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BOTH SIDES OF THE FENCE – MANAGING MISCONDUCT IN THE TERTIARY SECTOR – A QUESTION OF COMMITMENT

***David Robinson**, Acting Director, Standards and Integrity, WA Department of Education.
Formerly, Acting Manager, Corruption Prevention, WA Corruption and Crime Commission*

INTRODUCTION

This paper will examine two investigations conducted by the Corruption and Crime Commission (the Commission) into allegations of misconduct by staff employed at Curtin University (Curtin). These cases suggest that although misconduct risks in the university sector are significant and well understood, the response to those risks is sometimes inadequate. The paper will also consider Curtin's response to the investigations and the comment on the challenges facing the tertiary sector in dealing with misconduct risks.

1. BACKGROUND

1.1. The Universities and the Commission

Misconduct risks in the university sector are significant. In 2002 the Independent Commission Against Corruption (ICAC) published a report entitled *Degrees of Risk*¹. That report set out in very clear terms the risks faced by the sector. The main risk areas include:

- the learning process with opportunities for cheating, plagiarism, soft marking and favouritism;
- research risks, including favouritism in employing research staff, pecuniary interests, undeclared and unmanaged conflicts of interest and misuse of research funds;
- financial risks, such as fraud, accepting bribes, gifts and other benefits;
- staff conduct risks, such as falsifying credentials, plagiarism, favouritism, undeclared conflicts of interest and misuse of confidential information;
- corporate risks, such as failing to act or report misconduct; and
- the risks posed by increased engagement with the private sector - in other words finding the right balance between the public interest and the interests of corporations engaged in mutual undertakings with universities.

The ICAC noted that the pace of change and competition in the sector could make universities reluctant to acknowledge and openly tackle these matters or even report them as they were legally obliged to do. The former Commissioner of the Corruption and Crime Commission, the Hon. Len Roberts-Smith commented in a speech at Curtin in 2010 that: *'There is no reasons to think the situation in Western Australia is any different'*.²

The Corruption and Crime Commission has jurisdiction over all universities in Western Australia³. The Vice Chancellors are all required to notify the Commission of matters which concern or may concern misconduct. In the early life of the Commission there was little engagement with the sector and the number of notifications relative to the number of employees was low. It should be recognised that there is no 'correct' number of notifications but generally one would expect to see significantly more notifications than have been received from a sector which employs approximately 10,000 people. In 2006 the Commission received less than 10 notifications from the sector. In recent years the level of engagement and notifications have increased, although the number of notifications remains relatively low.⁴

Despite the low level of notifications, the Commission has a good understanding of the risks in the sector. Regular meetings between Commission staff and the universities have provided a welcome opportunity for both parties to discuss misconduct risks and share information about the best ways to deal with those risks. The meetings also provide an opportunity for the Commission to get its message across about the importance of dealing with that risk and the legislative requirements placed on the universities by the *Corruption and Crime Commission Act 2003*. The Commission 'message' to universities about misconduct is best summed up by a quote from the Hon. Len Roberts-Smith. In the same speech referred to earlier he said:

*... having comprehensive policies and procedures for managing misconduct which are understood and effective is just as important as delivering key educational outputs. Why? Because when staff engage in corruption or other forms of misconduct it can have a devastating effect on the reputation of the institution and the school involved, the individual and their work colleagues. The publicity resulting from a single action can have significant financial implications and seriously damage the reputation of an institution built up over many years by the hard work of hundreds of people.*⁵

The two investigations highlighted in this paper well illustrate this point.

2. COMMISSION INVESTIGATIONS

2.1. Allegations against a Sessional Academic⁶

In early 2009 Curtin notified the Commission of an allegation against a sessional academic employed at the Curtin Business School. The allegation was that the sessional academic had used his position to bring pressure to bear on a female international student by seeking sexual favours in exchange for higher marks. The Commission commenced an investigation soon after receiving the notification from Curtin.

In the early stages of its investigation, the Commission became aware of three similar allegations against the same sessional academic from other international students. Two of these matters were

identified as a result of the Commission's enquiries and the third allegation came to the Commission's attention through a further notification from Curtin. The investigation culminated in private hearings with the victims and the sessional academic. The Commission also took evidence from a number of University staff responsible for dealing with complaints and misconduct issues.

The investigation revealed that the sessional academic had used social media to target young attractive female students. Some of those students were struggling to pass a course run by the sessional academic and were therefore particularly vulnerable to pressure from him. The sessional academic arranged to meet with the students one on one, ostensibly to talk about their performance in the course. During those meetings, his real purpose became clear. The sessional academic said that he could be 'persuaded' to improve their marks. Although he did not directly ask for sex his meaning was clear to the students. None of the students agreed to his suggestions but they were placed under enormous pressure to do so and they all understood the consequences of not complying. In fact, the investigation revealed that in at least two cases he had reduced the marks of students because they had, in his view, 'jilted' him.⁷

2.2 Report and Recommendations

The Commission published a report on its investigation in September 2010. In that report the Commission expressed the opinion that the sessional academic had engaged in five acts of serious misconduct by corruptly taking advantage of his employment to seek a benefit and cause a detriment. In three of those matters, the sessional academic attempted to take advantage of his position by seeking sexual favours from students. In the other two, he had reduced the marks of students because of a personal grievance he had with the students.

The report also considered relevant policies and systems and made five recommendations:

1. The Commission's investigation pointed to a number of concerns about the support provided to overseas students, particularly those from non-English speaking backgrounds. These risks are not new. The Baird Report into the Review of Education Services for Overseas Students,⁸ and prior to that the *Good Practice Guide for English Language Proficiency for International Students in Australian Universities*, noted concerns about low English language entry requirements and poor social inclusion of students in their institutions and the broader community. The Baird Report concluded that international students need ongoing access to comprehensive orientation information and programs. The Commission's report suggested that more needed to be done to implement the recommendations of the Baird Report.
2. The investigation highlighted a lack of control over the student assessment process. Specifically, it found that the sessional academic was not required to keep a record of his marking spreadsheet, his records were not checked and he was not required to justify any adjustments he made.
3. The investigation also highlighted deficiencies in the Business School's employment, orientation and supervision of sessional staff. During the investigation the University commenced an external review of operations of the Business School. The Commission recommended that the review continue.
4. During the investigation the University announced that it would implement a centralised complaints management system, including clear, assessable and confidential reporting mechanisms, centralised reporting and recording, and centralised recording and review of investigations and outcomes. The Commission recommended continuation of this process.

5. That the University continue its review of practices, policies and procedures relating to staff recruitment to reduce misconduct risks identified in the report.

In making these recommendations, the Commission acknowledged that as soon as senior management at the University became aware of the allegations and the Commission's investigation, it acted very quickly to protect the victims and to address the systems and policy failures. The Commission also acknowledged that the Vice Chancellor and other University officers demonstrated an immediate and ongoing commitment to dealing with the systemic and other deficiencies which the investigation identified.

As part of the process of implementing the Commission's recommendations, Commission staff were invited to address the University executive shortly after the report was made public. The purpose of the meeting was to provide senior university staff with the opportunity to ask questions about the report and recommendations. Commission officers briefed the University staff on the investigation and more generally about the strategies needed to deal with misconduct risks.

2.3 Allegations of bribery in relation to the International English Language Testing System⁹

The International English Language Testing System (IELTS) is a widely used process to determine English language skills and competencies. The system is used by the Commonwealth Department of Immigration and Citizenship for the purpose of English language requirements and visa applications, including skilled migrant visas. It is also used by educational institutions in Australia to determine eligibility for enrolment. The IELTS was developed by Cambridge University and in Australia is jointly managed through the British Council, Cambridge University and IELTS Australia. Until recently Curtin held a contract with IELTS Australia to conduct and assess the tests at the Curtin English Language Centre (CELC) where each applicant was charged \$317 for taking the test. There are 40 such centres in Australia and the test is used in over 130 countries.

The IELTS assesses English language across a range of competencies, including reading, writing, speaking and listening. IELTS is scored on a nine band scale with each band corresponding to a specified competence in English. From those bands an overall score is developed. This overall score is used by the Department of Immigration and Citizenship to determine visa eligibility. Different visas require different scores but generally the minimum requirement is a score of six.

Once again, Curtin notified the Commission about the suspected misconduct. Curtin had been notified of irregularities in test scores following a routine review of scores from the CELC by IELTS in the UK. Following that advice, staff at CELC compared the marks on test papers to those recorded online and found that marks may have been changed by staff at the CELC. This information prompted a notification to the Commission. Soon after the Commission commenced an investigation.

The Commission conducted public hearings into the matter in March 2011. The Commission was told that a former Curtin employee received money to falsify test scores and that some candidates paid between \$1,500 and \$11,000 to have their scores altered. Most of the payments were made through intermediaries rather than direct to the former employee. To date nine people have been convicted of 59 bribery charges and received penalties ranging from fines to imprisonment. Recently, a tenth person was charged and the University has announced the closure of the testing centre.

How and why did this happen? In simple terms, a coordinator employed by the Curtin English Language Centre was able to access the IELTS database using the logon details of other staff members and make changes to test results. It was clear from the public hearings that password sharing was a common practice among some staff at the Centre and this was the immediate reason for most of what followed. It would appear that this arrangement arose because staff at the CELC experienced difficulties with the IELTS software which would sometimes crash or freeze. If a staff member was logged onto the system when this happened, the software would not allow the same user to log on again. To overcome this problem, staff would share logon details including passwords. This arrangement provided an opportunity for the coordinator to logon using another user's details to access and alter test results.

Although password sharing was the immediate cause of the misconduct, the public hearings pointed to two broader issues. The first relates to risk appreciation and assessment. Curtin's policy prohibiting the sharing of passwords has been in place since 2005. It would appear from evidence given to the Commission at the public hearing that staff at the CELC were aware that password sharing was contrary to policy because efforts were made to hide the practice from auditors. What they did not properly appreciate was the potential significance of that risk. Staff trusted each other to do the right thing and simply did not believe that one of their colleagues would do such a thing.

The second and perhaps more significant problem relates to organisational commitment. It would be easy to blame those individuals and to say that they should have paid more attention to misconduct risks. However, responsibility for dealing with misconduct is as much about organisational commitment as it is about individual commitment. Both this case and the previous case suggest that the time Curtin did not have the necessary organisational commitment to identify and deal with misconduct. Fortunately, Curtin acted very quickly and comprehensively to address this issue. Since the investigation Curtin has:

1. established a Professional Standards and Conduct Unit. The Unit has responsibility for dealing with complaints and reports of misconduct. The Unit is also charged with promoting an ethical culture across the University; and
2. commenced a process of ensuring that all staff are aware of the Code of Conduct and its requirements.

These steps show that Curtin is taking significant steps in making staff aware of misconduct issues and better equipping the University to deal with such issues. From the Commission's perspective these steps have been very welcome.

It would be wrong for anyone to conclude that these issues are isolated to Curtin. As previously noted, the misconduct risks in the university sector are significant and have been well known for some time. In my view, what has been missing is a willingness to respond to those risks in a comprehensive and committed way.

3. THE CHALLENGES FOR THE SECTOR

These cases suggest that although significant improvements have been made to the way universities deal with misconduct there is much still to be done. The Commission likes to say that dealing with misconduct cannot be an add-on to an organisation. It needs to be part of core business. This is because the only effective way to deal with misconduct risks requires organisational and individual commitment. That message needs to be clearly and consistently articulated by the senior executives to the rest of the organisation. An organisation also needs to develop the capacity to identify and deal with allegations of misconduct. Perhaps more importantly, it also needs, understand and properly respond to misconduct risks. As the cases demonstrate, the risks were understood but the level of trust was such that no one really believed that these individuals would act in such a way.

I am pleased to say that in recent years the university sector in Western Australia, and Curtin in particular, has taken some significant steps to dealing with the issue of misconduct; however, there is much still to be done. In my view, the greatest challenge for the sector will be sustaining that development into the future.

4. REFERENCES

- [1] The Independent Commission Against Corruption; *Degrees of Risk, A corruption risk profile of the New South Wales university sector.* (2002)
- [2] Roberts-Smith, Hon. L.W., Corruption and Crime Commission; *Address to Curtin University's Senior Managers.* (2010)
- [3] There is a question over the Commission's jurisdiction over Notre Dame University (NDU) that has yet to be judicially settled. By agreement, NDU notifies the Commission of suspected misconduct by public officers at the university.
- [4] Corruption and Crime Commission; *Report on the Investigation of Alleged Public Sector Misconduct by Dr Nasrul Ali as a Sessional Academic Employed by Curtin University of Technology (Report on Sessional Academic).* (2010), p.81
- [5] Roberts-Smith, Hon. LW., op cit.
- [6] Corruption and Crime Commission; *Report on Sessional Academic,* op cit.
- [7] Corruption and Crime Commission; *Report on Sessional Academic,* op cit. p.80
- [8] *Stronger, Simpler, Smarter ESOS, Supporting International Students - Review of the Education for Overseas Students (ESOS) Act 2000.* Australian Education International Website, www.aei.gov.au.
- [9] Corruption and Crime Commission, Transcript of Proceedings, Public Examination, 21 March 2011.