
GOVERNMENT NOTICE

DEPARTMENT OF HIGHER EDUCATION AND TRAINING

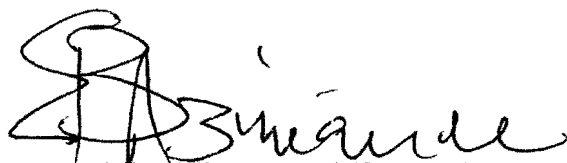
No. 548

17 July 2012

HIGHER EDUCATION ACT (ACT 101 OF 1997)

APPOINTMENT OF AN ADMINSTRATOR TO THE VAAL 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 No. 101 of 1997), hereby appoint Prof Patrick Fitzgerald as Administrator to the Vaal University of Technology, following the report of the Independent Assessor, Advocate Frederick Mzawuvuke Sishakhane, into the affairs of the University. The terms of reference for this appointment are attached hereto.



Dr Bonginkosi Emmanuel Nzimande, MP
Minister of Higher Education and Training

Date: 11/07/12

MINISTER OF HIGHER EDUCATION AND TRAINING**TERMS OF REFERENCE****ADMINISTRATOR FOR VAAL UNIVERSITY OF TECHNOLOGY****PREAMBLE**

In terms of section 41A 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 council's functions relating to governance; and**
 - (c) ensure that a new council is constituted.**

[Sub-s (3) added by s11 of Act 63 of 2002]

[S. 41A inserted by s. 6 of Act 55 of 1999.]

In terms of section 45(a) of the Higher Education Act (Act No. 101 of 1997), the Minister of Higher Education and Training appointed an Independent Assessor to conduct an investigation into the affairs of the Vaal University of Technology. The overall purpose of the investigation was to advise the Minister and university council on:

- The nature of the problems facing VUT, including those relating to governance, financial management and procurement practices, administration matters, student governance and any other matter that may arise.
- Measures required to resolve problems identified in all areas; and
- Clear short, medium and long-term recommendations.

The terms of reference as contained in the Government Gazette dated 11 May 2012:

- Conduct a detailed analysis of and provide a report on the current situation of the university governance and executive management structures, in particular their functioning and efficacy, and relationships between the various structures and portfolios.
- Conduct a thorough investigation of the financial policy and procedures of the institution, with a specific focus on internal audit processes, procurement and tender procedures, expenditure on legal fees, donor funding management, the management of NSFAS allocations, and any other specific allegations of financial irregularity that may be brought to the attention of the Independent Assessor.
- Investigate the operations of the Office of the Registrar in relation to the management of academic affairs, registration and certification matters and any other matter that the independent assessor believes warrants investigation;
- Investigate the problems in the area of student governance; and
- Investigate and report on any matters that, in the opinion of the Assessor, may impact on the effective functioning of the university, from the analysis of problems relating to governance and management.

And make recommendations on:

- The restoration of good governance, specifically in relation to the Executive Management of the University and its Council.
- Short, medium and long-term solutions required to address any issues identified in relation to the areas in the Terms of Reference;
- Any action required to ensure effective academic operations at the university;
- Ways of resolving the challenges relating to student governance; and
- Any other areas of action required to ensure the effective functioning of the university.

I have received and considered the report of the Independent Assessor. It is evident in the report that there are serious problems in the governance and management of the University, which are undermining the effective functioning of the university. The key recommendations of the Independent Assessor are as follows:

1. Dissolve the Council and its committees with immediate effect.
2. Appoint an Administrator to fulfil the duties of Council, while a new Council is being established.
3. Recall the new Statute of VUT that has already been submitted to the Department for approval, and review the statute making certain changes to ensure that the current problems of governance do not persist. Resubmit the statute to the Department for approval and reconstitute a new Council as soon as possible thereafter in terms of the new approved Statute.
4. Set new performance targets for the current Vice-Chancellor and Management regarding strategic transformation milestones for the institution as well as Human Resource related issues.
5. Revisit Council's decision not to extend the Vice-Chancellor's contract for a full five year term.
6. Establish a special independent forensic audit to investigate procurement and management in respect of student residences of the institution, in particular the services rendered by a company called Prellex; the forensic audit should pay special attention to (1) residential leases, (2) contracts, (3) management integrity;
7. Suspend the investigation conducted by the Task Team and investigate the very decision to establish the Task Team in order to determine whether it was done in good or bad faith. If necessary, set up a new independent investigation into the issue of MPL (Pty) in order to settle it once and for all. The report of PWC in this regard must also be considered;
8. Consider seriously mechanisms for resolving the relationship between the DVC: Finance and the current Vice Chancellor;
9. Ensure that HR produces a document clarifying job descriptions, job profiles, post levels, remuneration and the implementation of equity within the institution.
10. In respect of Finance the following recommendations are made:
 - i. Audit and Finance Committees should be dissolved and re-constituted once the new Council is in place based on required skill levels and integrity;
 - ii. A Risk Management Strategy should be formulated by the new Council;

iii. Performance of the Finance and Audit Committees should be reviewed annually. An internal Audit function must be established.

11. VUT should build its own student residential accommodation for its affected students and do away with third party accommodation;

12. VUT should also increase the infrastructural capacity of the campuses adequately to cater for all student enrolments; and

13. The newly constituted Council must be inducted as soon as possible, with a special emphasis on the need to declare business and other interests. In this regard, a proper regime for such declaring must be put in place in order to ensure good governance and best practice in the future.

I have accepted the report and recommendations of the Independent Assessor. In this regard, I, Dr BE Nzimande MP, Minister of Higher Education and Training have decided to appoint Prof Patrick Fitzgerald as Administrator for the Vaal University of Technology in terms of Section 41A of the Higher Education Act, with the following terms of reference:

TERMS OF REFERENCE

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

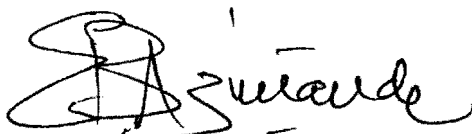
- To take over the authority of the Council of Vaal University of Technology and its committees for an initial period of six months; with the possibility of an extension for a further six months;
- To identify and initiate processes and initiatives that restore proper governance and management at the Vaal University of Technology;
- To ensure the institution has an effective functional Council by the appointment of new Council members, including the review and establishment of necessary Council sub-committees and the drafting and submission to the Minister of Higher Education and Training, a revised statute for the University;
- The Administrator must establish a full complement of executive managers necessary for the proper management of the core activities of the University, including a full review of the contract of the Vice Chancellor;
- To conduct a detailed analysis and report on the human resource policies and practices of the University, particularly in relation to enhancing organisational efficiency and employment relations at the University. In addition, the Administrator must identify any

regulation, policy or practices that must be reviewed or created to improve employment relations within the University;

- Review the terms of reference of the Finance and Audit Committees and the functioning of these committees to assess whether areas of internal control and risk management are covered; and
- Initiate an independent forensic audit to investigate procurement and management in respect of student residences, awarding and management of tenders, including the appointment of MPL (Pty) and any other matters that may arise. The investigation should be carried out in order to identify any corrupt practices and to institute appropriate action within the prescripts of the law.

The Administrator will report to the Minister of Higher Education and Training or his delegated officials. Besides other forms of communication and interaction with the Ministry and Department of Higher Education and Training, the Administrator must submit quarterly written reports on the progress regarding the above issues. The Administrator may appoint technical experts where necessary to assist in the different areas.

The Administrator will commence duty on date of publication of this Notice.



Dr BE Nzimande, MP
Minister of Higher Education and Training
Date: 11/07/12
