
GOVERNMENT NOTICE

DEPARTMENT OF HIGHER EDUCATION AND TRAINING

No. 667

15 August 2011

MINISTRY OF HIGHER EDUCATION AND TRAINING


HIGHER EDUCATION ACT (ACT 101 OF 1997)

APPOINTMENT OF AN ADMINISTRATOR TO THE TSHWANE UNIVERSITY OF TECHNOLOGY

I, Bonginkosi Emmanuel Nzimande MP, Minister of Higher Education and Training, in terms of Section 41A of the Higher Education Act, 1997 (Act 101 of 1997), hereby appoint Professor Themba Mosia as Administrator to the Tshwane University of Technology.

The background, process and reasons for the appointment of the Administrator are contained in Schedule A.

The terms of reference for the appointment of the Administrator are attached hereto as Schedule B.



Dr BE Nzimande, MP

Minister of Higher Education and Training

Date: 14/08/2011

SCHEDULE A**BACKGROUND, PROCEDURE AND REASONS FOR APPOINTMENT OF THE
ADMINISTRATOR FOR THE TSHWANE UNIVERSITY OF TECHNOLOGY****PREAMBLE**

In terms of the Higher Education Act, 1997 (Act No. 101 of 1997), as amended, the Minister of Education may appoint an Administrator for a public higher education institution in terms of section 41A of the Act, which states:

41A Appointment of Administrator

- (1) If an audit of the financial records of a public higher education institution, or an investigation by an independent assessor as contemplated in section 47, reveals financial or other mal-administration of a serious nature at a public higher education institution or the serious undermining of the effective functioning of a public higher education institution, the Minister may, after consultation with the council of the public higher education institution concerned, if practicable, and notwithstanding any other provision of this Act, appoint a person as Administrator to take over the authority of the council or the management of the institution and perform the functions relating to governance or management on behalf of the institution for a period determined by the Minister, and such period may not exceed two years.
- (2) The Minister may extend the period referred to in subsection (1) once for a further period not exceeding six months.
- (3) Notwithstanding subsection (1), if a council is deemed to have resigned as contemplated in section 27(8), the Minister must appoint a person for a period of not longer than six months as an Administrator on behalf of the institution to:
 - (a) take over the authority of council;
 - (b) perform the council's functions relating to governance; and
 - (c) ensure that a new council is constituted.

In terms of section 45 (a) of the Higher Education Act (Act 101 of 1997), the Minister of Higher Education and Training appointed an Independent Assessor to conduct an investigation into the affairs of the Tshwane University of Technology. The general purpose of the investigation was to advise the Minister on:

- the source, and nature of the governance, management and administrative problems at the Tshwane University of Technology; and
- the steps required to restore proper governance, management and administration at the Tshwane University of Technology.

In this regard the Minister of Higher Education appointed Dr V Maphai as the Independent Assessor at the Tshwane University of Technology. The final report was handed to the university, via a special meeting of Council, on 2 November 2010. The report was published in the Government Gazette No. 33787 on 22 November 2010.

The terms of reference of the Independent Assessor were:

Governance and Management Structures and Efficiencies:

- Conduct a detailed analysis of, and report on the current situation in terms of organisation, management and governance structures, processes, systems, policies and competencies including issues of accountability and responsibility.
- Identify any regulations, policies or practices that must be reviewed or developed to improve the governance, management and administration of the financial affairs of the University.
- Specifically conduct a detailed analysis and report on the functioning of Council and other appropriate committees of the University as well as the capacity to address the immediate challenges of governance.
- Conduct a detailed analysis and report on the financial management systems and practices of the institution with particular emphasis on whether the University has appropriate and adequate procurement and tender policies and whether the policies are adequately applied, including the functioning of the appropriate committees.
- Identify any regulations, policies or practices that must be reviewed or created to improve employment relations within the University.

To make Recommendations on:

- Restoring of effective and proper governance, management, administration and employment relations at the University; and
- What action, if any, ought to be taken immediately to ensure the University is fully functional.

The Independent Assessor found that there are serious problems in the governance and management of the University, which are undermining the effective functioning of the institution. The Independent Assessor deliberated on bringing in an Administrator, but indicated in his report that instead of bringing in an Administrator, that the Council should be given until

December 2010 to sort out the key remaining issues emanating from both the Sithole Commission and this report.

The final report was handed to the university, via a special meeting of Council, on 2 November 2010. The key recommendations of the Independent Assessor's report included the need for Council to re-form and to build a strong Council around people who are professional and understand the concept of fiduciary responsibility. The need for Council to revisit and revise the delegation of authority document in accordance with the guidelines espoused in the King Codes of Good Corporate Governance were identified. It further recommended that particular care must be exercised to ensure that the management of tenders and large expenditure, or appointment of staff is conducted in an open and transparent manner so that there can be no suspicion of favour. The report further recommended that Council acknowledges and accepts that some of the biggest problems at the University emanate from the Human Resources portfolio and that the members of Council need to address this.

The University was requested to develop an action plan that was to be submitted to the Department of Higher Education and Training in December 2010. The plan identified the actions needed to restore proper governance and management at the university including the responsibility of Council to receive training in good corporate governance. Council also had the primary responsibility to appoint the Vice-Chancellor and senior management.

On 11 March 2011 the Minister of Higher Education and Training wrote to the Chairperson of Council, Dr Motlata indicating that he intends to appoint an Administrator and gave the University an opportunity to respond to this intention. This letter further requested the Council to postpone their final decision to appoint a Vice-Chancellor until the Minister has taken the decision to appoint an Administrator or not. This request was based on information that was brought to the attention of the Minister relating to the governance functions of the TUT Council in the selection process for a Vice-Chancellor. Council was requested to provide the Minister with a detailed report on the processes and proceedings followed as per the Higher Education Act (Act 101 of 1997). The process to select and appoint the post of Vice-Chancellor has revealed the non-compliance with the findings of the Independent Assessor's report and the Sithole report.

Two such findings on page 12 and 15 of the Independent Assessor's report state that

"The essential actions that need to be implemented by the Council if the Tshwane University of Technology is to be transparent and correct in the performance of good governance are: Appointing the Vice Chancellor and other Senior Management based on agreed principles of defined prerequisites and advertised criteria, after advice from the Institutional Forum, usually on performance-based fixed-term contracts. (page 12)

"A particular responsibility of Council is to ensure that the University has identified the greatest risks to its reputation, academic quality and fiscal good practices. More especially Council needs to monitor the implementation of actions that contain, reduce, eliminate and quality assure against these risks. This process of monitoring must also stretch to include elected members of Council. (page 15)

On 21 July 2011 the Minister wrote to Council expressing his intention to appoint an Administrator to take over the authority of Council and management in accordance with section 41A of the Higher Education Act (Act 101) of 1997, unless the University provided reasons as to why the Administrator should not be appointed. The letter expressed the Minister's concern that the University had taken so long in its investigation into the qualification of Prof Molefe, whereas the South African Qualifications Authority (SAQA) had already confirmed that the Doctor of Business Administration degree is not acceptable for evaluation as the St George University International in the West Indies is not an accredited university in that system. Two members of Council, both ministerial appointments, tendered their resignations during July 2011 citing their frustration with poor governance on the part of the Council. The letter also stated that the fixed term contract of the Chief Financial Officer terminated at the end of June 2011 may pose significant and unnecessary risk to the University if a suitable person was not appointed speedily. The letter noted that the integrity of the qualification of the acting Vice-Chancellor and the uncertainty of the executive positions are creating conditions of instability at the University and putting at risk the academic integrity of the University. Council was requested to invite the Minister to a meeting within five working days upon receipt of the letter. The meeting was scheduled for 15:15 on 29 July 2011.

The Acting Director-General was delegated to represent the Minister due to the fact that the meeting started 3 hours later than scheduled. The meeting went ahead, but the Council was not ready to discuss the issue of the Administrator as the letter of the Minister dated 21 July 2011 was not distributed to the members of Council. In the meeting the Chairperson of Council acknowledged that no official correspondence were submitted to the Minister and described the process followed to manage the "verification" of the qualification of the Acting Vice-Chancellor. The Chairperson of Council further acknowledged that the task team appointed to provide advice on the qualification did not have the authority in law to recognise or verify the status of the qualification. The Chairperson of Council further acknowledged that the letter he sent to the Minister on 28 July 2011 was his own response and not a reflection of the Council's position. It was agreed that individual members could make their own contributions to the Minister to consider when making his decision on whether to appoint an Administrator or not.

In a letter dated 2 August 2011 the Minister expressed his surprise that Council took the decision to appoint the Vice-Chancellor, even though the final decision to appoint the Administrator had not been taken by him. He requested the Council to present him with an official response on the Council's decision to appoint the Vice-Chancellor, given that the Chairperson of Council had acknowledged at the meeting on 29 July 2011 that the task team appointed to investigate the qualifications of the Acting Vice-Chancellor did not have the authority to recognise the status of the qualification within the legal framework of the National Qualifications Framework Act 2008 (NQF) or the Higher Education Qualifications Framework. Council was requested to withdraw or suspend the appointment of Prof Molefe pending the pronouncement of a review application as the Minister was advised that there were sufficient grounds to institute legal proceedings. Council was requested to respond by 3 August 2011, which was later extended to 5 August 2011. No response has been provided to this request, except to submit the letter of 28 July 2011 again to the Minister, this time on an official letterhead.

The decision of Council to appoint a Vice-Chancellor whose qualification is not recognised by the South African Qualifications Authority seriously compromises the academic integrity and reputation of the University in particular and the higher education in South Africa as a whole. In addition, Council posed significant and needless risk to the university when it terminated the contract of the Chief Financial Officer without ensuring that a replacement was in place. Council's failure to comply with key governance recommendations based on the critical findings made by the Independent Assessor seriously undermines the effective functioning of the University.

At the meeting of 29 July 2011 it was agreed that individual Council members' positions on the decision to appoint an Administrator would be relevant information that must be considered before the Minister took his final decision. Members were requested to submit their positions by Friday 5 August 2011. It was evident from the meeting and the presentations received, that the position of the Chairperson of Council that there is good co-operation and unity within the Council and Management, is not true. The opposite is rather true, namely, that the conduct of Council seriously undermines the effective functioning of the University.

The Minister was informed that five additional members tendered their resignation from the TUT Council including the Chairperson of the Audit Committee. After careful consideration of the submissions received from members and other relevant correspondence, including the task team reports, the Minister has decided to appoint an Administrator for the Tshwane University of Technology.

In this regard, the Minister, BE Nzimande MP, Minister of Higher Education and Training, has decided to appoint Professor Themba Mosia as Administrator for the Tshwane University of Technology in terms of section 41A of the Higher Education Act, with the terms of reference as described in Schedule B.

SCHEDULE B

**TERMS OF REFERENCE OF THE
MINISTER OF HIGHER EDUCATION AND TRAINING
ADMINISTRATOR FOR THE TSHWANE UNIVERSITY OF TECHNOLOGY**

The general and specific terms of reference of the Administrator are:

- To take over the authority of the Council to govern the institution and the function of the Vice-Chancellor to manage the Tshwane University of Technology, for a period not exceeding two years, subject to a review of progress after 12 months.
- To identify and initiate processes and initiatives that restore proper governance and administration at the Tshwane University of Technology.
- To ensure the institution has an effective functional Council by the appointment of new Council members at the Tshwane University of Technology, including the review and establishment of necessary Council sub-committees and the drafting and submission to the Minister of Higher Education and Training, of a revised statute for the University if needed.
- To initiate and conclude the key recommendations of the Independent Assessor report including the appointment of senior staff by ensuring that appointments made into senior managers posts and in particular the appointment of the Vice-Chancellor is in accordance with the requirements published in the advertisement of the post and to manage the non compliance to requirements within the prescripts of the law.
- To assess the nature and extent of support needed to perform the functions of the Administrator and to make a formal motivation for this request to the Acting Director-General of the Department of Higher Education and Training.

The Administrator will commence duties on the date of publication of this notice.
