PART A

CHAPTER 4 – FINANCIAL GOVERNANCE AND CONTROLS – THE GOVERNMENT PERSPECTIVE

“And whereas it is desirable for higher education institutions to enjoy freedom and autonomy in their relationship with the State within the context of public accountability and the national need for advanced skills and scientific knowledge.” – (South Africa, 1997b: Preamble).

4.1 INTRODUCTION

As discussed in chapter 3 of this thesis, there is very little statutory guidance on how a public higher education institution such as the RAU should be governed. This fact reflects the statutory view that higher education institutions enjoy autonomy as specifically expounded by the Higher Education Act (South Africa, 1997b: Preamble).

However, this does not mean that the issue of governance and control of higher education institutions, particularly in respect of finances, is not an important theme of Government. After all, in itself, chapter 3 has shown that terms such as accountability and governance do appear in legislation that affects higher education.

The purpose of this chapter is to provide a wider perspective on Government’s view of governance, control and accountability in the public higher education sector and to provide evidence that educational autonomy is limited. In addition, this chapter will provide evidence that higher education institutions may indeed be regarded as organs of state and, to that extent must entertain Government intervention and direction. Specifically in respect of the procurement of goods and services, the financial models, policies and procedures implemented in institutions should entertain Government direction and wider Government policies for organs of state and public bodies.
However, in order to fully understand the issue, some attention will firstly be given to definitions for governance and related concepts. In this respect, specific definitions will be established for a number of terms that will be used in this thesis in order to understand Government's view on the subject.

Chapter 4 will end off by providing suggestions on how Government can contribute directly to financial governance and control in higher education, including suggestions on spend efficiencies.

4.2 DEFINITIONS FOR GOVERNANCE AND RELATED CONCEPTS

4.2.1 Introduction

Should one read through Government publications on education and do research on financial controls and governance, there are a number of related concepts that need further attention and specific definitions in the context of this thesis. The terms that will be defined and discussed further are:

- Accountability;
- Governance;
- Institutional (academic) governance;
- Corporate governance;
- Financial governance; and
- Controls.

4.2.2 Accountability

The term “accountable” is defined as “bound to give account, responsible, explicable” (Sykes, 1984:7).

The Cadbury report (The Report of the Committee on the Financial Aspects of Corporate Governance) identified accountability as one of the three fundamental principles of corporate governance (International Federation of Accountants (hereafter IFAC), 2000:15).

IFAC defines “accountability” in the public sector as (IFAC, 2000:16):

“Accountability is the process whereby public sector entities, and the individuals within them, are responsible for their decisions and actions, including their stewardship of public funds and all aspects of performance, and submit themselves to appropriate external scrutiny. It is achieved by all parties having a clear understanding of those responsibilities, and having clearly defined roles through a robust structure. In effect, accountability is the obligation to answer for a responsibility conferred”.

In the context of corporate governance in the public sector, IFAC determined that attention should be given to statutory accountability and accountability for public money when considering the organisational structures and processes that should be in place in the public sector. In respect of statutory accountability, governing bodies of public sector entities need to establish effective arrangements to ensure compliance with all applicable statutes and regulations and statements of best practice. In respect of the second issue (being accountability for public money), the governing bodies of public sector entities need to establish appropriate arrangements to ensure that public funds and resources are properly safeguarded and used economically, efficiently and effectively (IFAC, 2000:19).

Accountability can be interpreted as a means of making public sector entities such as the RAU, accountable to the “public” (IFAC, 2000:23).

However, a distinction must be drawn between accountability and responsibility. The Institute of Directors in Southern Africa explains the difference as follows (2001:8):

“One is liable to render an account when one is accountable and one is liable to be called to account when one is responsible”.

In the context of this thesis, and in particular this chapter, accountability will mean the
responsible, efficient and effective use of public funds and reporting on the use of these funds in order to demonstrate accountability.

### 4.2.3 Governance and institutional (academic) governance

“Governance” may be defined as an “act, manner, fact, or function, of governing; sway, control” (Sykes, 1984:429-430).

Governance may also be defined as the distribution of authority and functions among the units within a larger entity, the modes of communication and control among them, and the conduct of relationships between the entity and the surrounding environment (Ricci, 1999:2).

Descriptions of the way in which organisations are “governed” generally refer to the structures that are in place, such as a Board of Trustees, Presidents, Administrative Officers and Faculties (Ricci, 1999:1) or a central administration (University of the West Indies, 2001:1).

As discussed in chapter 2, institutional or academic governance refers to the governing bodies in place such as those described in the statute of the RAU (refer paragraph 2.4.2.3). As will be seen from the discussions below, Government generally views governance (in the higher education arena) as the structures that must be put in place, such as a council, to control an institution and take responsibility for it.

*In the context of this thesis, governance will refer collectively to all of the different types or classifications of governance. In other words, governance will be an all-encompassing term.*

*Institutional (academic) governance will refer to the bodies that take responsibility for governance.*
4.2.4 Corporate governance

Corporate governance is a well-researched area and there are a number of definitions available to describe the concept. The issue of whether corporate governance principles may also be applied to the public sector, will be discussed later in this chapter, but for now the assumption is made that corporate governance should also be in place in public entities.

The Cadbury report defined corporate governance as (IFAC, 2000:15):

“…the system by which organizations are directed and controlled”.

In terms of this report, there are three fundamental principles of corporate governance, being openness, integrity and accountability (IFAC, 2000:15).

Other authors have defined corporate governance as:

- The processes and structures used to direct a corporation’s business (McConomy & Bujaki, 2000:1);

- A set of relationships between a company’s management, its board, its shareholders and other stakeholders. Corporate governance also provides the structure through which the objectives of the company are set, and the means of attaining those objectives and monitoring performance (Organisation for economic co-operation and development (hereafter OECD), 2001:2); and

- The system or process by which companies are directed and controlled. The directors are responsible for the governance of the company, and the shareholders are responsible for appointing the directors and auditors (KPMG, 1995:5).

Corporate governance is a wide concept that covers a range of issues. Although codes of corporate governance differ from country to country, there are a number of issues that are found in most codes of corporate governance, such as (Cadbury, 1997:2-9):

- The need for disclosure by boards of directors about the activities of the businesses they direct;

- The need for checks and balances in governance structures;

- Recognizing and resolving divergences of interest between shareholders and the management of a company;
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- Clarity about the powers and duties of the directors of a company;
- The composition of a board of directors;
- The fact that board structures aim to combine the detailed knowledge of directors inside and outside the organisation;
- The problematic issue of a limited pool of directors and the supply and demand of directors, particularly in smaller countries;
- The size of the board of directors is also addressed in some corporate governance codes;
- A number (and in some cases the majority) of directors must be independent of the organisation;
- The role of the chairman of a board is important in transforming the board of directors into an effective board;
- The control and supervisory tasks of a board is often set out;
- All of the codes refer to committees of the board (such as the remuneration committee, governance committee and nomination committee) and to their importance, given the detailed work that the committees carry out on behalf of the board and the fact that these committees generally comprise of members outside of an organisation;
- The particular duty of the board to establish an effective system of internal financial controls;
- Board appraisals, the promotion of board effectiveness and help in order for boards to give companies the leadership that is required; and
- Training of board members

The significance of corporate governance is widely recognised both nationally and internationally and acts as “a lever to address the converging interests of competitiveness, corporate citizenship, and social and environmental responsibility, and as a mechanism for encouraging efficiency and combating corruption” (Institute of Directors in Southern Africa, 2001:17).

In South Africa, the code of corporate governance is referred to as the “King Code”. The first King Code was issued in 1994. This code went beyond comparable codes in other countries in advocating an integrated approach to corporate governance and taking into account the interests of numerous stakeholder groups (Institute of Directors in Southern Africa, 2001:8).
The principles found in the first King Code of corporate governance (applied until 31 December 2001) are:

- The code is applicable to listed companies, large public entities as defined in the Public Entities Act, banks, financial and insurance entities and large unlisted companies (KPMG, 1995:7);
- The annual reports of companies must include a statement of the directors in respect of the code for corporate practice (Die Instituut van Direkteure van Suider-Afrika, 1997:28);
- The code proposes a unitary board structure (KPMG, 1995:7);
- A board of directors should include at least two non-executive directors (KPMG, 1995:7);
- The board is responsible for ensuring that the organisation continues as a going concern and that it is effectively controlled and managed (KPMG, 1995:7);
- Share transactions in respect of the company in which a director is involved must be disclosed in detail (Die Instituut van Direkteure van Suider-Afrika, 1997:29);
- Directors have a specific duty of care and skill that has to be used for the good of the company (Die Instituut van Direkteure van Suider-Afrika, 1997:30);
- Specific detail in respect of the business of the company must be disclosed in the directors’ report (Die Instituut van Direkteure van Suider-Afrika, 1997:30);
- The appointment of directors to the board must be based on the consensus of the board (Die Instituut van Direkteure van Suider-Afrika, 1997:31);
- The roles of the chairman and chief-executive officer should be separated and the chairman of the board should be a non-executive director (KPMG, 1995:7);
- A clear definition is given for a non-executive director (KPMG, 1995:8);
- The idea of nomination committees was not supported, but guidance was given that the contracts of executive directors should not exceed five years (KPMG, 1995:8);
- A remuneration committee should be appointed to take responsibility in respect of all of the elements of director’s remuneration and this remuneration should be disclosed in detail (KPMG, 1995:8);
- Boards should meet at least once every quarter (KPMG, 1995:8);
- Directors should be supported by a company secretary (KPMG, 1995:9);
- A premium should be placed on stakeholder communication and communication must be transparent (KPMG, 1995:9);
An independent external audit function must be in place and adherence to generally accepted accounting practice is of paramount importance (Die Instituut van Direkteure van Suider-Afrika, 1997:32);

An effective internal audit function should be established (KPMG, 1995:10);

An audit committee with specific terms of reference should be established (KPMG, 1995:10);

A system should be developed to involve workers in corporate governance and in the management and control of the organisation (KPMG, 1995:10);

Affirmative action programs must form part of the operations of an organisation (KPMG, 1995:10); and

A code of ethics should be implemented as part of corporate governance (KPMG, 1995:10).

During 2000 and 2001 the King Code was revised and the “King Report on Corporate Governance for South Africa 2001” (hereafter referred to as King 2) was issued for public comment by the Institute of Directors in Southern Africa (hereafter IODSA) in July 2001 (IODSA, 2001:2). The Code of Corporate Practices and Conduct contained in the revised King report will replace the first code with effect from 1 January 2002 (IODSA, 2001:4).

King 2 is a much more comprehensive document than the first King Code. King 2 contains the following main sections (IODSA, 2001:5-7):

- Introduction and background;
- Code of Corporate Practices and Conduct;
- Recommendations requiring statutory amendment and other actions;
- Boards and directors;
- Auditing and accounting;
- Internal audit;
- Risk management;
- Non-financial matters;
- Compliance and enforcement;
- Details in respect of the members of the King Committee on corporate governance (that includes the chancellor of the RAU, mr P du P Kruger (IODSA, 2001:152));
- The terms of reference of review and membership of task teams;
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- Directors’ legal duties;
- Board self-evaluation;
- Model term of reference for board committees;
- Internal audit charter;
- Risk management and internal controls;
- Code of ethics for enterprises and all who deal with enterprises;
- The global Sullivan principles of corporate social responsibility;
- AA1000 standard – executive summary;
- Recommendations of the Global Reporting Initiative – Part B: Reporting principles and practices;
- Acknowledgements and bibliography; and
- Useful websites on corporate governance.

King 2 will apply to (IODSA, 2001:23):

- All companies with securities listed on the Johannesburg Securities Exchange;
- Banks, financial and insurance entities as defined in the various legislation regulating the South African services sector;
- Public sector enterprises and agencies that fall under the Public Finance Management Act and the Local Government Municipal Finance management Bill (as at July 2001, still to be promulgated), including any department of State or administration in the national, provincial or local sphere of government or any other functionary or institution;
  - Exercising a power or performing a function in terms of the Constitution or a provincial constitution; or
  - Exercising a public power or performing a public function in terms of any legislation, but not including a Court or a judicial officer.

In addition, King 2 states that (IODSA, 2001:23):

- “All companies, in addition to those falling within the categories listed above, should give due consideration to the application of this Code insofar as the principles are applicable”; and
- “While it is acknowledged that certain forms of State enterprises may not lend themselves to some of the principles set out in this Code, it is recommended that the
principles should be adapted by such enterprises”.

As higher education institutions perform a public function in terms of legislation and taking into consideration the decision in the case *Transnet Ltd v Goodman Brothers (Pty) Ltd* that will be discussed later in this chapter, an institution such as the RAU should clearly put mechanisms in place to enforce the application of King 2 on and after 1 January 2002.

King 2 contains a host of principles relating to a number of diverse matters that will not be documented in detail below. Rather, by using headings that correspond to the headings in the code, specific matters that may affect purchasing governance will be presented below with comment relevant to this thesis presented in italics.

### 4.2.4.1 The Board of Directors (IODSA, 2001:24-25)

- The board must give strategic direction to the company, appoint the chief executive officer and ensure succession planning for the board. *In respect of preferential treatment of suppliers and inclusivity of an approved supplier list, specific strategic direction and decision making are needed. For this reason the documents presented in Part B of this thesis has been presented to and approved by the management committee, audit committee and council of RAU;*

- The board must retain full and effective control over the company and monitor management in implementation of set plans and strategies. *Issues relating to the operationalisation of the procurement strategies will be presented in later chapters of this thesis. Although management has to monitor the implementation of the procurement strategies, a great deal of attention will be paid to the wording and practical application of policy and procedures so as to ensure that employees at different management and competency levels may be able to understand and use the policy and procedures presented in Part B of this thesis;*

- The board must ensure that the company complies with all relevant laws, regulations and codes of business practice and that the company communicates with shareholders and relevant stakeholders openly and promptly with substance prevailing over form. *The applicability of the Preferential Procurement Policy Framework Act and the*
Preferential Procurement Regulations are discussed in detail later on in this thesis. As far as current business ethics and practice is concerned, the promotion of Black Economic Empowerment receives specific attention later on in this thesis, as well as procedures to deal with unsolicited bids:

- Materiality levels should be determined by the board and applied consistently and certain powers should be reserved for the board. Purchases cut-off levels will be determined in this manner and presented later on in this thesis;
- Agreed procedures should be in place to allow directors to take independent professional advice at the company’s expense. The same principle applies to obtaining expert advice in the case of the writing of tender specifications and adjudication of tenders;
- Key risk areas and key performance indicators must be identified and constantly monitored, including non-financial aspects relevant to the business. Specifically addressed in respect of the inclusivity of the preferred supplier list and targeted procurement;
- Effective communication must be put into place by the board between the company and its internal and external stakeholders. The specific right, obligations and procedures relating to the application of the Promotion of Access to Information Act will be incorporated in the communication strategy with regard to procurement stakeholders; and
- The board must find the correct balance for its business between conforming to governance constraints and performing. The same principle applies to purchasing governance and the need to carry on with business in a timely manner, whilst still ensuring segregation of duties and management control.

4.2.4.2 Board composition (IODSA, 2001:25)

- Boards must comprise of a balance between non-executive and executive directors, preferably a majority of non-executive directors. The same principle will be applied to the composition of the tender committee and procurement committee; and
- Appointment should be formal and transparent and a matter for the board. The same principle will be applied to the composition of the tender committee and procurement
4.2.4.3 Directors (IODSA, 2001:26-28)

- Appropriate balance of power and authority must be in place on the board. The same balance should be striven for in respect of the tender committee and procurement committee;
- Non-executive directors must be individuals of calibre and credibility with the necessary skill and experience to bring an independent view to the board. The inclusion of non-executive members or members with specific skill will receive attention in the case of the tender committee;
- A formal orientation program should be put in place for board members. The same principle will receive attention in the case of members of the tender committee and procurement committee; and
- New directors with limited training should receive appropriate training. The same principle will receive attention in the case of members of the tender committee and procurement committee.

4.2.4.4 Board meetings (IODSA, 2001:30)

- The board should meet at least quarterly and the number of meetings must be disclosed in the annual report. The same principle of regular meetings at predetermined times that have been disclosed widely in the institution will be applied in the case of the tender committee and procurement committee;
- Processes should be in place to fully inform board members before board meetings take place. The same principle will be applied to information presented to members of the tender committee and procurement committee;
- The board should regularly review processes and procedures to ensure effectiveness of internal control systems. This review process has indeed been followed during the development of the policy, procedures and documents that will be presented in Part B of this thesis; and
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- The board should take note of non-financial and other performance measures. 
  Incorporated in the inclusivity targets of the preferred supplier list and tender procedures.

4.2.4.5 Board Committees (IODSA, 2001:30-31)

- Transparency and full disclosure must characterise board committees. The same applies to meetings of the procurement committee and tender committee. Also in line with the Promotion of Access to Information Act;
- Non-executive board members will play an important role in board committees. The same principle applies to the voting rights in respect of the tender committee that will be set out in the charter of the tender committee;
- These committees should preferably be chaired by non-executive directors. Considered at the writing of the charter of the tender committee; and
- Board committees must be free to take independent advice. The principle that independent advice may be sought will be included in the procedures and policy presented in Part B of this thesis.

4.2.4.6. Company secretary (IODSA, 2001:32)

- The company secretary plays a pivotal role in the corporate governance of a company through the board. The secretary of the tender committee and procurement committee plays an equally important role in the process presented in Part B of this thesis;
- All directors should have access to the company secretary. Members of the tender committee and procurement committee must have the same rights;
- The company secretary must support the chairperson. The same applies to the tender committee and procurement committee;
- In addition to the prescribed statutory duties, the company secretary must provide the board as a whole and directors individually with detailed guidance as to how their responsibilities should be properly discharged in the best interests of the company. The same applies to the tender committee and procurement committee;
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- The company secretary has a role to play in the induction of new and inexperienced directors. *The same applies to the tender committee and procurement committee*; and
- The company secretary should provide a central source of guidance and advice to the board on matters of business ethics and governance *The same applies to the tender committee and procurement committee*.

4.2.4.7 Audit committee (IODSA, 2001:33-34)

- An audit committee must be appointed that comprises of at least two non-executive directors. *The same principle that non-executive or non-finance section personnel is involved in the tender committee will be applied*;
- The majority of the members of the audit committee must be financially literate. *The same principle must apply to the members of the tender committee and procurement committee*; and
- The audit committee should have written terms of reference, which deal adequately with its membership, authority and duties. *In the case of the tender committee and procurement committee these issues will be addressed in the charters of these committee*.

4.2.4.8 Risk management (IODSA, 2001:35-38)

- A comprehensive system of control should be established to ensure that risks are mitigated. *One of the main driving forces behind the comprehensive documents included in Part B of this thesis is procurement risk and procurement process risk*;
- Risks should be assessed on an ongoing basis and control activities should be designed to respond to risks throughout the company. *In respect of procurement, the detailed procedure and documents included in Part B of this thesis have evolved over time as a reaction to procurement risk*;
- A system of risk management and internal controls that builds more robust business operations must be developed. *Mirrored in the detail in Part B of this thesis*; and
- The board must identify key risk areas and key performance indicators of the company
and monitor these factors as part of a regular review of processes and procedures to ensure effectiveness of internal control systems. *Incorporated in measurable criteria for purchasing.*

### 4.2.4.9 Non-financial matters (IODSA, 2001:38-39)

- Every company should disclose the nature and extent of its commitment to social, ethical, safety, health and environment practices, the position in respect of HIV/AIDS, procurement practices and Black Economic Empowerment which is obviously important in the context of this study;
- Materiality guidelines should be developed and applied consistently. *The same has been developed and applied consistently in respect of purchasing cut-off values;* and
- Business processes and safety, health and environmental management principles should be integrated. *To be reflected in the standard forms used for tenders and applications to be placed on the approved supplier list.*

### 4.2.4.10 Communication (IODSA, 2001:40-41)

- Reports and communications must be made in the context of transparency and accountability. *The same must apply to reporting on procurement;*

### 4.2.4.11 Code of Ethics (IODSA, 2001:41)

- A Code of Ethics should be implemented as part of the corporate governance of the company. *Code of conduct for purchases personnel will be developed.*

To conclude, King 2 is an utterly comprehensive document that requires total commitment to a wide range of issues that affects all of the facets of a business.
Purchasing plays a key role in any business. Just as the other key functions of a business should incorporate corporate governance principles, so too should rules or guidelines governing purchasing incorporate these ideas.

*For purposes of this thesis, it is therefore clear that governance and corporate governance is closely related. Also, as corporate governance deals in detail with the structure of the board of directors and how the directors should direct the company, corporate governance also encompasses institutional governance.*

*Corporate governance is an all-encompassing term that refers to the system and ethical code by which organisations are directed and controlled. Given this definition, it is fairly logical that a culture of corporate governance should be in place in all organisations irrespective of their nature.*

### 4.2.5 Financial governance

Financial governance is not defined separately in corporate governance literature.

*For purposes of the thesis, financial governance refers to all of the controls, procedures, processes and systems affecting financial aspects of corporate governance.*

In general, most of the decisions (or lack thereof) of an organisation have a financial effect in the short-, medium- or long-term.

Although the management or directors or controlling body of an organisation is held accountable for the financial governance, the responsibility for the day to day financial governance (jointly or severally) firstly lies with a person such as a financial director, or in the case of an institution such as RAU, the rector (in terms of the statute of the RAU) and the Registrar (Finance).
4.2.6 Controls

The general definition for “control” is (Sykes, 1984:206):

- Power of directing;
- Command;
- Directing an activity;
- In proper order;
- Means of restraint;
- Standards of comparison for checking inferences deduced from experiment;
- Dominate;
- Command;
- Check, verify; and
- Regulate.

The concept “control” is not defined in South African auditing standard. However, a number of related concepts are defined in detail, being:

- Control procedures;
- Control environment;
- Accounting systems; and
- Internal control systems.

Each of the definitions will be detailed below.

“Control procedures” are defined as those policies and procedures, in addition to the control environment that is in place, which management has established to achieve the entity’s specific objectives (South African Institute of Chartered Accountants (hereafter SAICA), 1999).

A “control environment” is defined as the overall attitude, awareness and actions of the directors and the management regarding the internal control system and its importance in an entity (SAICA, 1999).

An “accounting system” is defined as (SAICA, 1999):
“The series of tasks and records of an entity by which transactions are processed as a means of maintaining financial records. Such systems identify, assemble, analyse, calculate, classify, record, summarise and report transactions and other events”.

An internal control system is defined as (SAICA, 1999):

“An internal control system consists of all the policies and procedures adopted by the management of an entity to assist in achieving management’s objective of ensuring, as far as practicable, the orderly and efficient conduct of its business, including adherence to management policies, the safeguarding of assets, the prevention and detection of fraud and error, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information. The internal control system extends beyond these matters which relate directly to the functions of the accounting system”.

_for purposes of this thesis, the definitions detailed above will be used in later chapters._

**4.2.7 Conclusion**

If one reflects carefully on the definitions of the concepts as set out in the preceding paragraphs, it is clear that there is a relationship between the concepts. This relationship is set out in a pyramid in Figure 4.1. The base of the pyramid showing the widest possible, all-encompassing concept.
FIGURE 4.1 – GOVERNANCE PYRAMID
Now that specific definitions have been documented for the concepts shown in Figure 4.1, this thesis will further investigate references to governance and related concepts in Government publications on higher education. In each case the reference/references will be re-classified based on the definitions determined in paragraph 4.2.

4.3 THE GOVERNMENT PERSPECTIVE ON GOVERNANCE IN HIGHER EDUCATION

4.3.1 Introduction

The SWOT-analysis performed in chapter 2 of this thesis indicated post-apartheid Government’s commitment to addressing problems in respect of higher education in South Africa and the extent to which Government intends to direct change in higher education. In addressing these pressing issues, a number of documents have been released. To follow is a review of these documents that in any way address governance or related topics in order to explain Government’s view on governance and accountability in the higher education sector. The review will start with the earlier documents.

4.3.2 “A policy framework for higher education transformation”

As far back as 1996, Government identified a number of key principles for the transformation of public higher education. All of the principles relate to accountability and institutional governance and some attention is given to financial governance as defined in this thesis. The principles are:

- Equity should drive the provision of resources and opportunity in higher education;
- Historical inequities must be redressed;
- Governance of the higher education system and of individual institutions should be democratic, representative and participatory;
- The ideal of a balanced development of national resources should be aspired to;
- Services and products of public higher education should pursue and maintain the highest
attainable level of quality;

- Academic freedom and institutional autonomy must be established and observed; and
- Increased efficiency and productivity of higher education is an essential attribute of accountability for public funding (South Africa, 1996a:4-5).

The policy framework also states that attention must be paid to changes in (institutional) governance in order to transform higher education in South Africa. The framework explains that there are different models that would characterise the relationship between institutions of public higher education and the State, such as state control, state interference and state supervision. The model proposed by the framework was one of co-operative governance.

The framework distinguishes between and discusses in detail, three levels of governance, being national governance structures, regional co-operation and governance at institutional level. The latter relating to the council, executive committee, institutional forum, senate, students’ representative council and other bodies responsible for institutional governance, such as that described by the statute of the RAU.

The co-operative national governance structure of the model proposed at the time was depicted as follows in the framework (South Africa, 1996a:15) that has been duplicated below in figure 4.2:
FIGURE 4.2 – NATIONAL GOVERNANCE STRUCTURES
The branch of higher education in the ministry was set up to provide effective and efficient service to higher education and to advise the Minister on policy matters (South Africa, 1996:13). The proposed purpose of the higher education forum was to be the deliberation of policies and principles, but the forum did not find a place in the eventual legislation (South Africa, 1996:14).

The focus of the policy framework was therefore very much on institutional governance and the way or level/degree to which the State was going to get involved in higher education.

4.3.3 Draft Education White Paper 3

The effectiveness and efficiency of the higher education system was one of the principle ideas put forward by Draft Education White Paper 3 that was issued in 1997. In terms of these principles it is imperative that optimal use is made of available means, which eludes to the principles of financial governance and accountability (South Africa, 1997a:7).

The White Paper also addressed the issue of public accountability in higher education very clearly with the following statement (South Africa, 1997a:8):

“The principle of public accountability bears upon decision-making, the spending of funds and the achievement of results. Firstly, it requires that individuals and institutions should demonstrate responsible actions to one or more constituencies. Secondly, it requires that individuals or institutions receiving public funds should be able to report how, and how well, money has been spent. Thirdly, it requires that institutions should demonstrate the results they achieve with the resources at their disposal.”

The idea that the council of an institution must provide Government with strategic plans (later referred to by Government as “redling plans”) as well as reports on actual performance against targets was clearly set out in paragraph 4.49 of the White Paper in order to provide a framework for continuous improvement within institutions and a reference point for quality assurance (South Africa, 1997a:27) and accountability. This idea finally found a permanent place in public higher education with the release of the National plan as discussed in chapter 2.
Chapter 3 of the White Paper discusses the issue of “governance” in detail. These governance issues relate to the operation of the public higher education system. The model yet again adopted by Government was one of “co-operative governance”, meaning that Government assumes a proactive, guiding and constructive role (South Africa, 1997a).

The discussion of governance at a systems level refers specifically to the CHE and its responsibilities and rights. In addition, a Higher Education Branch of the Department of Education was established by the Minister of Education (South Africa, 1997a:18).

In respect of institutional governance, the White Paper makes it clear that it is the responsibility of higher education institutions to manage their own affairs. In this regard, great emphasis is placed on the role of council in an institution of higher learning. Council must be responsible for the good order and governance of institutions and for their mission, financial position, performance, quality and reputation (South Africa, 1997a:19). In the case of the RAU, all of these ideas and ideals are embodied in the statute of the RAU as discussed in paragraph 2.4.2.3 and 3.5.

*The focus of the White Paper was therefore accountability, financial governance (to some extent) and institutional governance or governance structures in higher education.*

### 4.3.4 Green Paper on further education and training

Chapter 5 of the Green Paper on further education and training addresses funding in detail. The chapter does not refer to financial governance or controls, but rather focuses on the need for a new funding system (South Africa, 1998:chapter 5).

Chapter 6 of the Green Paper focuses on governance. *Again, this document focussed on institutional governance and the structures that must be in place to control education (South Africa, 1998:chapter 6).*
4.3.5 Report on the investigation into the affairs of the University of Fort Hare

During 1999, the then Minister of Education appointed an independent assessor to conduct an investigation into the affairs of the University of Fort Hare. The seriousness with which Government regards governance and control over finances is borne out by the specific terms of reference given to the assessor being:

- Finding reasons for the deterioration of relationships between and amongst structures of the university; and
- Reasons for the serious lack of confidence in the governance structures of the university, in particular:
  - The inability of management to properly administer the finances of the university;
  - Perceived mal-administration by management;
  - Financial management decisions made by management; and
  - The role of the functioning of the council of the university (South Africa, 1999a:1-2).

The report went on to detail some of the questionable actions and financial transactions perpetrated at the university and a lack of responsible actions and accountability.

4.3.6 Report of the Shape and Size of Higher Education Task Team

The Report of the Shape and Size of Higher Education Task Team was discussed in detail in paragraph 2.7. Some of the issues relating to governance, corporate governance, financial governance and accountability will be set out again below:

- A lack of institutional effectiveness compromises accountability to the public and government in relation to the investment of public resources (CHE, 2000:15);
- The costs of institutional inefficiency are ultimately borne by the public and especially the parents and students from working class and rural poor backgrounds (CHE, 2000:15);
Many institutions have fragile governance capacities, also in terms of management and administration (CHE, 2000:21);

Higher education information systems are inadequate in relation to information on finance matters (CHE, 2000:21);

The demand for public accountability is a necessary and legitimate demand in respect of the use of scarce public resources (CHE, 2000:25);

Various institutions show evidence of governance and financial problems, inadequate financial systems and the lack of optimal use of infrastructure and human resources (CHE, 2000:25);

Inadequate senior and middle-management capacities exist in higher education (CHE, 2000:34);

The diversification of funding and sources of revenue and the extent to which state funds could become an increasingly limited instrument for steering and regulation of higher education remains a problem (CHE, 2000:34);

Funding must enable higher education institutions to pursue social and educational goals (CHE, 2000:56); and

Institutional viability and sustainability should be considered before decisions are taken on the combination of institutions of higher education (CHE, 2000:59).

4.3.7 National plan

The National plan for higher education that was released in 2001 is the culmination of an intense public debate on the framework and mechanism for restructuring the higher education system. Whereas previous government publications focussed largely on (institutional) governance and accountability, the National plan follows the same recipe. For instance:

One of the primary purposes of the National plan is to use limited resources efficiently and effectively and to ensure accountability for using public funds (accountability and financial governance) (South Africa, 2001:7);

Student debt, governance failures and management failures may be cited as reasons for the failure of historically black universities (South Africa, 2001:10);

Governance and academic structures must be put in place to support the missions of institutions (South Africa, 2001:10); and
• Academic autonomy must be coupled with accountability (South Africa, 2001:12).

**4.3.8 Conclusion**

Clearly a lot of Government attention with regards to higher education is focussed on institutional governance and governance structures. Indeed, from the information presented below in paragraph 4.4, this evidence supports a widely accepted notion that institutions of higher education do not have clear autonomy in their existence in South Africa.

However, from the evidence provided above, it is clear that neither legislation nor Government documents relating to public higher education focuses sufficiently on corporate governance or financial governance as defined in paragraph 4.2. Given the state of the higher education sector, it is surprising that more attention is not given to these matters given bad financial publicity that the sector has received and the extent to which Government wants to direct and control higher education.

For example, in 2000 the auditor-general issued qualified audit reports for the 1997 financial years in respect of the universities of Fort Hare, Transkei, North West and Venda. In 1997 the university of Fort Hare ran up a bank overdraft of R40.4 million and the university of Transkei also used up a significant amount of its cash reserves at that time (Ensor, 2000:1).

By August 2000, the vice chancellor of the university of the North had already been suspended since December of 1999, but was still paid a salary of R76 000 a month (Naidu, 2000:1).

The question therefore arises why so little attention is paid to corporate governance and financial governance and why so much attention is paid to accountability and institutional governance structures.

The answer may be found in the co-operative governance model adopted by the Department of Education that dictates that institutions have to take responsibility for their own affairs. Although institutions of higher education must demonstrate accountability and have bodies in
place that address institutional governance from Government point of view, the detail issues of management and control is left in the hands of the individual institutions.

One may ask whether this approach is acceptable. Although it is fairly logical to want greater guidance from Government given poor financial controls in some institutions and limited financial resources that are available to higher education, the consequence is that the autonomy of individual institutions of higher education will be affected even further with greater Government intervention. However, one may ask the question whether this intervention will have any further real effect on institutions given the extent of Government intervention in education.

The issue of academic autonomy and whether public higher education institutions may be defined as organs of state (and would therefore have to tolerate Government intervention) will be discussed in detail below.

### 4.4 ACADEMIC AUTONOMY VERSUS GOVERNMENT INTERVENTION

#### 4.4.1 Introduction

The autonomy of universities is a well-recognised principle world-wide. In South Africa, the Higher Education Act indeed guarantees higher education institutions “freedom and autonomy in their relationship with the State” (South Africa, 1997b:Preamble).

From the evidence presented above and in chapter 2 of this thesis, it is evident that Government’s views on the direction and control of higher education and redress within the higher education system does not always allow for full and unfettered institutional autonomy as specific targets are set and national higher educational goals expounded. Indeed, a case may be made that greater Government intervention is needed, and appropriate in South Africa at this time where dramatic redress of the higher education system can be a substantial driver of change for our young democracy.
4.4.2 Academic freedom and institutional autonomy

Throughout the ages, academic freedom and institutional autonomy has been the cornerstones of the higher education system. In the view of many authors, the two concepts are closely knit together. For example Dlamini explains that (1997:40):

“There can be no academic freedom without institutional autonomy and institutional autonomy has been regarded as an essential, though not sufficient, precondition for academic freedom. Even an autonomous institution can violate the academic freedom of its members”.

The Draft White Paper on education proposes that there is a clear distinction between academic freedom and institutional autonomy, whilst the concepts are related. The White Paper explains the distinction as follows (South Africa, 1997a:7-8):

“Academic freedom implies the absence of outside interference, censure or obstacles in the pursuit and practice of academic work. It is regarded as a precondition for critical, experimental and creative thought and therefore for the advancement of intellectual inquiry and knowledge. Institutional autonomy refers to a high degree of self regulation and administrative independence with respect to student admissions, curriculum, methods of teaching and assessment, research, establishment of academic regulations and the internal management of resources generated from private and public sources.”

Although section 16 of the Constitution of South Africa guarantees academic freedom, there is no constitutional guarantee for institutional autonomy (Dlamini, 1997:40).

If one considers the two concepts, there is clear merit that both Government and institutions should support the notion of full academic freedom. After all, universities have to generate knowledge and these institutions must be afforded freedom to accomplish this national task. But, even this very concept is currently being questioned by academics who are of the opinion that the National Qualifications Framework, as expressed through the directives of the South African Qualifications Authority (that is a body set up by Government) limits the right to academic freedom (Malherbe, 2000:55).
Institutional autonomy is an even more difficult matter to deal with.

The definition for autonomy of universities that has also been quoted in numerous American court cases, is that autonomy entails the freedom of a university to determine for itself on academic grounds only who should teach, what should be taught, how it should be taught and who should be admitted as students (Dlamini, 1997:41).

Although the Higher Education Act expounds that it is desirable for higher education institutions to enjoy freedom and autonomy in their relationship with the State, this autonomy is only guaranteed “within the context of public accountability and the national need for advanced skills and scientific knowledge” (South Africa, 1997b:Preamble). In other words, the Act does not grant higher education institutions unfettered autonomy or independence (South Africa, 2001:12).

The National plan sets out the view of the Minister of education in detail in this regard (South Africa, 2001:12):

“The Ministry is committed to institutional autonomy as is evident from the limited interventions that it has made in the day-to-day operations of higher education institutions. Indeed, it has often been criticised for not being interventionist enough in dealing with the crises that sporadically erupts in various higher education institutions. The Ministry is acutely aware of the delicate balance that requires to be maintained between institutional autonomy and public accountability. It is committed to maintaining this balance. The Ministry believes that the solution to finding appropriate balance must be determined in the context of our history and our future needs. The Ministry will not however, allow institutional autonomy to be used as a weapon to prevent change and transformation”.

As stated above, in the context of the preamble to the Higher Education Act, there are two issues that affect the unfettered autonomy of institutions of higher education, being public accountability and the national need for advanced skills and scientific knowledge.

The issue of public accountability is particularly important as it bears upon decision-making, the spending of funds and the achievement of result (South Africa, 1997a:8). In other words, Government needs to see evidence of return on an investment in higher education. Although a
strong case can be made for state subsidy of higher education when economies suffer from imperfections in capital and labour markets (Ziderman & Albrecht, 1995:10) such is the case in South Africa, there needs to be a balance between the provision of funds and attaining national goals.

Authors such as Dlamini concurs with this view that accountability and responsibility are not necessarily in conflict with academic freedom and institutional autonomy, but that these concepts should not be used to attain goals for which they were not meant, but rather for the effective attainment of the functions of the university being teaching and learning (1997:44). However, the teaching and learning does not only involve the employment of human capital. A range of other goods and services need to be procured in order to facilitate teaching and learning through appropriate infrastructural means. The effectiveness and efficiency with which these goods and services are procured has a direct effect on the return on investment made by Government.

Secondly, the Ministry of Education has indeed repeatedly presented its case for educational redress for the nations good and to achieve goals related to the national need for advanced skills and scientific knowledge. For example:

- The Ministry believes that if the legacy of apartheid is to be overcome and the challenges of reconstruction and development addressed, the higher education system must be planned, governed and funded as a single national coordinated system (South Africa, 1997a:8);
- The Ministry’s commitment to changing the composition of the student body will be effected through the targeted redistribution of public subsidies to higher education (South Africa, 1997a:9);
- The programme-based approach through ensuring greater articulation between the different tiers of the higher education system, promoting flexibility and diversification in the range of programmes offered and cooperation between institutions will result in structural changes and a reconfiguration of the institutional landscape in the medium to long-term (South Africa, 1997a:10);
- Institutions will continue to have the right to determine entry requirements as appropriate beyond the statutory minimum. However, in exercising this right, selection criteria should be sensitive to the educational backgrounds of potential students and
should also incorporate recognition of prior learning which is an essential concept in the National Qualifications Framework (South Africa, 1997a:14); and

- The national Government has responsibility for ensuring the social and economic development of the young South African democracy and for promoting the welfare and advancement of its people. Further education and training has a critical role to play in under-pinning the country’s macro-economic policies and development strategy and in laying the foundations for a more just and equitable society (South Africa, 1998:chapter 6, par 3.1.1).

In respect of Government intervention in institutions on the basis that the needs of the nation should receive precedence, a current case in point is the objections of the Minister of Education, prof Kader Asmal, to the appointment of the former Human Rights Commission chairperson to head the UNISA for the next five years. The Minister’s objection is based on the fact that, in terms of the National plan, UNISA is to merge with Vista University and Technikon SA within two years’ time. Higher education experts such as prof Jonathan Jansen concur with the position of the minister in that “you cannot allow a university to defy the Minister when he is implementing transformation of higher education” (Monare, 2001:11).

Internationally, university autonomy and accountability for public funds has received a lot of attention. Governments are increasingly unwilling to provide funds to universities to do as they wish. The traditional view that higher education institutions need not justify their activities to government and to society at large has largely fallen away in the context of limited public funds. In the view of Ziderman and Albrecht, universities may not be relied upon to pursue policies that accord with societal priorities and governments need to establish a counter balance to evaluate the financial performance of an institution (1995:31).

The position of the Minister of Education is that institutions of higher education must manage their own affairs and that the micro-management of institutions is not an option that can be entertained (South Africa, 1997b:19). However, consistent with the principle of public accountability and the reputation of the higher education system, the Minister has a legal right to seek independent assessment and advice on the condition of a higher education institution when circumstances arise in an institution that warrants investigation. This and other legal rights of intervention are set out in the Higher Education Act.
4.4.3 Interventionist measures through the Higher Education Act

Although Government policy statements declare that institutions of higher education are responsible for their own micro-management, the Higher Education Act includes a number of powers or measures that may be used to intervene in the affairs of public higher education institutions. In each case, the section number will be provided and a description of the interventionist measures (South Africa, 1997b).

Section 20 (5)
A public higher education institution may not, without the concurrence of the Minister, dispose of or alienate in any manner, any immovable property acquired with the financial assistance of the State or grant to any person the real right therein or servitude thereon.

Section 20 (6) to 20 (11)
If the Minister establishes a university, technikon or college (such as the case with the newly proposed merger of UNISA, Vista University and Technikon SA), the Minister must establish an interim council for a period not exceeding six months to perform functions relating to the governance of the institution, except the making of an institutional statute.

Section 23
The Minister may, after consulting the CHE declare in a Government Gazette that two or more public higher education institutions must merge into a single higher education institution. The Minister must establish an interim council for the newly merged institution and will appoint the members of the interim council.

Section 25
The Minister may, after consulting the CHE declare the closure of an institution of higher education in a Government Gazette.

Section 27 (8) and 27 (9)
If 75 percent or more of the members of the council of a public higher education institution resign at a council meeting, it is deemed that the council has resigned and a new council must
be constituted in terms of the statute of the institution.

Section 33
Any institutional statute must be submitted to the Minister for approval. The Minister must make a standard institutional statute, which applies to all institutions that has not made an institutional statute.

Section 41A
If an audit of the financial records of an institution or an investigation by an independent assessor reveals financial or other maladministration of a serious nature or the serious undermining of the effective functioning of the institution, the Minister may, after consulting the council of the institution, if practicable, appoint a person as administrator to take over the authority of the council or the management of the institution and to perform functions relating to governance or management on behalf of the institution for a(n undetermined) period (own brackets).

Section 44 and 45
The Minister may appoint an independent assessor to investigate a public higher education institution in the following cases:

- When the council of the institution makes the request;
- When circumstances arise that:
  - Involve financial or other mal-administration of a serious nature; or
  - Seriously undermine the effective functioning of the institution;
- When the appointment is in the interests of higher education in an open and democratic society.

Section 65A
An institution has a seat of education that is its physical location. An institution may only teach and perform research activities beyond its seat with the approval of the Minister, thereby limiting distance learning possibilities for institutions.

During 1999, evidence of intervention came in the form of an audit of six institutions teetering on the brink of financial collapse being Fort Hare, Medunsa, University of Zululand,
In response to comments by members of opposition political parties such as the Democratic Alliance, the Federal Alliance and the Afrikaner Eenheidsbeweging, that the 2001 Higher Education Amendment Bill granted the Minister too much regulatory powers and interfered with the autonomy of tertiary institutions, the Minister said that Government allocated more than R7 billion for tertiary education in 2001 and should therefore have a say in how institutions were governed (Xako, 2001:1).

4.4.4 Financial flows to institutions of higher education

The role of the state as a financier of higher education is dominant in most university systems (Ziderman & Albrecht, 1995:6).

In the South African context, Government’s budget has become increasingly constrained and higher education will probably not receive a larger slice of allocated funds in future (South Africa, 2001:8).

However, the features of the South African economy create an agenda for higher education. Prominent items on this agenda are (South Africa, 1997a:5):

- Human resource development through the mobilisation of human talent and potential through the training and provision of person power for a changing labour market;
- High-level skills training through the higher education of professionals and knowledge workers with globally equivalent skills to strengthen South African enterprises, services and infrastructure; and
- The acquisition and application of new knowledge and an industrial set-up characterised by continuous technological improvement and innovation, driven by a well-organised, vibrant research and development system.

Given the extent to which Government supports higher education financially, the Minister of Education “has a responsibility to advise the government on whether this vast infrastructure of intellectual and professional endeavour, substantially supported by public funds, is yielding
a good return to the nation, and how it might be assisted to do better” (South Africa, 1997a:2).

In addition, cognisance must be taken of the fact that the primary income of public sector institutions, including universities and technikons, does not directly relate to the outcomes achieved by institutions. In this regard, additional measures to assess the effective and efficient use of funds must be put in place. The difference between funding in public and private sectors in this regard are shown in figures 4.3 and 4.4 below (Harvey, 1977:10).

**FIGURE 4.3 – PRIVATE SECTOR FUNDING**

**FIGURE 4.4 – PUBLIC SECTOR FUNDING**
In the case of the RAU, Government is indeed the institution's largest financial contributor as can be seen from Table 4.1 below (RAU, 2000:Bylai E, 2).

<table>
<thead>
<tr>
<th>INCOME CLASSES</th>
<th>2000 R'000</th>
<th>% OF TOTAL</th>
<th>1999 R'000</th>
<th>% OF TOTAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>Class and other fees</td>
<td>108 882</td>
<td>28%</td>
<td>97 308</td>
<td>27%</td>
</tr>
<tr>
<td>Government subsidies</td>
<td>228 487</td>
<td>58%</td>
<td>221 200</td>
<td>61%</td>
</tr>
<tr>
<td>Government grants, research</td>
<td>4 241</td>
<td>1%</td>
<td>4 338</td>
<td>1%</td>
</tr>
<tr>
<td>Private donations, grants, contracts</td>
<td>29 445</td>
<td>8%</td>
<td>22 182</td>
<td>6%</td>
</tr>
<tr>
<td>Sale of fixed assets</td>
<td>12</td>
<td>0%</td>
<td>84</td>
<td>0%</td>
</tr>
<tr>
<td>Sales and services of support orgs.</td>
<td>12 135</td>
<td>3%</td>
<td>11 546</td>
<td>3%</td>
</tr>
<tr>
<td>Other income</td>
<td>7 836</td>
<td>2%</td>
<td>5 848</td>
<td>2%</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>391 038</strong></td>
<td><strong>100%</strong></td>
<td><strong>362 506</strong></td>
<td><strong>100%</strong></td>
</tr>
</tbody>
</table>

**TABLE 4.1 – INCOME OF THE RAU**

The funding of public institutions of higher education institutions has to do with the constitutional right to education for all citizens as discussed in chapter 2 of this thesis and the need to have public bodies in place to perform these functions.

Government's policy of financial support for higher education can be justified in a number of ways such as the creation of favourable conditions for research, the provision of a suitable environment for the development of intellectual potential, the provision of occupational flexibility in the labour force and a sense of national pride (Department of National Education, 1982:7-9).

Given the high levels of public funding of public institutions of higher education and their role as public educators, the question again beckons whether these institutions are autonomous or organs of state.

**4.4.5 Definitions for public higher education institutions**

During the course of this study, legal opinion was obtained from advocate A Botha, among
others, to determine the definition of an institution such as the RAU. More specifically, the question that was addressed was whether the RAU is an “organ of state” and a “public body”. The entire legal opinion will be presented in Part B of this thesis.

In the opinion of advocate Botha, the RAU is an organ of state as it performs a public function. Advocate Botha bases his opinion on the definition of an organ of state as defined in section 239 of the Constitution as (South Africa, 1996b):

“(a) any department of state or administration in the national, provincial or local sphere of government; or
(b) any other functionary or institution –
   (i) exercising a power of performing a function in terms of the Constitution or a provincial constitution; or
   (ii) exercising a public power or performing a public function in terms of any legislation.”

The case Transnet Ltd v Goodman Brothers (Pty) Ltd 2001 (1) SA 853 (SCA) shed particular light on what constitutes an institution performing a public function. The case revolved around a company, Goodman Brothers (Pty) Ltd, that had unsuccessfully tendered to supply wristwatches to Transnet, the national rail corporation of South Africa. Goodman Brothers approached the court to declare a section of the Transnet tender conditions invalid that dictated that Transnet need not provide reasons for the awarding or not of tenders. The grounds on which the Goodman Brothers case was made was that Transnet was an organ of state and that the awarding of a tender was an administrative action in terms of the constitution. The contention was that Transnet was an organ of state as it performed a public function. The court of appeals determined that the fact that Transnet had become a limited company was of no consequence. Government owned all of the shares of Transnet and thus had ultimate control over Transnet. The court further determined that even though Transnet was now competition- or profit-oriented, it still provided a general service to the public and was indeed obliged to do so.

In the same vein, public higher education institutions perform public functions. The institutions all fall under the Higher Education Act that is intended to, among others, “establish a single co-ordinated higher education system” (South Africa, 1997b:Pre-amble).
The notion that a public higher education institution is an organ of state performing a public function also entertains the notion that the Preferential Procurement Policy Framework Act will be applicable in principle to universities and technikons as will be explained later on in this thesis.

4.4.6 Conclusion

Public institutions of higher education are not truly autonomous in South Africa. The higher education system is relatively highly regulated and Government has set out specific goals that the sector must achieve. In addition, it is the view of Government that given the high levels of public funding of higher education institutions, Government must ensure a return on the investment of public funds.

Given the opinion that public higher education institutions are organs of state as they perform the public function of educating citizens, there is a case to be made for greater Government intervention in the financial affairs of institutions given evidence of poor financial management and control.

However, evidence presented in this chapter has shown that Government has provided very little guidance in respect of the financial management and financial governance of institutions.

It is the contention of this author that a greater degree of intervention in the financial affairs of institutions of public higher education will increase efficiencies that will free funds to sustain redress of the system, rather than funding redress from additional public income sources. Specific practical suggestions on how Government intervention may improve governance and specifically financial governance in public higher education institutions will be set out below.
4.5  PRACTICAL SUGGESTIONS TO IMPROVE
GOVERNANCE IN PUBLIC INSTITUTIONS OF
HIGHER EDUCATION

4.5.1  Introduction

It was established in paragraph 4.2.7 that there is a link between governance and accountability. However, Government’s focus has been on accountability and institutional governance in respect of higher education. Although the reason for this probably lies in the co-operative governance model applied on public higher education, it is the contention of this author that this position held by Government is not sufficient in order to address wider governance in higher education.

In order to support the idea that Government should place greater emphasis on corporate governance and financial governance rather than focussing on accountability and institutional governance, it is only fair that this author must provide practical suggestions to improve governance in higher education. These will be set out below.

4.5.2  Swift action from central Government

Section 4.3.8 of this thesis has given a number of examples where poor governance and poor judgement in respect of finances carried on for an extended period, particularly at historically black universities without decisive action from Government.

Given the wider need of society to see evidence of redress and efficiency at public higher education institutions, swift direct action by Government may be appropriate at this time.

The question that immediately comes to the fore is whether the autonomy of institutions will not be affected negatively if this policy is followed. Although the answer is in the affirmative, perhaps the way in which Government should intervene is in consultation with the council of an affected institution if governance or financial control is materially in doubt. Furthermore,
Government intervention proposed below, remain *reactionary and not prescriptive* in the absence of evidence of poor financial governance and controls. The following steps are proposed:

- The official or officials involved must be suspended with pay (but only for a limited period) with immediate effect;
- The council of the affected institution must be given a two week period in which to nominate three non-executive persons to sit on a commission of inquiry;
- In addition, the Minister of Education must appoint a person to chair the commission of inquiry;
- Given the nature of the allegations to be investigated by the commission of inquiry, an interim report is to be tabled to the council of the institution and the Minister on the progress of the commission and the preliminary results of the investigation in a given time frame; and
- The council, in consultation with the Minister must, in the shortest possible period of time, decide whether a Ministerial team of “auditors” should be involved in the inquiry, such as the teams that have already performed limited audits of the administrative and management systems at some of the historically black universities where financial sustainability was at risk.

The question that may arise is whether the above procedure is different to the actions that may be taken by the Minister through the Higher Education Act. The answer lies in the fact that these steps will not follow after a substantial period of time has elapsed from the transgression or act of mal-administration, such as the case for ministerial action in terms of the act. In respect of procurement it is imperative that there is open and transparent reporting of problems to underpin the process as the faster action is taken, the greater the chance of some recovery.

It is imperative that action is taken and seen to be taken by Government against officials who are guilty of financial misconduct and poor governance actions. In the face of evidence of financial misconduct and poor governance actions, surely the issue of Government intervention in academic autonomy has to take a back seat.
4.5.3 Defining the trust-accountability relationship to be adopted in higher education

One of the transformation debates of the CHE has been the argument that “in the short term, government should sustain funding levels, to stabilise the system and to provide higher education the space to start increase efficiency, in creased participation rates and put in place better internal and external accountability measures” (Cloete, 2000:1).

In his paper, Cloete briefly described two different forms of accountability that combines accountability and trust in high and low permutations (2000:9). Based on this basic idea, consider the following table suggested by this author. In the table below, trust relates to the degree of trust that Government can view the institutions with and accountability relates to the extent to which Government will require institutions to provide proof of effectiveness and efficiency:

<table>
<thead>
<tr>
<th>Trust</th>
<th>Accountability</th>
<th>Characteristics of this type of environment</th>
<th>Preferred option when</th>
</tr>
</thead>
<tbody>
<tr>
<td>Low</td>
<td>Low</td>
<td>• Poor quality institutions;</td>
<td>Never the preferred option.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Low graduate through-puts;</td>
<td>However, currently the</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• The admission of under-prepared students;</td>
<td>position in South Africa.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Inability to contribute sufficiently to social redress;</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Management difficulties;</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Low efficiencies;</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Extended public debates on higher education without specific outcome and direction;</td>
<td></td>
</tr>
<tr>
<td></td>
<td></td>
<td>• Very little sanction against under-performing institutions or management where governance is proved to be poor;</td>
<td></td>
</tr>
<tr>
<td>Low</td>
<td>High</td>
<td></td>
<td></td>
</tr>
<tr>
<td>---------</td>
<td>------</td>
<td></td>
<td></td>
</tr>
<tr>
<td>• Little direct guidance from Government on the direction, size and shape of higher education.</td>
<td>Not the ideal. To a large extent the autonomy of institution are affected. However, until such time as institutional problems are addressed in South Africa, perhaps a better option that the first as institutions are held highly accountable. Indeed, given the information contained in the National plan which was discussed in chapter 2, this option will be followed by Government in South Africa in the future.</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>High</th>
<th>Low</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Sophisticated higher education institutions that meet the needs of society;</td>
<td>The preferred option in which institutions contribute effectively to society whilst institutional self-governance is well established. Generally found in elitist environments such as the case in predominantly white universities in the apartheid era.</td>
</tr>
<tr>
<td>• Great degree of self-governance, control and management ability;</td>
<td></td>
</tr>
<tr>
<td>• Effective and efficient institutions;</td>
<td></td>
</tr>
<tr>
<td>• Central government funding not necessarily linked to goals other than graduate output;</td>
<td></td>
</tr>
<tr>
<td>• The ability of institutions to provide the required research and human skills require.</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>High</th>
<th>High</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Institutions are effective and efficient, providing high quality</td>
<td>Possibly highly state controlled environment.</td>
</tr>
</tbody>
</table>
Part A
Chapter 4 – Financial governance and controls - The Government perspective

| research and graduate output; | • Funding linked to attaining specific goals set by central Government; |
| • Close monitoring and detailed policy making by Government; |
| • Interventionist governance model adopted by Government. |

TABLE 4.2 – TRUST, ACCOUNTABILITY RELATIONSHIP IN HIGHER EDUCATION

From the table above, it is clear that the current model in South Africa is one of “low-trust-low-accountability”. Although the ideal is a scenario of “high-trust-low-accountability”, this model is not currently feasible in South Africa.

What should happen is that Government must issue clear statements that high levels of accountability is deemed necessary and will be maintained as a result of the lack of redress in higher education (low trust) until such time as higher levels of trust can be maintained. Such statement/statements should include timeframes. Thereafter, a more “normalised” higher education environment may be entered into where high levels of trust and low accountability, given high levels of self-governance, will be the order of the day.

4.5.4 The Public Finance Management Act

The purpose of the Public Finance Management Act, No. 29 of 1999 as set out in the preamble is:

“To regulate financial management in the national government and provincial governments; to ensure that all revenue, expenditure, assets and liabilities of those governments are managed efficiently and effectively; to provide for the responsibilities of persons entrusted with the financial managements in those governments; and to provide for matters connected therewith” (South Africa, 1999b: Preamble).
Section 2 of the Public Finance Management Act states that the object of the act is “to secure transparency, accountability, and sound management of the revenue, expenditure, assets and liabilities of the institutions” to which the act applies (South Africa, 1999b:s 2).

Given the evidence presented in this chapter, the act can clearly make a positive contribution to the governance of higher education institutions. However, although the act is applicable to public entities listed in Schedule 2 and 3 (South Africa, 1999b:s 3 (1)), section 47 (3) (c) clearly states that the act does not apply to any institution of higher education. Some of the entities listed in Schedule 2 are Transnet Limited, ESKOM, DENEL, Telkom SA Limited. Some of the entities listed in Schedule 3 are the Accounting Standards Board, Financial Services Board, National Housing Board, SA Revenue Services, Goudveld Water, Eastern Cape Tender Board, Gauteng Gambling Board, KwaZulu-Natal Economic Council, Algoa Bus Company and the South African Qualifications Authority.

It is the contention of this author, that an urgent amendment is needed to make the Public Finance Management Act (or at least some sections of the Act) applicable to institutions of higher education. Although, as explained in chapter 3, there are a number of statutory regulations dealing with the finances of universities and technikons, these rules, controls and structures are not as clear and precise as the relevant stipulations encompassed in the Public Finance Management Act. In addition, if large conglomerates such as Transnet Limited can apply the act, surely smaller institutions such as universities and technikons can do the same.

If made applicable, the following stipulations of the Public Finance Management Act will make a significant and valuable contribution towards the financial governance of public higher education institutions and more specifically to procurement (relevant commentary provided in italics):

- The accounting authority for an institution has specific fiduciary duties such as:
  - Exercising the duty of utmost care to ensure reasonable protection of the assets and records of the institutions (South Africa, 1999b:s 50 (1) (a)). Control over the sale, use and letting of assets will be dealt with in detail in the policy document.
  - Acting with fidelity, honesty, integrity and in the best interest of the institution in managing the affairs of the institution (South Africa, 1999b:s 50 (1) (b)). In line with the purpose of the procurement function. Will be addressed in the code of
conduct;

- Disclosing all material facts to the executive authority of the institution, including those reasonably discoverable which may influence the actions and decisions of the institution (South Africa, 1999b:s 50 (1) (c)). Supported by the principles of openness and transparency that will be discussed in greater detail later on in this thesis;

- Seeking to prevent any prejudice to the financial interest of the state (South Africa, 1999b:s 50 (1) (d));

- A member of the accounting authority of an institution may not act in any way that is inconsistent with the responsibilities assigned to the accounting authority or use the position or privileges of, or confidential information obtained for personal gain or to improperly benefit another person (South Africa, 1999b:s 50 (2)). Specific purchasing cut-off values proposed, together with independence criteria in the charters of the tender committee and procurement committee;

- A member of the accounting authority must disclose any direct or indirect personal or private business interest that any spouse, partner or close family member has in any matter before the accounting authority and withdraw from the proceedings unless deemed trivial by the authority (South Africa, 1999b:s 50 (3)). Addressed in the charters of the tender committee and procurement committee;

- The accounting authority must ensure that the institution maintains an effective, efficient and transparent system of financial and risk management and internal control (South Africa, 1999b:s 51 (1) (a) (i));

- A system of internal audit and an audit committee is required by law (South Africa, 1999b:s 51 (1) (a) (ii));

- An appropriate procurement and provisioning system which is fair, equitable, transparent, competitive and cost effective must be put in place (South Africa, 1999b:s 51 (1) (a) (iii)). In line with section 217 of the Constitution and incorporated in code of conduct;

- A system must be put in place for properly evaluating all major capital projects prior to a final decision on the project (South Africa, 1999b:s 51 (1) (a) (iv)). Indeed the purpose of the comprehensive tender procedures;

- The accounting authority must take effective and appropriate steps to (South Africa, 1999b:s 51 (1) (b));
- Collect all revenue due to the institution;
- Prevent irregular expenditure, fruitless and wasteful expenditure, losses resulting from criminal conduct, and expenditure not complying with the operational policies of the institution;
- Manage available working capital efficiently and economically;

- The accounting authority must take responsibility for the management of the entity, including the safeguarding of assets and the management of expenses and liabilities (South Africa, 1999b:s 51 (1) (c));
- The accounting authority must take effective and appropriate disciplinary steps against any employee of the institution who contravenes the Public Finance Management Act or commits an act that undermines the financial management and internal controls of the institution or makes or permits an irregular, wasteful or fruitless expense (South Africa, 1999b:s 51 (1) (e)). *A set of safeguards will be built into the procedures manual*;
- The annual report of the institution must include particulars of (South Africa, 1999b:s 55 (2) (b)):
  - Any material losses through criminal conduct;
  - Any irregular expenditure and fruitless and wasteful expenditure that occurred during the financial year;
  - Any criminal or disciplinary steps taken as a consequence of such losses or irregular expenditure or fruitless and wasteful expenditure;
  - Any losses recovered or written off;
- The responsibilities of officials of the institution would include they (South Africa, 1999b:s 57). *Incorporated into the code of conduct*:
  - Must ensure that the system of financial management and internal control established for the institution is carried out within the area of responsibility of that official;
  - Are responsible for the effective, efficient, economical and transparent use of financial and other resources within that official’s responsibility;
  - Must take effective and appropriate steps to prevent any irregular expenditure and fruitless and wasteful expenditure and under collection of revenue in their sphere of responsibility;
  - Are responsible for the management, safeguarding of assets and management of liabilities within their responsibilities; and
• Financial misconduct, including making or permitting an irregular expenditure or a fruitless or wasteful expenditure is a ground for dismissal or suspension of an official (South Africa, 1999b:s 83).

In general the Public Finance Management Act places additional controls in and responsibilities on designated organisations and require of them to ask for permission for certain transactions which can encroach on the autonomy of institutions of higher education if this Act was to be made applicable to institutions. However, if Government is truly serious about governance and using funds that are made available to institutions effectively and efficiently, the application of the sections listed above will contribute to the long term self-governance of higher education and thereby returning autonomy to universities and technikons in the long run. Moreover, more attention will be given to a particularly grey area, not only in the public sector, but also in the private sector, being financial misconduct in respect of fruitless and wasteful expenditure. The application of the Public Finance Management Act also gives some statutory backing for what this author proposes in respect of procurement control at the RAU.

4.5.5 Applying corporate governance principles to the public sector

The ideals of corporate governance are not restricted to companies and the corporate world.

For example, not-for-profit organisations in Canada have recognised the importance of good governance practice and the panel on Accountability and Governance in the Voluntary Sector issued a report in February 1999 entitled “Building on strength: Improving governance and accountability in Canada’s voluntary sector” that propagates the idea of a “good practice guide for effective stewardship” (McConomy & Bujaki, 2000:5).

Whitherell realised that corporate governance was not just a business matter and that it concerned the well-being of whole economies and populations (2000:1).

The President of the World Bank, Jim Wolfensohn, emphasised the importance of wider
governance followed by corporate governance by stating that “the proper governance of companies will become as crucial to the world economy as the proper governing of countries” (IODSA, 2001:10).

McConomy and Bujaki stated that:

“Regardless of where you work, whether for a public corporation or a voluntary organization, if your organization holds an accountability relationship to its stakeholders, you should make sure that it has an effective corporate governance system that is up to date with these guidelines and current trends. After all corporate governance is good for all of us” (2000:6).

IFAC released a document entitled “Corporate Governance in the Public Sector: A governing body perspective” in November 2000 which had as its purpose “to consider an appropriate framework to assist in ensuring an appropriate balance between freedom to manage, accountability and the legitimate interests of the different stakeholders” (IFAC, 2000:5).

The document contains a number of useful principles that may be applied with positive results in higher education in South Africa. At this stage, these principles will merely be documented. A critical analysis of these principles against the governance measures in place at the RAU will be performed in chapter 5. However, at this stage it must be noted that corporate governance standards, irrespective of where it is applied, results in constraints on management (IODSA, 2001:10). Any academic environment (or at least part thereof) may consequently struggle with additional rules and procedures that may inhibit the notion of freedom. The larger the degree of decentralised financial control and decision-making in an institution of higher education, the harder it may be to implement corporate governance principles institution-wide at a rapid or even sufficient pace.

Some of the corporate governance principles for the public sector that may aid wider governance in higher education in South Africa are:

- It is not adequate to only appoint a governing body for an institution without ensuring mechanisms are in place to secure adherence to recommendations of corporate governance (IFAC, 2000:par .026);
- Auditors may be required to report whether or not expenditure has been applied for authorized purposes and conforms to the authority that governs the institution and due
regard is paid to securing economy, efficiency and effectiveness (IFAC, 2000:par .045);

- There are seven “principles of public life” that must be used in drawing up codes of conduct or enforcing certain standards of behaviour being (IFAC, 2000:par .059):
  - Selflessness;
  - Integrity;
  - Objectivity;
  - Accountability;
  - Openness;
  - Honesty; and
  - Leadership; and

- There are four dimensions of corporate governance that must receive attention in the public sector being, organisational structures and processes (how top management is appointed and organised, how responsibilities are defined and how persons are held accountable), external reporting in order to demonstrate accountability, internal controls and standards of behaviour within an organisation that defines the culture and behaviour on the organisation and its participants (IFAC, 2000:par .061).

It is interesting to note that King 2 also contains seven primary characteristics of good corporate governance being (IODSA, 2001:13-14):

- Discipline;
- Transparency;
- Independence;
- Accountability;
- Responsibility;
- Fairness; and
- Social responsibility.
One may compare the seven principles in the two documents as follows in Table 4.3 below by using the detailed explanations of each of the King 2 terms (IODSA, 2001:13-14):

<table>
<thead>
<tr>
<th>IFAC Principles</th>
<th>KING 2 Principles</th>
</tr>
</thead>
<tbody>
<tr>
<td>Accountability</td>
<td>Accountability</td>
</tr>
<tr>
<td>Selflessness</td>
<td>Social responsibility</td>
</tr>
<tr>
<td>Openness</td>
<td>Transparency</td>
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<tr>
<td>Honesty</td>
<td>Fairness</td>
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<tr>
<td>Integrity</td>
<td>Discipline</td>
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<tr>
<td>Objectivity</td>
<td>Independence</td>
</tr>
<tr>
<td>Leadership</td>
<td>Responsibility</td>
</tr>
</tbody>
</table>

**TABLE 4.3– COMPARISON OF IFAC AND KING 2 PRINCIPLES**

Clearly, there is a lot of common ground regarding the principles underlying corporate governance whether in the public sector or not. However, King 2 took account of value systems in an Africa context that may be different to the value systems prescribed to in other countries such as (IODSA, 2001:21):

- Humility and helpfulness to others, rather than criticism of them;
- An hierarchical political ideology but one based on an inclusive system of consultation at various levels; and
- Perpetual optimism due to strong belief in the existence of an omniscient, omnipotent and omnipresent superior being in the form of the creator of mankind.

In respect of the four dimensions of corporate governance detailed in the IFAC document, there are a number of principles that are relevant in the context of this study that will be taken into account in the writing of the policy:

- Appropriate arrangements must be established to ensure that funds and resources are properly safeguarded and used economically, efficiently and effectively (IFAC, 2000:par .065);
- Clear channels of communication must be established with stakeholders (IFAC, 2000:par .066);
- Governing bodies must make explicit commitments to openness and transparency in all of the activities of the entity (IFAC, 2000:par .067);
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- The process for appointing officials and the names of all officials must be publicly known (IFAC, 2000:par .068);
- Clear divisions of responsibilities must be in place to ensure a balance of power and authority (IFAC, 2000:par .069);
- Members of the governing body must receive appropriate training at the time of their appointment (IFAC, 2000:par .071);
- A formal schedule of the delegation of powers must be prepared that details those decisions that must be made collectively (IFAC, 2000:par .073);
- Non-executive governing body members must be appointed to provide independent judgement on issues of strategy, performance, resources and standards of conduct (IFAC, 2000:par .077);
- Performance measures must be established and reported on to demonstrate that resources have been procured economically and are utilized efficiently and effectively (IFAC, 2001:par .088);
- A formal code of conduct must be adopted that defines the standards of behaviour to which individual governing body members and all employees are required to subscribe (IFAC, 2000:par .097); and
- Appropriate mechanisms must be established to ensure that members and employees of public sector entities are not influenced by prejudice, bias or conflicts of interest (IFAC, 2000:par .098).

Appendix 1 of the IFAC document also details a checklist entitled “Good governance: a checklist for governing bodies” (IFAC, 2000:63-66) that can be applied in all institutions of higher education. The checklist will be reproduced and utilised in chapter 6 of this thesis in order to critically analyse corporate governance at the RAU.

Lastly, the question that remains is whether the IFAC code of corporate governance in the public sector can really be applied to institutions of higher education. The scope of the word “governance” in the IFAC document extends beyond companies and business corporations in the private sector and it is clearly stated that the document has broader application to all public sector entities (IFAC, 2000:par .002). Paragraph .016 states that the concept of a “governing body” is directly applicable to:

“All arrangements where a government (whether central, regional or local) delivers a
service or activity through a controlled entity (subsidiary), whether that subsidiary
title entity X is or is not whole controlled by government or has a separate legal identity.”

Given the acts and statutes that govern universities and technikons, as well as the results of
the case Transnet Ltd v Goodman Brothers (Pty) Ltd dealing with the classification or
definition of public bodies in South Africa, it is safe to say that the principles of the IFAC
document can be applied to institutions of higher education in South Africa.

4.5.6 Conclusion

From the preceding paragraphs it is clear that a number of measures are available to
Government to enhance wider governance in higher education that may be applied to
procurement.

The suggested measures may need to be implemented through direct Government ruling, but
the continued application of these suggestions will be the responsibility of the institutions.
Although the autonomy of institutions will no doubt be affected to some extent, the general
control and governance environment in institutions will be enhanced but not over-burdened.
As always, it will be up to the institutions themselves to decide whether wider governance is a
burden or a means to achieving greater effectiveness and efficiency.

4.6 SUMMARY

The purpose of this chapter was to detail the Government perspective on governance and
controls in the higher education sector.

The chapter succeeded in defining accountability, governance, institutional governance,
corporate governance, financial governance and controls in order to fully understand the
context of references to the terms in literature on higher education. The relative relationship
between the terms was also plotted in a governance pyramid.
The chapter also detailed references to the abovementioned terms in respect of documents released by Government on higher education since 1994. This evidence clearly showed that a lot of attention was given to accountability and institutional governance. Very little attention was paid to wider governance, corporate governance and financial governance.

This chapter also discussed the relative autonomy of public institutions of higher education in South Africa.

It is the contention of this author that greater intervention and policy direction from Government is needed at this time in order to speed up change under well-controlled circumstances in tertiary education.

Indeed, the chapter provided evidence that public higher education in South Africa is not autonomous, is funded to a large extent by Government and should entertain further intervention in respect of financial governance and control. Additional intervention in this respect can drive greater efficiency and may free funds to sustain systemic redress of the public education system.

This statement was backed up by practical suggestions on how governance in higher education could be improved such as:

- Swift action from Government when poor governance and poor judgement in respect of finances come to the fore;
- Sound policy statements on the trust-accountability relationship between Government and institutions of higher education;
- The application of at least part of the Public Finance Management Act in the public higher education sector; and
- The application of well-researched public sector corporate governance principles in institutions of higher education.

The next chapter will focus on the specific financial and related controls and structures in place at the RAU as well as an assessment of the degree of governance in place at this institution.

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