Reference will be subject to an annual review by College management to ensure its relevance.