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SUBMISSION BY THE UNIVERSITY OF CAPE TOWN ON THE HIGHER EDUCATION AMENDMENT BILL OF NOVEMBER 2015

The Bill tabled in Parliament in November 2015 is long and complex. Much of it is technical in nature. Universities SA and the UCCF, SA were consulted in 2013 and 2014 about this Bill, and UCT contributed to the submissions.

There are many aspects to this Bill that we welcome. These provisions remove problematic provisions, introduce needed provisions, and will clarify others. However we believe that a number of adjustments are still needed. It is hoped that the Portfolio Committee will consider these suggested amendments.

1. UCT appreciates that the proposed provisions Section 3 (b) and 3 (c) granting the Minister additional powers in relation to transformation have probably been inserted as a response to the widespread national social action on university campuses which occurred throughout the country in 2015. We concur that the Minister has a responsibility to ensure that the pace and scope of transformation in the system of higher education is accelerated, and as such should have the powers to set goals for the system. Currently the Minister's power to determine policy is conditional upon the Minister consulting the CHE; we believe that the power to determine transformation goals and institute oversight mechanisms should similarly be executed in consultation with the CHE. We propose the addition of a clause in Section 3 (b) to this effect.
2. In August 2015 UCT sent a submission to HESA on the CHE's Draft Policy on the Recognition of Prior Learning, Credit Accumulation and Transfer, and Assessment in Higher Education. Whilst we welcomed the presentation of the policies for Recognition of Prior Learning and Credit Accumulation and Transfer (CAT) in a single integrated policy framework as helpful for conceptualising and supporting lifelong learning and student mobility, we had a number of concerns about inconsistencies in the draft policy itself, and between the proposed CHE policy and the policy on RPL and CAT promulgated by SAQA. Given the importance of this framework we submit that the Minister should be obliged to consult with the CHE before finalising any new policy framework to avoid any possible confusion that may arise.
3. We are concerned about the proposed introduction by way of legislation, without adequate policy to underpin this, of a new landscape for public higher education in which there will be universities, university colleges and higher education colleges (the proposed s. 20 of the Act). We believe that more discussion is necessary about the proposed different institutional types before creating new types through an Amendment Bill.

4. Reference is made in the Bill to a role for the PFMA which does not apply to Public Higher Education Institutions. We suggest that this should be omitted.
5. Public HEIs have had full juristic capacity to invest. Subsection 20(5) limits this. It does so for good reason. This subsection provides that a public HEI may not alienate immovable property (or grant to any person a real right or servitude on any immovable property) acquired with the assistance of the state. However, in its current form the Bill may result in unintended consequences. For example, it may lead to the interpretation in law that a public HEI may not invest in, say, a spin-off company. We urge the Minister to review the details of this proposed amendment so that the Act does not unnecessarily limit the ability of public universities to profit from the beneficiation of its intellectual property.
6. The proposed amendment to Section 42 (1) (d) of the principal Act makes provision for the Minister to issue a directive in response to a number of things, including a failure to comply with any law. We propose that this should be restricted to a substantial contravention of, or failure to comply with, the law.

The Minister may also issue a directive to the council of a public higher education institution where there are reasonable grounds to believe that the Council or the management of that public higher education institution has acted in an unfair, discriminatory or wrongful manner towards a person to whom it owes a duty under this Act or any other law. We submit that an individual in such a position will have other remedies in law, and these we believe are the appropriate remedies if the Minister is not to be put in a position where the Minister takes the role that the courts should properly have.

7. We support the proposed addition of Sections 65 BA (1) and (2) but suggest that it is necessary to state that disciplinary provisions applicable to students as set out in institutional rules may make provision for the withdrawal and revocation of any degree, diploma, certificate or other qualification on other grounds after due institutional legal processes are followed.
8. We do not understand the purpose of clause 37 of the Bill. The Act as it now stands allows a public HEI to offer a qualification or part qualification on the sub-framework for trades and occupations, where the Minister approves of this. The Bill now proposes to invert this and give the Minister power to compel a public HEI to do so. We do not support this provision as such qualifications will ordinarily not form part of the curriculum of a university. The Memorandum on the Bill gives no reason for the proposed provision.

We look forward to engagement with the Minister and the Portfolio Committee.



Dr Max Price
Vice-Chancellor

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