

The Regulatory Context in Private Higher Education in South Africa

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Abstract

Regulatory requirements within a complex educational environment in South Africa are presenting a huge challenge to private higher education providers. With the increasing demand for post-school education, it is widely acknowledged that private education providers can play a significant role in the provision of education and training in South Africa. The purpose of this article is to outline the regulatory context in which the private higher education providers operate in South Africa. This article highlights the tension that exists between the business focus of private providers and the requirement of meeting the conditions of the regulatory framework. As a result, the management of private higher education institutions in South Africa not only has to deal with the influences of the conditions of the regulatory framework but also has to manage the tension this creates within the management process of planning, organising, leading and controlling of the resources to achieve institutional goals, including healthy financial sustainability and good quality education.

Keywords: private higher education; regulatory framework; higher education; higher education legislation in South Africa

1. Introduction

The various factors that have impacted higher education sparked an international debate during the mid-1990s. The World Bank (1994) and the United Nations Educational, Scientific and Cultural Organization (UNESCO) (1995) identified the main factors influencing higher education. These main factors included numerical expansion, diversification of institutional structures, programmes and types of studies, financial constraints and the lack of management and institutional leadership (Centre for International Higher Education – Boston College, 1996). Further studies by the World Bank (2000; 2002) emphasise the impact of the main factors listed in their previous studies, as well as economic, social and political development on higher education institutions. Consequently, the World Bank urged countries to make it a national priority to determine the effect of these factors on their higher education systems (Salmi, 2009). During the last quarter of the 20th century world factors impacting higher education intensified with an increasing call for higher education owing to, *inter alia*, the massification of higher education and the knowledge-based economy (Bezuidenhout, De Jager & Naidoo, 2013; Enders, de Boer & Westerheijden, 2011; Organisation for Economic Co-operation and Development, 2014). As a result of these influences, private higher education has become the fastest growing sector in higher education throughout the world (Altbach, 2005; Carpenter, 2012; Tilak, 2003). This occurred because of public higher education sector's unwillingness or inability address the need for higher education, which has left a gap for private higher education to meet the demand for higher education (Enders & Jongbloed, 2007; Kwiek, 2010; University World News, 2013). Bezuidenhout, De Jager and Naidoo, 2013:1185 also state that there has been an increase in the demand for higher education in South Africa and private providers have used the opportunity to provide such services. In 2009 13.9% of matriculants obtained a senior certificate compared to 24.3% in 2011 (Roberts, 2012); this was a huge increase for which public higher education was not prepared. The throughput rate of students in private education institutions between 2001 and 2010 was 42% (Blom, 2011) compared with a throughput rate of 22% at public universities (Letseka & Maile, 2008).

The United Nations Educational, Scientific and Cultural Organization (UNESCO) (2009a) predicted that by the year 2025 the global demand for higher education will have increased from 97 million students in 2000 to over 262 million

students. Moreover, UNESCO (2009a) showed that the need in some of the developing economies could be between 20% and 50% more than the learning spaces available in their public higher education institutions. The lack of sufficient learning spaces for students in higher education at public higher education institutions occur in developed and developing countries. South Africa is a developing country, and the average number of student applications in South Africa has increased annually by almost 4.2% since ...even though the number of international student applications remained at 7% (International Education Association of South Africa, 2011).

Data in Table 1 show that the demand for higher education in South Africa by far exceeded the places available at some of the public universities for 2014. The lack of public universities' capacity to meet the need for higher education to the South African population has an impact on, *inter alia*, the economic development of South Africa and good citizenship (National Planning Commission, 2012).

Table 1: First year places available at some South African public universities versus applications received for 2014

Public university	Places available	Applications received
University of Witwatersrand	5 500	34 124
University of Pretoria	16 500	30 000
University of Johannesburg	10 800	40 000
University of KwaZulu-Natal	9 500	65 000
University of Cape Town	4 200	19 360
University of Limpopo	5 513	11 249
Mangosuthu University of Technology	3 000	14 000
Tshwane University of Technology	14 287	66 688
Durban University of Technology	7 100	47 300

Source: Adopted from Independent Online (IOL), 2013a; Independent Online (IOL), 2013b.

The private higher education sector in South Africa has the potential to provide higher education to students who cannot be accommodated in the public higher education system due to geographic or capacity constraints. To understand South Africa's higher education system, especially private higher education providers, it is necessary to present a brief overview of South Africa's higher education system. This article forms part of a formal study done by Ellis (2012) and by Ellis and Steyn (2014). It focused on the way in which a particular private higher education institution was managed within the current higher regulatory context in South Africa. For the purpose of this article, the focus is on the current regulatory context of private higher education institutions in South Africa. The study was carried out by means of a document analysis and a literature review of private higher education.

2. Brief History of Private Higher Education in South Africa

South Africa's pre-1994 higher education system was shaped by political, social and economic inequalities of race, class, gender and institutional structures. South Africa's democratic government, led by the African National Congress since 1994, has committed itself to transforming the inherited apartheid social structure and to bring about a new social order by transforming higher education (Badat, 2007). Although the majority of South Africa's prestigious and well-established public higher education institutions have originated from private higher education, the South African government and the public sector were alarmed by the remarkable growth of the private higher education institutions. They were concerned about the quality of private higher education providers in terms of the facilities, staff, resources and value for money and that these providers would attract students from public higher education institutions (MacGregor, 2008). These fears, combined with changes in the economic and social goals of the government, led to new regulations for higher education institutions. In particular, the government's legislative developments focused on private higher education (Subotzky, 2003). Prinsloo (2005) states that these legislative regulations covered the control of the quality as well as the sustainability of private providers. As a result, legislation was formalised and private providers were required to register with the Department of Education.

In terms of its credo, the ANC government has focused on constructing a "united, non-racial, non-sexist and democratic society" (African National Congress, 2014). To enable the South African Government to meet these objectives, numerous enactments have been initiated which were founded on the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) (Republic of South Africa, 1996). These enactments have forced the Government to unify

and transform the education system in South Africa (Kruger, 2010). All the stakeholders in the higher education system agreed that higher education must be re-planned, governed and funded as a single national coordinated system (Department of Education, 1997a). As a result, a new regulatory framework was introduced by the South African Government which has been applicable to both private- and public higher education institutions. The regulatory framework includes, *inter alia*, Chapter 2 of the Constitution of the Republic of South Africa, 1996 (Act 108 of 1996) (Republic of South Africa, 1996). In Section 23(1)-(6) and Section 29(3) (a)-(c), the Constitution (Republic of South Africa, 1996) gives every citizen the democratic right to establish and maintain a private institution at his/her own expense, not excluding the provision of government subsidies. The provision is that the institution does not discriminate on the basis of race, that it practises fair labour practices, is registered with the applicable government bodies and maintains standards that are not inferior to standards at comparable public educational institutions (Republic of South Africa, 1996). In paragraphs 2.55 and 2.56 of the Education White Paper 3 – A programme for higher education transformation (Department of Education, 1997b), the government acknowledges the indispensable role of private higher education in the higher education sector, but advocates a regulatory framework to regulate private higher education without suffocating private higher education institutions through over-regulation (Department of Education, 1997b). The Department of Education (2004) regulates the provision of private higher education by means of the following legislation:

- Higher Education Act, No. 101 of 1997 (Department of Education, 1997b).
- Higher Education Amendment Acts: No. 55 of 1999; No. 54 of 2000; No. 23 of 2001; No. 63 of 2002; No. 38 of 2003 and No. 39 of 2008; (Department of Education, 1999, 2000, 2001, 2002b, 2003b, 2008b).
- Higher Education Act, No. 101 of 1997: Regulations for the Registration of Private Higher Education Institutions (hereafter referred as the Regulations) (Department of Education, 2002a).
- Minimum Admission Requirements for Higher Certificates, Diplomas and Bachelor's Degrees Programmes (Admission Requirements) (Department of Education, 2005).
- Higher Education Qualifications Framework (HEQF) (Department of Education, 2007).
- National Qualifications Framework Act, No. 67 of 2008 (NQF Act 2008) (Department of Education, 2009a).
- Minimum Admission Requirements for Higher Certificate, Diploma and Bachelor's Degree Programmes requiring a National Certificate (Vocational) at Level 4 of the National Qualifications Framework (Department of Education, 2009b; Council on Higher Education, 2006a:2; Department of Education, 2007:3; Department of Education, 2009a:2; Department of Education, 2009b:1).

A private higher education institution is eligible to provide higher education if it can provide proof of institutional registration with the Department of Education, programme registration on the National Qualifications Framework by the South African Qualifications Authority and fulfilment of the higher education quality assurance function through institutional and programme accreditation (Council on Higher Education, 2003; Department of Education, 2004a; Department of Education, 2008a). Private higher education institutions are categorised and registered as (Pty) Ltd/for-profit or NPC/not for profit according to the regulatory requirements. These institutions consist of colleges, seminaries, training institutions, schools and professional institutions that offer higher education by means of a mix of contact and/or distance education modes (Baumgardt, 2013). The register of private higher education institutions shows that the majority of registered and/or provisionally registered private higher education institutions are registered as for-profit (Department of Higher Education and Training, 2014). The list of 24 February 2014 indicates that there are 90 registered private higher education institutions and 26 provisionally registered private higher education institutions.

The purpose of registration for private higher educational institutions by the Department of Education (South African Government Services, 2014) is to ensure that these institutions offer quality education; the public and students are protected against exploitative and unscrupulous providers; students obtain qualifications that are aligned with the Higher Education Qualifications Framework and registered on the National Qualification Framework; private higher educational institutions comply with the Higher Education Act, 1997 (Act 101 of 1997); and that all institutions meet the goals of transforming South Africa in accordance with government policy and legislation.

3. Registration with the Department of Education

In order to register with the Department of Education, a private higher education institution has to prove fulfilment of the conditions stipulated in, *inter alia*, Chapter 7, Sections 50-64 of the Higher Education Act (Department of Education, 1997b) and Chapter 3 of the Regulations (Department of Education, 2002a) Department of Education, 2008a). The private higher education institution has to provide proof of the institution's capability to fulfil its financial obligations to prospective students and its commitment to comply with the criteria of the Higher Education Quality Committee, as

accredited by South African Qualifications Authority in terms of the South African Qualifications Authority, Act 58 of 1995 (South African Qualifications Authority, 1995) (Department of Education, 1997b; Department of Education, 2008a). Sections 2, 9, 12(2) and 15 of the Regulations (Department of Education, 2002a) elaborate on the registration conditions in terms of the Higher Education Act (Department of Education, 1997b) by requiring the institution to register and trade as a juristic person or an external company in terms of the Companies Act 61 of 1973 (hereafter referred to as the Companies Act) (Department of Trade and Industry, 1973), to comply with the health and safety regulations of the Department of Labour and to comply with periodical evaluations of the institution by the Department of Education (2002a; 2008a). The fulfilment of conditions imposed by the regulatory framework on the private higher institution presents a challenge to the institution in that its managers must have the capacity to manage the impact of the regulatory framework through the management process.

3.1 The management process

The management process is defined as the planning, organising, leading and controlling of the resources of an institution to achieve the institutional goals as profitably as possible within the specific objectives of the institution's mission statement (Hofstrand, 2006). The management process is complicated by the compliance conditions indicated in section 2.2 and sections 2(1)(a)-(b) and 9 of the Regulations in the Department of Education (2002a). According to these conditions, an institution's juristic person must be registered as a proprietary limited company (Pty) Ltd of which the primary mission is to earn a profit (Department of Education, 2002a; SwiftReg Company Registration, 2008). The content of the mission statement for a private educational institution is prescribed in the criteria as found in the following government documents:

- *Criteria and guidelines for providers* (South African Qualifications Authority, 2001).
- Criterion 1 of the *Criteria for programme accreditation* (Programme Accreditation Criteria) (Council on Higher Education, 2004c)
- Criterion 1 of the *Criteria for institutional audits 2004* and the *Higher Education Quality Committee institutional audits manual 2007* (Audit Criteria) (Council on Higher Education; 2004b, Council on Higher Education, 2007b).

These criteria direct the higher education institution's mission statement regarding the stipulation of its purpose, goals and priorities in terms of how the institution would meet international, national, sectoral, local and student requirements, provide for transformational issues within the context of an accessible and affordable, cost-effective quality system. The mission statement should further provide for effective strategies, sufficient human resources, financial resources and infrastructural resources for delivering and assessing of the institution's learning programmes (South African Qualifications Authority, 2001; Council on Higher Education, 2004b; Council on Higher Education, 2004c; Council on Higher Education, 2007b). However, these government documents do not suggest a direction or alignment towards achieving the for-profit and business-orientated approach of a proprietary limited company.

Considering the above, managing the strain between the business- and the academic voices of an institution places a strain on the private higher education institutional management as the prescribed mission statement (transformational-academically phrased) is not in harmony with the spirit of a for-profit orientated mission statement and does not intend to meet the same goals (Council on Higher Education, 2007a). Therefore, an institution provides educational services in the marketplace with the primary focus of making a profit for its operations but also with the aim of providing education in terms of the required standard as is expected (Council on Higher Education, 2006b; Educor Council, 2005). The management of a private higher education institution not only deals with the influences of the conditions of the regulatory framework but also has to manage the tension this creates within the management process of planning, organising, leading and controlling of the resources to achieve institutional goals, including healthy financial sustainability and good quality education. In this regard, Figure 1 illustrates the normal flow of the management process (Smit & Cronjé, 2004).

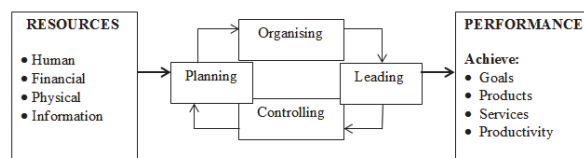


Figure 1: The management process of planning, organising, leading and controlling of the resources to achieve institutional goals (Adapted from Smit & Cronjé, 2004)

The management process as depicted in Figure 1 is generally applicable to businesses and organisations. By means of planning, performance objectives, resource allocation and the required actions to accomplish these objectives, are identified. Controlling is the sum total of all the processes which management uses to ensure that the plans and actions are executed and implemented according to the original planning and allocation of resources. This management process is also applicable to private higher education institutions. Management aims to meet its performance objectives as an effective educational process, through the management process of planning, organising, leading and controlling. It also aims to improve the quality of the learning environment through the allocation, leading and controlling of the resources to manage the educational process and to improve the quality of the learning environment (Daigneau, 2005). However, private higher education institutions are constrained by the regulatory environment within which the institution in question has to function. These constraints are manifested especially in the resource and performance elements of the process, as indicated in Figure 1. The impact of these constraints on resources and performance has a direct influence on the managerial process of planning, organising, leading and controlling.

3.1.1 Managing resources

The nature of the management process of a private higher education institution is prescribed by means of its mission statement as determined by the regulatory framework. It means that the process of managing and resource allocation necessary to achieve the institution's goals is different from that in other organisations. In Figure 1 certain elements of resources and performance are indicated as components of a generic management process of planning, organising, leading and controlling to achieve institutional goals. Table 2 below shows how the allocation of resources differs according to the nature of various institutions. The table compares different institutions in terms of their resource allocation. The areas highlighted are typically those characteristic of a private higher education institution.

Table 2: Illustration of resources grouped together differently in various institutions (own highlighting) (Adapted from Griffen, 1999:8)

Institutions	Human Resources (staff)	Financial resources (money)	Physical resources (facilities)	Information resources (reports)
University of South Africa	Lecturers and administrative staff	State subsidies, contributions by private enterprises, student fees	Buildings, libraries, teaching and learning venues, IT infrastructure, video-conferencing equipment	Expertise in distance teaching, research reports, annual reports
Toyota South Africa	Managers, engineers, technicians, administrative staff, workers	Shareholders, loans, profits	Assembly plants, equipment, computers	Data on the market, environmental information, statistics, skills in car manufacturing
City Council of Tshwane	Engineers, jurists, town planners, technical and administrative staff, councillors	Municipal taxes, fines, fees	Buildings, power stations, waterworks, pipelines, vehicles	Statistics on urban population, annual reports, budgets, expertise in town management

The highlighted areas in Table 2 indicate that the resources characteristic of a private higher education institution have to be managed in a different fashion to that of a public higher education institution as it encompasses different business models, each of which has its own management structure and regulatory constraints which are not necessarily characteristic of higher education. The regulatory constraints of a private higher education institution are predominantly evident at the level of human resources and institutional performance, due to the duality inherent in the fact that it is run both as a business and an educational institution.

3.1.1.1 Human resources

The management of human resources is subject to the regulations of the Department of Labour, (Council on Higher Education, 2004c). The Department of Labour refers to section 23(1) of the Constitution (Republic of South Africa, 1996) in order to construct a regulatory framework for fair labour practices, which all employers are obliged to meet. This regulatory framework intends to allow the country to meet its need for highly skilled workers and makes provision for higher education being subject to the guidance of the Department of Labour as well as the Department of Education (Department of Labour, 1997; Gravett & Geysler, 2004). The Department of Labour regulatory framework consists, *inter alia*, of:

- The Occupational Health and Safety Act, No. 181 of 1993, (Department of Labour, 1993).
- The Labour Relations Act, No. 66 of 1995, (Department of Labour, 1995).

- The Basic Conditions of Employment Act, No. 75 of 1997, (Department of Labour, 1997).
- The Skills Development Act, No. 97 of 1998, (Department of Labour, 1998).
- The Skills Development Levies Act, No. 9 of 1999, (Department of Labour, 1999; Department of Labour, 2008; Department of Labour 2014).

The Department of Labour's regulatory framework expects the management of a private higher education to promote the skills development of its staff by providing training and development programmes listed in its Workplace Skills Plan and Workplace Skills Report while paying levies against its payroll to the Sector Education and Training Authority (SETA), with which the institution is annually registered (Gravett & Geysler, 2004). Conditions in sections 12(2)(a), 23(h)(i)(iv) and 29(1)(iii) of the Regulations (Department of Education 2002a) embrace the Department of Labour's regulatory framework and taper the conditions of human resources recruitment, employment and management by obliging the private higher education institutional management to declare its commitment formally to maintain the necessary academic, administrative and support staff, with appropriate academic and/or professional qualifications and experience to meet and sustain the objectives of each programme.

The Higher Education Quality Committee, through its quality assurance function, emphasises these conditions through criteria 3, 4, 6, 7 and 8 of the Programme Accreditation Criteria (Council on Higher Education, 2004c) and criteria 3, 4 and 9 of the Audit Criteria (Council on Higher Education, 2004b; Council on Higher Education, 2007b). In these documents the Higher Education Quality Committee requires staff policies, -procedures and -strategies describing the following components within the stipulations of the Department of Labour's regulatory framework: Clear recruitment; Selection; Appointments; and Development and support.

Along these lines, the selection procedure indicates, *inter alia*, that academic staff members, such as lecturers and internal and external moderators, meet the redress and equity requirements of the Department of Labour and the management profiles of the institution. Selection procedures should furthermore determine the size and seniority of staff through having recognised qualifications that is one level higher than the exit level of the programme but with the minimum of a degree and have a minimum of two years' experience of teaching and learning, assessment and research on the exit level of the relevant programme to be lectured and/or moderated (Council on Higher Education, 2004b; Council on Higher Education, 2007b; Council on Higher Education, 2004c). The Higher Education Quality Committee furthermore expects the institution to have an acceptable student to staff ratio. After selection, the staff member appointed must have a service contract and clear guidelines in terms of responsibilities. The development strategies focus on providing staff members with the opportunity for professional development by encouraging academic staff members to conduct research in their subject areas, building capacity through frequent reviews of the staff in relation to programme needs; professional growth and development; and maintaining an acceptable ratio of full-time to part-time staff (Council on Higher Education, 2004b; Council on Higher Education, 2004c; Council on Higher Education, 2007b). Employing part-time staff members assists in managing the allocation of financial resources by accommodating the fluctuating human resource demands and to ensure that working conditions are conducive to teaching and learning and research with an appropriate full-time part time ratio (Jack & Dawn, 2003; Council on Higher Education, 2004c; Council on Higher Education, 2006a).

Ensuring that working conditions are conducive to teaching and learning and research within a staff member's understanding and experience of the programme accreditation criteria (Council on Higher Education, 2004c) and audit criteria (Council on Higher Education, 2004b; Council on Higher Education, 2007b) increases the tension within the institution that has to be managed by the private higher education institutional management.

According to an evaluation study conducted by the Council on Higher Education (2007a), the similarities and differences between the terms and processes used by the Council on Higher Education/Higher Education Quality Committee, Sector Education and Training Authorities and the South African Qualifications Authority for the same actions and activities, add to duplication of required processes and their associated documents, thereby increasing the workload and costs linked to these processes. In most cases where private higher education institutions are also registered as Further Education and Training providers, the same staff members have to fulfil both functions with their associated, although distinctly different, documentation as prescribed by the appropriate Sector Education and Training Authority. A study done by the Council on Higher Education (2007a) indicates that staff members experience these processes as a form of policing or oversight that limits academic autonomy and are of the opinion that the criteria impinge on the uniqueness of the institution with a particular emphasis on creative and practical skills. The link between the quality and availability of suitable staff members that meet the criteria of the Council on Higher Education and the institution, as well as the impact of these conditions on the institution and the private higher education institutional management, result in additional costs, including increasing demands on the financial resources of the private provider.

3.1.1.2 Financial resources

As mentioned earlier, a private higher education institution needs to register as a (Pty) Ltd company under the Companies Act (Department of Trade and Industry, 1973). For this reason, the institution is subject to the regulatory framework provided by the Companies Act (Department of Trade and Industry, 1973), including the South African Revenue Services Act 34 of 1997 (Department of Trade and Industry, 1997). The institution is also subject to the Higher Education Act (Department of Education, 1997b) and the Regulations (Department of Education, 2002a). Private higher education institutional management also has to provide proof that the institution is financially capable of meeting its obligations to prospective students. The Department of Education's conditions through Section 57 of the Higher Education Act (Department of Education, 1997b), Sections 13, 29(1)(i)-(ii) and 29(1)(iii) of the Regulations (Department of Education, 2002a) and by reinforcement of the Companies Act (Department of Trade and Industry, 1973) stipulations, require the proof to be in the form of compliance with general accepted accounting practice principles and procedures by keeping books and records of income; expenditure; assets; liabilities, income statements, expenditure statements and balance sheets (Department of Education, 1997b). To ensure the legitimacy of the financial statements, they are annually audited and accompanied by certified copies of the auditor's report, according to generally accepted auditing standards, and submitted to the Department of Education together with an established financial surety or financial guarantee no later than 30 April of each year (Department of Education, 2002a). If the private higher education institutional management does not adhere to these conditions and does not submit the financial documents or if the Registrar is not satisfied with the status of the financial documents, the Department of Education may deregister the institution, restricting the institution from providing higher education (Department of Education, 2008a). Consequently, the private higher education institutional management is obligated to inform the Department of Education of any noteworthy reduction in the financial and or physical resources needed to sustain a programme even if the registrar has accepted the required financial documents (Department of Education, 2002a).

The Higher Education Quality Committee through its quality assurance function emphasises these conditions through Criterion 7 of the Programme Accreditation Criteria (Council on Higher Education, 2004c) and Criterion 2 of the Audit Criteria (Council on Higher Education, 2004b; Council on Higher Education, 2007b) by requiring the institution to provide and budget for adequate resource allocation in terms of human resources development and implementation, and the review, renewal and expansion of physical resources (Council on Higher Education, 2004b; Council on Higher Education, 2004c; Council on Higher Education, 2007b). Bearing in mind that the institution depends entirely on student fees, external support and venture capital for funding and is not subsidised by the government, the private higher education institutional management has to manage the allocation of resources carefully including physical resources (Chilundo & Berwerwijk, 2001).

3.1.1.3 Physical resources

Physical resources, such as teaching and learning venues, buildings and libraries, form part of the teaching and learning experience, and include health and safety issues. Such physical resources are financial assets in terms of financial resources. For that reason, the institution is subject to the regulatory framework set by, *inter alia*, the Department of Labour regulations (health and safety), Department of Trade and Industry regulations (financial resources) and the regulations (teaching and learning) (Department of Education, 2002a).

Within this context, the conditions in sections 12(2),(3)(c),(d), 23(i),(iii) and 29(1)(iii) of the regulations emphasise the importance of the teaching and learning experience in terms of sufficient space, equipment and instructional material to provide education and training to achieve the objectives of the programmes. Consequently, the private higher education institutional management is obligated to inform the Department of Education of the loss of any physical and supporting resources or change in the site of delivery that will influence the status quo necessary for the proper conduct of a programme (Department of Education, 2002a).

The Higher Education Quality Committee through its quality assurance function emphasises these conditions through Criterion 7 of the Programme Accreditation Criteria (Council on Higher Education, 2004c) and Criterion 4 of the Audit Criteria (Council on Higher Education, 2004b; Council on Higher Education, 2007b), by requiring clear policies and procedures regarding the management, maintenance, renewal and expansion of library and information technology resources in terms of support and access to on- and off-site staff and students. The policies and procedures also elaborate on the appropriate information technology infrastructure that are complementary to the nature of the programmes and support the curriculum programme which include functional and appropriate hardware, software and databases and library and learning resources material (Council on Higher Education, 2004b; Council on Higher

Education, 2004c; Council on Higher Education, 2006a; Council on Higher Education, 2007b). However, the globalisation of access to information and the fact that the internet has democratised access to knowledge, institutions become devalued in the process as a repository of knowledge via the library (Kotecha, 2006). In practice, books are rarely used because most searches are done using an internet search engine such as Google, to keep abreast of new knowledge (Sayed, 2008). Students prefer using modern information communication technology such as the internet to actual library resources because of their exposure to information communication technology information selection, gathering, sorting and analysing, in the general and further education and training bands (Department of Education, 2003b; Department of Education, 2004b; De Villiers, 2007).

Regarding human resources, staff members within an academic environment also prefer using modern information communication technology to assist them in their search for information, as well as with the gathering, sharing and dissemination of information through effective communication, with their peers (internal and external) (Council on Higher Education, 2006b). To complicate the matter even further, programme accreditation and -registration are done by means of the Higher Education Quality Committee online programme accreditation application system and the Sector Education and Training Authority online programme registration application system (Council on Higher Education, 2008d; South African Qualifications Authority, 2008). Notwithstanding this status quo, the expectation of archaic library usage is maintained as a prerequisite to accreditation. Undoubtedly, the use of modern information communication technology is a valuable asset for the private higher education institutional management as it assists the private higher education institutional management to allocate the necessary information resources for the completion of the applicable reports to manage the institution, meet the criteria of the Council on Higher Education and stay in touch with the ever-changing higher education landscape.

3.1.1.4 Information resources

The information resources required by the Council on Higher Education take the form of prescribed quality assurance evidence reports pertaining to the different submission processes of the Council on Higher Education. These quality assurance evidence reports are based on quality assurance arrangements and the self-evaluation reports conducted by the institution. The Council on Higher Education developed a range of documents to guide the private higher education institutional management with the preparation of these reports. The documents include the following:

- *Criteria for programme accreditation* (Council on Higher Education, 2004c).
- *Criteria for institutional audits* (Council on Higher Education, 2004b).
- *Higher Education Quality Committee (HEQC) institutional audits manual* (Council on Higher Education, 2007b).
- *Improving teaching and learning resources* (Council on Higher Education, 2004e).
- *Development of audit portfolio* (Council on Higher Education, 2004d).
- *Site visit – preparation manual for institutions* (Council on Higher Education, 2008a) and the *Guidelines on writing improvement plans* (Council on Higher Education, 2008b; Council on Higher Education, 2008c; Council on Higher Education, 2004d).

These reports, together with the other reports form part of the Department of Education's information resources and processes as indicated in sections 13 and 44 of the *National Education Information Policy* (Department of Education, 2004b). The information resources provided ensure that the Minister of Education can monitor and evaluate the standards of education provision, delivery and performance (Department of Education, 2004b). The Department of Education's information resources gathering and implementation processes include a range of documents, such as Application for registration as a private higher education institution - Form APX-01 (Department of Education, 2003a); Application for amendment (Form APX-02) (Department of Education, 2003a); Application for conversion (Form APX-03) (Department of Education, 2003a); Annual reporting form (Form APX-04) (Department of Education, 2003a); and National learner record database (NLRD), (South African Qualifications Authority, 2007), administrated by SAQA, which holds records of individual students and their achievements (Department of Education, 2008a).

These records not only assist the Department of Education in determining the institution's educational performance and progress in terms of the government's goals but also aid the private higher education institutional management in ascertaining whether the institution's performance is achieving its goals.

3.2 Performance

By measuring the private higher education institution's performance, its management benchmarks the institution against other higher education institutions focusing on globalisation, new communication and information technology and marketisation by using the information gathered through the information resources. The information resources provide the private higher education institutional management with information regarding the most effective marketing strategies, sales tactics to create revenue, best pricing models, student throughput rates and the output of the academic staff (Nelson & Kelly, 2005; Poole, 2005). The performance of the institution is also measured by the Department of Education. Institutional performance is thus measured directly against national goals that are incorporated in the institutional goals in terms of the prescribed mission statement indicated earlier in the article (Centre for Higher Education Transformation, 2007).

3.2.1 Achieving goals

Achieving institutional goals is a dual function. On the one hand the private higher education institutional management assists in meeting the national goals by transporting human talent and potential that are equivalent to global standards to contribute to the social-economic growth of the country, and on the other hand by earning a profit to ensure financial sustainability (Council on Higher Education, 2007c; Department of Education, 1997a). As a relationship exists between economic growth and the participation rate in higher education, the private higher education institutional management has to accommodate the government's goal of the massification of the higher education system by increasing the participation rate through achieving its institutional goals (Department of Education, 2001a). To achieve the institutional goals, the private higher education institutional management focuses on filling the gaps in the higher education sector by providing a cost-effective and international product within a flexible management structure (Australian Council for Private Education and Training, 2004).

3.2.2 Products

In the case of higher education, the product is a learning programme and/or short learning programme that is delivered as a learning experience, which is assessed to ensure that the student achieves the aim of the programme. Because of the vital role that the programme plays in achieving the government's goals through the link with the private higher education institution's mission, the Higher Education Act (Department of Education, 1997b) by means of section 3(1) – (2)(a) and (b) tasks the Minister of Education with the responsibility to determine the policy on higher education (Department of Education, 1997b).

The following higher education policies form the parameters and criteria for the programme development procedure within which internal and external stakeholders have to apply their expertise:

- The Higher Education Qualifications Framework (Department of Education, 2007);
- Minimum Admission Requirements for Higher Certificates, Diplomas and Bachelor's Degree Programmes (Minimum Admission to Higher Education), (Department of Education, 2005);
- Criteria 1 and 6 of HEQC's Criteria for Programme Accreditation (Council on Higher Education, 2004c); and
- Criteria 1, 5, 7, 8 and 10 of HEQC's Criteria for Institutional Audits (Council on Higher Education, 2004b; Council on Higher Education, 2004a; Council on Higher Education, 2004c; Council on Higher Education, 2007b).

A curriculum that complies with the above-mentioned parameters and criteria should have sufficient disciplinary content, theoretical depth, balance between theoretical, practical and experiential knowledge and skills and coherency of modules which refers to, *inter alia*, content, level, credits, purpose, outcomes, competencies expected of students, rules of combination and tentative weight and delivery against the Higher Education Qualifications Framework level descriptors with complementary teaching and learning methods and applicable modes of delivery (Council on Higher Education, 2004c; Department of Education, 2007).

However, there are certain factors that impact on the curriculum choice. They are the quality of school leavers, massification of higher education and the constantly changing higher education regulatory framework. Widening access and securing equity through massification is problematic where the primary gateway between school and higher education as well as the statutory minimum admission requirements to higher education is the National Senior Certificate, as school leavers are not fully equipped by the school curriculum to make the transition to higher education (Department

of Education, 2005; Department of Education, 2007; Jamine, 2007; Kotecha, 2006; Oosthuizen, 2008). Accommodating these students increases the workload of academic staff members and it is required that these students' progress should be monitored closely to ensure that students who are at risk of not meeting the assessment criteria linked to the outcomes of the programme are identified timeously.

Through identifying "at risk" students, the validity, reliability, fairness and transparency of the assessment practices, experiential learning and recognition of prior learning are monitored through internal and external moderation processes which are stipulated in clear assessment policies and procedures for all modes of delivery. These policies and procedures also provide the students with information regarding access to the applicable documentation for the settling of disputes around assessment, the security and reliability of the result recording process, plagiarism and other unacceptable behaviour (Council on Higher Education, 2004b; Council on Higher Education, 2004c; Council on Higher Education, 2007b).

The outcomes of both the programme accreditation and institutional audit processes are placed in the public domain to inform the public about the state of quality arrangements inside the institutions. Being registered and accredited means that the institution provides viable quality products and services in the business of teaching and learning in higher education (Council on Higher Education, 2006a).

3.2.3 Service

The market forces in higher education have transformed students into consumers (Blaum, 2005). Students want and expect a service experience where the institution pays as much attention to the relations as to the business during the service period (Williams, 2003). They seek relevance, value and choice regarding an institution where the total higher education experience matters almost more than the teaching and learning experience. Students and their families demand a return on their substantial investment, from state-of-the-art facilities to high-speed internet access (Potier, 2001). Value for money is only achievable by having quality assurance at the core of the institution. Quality assurance involves harsh scrutiny of the institution's input and output processes. The purpose of the scrutiny is to maintain acceptably high standards that lead to good practice, continuous improvement and rising productivity (Bundy, 2006).

3.2.4 Productivity

Rising productivity in terms of continuous improvement involves autonomy of the institution and academic freedom. However, the autonomy of the institution and academic freedom are hindered by the government's involvement in the affairs of higher education institutions (Kotecha, 2006). It is clear from the impact of the regulatory framework that the institution has been deprived of the following rights: institutional autonomy, academic freedom, self-regulation, administrative independence and the internal management of resources generated from private and public sources, even though these are fundamental rights protected by the Constitution (Department of Education, 1997a). However, the government's view is that it needs to intervene to ensure that higher education institutions are not involved in illegal activities and that they are not disobedient to democratic change or government's predicted expectations, especially when an institution receives public funding (Pandor, 2004; Council on Higher Education, 2006c). The fact is that private higher education institutions contribute to government revenue through the payment of all the relevant taxes and charges in the same way as any other private business, but have to deliver quality educational outcomes at no cost to the government (Australian Council for Private Education and Training, 2004). As higher education has become commoditised with students becoming customers, the market also regulates the institution. Students will only enrol with an institution that meets their needs, ensuring that only such institutions thrive and are profitable (Council on Higher Education, 2006c).

3.2.5 Profit

Private institutions generate their funding by collecting tuition fees and other charges for services offered and are not subsidised. However, substantial regulatory fees have to be paid in order to achieve registration, accreditation, amendments and conversions. The prescribed regulatory fees per Department of Education registration and amendment submission are listed in the Higher Education Act, 1997 (Department of Education, 1997c), the Regulations (Department of Education 2002a) and the Regulations for the registration of private higher education institutions (Department of Education, 1997b; Department of Education, 2002a; Department of Education, 2003a). The Higher Education Act (Department of Education, 1997c) also entitles the Council on Higher Education to charge fees for any service rendered

by the Higher Education Quality Committee to any person, institution or organ of state (Department of Education, 1997b). Private higher education institutions have to pay for all enforced regulatory services provided by the Council on Higher Education and have to absorb regulatory fees such as R4 000 per programme accreditation submission; R1 000 per application for every additional site of delivery; R5 000 per new provider's application; R1 000 per review of meeting conditions; R1 000 per programme accreditation appeal; and the direct costs of the quality assurance such as evaluators' fees, transport and site visits, among others (Council on Higher Education, 2008a).

These costs, together with the number of person hours required to meet the conditions of the regulatory framework, which are not always quantifiable, have a negative effect on the profit of the institution and do not change the perception that private higher education provision is still not equal to public education provision by government institutions (Kruss, 2004).

4. Conclusion

South African private higher education providers have been operating in one of the most difficult management environments in the world and have been affected by many variables such as the depreciation of the rand, punitive labour laws, high crime levels, political indulgence of transformation, illegal foreigners and foreign investors' response to these variables, trust from the government's side in terms of the institution and its commitment to the national goals of the country. Compared to other businesses, the Government has instituted an overregulated framework for private providers. This has resulted in private higher education providers becoming one of the most regulated sectors of the South African education environment. However, such direct control measures for private providers in a developing country such as South Africa could negatively impact the educational needs of students and also decrease the ability of higher education institutions to meet their primary goals of promoting economic development and social justice.

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