



CORRUPTION AND CRIME COMMISSION

REPORT ON THE INVESTIGATION OF ALLEGED PUBLIC SECTOR MISCONDUCT BY DR NASRUL AMEER ALI AS A SESSIONAL ACADEMIC EMPLOYED BY CURTIN UNIVERSITY OF TECHNOLOGY

2 September 2010

ISBN: 978 0 9805052 2 1

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CORRUPTION AND CRIME COMMISSION

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Clerk of the Legislative Council
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Mr Peter John McHugh
Clerk of the Legislative Assembly
Parliament House
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Dear Mr Peacock
Dear Mr McHugh

As neither House of Parliament is presently sitting, in accordance with section 93 of the *Corruption and Crime Commission Act 2003* ("the CCC Act"), the Commission hereby transmits to you a copy of the *Corruption and Crime Commission Report on the Investigation of Alleged Public Sector Misconduct by Dr Nasrul Ameer Ali as a Sessional Academic Employed by Curtin University of Technology*.

The Commission notes that under section 93(3) of the Act a copy of a report transmitted to a Clerk of a House is to be regarded as having been laid before that House.

Yours faithfully

A handwritten signature in black ink that reads "Len Roberts-Smith".

The Hon. LW Roberts-Smith, RFD, QC
COMMISSIONER

2 September 2010

ABBREVIATIONS AND ACRONYMS

AUQA	Australian Universities Quality Agency
AVCC	Australian Vice-Chancellors' Committee ¹
CBS	Curtin Business School, Curtin University of Technology
“the CCC Act”	<i>Corruption and Crime Commission Act 2003</i>
“the Commission”	Corruption and Crime Commission
CRICOS	Commonwealth Register of Institutions and Courses for Overseas Students ²
“Curtin University”	Curtin University of Technology
DEEWR	Department of Education, Employment and Workplace Relations, Commonwealth
DIAC	Department of Immigration and Citizenship
“Dr Ali”	Dr Nasrul Ameer Ali
ESOS	Education Services for Overseas Students
“the ESOS Act”	<i>Education Services for Overseas Students Act 2000</i>
GCM	Graduate Certificate of Management, Curtin University of Technology
“the Guild”	Curtin Student Guild
HR	Human Resources
ICAC	Independent Commission Against Corruption
MIB	Master of International Business, Curtin University of Technology
PC	Pass Conceded (or Conceded Pass)
(“the PSM Act”)	<i>Public Sector Management Act 1994</i>
“the University”	Curtin University of Technology
VROI	Video Record of Interview

¹ The Australian Vice-Chancellors' Committee (AVCC) was established in May 1920 and was comprised of the Vice-Chancellors of the then six universities in Australia. In 1966 the AVCC Secretariat was relocated from Melbourne to Canberra. Universities Australia was established on 22 May 2007, replacing the AVCC. Universities Australia represents Australia's 39 universities in the public interest, both nationally and internationally. Members of Universities Australia are the universities, represented by their Chief Executive Officer, the Vice-Chancellor. Australian Universities Website, <http://www.universitiesaustralia.edu.au>, viewed 20 July 2010.

² Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS), Department of Education, Employment and Workplace Relations (DEEWR), is the official Australian Government Website that lists all Australian education providers that offer courses to persons studying in Australia on student visas, and the courses offered by those providers. DEEWR Website, <http://cricos.deewr.gov.au/?Redirect=Y>, viewed 20 July 2010.

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EXECUTIVE SUMMARY

Introduction

- [1] In June 2009 the Corruption and Crime Commission (“the Commission”) began an investigation as the result of an allegation against a sessional academic at Curtin University of Technology (“Curtin University” or “the University”).
- [2] The allegation was that Dr Nasrul Ameer Ali (“Dr Ali”) sought to use his position at the University to bring pressure to bear upon a female international student by seeking sexual favours from her in exchange for a higher mark.
- [3] As the investigation progressed it revealed that there were three students who complained of that experience, and another female student who was denied an increased mark by Dr Ali because he felt he had a grievance against her.
- [4] None of these four complainants wished to be identified. The Commission has therefore referred to them in this report as Complainant 1, Complainant 2, Complainant 3 and Complainant 4.
- [5] Where it has been necessary for reasons of privacy to refer to other individuals whose names should not be disclosed in this report the Commission has referred to them using alpha-numeric codes (for example, S1 and S2 for Student 1 and Student 2).

Investigation of Misconduct

- [6] The Commission investigation into alleged misconduct by a public officer is not like a police investigation of an alleged criminal offence. A police investigation would be concerned only to ascertain whether or not there was evidence, admissible in a court of law, that an offence had been committed. Once the police investigation demonstrated that there either was, or was not, the investigation would be concluded – and criminal charges either preferred or not.
- [7] A Commission investigation is quite different. “Misconduct” as defined in section 4 of the *Corruption and Crime Commission Act 2003* (“the CCC Act”) may involve possible criminal offences, but often may involve conduct which would not constitute criminal offences.
- [8] Also importantly, the investigative role of the Commission is to determine and expose the facts, rather than “prove a case”. So as to be able to achieve that, the Commission is not bound by the rules of evidence which apply to a court of law and it is required to form its opinions on the balance of probabilities. It follows that evidence or other material upon which the Commission can lawfully and properly rely for an opinion that a public officer has engaged in misconduct – even if that were to possibly involve a

criminal offence – would often not be legally admissible in evidence in a criminal prosecution in a court.

- [9] By contrast, if criminal charges were to be laid, the court would be able to act only on evidence admissible under the rules of evidence, and could not find the charges proved unless satisfied of them beyond reasonable doubt.
- [10] The Commission must bear all of these differences in mind when assessing evidence, forming its opinions and making its recommendations.
- [11] The most significant purpose of the CCC Act (and so of the Commission) is to help public authorities to deal effectively and appropriately with misconduct by increasing their capacity to do so.¹
- [12] At the same time it retains power to itself to investigate cases of misconduct, particularly “serious misconduct”.²
- [13] In its function of helping to prevent misconduct in the public sector, the Commission may (amongst other things) analyse the results of its investigations and of systems within public authorities to prevent misconduct and report on ways to prevent misconduct.³
- [14] In this instance the Commission conducted a misconduct investigation and a review and analysis of Curtin University’s corruption and misconduct systems, and the factors which enabled the conduct which occurred here to happen.
- [15] The Commission’s misconduct investigation involved standard investigative techniques, as well as compulsory notices under the CCC Act to produce documents or to answer questions, search warrants and compulsory private examination of individuals. It would not have been possible to establish what had occurred here by ordinary investigative means.

Allegations

Complainant 1: Allegation that Dr Ali Used His Position to Gain a Benefit

- [16] Complainant 1 is a Chinese National and at the time of making the allegation was 24 years of age. She entered Australia in 2007 on a student visa to study at Curtin University and enrolled in a Graduate Certificate of Management (GCM). GCM is a prerequisite to entering into a Master of International Business (MIB).
- [17] One of the core units of GCM was Finance (International) 573 and in 2008 Complainant 1 failed it. As a result she was classed by Curtin University as an extension student, thus enabling her to repeat her Finance unit whilst moving on to study three units in MIB. With the obligation on her to pass Finance in order to continue her studies, coupled with the consequential financial detriment to her family (the cost of the unit being

\$2,275, due again in order to repeat), enormous pressure was placed upon her.

- [18] Complainant 1 stated that on 22 April 2009 she received her mid-term examination mark which was 38/100 for Finance (International) 573. Having previously failed the unit her mark was of great concern to her. A second failure could ostensibly result in failing to complete her degree and lead to revocation of her student visa.
- [19] Complainant 1 sought a meeting with Dr Ali to discuss her mid-term examination mark. It was not unusual for students and lecturers to have such discussions.
- [20] In this instance, however, the discussion soon turned to the possibility that her paper could be “marked up” by Dr Ali, if she could think of something to persuade him to do that. He rejected her suggestions of academic options and talk of gifts or money. He asked her to think of something else.
- [21] There were several uncomfortable silences in the conversation. These silences and the inferences to “convincing him” to change the mark led her to believe he wanted something sexual in nature in return for a higher mark. However, she avoided confronting him on that issue by continuing to proffer academic solutions only. Eventually, after long periods of silence she was able to remove herself by telling him her friend was waiting for her.
- [22] After the incident Complainant 1 immediately told her boyfriend about what had happened. She was visibly upset. Her boyfriend (Mr A) advised her to type up notes of the conversation she had had with Dr Ali. She did so when she went home that night.
- [23] Complainant 1’s cultural orientation meant she held lecturers in high respect; they were not someone she could easily make a complaint about so reporting what had happened presented some difficulties for her. She was not sure who to report it to and worried that her account would not be believed against that of such a highly respected person as Dr Ali.
- [24] On 28 April 2009, at the insistence of Mr A, Complainant 1 reported her conversation with Dr Ali to a Student Assist Officer at the Curtin Student Guild.³ On the advice of the Student Assist Officer Complainant 1 and Mr A met with the University Grievance Resolution Officer. Subsequent to this meeting Complainant 1 wrote a formal letter of complaint to the Acting Head of the School of Economics and Finance, with a copy being forwarded to the Grievance Resolution Officer. The letter of complaint was sent to the Acting Head of School on 13 May 2009, with a copy of Complainant 1’s contemporaneous notes of her meeting with Dr Ali on 23

³ Student Assist (Curtin Student Guild) provides support to, and advocacy and referral services for, all enrolled students at Curtin University, in relation to difficulties being experienced in personal, welfare or academic areas.

April 2009 attached. The Commission was notified of the complaint on 25 May 2009 by the Curtin University Integrity and Standards Officer. The notification was received by the Commission on 28 May 2010.⁴

- [25] Complainant 1 was not willing to pursue the matter criminally. However, she appeared at the Commission on 10 March 2010 where she gave evidence in a private examination. With the aid of a Mandarin interpreter Complainant 1 detailed the allegations she had made and confirmed the account she had given in her statement.

Complainant 2: Allegation that Dr Ali Used His Position to Gain a Benefit

- [26] Complainant 2 is also a Chinese National and at the time of making the allegation was 22 years of age. She entered Australia in March 2007 on a student visa enrolling at Curtin University to study Global Economics and Finance.
- [27] One of the course core units was Finance (Portfolio Management) 301, a unit she had failed in Summer School and was repeating in Semester One, 2009, her final year. Her unit coordinator was Dr Ali, who she first met in March 2009 when he had assisted her with a late re-enrolment in the unit. With the obligation on her to pass Finance (Portfolio Management) 301 to pass her course, coupled with the consequential financial detriment to her family, enormous pressure was placed upon her.
- [28] Complainant 2 stated that on 17 June 2009 Dr Ali telephoned her on her personal mobile phone and arranged to meet her at the University to discuss her final examination mark for Finance (Portfolio Management) 301. The official date for release of final examination marks was not until 8 July 2009 and it was unusual to learn about an examination mark prior to the official release date.
- [29] Dr Ali met with Complainant 2 and told her that her final examination mark of 43/100 meant she would fail the unit. He told her that there were some options: retake the unit in Australia (she told him that was not possible because her student visa expired in August 2009); retake the unit in China (she was reluctant to do this); he could scale the marks so that she passed the unit; or she could wait for the Board of Examiners to approve a conceded pass. Complainant 2 told Dr Ali her preference would be for one of the latter two options.
- [30] As Dr Ali was constrained for time at the first meeting, he told Complainant 2 that he would like to meet her that evening. At that meeting Dr Ali again asked Complainant 2 how she could convince him to change her examination mark. She offered him academic options: a conceded pass (which required approval by the Board of Examiners); scaling marks; or a “pop quiz”. Dr Ali did not accept any of these options. He asked her to think of something “non-academic” between him and her. This is when Complainant 2 believed he was asking her to do something related to “immoral trade” like sex and so she continued to give him academic

solutions. At this time Complainant 2 became increasingly concerned for her welfare.

- [31] Dr Ali told Complainant 2 that it was a matter of making her feel comfortable with it and that there was one thing he would consider that she would not even know about, but at no stage did he say expressly what he meant. Dr Ali continued telling Complainant 2 that he could think of something but didn't know if she would. Complainant 2 interpreted this to mean sex or something similar in nature, so in an attempt to change the subject she talked about other students buying examination papers and cheating. They walked to the elevator and the conversation ended.
- [32] Complainant 2's cultural orientation, like Complainant 1, meant she held lecturers in high respect; they were not someone she could easily make a complaint about so reporting what had happened presented some difficulties for her. She was not sure who to report it to and worried that her account would not be believed against that of Dr Ali's. She considered going to the Western Australia Police, but felt it would be her word against his and no one would believe her. Her motivation to report the matter was to stop it happening to someone else and because she did not think he should be able to get away with it.
- [33] On 19 June 2009 Complainant 2 reported her conversation to Mr Desmond Pegrum, Business School Planning and Resource Coordinator. Mr Pegrum advised her to speak with Ms Joanna Watts, a Student Advisor and a Personal Assistant to the Dean of Students at the Business School.
- [34] Complainant 2 was not willing to pursue the matter criminally and, although she had made a formal statement to the Commission, did not appear at the Commission's private examinations, having already returned to China in October 2009. She did, however, produce an MP3 recording, of the conversation that she had had with Dr Ali on 17 June 2009, to the Commission. Complainant 2 did not disclose the existence of the MP3 recording to any person from Curtin University because she did not know who to trust.

Complainant 3: Allegation that Dr Ali Used His Position to Gain a Benefit

- [35] Complainant 3 is also a Chinese National and at the time of making the allegation was 20 years of age. She entered Australia in July 2008 on a student visa enrolling at Curtin University to study for a Bachelor of Commerce (Finance and Accounting).
- [36] Complainant 3 told the Commission that she was a student in Dr Ali's 2009 Semester One Finance (Portfolio Management) 301 class. On Wednesday 13 May 2009, the day the group assignment was handed back, Dr Ali approached her about a letter he had received from two classmates in her assignment group, complaining about Complainant 3's lack of contribution to the group.

- [37] On Friday 15 May 2009 Dr Ali called Complainant 3, arranging to meet her at a suburban McDonalds at about 7:00 p.m. Complainant 3 attended the meeting with her boyfriend (Mr H), who waited for her in the nearby Chicken Treat store whilst she waited in McDonalds. When Dr Ali arrived she met him outside McDonalds. He showed her the letter he had received from the other members of the assignment group. Dr Ali told her McDonalds was too noisy, and that he lived within walking distance and it would be better to go to his house to discuss the letter.
- [38] At Dr Ali's house they sat on a couch in the lounge room and discussed the content of the letter and the difficulties that Complainant 3 had with the unit. She told him that not everything in the letter was correct and that she had tried really hard as a member of the group working on the assignment. He told her that she would need his help otherwise she would fail the unit.
- [39] Dr Ali asked Complainant 3 how a Chinese student would normally have satisfied a Chinese teacher, to which Complainant 3 responded by telling him a Chinese student would try to be a good student and get good grades. According to Complainant 3, it was then that he told her that she could live with him. At this time Dr Ali had his arm along the back of the couch behind Complainant 3 which made her feel uncomfortable.
- [40] Complainant 3 tried to make light of the situation because the conversation seemed to be leading towards her giving Dr Ali something in exchange for an increase in her mark and she was scared because it seemed he wanted her to have sex or similar with him. She wanted to leave but didn't know how. Eventually after a period of silence she told him "I can't today because it's my boyfriend's birthday". Dr Ali said he wanted her to try and satisfy him, that he wanted her to stay the night. She told him that she did not have time.
- [41] After continued periods of long silence, Complainant 3 stood and told Dr Ali that she had to go and she would see him next time. Complainant 3's understanding from their conversation was that if she had sex with him she would not lose marks on her assignment.
- [42] Complainant 3 did not attend any more of Dr Ali's lectures and it was not until she received a telephone call from S1, one of two other students with whom she worked on the group assignment, that she met with Dr Ali again. She was at home when she received the call from S1 who told her that Dr Ali wanted to speak with her. Complainant 3 reluctantly agreed to meet with Dr Ali that evening at 9:30 p.m. in the hope that she could reason with him in order to pass the assignment.
- [43] They sat in Dr Ali's parked car, after discovering the buildings at Curtin University were closed. Dr Ali continued to indicate that he wanted something in exchange and he was eager to discuss a time and place to meet again. Complainant 3 believed he wanted to have sex with her. Eventually she agreed to meet him at Cottesloe after work, the following Thursday evening. Dr Ali told her that if she did meet him he would raise her mark and give her the examination paper and answers as well so that

she would definitely pass the unit. If she did not meet with him, she would not pass the unit.

- [44] Dr Ali told her to send him an email asking to make an appointment to see him, suggesting the date and time they had agreed so that the University would not be suspicious, if anyone else saw the email. He told her that if he did not receive the email by Thursday then he would not help her and she would fail the unit. Complainant 3 did not send the email and did not attend work on the Thursday evening for fear of having to meet with Dr Ali again. Complainant 3's fear of Dr Ali was so great that it caused her to suffer from a medical condition [suppressed] whenever she thought about or discussed the incident. She had paid full upfront fees of \$2,500 for the unit and was too frightened to sit the final examination, which resulted in her failing the unit.

Complainant 4: Allegation that Dr Ali Used His Position to Cause a Detriment

- [45] Complainant 4 told the Commission that in class Dr Ali was always friendly and casual towards her. During Summer School he emailed her about a trip he had planned to take to Kuala Lumpur, Malaysia. Complainant 4 was from Malaysia and he asked her if she would meet him for a drink to discuss Kuala Lumpur. Complainant 4 did not feel comfortable with this arrangement and initially rejected his offer saying she was busy. However, eventually she agreed to meet one evening, at a cafe where they talked about Malaysia. Dr Ali wanted her to meet with him and show him around when they were there.
- [46] Complainant 4 travelled to her home town in Malaysia for five days. However, she did not tell Dr Ali. It was after this trip that Dr Ali changed his behaviour towards her. He was no longer so friendly and hardly spoke to her, a noticeable difference from his friendly behaviour prior to her trip.
- [47] Of concern to Complainant 4 was a group assignment mark she received in her 2009 Semester One class, a unit she was repeating after failing in Summer School 2009. Dr Ali returned her group's assignment with notable changes in the final mark, amounting to a loss of over 20 marks. Although the final mark had been crossed out, it appeared that it had been changed from 73 to 50/100. The assignment group was comprised of three members, the other two were S3 and S4.
- [48] Further inquiries revealed the assignment had originally been marked by a tutor and re-marked by Dr Ali as unit coordinator. Commission Investigators obtained Complainant 4's original group assignment and sought the assistance of Curtin University staff to have it re-marked. A copy of the original assignment was made deleting any markings and student names, and handed to Associate Professor Alles Lakshamn, Department of Finance and Banking, Curtin Business School, School of Economics and Finance, for re-marking. Associate Professor Lakshamn re-marked the assignment at 88/100, substantially different to Dr Ali's adjusted mark of 50/100.⁵

- [49] There were three assessments each carrying different weighting to make up the final grade for Finance (Portfolio Management) 301.⁶ The mark of 50/100 contributed to Complainant 4's final overall percentage for the unit of 45% which resulted in a fail. However, a conceded pass was approved by the Board of Examiners, which is recorded on Complainant 4's Academic Transcript as a PC ("Pass Conceded").
- [50] Of 257 students assessed in the unit, 29 students who received final marks between 41% and 45% had their marks adjusted by Dr Ali to pass the unit with a final mark of 50%, thus avoiding the need for the Board of Examiners to approve a conceded pass. By avoiding this process these students received a pass indicated on their academic records as P, as distinct from PC.
- [51] Whilst concerned about her assignment mark, Complainant 4 did not seek a conceded pass and was not aware that Dr Ali knew of her trip to Malaysia.

Assessment of Evidence by Complainants

- [52] The accounts given by Complainants 1, 2 and 3 bear striking similarities which the Commission is satisfied are not the product of any discussions between them, nor any joint experience.
- [53] Their individual accounts are internally consistent and logical. They are supported by the evidence of others to whom they made contemporaneous complaints and who observed their distress and anxiety following their contacts with Dr Ali.
- [54] It is apparent these three complainants were responding to pressure by Dr Ali. Each was embarrassed and upset by the idea of sex in this context.
- [55] Having seen and heard their evidence, the Commission is satisfied it is not likely that these complainants would offer sex to Dr Ali and does not accept Dr Ali's evidence insofar as he suggested otherwise. Dr Ali presented as evasive and obfuscatory. He was less than frank and sought to play down both what he said to the complainants and what he was seeking from them.
- [56] He initially denied he said anything to any of them which could reasonably have given an impression he would change their marks if they had sex with him. Ultimately, however, he agreed not only that he did so, but that in fact was precisely what he intended them to understand. He qualified his position then, by saying he only wanted to see if they would agree, but he never had any intention of following through.
- [57] Having weighed all the evidence, the Commission is satisfied that the events occurred as described by each of these three complainants and that the perception of each of Complainants 1, 2 and 3, that Dr Ali was pressuring her to have sex with him in exchange for giving higher marks, was accurate. That was exactly what he was trying to convey.

[58] In relation to Complainant 4, the Commission is satisfied by the evidence, particularly of Mr Sherwant Singh Gill, an academic colleague, S5, a student, and Dr Ali himself (considered in detail in Chapter Two of this report), that Dr Ali deliberately used his position to disadvantage her on two occasions because he was angry with her for “jilting” him in connection with his trip to Malaysia.

Commission Opinions

[59] It is the opinion of the Commission that:

- in April 2009 Dr Nasrul Ameer Ali, then a sessional academic in the Curtin Business School at Curtin University of Technology, engaged in serious misconduct under section 4(b) of the CCC Act in that he corruptly took advantage of his employment as a public officer to obtain a benefit for himself by seeking sexual favours from a female foreign student of his (Complainant 1) in exchange for awarding her a higher mark in her mid-term examination;
- between May and June 2009 Dr Nasrul Ameer Ali, then a lecturer in the Curtin Business School at Curtin University of Technology, engaged in serious misconduct under section 4(b) of the CCC Act in that he corruptly took advantage of his employment as a public officer to obtain a benefit for himself by seeking sexual favours from a female foreign student of his (Complainant 3) in exchange for awarding her a higher mark for her group assignment;
- between June and July 2009 Dr Nasrul Ameer Ali, then an academic unit coordinator in the Curtin Business School at Curtin University of Technology, engaged in serious misconduct under section 4(b) of the CCC Act in that he corruptly took advantage of his employment as a public officer to obtain a benefit for himself by seeking sexual favours from a female foreign student of his (Complainant 2) in exchange for awarding her a higher mark in her semester final examination;
- in 2009 Dr Nasrul Ameer Ali, then an academic unit coordinator in the Curtin Business School at Curtin University of Technology, engaged in serious misconduct under section 4(b) of the CCC Act in that he corruptly took advantage of his employment as a public officer to cause a detriment to a female student of his (Complainant 4) by reducing a group assignment mark from approximately 73% to 50%, because of a personal grievance he felt towards her; and
- in 2009 Dr Nasrul Ameer Ali, then an academic unit coordinator in the Curtin Business School at Curtin University of Technology, engaged in serious misconduct under section 4(b) of the CCC Act in that he corruptly took advantage of his employment as a public officer to cause a detriment to a female student of his (Complainant 4) by not exercising his discretion to increase her final examination mark from 45% to 50%, solely because of a personal grievance he felt towards her, in circumstances in which he agreed he otherwise would have done so.

Managing Misconduct: Systemic Issues

- [60] At the time of Dr Ali's employment and his misconduct, Curtin University did not have systems in place that ensured that Dr Ali was appropriately selected, as a sessional tutor, lecturer and later unit coordinator, with the necessary checks and safeguards, provided with the necessary orientation and training, and was adequately supervised with formal performance appraisals, and otherwise supported by his employer.
- [61] Further, the systems and procedures at Curtin University and the Curtin Business School failed to meet the needs of these overseas students in adjusting to studying in a new country, in another language and to living in a different culture. There was a lack of protection and recourse afforded to these overseas students who were in a largely powerless situation when they were sexually pressured by Dr Ali.
- [62] These systems and policy failures created a number of misconduct risk areas which can essentially be classified as those associated with:
- full fee-paying overseas students;
 - Curtin Business School culture and practice;
 - policy gaps;
 - orientation and training for sessional academics;
 - Curtin University policies and practices; and
 - social networking websites.
- [63] The Commission acknowledges that as soon as the senior management of the University became aware of the Commission investigation and the purpose of it they acted very quickly and proactively to protect the victims and to address the system and policy failures. The Vice-Chancellor, and other Curtin University officers with whom the Commission was liaising, demonstrated an immediate and ongoing commitment to recognising the systemic and other deficiencies which this situation identified, and to putting appropriate measures in place to deal with them.
- [64] There is a significant power imbalance between a student and university lecturer who has control over the assessment of units. This imbalance is always present, and there is an ever present risk that it will be exploited. Universities rely on the integrity of their staff and reinforce that integrity with staff orientation and training. In other words, they trust their academic staff to not exploit their power.
- [65] Full fee-paying overseas students, in contrast to locally-based students, pay much higher fees and have many other costs associated with their study in Australia. Research by Sawir *et al* published as *Loneliness and International Students: An Australian Study* states that overseas students:

... face a foreign language, study in a new setting, finances, accommodation, and day-to-day living problems, and they must negotiate an unfamiliar set of institutional rules. They often face issues of personal autonomy ... and the recreation of identity in a new setting. Often the physical and cultural environment is very different, with new social customs and norms. International students must establish themselves as foreigners staying for a time, as neither inside nor outside. They must deal with unpredictable encounters, idiosyncratic communications, and problems of racial discrimination, largely on their own ...⁷

- [66] The Commission investigation, and academic and government research, has demonstrated that for overseas students of Australian tertiary educational institutions lack of competency in English is a problem and a particular misconduct risk.
- [67] The three students' English skills were obviously affected by their stress at being at a Commission private examination, but the level of support required by two of the students to give evidence during the examination, and to communicate in English during the investigation, raises two issues. The first is that poor English language skills may have increased the difficulties the students faced in completing the necessary coursework, making them particularly vulnerable. The students' vulnerability brought them to the attention of Dr Ali, who discerned he could potentially benefit from their apprehension about their risk of failing and thus their risk of being notified to the Department of Immigration and Citizenship, which could adversely affect the continuation of their student visas.
- [68] The second concern is that the students' difficulties with English made it more difficult for them to ascertain what action they could take in response to Dr Ali's actions. It was clear from their evidence that they did not know who to approach nor from whom they could seek guidance. This acted to increase their sense of powerlessness.
- [69] The issue of vulnerability of overseas students caused by a lack of English language proficiency is also an evident concern of the Australian Government which has addressed the issue in a number of reports.
- [70] Those reports produced good practice principles developed in consultation with Australian universities and other relevant stakeholders. Those principles are –
1. *Universities are responsible for ensuring that their students are sufficiently competent in the English language to participate effectively in their university studies.*
 2. *Resourcing for English language development is adequate to meet students' needs throughout their studies.*
 3. *Students have responsibilities for further developing their English language proficiency during their study at university and are advised of these responsibilities prior to enrolment.*

4. *Universities ensure that the English language entry pathways they approve for the admission of students enable these students to participate effectively in their studies.*
5. *English language proficiency and communication skills are important graduate attributes for all students.*
6. *Development of English language proficiency is integrated with curriculum design, assessment practices and course delivery through a variety of methods.*
7. *Students' English language development needs are diagnosed early in their studies and addressed, with ongoing opportunities for self-assessment.*
8. *International students are supported from the outset to adapt to their academic, sociocultural and linguistic environments.*
9. *International students are encouraged and supported to enhance their English language development through effective social interaction on and off campus.*
10. *Universities use evidence from a variety of sources to monitor and improve their English language development activities.⁸*

[71] The Commission's investigation, and the apparent vulnerability of these students, raises questions about the extent to which Curtin University was:

- monitoring the academic performance of overseas students by entry pathway;
- paying attention to students' transition to university, with a concomitant emphasis on ensuring overseas students are better prepared for academic study;
- implementing or examining early diagnostic assessment of overseas students' English language development needs;
- monitoring overseas students' English language proficiency on completion of their course; and
- assessing the effectiveness of its cultural integration activities for overseas students.

[72] Other areas of misconduct risk identified by the Commission in this investigation include those listed below.

- A failure of the Curtin Business School orientation program to adequately inform these students about appropriate behaviour for students and academics, the complaints process and student liaison staff.

- The selection of sessional academics was not competitive, the pool of potential applicants was small and there was significant potential for patronage and favouritism.
- The vulnerability of the overseas students was compounded by the absence of checks and balances in the employment and supervision of Dr Ali by Curtin Business School. The exposure of the students was further compounded by the lack of controls and balances around unit assessment processes.
- The lack of controls and supervision of a sessional academic like Dr Ali, by the Curtin Business School, gave him the freedom and the opportunity, with little or no risk to himself, to abuse his position. The lack of checks and balances enabled him to offer, without risk to himself, to exchange an increase in marks, to change the overall assessment or to give access to an examination paper and answers for sexual favours. Again this systemic failure in the Curtin Business School exacerbated the vulnerability of these female overseas students.
- Dr Ali's behaviour brings into serious question the integrity of the student assessment process in the Curtin Business School. His actions were contrary to the procedures stipulated in the Curtin University *Assessment and Student Progression Manual*. Dr Ali's evidence suggested that he did not receive sufficient guidance in the form of training or induction, nor advice from a supervisor, to ensure that he was aware of and complied with student assessment policy and procedures. The Commission does not necessarily accept his evidence on that, but the practical utility of training requirements and the effective communication of policies are clearly areas which Curtin University needs to carefully examine.
- There were a number of gaps in the Curtin Business School policy regarding:
 1. group work and non-performing group members;
 2. staff providing private tutoring of students; and
 3. staff meeting students and meeting students off campus.

Each of these gaps in policy played a role in establishing and maintaining the vulnerability of the overseas students.

Outcomes

- [73] The Commission again acknowledges that as soon as the senior management of the University became aware of the Commission's investigation and the purpose of it they acted very quickly and proactively to protect the victims and to address the system and policy failures. The steps taken by Curtin University to address the concerns raised in this report are outlined in Chapter Six.

- [74] The Commission makes five recommendations for the purpose of addressing the deficiencies identified in this report, and to improve the prevention, detection, reporting and management of misconduct within Curtin University. These are outlined in Chapter Five.
- [75] Liaison between the Commission and Curtin University early in the investigation caused the University to institute a review of its systems, policies and procedures. The University commenced a comprehensive external review of the operations of the Curtin Business School. Several changes were implemented prior to the completion of the investigation and this report. These changes were described in the University's response to the Commission's notification of possible adverse matters, made pursuant to section 86 of the CCC Act, and are also outlined in Chapter Six.
- [76] However, it is the operationalisation of policy, the degree to which policy and procedures are embedded within the systems of an institution, and the will and commitment to create a misconduct resistant culture which ultimately will determine the extent to which an institution can detect and manage misconduct, and protect and maintain integrity.
- [77] Although the prompt and positive response by Curtin University to the recommendations made as a result of the Commission investigation, are commendable, the organisational change required to fully implement them, and to address the issues raised in this report, will take time. Therefore, it is the intention of the Commission to monitor the action taken by Curtin University to address the issues and implement the recommendations; monitoring which will occur within the context of an ongoing relationship between the Commission and Curtin University.

EXECUTIVE SUMMARY: ENDNOTES

¹ Section 7B(3) of the *Corruption and Crime Commission Act 2003*.

² Section 7B(3) of the *Corruption and Crime Commission Act 2003* (“the CCC Act”). “Serious misconduct” is defined in section 3(1) of the CCC Act.

³ Section 17(2)(ab), (ac) and (d) of the *Corruption and Crime Commission Act 2003*.

⁴ Letter to the Commissioner of 25 May 2009 from the Integrity and Standards Officer, Curtin University, with attachments (letter and contemporaneous notes) [CCC 69752].

⁵ Mr Felix Mo Foon Chan stated at a Commission private examination that Dr Nasrul Ameer Ali was “fully aware of [Professor] Lashman’s [sic: Lakshamn’s] expectations and marking key ... I find it interesting to see there’s such big differences in mark”. Transcript of Proceedings, Private Examination of Mr Felix Mo Foon Chan on 12 March 2010, p.425.

⁶ Spreadsheet of Master 301 results prepared by Dr Nasrul Ameer Ali [00920-2009-0143].

⁷ Sawir E, Marginson S, Deumert A, Nyland C, and Ramina G, (2007), *Loneliness and International Students: An Australian Study*. University of Melbourne Website, <http://www.cshe.unimelb.edu.au/pdfs/JSIE%20online%20Sawir%20et%20al%20loneliness.pdf>, viewed 19 August 2010.

⁸ “Good Practice Principles” as contained in the report entitled *Good Practice Principles for English Language Proficiency for International Students in Australian Universities* by the Australian Universities Quality Agency (AUQA), December 2008. Department of Education, Employment and Workplace Relations (DEEWR) Website, http://www.deewr.gov.au/HigherEducation/Publications/Documents/Final_Report-Good_Practice_Principles.pdf, viewed 19 August 2010.

CHAPTER ONE

INTRODUCTION

1.1 Background

- [1] The Corruption and Crime Commission (“the Commission”) investigation commenced with a notification from Curtin University of Technology (“Curtin University” or “the University”) made under section 28 of the *Corruption and Crime Commission Act 2003* (“the CCC Act”). The notification was of an allegation that Dr Nasrul Ameer Ali (“Dr Ali”), a sessional academic in the School of Economics and Finance within Curtin Business School, made inappropriate comments to a female international student, in a context of a possible increase in her mark.
- [2] Initial inquiries revealed this type of allegation may not have been an isolated incident and identified inadequate policies and procedures at Curtin University to deal with the reporting of such matters.

1.2 Allegation

- [3] Initial inquiries further revealed the allegation more particularly was that Dr Ali used his position in authority to gain a benefit, sexual or otherwise, in exchange for increasing a female student’s mid-term examination mark.

1.3 Scope and Purpose

- [4] The general scope and purpose of the Commission investigation was to determine whether Dr Ali, or any other public officer employed at Curtin University, had engaged, was engaging or may have engaged in misconduct, and to examine the policies and procedures regarding misconduct reporting at Curtin University.

1.4 Curtin Business School (Curtin University of Technology)

- [5] Curtin Business School is located at the Bentley Campus, Kent Street, of Curtin University, which operates out of 16 locations including seven regional centres and campuses in Sydney, Sarawak (Malaysia) and Singapore. The Bentley Campus is considered to be the main Curtin University Campus, offering the majority of courses available through Curtin University. Courses in humanities and business are offered in the regional centres, which include Albany, Armadale, Karratha and Port Hedland.¹
- [6] At the time that the allegation was made Dr Ali was engaged in a contract of employment with Curtin University as a sessional academic in the School of Economics and Finance (one of seven schools within the Business School Faculty).² Dr Ali’s position title ranged from tutor to lecturer to unit coordinator.³ As a sessional academic he was employed on a casual basis and paid on an hourly rate, in accordance with the

Curtin University of Technology Academic Staff Certified Agreement 2005-2008 based on activities undertaken, such as, marking, tutoring and lecturing. Dr Ali's contract could be terminated by way of notice of only one hour by either the University or himself.

1.5 Jurisdiction

[7] Investigation into the conduct of public officers falls within the jurisdiction of the Commission relevant to the following.

- The term "public officer" is defined within section 3 of the CCC Act by reference to section 1 of *The Criminal Code* and includes employees of Curtin, as employees of an authority established under a written law.⁴
- The allegations, if proved true, would fall within the jurisdiction of the Commission and would constitute "serious misconduct" under section 4(b) of the CCC Act, as defined by section 3.

[8] The Commission is an executive instrument of the Parliament (albeit an independent one). It is not an instrument of the government of the day, nor of any political or departmental interest. It must perform its functions under the CCC Act faithfully and impartially. The Commission cannot, and does not, have any agenda, political or otherwise, other than to comply with the requirements of the CCC Act.

1.6 Definition

1.6.1 Misconduct

[9] The term "misconduct" has a particular and specific meaning in the CCC Act and it is that meaning which the Commission must apply. Section 4 of the CCC Act states that:

Misconduct occurs if —

- a public officer corruptly acts or corruptly fails to act in the performance of the functions of the public officer's office or employment;*
- a public officer corruptly takes advantage of the public officer's office or employment as a public officer to obtain a benefit for himself or herself or for another person or to cause a detriment to any person;*
- a public officer whilst acting or purporting to act in his or her official capacity, commits an offence punishable by 2 or more years' imprisonment; or*
- a public officer engages in conduct that —*

- (i) *adversely affects, or could adversely affect, directly or indirectly, the honest or impartial performance of the functions of a public authority or public officer whether or not the public officer was acting in their public officer capacity at the time of engaging in the conduct;*
- (ii) *constitutes or involves the performance of his or her functions in a manner that is not honest or impartial;*
- (iii) *constitutes or involves a breach of the trust placed in the public officer by reason of his or her office or employment as a public officer; or*
- (iv) *involves the misuse of information or material that the public officer has acquired in connection with his or her functions as a public officer, whether the misuse is for the benefit of the public officer or the benefit or detriment of another person,*

and constitutes or could constitute —

- (v) *an offence against the “Statutory Corporations (Liability of Directors) Act 1996” or any other written law; or*
- (vi) *a disciplinary offence providing reasonable grounds for the termination of a person’s office or employment as a public service officer under the “Public Sector Management Act 1994” (whether or not the public officer to whom the allegation relates is a public service officer or is a person whose office or employment could be terminated on the grounds of such conduct).*

[10] Misconduct, as defined in section 4 of the CCC Act applies only to the conduct of public officers.

[11] In section 3 of the CCC Act “serious misconduct” is defined as “misconduct of a kind described in section 4(a), (b) or (c)”.

[12] Misconduct of a kind described in section 4(d)(i) – (iv) must not only involve the type of conduct described there, but must also be serious enough to meet the criteria set out in section 4(d)(v) or (vi).

[13] Section 4(d)(v) says that the conduct must be serious enough so that it constitutes, or could constitute, an offence against a written law.

[14] Section 4(d)(vi) is more complex. It says that the conduct must be serious enough so that it constitutes or could constitute “a disciplinary offence providing reasonable grounds for the termination of a person’s office or employment as a public service officer under the *Public Sector Management Act 1994* (whether or not the public officer to whom the

allegation relates is a public service officer or is a person whose office or employment could be terminated on the grounds of such conduct)".

[15] The words in brackets are important. They make it clear that where the public officer concerned is not an officer of the public service, and subject to the *Public Sector Management Act 1994* ("the PSM Act"), the test is notional – that is, although it cannot then apply directly, the Commission must assess the public officer's conduct against the objective criteria set out in the PSM Act, as if that person were a member of the public service.

[16] In Cox v Corruption and Crime Commission [2008] WASCA 199, Martin CJ at [63] stated that:

... [s]ection 4(d)(vi) [of the CCC Act] expressly provides that the definition of "misconduct" applies whether or not the public officer is a public service officer whose employment could be terminated on the grounds of a disciplinary offence under the PSMA [the PSM Act]. It is therefore clear that the conduct defined as "misconduct" by s 4(d) of the [CCC] Act is that which would provide reasonable grounds for termination if the public officer was liable to termination under the PSMA, irrespective of whether or not the public officer is so liable. In the case of a public officer who is not a public service officer covered by the PSMA, the definition imposes a hypothetical standard of conduct – the hypothesis being that the officer could in fact be liable to dismissal under the terms of the PSMA.

Steytler P at [116] stated that:

... there is nothing in s 4(d)(vi) of the CCC Act that requires the public officer in question to have been a public service officer under the PSM Act. That is made plain by the words "(whether or not the public officer to whom the allegation relates is a public service officer or is a person whose office or employment could be terminated on the grounds of such conduct)". It is consequently irrelevant whether Dr Cox was, or was not, a public service officer for the purpose of the PSM Act.

[17] General principles of official conduct are set out in section 9 of the PSM Act, which states that:

The principles of conduct that are to be observed by all public sector bodies and employees are that they –

(a) *are to comply with the provisions of –*

(i) *this Act and any other Act governing their conduct;*

(ii) *public sector standards and codes of ethics; and*

(iii) *any code of conduct applicable to the public sector body or employee concerned;*

(b) *are to act with integrity in the performance of official duties and are to be scrupulous in the use of official information, equipment and facilities; and*

(c) *are to exercise proper courtesy, consideration and sensitivity in their dealings with members of the public and employees.*

[18] Breaches of discipline are set out in section 80 of the PSM Act, which states that:

An employee who –

(a) *disobeys or disregards a lawful order;*

(b) *contravenes –*

(i) *any provision of this Act applicable to that employee;*
or

(ii) *any public sector standard or code of ethics;*

(c) *commits an act of misconduct;*

(d) *is negligent or careless in the performance of his or her functions; or*

(e) *commits an act of victimisation within the meaning of section 15 of the “Public Interest Disclosure Act 2003”,*

commits a breach of discipline.

[19] Section 80(e) was added on 1 July 2003 but otherwise the section has remained unchanged.

[20] A breach of discipline may be a minor breach or a serious breach. In order to be dismissed under section 86(3)(b)(vi) of the PSM Act a person must have committed a serious breach. The PSM Act does not provide criteria for determining whether a breach is minor or serious. The *Disciplinary Procedures Guide* produced by the Department of the Premier and Cabinet, Government of Western Australia, states (at paragraph 2.3) that: “Agencies must use their own judgement when determining if a breach is serious or minor in nature. Consideration should be given to the impact the breach of discipline has on the relationship of trust between the respondent and the employing authority, other employees and the general public”.⁵

[21] The *Disciplinary Procedures Guide* also states (at paragraph 4.9) that: “Serious breaches of discipline are difficult to define and in most cases a question of degree will be involved. An employing authority’s view is also likely to vary with the nature of the public sector body’s business and the position held by the respondent”.⁶

[22] A minor breach may be punished by a reprimand or a fine not exceeding 1 days pay or both, pursuant to section 83(1)(a)(i), (ii) or (iii) of the PSM Act.

[23] If a departmental investigating authority is of the opinion that a serious breach of discipline appears to have been committed, that authority shall

cause the public officer to be charged with that alleged breach pursuant to section 83(1)(b) of the PSM Act.

[24] The procedure for dealing with a charge of a serious breach of discipline is set out in section 86 of the PSM Act.

[25] The punishments which may be imposed where a charge of a serious breach of discipline is admitted and proved are set out in section 86(3)(b) of the PSM Act. Section 86(3)(b) states that:

... if a respondent admits a charge under subsection (2) and the employing authority finds the charge to be proved, the employing authority –

(b) may –

...

(vi) dismiss the respondent ...

[26] Where the public officer concerned is a Chief Executive Officer and the recommendation is for dismissal, the Minister shall so recommend to the Governor (section 89 of the PSM Act).

[27] It follows from the above, that not only must there be an identifiable (actual or possible) breach of discipline under the PSM Act for section 4(d)(vi) of the CCC Act to be brought into play, but it must be characterisable as a serious breach for the punishment of dismissal to be an option under section 86(3)(b)(vi) of the PSM Act.

1.7 Reporting by the Commission

[28] Under section 84(1) of the CCC Act the Commission may at any time prepare a report on any matter that has been the subject of an investigation or other action in respect of misconduct. By section 84(3) the Commission may include in a report:

(a) statements as to any of the Commission's assessments, opinions and recommendations; and

(b) statements as to any of the Commission's reasons for the assessments, opinions and recommendations.

[29] The Commission may cause a report prepared under this section to be laid before each House of Parliament, as stipulated in section 84(4) of the CCC Act, or dealt with under section 93 of the CCC Act.

[30] Section 86 of the CCC Act requires that before reporting any matters adverse to a person or body in a report under section 84 the Commission must give the person or body a reasonable opportunity to make representations to the Commission concerning those matters.

- [31] Accordingly, a number of persons were notified by letter dated Thursday 22 July 2010 of possible adverse matters which it was proposed to include in this report. They were invited to make representations about those and other matters about which they might wish to do so by Friday 13 August 2010. They were advised that they and/or their legal adviser could inspect the transcript of examinations before the Commission and evidentiary material going to matters identified. Representations were received from Professor Jeanette Hacket, Vice-Chancellor, Curtin University, by the due date.
- [32] The Commission has given consideration to these representations and has taken them into account in finalising this report. A coverage of matters included in representations from Curtin University is contained in Chapter Six of this report.
- [33] A list of persons who received notifications under section 86 of the CCC Act in respect of this report is detailed in Appendix 1 to this report.

1.8 Opinions of Misconduct

- [34] The Commission fully appreciates that any expression of opinion by it in a published report that a public officer has engaged in misconduct is serious. The publication of such an opinion or any adverse matter against a public officer, or any other person, may have serious consequences for the public officer, or person, and their reputation.
- [35] The Commission is careful to bear these matters in mind, when forming opinions, when conducting investigations and reviews, and when publishing the results of investigations and reviews.
- [36] It should be noted, however, that as a standing Commission of inquiry, section 7B(1) of the CCC Act, which, *inter alia*, conducts administrative investigations, the Commission does not determine whether any person has committed a criminal or disciplinary offence. The opinions of the Commission are confined to whether or not a public officer has engaged in misconduct according to the particular definition contained in section 4 of the CCC Act.

1.9 Standard of Proof: Balance of Probabilities

- [37] The Commission may form an opinion as to misconduct on the evidence before it only if satisfied of misconduct on the balance of probabilities. The seriousness of the particular allegation and the potential consequences of the publication of such an opinion by the Commission, also go to how readily or otherwise it may be so satisfied on the balance of probabilities.
- [38] The balance of probabilities is defined as:

The weighing up and comparison of the likelihood of the existence of competing facts or conclusions. A fact is proved to be true on the

balance of probabilities if its existence is more probable than not, or if it is established by a preponderance of probability ...⁷

- [39] The balance of probabilities is a standard used by courts when considering civil matters. It is a standard which is less than the criminal standard of beyond reasonable doubt. This was confirmed by the High Court in a unanimous judgement in Rejfeek v McElroy (1965) 112 CLR 517:

... The difference between the criminal standard of proof and the civil standard of proof is no mere matter of words: it is a matter of critical substance. No matter how grave the fact which is to be found in a civil case, the mind has only to be reasonably satisfied and has not with respect to any matter in issue in such a proceeding to attain that degree of certainty which is indispensable to the support of a conviction upon a criminal charge ...

- [40] The balance of probabilities can be applied to circumstantial evidence, as explained by the High Court in Luxton v Vines (1952) 85 CLR 352:

... The difference between the criminal standard of proof in its application to circumstantial evidence and the civil is that in the former the facts must be such as to exclude reasonable hypotheses consistent with innocence, while in the latter you need only circumstances raising a more probable inference in favour of what is alleged. In questions of this sort, where direct proof is not available, it is enough if the circumstances appearing in evidence give rise to a reasonable and definite inference: they must do more than give rise to conflicting inferences of equal degrees of probability so that the choice between them is mere matter of conjecture ... But if circumstances are proved in which it is reasonable to find a balance of probabilities in favour of the conclusions sought then, though the conclusion may fall short of certainty, it is not to be regarded as a mere conjecture or surmise ...

- [41] The degree of evidence necessary to reach a conclusion on the balance of probabilities varies according to the seriousness of the issues involved. This was explained by Sir Owen Dixon in Briginshaw v Briginshaw (1938) 60 CLR 336:

... Except upon criminal issues to be proved by the prosecution, it is enough that the affirmative of an allegation is made out to the reasonable satisfaction of the tribunal. But reasonable satisfaction is not a state of mind that is attained or established independently of the nature and consequence of the fact or facts to be proved.

The seriousness of an allegation made, the inherent unlikelihood of an occurrence of a given description, or the gravity of the consequences flowing from a particular finding are considerations which must affect the answer to the question whether the issue has been proved to the reasonable satisfaction of the tribunal. In such matters "reasonable satisfaction" should not be produced by inexact proofs, indefinite testimony, or indirect inferences ...

or, as Lord Denning said in Hornal v Neuberger Products Ltd (1956) 3 All ER 970: "The more serious the allegation the higher the degree of probability that is required ...".

[42] Furthermore, the Commission could not reach an opinion of misconduct on the basis of a “mere mechanical comparison of probabilities”, without any actual belief in its reality. That is to say, for the Commission to be satisfied of a fact on the balance of probabilities, it would have to have an actual belief of the existence of that fact to at least that degree.⁸

1.10 Section 23(1) of the *Corruption and Crime Commission Act 2003*

[43] Section 23(1) of the CCC Act prohibits the Commission from publishing or reporting a finding or opinion that a particular person has committed, is committing or is about to commit a criminal offence or a disciplinary offence. Accordingly, the Commission must not publish or report an opinion that a person has engaged in misconduct of a kind described in section 4(c) unless they have been convicted (or at least pleaded guilty) to the relevant offences. In such a case the Commission would be reporting a fact, not its opinion, as to that.

1.11 Expression of Opinion

[44] The Commission has borne all of the foregoing considerations in mind in forming its opinions about matters the subject of the investigation and reviews. Any expression of opinion in this report is so founded.

CHAPTER TWO COMMISSION INVESTIGATION

2.1 Background

- [45] As mentioned previously, the Commission investigation began after an assessment of a section 28 notification from Curtin University detailing allegations made by an international female student in one of Dr Ali's classes. On 17 June 2009 the Commission commenced an investigation pursuant to section 33(1)(a) of the CCC Act. On 23 June 2009 the Commission directed Curtin University to discontinue any investigation until otherwise directed, pursuant to section 42(2) of the CCC Act.
- [46] On 2 July 2009 Curtin University provided a second section 28 notification of a similar allegation made by another international female student against Dr Ali.
- [47] A notice served on Curtin University under section 95 of the CCC Act identified deficiencies in the University's policies and procedures and complaint handling processes. Analysis was conducted of available intelligence and lawfully intercepted telecommunications. Work emails were monitored and an integrity testing programme implemented.
- [48] Interviews were conducted with female students making the complaints and with Curtin University staff and other students.
- [49] A search warrant was executed on 7 July 2009 at Dr Ali's residence, where several items of interest were seized including marked assignments, examination papers and computer paraphernalia. Later that day Commission Investigators interviewed Dr Ali (one of two video recorded interviews with Dr Ali) pursuant to the *Criminal Investigation Act 2006*, which led to the identification of several other potential witnesses all of whom were subsequently interviewed. Some of these interviewees made additional allegations and others corroborated existing allegations against Dr Ali.
- [50] Private examinations were conducted to establish if Dr Ali had engaged in serious misconduct and to clarify the misconduct processes and procedures, and complaint management system at Curtin University.

2.2 Section 95 Notice

- [51] On 23 June 2009, a section 95 notice was served on the then Deputy-Vice Chancellor, Academic, Professor Jane den Hollander, at Curtin University to produce documents relating to complaints, complaint management processes and any code of conduct relating to relationships between students and lecturers. The notice required records relating to Dr Ali and students' personal records to be produced.

[52] It became apparent that the University did not have a central complaint management system and that complaints were filed under the name of the student who made the complaint rather than the name of the person against whom the complaint was made. Departments including but not limited to Human Resources, and Legal and Compliance kept records of complaints separately as did some individual staff members. This practice made it impossible to identify how many complaints had been made against a particular individual.

2.3 Confidentiality

[53] Students are in a position of vulnerability with respect to their lecturers and academic staff generally. That is particularly so if the students are from other countries and their residency status depends on their academic results.⁹ The Commission addresses these and related issues later in this report. In addition, the sexual nature of the allegations and their apprehension about these matters becoming public and a source of embarrassment to their families were matters of substantial concern to the complainants. As a consequence, they did not want to take or become involved in any action which might result in them being publicly identified. They gave evidence to the Commission in private examinations with the assurance that the Commission would not publicly identify them. In this report, therefore, they are referred to simply as Complainant 1, Complainant 2, Complainant 3 and Complainant 4. A similar naming convention has been used when referring to other students, using the prefix "S", or other letters of the alphabet for non-students.

2.4 Allegations Dr Ali Used His Position to Gain Benefits from Female Students and Cause a Detriment to a Female Student

2.4.1 Complainant 1: Allegation that Dr Ali Used His Position to Gain a Benefit

[54] Complainant 1 is a Chinese National and at the time of making the allegation was 24 years of age. She entered Australia in 2007 on a student visa to study at Curtin University and enrolled in a Graduate Certificate of Management (GCM). GCM is a prerequisite to entering into a Master of International Business (MIB).

[55] One of the core units of GCM was Finance (International) 573 and in 2008 Complainant 1 failed it. As a result she was classed by Curtin University as an extension student, thus enabling her to repeat her Finance unit whilst moving on to study three units in MIB. With the obligation on her to pass Finance in order to continue her studies, coupled with the consequential financial detriment to her family (the cost of the unit being \$2,275, due again in order to repeat), enormous pressure was placed upon her.

- [56] On 28 May 2009 the Commission received notification pursuant to section 28 of the CCC Act of a complaint Complainant 1 had made to Curtin University.¹⁰
- [57] Complainant 1 was interviewed¹¹ by a Commission Investigator in June 2009 and subsequently signed a statement.¹²
- [58] Complainant 1 stated that on 22 April 2009 she received her mid-term examination mark which was 38/100 for Finance (International) 573. Having previously failed the unit her mark was of great concern to her. A second failure could ostensibly result in failing to complete her degree and lead to revocation of her student visa.
- [59] Complainant 1 sent an email to meet with the unit lecturer, Dr Ali, asking him to meet and discuss her mid-term examination mark. He replied, arranging to meet between 3:00 p.m. and 5:00 p.m. in a nominated room at the University the following day.¹³ The arrangements were not out of the ordinary as it was considered normal practice for students to meet lecturers at Curtin University to discuss assessments.
- [60] On 23 April 2009, as arranged, Complainant 1 went to the University to meet Dr Ali. However, when she arrived at the nominated room there was a class in session. Not knowing what to do she sent an email to Dr Ali from the library¹⁴ and went to speak to the unit coordinator, who advised her that if she was not happy with her mark she would first have to discuss it with her lecturer. Complainant 1 returned to the nominated room and this time saw Dr Ali in the room with the class. She had not realised it was his class.
- [61] Dr Ali and Complainant 1 spoke for about 30 to 40 minutes about the mid-term examination and the difficulties Complainant 1 had had with it. Complainant 1 detailed her concerns about failing the unit for a second time, advising him that she was an extension student and what it would mean to her studies if she were to fail the unit again. When Dr Ali asked her who paid for her tuition (her parents) Complainant 1 got upset about the financial pressure she felt she was putting on her family. Dr Ali moved her out of the classroom and suggested they continue the conversation after the Finance class, which was due to start.
- [62] At the conclusion of the Finance class they resumed their conversation in another room, devoid of students, with the door closed. Their discussion this time centred on her mid-term paper being “marked-up” by Dr Ali. He asked Complainant 1 to think of something to “convince” him to change her mark. After exhausting all academic options Dr Ali asked her to think about what students back in China might do and she responded by telling him they might give gifts or offer money. Dr Ali told her that he did not want to be reminded of what he had done (a gift would be a physical reminder, he explained) and asked her to think of something else to “convince” him.
- [63] There were several uncomfortable silences in the conversation. These silences and the inferences to “convincing him” to change the mark led her

to believe he wanted something sexual in nature in return for a higher mark. However, she avoided confronting him on that issue by continuing to proffer academic solutions only. Eventually, after long periods of silence she was able to remove herself by telling him her friend was waiting for her.

[64] After the incident Complainant 1 immediately told her boyfriend (Mr A) about what had happened. She was visibly upset. Mr A advised her to type up notes of the conversation she had had with Dr Ali. She did so when she went home that night.

[65] Complainant 1's cultural orientation meant she held lecturers in high respect; they were not someone she could easily make a complaint about so reporting what had happened presented some difficulties for her. She was not sure who to report it to and worried that her account would not be believed against that of such a highly respected person as Dr Ali.

[66] On 28 April 2009, at the insistence of Mr A, Complainant 1 reported her conversation with Dr Ali to a Student Assist Officer at the Curtin Student Guild.¹⁵ On the advice of the Student Assist Officer Complainant 1 and Mr A met with the University Grievance Resolution Officer. Subsequent to this meeting Complainant 1 wrote a formal letter of complaint to the Acting Head of the School of Economics and Finance, with a copy being forwarded to the Grievance Resolution Officer. The letter of complaint was sent to the Acting Head of School on 13 May 2009, with a copy of Complainant 1's contemporaneous notes of her meeting with Dr Ali on 23 April 2009 attached. The Commission was notified of the complaint on 25 May 2009 by the Curtin University Integrity and Standards Officer. The notification was received by the Commission on 28 May 2010.¹⁶

[67] Complainant 1 was not willing to pursue the matter criminally. However, she appeared at the Commission on 10 March 2010 where she gave evidence in a private examination. With the aid of a Mandarin interpreter Complainant 1 detailed the allegations she had made and confirmed the account she had given in her statement.¹⁷

2.4.1.1 Boyfriend (Mr A)

[68] Mr A is in full time employment in a private business and lives in Western Australia. He was interviewed on 5 August 2009 by Commission Investigators¹⁸ and corroborated the details of Complainant 1's account of events. Of significance he detailed the complaint process adopted by him and Complainant 1, and their personal debate about reporting it, including the issues encountered at Curtin University.

[69] On the day of the incident Mr A was waiting for Complainant 1 to finish her class. He explained that Dr Ali's classes were significantly shorter than the allocated time, starting at 5:30 p.m. and usually finishing at about 7:00 p.m. rather than 8:00 p.m. As it was an evening class, Mr A usually collected Complainant 1 and on the day of the incident was in the library at 7:00 p.m. She was notably delayed that night, although not enough to raise his concern.

- [70] About 8:00 p.m. or shortly thereafter Complainant 1 approached him and slammed her bag on the table. She seemed angry. She spoke to him in Chinese and told him how she couldn't believe her teacher was so strange and weird (using a Chinese word that when interpreted basically means "abnormal"). After she explained what had happened, Mr A suggested it sounded as though her teacher was trying to take advantage of her situation (knowing that she had failed). Her teacher's questions were repetitive in asking her to try to convince him to assist with increasing her mark and Mr A was left with no doubt from what Complainant 1 was telling him that her teacher, who she identified as Dr Ali, had been asking her for a sexual favour or similar. This was only confirmed to him when Complainant 1 told him she had exhausted every academic option and Dr Ali asked her to think of something that was not a gift or money as he didn't want to be reminded of it.
- [71] Mr A was mindful that there was little evidence other than Complainant 1's word against her lecturer, and it was he who suggested she write down her account of events whilst they were still fresh in her memory. Complainant 1 wrote her account alone, but Mr A assisted with grammar, formatting and interpreting words. Separately, Mr A conducted internet research on policies at Curtin University and other universities around Australia on the subject of making complaints about lecturers. He found little information and that policies in existence were predominantly directed towards students' misconduct rather than the conduct of lecturers.
- [72] Not really knowing what to do Mr A sought advice from a friend (Mr B), an employee of the International Office at Murdoch University. Of interest Mr B told Mr A that what had happened to Complainant 1 was not uncommon, the problem was proving it and at his suggestion Mr A and Complainant 1 sought assistance from the Curtin Student Guild.
- [73] The delay in Complainant 1 reporting the incident was associated with the lack of knowledge of where to go and the decision on whether she should make a formal complaint. Initially, and as mentioned previously, on 28 April 2009 (five days after the incident) Mr A and Complainant 1 spoke to a Student Assist Officer at the Curtin Student Guild. The Student Assist Officer provided advice in relation to two possible courses of action, namely, appeal the assessment or make an appointment with the Grievance Resolution Officer. Complainant 1 decided on the latter option, and made an appointment for the following week. In the meantime Complainant 1 had to attend another Finance lecture, to be given by Dr Ali. Mr A ensured that he was there to collect Complainant 1 after the lecture, and whilst he considered approaching Dr Ali he thought it better to await until after the meeting with the Grievance Resolution Officer.
- [74] Mr A and Complainant 1 met with the Grievance Resolution Officer and with Mr A's assistance, Complainant 1 wrote a formal letter of complaint to the Acting Head of the School of Economics and Finance.
- [75] Mr A reiterated to the Commission Complainant 1's concern about making a complaint against a lecturer, and Chinese customs emphasising the

power a person in Dr Ali's position has and the penalties a student might face in China (such as failing), if they were to raise a similar complaint. Complainant 1, unaccustomed to the sense of "justice" in Australia, was fearful this would happen to her.

- [76] On 6 August 2009 Mr A emailed the Commission¹⁹ to advise that Dr Ali was continuing to teach a Business Capstone unit at Curtin University. This was later identified to Mr A by the Grievance Resolution Officer as reflecting poor communication processes within the University. Dr Ali's teaching hours had been discontinued by the School of Economics and Finance, but not by the School of Accounting, both of which were located within the Curtin Business School Faculty.

2.4.1.2 Mr Felix Mo Foon Chan

- [77] Mr Felix Mo Foon Chan is employed as the Head of Department of Finance and Banking at Curtin Business School and has been in that role since the beginning of 2008. He was interviewed by Commission Investigators on 6 August 2009.²⁰

- [78] At the time of the incident between Dr Ali and Complainant 1 Mr Chan was acting unit coordinator for Complainant 1's Finance (International) 573 class. As acting unit coordinator it was his role to set the mid-semester test, but Mr Chan was able to delegate authority to mark the test to the lecturer (Dr Ali) and the tutors.

- [79] Mr Chan was not able to recall Complainant 1 approaching him about her mark. However, he stated that many students had approached him about that particular test because it was significantly more difficult than previous mid-semester tests. He knew of Complainant 1 only because he had by then been instructed by the Acting Head of the School of Economics and Finance to keep interactions between Dr Ali and Complainant 1 to a minimum after a complaint had been received. He did not know details of the complaint, but assumed that it was to do with Dr Ali.

2.4.2 Complainant 2: Allegation that Dr Ali Used His Position to Gain a Benefit

- [80] Complainant 2 is a Chinese National and at the time of making the allegation was 22 years of age. She entered Australia in March 2007 on a student visa enrolling at Curtin University to study Global Economics and Finance.

- [81] One of the course core units was Finance (Portfolio Management) 301, a unit she had failed in Summer School and was repeating in Semester One, 2009, her final year. Her unit coordinator was Dr Ali, who she first met in March 2009 when he had assisted her with a late re-enrolment in the unit. With the obligation on her to pass Finance (Portfolio Management) 301 to pass her course, coupled with the consequential financial detriment to her family, enormous pressure was placed upon her.

- [82] On 25 May 2009 the Commission received verbal notification under section 28 of the CCC Act of a complaint Complainant 2 had made to

Curtin University. Written notification was received by the Commission on 2 July 2009.

- [83] Complainant 2 was interviewed by Commission Investigators on 24 June 2009.²¹ She disclosed an MP3 recording of her conversation with Dr Ali. She later signed a full statement.²²
- [84] Complainant 2 stated that on 17 June 2009 Dr Ali telephoned her on her personal mobile phone and arranged to meet her at the University to discuss her final examination mark for Finance (Portfolio Management) 301. The official date for release of final examination marks was not until 8 July 2009 and it was unusual to learn about an examination mark prior to the official release date.
- [85] Dr Ali met with Complainant 2 and told her that her final examination mark of 43/100 meant she would fail the unit. He told her that there were some options: retake the unit in Australia (she told him that was not possible because her student visa expired in August 2009); retake the unit in China (she was reluctant to do this); he could scale the marks so that she passed the unit; or she could wait for the Board of Examiners to approve a conceded pass. Complainant 2 told Dr Ali her preference would be for one of the latter two options.
- [86] Dr Ali was constrained for time at the first meeting and told Complainant 2 he would like to meet with her that evening (7:00 p.m.) suggesting they meet away from Curtin University because of his concern that other people would know that he was talking to her and he would prefer to speak with her alone. Dr Ali asked Complainant 2 how she was getting to the meeting and when she told him by bus or taxi he suggested he pick her up at McDonalds, Victoria Park. Whilst Complainant 2 agreed with this, she was not comfortable with it.
- [87] Complainant 2 told her boyfriend (Mr D) about her meeting and her concerns regarding Dr Ali wanting to meet her away from the University. Complainant 2 was unsure of Dr Ali's intentions at this time and she was worried for her safety. Mr D suggested she record the conversation with an MP3 and that she meet Dr Ali at the University and not at McDonalds. To ensure her safety, Mr D and three friends went to the University with her.
- [88] Complainant 2 arrived at Curtin University with Mr D and friends, and waited for Dr Ali to contact her. At 7:00 p.m. she received a telephone call from Dr Ali asking where she was. Complainant 2 recorded this conversation on her MP3 and agreed to meet him at a particular building on campus which he nominated.²³ They met there approximately ten minutes later. Complainant 2 continued to record the conversation on the MP3. She did not tell Dr Ali that she was recording the conversation. Curtin University video surveillance captured the pair exiting an elevator in the building and also showed another female person.²⁴ That person asked them what they were doing, departing only when Dr Ali identified himself as a Curtin University staff member.

- [89] When they were alone Dr Ali again asked Complainant 2 how she could convince him to change the mark. She offered him academic options: a conceded pass (which required approval by the Board of Examiners); scaling marks; or a “pop quiz”. Dr Ali did not accept any of these options. He asked her to think of something “non-academic” between him and her. This is when Complainant 2 believed he was asking her to do something related to “immoral trade” like sex and so she continued to give him academic solutions. At this time Complainant 2 felt increasingly concerned for her welfare.
- [90] Dr Ali told Complainant 2 that it was a matter of making her feel comfortable with it and that there was one thing he would consider that she would not even know about, but at no stage did he say expressly what he meant. Dr Ali continued telling Complainant 2 that he could think of something but didn’t know if she would. Complainant 2 interpreted this to mean sex or something similar in nature, so in an attempt to change the subject she talked about other students buying examination papers and cheating. They walked back to the elevator and the conversation ended.
- [91] Complainant 2 immediately walked to where her boyfriend and friends were waiting for her and told them what had happened. They later described her as scared and visibly upset, and they discussed whether to report it to the Western Australia Police or to the University.
- [92] On 19 June 2009 Complainant 2 reported her conversation to Mr Desmond Pegrum, Business School Planning and Resource Coordinator. Mr Pegrum advised her to speak with Ms Joanna Watts, a Student Advisor and a Personal Assistant to the Dean of Students at the Business School. Complainant 2 did not tell any person from Curtin University about the MP3 recording because she did not know who to trust.
- [93] Complainant 2’s cultural orientation, like Complainant 1, meant she held lecturers in high respect; they were not someone she could easily make a complaint about, so reporting what had happened presented some difficulties for her. She was not sure who to report it to and worried that her account would not be believed against an account by Dr Ali. She considered going to the Western Australia Police, but felt it would be her word against his and no one would believe her. Her motivation to report the matter was to stop it happening to someone else and because she did not think he should be able to get away with it.
- [94] Complainant 2 was not willing to pursue the matter criminally and, although she had made a formal statement to the Commission, did not appear at a Commission private examination, having already returned to China in October 2009. She did, however, produce the MP3 recording to the Commission.

2.4.2.1 Boyfriend (Mr D)

- [95] Mr D is 26 years of age. He is from China, and arrived in Western Australia on a student visa in 2004. He is Complainant 2’s boyfriend and

resided with her until they returned to China. He was interviewed and signed a formal statement on 21 July 2009.²⁵

- [96] Mr D corroborated the details of his involvement as per Complainant 2's account of events. Of note to the Commission was the high level of concern he had after Complainant 2's first meeting with Dr Ali. It was unusual for a lecturer to meet with a student outside of consulting hours, between 9:00 a.m. and 5:00 p.m., and he was angry with what Complainant 2 had told him Dr Ali had said to her at that first meeting. He told the Commission that from what she was saying he felt that Dr Ali was trying to get either money or sex from Complainant 2.
- [97] It upset him enough to discuss the situation with his room mates, Mr E, Mr F and Mr G. They discussed Complainant 2's option of going to the Western Australia Police, but at that time felt they really didn't know what the lecturer wanted and it was at this point that Mr E raised the idea of using an MP3 to record the conversation in order to get an accurate account of it.
- [98] The group attended together at the University on 17 June 2009 and Mr D was close by when Complainant 2 recorded the telephone conversation she had with Dr Ali. He waited in the car whilst Complainant 2 met with Dr Ali, unable to contact either Complainant 2 or Mr F because Mr F had his mobile phone line open to Complainant 2's. Mr D waited in the car for approximately one hour before he saw Complainant 2 and Dr Ali walking towards him. When Complainant 2 got to the car (Dr Ali had walked away) he could see she was upset, crying and appeared scared. Complainant 2 told him what had happened and that she felt Dr Ali wanted sex from her because she had exhausted all academic options with him.

2.4.2.2 Friend (Mr E)

- [99] Mr E is 25 years of age, a student at Curtin University and was interviewed on 4 August 2009,²⁶ corroborating Complainant 2 and D's account of events. He reiterated that it was unusual for a lecturer to meet a student after 5:00 p.m. and even more unusual for the meeting to take place off campus in order to discuss examination marks not yet released. His level of concern heightened when Complainant 2 told him that her lecturer was asking for something other than academic options to convince him to alter her results.
- [100] Mr E is the owner of the MP3 and is the person who suggested recording the conversation in an attempt to clearly establish Dr Ali's intentions. Mr E was so concerned for the safety of Complainant 2 that he and Mr F followed her to her meeting with Dr Ali. Mr F's mobile phone line was connected to Complainant 2's mobile phone and was left open and placed on loudspeaker to enable him to monitor the conversation.
- [101] Whilst he could not detail the conversation it was obvious to him that Complainant 2 was nervous and at the very least a little scared because he could hear it in her laugh, a laugh he knew well enough to know that she was uncomfortable.

[102] Mr E and Mr F lost sight of Complainant 2 when Dr Ali took her up to an upper floor of the building. Immediately they commenced searching all rooms on level two where they had last seen her, before entering the elevator and stopping off to search every floor for her. Eventually Complainant 2 was located on the floor where she had been taken by Dr Ali. Mr E and Mr F are visible on Curtin University security surveillance footage stepping out of the elevator as Dr Ali and Complainant 2 are stepping in. Mr E did not want to make it obvious to Dr Ali that he knew Complainant 2 so he did not acknowledge her.

[103] Prior to the incident Mr E did not know Dr Ali and had not heard of any similar complaints. He was very surprised that something like this had happened.

2.4.2.3 Ms Caroline Bennett

[104] Ms Caroline Bennett is an Administrator, Research and Development, at Curtin University and was interviewed after being identified on security surveillance footage. The footage shows Complainant 2 and Dr Ali leaving an elevator and Ms Bennett, after hesitating slightly, also leaving an elevator to follow them before returning a short time later. She was interviewed²⁷ by the Commission and corroborated the account of events as provided by Complainant 2.

[105] Ms Bennett stated she was working back that night. There had been security issues in the building, specifically that floor, in regard to students entering and stealing food and kitchen items, so she was mindful of intruders. She was leaving the building for the night when she saw a male and female (identified as Dr Ali and Complainant 2) unknown to her, exiting an elevator and heading towards the conference room. Due to recent events she followed them and saw Dr Ali leaning against a desk and Complainant 2 with her back towards her. Ms Bennett was unable to hear any of their conversation and stated that they were unusually quiet to be having a lecturer-student discussion.

[106] Assuming they were students, she approached Dr Ali and asked if he belonged to Curtin Business School. He showed identification, informing her he was a sessional lecturer (or tutor, she was not sure which) from the School of Economics and Finance. Ms Bennett stated it was highly unusual to see a student and lecturer alone at that time of night, other than in focus groups, usually prearranged and generally no later than 5:30 p.m.; however those occasions were as rare as once a year. Her immediate impression was that although it was unusual and rare, given his position it must have been acceptable.

2.4.2.4 Mr Desmond Pegrum

[107] Mr Desmond Pegrum is employed at Curtin University as the Business School Planning and Resource Coordinator and is the first staff member to whom Complainant 2 reported the incident. He was interviewed by the Commission on 6 August 2009²⁸ and corroborated Complainant 2's account of events.

- [108] Receiving complaints is not part of Mr Pegrum's role. He believed Complainant 2 approached him because she or someone from her group of friends was familiar with him as a member of staff and had nominated him as person she could trust. It was Mr Pegrum who took Complainant 2 to Ms Watts to detail the incident.
- [109] Mr Pegrum stated the incident was unusual and believed there to be no valid reason for a lecturer from Economics and Finance to meet with a student on the floor where the Management Divisional Office was located, when the Economics and Finance meeting room was on another floor. Additionally it was rare for lecturers to meet students outside the hours of 9:00 a.m. and 5:00 p.m. and more so in this case as lectures had ceased (because it was an examination period). To arrange a meeting as originally organised at McDonalds, off campus, was another indication to him that this was an irregular meeting between student and lecturer.
- [110] Mr Pegrum stated the early release of examination results or discussion of examination results between lecturers and students should not occur until such time as the results had been submitted to the Board of Examiners and published online. Whilst he could not locate any policy or procedures regarding this, he was sure there was one as he had previously held a position as an Examination Officer and felt he had knowledge of such procedures.
- [111] When asked if there were any legitimate ways that Dr Ali could have changed Complainant 2's mark, Mr Pegrum advised that unless he were to alter it because of a mistake in the original mark there would be nothing that Complainant 2 would have been able to do from an academic perspective. It was for the Board of Examiners to decide.
- [112] In the course of the investigation it became apparent to the Commission that the current complaint management system used at Curtin University made it impossible to search for complaints under the name of the person who had the complaint made against them. Complaints about staff were filed in the personal file of the student making the complaint, not the person against whom the complaint was made. This meant a person could have several complaints made about them and the person investigating the complaint would not know about it, unless it was substantiated and recorded in the staff member's personal file.

2.4.2.5 Ms Joanna Watts

- [113] As previously mentioned, Ms Watts is a Student Advisor and a Personal Assistant to the Dean of Students at Curtin Business School, Curtin University. She has been in that role for about three and a half years. Ms Watts was interviewed on 6 August 2009²⁹ and corroborated Complainant 2's account of events.
- [114] Ms Watts' role as Student Advisor is somewhat unclear. It appears she assesses students' complaints before making an appointment for them to see the Dean. However, in the majority of cases she refers the student to counselling, or as in this case, to a Grievance Resolution Officer. Ms

Watts stated that she always advised the Dean of complaints but there does not appear to be a record of this advice.

- [115] According to Ms Watts the type of complaints she received varied, but generally related to issues students were having with other students, depression or on occasion domestic problems. Complainant 2's incident, where a lecturer had allegedly used his position to seek something from a student, was the first of its kind reported to her.
- [116] Ms Watts corroborated Complainant 2 and Mr Pegrum's account of events. She told the Commission that she forwarded her handwritten notes to the Grievance Resolution Officer.

2.4.3 Complainant 3: Allegation that Dr Ali Used His Position to Gain a Benefit

- [117] Complainant 3 is also a Chinese National and at the time of making the allegation was 20 years of age. She entered Australia in July 2008 on a student visa enrolling at Curtin University to study Bachelor of Commerce (Finance and Accounting).
- [118] On 17 June 2009, as a result of a video record of interview with Dr Ali in which he mentioned some interaction with Complainant 3, Commission Investigators spoke with her. She provided a brief account of her dealings with him. However, due to her reticence to become involved in any investigation it was not until 19 August 2009 that she was confident enough to give a more detailed statement of circumstances involving Dr Ali.³⁰
- [119] Complainant 3 told the Commission that she was a student in Dr Ali's 2009 Semester One Finance (Portfolio Management) 301 class. On Wednesday 13 May 2009, the day the group assignment was handed back, Dr Ali approached her about a letter he had received from two classmates in her assignment group, complaining about Complainant 3's lack of contribution to the group.
- [120] Dr Ali discussed meeting with Complainant 3 on either the Thursday or Friday to talk about the letter. He asked her where she lived and they talked about meeting in a place between her home and his. They lived in suburbs on opposite sides of Perth.
- [121] He asked for her telephone number so that he could call and arrange a meeting.
- [122] On Friday 15 May 2009 Dr Ali called Complainant 3, arranging to meet her at a suburban McDonalds (not Victoria Park) at about 7:00 p.m. Complainant 3 attended the meeting with her boyfriend, Mr H, who waited for her in the nearby Chicken Treat store whilst she waited in McDonalds. When Dr Ali arrived she met him outside McDonalds. He showed her the letter he had received from the other members of the assignment group. Dr Ali told her McDonalds was too noisy, and that he lived within walking distance and it would be better to go to his house to discuss the letter.

- [123] At Dr Ali's house they sat on a couch in the lounge room and discussed the content of the letter and the difficulties that Complainant 3 had with the unit. She told him that not everything in the letter was correct and that she had tried really hard as a member of the group working on the assignment. He told her that she would need his help otherwise she would fail the unit.
- [124] Dr Ali asked Complainant 3 how a Chinese student would normally have satisfied a Chinese teacher, to which Complainant 3 responded by telling him a Chinese student would try to be a good student and get good grades. According to Complainant 3, it was then that he told her that she could live with him. At this time Dr Ali had his arm along the back of the couch behind Complainant 3 which made her feel uncomfortable.
- [125] Complainant 3 tried to make light of the situation because the conversation seemed to be leading towards her giving Dr Ali something in exchange for an increase in her mark and she was scared because it seemed he wanted her to have sex or similar with him. She wanted to leave but didn't know how. Eventually after a period of silence she told him "I can't today because it's my boyfriend's birthday". Dr Ali said he wanted her to try and satisfy him, that he wanted her to stay the night. She told him that she did not have time.
- [126] After continued periods of long silence, Complainant 3 stood and told Dr Ali that she had to go and she would see him next time. Complainant 3's understanding from their conversation was that if she had sex with him she would not lose marks on her assignment.
- [127] Dr Ali walked her out of the house towards McDonalds and attempted to hold her hand and put his arm around her waist. Complainant 3 avoided contact by walking a little faster. The conversation continued in the same form outlining his desire to meet with her again. Complainant 3 did not immediately tell her boyfriend of the incident because it was his birthday, nevertheless that night after they returned from his party she told him that Dr Ali had tried to "make sex with her".
- [128] After this incident Complainant 3 approached a Curtin University accounting tutor and asked him if it was possible for a lecturer to prevent her from passing if he did not want her to. The reply was that that would not be possible. The Commission was unable to ascertain who this tutor was.
- [129] Dr Ali attempted to contact Complainant 3 on numerous occasions over the next couple of weeks. However, she either did not answer or made excuses that she did not have time to meet with him.
- [130] Complainant 3 did not attend any more of Dr Ali's lectures and it was not until she received a telephone call from S1, one of two other students with whom she worked on the group assignment, that she met with Dr Ali again. She was at home when she received the call from S1 who told her that Dr Ali wanted to speak with her. Complainant 3 reluctantly agreed to meet with Dr Ali that evening at 9:30 p.m. in the hope that she could reason with him in order to pass the assignment.

- [131] They sat in Dr Ali's parked car, after discovering the buildings at Curtin University were closed. Dr Ali continued to indicate that he wanted something in exchange and he was eager to discuss a time and place to meet again. Complainant 3 believed he wanted to have sex with her. Eventually she agreed to meet him at Cottesloe after work, the following Thursday evening. Dr Ali told her that if she did meet him he would raise her mark and give her the examination paper and answers as well so that she would definitely pass the unit. If she did not meet with him, she would not pass the unit.
- [132] Dr Ali told her to send him an email asking to make an appointment to see him, suggesting the date and time they had agreed so that the University would not be suspicious, if anyone else saw the email. He told her that if he did not receive the email by Thursday then he would not help her and she would fail the unit. Complainant 3 did not send the email and did not attend work on the Thursday evening for fear of having to meet with Dr Ali again. Complainant 3's fear of Dr Ali was so great that it caused her to suffer from a medical condition [suppressed] whenever she thought about or discussed the incident. She had paid full upfront fees of \$2,500 for the unit and was too frightened to sit the final examination, which resulted in her failing the unit.
- [133] Complainant 3, like Complainants 1 and 2, was not willing to pursue the matter criminally; however she appeared in a private examination by the Commission in March 2010.

2.4.3.1 Another Student (S2)

- [134] S2 is 23 years of age, from Indonesia, and was a student in Complainant 3's Finance (International) 301 class. It was S2's third attempt at the unit, having previously failed in Semester Two, 2008, and Summer School 2009. She graduated from Curtin University with a double major in Accounting and Finance in June 2009.
- [135] S2 was interviewed by Commission Investigators in September 2009.³¹
- [136] S2 stated that she, along with another international student (S1), was in an assignment group with Complainant 3. They were having difficulties with Complainant 3's lack of contribution and attendance at group sessions and wrote a letter to Dr Ali outlining their issues. This was the same letter that resulted in Dr Ali contacting Complainant 3.
- [137] S2 described Dr Ali as a good, strict teacher who expected a lot from his students. She stated that the Finance International unit was very difficult for her and very different to classes she had previously completed in Indonesia. She felt enormous pressure to pass given it was her third attempt at the unit and believed Complainant 3's lack of contribution to the group assignment would have a negative impact on her final mark.
- [138] S2 confirmed that, along with S1, she provided the letter to Dr Ali and that she saw Dr Ali talking to Complainant 3 after the lecture. She presumed it was about the letter but did not hear the conversation. She did not have

any further contact with Complainant 3 because Complainant 3 did not attend class again. S2 believed Complainant 3 received half the marks that S1 and S2 received and did not believe that was fair, alleging Complainant 3 did not contribute at all.

- [139] When asked about her experience involving lecturers changing marks in exchange for something she stated that it was common in [suppressed], but she did not believe it would happen in Australia because it is a good place and lecturers would not do it.

2.4.4 Complainant 4: Allegation that Dr Ali Used His Position to Cause a Detriment

- [140] Complainant 4, a Malaysian student, first met Dr Ali in Summer School February 2009 when he was her lecturer and tutor for Finance (Portfolio Management) 301. She failed the unit with a final grade of 42/100.

2.4.4.1 Student from Perth (S3)

- [141] S3 is 24 years of age and resides with her family in Perth, Western Australia. She is not an international student. S3 came to the attention of Commission Investigators when emails from Dr Ali's computer between February and March 2009 were analysed, identifying a trail between S3 and Dr Ali discussing a rumour that Dr Ali was having a relationship with Complainant 4.³²
- [142] S3 was interviewed by Commission Investigators in July 2009.³³ She stated she first met Dr Ali in Summer School at Curtin University between January and February 2009. He was the tutor and lecturer in her Finance (Portfolio Management) 301 class and it was there that she also met Complainant 4. Both S3 and Complainant 4 failed the unit and repeated it in Semester One, 2009, when Dr Ali was the lecturer and unit coordinator.
- [143] The Summer School class was smaller than the semester class, which enabled S3 to form a friendship with Dr Ali. However, she did not feel it was inappropriate nor beyond the boundaries of a student-teacher relationship.
- [144] S3 heard a rumour from a friend of hers that Dr Ali was in a relationship with Complainant 4 and tried to joke about it in a conversation with him. S3 knew Complainant 4 and knew that she had gone to Malaysia. She also knew that Dr Ali had gone to Malaysia and she jokingly said to him: "So how's [Complainant 4]". S3 was surprised when Dr Ali told her that he did not know that Complainant 4 had been in Malaysia at the same time as he, and realised her mistake when he became angry about it and started to act "cold" towards her in classes.
- [145] An incident occurred in April 2009, a week or two after the mid-semester examination, when Dr Ali was handing out the students' examination papers. Complainant 4 took a photograph of her paper with her mobile phone and Dr Ali made her delete it. His confusing reaction to her prompted S3 to email him about the way he was towards Complainant 4.

- [146] S3 completed the Finance (Portfolio Management) 301 group assignment with Complainant 4 and S4 and was upset when Dr Ali adjusted their assignment mark down from 73/100 to 50/100. He told them that it was because he felt that the tutor who had marked the assignment had marked too easily. When S3, accompanied by Complainant 4 and S4, complained about the adjusted mark to Dr Ali he explained to them that the end section had a lot of grammatical errors and that was where he had deducted the majority of marks.
- [147] S3 did not appeal the result because she did not know where to go to appeal, and had no knowledge of the appeal process. Her final grade in the unit was an F (Fail) with a final mark of 45%.
- [148] On 20 October 2009 S3 provided the original group assignment to Commission Investigators.

2.4.4.2 Complainant 4

- [149] Complainant 4 was interviewed by Commission Investigators on 19 October 2009³⁴ as a result of the analysis of emails between Dr Ali and S3.
- [150] Complainant 4 told the Commission that in class Dr Ali was always friendly and casual towards her. During Summer School he emailed her about a trip he had planned to take to Kuala Lumpur, Malaysia. Complainant 4 was from Malaysia and he asked her if she would meet him for a drink to discuss Kuala Lumpur. Complainant 4 did not feel comfortable with this arrangement and initially rejected his offer saying she was busy. However, eventually she agreed to meet one evening, at a cafe where they talked about Malaysia. Dr Ali wanted her to meet with him and show him around when they were there.
- [151] Complainant 4 travelled to her home town in Malaysia for five days. However, she did not tell Dr Ali. It was after this trip that Dr Ali changed his behaviour towards her. He was no longer so friendly and hardly spoke to her, a noticeable difference from his friendly behaviour prior to her trip.
- [152] Of concern to Complainant 4 was a group assignment mark she received in her 2009 Semester One class, a unit she was repeating after failing in Summer School 2009. Dr Ali returned her group's assignment with notable changes to the final mark, amounting to a loss of over 20 marks. Although the original mark had been crossed out, it appeared that the final mark had been changed from 73 to 50/100. The assignment group was comprised of three members, the other two were S3 and S4.
- [153] Further inquiries revealed the assignment had originally been marked by a tutor and re-marked by Dr Ali as unit coordinator. Commission Investigators obtained Complainant 4's original group assignment from S3, with the crossed out original mark of 73/100 adjusted to 50/100 and organised for it to be re-marked. All markings from the original were deleted as were the names of the students before being photocopied and given to Associate Professor Alles Lakshamn, Department of Finance and Banking, Curtin Business School, School of Economics and Finance, for

re-marking. Associate Professor Lakshamn had been the unit coordinator for the same unit, Finance (Portfolio Management) 301, in Summer School, at the time that Dr Ali had been the lecturer and tutor. Associate Professor Lakshamn re-marked the assignment at 88/100, an increase of 38 marks from Dr Ali's adjusted mark of 50/100.³⁵ Associate Professor Lakshamn was not informed of the reason he was re-marking the assignment – it was a “blind” re-mark.

- [154] As a comparison, another student's original group assignment was also obtained and the same procedure adopted. The student's original unadjusted mark of 77/100 was re-marked by Associate Professor Lakshamn to 91/100, an increase of 14 marks. This student is referred to as S5 in this report.
- [155] There were three assessments each carrying different weighting to make up the final grade for Finance (Portfolio Management) 301.³⁶ The mark of 50/100 contributed to Complainant 4's final overall percentage for the unit of 45% which resulted in a fail. However, a conceded pass was approved by the Board of Examiners, which is recorded on Complainant 4's Academic Transcript as a PC (“Pass Conceded”).
- [156] Of 257 students assessed in the unit, 29 students who received final marks between 41% and 45% had their marks adjusted by Dr Ali to pass the unit with a final mark of 50%, thus avoiding the need for the Board of Examiners to approve a conceded pass. By avoiding this process these students received a pass indicated on their academic records as P, as distinct from PC.
- [157] Whilst concerned about her assignment mark, Complainant 4 did not seek a conceded pass and was not aware that Dr Ali knew of her trip to Malaysia.

2.4.4.3 Male Student (S5)

- [158] S5 was a student at Curtin University and Dr Ali was the unit coordinator and tutor for both his 2009 Financial International 310 and Finance (Portfolio Management) 301 classes. He was also Dr Ali's friend, often talking on the telephone, chatting on line or meeting up outside of the University. This friendship was acknowledged by Dr Ali on 7 July 2009 when a search warrant was executed at Dr Ali's residence by Commission Investigators and S5 was present.
- [159] S5 told the Commission that Dr Ali confided in him about his relationships with other students, particularly a female student from Hong Kong, with whom he was hoping to pursue a relationship. S5 stated that he would not normally be friends with someone like Dr Ali because he was such a negative person. However, he felt pressure to remain a friend in order to avoid any detrimental effect on his marks. Given Dr Ali's position as unit coordinator in two of his classes S5 was aware that Dr Ali had the power to change his marks and he thought it best to remain on his good side.

- [160] S5 contacted the Commission regarding concerns he had about an assignment Dr Ali re-marked and was interviewed by Commission Investigators on 23 September 2009.³⁷ He stated he was a friend of a female student in his Finance (Portfolio Management) 301 class, S3. He knew that S3 completed her group assignment with two other female students, S4 and Complainant 4, but he didn't know either personally.
- [161] S5 was present in Dr Ali's consultation class when the female students approached him about the concerns they had about their group assignment mark. He watched Dr Ali go through the areas that had been marked down and, whilst it appeared legitimate, he considered that marking the assignment down by 23 marks from 73/100 to 50/100 was extreme.
- [162] He was concerned because Dr Ali had previously spoken to him about Complainant 4 and a trip she had planned to take to Singapore (this was later identified and clarified as Malaysia). Dr Ali told him that Complainant 4 had said she would show him around but had stood him up by going without telling him and S5 thought that Dr Ali felt jilted by Complainant 4.
- [163] After examinations were finished S5 had a conversation about the group assignment with Mr Sherwant Singh Gill, a tutor at Curtin Business School. Mr Gill told him that Dr Ali had said to him, "that bitch is going to pay", or words to that effect, which led S5 to believe Dr Ali had deliberately marked the assignment down because Complainant 4 had not shown him around Malaysia.
- [164] Following the execution of the search warrant at Dr Ali's residence S5 felt he should report what had happened and spoke to Ms Melissa Lewis, a sessional tutor and/or lecturer at Curtin University (refer Point 2.4.4.4 below). Ms Lewis advised him to speak to Mr Chan (Head of Department of Finance and Banking, Curtin Business School), which he did.

2.4.4.4 Ms Melissa Lewis

- [165] As mentioned above, Ms Melissa Lewis was a sessional tutor and/or lecturer at Curtin University. She was employed on a semester by semester basis and had been at the University working as a tutor and lecturer for five years, but in a more substantial capacity in the last three of those years.
- [166] Ms Lewis was interviewed on 16 September 2009 by Commission Investigators,³⁸ after approaching the Commission with concerns relating to a letter she had received from Mr Chan about unauthorised release of her Curtin University password to Mr Gill. The Commission had been notified of this matter pursuant to section 28 of the CCC Act and referred it back to Curtin for action pursuant to 33(1)(c) of the CCC Act.
- [167] Ms Lewis corroborated S5's version of events in relation to what he told her about Complainant 4's assignment. Ms Lewis reiterated S5's concern in relation to feeling pressured to be friends with Dr Ali due to his position as unit coordinator in his Finance Portfolio class and subsequent control

over his grades. S5 told her that on one occasion Dr Ali had said to him “I’ll give you 86 (or 82) reasons why you should hang out with me”. Whether the mark was 86 or 82, the reference was that his final mark would be a High Distinction. S5 spoke to Ms Lewis of his concerns that Dr Ali would adjust his mark if he did not “hang out” with him. As a result of this conversation with S5, Ms Lewis notified Mr Chan.

[168] Commission Investigators spoke to Ms Lewis about her personal practice at Curtin University in relation to marking and recording student results. When marking assignments, five or six tutors for the relevant unit are provided with clear instructions and a marking guide from the unit coordinator. The assignments are distributed among the tutors and they mark according to the instructions given. Marking differs for examinations whereby each tutor marks one or two questions each, as opposed to marking it in its entirety.

[169] Ms Lewis had previous experience as a unit coordinator at Curtin University. Her role in that position was to prepare materials and finalise marks provided to her by the tutors and lecturers. She would then input those marks and final results into an internal spreadsheet. Ultimately it is the responsibility of the unit coordinator to keep all results. In her role as a tutor Ms Lewis recorded the students’ results on another spreadsheet for her own record which she kept on her personal hard drive. However, she was not sure if all tutors did this.

[170] Ms Lewis is no longer employed by Curtin University.

2.4.4.5 Mr Sherwant Singh Gill

[171] At the time of the Commission investigation Mr Gill was a sessional tutor at Curtin Business School. On occasions he substituted as a lecturer in circumstances where a lecturer was sick.

[172] On 14 September 2009 Commission Investigators interviewed him regarding comments Dr Ali had made to him about Complainant 4.³⁹ Mr Gill had known Dr Ali for approximately three years and said that whilst he would not consider him a “mate” he enjoyed academic conversations with him, exchanging texts and emails on a fairly regular basis.

[173] Mr Gill corroborated S5’s statement regarding the comments Dr Ali made about Complainant 4 showing him around Malaysia. He recalled the conversation he had with Dr Ali being about a female student who went to Singapore (later confirmed as Malaysia).

[174] Dr Ali told Mr Gill that the female student had gone to Singapore (Malaysia) at the same time he had and had not told him. He was upset because he expected her to tell him when she was going and to show him around. Mr Gill recalled Dr Ali saying “she’s going to pay for that, she’s going to pay”, or words to that effect. He later found out from S5 that the same female student had had her assignment marked down by Dr Ali.

[175] Mr Gill is no longer employed by Curtin University.

2.4.4.6 Curtin University Student Results Record Keeping

- [176] The investigation highlighted the lack of transparency at Curtin Business School when recording students' results. Mr Jeffrey Petchey, Head of School, Department of Economics and Finance, indicated in an email⁴⁰ that it was accepted practice for unit coordinators to record marks on personal spreadsheets and submit only the final mark to the University. If a student, such as the complainants here, made a complaint about their final mark the University would be unable to access assessment results for the unit unless they were to approach the unit coordinator, who in this case was Dr Ali.
- [177] In locating original assignments Commission Investigators had to approach individual students, S3 and S5, in order to obtain them.

2.5 Assessment of Vulnerability and Knowledge of Each Other: Complainants 1, 2 and 3

- [178] Complainants 1, 2 and 3 were all very similar in regard to background and circumstance. Relatively new to the country, and all with boyfriends, they had a relatively small support network in Western Australia. Their families remained in China and provided for them financially. All were young women in a foreign country, living and learning in a new culture. They were willing to please, shy and non-confrontational.
- [179] Complainants 1 and 2 were both repeating their respective units and Complainant 3 was struggling. Their circumstances made them vulnerable to Dr Ali, a lecturer who had the perceived and real power to increase and decrease marks. He established each of their situations in conversation and sought to use it to his own advantage.
- [180] Complainants 1 and 2 were similar in their reluctance to make a complaint, given that it was their perception of what Dr Ali wanted and it was Complainant 1's boyfriend who encouraged her to come forward. Complainant 2's boyfriend and friends provided support and encouragement to obtain further evidence of the conversation by way of a recording, made on an MP3, before making a complaint. Complainant 3's complaint only came to the Commission's attention when Dr Ali himself talked about it during an interview with Commission Investigators.
- [181] It is unlikely that Complainants 1, 2 and 3 conspired together. There were no indications that they knew each other. Each believed she was the only person who had had this experience with Dr Ali and was surprised, and somewhat relieved, when later informed by Commission Investigators that there were also complaints by other female students.

2.6 Dr Nasrul Ameer Ali

- [182] At the time of the investigation Dr Ali was 29 years of age. He obtained a Bachelor of Commerce (Banking and Commerce) in 1999 and Honours in

Finance in 2000 from Murdoch University; and a Doctorate in Economics in February 2008 from the University of Western Australia.⁴¹

- [183] Dr Ali was Complainant 1's Semester One lecturer in Finance (International) 573 and the unit coordinator for Complainant 2, Complainant 3 and Complainant 4's Semester One Finance (Portfolio Management) 301 class, although it is not clear whether or not they attended the same lectures.
- [184] Dr Ali was interviewed by Commission Investigators under caution in a Video Record of Interview (VROI) on two separate occasions, the first on 7 July 2009,⁴² the same day the search warrant was executed at his residence, and the second on 10 July 2009.⁴³
- [185] In the VROI on 7 July 2009, in the presence of a relative, Dr Ali generally confirmed the account of events given by Complainant 1 and Complainant 2. However, he denied that he was attempting to convince them to give him sexual favours in exchange for an increase in marks. He said that his intention was to assist them and that it was they who were offering him gifts and alternatives for an increase in their marks.
- [186] This interview identified a third student (Complainant 3), details of whom Dr Ali disclosed and which were previously unreported to the University or Commission Investigators.
- [187] On 8 July 2009 during a conversation between Dr Ali and Commission Investigators about his seized hard drive, he disclosed information regarding complaints about other Curtin University staff members. These complaints became the subject of an investigation conducted by the University. Dr Ali said that he felt sorry for one student and changed his/her grades so that he/she could pass the unit. He did not, however, disclose the name of the student.
- [188] Whilst Dr Ali maintained in his interviews that he did not say anything that could have led the female students to apprehend he wanted sexual favours from them, that was certainly the perception they had. Their perception of what had happened left them frightened and afraid, unsure if the next time they met with him he was going to force himself on them or hurt them in some way. That their perception was accurate later became clear from Dr Ali's evidence in his private examinations before the Commission.

2.7 Private Examinations

- [189] On 23 November 2009 the Commissioner approved the conduct of private examinations to further the investigation.
- [190] The private examinations commenced on 10 March 2010. On that day Complainants 1, 3 and 4 were examined before the Commission. Complainant 2 was unavailable to give evidence because she had already returned to China. Complainants 1, 3 and 4 repeated in evidence what they had said in their previous statements to the Commission.

[191] During private examinations held on 11 March 2010 S5 and Mr Gill were examined, and they too confirmed their previous statements. Of significance, Mr Gill was unaware why he no longer received hours at Curtin University, highlighting issues within the Curtin investigation process whereby the investigator does not advise persons under investigation of the result and when a contract is not renewed the staff member is not advised why. By simply not renewing the staff member's contract, the staff member is able to apply for positions at other universities with seemingly no consequence.

[192] Dr Ali was examined on 11 and 12 March 2010. He initially adhered to the account he had earlier given in interviews. That was that he did have discussions with them about changing their marks but that was only because he felt sorry for them and was trying to help them. At that stage he said he was asking them to give him (legitimate) reasons why he should increase their marks and they were suggesting gifts and other alternatives. His account evolved significantly in the course of his examination over two days.

2.7.1 11 March 2010

2.7.1.1 Complainant 1

[193] Dr Ali agreed he had arranged to meet Complainant 1 on 23 April 2009 to discuss her mark. He met her after class. He said she was asking him what he "could do to help her because she didn't want to fail".⁴⁴ They spoke initially in a classroom, where there was a lecture. He then took her to another room, so they could talk in private. By then it was between 7:00 p.m. and 8:00 p.m.

Can you tell me what you can remember about that conversation?---I remember that she was crying and she was upset that she was going to fail and she asked me, "Is there anything I can do" and I said, I'm pretty sure I said no, but - because I think the tests had already been given back to the coordinator at that stage, I wasn't the coordinator, and then I said the only thing I can do is talk to the coordinator and try and get him to do something, but I did say that I wasn't keen on doing that, and then that's when - I don't remember how it happened, but that's when the issue of gift giving came up.

Okay. Who was the actual unit coordinator for this unit?---Felix Chan.

Had you actually marked the mid-term exam yourself?---I can't remember honestly, but I'm sure I marked some of it, at least some of it, but I can't remember if I marked all of it.

Okay. Can you describe to me what she said to you about the issue of gifts?---I think she said that's the only thing that she can do, and I said that's - I can't remember what I said exactly, but I did indicate that wasn't the right thing to do, and then at some stage she mentioned that's what they do in China. Apparently, students give gifts to lecturers all the time. I said we don't do that here, and I told her that she shouldn't tell other lecturers, or talk to other lecturers like this, because some lecturers might

take advantage of that and ask her to do things with them, you know, beyond gift giving.

What do you mean by beyond gift giving?---You know, like, sexual services, something like that. There are rumours that that stuff happens, so I said to her, "Just be careful, don't go round talking to people like that."

What was your understanding when she was talking to you as to what gifts she was offering or talking - - -?---Money.

Money?---I think, yeah, money.

What did you talk to her about in relation to the mark? Did you give her any options of what she could do?---I can't remember if - the only thing I'm pretty certain about is that I said the only thing I could do was talk to the coordinator.⁴⁵

[194] He said he thought she was upset because she thought she would have to go back to China if she failed.

[195] Dr Ali told the Commission that meeting was inconclusive.

What was the end result of that meeting?---I think I told her that I can't do anything and I said, "I'm sorry, I think you need to just try harder." I'm just saying this is what I think I would've said in that situation because I get students like that all the time, so I would've said something like that, and I left.

Did she accept that?---Yes; in fact I remember I saw her after that, I think a few days later, and she stopped me in the corridor and had a chat. She talked to me like we were good friends ...⁴⁶

[196] He agreed that saying "... if you could say something to convince me"⁴⁷ was the sort of thing he would have said –

Do you recall saying to her at that meeting, "So if you could say something to convince me"?---I can say that if I was in that situation the sorts of things that I would say to the student are like that, but I don't think I would have said it that way. I would've said something like, "I don't believe" - right, "The only thing I can do is to talk to the unit coordinator, and I don't feel convinced or you will have to convince me that that's worth me doing that for your case."⁴⁸

Later, he elaborated.

But if you had said that?---If I had said that I would have meant, "Can you give me some reasons why you deserve me talking on your behalf to the coordinator?" Yeah.

Do you remember saying, "What happens in China?" to her?---We talked about China, but I don't recall whether that was after she mentioned the gifts or before or when, but we did talk about what happens in China. Yes, I asked her, "So what do students do over there?" and I think that's when she said, "They give gifts," and that's when I said, "Well, we don't do that in Australia. It's very different."⁴⁹

[197] He denied Complainant 1 may have thought it was his “intention that she should have sex with” him.⁵⁰

[198] Dr Ali agreed it would have been possible for him to change her mark.

If you had been inclined to accept the offer you thought was being made by [Complainant 1] - - -?---Yes.

- - - would you just have re-marked the paper yourself? How would you have done that?---In that case, something tells me that I marked all those papers, because it was a post grad class, and I think the post grad class was not divided amongst different tutors, because there was only one class; so in that case what I would've done is I would've re-marked it and then gone to the coordinator and said, "Look, we need to change this student's mark because it has been marked too hard," or whatever, yeah.

So you could just tell the coordinator that the mark needed to be changed - - -?---Yep.

- - - without any reasoning behind it?---No. They don't care about that, no.

Is that common, that you could go to the course coordinator?---Absolutely, yeah.

Would the course coordinator ever question you much about why the mark was being changed?---No.

So theoretically if, from what you have described, [Complainant 1] was offering you some sort of bribe - - -?---Yep.

- - - in your opinion would it have been easy to actually accomplish what she wanted?---Definitely.⁵¹

[199] Later in the semester Mr Chan spoke with Dr Ali and told him there was a student who could not go to Dr Ali's last few lectures. He said Mr Chan asked him to record them on an MP3 for her. He said Mr Chan did not tell him what was wrong, but he later found out by other means that it was Complainant 1. In the meantime, he had given the recorded lectures to Mr Chan.

[200] Dr Ali was asked further questions about Complainant 1 the following day, 12 March 2010, but that was after he had been questioned about the other complainants and for context it is necessary to discuss that first.

2.7.1.2 Complainant 3

[201] He was next asked about Complainant 3.

[202] She and two other students had to complete a group assignment over the semester. The other two wrote a letter to Dr Ali complaining Complainant 3 was not contributing her share of the work and they didn't think it fair they should get the same mark.

[203] Dr Ali said he contacted Complainant 3 and they met, but had only a brief time after an evening lecture. He told her he would call her to arrange another meeting. He described what happened after that.

And what arrangements did you make?---I remember I called her several times and she just wasn't available or something, and she kept suggesting different places or different times to come to Curtin and talk about it and I got frustrated and I said I couldn't be bothered going out of my way to the campus to meet her when I don't have - normally, I meet students after a class like that lecture and like that other girl. And then I told her to meet - she actually offered, she was being very accommodating, she said to me, "I can meet you anywhere else, wherever you want." She seemed very desperate to explain her side of the story, so I gave her the benefit of the doubt and I said, "Okay, I'll meet you, but I'm not going to meet on campus because it's out of my way." She said, "I can come to somewhere near you," so I suggested the McDonalds near my place.

That was because you didn't want to travel to Curtin?---Absolutely.⁵²

- [204] He told the Commission he went to McDonalds but did not go in (this was on 15 May 2007). He saw her and when he gestured to her she came outside. He was asked why he had arranged to meet her at McDonalds.

Why did you not go in to meet her?---I think I didn't want to sit in McDonalds and talk about this.

But you had arranged to meet there?---Well I don't want to give her my address, and that's why what happened after that was - I said, "Let's just go and talk about it in my - my place," because it's quiet and private, but I'm not going to give my address to students.

But you invited her back to your house?---That's right, yeah.⁵³

- [205] He said her response was "that's fine"⁵⁴ and they walked to his place. It was dark by then. He explained –

How long does it take you to get to your house from that McDonalds?---About a five-minute walk, if that.

What did you do when you got to your house?---Sat down, showed her the letter. Actually, no, I took the letter with me to McDonalds. She read the letter as we were walking back, I think, and then went to my place and then - actually that can't be right because it was dark. Maybe she didn't read the whole thing, and we got to my place and then she - I gave her more time to read the letter and I asked her to give me her side of the story and she did.

Was there anybody else at your house at the time?---No, it was just the two of us.

Did you actually sit on separate chairs or together - - -?---No, on - on my couch.

And what did - - -?---I don't have any other chairs.⁵⁵

- [206] Dr Ali said he sat next to Complainant 3 and they talked about the problem.

What did you say to her?---I can't remember exactly, but I would have talked about the group problem and asked her her side of the story.

What did she say to you?---I can't remember, but I'm sure she would have just reiterated all the stuff, all those excuses that maybe those students mention in that letter and she was - seemed quite desperate and was saying that she really needs to pass and she was making me feel like I'd really have to help her out.⁵⁶

- [207] He said he raised with her the complaints made by the other students, but it seemed to him she was just making excuses. Then the discussion took another turn.

Did you talk to her about any other things during this conversation?---Yes. She at one point said that - can she convince me to - I probably would've made the same statement I made to the other students that I don't believe your case and, you know, you're not telling me anything that's going to change my decision at that stage and then, you know, she said at some point that she could be my girlfriend if I agreed to change her mark for her.

What did she actually say to you about being your girlfriend?---I don't remember, but that phrase stuck out in my head, so I guess she meant she would do sexual services.

And what was your response to that?---My honest answer is that I thought about it and I was thinking that it's a little bit - that's the first time I've actually had a student be so forthcoming and in my face about that, so I did think about it and I was tempted, but I said to her that I don't think that's the right thing to do, and pretty quickly after that I ended the meeting, but I did tell her that I want to meet with all of them after the lecture to discuss the whole problem, yeah.

So it's your evidence that during the meeting she was trying to convince you to change her mark?---Yes.

Or to alter what the other students had complained about?---Yes.

And that she was offering to be your girlfriend?---Yes.

And you interpreted that she would offer you sexual favours?---Yeah.

Did you ever say to her in that meeting, "You need my help to pass"?---I don't think I would have said it like that, but I would've indicated that I can adjust her penalty. I decide her penalty, that's right, I decide her penalty for her assignment for not contributing, and that's up to me to decide.⁵⁷

- [208] He denied asking her how "would a Chinese student normally satisfy a Chinese teacher".⁵⁸ He said he made it quite clear he would not accept her offer of sexual favours. He initially said he did not recall her saying she had a boyfriend and did not talk to her about him having a girlfriend. He said he did not try to convince her to stay longer at his house, and denied that he asked her to stay the night.

- [209] Asked whether she told him it was her boyfriend's birthday he said that sounded familiar and he thought she told him she had to go to a birthday party, or something like that, and he then walked her out and back to McDonalds, where he left her.

- [210] He denied that he said anything like if “you can satisfy me I will give you higher marks”.⁵⁹
- [211] He said that while walking her back to McDonalds he told her that he would need to see her and the other two students after the next lecture.
- [212] His evidence was that the other two were there, but Complainant 3 was not, so he told one of the others to call Complainant 3 on her mobile phone. She did so, and Dr Ali then took the telephone from her and spoke with Complainant 3. He told her to come to them. His evidence was that was the only telephone contact he had with her.
- [213] The Commission had his telephone call records. They showed he had called her at 4:57 p.m. on 15 May 2009 and then he made nine calls to her from 8:34 p.m. on 20 May 2009.
- [214] Faced with this Dr Ali told the Commission his lecture would have finished about 8:00 p.m. and he was then waiting for her with the other two students. He said after some time, when Complainant 3 had not turned up, the other two left, and that is why he made the calls.
- [215] When he spoke to her he arranged to meet at the campus because he was already there. He arranged to meet her outside a building – probably because at that time the buildings were closed. He explained –

*Did she want to go into an office or classroom to talk about it?---Yes, she did, but I didn't want to and she - and it was actually quite cold that night, I think, so we ended up sitting in my car. I know this sounds horrible but, yes, we sat in my car.*⁶⁰

- [216] In evidence, Dr Ali said Complainant 3 raised similar issues as she had that night at his house –

THE COMMISSIONER: *What was the effect of what she was saying to you?---That she still wanted me to change her mark and do things for her in exchange for something.*

Do what for you?---I'm sorry?

Do what for you?---Not give her that penalty and help her with the unit.

Yes, but what was she going to do for you?---I don't remember her specifying what she was going to do, but I know that the impression I got was it was similar to what she was saying in my house.

*Which was?---Sexual favours.*⁶¹

- [217] Asked what he said to her about that, his response was –

... Again I thought about it because I was again in that situation and she said to me that she could - she could meet me and - outside campus and - and do the whole thing. I don't remember exactly what she said, but that was the sort of thing she was saying to me, and I said - I was indicating that - initially again I paused and I think - I know that was the wrong thing to do, but I wasn't expecting her to say that to me again, and then I was frustrated because I was already angry that I had to wait so long and I didn't want to

give her any more sort of - what's the word - any more assistance in this matter. I just wanted to give her the penalty and forget about it and, yes, so that - that's pretty much what the conversation was. I can't remember exactly what we said to each other, but I remember that she said something about she will contact me again, I think, and I said, "I'm still not going to do anything," and I think she left and that was the last contact that I had with her.⁶²

[218] Shortly afterwards, he was asked by the Commissioner –

What were you thinking at the time when she was talking to you? Were you actually thinking that yes, maybe I could have a sexual relationship with this student and no-one find out about it?---No, not that part of it, but when I say I paused, I thought that yes, I could conceivably do things with this girl and be able to reward her with marks; that's what I was thinking to myself.⁶³

2.7.1.3 Complainant 2

[219] The examination then moved to questions about Complainant 2. In his earlier statement Dr Ali had explained this student was one he thought had a mark like 43 or something and she wanted to pass, so he met her on campus to discuss that.

[220] He said before that she had originally come to him crying because she had previously failed the subject and needed his permission to be enrolled to do it again. He was the unit coordinator at this stage. He went to the enrolment office and authorised the re-enrolment.

[221] He told the Commission in evidence that he later called Complainant 2 asking her to meet him to talk about her final grade for Finance Portfolio Management (this was the one he thought was 43). He said he called her because he had helped her (re) enrol in the unit and felt bad; he thought she was genuine and felt sorry for her. They met on Level 5 of a building where the examination papers were kept. He retrieved her paper. He said they somehow ended up in the lift lobby.

... we ended up in the lift lobby and I was telling her that the situation is that she is probably going to fail if it's 43, but she may get a considered [sic: conceded] pass if her mark is between 45 and 49 and I was considering raising that mark for her.⁶⁴

[222] This meeting was late in the afternoon of 17 June 2009 and Dr Ali had to take an airline flight the next day. He said he was in a rush to get home to dinner.

[223] He was asked what he spoke to her about –

... I told her that her situation is that she's on 43 and I just wanted her to see the exam paper and satisfy herself that that was the mark and to expect that that's what's going to happen, because I felt sorry for her and I didn't want her to wait several weeks to get the result.

So what were you saying to [Complainant 2] was going to happen?---That two things could happen, she'd either - if I - if I do nothing she's probably going to fail. If I raise the mark to 45 she could get a considered

[sic: conceded] *pass because a considered [sic: conceded] pass is between 45 and 49, but that's not guaranteed; or I could raise the mark to 50, but I can't remember whether I gave her those alternatives then or in our subsequent meeting later ...*⁶⁵

[224] Asked whether he told her that he could alter her work “if she could convince [him]”, Dr Ali said –

*... Again I would have said the similar things that I said to the other people, that I - "I can help you to change this mark, but I need to know more about you to decide that" because, you know, it's a big decision for me to - well, not so much the 43 to 45, I could do that by myself. It was - I was actually prepared to just pass her, give her the 50, which was actually a bigger increase, but I wasn't so comfortable with that. That's why I said to her that I'm not convinced yet whether that - I should do that, yes.*⁶⁶

[225] Dr Ali told the Commission he was in a hurry and said to her that if she wanted to talk about it they would have to meet that evening. He said that was because he was flying out the next day and had to submit the results, so that was the only opportunity he had to talk to her. They arranged to meet later.

[226] He said he told her they would meet on campus, but she said she could not because she did not drive. He said he offered to drive her, if she told him where she lived. He then suggested he pick her up at McDonalds in East Victoria Park. He said he went there at the agreed time but she was not there, so he called her on the telephone. She said she was at the campus already. So he told her what building they would meet in, and he went there.

[227] At this point in Dr Ali's examination Counsel Assisting played to him the MP3 recording which Complainant 2 had made of their meeting that night.

[228] Although much of it is indistinct, it clearly enough reveals Complainant 2 was very anxious and concerned about the consequences of getting a low mark and that in response to Dr Ali's queries about her saying what she could suggest to him, she repeatedly proffered “academic” possibilities. Their conversation was punctuated by long and obviously awkward silences.

[229] Dr Ali was asked about this conversation.

You can see that you say ... "I think it would make life a lot easier if I gave you a pass"?---Yes.

What did you mean by that?---If she waits to see what happens she's got a risk that she may not pass, because the board of examiners may not give her the conceded pass, so I could make life easier for her just by giving her the 50 which I eventually did.

*She is saying there something about a pop quiz. Is she suggesting that to you?---I think she said she could do something like another assessment and I said no.*⁶⁷

...

Then further down you mention, "Especially with a core unit. If it wasn't a core unit." Was this - - -?---I think for core units they're a bit more stricter, so if they're going to give a conceded pass it's less likely to happen for a core unit than it would for elective.

This was a core unit?---Portfolio is a core unit, yes.

So you were explaining to her that it's more difficult?---That sounds like what I say, yes.⁶⁸

...

And then you can see, if you look at the transcript from the recording?---Yes.

"It's not so much that about proving yourself, it's more about making it worth me changing your mark." Do you remember saying that?---No, I don't remember it, but when you play that tape and I'm saying that, I can say that what I meant was changing your mark from 43 to 50 is a big thing, so I need to be sure that you're worth me doing that, but I don't mean you're worth me doing that academically, I mean your situation is worth me doing that. That's what I meant.

So you were looking at her as a whole picture as to why you should make that change?---Yes.

If you go to page 12⁶⁹ you can see you're saying in the second paragraph, "I already know you're good as a student"?---Yeah, that's right.

Was that your opinion of her academically?---I guess that was the other reason I felt sorry for her, that this was the only unit that was holding her back, because she had done well in the other units.

And again - - -?---And actually, sorry, that's probably the reason why I helped her re-enrol in March, because I would've at that time also checked her transcript to decide whether she's worth me signing off, and I probably made that conclusion.

Again, you say in that paragraph, "It's just a matter of making me feel comfortable with it"?---That's right, comfortable with changing the mark by such a large amount, yes.

Were you meaning by that you wanted her to offer something to you to make you feel comfortable?---Not at that point, no.⁷⁰

...

So during that conversation were you saying to her, "You need to offer me a non-academic" - - -?---I don't think I said it like that, but that's what I was indicating, yes.

What did you mean by non-academic?---At this stage, I was just thinking of some other information that she could tell me that would make me feel that she's worthy of the set of marks. Like, if she said something about her group assignment - she never once discussed with me her group assignment problems and whether she's had any problems studying or if she's got some illness or anything. I was just - - -

So you're thinking about personal factors?---Yes.

And was one of those factors what she could offer you herself?---Not at that point.⁷¹

...

If we just go down to second-last sentence on that page, you can see, Nasrul, it says, "It'll be a lot easier if I pass"?---Yes, that's right.

THE COMMISSIONER: It was actually, "It will be a lot easier if [sic: I] passed you," I think.

COUNSEL ASSISTING: Yes?---Yes.

Do you recall saying that?---Yes, that sounds right, yes.

You were saying that because for all her options it would be a lot easier for her if you just changed the mark?---Correct.⁷²

...

Then, Nasrul, you can see the transcript states, "I just said I could think of something but I don't know - I don't know if you will." Do you remember saying that?---Yes.

What did you mean by that?---Okay, this is the point in the conversation where I - the tone of the conversation was starting to get very light-hearted and it was not serious like it was with the other students that I've told you about, and I wanted to see what - or how desperate she was and what she was prepared to do. That's why I asked her those questions. I wanted her - and I wasn't saying it seriously, I was laughing and joking about it like you heard on the tape and - but I never had any intention of going through with it, and the proof of that is that I changed her mark anyway even though nothing happened after this conversation.

Can you just tell me what you were suggesting to her even as a joke?---If she would, you know - honestly at the time I didn't have anything in mind, but I was thinking if she would, you know, give me a gift or - sorry, one more thing I should add. When I gave her the re-enrolment for her course in March, after I signed that form she said to me, "If you ever come to [suppressed] again I can take you out or show you around," so when I was - at this point I was thinking maybe she might offer me something like that again, and I go to [suppressed] frequently and I thought maybe she might take me out when I was there. This is what I was thinking at the time.

Can we just look at that sentence again?---Yeah.

"I just said I could think of something but I don't know - I don't know if you will." Why did you say "I don't know if you will"?---Because she hadn't said anything at that point.

Is it the case that when you said that you were meaning in a sense of her offering you a sexual favour?---Not sexual, but something like - like I said, going to ... and taking me out or something of that - - -

Okay, so at no stage during that conversation were you considering a sexual - - -?---No.

Throughout the whole conversation?---Not - not in the boardroom, no. Hang on, no, nothing sexual, nothing sexual, nothing sexual at all throughout the conversation.

You have given evidence that you were starting to talk in a light-hearted joking manner?---Yes.

Were you joking about the fact that she could offer you a sexual favour?---Not sexual, but like going out, like dating, that kind of thing, okay, not sexual.

So were you looking to possibly see if she wanted to go out on a date with you?---Yes.

And that was so that perhaps later down the track perhaps you two could have a relationship?---No, that's not why I did this. I was doing this to see whether that was something she'd do. I was - I know it's stupid, but I was having - the conversation like that, I was having a bit of fun and it was starting to sound like she was heading in that direction, so I just wanted to see how far she'll go, but I never would've - even if she had have agreed, I wouldn't have done anything, and the fact that she didn't agree and I didn't do anything with her, I didn't punish her for that because I still passed her, so that shows I never had any intention of going through with it.⁷³

(emphasis added)

...

[COMMISSIONER:] And your evidence is that you were asking her those things to see if she was worthy, or you were testing her?---Yeah. I think it might've been also because of that other incident with that other girl at my house, I suddenly thought that maybe this girl is like that girl and is that what she means. I'm being honest with you, that although I'm saying to you now that it was stupid, at the time when I think about it it's exciting, because I don't get those kind [sic: of] offers from students. It's the first time it's happened; so the same kind of situation here, I just felt like I'd just ask and see where it went, but I had no intention of following through with it.

So at the time in the conversation were you excited about where this could take you?---Yes, that's what I was thinking.⁷⁴

(emphasis added)

...

COUNSEL ASSISTING: And were you trying to encourage her to agree to a date with you?---No. I just wanted to see whether she would put the offer on the table.

But you were saying that you could help her with her mark during that conversation?---Well, I didn't tie it to that, but yeah, that was how the conversation was going, yeah.

Could you see from that conversation that you were putting some pressure on her about her options?---Yes, admit that. Yes.

And that by saying it would be easier for you to pass her, that would be putting pressure on her?---Yes, but like I said, if she had said yes, nothing would've happened, and in fact I think she was going to say yes and I stopped her and I actually agreed to meet her - - -

Okay?--- - - and say that everything is fine and change her mark, but it never happened.⁷⁵

...

*And from what you recall was she saying, "I can't go out on a date with you, I can't do that because I don't do that sort or thing." Is that what was said?--
-Yeah, something like that, yeah, not with those words but, yeah, something like that.*

From that recording we could all hear that there was [sic: were] a lot of long pauses?---Yes.

Silences?---Yes, yes.

Was that because she was uncomfortable?---No, all that happened before I mentioned this stuff about - that comment I made about - you know, I could think of something, but up until that point there was never any insinuation that there was something else I wanted. I was just waiting - giving her time to give me some other reasons that I could do. Once I realised that wasn't going to happen I tried this stupid thing to test how far it would go and then we ended the meeting.⁷⁶

...

Would you agree that in that conversation with [Complainant 2] that we've heard that you were the one encouraging her to think of other ways to convince you, that it was you putting the pressure on?---Yeah, it does appear that I was the one that was doing that, yeah.

And does it appear that she was trying to find other ways to deal with the situation?---Other than - - -

Such as a pop quiz?---Yes, yes.⁷⁷

(emphasis added)

[230] The examination of Dr Ali that day concluded shortly after.

2.7.2 12 March 2010

2.7.2.1 Complainant 1

[231] Counsel Assisting began the second day of Dr Ali's examination by asking again about Complainant 1.

[232] Dr Ali said he met up with her after his class and they went to another room where they discussed her mark. That was when the issue of gift-giving "and stuff" came up. She could have got the impression that's what he was asking, but he never took anything and never changed the mark. He added:

What did you say to her?---I can't remember, but I did tell her that I had to be convinced, and you've got to say stuff to help me decide what to do, and I can understand that may have meant the whole bribe stuff.

What do you mean, "the whole bribe stuff"?---Like giving money to do that kind of stuff.

Is it your evidence then that that meeting was about her trying to offer you a bribe?---She did say she could do that, yes. That's what I remember.⁷⁸

A little later he qualified that –

... I admit I did make it clear - or make it - make her feel like that was something that could be done, but I never intended to pursue that and I left that meeting telling her that it can't happen and I told her not to talk to other staff members about that.

Dr Ali, in that situation - - -?---Yeah.

- - - is the reality of what happened the same as what happened in that audio recording that we heard, in that you were trying to test [Complainant 1] to see if she would perhaps go on a date with you, and I need you to tell me the truth?---I - I honestly cannot remember what I said to her, but if - if you've got something that says I said stuff like what I said to her - to that other girl, all I can say to you is that maybe I got caught up in the whole thing and I - and what I said sounded like what I said to that - that other girl, but - - -

Okay, let's - - -?--- - - - I swear to you I didn't have any intention to do anything.⁷⁹

When pressed further, he made a concession –

... What were you trying to make her think?---I - I guess I wanted to see what she was prepared to do.

And what do you mean by that?---I don't know, whatever she suggested she could do, like gifts of dating, but I don't know, maybe - that's all I can remember.⁸⁰

(emphasis added)

[233] The questions focused on what impression he was trying to create in Complainant 1's mind –

... I wanted to know what she could do to help me decide whether I should help her.

What did you mean by that at the time? What sort of thing?---It will either be bribe paying or dating.

Right. Are you saying that you were thinking like that at the time you had that conversation with her?---Yes.⁸¹

...

Nasrul, just thinking back to that meeting and what you have answered the Commissioner then, can you tell me if it was the same sort of

situation as we have with that recording in that you were excited about where this might lead to with [Complainant 1]?---Yes.

And would it be the same as that recording where you were testing her?---Yes.

Is there anything else you would like to tell me about that meeting with [Complainant 1]? Did anything else happen in that meeting?---I - all I remember is I asked her what she can do to convince me that I'm going to - that I can help her, and then I don't know what happened. Somehow we got to the topic of the bribe paying and then I asked about what they do in China and then she said they give gifts and I said, "Don't give gifts," and then she said something about - then maybe I said something about dating and she said no, and that was it, and then I said don't tell other staff members about stuff like that because they might take advantage of you and then, that's all I remember, and I left the meeting, and then I saw her again afterwards.⁸²

and a little later –

- - - was it your understanding that she obtained the impression that you were trying to ask her out?---Maybe she thought that from what I was talking - just like that other girl did.

THE COMMISSIONER: If that's what she thought, given what you have just told me - - -?---Yes.

If that's what she thought would she have been right to think that? If she thought what you were saying to her was indirectly, if you like, whether she was prepared to go out with you in exchange for you marking her up, would you say that was a correct understanding on her part of what you were in fact putting to her?---Correct in that that's what - that's the impression that I was giving.

Deliberately I mean?---Yes.

Yes?---But if I - but that impression was not something that I planned on actually following through with. It was just - like with that other girl, it was just excitement and I just wanted to see what she would say or do.

Okay. I want to get my understanding of this quite correct?---Yeah.

You are telling me that if she got the impression that you were saying to her, "Well, if you're prepared to date me I can give you a higher mark," she would have been correct in having that impression?---Yeah.

That is, that's what you were in fact putting to her but you say if she had agreed to that, you would not have gone through with it?---That's right.⁸³

2.7.2.2 Complainant 3

[234] Counsel Assisting then moved again to Complainant 3. Dr Ali was asked –

COUNSEL ASSISTING: Like [Complainant 1], during your meeting with [Complainant 3], do you think that you could have given her the perception that you wanted something more from her?---Yes, but I will also add that

out of all these situations she was the one that seemed the most receptive and cooperative in that regard.

Can you tell me more about that?---That she was prepared to say that, that she could be my girlfriend. None of the others made statements like that.

Did she actually say or ask you in that conversation if you meant that you wanted to have sex with her?---I can't remember saying that word. That's the truth. I don't remember saying that word.

Did she ask you that word?---I don't remember, but I know that that's what was meant by our discussion. I know that what being girlfriend - yes.

So did she first raise with you during that meeting about you and her being girlfriend and boyfriend or was it you first?---I think what would have happened is I said, "What can you do to convince me" and she would've said, "I can be your girlfriend." That's how I think it would have happened.

What happened after she said that?---I thought about it.

How long did you think about it for?---I can't remember. Honestly, I can't remember.

Do you think during the time that you thought about it she could have got the impression that that's what you wanted?---Yes.⁸⁴

and again, later –

Is there anything more you want to tell me about what happened during that meeting?---I - I thought about what she was saying and I was tempted, but I never did anything with her, but I can understand she left with the impression that that was open, that was an offer open to her, yes.⁸⁵

[235] The examination returned to why Dr Ali had taken Complainant 3 to his car and sat in that to discuss her mark –

Why did you choose to go to your car, and I want you to be honest about this?---My honest recollection is that it was cold outside and we - I think she even said she wanted to go somewhere that was not so cold, and I said okay; but I didn't want to go into a classroom and my car was just there, so I just said, "Just go and sit in my car."

I want you to think carefully back to that evening?---Okay.

And what you were thinking at the time?---Yes.

Did you choose to go to your car also so that you could have private time with her?---Yes, private to talk about the issues, yes.

Think about whether you were also thinking about possibly if I'm in my car, could I then possibly be able to talk to her about personal things?---No, but that's what happened when I got into the car; so it entered my mind when I got in the car that - and that's how the conversation suddenly got onto the whole same issue again, but I didn't think about that as I went to my car.

When did you first think about it?---I honestly can't remember, but it happened in the car. I'm pretty sure we discussed the whole issue again about what she could do for me.⁸⁶

[236] He reiterated that she indicated she could do something for him if he changed her mark, and he was tempted and was talking to her as though that was “stuff” he was prepared to do –

THE COMMISSIONER: Again when you are saying, "We talked about what I could do for her and what she could do me for [sic: for me]," is it the case, as you have explained to us earlier with the others, that your intention was to convey to her the impression that you wanted her to date with you - -?---Yes; yes.

- - - or whatever?---Yes; yes.

In exchange for that you could give her a higher mark?---Yeah, that's right.⁸⁷

[237] Dr Ali testified that he definitely did not see Complainant 3 again after that night, although he “may have contacted or called her again”.⁸⁸ He was asked about that –

What was your intention in trying to contact her?---I guess it was to see whether she was actually serious about what she was prepared to do.

What do you mean when you say that about what she was - - -?---Like the whole dating thing, whether that was - yeah.

So you were hopeful at that time that you could have a date with her?---Well, not hopeful but I was excited about it, yes.

And you were happy to pursue that even though she was your student?---I've got to say again that I'm - I can - I can admit I'm incredibly gutless and I would never have gone through with any of these things, but I was caught up in the excitement of it and - yeah.

So even after the meeting in the car - - -?---Yeah.

- - - you were still hoping that something would work out with this lady?---No, see hoping is not the right word. It was like I was excited about it and I was thinking about it, but I - I guess I was - I was trying to see how far she was going to go, but I would never have done anything. That's - that's the truth.

How do you know you would never have done anything?---Because I'm gutless, I wouldn't have had the guts to do that, to go that far.⁸⁹

[238] He was then asked further questions by the Commissioner.

If she were to say something like you told her that if she didn't agree to do what you wanted or didn't satisfy you - - -?---Yes.

- - - you would let her have very low marks on the assignment and she couldn't pass the unit, would you agree that would be the impression you were trying to give her?---I don't recall saying that but, yeah, that was the impression.

I see. Did you tell her that if she would have sex with you you would give her the final exam paper before the final exam and also some other paper

to help her pass?---I'm pretty certain I wouldn't have used the word sex, but that would've been the impression I gave, yes.

...

... In that context did you say that it didn't have to be a long-term relationship, you could just have sex a couple of times?---Again, I wouldn't have said those words, but - maybe I said something like that, but I honestly don't remember what I said.

If she had that impression that that's what you were telling her, would that have been a correct impression?---Yes.⁹⁰

2.7.2.3 Complainants 1, 2 and 3

[239] Dr Ali agreed that he was "testing the waters"⁹¹ without coming out and saying specifically what he meant. He agreed Complainant 1 and Complainant 3 would have had the perception he wanted to have sex with them and that would have been a fair perception on their part.

[240] Asked what he had meant earlier when he said that during these meetings he was excited about what would happen, he explained –

What do you mean by "excited"? Is this that you had a sexual excitement at that time?---No, just excited that I got a student willing to go to that extent because I never had that happen to me before.

Did you feel powerful at that time?---Powerful - I don't know; maybe, I guess.

Did you feel that you had a degree of power over these girls?---Yes, yes, because I was coordinator.⁹²

[241] In relation to Complainant 2, Dr Ali agreed he had previously met Complainant 3 at McDonalds and subsequently suggested the same thing with Complainant 2.

[242] When asked what was going through his mind at his meeting with Complainant 2 he said –

... That I wanted to see whether she would admit to doing something.

What do you mean by her admit to doing something?---Like something that - you know like bribing or - - -

THE COMMISSIONER: *You mean agree?---Yes. Yeah.*

Yes.

COUNSEL ASSISTING: *So you were wanting to see if she would agree to something with you?---That's right, yes.*

And truthfully, what were you hoping that that would be?---Again, the whole dating thing, yeah.⁹³

[243] He explained the progression in his thinking –

THE COMMISSIONER: *I suppose, thinking about how you were approaching it at the time in terms of your explanation that you were trying to see how far each of these girls would go, what they would offer and so forth, there would be a bit of a progression, wouldn't it?---Okay, yes.*

If they were prepared to offer a bribe or a gift, you could then move - - -?---Yes, okay.

Then know that they were prepared to give you something?---Yes.

And you could then move on with the suggestion, "Well, no, that's not good enough, what about something else"?---Yes.

Having in mind, as you have described, dating. Again, is that the sort of thinking that you had?---Yes. That's right, yes.⁹⁴

2.7.2.4 Complainant 4

- [244] Counsel Assisting then turned to Complainant 4, who had been one of his Summer School students in 2009. He said they became friends. He would talk to her after class about her life and other things. They made arrangements to meet for lunch or coffee, but he could not remember whether that had actually happened. He said they contacted each other by email. After Summer School she went back to Malaysia for her holiday. When she returned she was in his Portfolio Management course again, but they were not then in much contact anymore. He said "things sort of petered out when she went back to Malaysia".⁹⁵ However, he did say they met for coffee after her return. It was on that occasion he told her he was going to Malaysia on a teaching trip. He asked whether she would be going back at that same time and if she was, could she take him around in Malaysia. He said she told him she couldn't, although later he said he thought she gave him the impression she would, and he was looking forward to it.
- [245] Counsel Assisting showed him an email of 10 February 2009 from Dr Ali to Complainant 4 in which he asked her to meet him for coffee and wished her "[g]ood luck for tomorrow", and under his name "p.s. I can mark your paper first, if you like ...", with a smiley face.⁹⁶

*Subject: hello
Date: Tue, 10 Feb 2009 13:34:58 +0900
From: Nasrul.Ali ...
To: [Complainant 4]*

Hi [Complainant 4],

I know you're probably busy studying for the exam. Just wondering if you'd like to meet for a coffee on either Thursday or Friday evening? I still have concerns about getting around in KL, perhaps you can give me more tips??

Good luck for tomorrow.

*Regards,
Nasrul*

p.s. I can mark your paper first if you like ... :)

- [246] He told the Commission he thought this was a reference to a Summer School examination she had the following day, and the postscript was just a joke; he was just being friendly.
- [247] Dr Ali said the coffee meeting at Victoria Park happened at the start of first semester
- [248] His evidence was that they were both considering going to Malaysia in the same study week, but it did not eventuate. Sometime later he learned that she had been in Malaysia at the same time he had been and that annoyed him. He thought she should at least have told him.
- [249] He said he did talk to a few friends about it. They were Mr Gill, an academic colleague, and a student, S5.
- [250] He agreed he “might have” told Mr Gill he was angry about it, and may have said something like, that he was going to make [Complainant 4] pay for what she had done.⁹⁷
- [251] However, he sought to explain that in evidence by claiming that he only intended that if she was ever in a borderline situation with a mark he would not show her any favours because “she’s obviously not an honest, genuine person”.⁹⁸ Again, though, he agreed it was possible that he told Mr Gill he would make her pay for what she had done. He said that he “may have” told something similar to S5, because he was “pretty angry” about it.⁹⁹
- [252] It was after those conversations that Dr Ali marked down a group assignment submitted by Complainant 4 and two other students. He said the mark given by the tutor was “ridiculously too lenient” (by which he explained he meant “high”) and so he had to re-mark it.¹⁰⁰
- [253] Shown the marked assignment during the examination, Dr Ali confirmed it was he, as the unit coordinator, who scribbled over the original mark, which was in the range of 70 to 75, and marked it at 50.
- [254] Dr Ali was then asked about marking for examinations He explained the process –

... At the end of every semester we get given a sheet of paper that says, "Please fill in the breakdown of your results." So they want the number of students that got 90 to 100, 80 to 90, 70 to 80 et cetera, et cetera, fail, and then the percentage of each of those groups, and then they say that, here's the university, what they call the university accepted proportions that should be in those categories, and you should ensure that yours falls into this classification and if it deviates substantially from that, you've got to give reasons why. I can also add that the general view is that that's another way of saying you've got to make sure that you pass a certain amount or give a certain amount of credits, yeah.

So your evidence is that the university expects you to mark in a certain way?---That's how I interpret it, yes.¹⁰¹

[255] He was shown a Curtin University document entitled *Assessment and Student Progression Manual*. He said he had never seen it before. The proposition contained in it, that “[p]ractices such as scaling marks and grading students to fit a normal distribution curve are inappropriate”, had never been made known to him.¹⁰²

[256] He was then shown a master spreadsheet of his first semester marks in Finance (Portfolio Management) 301, taken off a memory stick obtained by the Commission on a search warrant for his residence on 7 July 2009.¹⁰³ He was asked how he guided his marking.

... Okay. I do a couple of things - well, a few things. One of the things is I calculate a mean and I like to have a mean that's somewhere between 50 and 60. The second thing I do is I try to ensure that there is not too much of a skew so we don't have an inordinate number of fails and then only three or four HDs. So what I will do is if I see the marks indicate that there's a large number of fails, that indicates to me that maybe the assessments were too difficult. So what I might do is I'll go to the HD group or the D group and someone who's sitting on, say, 75, I might push them up to 80 and give them the HD, because relatively they were the best performing or better performing students and giving them an HD would then put them into that next bracket.¹⁰⁴

...

... If we could just turn to the next page and if you start at the very top name - - -?---Yeah.

- - - again that has jumped 41 to 50?---Yeah, so - - -

And again the next student?---Yeah, so this is another case of - one other thing I should also add, if I - so say that guy's on 41, if I push him up by only five marks and he ends up on 46 he ends up with a supplementary exam, so the other thing that we keep in mind is whenever you have students sitting between 45 and 49 you could - it's just easier to push them up to the 50 and avoid them having to do the supp, which means less work for us, and so that was the general practice, so in those cases it could be that I actually was only prepared to give him a little bit of help, but then that pushes them into the supp category so it's easier just to push them to 50, and I know that this semester we had a really bad average. I think if you calculate the average on just the final marks it'd be pretty low, and so I was trying to make the marks - scale them up and make them look a bit better.

I can understand possibly when you're at 45 pushing up to a 50?---Yeah.

But a larger number of these are from 41 to 50?---Yeah.

Why were you putting them up so high?---But like I said, if I just put them from 41 to 45 I'm going to end up with a whole bunch of people doing supplementary exams and that's going to be another headache because we don't get paid for supplementary exam papers.

So it's a headache for you?---Yeah, and we have to mark them again and we've got to go through all that process. It's much easier if we just push them up to 50.

And that's easier for you?---Yeah, and it's not just me, but lots of people do that ...¹⁰⁵

[257] Dr Ali agreed he was under pressure to push people up, so as to save them having to go through the supplementary examination process. There were a number of students whose marks he had increased from 41 to 50. However, Complainant 4's mark of 45 had not been adjusted. He was asked about that –

Do you see that her 45 has not been pushed up?---Correct.

Why?---Like I said before, I don't - I will also assess their situation. If I think that they're not deserving of that assistance, I won't give it to them. Actually, 45 means she will get a sup anyway, so I didn't feel so bothered by it because she is not failing, she will actually have a second chance anyway.

Did you push some 45s up to 50?---Yeah, I did.

Nasrul, I want you to be honest with me now in what you tell me?---Okay.

Was the reason that you decided, or was the reason that you decided not to put her up to 50 - - -?---Yes.

- - - because of what had happened with the Malaysia trip?---Yes.

And was it because you wanted her to pay in some way?---Not that I wanted her to pay, but I didn't want to help her unnecessarily because I don't think she deserves it because of that.

THE COMMISSIONER: *Can we put that another way?---Yeah.*

If that had not occurred, would you have increased her mark - - -?---Yes.

- - - more highly than you did?---I would've probably put her to 50, yeah.

COUNSEL ASSISTING: *Because the process of a supplementary exam means she still has to take another exam?---Correct.*

And she's still in danger of not passing that exam?---Correct, yes.

So would it be fair to say that you were deliberately disadvantaging her?---Wouldn't it be more correct to say I deliberately did not give her an advantage that I gave to other students? I didn't push the mark down. I actually could've gone from 45 to 43 and then she wouldn't have had the sup at all and would have failed, so I just left it at 45.¹⁰⁶

...

THE COMMISSIONER: *Anyway, you gave her 45, right?---Yes.*

But as I understand your evidence, what you have told me is that had there not been this incident about her and Malaysia you would have given her 50?---Yes.

Yes?---But hang on, when I say I would - I gave her 45. 45 is what is worked out from her scores in there, so - - -

Yes?---Yeah, and I would have left it, I left it - - -

You left it at 45?---I left it at 45, yes.

Okay.

COUNSEL ASSISTING *And the reason you left it was because you were angry with her?---Yes. That's right.*

Is it fair to say that if you hadn't been angry with her about Malaysia you may have put her mark up?---Absolutely, yes.

THE COMMISSIONER: *I think his evidence was, I think your evidence was you that would have?---I would have, yes.*

Yes.

COUNSEL ASSISTING: *So that was a deliberate action on your part?---Yes.*¹⁰⁷

- [258] As to recording the marks, Dr Ali explained the spreadsheet, which he kept as unit coordinator, and which showed the original marks, any adjustments and the total mark for each student, was his own working document; the University was given only the final mark and so would not be aware of which students' marks he was "pushing up".¹⁰⁸
- [259] The University records show that Complainant 4's mark remained at 45, but a conceded pass was approved by the Board of Examiners. From an academic or employment point of view, whilst obviously preferable to a fail, a conceded pass is "worth" much less than an actual pass.
- [260] Dr Ali agreed that, if she had not annoyed him about his Malaysia trip, he would have increased her mark from 45 to 50 – and so awarded her a pass.
- [261] The Commission notes in passing the evidence given by Mr Chan commenting on Dr Ali's first semester marking spreadsheet for Finance (Portfolio Management) 301.¹⁰⁹ That showed 63 instances of students being marked at exactly 50, out of a total of 200 students. In Mr Chan's opinion that was unusual. There were also a lot marked at exactly 40, and a much smaller number marked at exactly 60. Mr Chan said one would not expect to see exactly the same numbers being repeated like that.
- [262] Looking at the way individual marks had been scaled, he could see no obvious rule or proportion being applied and he was inclined to think it was "somewhat arbitrary".¹¹⁰
- [263] A further aspect which concerned him was the width of the spread of scaling adjustments used to produce a mark of 50. Apart from the high number originally marked at 50, marks from 41 to 49 were increased to 50 – although not all. So, for example, one mark of 49 was not adjusted at all. Mr Chan could not explain this.
- [264] Mr Chan told the Commission that if this spreadsheet had come across his desk in the ordinary routine of his work, it would have concerned him. He

agreed with the suggestion that the University should have a requirement that spreadsheets showing not just final marks, but original marks and adjustments to them showing how the final mark was arrived at, be produced and available for scrutiny.

2.7.3 25 March 2010

[265] During private examinations on 25 March 2010 a number of staff members were examined about current systems and policies in place at Curtin University. They were:

- Ms Bernadine Kathryn Tucker, Integrity and Standards Officer, Legal and Compliance Services;¹¹¹
- Ms Mabel Jane van den Herik, Associate Director, HR Consultancy Services;¹¹²
- Ms Naomi Ann Yellowlees, Director, Legal and Compliance Services;¹¹³ and
- Professor Jane den Hollander, Deputy Vice-Chancellor, Academic.¹¹⁴

[266] It became apparent during the examinations of staff members that issues relating to complaints, contracts, staff inductions, and policy and procedures had been identified as a result of the Commission investigation and were being addressed by way of a review and final report by Ernst & Young, a copy of which was obtained by the Commission. That report highlights many of the areas of concern identified by the Commission throughout the investigation.

2.7.4 Assessment of Evidence by Complainants

[267] The accounts given by Complainants 1, 2 and 3 bear striking similarities which the Commission is satisfied are not the product of any discussions between them, nor any joint experience.

[268] Their individual accounts are internally consistent and logical. They are supported by the evidence of others to whom they made contemporaneous complaints and who observed their distress and anxiety following their contacts with Dr Ali.

[269] It is apparent these three complainants were responding to pressure by Dr Ali. Each was embarrassed and upset by the idea of sex in this context.

[270] Having seen and heard their evidence, the Commission is satisfied it is not likely that these complainants would offer sex to Dr Ali and does not accept Dr Ali's evidence insofar as he suggested otherwise. Dr Ali presented as evasive and obfuscatory. He was less than frank and sought to play down both what he said to the complainants and what he was seeking from them.

[271] He initially denied he said anything to any of them which could reasonably have given an impression he would change their marks if they had sex

with him. Ultimately, however, he agreed not only that he did so, but that in fact was precisely what he intended them to understand. He qualified his position then, by saying he only wanted to see if they would agree, but he never had any intention of following through.

- [272] Having weighed all the evidence, the Commission is satisfied that the events occurred as described by each of these three complainants and that the perception of each of Complainants 1, 2 and 3, that Dr Ali was pressuring her to have sex with him in exchange for giving higher marks, was accurate. That was exactly what he was trying to convey.
- [273] In relation to Complainant 4, the Commission is satisfied by the evidence, particularly of Mr Gill, S5 and Dr Ali himself, that Dr Ali deliberately used his position to disadvantage her on two occasions because he was angry with her for “jilting” him in connection with his trip to Malaysia.
- [274] By section 4(b) of the CCC Act it is serious misconduct for a public officer to “corruptly” take advantage of his or her office or employment as a public officer to obtain a benefit or to cause a detriment to any person.

2.8 Meaning of Corruption

- [275] Corruption is a notoriously difficult concept to define. The word is not defined in the CCC Act. Although there are many cases which discuss the meaning of corruption, each is a product of the statutory provision (or common law concept) being considered and the circumstances then at hand.
- [276] The leading authority in Western Australia on the meaning of corruption is Willers v R (1995) 81 A Crim R 219. In that case Malcolm CJ said that section 83 of *The Criminal Code (WA)*, “is concerned with the use of power or authority for improper purposes”. Malcolm CJ noted that in the context of the corporations law the term improper “has been held not to be a term of art, but simply to refer to conduct by an officer of a company which was inconsistent with the proper discharge of the duties, obligations and responsibilities of the officer concerned ...”. Malcolm CJ went on to cite various definitions from the dictionary. Malcolm CJ said, for example, that the Oxford English Dictionary definition of “corrupt” included “perverted from uprightness and fidelity in the discharge of duty; influenced by bribery or the like”. In the same dictionary the verb “corrupt” meant “to destroy or pervert the integrity or fidelity of (a person) in his discharge of duty”. Ultimately Malcolm CJ concluded that an exercise of lawful authority for an improper purpose can amount to corruption under section 83 of *The Criminal Code (WA)* Malcolm CJ’s *ratio decidendi* should not be taken as an exhaustive definition of the meaning of corruption. The facts in that case involved the abuse of an otherwise lawful power for an improper purpose. The charges were laid under section 83(c) of *The Criminal Code* of acting “corruptly in the performance or discharge of the functions of ... [the officer’s] office or employment, so as to gain a benefit ... or ... cause a detriment”. On such a charge, proof of an intent to obtain a benefit or cause a detriment was itself an element of the offence.

Malcolm CJ's reasons must be understood in that context. The case does, however, provide a guide to what may amount to corruption in the circumstances of that case.

- [277] Re Lane (unreported, Supreme Court, Qld, Ryan J, 9 October 1992) concerned legislation pursuant to which a public officer could lose their superannuation entitlements if they committed an act of corruption. As to the meaning of corruption Ryan J said:

In my opinion, in this context it means conduct which is done deliberately and contrary to the duties incumbent upon the person by virtue of his public office, as a result of which the person has sought to gain an advantage for himself or another.

I consider that the word "corruptly" is not to be equated with "dishonestly", and that dishonesty does not necessarily connote corruption, but if a person who holds a public office dishonestly applies public moneys to his own use, then his conduct is properly describable as corruptly using a public office held by him.

I accept as correct the submission made on behalf of the respondent that it is necessary to find a conflict between duty and interest before one can find a corrupt performance or non-performance of public duties. But if a person uses a public office which he holds so as to dishonestly apply for his own benefit public funds, he has allowed his own private interest to override his public duty to apply the funds only for public purposes, and his conduct is corrupt.

(emphasis added)

- [278] Thus for Ryan J the essence of corruption was the dereliction of public duty. The judgment of Ryan J in Re Lane was cited with approval by Higgins J in DPP (Cth) v Hogarth (1995) 93 A Crim R 452. It is of course important to appreciate that the interpretation of particular words (such as "corruptly") can be very case-specific, and turn on the particular legislative context and the facts of the case.

- [279] Nonetheless, another decision that provides a useful insight into the meaning of the phrase "acts corruptly" is that of the Federal Court of Australia in Williams v R (1979) 23 ALR 369. That case involved an appeal from the ACT Supreme Court. At trial the appellant was convicted of conspiring to cause a police officer to act corruptly. His defence was that he had paid the police officer the money so as to encourage him to investigate the complaint (against the appellant) properly because he had been "framed". In deciding the case it was important to assess the meaning of the phrase "acts corruptly". Blackburn J (with whom St John J agreed) expressed this opinion about the meaning of the phrase, at 373:

The word has, in my opinion, a strong connotation of misconduct, i.e., dereliction of duty, whether by act or omission. To that extent, the scope of the section resembles that of the common law offence of bribery, which implied the intention to procure a breach of duty on the part of the official bribed.

(emphasis added)

- [280] The trial judge’s direction to the jury in that case left open the possibility that the jury might think that they could convict the appellant even if they concluded that he had bribed the police officer to conduct a thorough investigation. Blackburn J took the view that the appellant could not be convicted of conspiring to cause a police officer to act corruptly in circumstances where he was paid to do his duty. For that reason the conviction was quashed with an order for a retrial. The decision in this case is authority for the proposition that the phrase “acts corruptly” means to act contrary to one’s public duty.
- [281] In the criminal law, the notion that a person may act corruptly does not of itself necessarily involve the gaining of a benefit or the causing of a detriment. As Willers demonstrates, section 83 of *The Criminal Code* (WA) makes it an offence for a public officer, without lawful authority or a reasonable excuse, to act “corruptly” in the performance or discharge of the functions of his office or employment, so as to gain a benefit for, or cause a detriment to, any person. The meaning of “corruptly” therefore cannot necessarily involve an intent (or purpose) to obtain a benefit or cause a detriment.
- [282] More importantly, the same distinction is made clear in section 4 of the CCC Act itself. The word “corruptly” appears in both section 4(a) and 4(b). The former contains no reference to the gaining of a benefit or the causing of a detriment. That subsection makes it misconduct for a public officer to “corruptly” act or fail to act in the performance of his or her office or employment. The latter does expressly refer to gaining an advantage or causing a detriment, by the public officer “corruptly” taking advantage of his or her office or employment. If the notion of “corruptly” already included an intent to gain an advantage or cause a detriment, those words would be otiose.
- [283] It is axiomatic that the proper construction of a statutory provision turns upon the words used in the particular provision, read in the context of the Act of which the provision is part, and having regard to the general purpose and policy of the legislation.¹¹⁵
- [284] Ordinary dictionary definitions support the conclusion that in section 4 of the CCC Act, “corruptly” connotes dereliction or breach of duty, or acting contrary to one’s duty; being perverted from fidelity or integrity. “Corruption” is the perversion of a person’s integrity in the performance of official or public duty or work.¹¹⁶ It involves the concept of a prohibited act undertaken with a wrongful intention.¹¹⁷ The Commission accepts that the notion of “corruptly” in section 4(a) and (b) of the CCC Act requires that the conduct contrary to the duties incumbent upon the public officer by virtue of their office (to adopt the language of Ryan J in Re Lane) also be attended by moral turpitude of a kind implied by the expression “perverted from fidelity or integrity”. Without attempting to be exhaustive, that may be found in dishonesty;¹¹⁸ an improper purpose;¹¹⁹ in circumstances in which there is some conflict between the public officer’s interests and their duty; or in some other relevant factor.¹²⁰

[285] Thus, “corruptly”, in section 4(a) and (b) is not to be equated with “dishonestly” nor “for an improper purpose”, nor (merely), “contrary to [their] duty”. For present purposes it is sufficient to state that the Commission takes the law to be that “corruptly” in section 4(a) and (b) of the CCC Act connotes conduct done deliberately, which is contrary to the duties incumbent upon the public officer by virtue of their office and attended by moral turpitude in the sense explained above.

2.9 Conduct by Dr Nasrul Ameer Ali

[286] Dr Ali’s conduct as described in this report involved him taking advantage of his academic position for the purpose of seeking to obtain a benefit for himself in the form of sexual favours from Complainants 1, 2 and 3. He held out to them the prospect of awarding them higher marks in exchange for sex. In relation to Complainant 4 he took advantage of his position to cause a detriment to her by reason of an imagined grievance or “slight” he felt she had given him. In each instance this conduct was deliberate and it was contrary to his duty. It was a perversion from the fidelity and integrity required of him as an academic dealing with his students. His conduct falls within the meaning of “corruptly” in section 4(b) of the CCC Act.

[287] In the Commission’s opinion, Dr Ali’s conduct with respect of each of these complainants constituted serious misconduct under section 4(b) of the CCC Act.

CHAPTER THREE COMMISSION OPINIONS

3.1 Opinions

[288] It is the opinion of the Commission that:

- in April 2009 Dr Nasrul Ameer Ali, then a sessional academic in the Curtin Business School at Curtin University of Technology, engaged in serious misconduct under section 4(b) of the CCC Act in that he corruptly took advantage of his employment as a public officer to obtain a benefit for himself by seeking sexual favours from a female foreign student of his (Complainant 1) in exchange for awarding her a higher mark in her mid-term examination;
- between May and June 2009 Dr Nasrul Ameer Ali, then a lecturer in the Curtin Business School at Curtin University of Technology, engaged in serious misconduct under section 4(b) of the CCC Act in that he corruptly took advantage of his employment as a public officer to obtain a benefit for himself by seeking sexual favours from a female foreign student of his (Complainant 3) in exchange for awarding her a higher mark for her group assignment;
- between June and July 2009 Dr Nasrul Ameer Ali, then an academic unit coordinator in the Curtin Business School at Curtin University of Technology, engaged in serious misconduct under section 4(b) of the CCC Act in that he corruptly took advantage of his employment as a public officer to obtain a benefit for himself by seeking sexual favours from a female foreign student of his (Complainant 2) in exchange for awarding her a higher mark in her semester final examination;
- in 2009 Dr Nasrul Ameer Ali, then an academic unit coordinator in the Curtin Business School at Curtin University of Technology, engaged in serious misconduct under section 4(b) of the CCC Act in that he corruptly took advantage of his employment as a public officer to cause a detriment to a female student of his (Complainant 4) by reducing a group assignment mark from approximately 73% to 50%, because of a personal grievance he felt towards her; and
- in 2009 Dr Nasrul Ameer Ali, then an academic unit coordinator in the Curtin Business School at Curtin University of Technology, engaged in serious misconduct under section 4(b) of the CCC Act in that he corruptly took advantage of his employment as a public officer to cause a detriment to a female student of his (Complainant 4) by not exercising his discretion to increase her final examination mark from 45% to 50%, solely because of a personal grievance he felt towards her, in circumstances in which he agreed he otherwise would have done so.

[289] In the opinion of the Commission, each of the above instances also constitutes misconduct under section 4(d)(i), (ii), (iii) and (vi) of the CCC Act in that it was conduct that:

- directly adversely affected the honest performance of the functions of Curtin University of Technology, a public authority;
- involved the performance of his functions as a public officer in a manner that was not honest;
- constituted a breach of the trust placed in Dr Ali by reason of his employment as a public officer; and
- notionally could constitute a disciplinary offence providing reasonable grounds for the termination of a person's office or employment under the PSM Act (notwithstanding Dr Ali was not a public service officer subject to that Act).

[290] As none of the complainants are prepared to be involved in any criminal prosecution and as Dr Ali is no longer employed by Curtin University, the Commission makes no recommendation for consideration of criminal or disciplinary proceedings against him.

CHAPTER FOUR

MANAGING MISCONDUCT: SYSTEMIC ISSUES

Physical intimacy with students is not now and never has been acceptable behaviour for academicians ... [w]here power differentials exist, there can be no "mutual consent".¹²¹

4.1 Background

- [291] This chapter considers the misconduct management process in place at Curtin University generally and specifically within the Curtin Business School at the time of Dr Ali's employment. The systems, policies and procedures referred to in this chapter are those which should ensure that University academics carry out their work in a manner consistent with the University's policies and procedures and those which ensure that students are able to obtain their education in a safe and secure environment free from coercion and abuse.
- [292] At the time of Dr Ali's employment, Curtin University's systems did not ensure that Dr Ali was:
- appropriately selected with the necessary checks and safeguards as a sessional tutor, lecturer and later unit coordinator;
 - provided with the necessary orientation and training; nor
 - adequately supervised with formal performance appraisals, and otherwise supported by his employer.
- [293] The systems, policies and procedures at Curtin University and the Curtin Business School did not adequately meet the needs of these overseas students in adjusting to studying in a new country, in another language and to living in a different culture. There was an apparent lack of protection and recourse afforded to these overseas students who were in a largely powerless situation when they were sexually pressured by Dr Ali.
- [294] These apparent systems and policy failures created a number of misconduct risk areas which can be classified as those associated with:
- full fee-paying overseas students;
 - Curtin Business School culture and practice;
 - policy gaps;
 - orientation and training for sessional academics;
 - Curtin University policies and practices; and
 - social networking websites.

- [295] The description “misconduct risk areas” refers to those aspects of the business of Curtin University where there were few controls on staff, no oversight or supervision, a great deal of trust placed in staff, and where staff had a great deal of discretion in their decision-making. Each of these misconduct risk areas played a part in allowing Dr Ali to use his position to approach and intimidate four female overseas students.
- [296] These misconduct risk areas will form the basis of the analysis of the systems and policy failures in the Curtin Business School and at Curtin University generally.
- [297] The Commission acknowledges that as soon as the senior management of the University became aware of the Commission’s investigation and the purpose of it they acted very quickly to protect the victims and to address the system and policy failures. The Vice-Chancellor, and other Curtin University officers with whom the Commission was liaising, demonstrated an immediate and ongoing commitment to recognising the systemic and other deficiencies which this situation identified, and to putting appropriate measures in place to deal with them. The steps taken by Curtin University to address the concerns raised in this report are outlined in Chapter Six.

4.2 Systems and Policy Failure Risk Areas

4.2.1 Full Fee-Paying Overseas Students

- [298] There is a significant power imbalance between a student and university lecturer who has control over the assessment of units. This imbalance is always present, and there is an ever present risk that it will be exploited. Universities rely on the integrity of their staff and reinforce that integrity with staff orientation and training. In other words, they trust their academic staff to not exploit their power.
- [299] Full fee-paying overseas students, in contrast to locally based students, pay much higher fees and have many other costs associated with their study in Australia. Research by Sawir *et al.* (2007), published as *Loneliness and International Students: An Australian Study*, states that overseas students:

*... face a foreign language, study in a new setting, finances, accommodation, and day-to-day living problems, and they must negotiate an unfamiliar set of institutional rules. They often face issues of personal autonomy ... and the recreation of identity in a new setting. Often the physical and cultural environment is very different, with new social customs and norms. International students must establish themselves as foreigners staying for a time, as neither inside nor outside. They must deal with unpredictable encounters, idiosyncratic communications, and problems of racial discrimination, largely on their own ...*¹²²

- [300] Each of the complainants were overseas students for whom English was not their first language, whose families were paying for their children to

study at a high status Australian university. These students' residence in Australia was based on student visas which required them to maintain adequate progress in their studies. The institution was required to inform the Department of Immigration and Citizenship (DIAC) if any student failed to pass their course of study.

[301] Dr Ali was both an employee and an agent of this institution with this power. He also held the power over whether the students passed or failed their units, the key to their remaining in Australia. Each of the complainants stated that it was their long-term goal to finish their course of study, obtain a professional job in Australia and settle. Therefore, as they (correctly) perceived it, Dr Ali was a threat to their academic studies, their futures and their families' long-term goals. As a result he had considerable power over these students and their vulnerable situation left them at a high risk of being exploited. The University's systems, policies and procedures did not seem to afford them an adequate level of protection.

[302] The Independent Commission Against Corruption (ICAC) *Report Under Section 14(2) of the Independent Commission Against Corruption Act 1988 to the Minister for Education and Training (NSW)*¹²³ in 2004 quoted the 2002 ICAC publication *Degrees of Risk*, which outlines the risks facing the New South Wales university sector. ICAC commented:

[t]he ever-more competitive and commercial environment of higher education introduces risks of a different dimension into day-to-day activities. These risks must be identified and managed (2002: 17).

[303] ICAC also noted in *Degrees of Risk* that this very risk can make universities reluctant to acknowledge and openly tackle these types of matters, or even to report them to ICAC as they are legally obliged to do. By failing to report disclosed instances of misconduct, universities allow such activities to continue and proliferate. In the long-run this represents a greater risk to universities' reputations and to professional standards across the sector.

[304] As a result, exploitation and sexual harassment of overseas students by academics in Australian universities is not usually documented. However, *The Australian* newspaper reported that:

*[l]ecturer "solicited" sex cash for marks ... Melbourne's Victoria University has been rocked by allegations that a law lecturer solicited and received bribes in the form of sexual favours and money from some female Asian international students, offering in return to improve their marks.*¹²⁴

[305] This case, and government and academic research, suggest that this type of misconduct is likely to be more widespread across the university sector in Australia and not isolated to Curtin University.

[306] Rodan (2009: 28)¹²⁵ and Birrell (2006)¹²⁶ have also expressed concern about the potential for corruption in the provision of education to full fee-paying overseas students. Rodan comments:

[a]fter the Federal Government's decision to link immigration policy and international education, the associated issues of adequate language skills and international graduate employability became controversial

[307] When each of the three students attended private examinations before the Commission they were assisted by a qualified interpreter. Two required substantial assistance with answering the Commission's questions in English.

[308] Each student had studied at a university affiliated with Curtin University prior to moving to Perth to study at the Bentley Campus of the University. They had also studied English in Perth after they arrived. All three students were studying units of at least a second year level which suggests that they had passed or been given credits for the requisite first year units.

[309] The three students' English skills were obviously affected by their stress at being at a Commission private examination, but the level of support required by two of the students to give evidence during the examination, and to communicate in English during the investigation, raises two issues. The first is that poor English language skills may have increased the difficulties the students faced in completing the necessary coursework, making them particularly vulnerable. This vulnerability appears to have brought them to the attention of Dr Ali, who discerned that they were at risk of failing and thus at risk of being notified to DIAC, which could adversely affect the continuation of their student visas.

[310] The second concern is that the students' difficulties with English made it more difficult for them to ascertain what action they could take in response to Dr Ali's actions. It was clear from their evidence that they did not know who to approach nor from whom they could seek guidance. This acted to increase their sense of powerlessness.

[311] Also a lack of English skills may have caused the students to feel isolated from the general student body, increasing their vulnerability. The ability to relate and interact with the general student body within the Curtin Business School would have acted to ensure that they could have been supported, reducing their isolation, and would have been able to seek advice about their situation. Simply being informed that they had rights as students and that Dr Ali's actions were inappropriate would have served to boost their confidence and protected them from exploitation. Instead the students' isolation and sense of shame due to failing increased their feeling of vulnerability.

[312] The issue of vulnerability of overseas students as a result of a lack of English language proficiency is of concern to the Commonwealth Government, which has addressed the issue in a number of reports.

[313] The report entitled *Good Practice Principles for English Language Proficiency for International Students in Australian Universities*¹²⁷ by the Australian Universities Quality Agency (AUQA) defines English language proficiency as:

the ability of students to use the English language to make and communicate meaning in spoken and written contexts while completing their university studies.

[314] The Steering Committee which drafted these principles was “guided by a number of key ideas”, which relevantly include the following.

- *With widening participation across tertiary education and the increasing numbers of international students, it can no longer be assumed that students enter their university study with the level of academic language proficiency required to participate effectively in their studies.*
- *Irrespective of the English language entry requirements of the university, most students, in particular those from language backgrounds other than English, will require English language development throughout the course of their studies.*

[315] These “key ideas” are particularly relevant when considering the suggestion that a lack of English language skills made the overseas students who gave evidence to the Commission more vulnerable. The *Good Practice Principles* that were developed in consultation with Australian universities and other relevant stakeholders are detailed below.

1. *Universities are responsible for ensuring that their students are sufficiently competent in the English language to participate effectively in their university studies.*
2. *Resourcing for English language development is adequate to meet students’ needs throughout their studies.*
3. *Students have responsibilities for further developing their English language proficiency during their study at university and are advised of these responsibilities prior to enrolment.*
4. *Universities ensure that the English language entry pathways they approve for the admission of students enable these students to participate effectively in their studies.*
5. *English language proficiency and communication skills are important graduate attributes for all students.*
6. *Development of English language proficiency is integrated with curriculum design, assessment practices and course delivery through a variety of methods.*

7. *Students' English language development needs are diagnosed early in their studies and addressed, with ongoing opportunities for self-assessment.*
8. *International students are supported from the outset to adapt to their academic, sociocultural and linguistic environments.*
9. *International students are encouraged and supported to enhance their English language development through effective social interaction on and off campus.*
10. *Universities use evidence from a variety of sources to monitor and improve their English language development activities.*

[316] A more recent report, *Stronger, Simpler, Smarter ESOS: Supporting International Students – Review of the “Education Services for Overseas Students (ESOS) Act 2000”*,¹²⁸ also addresses the issue of English language competency. The Review Committee was chaired by the Hon. Bruce Baird, AM, and the report is referred to as the Baird Report.

[317] The Executive Summary of the Baird Report (2010: v-vi) notes concerns raised during consultations including:

- low English language entry requirements; and
- poor social inclusion of students in their institutions and the broader community.

[318] The Baird Report Executive Summary concludes that:

[o]nce in Australia, international students need ongoing access to comprehensive, informative and relevant orientation programs and ongoing access to orientation information.

[319] It seems then that there is little difference between the conclusions of the Baird Report and the *Good Practice Principles* even though there is a time difference of 18 months between the reports.

[320] The Commission's investigation, and the apparent vulnerability of the identified students, raises questions about the extent to which Curtin University was:

- monitoring the academic performance of overseas students by entry pathway;
- paying attention to students' transition to university, with a concomitant emphasis on ensuring overseas students are better prepared for academic study;
- implementing or examining early diagnostic assessment of overseas students' English language development needs;

- monitoring overseas students' English language proficiency on completion of their course; and
- assessing the effectiveness of its cultural integration activities for overseas students.

[321] Had these measures been more effective at Curtin University the overseas students may not have been as vulnerable, as they would have been better equipped to deal with the challenge of learning in a second language in an overseas university, better integrated into the wider community and the university community, had the skills to ask questions, and been better able to seek advice when they were confronted with Dr Ali's advances.

[322] The following section deals with the misconduct risks inherent in the culture and operations of the Curtin Business School, as identified by the Commission investigation.

4.2.2 Curtin Business School Culture and Practice

[323] Evidence given at the Commission's examinations was that the Curtin Business School was one of the largest schools in Curtin University with the highest percentage of enrolled full fee-paying overseas students, at around 50%. Not only were overseas students a large group with special needs deserving of specialist support, they were also a significant source of income for Curtin Business School and the University. The evidence given to the Commission suggests that their needs were not addressed, which increased the vulnerability of these students. The specific misconduct risks associated with Curtin Business School are detailed in the following sections.

4.2.2.1 Orientation of Overseas Students by Curtin Business School

[324] The University's evidence is that its Orientation Program informs students about appropriate behaviour for students and academics, the complaints process and about student liaison staff in the Curtin Business School

[325] Each of the complainants had either not attended the orientation or could not remember anything that they were told. Clearly, they did not place much value on this important process.

[326] Evidence given by one of the complainants was that a friend from another university suggested a course of action that led her eventually to an appropriate member of Curtin University staff who was able to deal with her complaint.

[327] Orientation programs provide a useful means of informing students new to a campus about the university's policies, processes and procedures and the range of support services available to them. The value of these programs depends on their mode of delivery, attendance by the students and the quality of the supporting material provided to reinforce the messages the university wishes to convey.

[328] Orientation programs by themselves are insufficient to ensure compliance with policies and awareness of support services and avenues of redress. These programs should be supported by a comprehensive and continuing communications strategy.

4.2.2.2 Staff Recruitment and Supervision Practices at Curtin Business School

[329] Dr Ali and Mr Gill gave evidence to the Commission that they were employed as sessional academics after they had sent in their *curriculum vitae* to a senior staff member at Curtin Business School. They were then offered a sessional academic position without an interview, without reference checks and without criminal record screening. This was commented on by Dr Ali who said that he had to attend interviews when he applied for a similar position at another university in Western Australia.

[330] These sessional academic positions are not formally advertised and so a very small pool of people would know that the positions are available. It also suggests that most of those employed would have been known to existing Curtin Business School staff and likely to have studied at Curtin Business School or had links to Curtin Business School staff. Accordingly, there would have been a limited opportunity for an outsider to be employed at Curtin Business School. As a result the selection of sessional academics was not competitive and the pool of potential applicants was very small providing significant potential for patronage and favouritism to occur.

[331] The Commission notes that the *Part-Time (Sessional) Academic Staff: Policy and Procedures*¹²⁹ (Section 7.2, Selection of Part-Time Sessional Staff) places the responsibility for recruitment of sessional academics on the individual schools such as the Curtin Business School. The policy states:

[t]here is no formal recruitment or selection process for part-time appointments and Schools are responsible for the hire and administration of part-time appointments within budgetary allocations.

[332] The potential misconduct risks would seem to have been recognised by the senior Curtin University staff who gave evidence to the Commission. They stated that following feedback from the Commission during the course of its investigation, all Curtin Business School sessional academic staff are now required to apply for contract positions by submitting a *curriculum vitae* to a panel of senior staff. The applicants are then interviewed and their references are now checked. However, these positions are still not formally advertised so the pool of those who know about the vacancies remains small and the risks associated with patronage and favouritism remain.

[333] Other senior Curtin University staff gave evidence that they have commenced the introduction of criminal records checking for all staff. All new staff will be screened before commencing and existing staff will be gradually processed. It was noted in evidence that there is some staff

resistance to this measure by the University. However, it can be argued that even this measure is insufficient to ensure the protection of students, as criminal checks will not reveal improper or otherwise inappropriate conduct which did not result in a criminal conviction, such as that demonstrated by Dr Ali. Such conduct or attitudes may only be revealed through the checking of references and a rigorous selection process.

4.2.2.3 Staff Supervision and Support

- [334] Dr Ali gave evidence that sessional academic staff at Curtin Business School are usually used to fill in for tenured or continuing academic staff members who have obtained funding for a project or research and have been able to “buy out” some or all of their teaching responsibilities. The “buy out” involves them using their new funding to employ someone to teach for them. The people employed to do this are the sessional academic staff, who like Dr Ali were employed with no background checks or interviews.
- [335] It can be seen from Dr Ali’s evidence that sessional academic staff can and do take on senior roles. Dr Ali was asked to assume a unit coordinator’s role which is a senior position with significant powers over student outcomes. In this position he was responsible for lecturing, tutoring and for setting and marking assignments, tests and examinations. Other sessional academics act only as tutors, but they too have the responsibility for marking assignments, tests and examinations.
- [336] It is useful to compare the selection process for sessional academic staff with that for the tenured or continuing staff at Curtin Business School. Evidence was provided that tenured staff have to apply for their positions, go through an interview process, have their references checked and have to provide a portfolio of their academic work to the selection panel. Whereas, a sessional academic need only submit a *curriculum vitae*.
- [337] It can be concluded from Dr Ali’s evidence that he, as a sessional academic, was able to move into a senior position as the unit coordinator for Finance Portfolio Management without being appropriately vetted at any time.
- [338] Until recently, sessional academics were not adequately supervised and the only performance check was through the student assessment of teaching surveys completed by students who had studied the unit during the semester. Dr Ali’s supervisor, Mr Chan, gave evidence that he had not seen Dr Ali lecture but had relied on informal conversations with students to assess Dr Ali’s performance. He also stated that they only talked at most “[o]nce ever[y] week to two weeks”.¹³⁰ The evidence from both Dr Ali and his supervisor was that there was no formal performance management process in place at Curtin Business School. Dr Ali gave evidence of a poor relationship with Mr Chan.
- [339] Mr Chan had been able to “buy out” his unit coordinator’s responsibility for teaching Finance Portfolio Management and Dr Ali was appointed to take on this responsibility. Mr Chan was able to pursue other duties and

someone less experienced and qualified was employed to fill his position teaching students. Dr Ali's evidence suggests that Mr Chan provided him with little supervision or support.

[340] It has been established that some overseas students were vulnerable. Their powerlessness was compounded by being placed under the guidance of Dr Ali, who had not been appropriately vetted by Curtin Business School, was not appropriately trained by Curtin Business School, was not as experienced or qualified as Mr Chan, and was not adequately supervised.

[341] The vulnerability of the overseas students was compounded by the absence of checks and balances in the employment and supervision of Dr Ali by Curtin Business School. The exposure of the students was further compounded by the lack of controls and balances around unit assessment processes.

4.2.2.4 Controls and Safeguards Around Finance Portfolio Management Assessment Practices

[342] As the unit coordinator and examiner for Finance Portfolio Management, Dr Ali was responsible for setting the unit's assignments, tests and the examinations, and also took part in marking this work. As the unit coordinator, Dr Ali would record each student's mark for each piece of work on a spreadsheet on his own computer. Dr Ali gave evidence that after each round of assessment he went through a scaling process to even out "hard" and "easy" markers. He talked about applying this scaling process for each assessment task and for the final marks for the unit. Evidence was given by Dr Ali of the use of a "bell curve" process for arranging marks so that the majority of students passed the unit, a minority failed and a minority achieved distinctions.

[343] Dr Ali's evidence showed that this process involved a great deal of discretion and trust as all the marks and the adjustments were done on his spreadsheet on his personal computer and only the final mark was provided to the head of department and student records. Dr Ali was not required to keep a copy of his spreadsheet, he did not have to have his assessments checked and was not required to justify his adjustments. Essentially there was no oversight of the marking process.

[344] The evidence by Dr Ali and Mr Gill was that sessional academics took assignments and examinations home to mark because they did not have an adequate workspace in the Curtin Business School or access to their own personal computer. This meant taking these papers off campus and holding them at home. The marking was usually in pencil so the marks could be changed in the scaling process.

[345] A student gave evidence that Dr Ali downgraded her marks because she refused to cooperate with his advances by refusing to meet up with him in Malaysia whilst he was there. The student's assignment was marked down by Dr Ali causing her total mark to decline below the normal course average which put in jeopardy her aspirations for postgraduate study. She

challenged this mark and a subsequent re-marking showed that Dr Ali had reduced her mark for the assignment by a significant margin. Had the student not challenged this assessment, Dr Ali's selective subjective marking practices would not have been uncovered.

- [346] Dr Ali was able to use the marking processes to his own advantage because there was simply no oversight of his marking processes. He was able to safely ask female students to “convince” him to increase their marks by offering sexual favours knowing that the spreadsheet would not be checked and it did not have to be retained for future oversight.
- [347] The lack of controls and supervision of a sessional academic like Dr Ali, by the Curtin Business School, gave him the freedom and the opportunity, with little or no risk to himself, to abuse his position. The lack of checks and balances enabled him to offer, without risk to himself, to exchange an increase in marks, to change the overall assessment or to give access to an examination paper and answers for sexual favours. Again this systemic failure in the Curtin Business School exacerbated the vulnerability of these female overseas students.
- [348] The Curtin University *Assessment and Student Progression Manual*¹³¹ specifies that the "Unit Coordinator is the Examiner for the unit unless otherwise specified by the Head of School". Dr Ali was therefore the examiner for Finance Portfolio Management. In addition it is stated in the *Assessment and Student Progression Manual* that:
- [t]he Examiner is responsible for submitting the grades and marks for students in a unit to the Board of Examiners.*
- The Examiner is responsible for ensuring, on behalf of the Head of School, that results are correctly recorded on the student records system by the deadline prescribed by the Director, Student Services.*
- [349] Contrary to Dr Ali's behaviour with regard to offering to increase the marks of some students and decreasing the marks of another student, the Curtin University *Assessment and Student Progression Manual* states that:
- [r]esults may only be changed on the written authority of the Head of School or Chair of the Board of Examiners or by the Director, Student Services ...*
- [350] The *Assessment and Student Progression Manual* is clear that the “collation sheets, duly authorised by the Chair, shall represent the official record of the decisions taken in respect of the student at the meeting of the Board of Examiners”.
- [351] Dr Ali's behaviour brings into question the integrity of the student assessment process in the Curtin Business School. His actions were contrary to the procedures stipulated in the Curtin University *Assessment and Student Progression Manual*. Dr Ali's evidence suggested that he did not receive sufficient guidance in the form of training or induction, nor advice from a supervisor, to ensure that he was aware of and complied with student assessment policy and procedures. The Commission does

not necessarily accept his evidence on that, but the practical utility of training requirements and the effective communication of policies are clearly areas which Curtin University needs to carefully examine.

4.2.3 Policy Gaps

[352] The Commission investigation identified a number of gaps in the Curtin Business School policy regarding:

- group work and non-performing group members;
- staff providing private tutoring of students; and
- meetings between staff and students.

[353] Each of these gaps in policy played a role in creating and increasing the vulnerability of the overseas students. In the example of the group work, Dr Ali reduced the mark of Complainant 3 because it was claimed that she did not participate in the group exercise. Whilst Dr Ali's decision to reduce her mark may have been objectively justifiable in other circumstances, he in fact used this to gain leverage and apply pressure on Complainant 3 to comply with his demands. Because it was not covered by policy and there was a lack of controls around assessment (as outlined at 4.2.2.4 of this report), she was wholly dependent on Dr Ali's honesty and discretion.

[354] Dr Ali alleged that a number of sessional academics in Curtin Business School privately tutor students who are enrolled in the units they teach. He claimed that this was contrary to Curtin Business School policy. Whilst he was not able to clearly state what the policy was regarding private tutoring it is a clear area of potential conflict of interest for staff and a situation in which vulnerable overseas students could be exploited.

[355] It is clear from the evidence of three of the female overseas students that it was Dr Ali's practice to try to meet students off campus to discuss university business. He claims he did this in an effort to make it easier for the student, but the evidence suggests that this was a part of his strategy to make these students more vulnerable by taking them away from the safety of the campus during the day.

[356] On one occasion he met with a student on campus at night in his car which would have particularly served his purpose of increasing her vulnerability. The evidence of Dr Ali and the students strongly suggested a need for policy that clearly prohibits meetings between staff and students off campus, or at least puts clear and accountable constraints around such meetings.

4.2.4 Orientation and Training for Sessional Academics

[357] Until recently when sessional academics were employed they were not required to participate in an induction programme, either by Curtin University or the Curtin Business School. This allowed Dr Ali to claim that he had not been told about correct behaviour with students. His and other evidence showed that he was not able to establish clear boundaries to his

behaviour with students. He had an inappropriate relationship with a male student that ignored the power relationship and his approaches to the female overseas students further indicate that he did not understand the need for boundaries within these relationships.

[358] Information about sessional induction can be found on the Curtin University Website,¹³² and is also provided in the recently released policy on the appointment of sessional academic staff (refer [429]). The policy states that “[s]essional staff ... are required to participate in the University sessional induction and Faculty/School induction programs”.¹³³

[359] Another area commented on by Dr Ali and Mr Gill was the absence of ongoing training for sessional academics. While again these comments may not be completely accurate, they do suggest that both the University and Curtin Business School are not using ongoing staff training as an opportunity to reinforce policy and practice, and to reduce misconduct risks.

4.2.5 Curtin University Policies and Practices

[360] There are a number of general Curtin University policies that are relevant to this matter. These establish how academic staff should behave, and how they should relate to students, the boundaries between staff and students, and ethical behaviours. The relevant policies are:

- *Ethics and Social Justice Commitment Statement*;¹³⁴
- *Guiding Ethical Principles*;¹³⁵
- AVCC¹³⁶ *Code of Ethical Practice in the Provision of Education to International Students by Australian Universities*;¹³⁷
- *Equal Opportunity Policy*;¹³⁸
- *Grievance Resolution Policy*;¹³⁹ and
- *Code of Conduct*.¹⁴⁰

4.2.5.1 Ethics and Social Justice Commitment Statement

[361] The Curtin University *Ethics and Social Justice Commitment Statement* has a number of underlying values. The following values are relevant to the consideration of the overseas students’ experience of sexual harassment.

- *Recognition of the rights and dignity of all individuals.*
- *Equality of opportunity in education and employment for all.*
- *Enhancing diversity in gender, age, culture, beliefs, attitudes, language and social circumstances.*
- *Well maintained, safe, and enhanced environments.*

[362] The experience of the students who gave evidence to the Commission suggests that this commitment has not been fully incorporated into the operation and culture of the Curtin Business School.

4.2.5.2 Guiding Ethical Principles

[363] The *Guiding Ethical Principles* establish the responsibilities of Curtin University as a community. The principles that are relevant to this matter are to:

- *encourage and promote ethical behaviour;*
- *defend the rights of individuals within the University community;*
- *observe the duty of care to each member of the University community, with equity and justice;*
- *ensure that the working environment of the University is a safe and healthy one;*
- *provide mechanisms for safeguarding human rights;*
- *respect the individual's right to privacy, and to undertake to keep personal information in confidence unless disclosure is required by legislative or regulatory authority;*
- *encourage individuals to conduct themselves conscientiously;*
- *encourage members to consider the impact of actions on others, on the University and on society; and*
- *foster recognition of obligations both as a member of the University and, where relevant and appropriate, as a member of a profession/discipline.*

[364] The evidence provided to the Commission indicates that these principles have also not been incorporated into the practical operation and culture of the Curtin Business School.

[365] The specific principles relevant to the evidence in this investigation and in particular Dr Ali's harassment of the overseas students are:

2.3 Individual Responsibility

Members of the University community should demonstrate integrity, objectivity and conscientiousness by an honest approach to their various employment and activities, including teaching, study, research, administration and business activities, by respecting the rights of others, and by ensuring that activities of individuals and groups in the University are in accord with general as well as University ethical principles.

2.7 Responsibilities Towards Others

Relations among staff and between staff and students should be respectful, among other things avoiding language and/or behaviour of a racist, sexist or otherwise prejudicial or demeaning kind. Members of the University community should be sensitive to those from other cultures. Academic staff should ensure, first, that their teaching practice recognises these rights of students and other staff members; second, because students have the right to access staff for assistance and counsel in their studies, staff should also ensure accessibility according to this right. Those staff who undertake to supervise students have special obligations, including accessibility, loyalty, honesty and respect for the ownership of intellectual property.

4.2.5.3 AVCC Code of Ethical Practice in the Provision of Education to International Students by Australian Universities

[366] The Australian Vice Chancellor's *Code of Ethical Practice in the Provision of Education to International Students by Australian Universities* ("the AVCC Code") is relevant here as Curtin University is a signatory to this document. Whilst this document appears on the University Website, it is of interest that none of the senior Curtin University staff who gave evidence at Commission private examinations were aware of it. The AVCC Code states that:

2.6 *Universities should accept that, given the financial and cultural consequences of failure, special care is required to ensure that only those international students who have reasonable chances of success are enrolled. Selection criteria for international students should be such as to maintain the university's academic standards and to maximise academic success.*

2.7 *Australian universities should recognise their on-going responsibilities for the education and welfare of international students and take appropriate account of the potential cultural and linguistic difficulties that international students may encounter. University [sic: Universities] should ensure that the academic programs, support services and learning environment offered to international students will encourage them to have a positive attitude about Australian education ...*

[367] It appears from this particular example that the University failed in its responsibility to ensure the "education and welfare of international students" and did not take appropriate account of the cultural and linguistic difficulties these students encountered. Had it not been for the advice of a friend of one of the complainants, who was from another university, it is likely that Dr Ali's misconduct would not have been discovered.

[368] If Dr Ali's misconduct had not been revealed, these students would have been failed by Curtin University's policy and practices and would have been denied their success in education and most certainly would not have

had a positive attitude about Australian education. It should be noted that the AVCC Code predates the *Good Practice Principles for English Language Proficiency for International Students in Australian Universities* (2008) and the Baird Report (2010). Both these documents canvass similar issues as the AVCC Code which suggests that the implementation of it by Curtin University and other Australian universities has not been effective.

[369] Another relevant point from the AVCC Code document, section 9, *Staff Support*, is stated below.

To enable staff to carry out effectively the tasks for which they are allocated responsibility, universities should make every effort to:

- *ensure that all staff involved with international students and other clients are competent to deal with the students' special circumstances;*

... and

- *provide appropriate grievance procedures for staff and students on international matters.*

4.2.5.4 Equal Opportunity Policy

[370] Another Curtin University policy relevant to the consideration of the treatment of these overseas students is the Curtin University *Equal Opportunity Policy*. The relevant clause deals with harassment. It states that harassment:

[o]ccurs when unwelcome, offensive, abusive, belittling or threatening behaviour, including bullying, is directed at staff or students and which is usually based on some real or perceived grounds of discrimination which may lead to the person being harassed, being offended, humiliated, intimidated or disadvantaged. It includes sexual, racial and disability harassment as defined in all relevant legislation. Harassment can be action(s) directed against a group or an individual by a group or individual. It may occur among peers, or between people in subordinate/superordinate roles ...

[371] It is clear that Dr Ali 's attentions were repetitive, unwelcome, exploitative, and designed to pressure these women into having sexual relations with him. He acted to increase the existing vulnerability of these women and abused his position and his power in his efforts to achieve his goal.

[372] This analysis leads on to the consideration of the complaints and grievance systems that were operating at Curtin University at the time these overseas students were harassed. Evidence was given by the overseas students, a domestic student, Dr Ali and Mr Gill that they did not know how to make a complaint or to lodge a grievance at Curtin University.

4.2.5.5 **Grievance Resolution Policy**

[373] The Curtin University *Grievance Resolution Policy* states that all grievances shall “be dealt with efficiently and in a manner which affords natural justice to all parties”. It defines a grievance as:

[a]ny real or perceived ground for complaint including perceived racial or sexual harassment; discrimination on the grounds of disability, race, religious belief, political viewpoint, sex, marital status or pregnancy; or any other unfair or improper treatment.

[374] Curtin University has a Grievance Resolution Officer who is responsible for the implementation of the *Grievance Resolution Policy*. Key areas of responsibility within this include:

- *monitoring and control of the grievance process;*
- *providing education (training) and consultative support relating to grievances, in particular to Heads of School/Faculty/Area;*
- *providing pro-active advice on necessary change and development within the University;*
- *fostering awareness of legal responsibilities and requirements within the University the responsibility of University managers to observe legislation and University policies and procedures; and*
- *reporting each year to the Vice-Chancellor on the number, categories and disposition of all complaints in the preceding twelve months.*

[375] The action taken by the Grievance Resolution Officer once Complainant 1 made a complaint to her has been noted earlier in this report.¹⁴¹ As pointed out in the Curtin University section 86 representations,¹⁴² that action was in accordance with the duties of the Grievance Resolution Officer’s position. However those duties included not only dealing with particular grievances as they arose, but also ensuring that the grievance process was accessible and that University staff and students were aware of the process, and of their legal responsibilities, rights and obligations. In this respect it is reflective of the wider system failure and lack of effective process and communication identified across a range of areas by the Commission investigation.

[376] The Baird Report (2010: Executive Summary, vi) states:

Providers [meaning in this case universities] are already required to have suitable dispute resolution processes.

[377] This refers to the *National Code of Practice for Registration Authorities and Providers of Education and Training to Overseas Students 2007* (“the National Code”).¹⁴³ The National Code is applicable to Curtin University as it is an institution that is on the Commonwealth Register of Institutions and Courses for Overseas Students (CRICOS).

[378] The National Code requires all providers to have an independent and external complaints process.

[379] The Baird Report (page 27) also found that a:

[s]trong, independent and transparent complaints processes are fundamental to a sound regulatory framework.

[380] Recommendation 14 of the Baird Report, Chapter 6, *Supporting Students in Australia*, states:

14. *That ESOS be amended to require providers to demonstrate that they deliver a comprehensive induction program and access to information on a continuing basis that:*

- a. *is reasonably adapted to the needs of their students;*
- b. *allows students to easily access the information on an ongoing basis; and*
- c. *includes information on safety, student rights, and where to seek support in making complaints.*

[381] Other reports also make similar recommendations and comments. In the Australian Learning and Teaching Council report, *Student Grievances and Discipline Matters* by Jackson *et al.*, the core recommendations include:

- (i) *universities need to improve the way in which they communicate ... how students can raise complaints or appeals. Better website design, use of plain English language documents and staff training are all critical to achieving these improvements;*
- (j) *universities should, wherever possible, streamline complaints and appeals processes to remove unnecessary complexity and thus minimise the risk of procedural error; and*
- (k) *universities need to implement records systems on a university-wide basis to capture data about complaints and appeals. This can lead to early identification and resolution of systemic problems, and may also address other issues, such as "forum-shopping" of complaints processes.¹⁴⁴*

[382] In a similar vein, the following comment is made in the *Discussion Paper: Complaint Handling in NSW Universities*, by the NSW Ombusman.¹⁴⁵

Complaints can benefit universities in several ways by:

- *creating a second chance to provide quality service and satisfaction to staff and students;*
- *identifying areas of risk;*
- *identifying areas that need improvement;*

- *providing opportunities to strengthen student, staff and public support for the university; and*
- *assisting in planning and allocation of resources.*

[383] Collectively these reports clearly underline that the difficulties experienced by these overseas students in using the Curtin University complaints and grievance systems are not unusual in the Australian university system. They also show that the failure by Dr Ali and Mr Gill to identify and describe Curtin University's complaints and grievances process is not unusual. It was a telling indictment of Curtin University that a student had to seek advice from a student in another Western Australian university in order to find a person at Curtin University with whom they could lodge a complaint.

[384] It seems from the number of reports dealing with the inadequacies of grievances and complaints in Australian universities that Curtin University is not alone in failing to provide a grievance and complaints management system that is easily accessible to all students, including those for whom English is a second language, centralised and able to be reviewed.

4.2.5.6 Code of Conduct

[385] The Curtin University *Code of Conduct* establishes how staff should relate to their students, their colleagues and the community. The four complainants, Dr Ali and Mr Gill examined by the Commission claimed that they were unaware of the Curtin University *Code of Conduct*.

[386] When Commission Investigators asked at the commencement of the investigation, whether Curtin University had a code of conduct, they were informed there was a draft *Code of Conduct* on the University Website, but it had been there in draft for two years.

[387] The notice issued under section 42(2) of the CCC Act directing the University not to act further in its disciplinary investigation, and the notice issued under section 95 of the CCC Act requiring the University to produce certain documents to the Commission, were served on 23 June 2009.

[388] The draft *Code of Conduct* was approved by the University's Planning and Management Committee on 30 June 2009, following service of the notices.

[389] The parts of this *Code of Conduct* of relevance here require that all parties will, with respect to:

2. *personal and professional behaviour, perform their duties professionally with respect, integrity, fairness, care, and without harassment, bullying, or discrimination;*
3. *relationships between staff and students, take care that all working relationships are appropriate and do not compromise professional and ethical standards or involve a conflict of interest and/or breach of trust; and*

6. *dishonest and criminal behaviour; conduct themselves lawfully and properly and not use their position within the University for personal advantage or for the personal advantage or disadvantage of others.*

[390] As a consequence of the Commission investigation Dr Ali's employment as a sessional academic by the Curtin Business School Faculty, in the Schools of Economics and Finance, and Economics, ceased. Initially, with respect to his employment in the Economics and Finance School, Dr Ali's teaching hours were discontinued, and subsequently, with respect to his employment in the Accounting School, Dr Ali was formally suspended without pay, pending the outcome of any investigation. Dr Ali is no longer employed by Curtin University.

4.2.6 Social Networking Websites

[391] The remaining area of misconduct risk not identified in any Curtin University policy or procedure during the relevant period relates to the use of social networking websites such as "Facebook" or "Twitter" by students and academic staff.

[392] Dr Ali and Mr Gill gave evidence to the Commission that they went to students' "Facebook" pages to obtain pictures and details of students that they liked or with whom they were interested in starting a relationship. They then accessed student records to obtain other details about these female overseas students. It seems that all the students that were targeted were female and full fee-paying overseas students. The students were identified as being attractive and their pictures were shared between Dr Ali, Mr Gill and a male student, S5.

[393] Dr Ali stated that he used the "Facebook" pages to assist in the identification of students with whom he would like to have a relationship. An alternative view is that he used this website along with student records to target students who were vulnerable. In either case the warning given by Dziech and Weiner in the *Lecherous Professor: Sexual Harassment on Campus* holds true:

*Where a power differential exists there can be no "mutual" consent.*¹⁴⁶

[394] Dr Ali's actions demonstrated the need for Curtin University and Curtin Business School to address the use of these social networking websites by academic staff and establish clear guidelines for appropriate use to prevent exploitation and harassment of students.

4.3 Reporting Misconduct

[395] The Commission has recently increased its engagement with tertiary institutions in Western Australia. The primary objectives of this engagement have been to inform the institutions about:

- their legislative responsibility to notify the Commission of misconduct pursuant to section 28 of the CCC Act;

- the misconduct risks that can exist within tertiary institutions; and
- how to identify, prevent and deal with corruption and other forms of misconduct.

[396] When compared with other agencies which are obliged to notify the Commission pursuant to section 28 (particularly those agencies with relatively well-developed misconduct management systems), tertiary institutions notify the Commission of relatively few matters involving suspected misconduct.

[397] It is important to emphasise that a low number of notifications to the Commission does not necessarily indicate that there are fewer instances of misconduct occurring within an institution. The *Discussion Paper: Complaint Handling in NSW Universities* by the NSW Ombudsman (2004: 3) states that:

*A sparse history of complaints or disclosures being made within a university should not be taken as indicating comprehensive complaint handling mechanisms are not needed. Experience shows such a history may simply reflect the lack of appropriate mechanisms to address complaints or disclosures.*¹⁴⁷

[398] Figure 1 below shows all matters notified to the Commission between 1 January 2006 and 30 June 2010. Although approximately 10,000 people are employed within the tertiary sector in Western Australia, it can be seen that fewer than five incidents of suspected misconduct were reported to the Commission by all Western Australian tertiary institutions within each six-month period between January 2006 and June 2007.

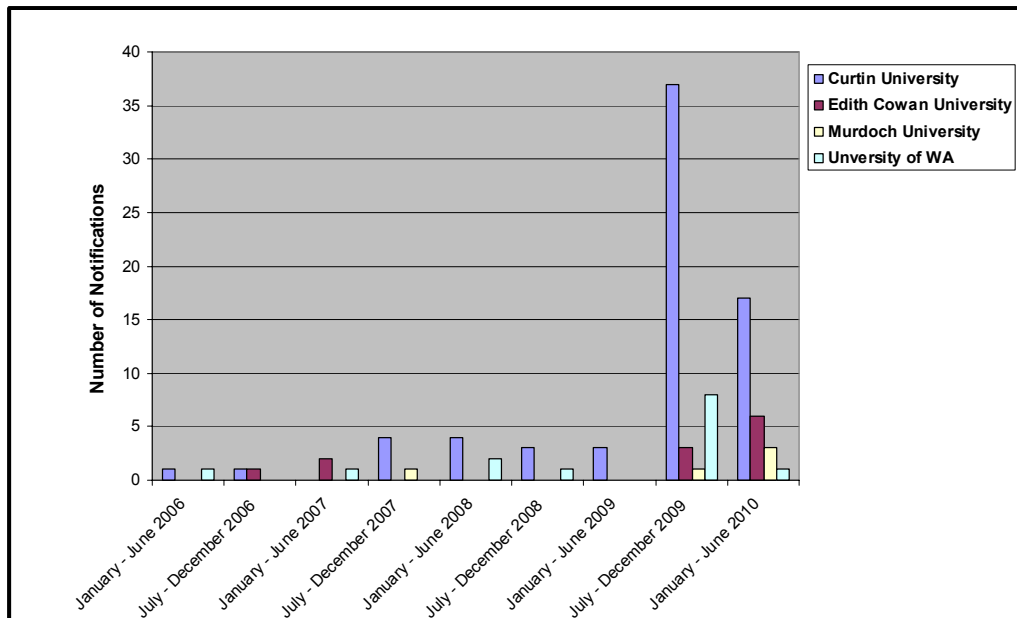


Figure 1: Notifications of Suspected Misconduct by Western Australian Tertiary Institutions to the Commission: January 2006 – June 2010

- [399] This number increased after July 2007, although the number of reported instances of misconduct within each six-month period up until June 2009 was still less than 10.
- [400] Figure 1 shows that the primary reason for this increase in 2009 was an increase in notifying by Curtin University. Since July 2007 Curtin University has notified the Commission of significantly more instances of suspected misconduct than other tertiary institutions.¹⁴⁸
- [401] Nonetheless, Curtin University's systems and processes were still insufficient to provide protection to the students exploited by Dr Ali, to prevent his misconduct from occurring and being repeated, and to detect the misconduct when it first occurred.
- [402] The figure demonstrates two large "spikes" in notifications received from Curtin University. The first of these occurred during the period July – December 2009. This resulted from the serving of a section 95 notice on 23 June 2009 on the then Deputy Vice-Chancellor, Academic, Professor Jane den Hollander, to produce documents relating to complaints as part of the Commission investigation into the conduct of Dr Ali. As a result of this notice, 31 matters that had previously been dealt with within Curtin University (without notification to the Commission) were identified as involving suspected misconduct pursuant to section 28 of the CCC Act and were therefore notified to the Commission (between 22 July 2009 and 24 July 2009). On a comparative basis during the July – December 2009 period 37, 8, 3 and 1 notifications were made by Curtin University, the University of Western Australia, Edith Cowan University and Murdoch University respectively.
- [403] The second "spike" in matters notified to the Commission by Curtin University occurred in January – June 2010. This resulted from a proactive audit undertaken by Curtin University into the use of its computer and internet systems by staff. Eleven breaches of policy and instances of suspected misconduct were identified by this audit and notified to the Commission between 4 May 2010 and 29 June 2010. On a comparative basis during the January – June 2010 period 17, 6, 3 and 1 notifications were made by Curtin University, Edith Cowan University, Murdoch University and the University of Western Australia respectively.
- [404] The thorough response of Curtin University to the section 95 notice is commendable, as are the more recent steps taken by the University to identify and report misconduct, including the audit undertaken of staff computer and internet use. Nevertheless, the two "spikes" confirm that a lack of misconduct notifications does not demonstrate that misconduct was not occurring. The data shows that many acts of suspected misconduct have been identified and reported to the Commission either as the result of the exercise of the Commission's coercive powers, or as a result of a proactive and thorough effort to detect misconduct on the part of an institution.
- [405] The final information of interest demonstrated in Figure 1 is that, since July 2009, the number of instances of suspected misconduct notified by the

other Western Australian tertiary institutions has also shown a marked increase. In the Commission's view this increase has resulted from the response of those institutions to the Commission's increased engagement with the tertiary sector. Time will tell whether the current level of reporting from individual institutions is appropriate, or whether there is still under-reporting of misconduct. Whatever the answer to that may be, the Commission looks forward to continuing to work cooperatively and proactively with all tertiary institutions to help them identify and reduce their misconduct risks and to devise and implement appropriate processes for dealing with alleged misconduct.

CHAPTER FIVE

CONCLUSIONS AND RECOMMENDATIONS

5.1 Conclusions

- [406] The failure of Curtin University and Curtin Business School's systems, policies and procedures to prevent, identify, and manage Dr Ali's misconduct placed already vulnerable female overseas full fee-paying students in a situation of greater vulnerability.
- [407] The students' families had spent a great deal of money to enable them to study at an overseas university. The combination of the immigration agent's fees, university fees, living expenses and costs of returning home amounts to a large financial outlay.
- [408] The students themselves had a lot to lose. Failure of a unit and the need to repeat would result in additional fees and an extended period of study at Curtin University or could adversely affect the continuation of their student visas. As they all aspired to work and stay in Australia, Dr Ali's actions, if undetected, could have had a significant long-term impact on these students.
- [409] The evidence provided to the Commission indicates that Dr Ali breached a number of significant Curtin University policies and procedures. Dr Ali alleged that he was unaware of some of these policies and procedures. Dr Ali is responsible for his own actions. However, the evidence provided to the Commission suggests that deficiencies within Curtin University's systems and policies created an environment in which Dr Ali's actions were not prevented or identified.
- [410] Deficiencies within the Curtin Business School systems for the employment, orientation and supervision of sessional academics created the opportunity for Dr Ali to exploit these overseas students. The failure of the University to adequately supervise Dr Ali and to check on the assessment processes in the Finance Portfolio Management unit created even more opportunity for Dr Ali.
- [411] It is significant that, having been subjected to Dr Ali's attempts to exploit them, none of the students knew where to go to complain about or report his actions. This suggests that systems within the University for detecting and reporting misconduct, including complaint handling systems, were not operating effectively.
- [412] The evidence provided to the Commission indicated that misconduct management within Curtin University relied upon trust. The Vice-Chancellor trusted that there were systems in place to detect and manage misconduct in the University's various schools and research centres, and that the senior staff would report that misconduct. Heads of School trusted that their academic staff, both sessional and tenured, would treat students in a manner consistent with the Curtin University *Code of Conduct*. Yet the *Code of Conduct* stood only in draft form on the University's Website

until it was formally adopted on 30 June 2009, after the Commission required production of that amongst other policy documentation. The University “trusted” that staff and students would bring misconduct matters to their attention. In the Commission’s experience that assertion, that “our people know what is right and can be trusted to report when things are wrong”, is a common refrain usually relied upon to excuse either a lack of relevant organisational policy or a failure to communicate it. The consequence ordinarily is that people in the organisation do not know what the organisation regards as unacceptable conduct and, in any event, do not know what they can do about it and have no confidence in the organisation dealing with it. There is an absence of a culture of integrity.

- [413] The University trusted Dr Ali to teach, tutor and mark student work, without knowing anything more about him than the *curriculum vitae* he provided. They, according to Dr Ali, did not give him adequate orientation, provide continuing training, and did not assess or supervise his work.
- [414] As a result of this misplaced trust, it can be argued that Curtin University and Curtin Business School systems, policies and procedures failed to protect the female overseas students from exploitation and abuse.
- [415] Liaison between the Commission and Curtin University early in the investigation caused the University to institute a review of its systems, policies and procedures. The University commenced a comprehensive external review of the operations of the Curtin Business School. Several changes were implemented prior to the completion of the investigation and this report. These changes were described in the University’s response to the Commission’s notification of possible adverse matters, made pursuant to section 86 of the CCC Act, and are outlined in the following chapter.
- [416] The evidence provided to the Commission indicated a need for Curtin University to implement the recommendations of the Baird Report and the report by the Australian Teaching and Learning Council, *Student Grievances and Discipline Matters*. The Commission considers that, by doing so, the University will be better able to protect overseas students who are vulnerable to exploitation and develop a better understanding of their misconduct risks.
- [417] The evidence provided to the Commission further indicated that Curtin University needed to introduce specific changes to its policies, procedures and systems, including the introduction of a centralised complaints management system, the improvement of systems for monitoring the assessment of students, and the improvement of the University’s policies and procedures surrounding the recruitment, induction and training and supervision of staff.
- [418] The Commission therefore makes five recommendations for the purpose of addressing the deficiencies identified in this report, and to improve the prevention, detection, reporting and management of misconduct within Curtin University.

5.2 Recommendations

Recommendation 1: International Students (Language and Support)

The Commission recommends that Curtin University of Technology implement the recommendations of the Baird Report, February 2010, entitled *Stronger, Simpler, Smarter ESOS: Supporting International Students – Review of the “Education Services for Overseas Students (ESOS) Act 2000”*, Australian Education International, and the report by the Australian Teaching and Learning Council entitled *Student Grievances and Discipline Matters*.

Recommendation 2: Audit Trail of Student Assessments

The Commission recommends that Curtin University of Technology review the practices, policies and procedures relating to student assessments to ensure the integrity of the process by appropriate and auditable safeguards.

Recommendation 3: Curtin Business School Review

The Commission recommends that Curtin University of Technology continue its external review of the operations of the Curtin Business School.

Recommendation 4: Centralised Complaints Management System

The Commission recommends that Curtin University of Technology continue its development and implementation of a centralised complaints management system, including:

- clear, accessible and confidential reporting mechanisms across the University;
- centralised recording and monitoring of complaints; and
- centralised recording and review of complaint investigations, and outcomes.

Recommendation 5: Staff Recruitment, Orientation, Supervision and Support

The Commission recommends that Curtin University of Technology continue its review of the practices, policies and procedures relating to sessional academic, and other academic, staff recruitment, supervision and support, and implement measures, as necessary, to avoid or reduce the misconduct risks identified in this report.

CHAPTER SIX

RESPONSE BY CURTIN UNIVERSITY TO THE COMMISSION INVESTIGATION AND RECOMMENDATIONS

6.1 Introduction

- [419] The Commission commends Curtin University on its response to the Commission's investigation into the conduct of Dr Nasrul Ameer Ali.
- [420] Curtin University has taken a number of steps towards improving its systems for the detection, reporting and management of misconduct. Some of these measures were taken immediately upon the commencement of the overt stage of the Commission investigation. Others were taken following the completion of the active investigation phase. Curtin University has also provided information to the Commission about improvements it intends to make to its systems, policies and procedures in the future, to address the issues identified by the Commission during the investigation and in this report.
- [421] As mentioned previously, in accordance with section 86 of the CCC Act, the Commission notified Curtin University of matters proposed to be reported by the Commission which could be considered adverse to the University. On 13 August 2010 Curtin University provided the Commission with its representations ("Curtin University section 86 representations").
- [422] The Curtin University section 86 representations include a letter of transmittal and introductory comments by Professor Jeanette Hackett, the Vice-Chancellor of Curtin University (refer Appendix 2 to this report). The introductory comments outline the impact of the investigation by the Commission into the conduct of Dr Ali and the approach taken by Curtin University to address the issues identified by the investigation. The representations also contain a response to each of the five recommendations arising from the Commission investigation, as outlined in Chapter Five of this report, and provide substantial detail about the measures already taken by Curtin University, and those planned to be undertaken in the future, to address the issues identified by the Commission's investigation.
- [423] The response by Curtin University to the Commission's recommendations has been positive and proactive. The Commission notes that the University accepts the recommendations of the Commission and has taken measures to implement each of them. These measures, as outlined in the section 86 representations received from Curtin University, are detailed below.

6.2 Response to Recommendations

6.2.1 Recommendation 1: International Students (Language and Support)

[424] Curtin University's response to Recommendation 1 is that —

Curtin will implement all amendments to the “Education Services for Overseas Students Act 2000” (ESOS Act) that are enacted by Parliament based on the recommendations of the Baird Review. Curtin has already taken significant steps in implementing the recommendations of the “Australian Learning and Teaching Council Report” on student grievances.

Curtin advises that it is compliant with the ... ESOS Act ...

English Language

Curtin advises the Commission that Curtin's IELTS¹⁴⁹ standards are comparable with most Australian universities and its international counterparts ...

Further, Curtin advises that it has reviewed its mechanism for ongoing English language support and has now instituted a compulsory unit for all Curtin Business School students, which ensures international students receive ongoing English language support. At the University level, Curtin has increased its staffing to strengthen the embedding of English language proficiency in the curriculum and for overseeing the implementation of a plan for English language development.

Student Support

Curtin advises the Commission that it has implemented a comprehensive Student Wellbeing Program that includes a student hotline, email and support services to resolve students' concerns, issues and problems quickly and effectively. It is implementing an information and education campaign to ensure every student is aware of and can access the help available. The University also advises that it has significantly increased its support for international students both before and after they arrive in Australia to address the specific issues raised by the Commission.

Curtin provides a comprehensive range of services supporting the physical, mental and social wellbeing of students.

The University provides pre-departure information and international students participate in a two-week Orientation program. Curtin's Student Transition and Retention Team supports all students as they adjust to University life. It provides dedicated international student advisers who assist international students in their integration into the University and Australian culture.

Students are encouraged to use the new Wellbeing hotline to seek assistance regarding any incident or activity that might affect their health, safety or happiness while studying at Curtin. There is also a 24 hour emergency phone line available to students and staff for any security or health emergency.

6.2.2 Recommendation 2: Audit Trail of Student Assessments

[425] Curtin University's response to Recommendation 2 is that —

Curtin advises the Commission that, commencing Semester 2 2010, the University is implementing an auditable central electronic database into which staff must enter all marks and that will enable Curtin to monitor any changes made.

This system will allow for viewing of marks allocated for each assignment task, the dates the marks were entered, any changes subsequently made to the marks, the date of the change, and the name of the person making the change.

...

[426] Curtin University's response to Recommendation 3 is that —

6.2.3 Recommendation 3: Curtin Business School Review

The Commission is informed that the Curtin Business School is continuing to use Ernst & Young and an international mentor to support the implementation of identified projects to change the Curtin Business School culture and support a comprehensive review of its systems, policies and procedures.

A new Pro Vice-Chancellor was appointed in 2008 to change the culture and improve quality across the Curtin Business School including its systems, policies and procedures. A new leadership team is going through multiple national and international accreditation and quality assurance processes to benchmark these changes against best practice.

The investigation, liaison with the Commission, and an absolute commitment to protect students and deliver the best possible educational experience are forcing the pace of change across the Curtin Business School in line with the Commission's recommendations.

[427] Curtin University's response to Recommendation 4 is that —

6.2.4 Recommendation 4: Centralised Complaints Management System

The Commission is advised that Curtin has established a well-resourced Professional Standards and Conduct Unit which works within the parameters of Curtin's Integrity and Standards Framework. The Framework includes a centralised complaint management system and an education, information and engagement strategy.

Following the guidance and examples provided by the Commission, in respect to complaints management, Curtin has benchmarked for best practice against: tertiary sector legislation, guidelines and practices; Australian Standards; and other public sector organisations.

Curtin has implemented or is in the course of implementing:

- An information and engagement strategy that brings the Curtin University “Code of Conduct” and all related policies and procedures to life, so that every staff member and student is fully aware of their roles, responsibilities, rights and accountabilities. The “Code of Conduct” will be an integral part of every activity of the University and known to anyone coming into contact with the University.*
- An education strategy designed to make the “Code of Conduct” real, dynamic, meaningful and embedded in the culture of everything Curtin does and stands for. It covers all University activities.*

[428] Curtin University’s response to Recommendation 5 is that —

6.2.5 Recommendation 5: Staff Recruitment Orientation, Supervision and Support

Curtin advises the Commission that it has completed a comprehensive review and improvement project covering all staff recruitment, orientation, supervision, performance management, support and professional development, especially for sessional staff.

The project implements the Commission’s recommendations for sessional staff and goes further to adopt the Australian Learning and Teaching Council recommendations for best practice published in “The RED resource: the contribution of sessional teachers to higher education” (Percy et al., ALTC, 2008).

As pointed out by the Commission, sessional staff are vital members of the University and the Curtin teaching community. Curtin fully acknowledges that the policies and procedures within which they operate must be robust, clearly articulated and strategically aligned with the overall Curtin Human Resources policy and practice. Above all, appropriate orientation, supervision, performance management, training and support must be provided and policies and procedures clearly understood and rigorously applied. As part of this process, Curtin will implement a new sessional staff policy, which seeks to specifically address every recommendation and suggestion raised in the Draft Report on this issue. Curtin strives to go beyond the recommendations to become a recognised leader in the sector.

Curtin is currently undertaking an extensive external review of all its policies in relation to staff recruitment, orientation, supervision, performance management, support and professional development, and benchmarking these across the University sector to identify and respond to any policy gaps to effect a best practice model for the maintenance of professional standards.

6.3 Commission Comments

[429] The Commission notes that the creation or modification of policies and procedures, and the employment of additional staff does not, on its own, ensure the creation and maintenance of effective systems for identifying and managing misconduct, nor for the creation and maintenance of a misconduct resistant culture. The Commission also notes that several policies were promulgated and published shortly after the section 86 notification was received by Curtin University on 22 July 2010. These are the:

- *Professional Integrity and Standards Policy* on 13 August 2010;
- *Appointment of Sessional Academic Staff: Policy and Procedures* on 13 August 2010; and
- *Personal Relationships Between Staff and Students: Policy and Procedures* on 16 August 2010.

Of course, this in itself is not enough. Promulgation and publication need to be accompanied by an implementation plan and a plan to continuously review and modify or replace policies as required. Underpinning this is a continual process of monitoring and communication to ensure the relevant policies, procedures and practices are being applied to achieve intended outcomes.

[430] It is noted, and this investigation has confirmed to some degree, that the existence of policies, and their availability on a website, does not ensure that staff are aware of these policies, or that they will comply with them.

[431] Additionally, the creation of a unit responsible for addressing issues of misconduct will not on its own ensure that misconduct does not occur in an institution, or that it will be identified and addressed when it does occur.

[432] It is the operationalisation of policy, the degree to which policy and procedures are embedded within the systems of an institution, and the will and commitment to create a misconduct resistant culture which ultimately will determine the extent to which an institution can detect and manage misconduct, and protect and maintain integrity.

[433] Although the prompt and positive response by Curtin University to the recommendations made as a result of the Commission investigation, are commendable, the organisational change required to fully implement them, and to address the issues raised in this report, will take time. Therefore, it is the intention of the Commission to monitor the action taken

by Curtin University to address the issues and implement the recommendations; monitoring which will occur within the context of an ongoing relationship between the Commission and Curtin University. Monitoring the implementation of recommendations is a normal part of the Commission's work subsequent to an investigation.

[434] In its interaction with Curtin University during the course of the investigation, the Commission has observed a genuine and strong commitment from the Vice-Chancellor and the University administration to draw on this experience to develop and strengthen the notion of integrity as a core part of the University's culture. The Commission looks forward to continuing to assist the University to that end.

[435] In the Commission's view, the ongoing positive response and commitment to integrity displayed by Curtin University has significant potential to enhance the reputation of the University as an ethical, professional and safe place to work and study, where the teacher-student relationship is underpinned by trust.

APPENDICES

APPENDIX 1

Notifications of Adverse Matters Under Section 86 of the *Corruption and Crime Commission Act 2003*

Notifications of Adverse Matters

No.	Recipient of Section 86 Notification	Date of Notification	Date of Representations	From
1.	Dr Nasrul Ameer Ali	22 July 2010	No Response	-
2.	Mr Sherwant Singh Gill	22 July 2010	No Response	-
3.	Curtin University of Technology	22 July 2010	12 August 2010 (Received on 13 August 2010.)	Professor Jeanette Hackett, Vice-Chancellor

APPENDIX 2

**Curtin University of Technology
Section 86 Representations: Letter of Transmittal from, and
Introductory Comments by, Professor Jeanette Hackett,
Vice-Chancellor, 12 August 2010**

Letter of Transmittal



Curtin University

Professor Jeanette Hackett

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12 August 2010

Hon LW Roberts-Smith RFD QC
Corruption and Crime Commission of Western Australia
PO Box 7667 Cloisters Square
St George's Terrace
PERTH WA 6850

Dear Commissioner

In accordance with legislative requirements, Curtin University presents the Response to the Corruption and Crime Commission Draft Report on the investigation of alleged public sector misconduct by Dr Nasrul Ameer Ali as a sessional academic employed by Curtin University.

I thank the Commission for the opportunity to respond.

Yours sincerely

Professor Jeanette Hackett
Vice-Chancellor

att:

Vice-Chancellor's Introductory Comments

VICE-CHANCELLOR'S INTRODUCTORY COMMENTS

I thank the Commission for the opportunity to respond to the Draft Report from the Corruption and Crime Commission's investigation into allegations of misconduct by a sessional academic staff member in the School of Economics and Finance, Curtin Business School, Curtin University (Curtin).

The serious nature of the events that Curtin reported to the Commission is acknowledged and I am extremely disappointed that the educational experience of these four students has been so negatively impacted. I am writing to those students whose identity is known to me, on a confidential basis, to express my deep concern and to offer counselling and financial remuneration for the unit.

Please be assured that I am committed to working closely with the Commission, committed to ensuring the safety of our students, and committed to Curtin becoming a best practice organisation in identifying and dealing with issues of misconduct and the maintenance of professional standards. Continuous improvement is at the heart of Curtin's activities, driving the University's goal of maintaining high professional and ethical standards and the delivery of quality education to over 40,000 domestic and international students. I will do whatever I can to ensure that the events which have been the subject of this investigation will not happen again to any other student at Curtin.

I appreciate the Commission bringing to my attention the serious systemic issues raised by the investigation and fully accept the Commission's five recommendations made in the Draft Report. The incidents that are the subject of the Draft Report confront the foundation on which the University is built—the primacy of the teacher–student relationship which is underpinned by trust.

As acknowledged by the Commission, Curtin leads the way among Western Australian universities in reporting misconduct issues and has acted quickly to address the system and policy failures which have been identified by the Commission's investigation.

I have acted immediately and proactively to address specific aspects of the recommendations. Considerable progress has already been made since the launch of the investigation, which is detailed on page 6, 'Response to Recommendations' and in the Summary (Appendix 1). The Commission is requested to consider this information in finalising its Report.

As a result of the investigation, Curtin has a heightened awareness of misconduct issues and I acknowledge the need for substantial improvement in this area. I will continue to explore ways to co-operate with the Commission to assist Curtin to move beyond the scope of the Draft Report's recommendations to become a leader in professional standards and integrity in the sector.

The need for accountability, which can be audited and is subject to internal and external checks, is strongly acknowledged. Curtin has a number of means by which its quality and accountabilities are assured: external audit by the Australian Universities Quality Agency (AUQA); external audit for CRICOS registration under the Education Service Providers Registration Act 1991 (ESPR Act); compliance with the Education Services for Overseas Students Act 2000 (ESOS Act) and its National Code; regular and specific internal audits in areas of institutional risk; and University-wide Annual Certification processes for all managers.

These recent events occur against this background of quality audits and Curtin's effort to gain and respond to significant student feedback. The 2008 AUQA audit, which included interviews with more than 600 students and staff, commended Curtin for a range of achievements including the positive impact that student orientation has on the student experience at the University and the widespread acknowledgement by students of the policy and penalties related to academic integrity and plagiarism. In addition, Curtin uses the Curtin Annual Student Satisfaction (CASS) Survey to obtain feedback on all aspects of the student experience to review performance and set targets for each of the service areas, as well as to identify best practice, excellence and areas for improvement.

These provisions for ongoing quality assurance notwithstanding, I acknowledge and accept that better systems, policies and procedures—underpinned by a comprehensive staff education strategy—will do much to reduce the misconduct risks identified in the Draft Report.

I raise a particular matter for the Commission’s attention. The Draft Report may give the impression of being critical of English language standards across the Australian university sector. It describes the English language weaknesses of the students during interviews and the hearing and appears to extrapolate these apparent weaknesses to all international students at Curtin and across the sector. It should be noted that Curtin has English competency admission requirements comparable with other Australian and international universities

...

Portions of the Vice-Chancellor’s “Introductory Comments” commenting on matters subsequently not included in the Commission’s final report have been omitted.

The integrity of Curtin’s staff has been called into question as part of these recent events. I acknowledge that the trust placed in staff has been breached by Dr Ali’s conduct. In a community of over 45,000 staff and students, we strive to, but may never completely, eliminate misconduct. However, I continue to have faith that the great majority of Curtin staff are dedicated, ethical, committed individuals who work in the best interests of students.

I was heartened by the Commission’s expression of appreciation of the high level of co-operation and assistance the University has provided during the investigation and the acknowledgement of our efforts in addressing the systemic issues that have been identified during the course of the investigation.

I thank the Commission for acknowledging Curtin’s genuine and strong commitment to draw on this experience to develop and strengthen staff integrity as a core part of the University’s culture.

ENDNOTES

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- ¹ Curtin University Website at <http://about.curtin.edu.au/our-locations.cfm>, viewed 8 July 2010.
- ² The seven schools within the Curtin Business School Faculty are Accounting, Business Law and Taxation, Economics and Finance, Information Systems, Management, Marketing and the Graduate School of Business, located in the Perth Central Business District. Curtin University Website at <http://www.business.curtin.edu.au/>, viewed 8 July 2010.
- ³ Dr Nasrul Ameer Ali's Sessional Employment Contract, Academic Staff [CCC 00920-2009-0124].
- ⁴ *Curtin University of Technology Act 1966* (WA).
- ⁵ *Disciplinary Procedures Guide*, Department of the Premier and Cabinet, Government of Western Australia, November 2007, p.9.
- ⁶ *Ibid*, p.28.
- ⁷ Butterworths Concise Australian Legal Dictionary (Third Edition), Lexis Nexis Butterworths, Australia 2004, p.42.
- ⁸ *Briginshaw v Briginshaw* (1938) 60 CLR 336 per Dixon J at 361-363; *Rejifek v McElroy* (1965) 112 CLR 517; *Neat Holdings Pty Ltd v Karajan Holdings Pty Ltd* (1992) 110 ALR 449.
- ⁹ See, for example, *International Student Security* by Simon Marginson, Christopher Nyland, Erlenawati Sawir and Helen Forbes-Mewett, Cambridge University Press, 2010.
- ¹⁰ Letter to the Commissioner of 25 May 2009 from the Integrity and Standards Officer, Curtin University, with attachments (letter and contemporaneous notes) [CCC 69752].
- ¹¹ Record of Interview of Complainant 1 by a Commission Investigator on 24 June 2009 [CCC 00920-2009-0089].
- ¹² Statement of Complainant 1 to the Corruption and Crime Commission on 21 July 2009 [CCC 00920-2009-0062].
- ¹³ Emails between Complainant 1 and Dr Nasrul Ameer Ali of 22 April 2009 [00920-2009-0090].
- ¹⁴ Email from Complainant 1 to Dr Nasrul Ameer Ali of 23 April 2009 [00920-2009-0090].
- ¹⁵ Student Assist (Curtin Student Guild) provides support to, and advocacy and referral services for, all enrolled students at Curtin University, in relation to difficulties being experienced in personal, welfare or academic areas.
- ¹⁶ Letter to the Commissioner of 25 May 2009 from the Integrity and Standards Officer, Curtin University, with attachments (letter and contemporaneous notes) [CCC 69752], *op cit*.
- ¹⁷ Statement of Complainant 1 to the Corruption and Crime Commission on 21 July 2009 [CCC 00920-2009-0062], *op cit*.
- ¹⁸ Record of Interview of Mr A by Commission Investigators on 5 August 2009.
- ¹⁹ Email from Mr A to the Corruption and Crime Commission of 6 August 2009.
- ²⁰ Record of Interview of Mr Felix Mo Foon Chan by Commission Investigators on 6 August 2009.
- ²¹ Record of Interview of Complainant 2 by Commission Investigators on 24 June 2009.
- ²² Statement of Complainant 2 to the Corruption and Crime Commission on 21 July 2009.
- ²³ There is no suggestion this was an illegal interception. Complainant 2's evidence was that "I put my mobile phone on speaker phone and Mr D recorded the conversation on the MP3 player. The MP3 player was away from the mobile phone". Statement of Complainant 2 to the Corruption and Crime Commission on 21 July 2009.
- ²⁴ Later identified as Ms Caroline Bennett, Administrator, Research and Development, Curtin University.
- ²⁵ Statement of Mr D to the Corruption and Crime Commission on 21 July 2009.
- ²⁶ Record of interview of Mr E by Commission Investigators on 4 August 2009.

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- ²⁷ Record of Interview of Ms Caroline Bennett by Commission Investigators on 6 August 2009.
- ²⁸ Record of Interview of Mr Desmond Pegrum by Commission Investigators on 6 August 2009.
- ²⁹ Record of Interview of Ms Joanna Watts by Commission Investigators on 6 August 2009.
- ³⁰ Record of Interview of Complainant 3 by Commission Investigators on 19 August 2009.
- ³¹ Record of Interview of S2 by Commission Investigators on 8 September 2009.
- ³² Emails between S3 and Dr Nasrul Ameer Ali, and Complainant 4 and Dr Nasrul Ameer Ali.
- ³³ Record of Interview of S3 by Commission Investigators on 31 July 2009.
- ³⁴ Record of Interview of Complainant 4 by Commission Investigators on 16 October 2009.
- ³⁵ Mr Felix Mo Foon Chan stated at a Commission private examination that Dr Nasrul Ameer Ali was “fully aware of [Professor] Lashman’s [sic; Lakshamn’s] expectations and marking key ... I find it interesting to see there’s such big differences in mark”. Transcript of Proceedings, Private Examination of Mr Felix Mo Foon Chan on 12 March 2010, p.425.
- ³⁶ Spreadsheet of Master 301 results prepared by Dr Nasrul Ameer Ali [00920-2009-0143].
- ³⁷ Record of Interview of S5 by Commission Investigators on 23 September 2009.
- ³⁸ Record of Interview of Ms Melissa Lewis by Commission Investigators on 16 September 2009.
- ³⁹ Record of Interview of Mr Sherwant Singh Gill by Commission Investigators on 14 September 2009.
- ⁴⁰ Email from Mr Jeffrey Petchey, Head of School, Department of Economics and Finance, to Ms Bernadine Tucker, Integrity and Standards Officer, Legal and Compliance Services, Curtin University, of 4 November 2009.
- ⁴¹ Dr Ali’s Dissertation is entitled *Corruption and Its Impact on Economic Growth in South-East Asia*.
- ⁴² Record of Interview of Dr Nasrul Ameer Ali by Commission Investigators on 7 July 2009.
- ⁴³ Record of Interview of Dr Nasrul Ameer Ali by Commission Investigators on 10 July 2009.
- ⁴⁴ Transcript of Proceedings, Private Examination of Dr Nasrul Ameer Ali on 11 March 2010, p.211.
- ⁴⁵ *Ibid*, pp.212-213.
- ⁴⁶ *Ibid*, p.215.
- ⁴⁷ *Ibid*, p.217.
- ⁴⁸ *Ibid*.
- ⁴⁹ *Ibid*, p.219.
- ⁵⁰ *Ibid*, p.220.
- ⁵¹ *Ibid*, pp.222-223.
- ⁵² *Ibid*, p.235.
- ⁵³ *Ibid*, p.237.
- ⁵⁴ *Ibid*, p.238.
- ⁵⁵ *Ibid*.
- ⁵⁶ *Ibid*, p.239.
- ⁵⁷ *Ibid*, pp.240-241.
- ⁵⁸ *Ibid*, p.242.
- ⁵⁹ *Ibid*, p.246.
- ⁶⁰ *Ibid*, p.258.
- ⁶¹ *Ibid*, p.260.

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- ⁶² *Ibid.*
- ⁶³ *Ibid*, p.262.
- ⁶⁴ *Ibid*, p.270.
- ⁶⁵ *Ibid*, p.273.
- ⁶⁶ *Ibid.*
- ⁶⁷ *Ibid*, pp.283-284.
- ⁶⁸ *Ibid*, p.284.
- ⁶⁹ Transcript of recording of conversation between Dr Nasrul Ameer Ali and Complainant 2 on 17 June 2009 [00920-2009-0148].
- ⁷⁰ Transcript of Proceedings, Private Examination of Dr Nasrul Ameer Ali on 11 March 2010, p.286.
- ⁷¹ *Ibid*, p.287.
- ⁷² *Ibid*, p.288.
- ⁷³ *Ibid*, pp.288-290.
- ⁷⁴ *Ibid*, p.290.
- ⁷⁵ *Ibid*, p.291.
- ⁷⁶ *Ibid*, p.292.
- ⁷⁷ *Ibid*, p.293.
- ⁷⁸ Transcript of Proceedings, Private Examination of Dr Nasrul Ameer Ali on 12 March 2010, p.301.
- ⁷⁹ *Ibid*, p.302.
- ⁸⁰ *Ibid*, p.303.
- ⁸¹ *Ibid*, p.304.
- ⁸² *Ibid*, pp.304-305.
- ⁸³ *Ibid*, p.306.
- ⁸⁴ *Ibid*, pp.311-312.
- ⁸⁵ *Ibid*, p.317.
- ⁸⁶ *Ibid*, pp.318-319.
- ⁸⁷ *Ibid*, p.320.
- ⁸⁸ *Ibid*, p.322.
- ⁸⁹ *Ibid.*
- ⁹⁰ *Ibid*, pp.323-324.
- ⁹¹ *Ibid*, p.326.
- ⁹² *Ibid*, p.327.
- ⁹³ *Ibid*, p.331.
- ⁹⁴ *Ibid*, p.332.
- ⁹⁵ *Ibid*, p.340.
- ⁹⁶ Email to Complainant 4 from Dr Nasrul Ameer Ali of 10 February 2009 [00920-2009-0141].
- ⁹⁷ Transcript of Proceedings, Private Examination of Dr Nasrul Ameer Ali on 12 March 2010, p.353.
- ⁹⁸ *Ibid.*
- ⁹⁹ *Ibid*, p.356.

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- ¹⁰⁰ *Ibid*, p.358.
- ¹⁰¹ *Ibid*, p.360.
- ¹⁰² Curtin University, *Assessment and Student Progression Manual*, 30 October 2009.
- ¹⁰³ Spreadsheet of Master 301 results prepared by Dr Nasrul Ameer Ali [00920-2009-0143], *op cit*.
- ¹⁰⁴ Transcript of Proceedings, Private Examination of Dr Nasrul Ameer Ali on 12 March 2010, pp.362-363.
- ¹⁰⁵ *Ibid*, p.364.
- ¹⁰⁶ *Ibid*, p.366.
- ¹⁰⁷ *Ibid*, p.367.
- ¹⁰⁸ *Ibid*, p.369.
- ¹⁰⁹ Curtin University, Spreadsheet of Student Marks, Semester One 2009, Finance (Portfolio Management) 301 [00920-2009-0147].
- ¹¹⁰ Transcript of Proceedings, Private Examination of Mr Felix Mo Moon Chan on 12 March 2009, p.418.
- ¹¹¹ Transcript of Proceedings, Private Examination of Ms Bernadine Kathryn Tucker on 25 March 2010.
- ¹¹² Transcript of Proceedings, Private Examination of Ms Mabel Jane van den Herik on 25 March 2010
- ¹¹³ Transcript of Proceedings, Private Examination of Ms Naomi Ann Yellowlees on 25 March 2010
- ¹¹⁴ Transcript of Proceedings, Private Examination of Professor Jane den Hollander on 25 March 2010
- ¹¹⁵ See Martin CJ (with whom Newnes AJA agreed) in Ex parte West Australian Newspapers Ltd [2008] WASCA 209 at [51].
- ¹¹⁶ Shorter Oxford English Dictionary, Sixth Edition, p.529; Macquarie Dictionary, 2nd Revised Edition, p.417.
- ¹¹⁷ R v Gallagher (1987) 29 A Crim R 33.
- ¹¹⁸ Willers v R (1995) 81 A Crim R 219 per Malcolm CJ at 224.
- ¹¹⁹ Willers v R, supra, per Malcolm CJ at 225; Rowland J at 231; Application by DPP (C'th) for a Superannuation Order in Respect of Hogarth (1995) 93 A Crim R 452 per Higgins J at 454-5.
- ¹²⁰ Williams v R (1979) 23 ALR 369 per Franki J at 381.
- ¹²¹ *The Lecherous Professor: Sexual Harassment on Campus*, Billie Wright Dziech and Linda Weiner, University of Illinois Press, Second Edition, 1990.
- ¹²² Sawir E, Marginson S, Deumert A, Nyland C, and Ramina G, (2007), *Loneliness and International Students: An Australian Study*. University of Melbourne Website, <http://www.cshe.unimelb.edu.au/pdfs/JSIE%20online%20Sawir%20et%20al%20loneliness.pdf>, viewed 19 August 2010.
- ¹²³ Independent Commission Against Corruption (ICAC) *Report Under Section 14(2) of the Independent Commission Against Corruption Act 1988 to the Minister for Education and Training*, October 2004. ICAC Website, <http://www.icac.nsw.gov.au/publications-and-resources/list-of-all-current-icac-publications>, viewed 24 August 2010.
- ¹²⁴ *The Australian* newspaper, 10 September 2009.
- ¹²⁵ *The International Student as Student, Migrant and Victim*, P Rodan, 2009.
- ¹²⁶ *Implications of Low English Standards Amongst Overseas Students at Australian Universities*, B Birrell, 2006.
- ¹²⁷ *Good Practice Principles for English Language Proficiency for International Students in Australian Universities* by the Australian Universities Quality Agency, December 2008. Department of Education, Employment and Workplace Relations (DEEWR) Website, http://www.deewr.gov.au/HigherEducation/Publications/Documents/Final_Report-Good_Practice_Principles.pdf, viewed 19 August 2010.

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- ¹²⁸ *Stronger, Simpler, Smarter ESOS: Supporting International Students – Review of the “Education Services for Overseas Students (ESOS) Act 2000”*, 2010. Australian Education International Website, www.aei.gov.au, viewed 23 August 2010.
- ¹²⁹ *Part-Time (Sessional) Academic Staff: Policy and Procedures*, Curtin University, 2000.
- ¹³⁰ Transcript of Proceedings, Private Examination of Mr Felix Mo Foon Chan on 12 March 2010, p.394.
- ¹³¹ Curtin University *Assessment and Student Progression Manual*, 30 October 2009, *op cit*.
- ¹³² Curtin University Website, <http://odu.curtin.edu.au/development/sessional.cfm>, viewed 30 August 2010.
- ¹³³ Curtin University Website, http://policies.curtin.edu.au/policies/az_index.cfm, viewed 30 August 2010.
- ¹³⁴ *Ethics and Social Justice Commitment Statement*, Curtin University, 2001 [00920-2009-0110].
- ¹³⁵ *Guiding Ethical Principles*, Curtin University, 2001 [00920-2009-0111].
- ¹³⁶ The Australian Vice-Chancellors’ Committee (AVCC) was established in May 1920 and was comprised of the Vice-Chancellors of the then six universities in Australia. In 1966 the AVCC Secretariat was relocated from Melbourne to Canberra. Universities Australia was established on 22 May 2007, replacing the AVCC. Universities Australia represents Australia’s 39 universities in the public interest, both nationally and internationally. Members of Universities Australia are the universities, represented by their Chief Executive Officer, the Vice-Chancellor. Australian Universities Website, <http://www.universitiesaustralia.edu.au>, viewed 20 July 2010.
- ¹³⁷ Australian Vice-Chancellors’ Committee, *Code of Ethical Practice in the Provision of Education to International Students by Australian Universities*, August 1998 [00920-2009-0112].
- ¹³⁸ *Equal Opportunity Policy*, Curtin University, 2002.
- ¹³⁹ *Grievance Resolution Policy*, Curtin University, 2001.
- ¹⁴⁰ *Code of Conduct*, Curtin University. Approved by the Planning and Management Committee on 30 June 2009 and launched in October 2009.
- ¹⁴¹ At [66], [73], [74] and [76].
- ¹⁴² Refer p.26 of Curtin University section 86 representations.
- ¹⁴³ Australian Government, Australian Education International Website, http://www.aei.gov.au/AEI/ESOS/NationalCodeOfPractice2007/National_Code_2007_pdf.pdf, viewed 27 August 2010.
- ¹⁴⁴ *Student Grievances and Discipline Matters*, Jackson J, Fleming H, Kamvounias P and Varnham S, May 2009. Australian Learning and Teaching Council Website, <http://www.altc.edu.au/resource-student-grievances-discipline-matters-scu-2009>, viewed 26 August 2010.
- ¹⁴⁵ *Discussion Paper: Complaint Handling in NSW Universities*, NSW Ombudsman, November 2004. Ombudsman NSW Website, <http://www.ombo.nsw.gov.au/publication/PDF/discussion/Discussion%20Paper-Complaint%20Handling%20Uni.pdf>, viewed 26 August 2010.
- ¹⁴⁶ *The Lecherous Professor: Sexual Harassment on Campus*, Billie Wright Dziech and Linda Weiner, University of Illinois Press, Second Edition, 1990, *op cit*.
- ¹⁴⁷ *Discussion Paper: Complaint Handling in NSW Universities*, NSW Ombudsman, November 2004. Ombudsman NSW Website, <http://www.ombo.nsw.gov.au/publication/PDF/discussion/Discussion%20Paper-Complaint%20Handling%20Uni.pdf>, viewed 26 August 2010, *op cit*.
- ¹⁴⁸ In April 2007 Curtin University implemented a new policy entitled *Corruption and Crime Commission Statutory Reporting Requirements of the University: Policy and Procedures*.
- ¹⁴⁹ IELTS is an acronym for the International English Language Testing System.