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THE SOUTH AFRICAN MBA REVIEW AND THE PRINCIPLES OF EFFICIENT REGULATION

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ABSTRACT

The South African Council on Higher Education (CHE) has developed a model to regulate the provision of post-graduate qualifications. This model was applied in the first instance to the MBA. Accreditation was withdrawn from 15 MBAs, 15 were granted conditional accreditation, and seven were fully accredited. This paper argues that CHE did not, however, observe the internationally recognised principles and processes of efficient regulation. Its regulation of MBAs is a paradigm case of failure in public policy construction and implementation. The consequences may extend beyond those immediately affected by CHE's decisions to impact adversely on South Africa's regulatory reputation.

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INTRODUCTION

The South African Council on Higher Education (CHE) is a regulatory body established under the Higher Education Act, 1997, responsible for, amongst other things, quality assurance in higher education. CHE decided in 2002 to conduct a review of the quality of MBA provision. The review was completed in 2004. CHE withdrew the accreditation of 15 MBAs which meant that they could no longer be offered to students. It also required that various dimensions of the programmes which were conditionally accredited be restructured (CHE, 2004a,b,c,d). These decisions involve a significant exercise of regulatory power. The withdrawal of the right of a provider to offer a qualification is a serious matter. Holders of the degree in question (and particularly current enrollees) will almost certainly suffer collateral damage to their self esteem and personal standing, to the status of their qualification, (and thereby possibly to their future earnings), even though retrospective withdrawal of recognition is not part of the CHE process (CHE, 2004c). Testimony to the extremely limited capacity of CHE, and the relevant degree holders, to quarantine the effects of the accreditation decisions can be found in, for example, media comment to the effect that the CHE process has shown that certain MBA qualifications were "...not worth the paper they are printed on..." and, despite this, "...current students at 'dud' colleges will still get their stripes." (Shevel et. al., 2004; Editorial, ThisDay, 26 May 2004).

It is incumbent upon a regulatory agency of the state to exercise its authority in accordance with internationally accepted principles and the highest standards of regulatory efficiency. This paper adduces evidence that CHE has, however, failed to discharge this obligation. Some of the consequences of this are examined. They will arguably extend beyond the immediate effects to include a likely adverse impact on South Africa's regulatory reputation which, paradoxically, national government policy specifically requires CHE to enhance. There are widespread national and international concerns over the alleged deleterious effects of South Africa's regulatory regime as a whole on economic growth, productivity and the attractiveness of South Africa as a destination for foreign direct investment (Business Day, 2004; Rose, 2005; Seria, 2005). CHE's failure to observe regulatory best practice can only exacerbate such concerns and add to their credibility.

The CHE regulatory model imposes a core MBA mission: *all* MBAs in South Africa must be generalist, must emphasise research, and must be devoted to South African issues (the model is evaluated in: Blackmur, 2004a). The means of achieving this are subject to CHE control through a regulatory process which requires compliance with non-negotiable criteria and minimum standards (CHE, 2004e,f,g). This suggests the addition of a fourth model of higher education regulation to the three already identified by Chris Middleton (Middleton, 2000, p.537): centralised objectives are

imposed through the regulation of the purposes of a qualification, and market relations are governed in specific ways (providers, for example, must educate students in action research, and must use predominantly domestic inputs) to serve them. The concept of quality which underpins the CHE model bears little resemblance to any of those which are discussed in the higher education quality assurance literature (Harvey and Green,1993).

The paper consists of four sections. Section I defines public regulation and the rationale for such activity; Section II examines CHE's official reasons for regulating MBAs; Section III considers CHE's approaches to regulatory design, regulatory options, and compliance costs; and Section IV discusses CHE's regulatory performance in terms of the principles of consistency, clarity and credibility. Concluding remarks follow.

SECTION I: PUBLIC REGULATION: DEFINITION AND RATIONALE

Public regulation can be defined as the imposition of legally enforceable mandatory requirements on the community as a whole or on any part(s) of the community. Many regulatory processes encourage or force individuals or groups "... to pursue their interests in ways they would not otherwise have done." (Productivity Commission, 2004, section 2.3). The economic rationale for regulation rests largely on the proposition that the welfare losses associated with the market failures associated with internalities (largely to do with information asymmetries), externalities, market power and public goods may be attenuated economically by public interventions (Labory and Malgarini, 2000, pp. 89, 90). One of the principal conclusions of modern regulatory theory is that "... , while a market failure problem might be apparent, it is not necessarily the case that government intervention in the market is appropriate." (Findlay, 2000, p.11; see also: Messerlin, 2000, p.25; Mattoo, 2000, p.54). Oliver Williamson has argued in this regard that "... whereas reference to market failures was once thought to be a sufficient condition for government intervention, there has been a growing realisation that regulation is beset with problems of its own." (1985, p.327; see also: Labory and Malgarini, 2000, p.92). The essential point is that the costs of government intervention, be it for market failure or other (say, equity) reasons, may exceed the benefits in which case the welfare losses which the intervention was supposed to reduce are, in fact, exacerbated. One of the most difficult propositions for governments (and regulators) to accept is arguably that a less than perfect state of affairs may nevertheless be the best which can be achieved under any given circumstances.

David Dill has argued that many of the regulatory initiatives which governments have taken in higher education since the 1980s implicitly assume "... that the transactions costs involved in student

selection of an academic programme warrant an intermediary body..., supposedly acting on behalf of the public interest, to formally contract with universities ... for academic programmes of a given quality, and to monitor academic quality through assessment of academic processes or outcomes.” (Dill, 2001, p.18). This assumption is, however, quite inappropriate: valuations of the costs and benefits of proposed public interventions on a case by case basis are clearly required . It is, relatedly, not obvious why taxpayer resources ought to be devoted to economizing on the higher education transactions costs of actual and potential students many of whom may enjoy relatively affluent circumstances.

There is no reference in any of CHE’s published material on the MBA Review which suggests that a net benefit test was applied to this proposed regulatory activity. Although this paper does not offer a formal net benefit test of CHE’s regulation of MBAs, there are *a priori* grounds for concern that, if any benefits have been generated through this regulatory process, they have been purchased at the cost of serious violations of the principles of efficient regulation.

SECTION II: THE CHE RATIONALE FOR MBA REGULATION

The principal justifications for the MBA review were that the National Plan for Higher Education had asked for priority to be given to reviews of post-graduate programmes, and that the MBA provided an appropriate starting point given its relevance to business. To the extent that any problems were identified as being potential candidates for regulatory attention, CHE maintained that “Concerns were raised about the proliferation of MBA courses in South Africa. The HEQC [Higher Education Quality Committee] wanted a better understanding of the quality, costs and benefits of these courses, and of their relevance to the country’s needs.” (CHE, 2004h). CHE’s director of accreditation explained “There has been a flood of MBAs on offer in the last five years and we wanted to know whether these curriculums were focusing on what they should, ...” (Pillay, 2004). The Review was, however, clearly more than an information gathering exercise given that CHE ultimately withdrew 15 MBAs from the market.

There is suggestive evidence, however, that the purposes of the MBA Review were wider than revealed in these official explanations. This offends against the principle that the objectives of regulation should be transparent (Byron et. al., 2000, p.192; Productivity Commission, 2004, p.5). The literature on regulation relatedly cautions against the risk that regulators may be tempted “... to assert ancillary powers, thereby to expand ... jurisdiction, often with dysfunctional consequences.”

(Williamson, 1985, p.328). An argument can be made to the effect that yielding to such temptation occurred, however, during the CHE MBA regulatory process.

CHE staff responsible for the report *The State of the Provision of the MBA in South Africa* (CHE, 2004i, p.iii) have suggested that CHE's future regulation of MBAs could include regulating the development of the discipline of Management (CHE, 2004i, p.84). The implications of this for government policy with regard to the preservation of academic freedom are extraordinarily serious. Other senior staff have announced, in the context of the MBA Review, that South Africa's higher education policy includes an undefined principle of "equitable access with success" (Singh et. al., 2004, p.198); in broad terms, CHE seems to have assumed a responsibility to decide and administer equity policy in South African higher education; and some CHE staff seem to regard their role as including the protection of university providers of programmes with high economic returns, such as the MBA, against competition from private providers (CHE, 2004i, p. 11).

On this latter, CHE is especially concerned that black students are apparently attracted to private providers and not to the public, historically advantaged institutions: "Fees are, together with admission requirements, the two most important elements in determining access to a programme. The history of South Africa explains the concentration of black student enrolments in [private provider] programmes with both low fees and low admission criteria. ..., lower admission requirements are usually the introduction to poor quality programmes." (CHE, 2004i, pp. 27,28).

The evidence for these claims with respect to MBA enrolments is, however, not provided. CHE has presented no statistical analysis of a representative sample of black MBA students/graduates in terms of the determinants of their choice of MBA provider. Assumptions and assertions have been substituted for evidence and analysis. CHE's implied black students' MBA demand function is also inadequately defined. It completely ignores, for example, the possibility that black students may disproportionately enroll in private provider MBAs because they are attracted to the programme, and, perhaps relatedly, because of the relatively high reputation many of these programmes enjoy with graduates and employers (Financial Mail, 2004). CHE has, furthermore, arguably sought to inflate the costs incurred by international private providers relative to those of South African providers by means of some of the minimum standards associated with its internal organisation criterion (CHE, 2004i, pp. 40,41).²

On matters of equity policy, CHE has decided that: "The market, which by definition is not an allocator of equal opportunity, seems an inadequate point of departure in the construction of a quality

assurance system that is trying to level the playing field in order to improve the higher education system.” (CHE, 2004i, p.2).³ It is difficult, however, to determine the precise meaning of this assertion. It is an example of the opaque language used on several occasions by CHE which is inconsistent with the standards of efficient regulation. A principal outcome of CHE’s processes was to extend full accreditation exclusively to the MBAs provided by the resource rich, historically advantaged universities in South Africa (CHE, 2004j,k). What this has to do with leveling the playing field (which one?) is not obvious. CHE’s rejection of the market may conceivably have something to do with its views about dismantling any vestiges of apartheid in the higher education system. Such transformation is highly dependent on, amongst other things, the financing of the system, including student access to finance, and the proper implementation by the relevant authorities of affirmative action, gender equality, equal opportunity and human rights legislation in all dimensions of university life. It may also be highly dependent, contrary to CHE’s philosophical position, on allowing more, not less, scope for the market in higher education. Addressing both the shortage of doctorally qualified, black staff and the relatively slow pace of the development of a black intelligentsia in South African universities will arguably require the relaxation of a deliberate public policy of suppressing the connections within the academic labour market (a policy endorsed by CHE. (CHE, 2004i, p. 112)), and between it and the professional labour market more generally.

SECTION III: REGULATORY DESIGN, REGULATORY OPTIONS AND COMPLIANCE COSTS

Consultation with the community is a key dimension in the design of effective and efficient regulatory processes. The concerns of interested parties can thus be considered, informed debate can be encouraged, and “... the costs, benefits and appropriateness of regulatory options.” can be exposed (Productivity Commission, 2004, ch. 3). CHE did not, however, employ such an inclusive process of consultation in the formative stages of its MBA regulatory model. It consulted a relatively narrow group which was overwhelmingly representative of providers. Despite a best practice requirement, moreover, to consult with consumers CHE did not engage in a systematic, scientific manner with students in MBA programmes, graduates, or employers (including bodies such as trade unions which are employers in their own right, and whose members clearly have an interest in the quality of business administration). Other potentially interested members of the public were similarly not consulted: in some other jurisdictions, direct general public input to regulators is facilitated by means of the Internet (Productivity Commission, 2004, pp. 24, 25, 26, 29, 30, 32,33).

Efficient regulation requires that alternatives to direct regulation, especially when it involves restricting competition, be properly evaluated and implemented if there turns out to be a superior

option (Coghlan, 2000, p.36; Productivity Commission, 2004, p. 17). CHE did not, however, follow this process. There were, by the same token, alternatives, which were available to it which, did not involve direct intervention which eliminated some, and restructured other, MBAs. These included informing the community of its reservations over matters of provision in the cases of certain MBAs and then relying on *caveat emptor* to effect adjustments to the supply of MBAs. The government (possibly through the agency of CHE or the Department of Education) could, moreover, have entered the MBA market as a purchaser. The provision of an MBA which met CHE's precise specifications could have been subsidised or completely funded by the taxpayer, and could have been added to the range of choices available to potential students. There is a risk, of course, that few, if any, students would have elected to engage with such a programme, which may, in part, account for CHE's rejection of such an option in favour of the regulatory enforcement of a "one size must fit all" approach.

Against this, CHE would arguably maintain that the "toxicity" of certain MBA programmes necessitated its direct intervention to eliminate them without delay. Given, however, that there is compelling evidence that these perceptions of MBA quality were not shared by graduates and employers (Financial Mail, 2004), and that CHE subsequently allowed pipeline students to continue their studies for a considerable period in conditions which it had condemned, there are grounds for arguing that there was, in fact, significant space for exploring at least these options.

There is no recognition in the material published by CHE of the compliance and other costs associated with the development and implementation of its regulatory model. The pressure, for example, which CHE's regulatory requirements places on all MBA academics to conduct and publish research may lead to unexpected and largely unwelcome outcomes and costs. MBA staff may, for example, sacrifice with respect to teaching commitment and innovation in order to increase the time and other resources available for research (Dill, 2001, pp.3, 5, 7). CHE's simultaneous regulation of aspects of educational delivery may attenuate such behaviour. But regulatory attempts to increase both research output and teaching quality at the same time, and in respect of all staff, may stimulate academics to innovate in ways of effecting a teaching: research trade-off, consistent with their personal preferences, which are subtle, difficult (extremely costly) to detect and which are corrosive of trust and cooperation (Dill, 2001, p.6). Considerations of moral hazard thereby loom larger in academic communities (Labory and Malgarini, 2000, p.93). Regulation of research production in terms of the CHE model can, furthermore, deny MBA schools the flexibility of decision-making which is necessary if the benefits of specialisation and the division of labour in matters of teaching, research and community service are to be maximised. Under these circumstances, delivery costs will be greater than they

would otherwise have been. In the final analysis, from the perspective of student engagement with the literature, the key issue is not that *all* faculty members associated with a given programme undertake research, but that students have access to the latest, cutting edge thinking regardless of its source.

There is a further, and related, way in which CHE's research regulations are problematic. The requirement that "Faculty members do their own research and publish the results" (CHE, 2004f) says, in effect, that all academic staff employed in the provision of MBAs in South Africa must integrate vertically into the production and distribution of knowledge. This is another "one size fits all", command and control blanket regulation which seems completely oblivious to the economic (or any other) rationale for vertical integration. There is an extensive literature on when such integration can add value in terms of particular purposes. One of the important conclusions of this literature is that vertical integration is only effective under certain circumstances and that poorly conceived vertical integration can be extremely costly. There is, however, no evidence that CHE's policy in this matter has been informed to the slightest degree by this research. A research-based policy with respect to the production and distribution of research by staff in MBA schools would necessarily exhibit considerably more finesse, and sensitivity to established theoretical principles and particular circumstances, than does that enforced by CHE.

In general, CHE has adopted a highly prescriptive style of regulation which is directed at means as well as ends. One of the risks in such an approach is that reliance on across-the-board regulations assumes, incorrectly, that all providers necessarily have a uniform cost structure. The only way in which the deleterious effects of this can be addressed would be to adopt a less prescriptive position and "...to indicate what regulatory outcome must be met and then leave it to those who must comply to select the least-cost means of achieving that outcome." (Coghlan, 2000, p.43). Highly prescriptive regulation, furthermore, involves significant costs associated with policing compliance, and the related costs of what might be called secondary effects such as the development of a "box-ticking" culture and compliance games on the part of providers (Blackmur, 2004b, p.112).

SECTION IV: REGULATION: CONSISTENCY, CLARITY, CREDIBILITY

Regulation, of whatever variety, must be consistent with other national regulatory arrangements, easy to understand, and credible (Coghlan, 2000, p.44; Byron et. al., 2000, p.193). CHE's regulatory philosophy and approach is, however, significantly at odds with many of the published policies of the South African government. The following discussion of this proposition emphasises CHE's "fitness of purpose" regulation given that this is a significant and important departure from conventional

international higher education regulatory practices (for Europe, see: Faber and Huisman, 2003, p.240; Proitz et.al., 2004; Schwarz and Westerheijden, 2004).

The Higher Education Act (Government of South Africa, 1997), the National Plan for Higher Education (Government of South Africa, 2001a), and the Human Resource Development Plan for South Africa (Government of South Africa, 2001b), all provide important benchmarks against which aspects of the CHE regulatory model can be analysed. The Act protects academic freedom and provides that universities in South Africa enjoy autonomy with respect to the State. This is not, however, absolute - universities are required to be publically accountable and to contribute to the development of advanced skills and scientific knowledge. The National Plan for Higher Education is designed to overcome “the legacy of apartheid” and to transform the higher education system into “... a key engine for reconstruction and development,...” (Government of South Africa, 2001a, p.33). In this context, one of the fundamental goals is to create and sustain diversity in South African higher education through means which include programme differentiation. A high priority is placed on ensuring “programme diversity.” (Government of South Africa, 2001a, p.23). Programmes must, furthermore, meet “... the high-skilled employment needs presented by a growing economy operating in a global environment;...” while there is a complementary imperative to integrate “... the research and training capacity of higher education with the needs of industry and of social reconstruction.” (Government of South Africa, 2001a, p. 16).

Higher education institutions are expected to respond “... to social and economic needs, including labour market needs, in a rapidly changing regional, national and global context.”. The relevance of programmes is to be determined by reference to the extent to which “... they meet the needs of the students and develop the knowledge and skills required by employers.”. In matters of research, the Plan regretted the “...decline in traditional or basic research,...” . One of the Plan’s priorities was, furthermore, to “...refocus and reshape the institutional culture and missions of institutions as South African institutions.”. This meant the eradication of “... the inequities and divides of the past.”. The quality of higher education qualifications was to be enhanced consistent with international best practice. As far as matters to do with fitness of purpose were raised in the Plan, they were addressed at the institutional and systemic levels (Government of South Africa, 2001a, pp.8,17,23,24).

The Human Resource Development Strategy for South Africa (HRD Strategy) complements the higher education strategy. One of the overarching goals of the HRD Strategy is an improvement in the supply of skills relevant to social and economic needs. It places a high priority on empowering people “... to develop relevant and marketable skills at further and higher education levels.”. The skill needs

of the public and private sectors are the point of departure for the strategy: market signals are fundamental. The growth of “a vibrant research and innovation sector” is also seen as a key objective (Government of South Africa, 2001b, pp.2,4,11,13,26).

The strategy emphasises, furthermore, the dynamic nature of the issues. Institutions involved in the skills’ development process must thus “... anticipate and respond to specific skill needs in society,...”. This process is to be assisted by departmental and agency studies designed to identify “... clearer indicators of emerging and declining economic sectors and their concomitant education and training implications.” (Government of South Africa, 2001b, pp.2, 4, 11, 13, 18, 45). The HRD Strategy also contains an international perspective. Another of its overarching goals is “To improve international confidence and investor perceptions of the economy.”. Success in these endeavours will be measured in terms of South Africa’s progress towards “... a higher position on the international competitiveness table.” (Government of South Africa, 2001b, pp.4, 10). The strategy, moreover, enjoins CHE to help to ensure that these national human resource development goals are achieved (Government of South Africa, 2001b, pp.11,46).

The CHE MBA regulatory model is, however, arguably inconsistent in significant respects with many of these policies. It is not clear, for example, which specific public policy goals are served by CHE’s requirement that *all providers* must deliver an MBA which is “South African” in terms of the issues, problems and examples which are considered by students; is research oriented in that students must produce a major dissertation (which deals only with a South African issue?); and is generalist in that its focus is on general management principles. Regulation in terms of “fitness of purpose” at programme level is inconsistent with the space assigned to institutional autonomy and academic freedom in the Higher Education Act, and with the notion of programme diversity which is a bedrock principle of the National Plan for Higher Education. It is, in other words, a recipe for uniformity. A standardised product is to be made available to the market by all providers. Innovation and differentiation can thus logically only occur in respect of delivery processes (but even these are highly constrained by CHE) and in matters such as fees’ structures. In an important sense, CHE has nationalised MBA provision in South Africa because an agency of the State has regulated what will be produced in an important educational market, and how it will be delivered.

The Higher Education Act, the National Plan for Higher Education, and the Human Resource Development Strategy for South Africa, taken together, suggest that the mission of individual programmes, such as the MBA, ought to be defined by providers on the basis of the needs of students and employers. (Matters of access and delivery must be defined in terms which include overcoming

the apartheid legacy). Under these circumstances, given that labour market needs and preferences are highly variable and diverse, a variety of programme missions could be expected to obtain (and be welcome) in respect of MBAs. A range of choice would thus be available, and the viability of any given programme would depend in large measure on the extent to which it met labour market expectations.⁴ The opposite has, however, been sanctioned by CHE.

The specific regulation of MBA mission is problematic in other respects. The severe reduction in MBA mission diversity surely removes a vital incentive for innovation from the system of MBA provision. Dynamic, innovative providers are typically market makers in the sense that they constantly explore the significance of local, national and global political, social, economic and technological change for the development of new MBA programmes. In the South African context, such research may, for example, identify a profitable opportunity in providing a specialist MBA to the mining industry which emphasises the challenges of multi-national diversification. It is extremely doubtful, however, if such an MBA would survive CHE's accreditation criteria and standards.

This is especially likely if at least 50 per cent of the programme was not dedicated to the production of a dissertation. This is, in effect, a product safety, command and control regulation which says that, unless the MBA has a certain thesis component, it will be regarded as "toxic" and must not be allowed on the market. Why, furthermore, should all MBAs emphasise research which, moreover, is limited by CHE to applied research which must be conducted in terms of the action research method? Again, it is the requirement that *all MBAs* conform to this prescription which is especially problematic. It obviously prevents the development of MBAs in South Africa which are concerned with priorities other than research. There are, in this regard, many internationally recognised MBAs which are not research degrees. It can do nothing to address the concern expressed in the National Plan for Higher Education at the decline in basic research in South Africa: indeed, it will exacerbate it; it ignores the possibility that basic research can contribute to social and/or industry needs; and it attenuates institutional autonomy and academic freedom in a way inconsistent with the Higher Education Act.

CHE's regulation of the MBA programme mission sits somewhat uncomfortably with other regulations to the effect that "user surveys", qualified people and market trends must play a part in MBA design (CHE, 2004i, pp. 128,133). A conundrum can arise here given the possibility that such market intelligence may indicate a demand for significant diversity in programme missions. It would seem, however, that any reference to the market is permissible only to the degree consistent with the constraint of a non-negotiable core MBA mission and delivery system. CHE attempts to connect the

delivery of the MBA, as opposed to the determination of the mission, to South African business needs, broadly defined, by means of requirements that relevant staff have business experience and maintain business links; and that research and teaching pay adequate attention to company projects (CHE, 2004i, pp. 133, 134, 136, 137). Despite this, CHE embraces a much narrower conception of the appropriate role of the market in matters of higher education quality than envisaged in the national higher education and human resource development plans.

There is further evidence of inconsistency between CHE's regulatory principles and those employed elsewhere in South African higher education. A particularly potent example is provided by the fact that the CHE MBA Review took place in the absence of a National Qualifications Framework definition of a master's degree, the determination of which is the statutory responsibility of the South African Qualifications Authority (SAQA). The Higher Education Act (1997, section 7 (2)) stipulates that CHE must comply with SAQA policies and criteria in such matters. To have proceeded with the MBA Review in the absence of a lawful definition of a master's degree suggests that CHE contravened the Act. There are, furthermore, examples of CHE refusing accreditation to higher education programmes which have already been accredited in terms of the statutory responsibilities of Sector Education Training Authorities (Pretorius, 2004).

Instances of opaque and essentially meaningless regulations in the CHE model have been identified earlier in this paper (see also: Blackmur, 2004a). On matters to do with credibility, CHE's ratings of MBAs was significantly different to those which explicitly took graduate and employer evaluations into account (Financial Mail, 2004). CHE, furthermore, withdrew the accreditation, for example, of two MBAs which enjoyed accreditation under other country's accreditation regimes, and gave only conditional accreditation to a third which is similarly accredited and is, moreover, located in the top 20 MBAs in ratings produced by *The Economist* (Economist Intelligence Unit, 2003). This latter evidence does not, in and of itself, establish anything definitive about the credibility of the accreditation outcomes of CHE's processes. The three providers in question may have been delivering MBAs in South Africa at a standard inferior to that which they offer elsewhere. Credibility issues cannot, by the same token, be dismissed as trivial - in future, if CHE releases further information on its investigations of the comparative standards of international and local MBA provision in these three cases, the issues may become clearer (assuming, of course, that CHE actually undertook such comparative research in other countries).

Apart from consistency, clarity and credibility, several further principles of good regulation can be identified. These include the availability of an efficient system for addressing consumer complaints;

independent avenues of appeal in respect of regulators' decisions; independence of the regulator given the risks of external regulatory capture (Labory and Malgarini, 2000, p.98); the existence of an external quality assurance system which involves independent review of both the regulator's performance and whether its activities can continue to be justified in net benefit terms; and contestable accreditation (Bryon et. al., 2000, pp.192, 193; Coghlan, 2000, p.45). In the case of CHE, it is not clear from the publically available evidence if any of the problems which its regulations are designed to address were identified through a process of analysing complaints from, say, current MBA students, graduates, employers, and/or other interested parties. There are, furthermore, probably no independent avenues of appeal - any appeals against CHE decisions are to CHE itself (although an appeal, in principle, to SAQA may be possible). There is no scholarly research which explores issues to do with regulatory capture in respect of CHE. Its Board contains a majority of appointees with university affiliations and, in this sense, CHE is an example of an industry body with statutory powers of self-regulation.

Most OECD countries have implemented various regulatory quality assurance processes which include the use of regulation impact analysis and the production of a Regulation Impact Statement (Löfstedt, 2003). These processes are designed to ensure that "... regulation should only proceed if it results in net benefits to the community."(Coghlan, 2000, p.45; Labory and Malgarini, 2000, pp.99-102). Such processes do not, however, govern the activities of CHE. In the longer term, this may change given President Mbeki's call for submissions regarding the introduction of regulation impact statements (Blackmur, 2004c). MBA providers in South Africa, moreover, have no choice of regulator. There are no means whereby, for example, they can negotiate to come under the scrutiny of other national, or international, public or private higher education quality assurance organisations. Mutual recognition of regulatory regime is not part of the South African system.

CONCLUSION

CHE's regulation of MBA provision in South Africa provides a comprehensive insight into the issues and processes involved in "fitness of purpose" regulation. It also reveals much about the nature and dynamics of command and control regulation of many other aspects of provider behaviour. CHE has departed from conventional notions of "fitness for purpose" through its direct regulation of MBA delivery systems. One of the other notable features of CHE's philosophy and methods is that they are significantly inconsistent with almost all of the principles of efficient regulation. There seems, in particular, to be no acknowledgment, in CHE or elsewhere, that regulation must be justified in terms of a net benefit test.

There is evidence that CHE does not understand adequately the processes and systems which it seeks to regulate. In the case of research, for example, its policies are based on at best a superficial understanding of the requirements of high quality scholarly and post-graduate research. A crude logic seems to underpin CHE's regulation of research whereby the best means of improving research performance is to be found in conscripting all MBA students and staff to become active researchers. The limitations and, indeed, the real possibility of perverse outcomes, of employing this policy instrument have been discussed in this paper.

CHE's specification of a "South African" MBA programme mission, together with its policy that providers must use predominantly domestic inputs, has, for the foreseeable future, arguably put an end to most new foreign investment in MBA (and other post-graduate?) provision in South Africa. The costs of such a (planned?) outcome include the employment, innovation and other income generating activities which this investment may have produced. Those universities whose MBAs were approved by CHE, moreover, now have a form of protection against new international competition. It remains to be seen if their performance will change under these somewhat more comfortable and insular circumstances. Under CHE's regulatory regime, international Internet MBA providers may be encouraged to promote their programmes more widely in South Africa. In terms of South Africa's reputation as a desirable destination for foreign direct investment, CHE's regulatory behaviour *by itself* may be of relatively minor significance. By the same token, straws have been known to break camels' backs, and CHE has indicated that its MBA regulatory model will be applied progressively to *all* post-graduate education in South Africa.

CHE asserts its commitment to improving access to higher education. But the result of forcing MBA providers to offer only one type of MBA will be to restrict access to a wide range of internationally prestigious degrees to those South Africans who are rich enough to enroll in high class Internet programmes, or who can afford to study in other countries. The relatively rich thus get to enjoy the widest range of choice, while the rest will have to take what CHE has decided is good for them. This is a strange way of promoting equity and access!

If the "South African mission and inputs" MBA model is to enjoy a virtual monopoly, this will expose the government's human resource development strategy to significant risks. A major risk is that this particular version of an MBA is not best suited to the future needs of students, employers and other interested parties in both South Africa and internationally. CHE is "betting the company" on the relevance of one particular type of MBA. Prudent private sector risk management, on the other hand,

recognises and respects the variation in consumer needs and preferences, and acknowledges the wisdom and importance of responding accordingly. CHE, as a public sector, taxpayer-funded monopoly is relieved of the obligation to think in these terms. It is relatively free to conduct policy experiments (using “live ammunition”) based on its idiosyncratic “one size must fit all” philosophy of MBA provision. If its judgment proves faulty, it will be students, graduates and other stakeholders, in whose interests CHE claims to be acting, and not CHE, who will suffer the significant adverse consequences.

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ENDNOTES

¹ CHE was formally asked to assist the research for this paper but it refused to answer any of the questions put to it. CHE was also asked to facilitate a workshop at which an earlier version of this paper could have been discussed with, and critically assessed by, its professional staff. This was also refused.

² Universities seem also to have been favoured over the then technikons through Department of Education/CHE policies which raised the regulatory compliance costs of the latter with respect to their international qualifications' partnerships (CHE, 2004i, pp. 33,34).

³ The market is, in fact, properly defined independent of any equity considerations: it can operate in the context of any distribution of income, equitable or not. Conceptually, it is also perfectly possible for a market which functions initially in a highly inequitable situation to do so in a way which reduces the degree of inequality.

⁴ Lest it be thought that this paper considers higher education only as an investment good, it ought to be noted that similar diversity exists in the preferences of those who undertake higher education exclusively for consumption purposes.