



CORRUPTION AND CRIME COMMISSION

REPORT ON A MATTER OF GOVERNANCE AT MURDOCH UNIVERSITY

1 JULY 2016

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CORRUPTION AND CRIME COMMISSION

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Clerk of the Legislative Council
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Ms Kirsten Robinson
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Dear Mr Pratt
Dear Ms Robinson

As neither House of Parliament is presently sitting, in accordance with the *Corruption, Crime and Misconduct Act 2003* (CCM Act) s 93, the Commission hereby transmits to you a copy of its *Report on a Matter of Governance at Murdoch University*.

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

Yours sincerely

A handwritten signature in blue ink that reads "John McKechnie".

John McKechnie, QC
COMMISSIONER

1 July 2016

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INTRODUCTION

- [1] Murdoch University (Murdoch), located in the southern suburbs of Perth, opened its doors to students as Western Australia's second university in 1975.
- [2] Murdoch is governed by a Senate, presided over by a Chancellor. At the beginning of the events recounted in this Report the Chancellor was Mr Terry Budge, succeeded in due course by Mr David Flanagan.
- [3] The Senate appoints a Vice-Chancellor who as the academic and administrative head of the University, is responsible to the Senate for all major aspects of its operations.
- [4] On 1 August 2011, a new Vice-Chancellor, Professor Richard Higgott, commenced duties.
- [5] Professor Higgott had been Pro Vice-Chancellor for Research at Warwick University, England (Warwick). Immediately before his appointment as Vice-Chancellor, he was Winthrop Research Professor at the University of Western Australia.
- [6] Within six months of his appointment, the Commission received correspondence from an anonymous complainant alleging conflicts of interest and breaches of policy by Professor Higgott. By the time Professor Higgott resigned as Vice-Chancellor on 24 October 2014, the Commission and the Chancellor had received other complaints about Professor Higgott. Anonymous letters making allegations were circulating around Murdoch.
- [7] The Commission undertook a co-operative investigation with Murdoch. The reasons for the Commission's involvement included Professor Higgott's senior position and the need for independence. The Chancellor, with the backing of the Senate acted decisively in working with the Commission. In the course of the investigation, Murdoch also engaged a number of consultants who reported on specific aspects of enquiry.
- [8] After the Commission conducted a series of voluntary interviews it appointed Ms Kirsten Nelson and Ms Avril Bartlett as Counsel to assist in the private examination of three witnesses, one of whom was Professor Higgott.
- [9] Following discussion with the Chancellor and the incoming Vice-Chancellor, the Commission has decided to report to Parliament. Although this report details the conduct of one person, there are wider lessons of governance for universities in Western Australia.
- [10] A modern university is part of Australia's third largest export sector at an estimated value of nearly \$20 billion.¹

¹ The value of international education to Australia (2015) prepared by Deloitte Access Economics for the Australian Government Department of Education and Training.

- [11] If they ever were, universities are no longer leafy and leisurely hubs of academic research and teaching but also businesses to be operated according to modern principles of efficiency, fairness and sound industrial relations.
- [12] Among the myriad of other tasks and skills, a Vice-Chancellor is required to know and implement Senate policies and to follow best practice.
- [13] Because the role of a Vice-Chancellor is pivotal and powerful, a Senate must have a system of robust and continual governance.
- [14] The relationship between a Senate, usually represented by the Chancellor and a Vice-Chancellor, must be one of trust, openness and honesty.
- [15] This account is how Professor Higgott, when Vice-Chancellor, did not live up to that trust. He seriously breached Murdoch's policies. This report illustrates what happens when a Vice-Chancellor does not act with probity and a Senate fails to effectively articulate the parameters within which a Vice-Chancellor should act.

Matters outside the scope of this report

Credit card use

- [16] Some matters were referred to the Commission for investigation but will not form part of this report. On occasion, matters were better investigated by Murdoch. Professor Higgott's use of an authorised credit card was one such matter.
- [17] Murdoch engaged consultants who examined a sample of corporate credit card transactions for a number of senior officials.
- [18] Murdoch's financial controls over corporate credit card use were lax. There was a lack of clarity as to the conditions of use and the permitted parameters of corporate credit card use were extremely broad. The Commission has formed no opinion of misconduct in respect of credit card use by Professor Higgott or any other senior official.
- [19] Murdoch was invited to outline its response to the perceived laxity:

The University has undertaken a number of initiatives to improve the controls and processes associated with the purchasing card environment. Following these separate reviews recommendations were made, accepted and action plans have been developed over a number of months.

Some of the key improvements have been associated with:

- *policy clarification (associated with travel, discretionary spend and purchasing card use),*
- *reviewing procedural documentation to ensure they align with policy to avoid an ambiguity,*
- *enhanced communications,*
- *improved and targeted compliance checks, and*

- *improved internal reporting through to the University's Integrity Officer for further assessment.*

Further improvement initiatives continue to be rolled out, including online training material, targeted reductions in the number of purchasing cards in circulation through improved technology and procurement initiatives, and the removal of purchasing cards from employees where circumstances demand such action.²

Destruction of documents

- [20] An aspect of concern and a matter which impeded the investigation, was the destruction of key documents, sometimes in breach of Murdoch's document retention policy and otherwise potentially in breach of the *State Records Act 2000*. It is not now possible to form an opinion whether the destruction of certain documents was deliberate to thwart an investigation or unintentional inadvertence. What is clear however is that Murdoch's document retention policy was not followed. Murdoch has responded:

The University has in place a Recordkeeping Policy and Recordkeeping Guidelines which are aligned with the State Records Act 2000. An objective of the Recordkeeping Policy is to ensure that statutory recordkeeping obligations are met. The University was involved in the establishment of the WA University Sector Disposal Authority (WAUSDA) and management of records at the University is covered under this document which also aligns with the State Records Act 2000.

The University moved its on-line recordkeeping training module to a new system in late 2015. This system provides the functionality to track completion rates - an email is sent to commencing staff alerting them to the need to complete the record keeping module, if they do not do this, a reminder is sent. There is escalation to the relevant office or School Dean if the module is not completed. In addition the University Secretary presents on various topics including individual staff obligations with regard to record keeping at the new staff induction sessions which are held monthly. It is planned that staff will complete the module as a refresher at least every three years.³

- [21] As Murdoch has accepted the recommendations of its consultants and improved its practices surrounding credit card use and document retention, the Commission has no need to make any recommendations.

Matters that fall within the scope of this report

- [22] The appointment of Professor Margaret Ann Capling as Deputy Vice-Chancellor (Education) (DVCE) and the appointment and termination of Mr Jonathan Baldwin, Deputy Vice-Chancellor (Professional Services) (DVCPS), illustrate with clarity the issues that arise when a transparent process is rendered opaque and when lies are told. The appointment of

² Letter from Professor Eeva Leinonen on 6 May 2016.

³ Letter from Professor Eeva Leinonen on 6 May 2016.

Dr Michael Crozier, who is Professor Capling's partner, was examined only in the context of its relevance to Professor Higgott's conduct in the appointment of Professor Capling.

- [23] Professor Higgott was discovered to be a viewer of adult material on his Murdoch laptop computer both during and outside normal working hours.⁴ Whilst the content or viewing of this material was not criminal, it was inappropriate for a Vice-Chancellor and in direct breach of Murdoch policies.⁵ Of itself this would not justify a report to Parliament. It is included in this report to further illustrate a wider issue: Professor Higgott's disregard for the policies it was his duty to enforce.
- [24] In one area the Commission has formed an opinion of serious misconduct:
- the breach of policy surrounding the appointment of Professor Capling as DVCE.
- [25] In two areas the Commission has formed an opinion of misconduct:
- misleading the Commission and the Chancellor over the appointment and termination of Mr Baldwin as DVCPS; and
 - the breach of policy by downloading adult material and subsequent attempts to delete it.⁶

Representations

- [26] Because aspects of this report directly affect Murdoch, the Commission delayed reporting until the new Vice-Chancellor, Professor Eeva Leinonen took up her appointment on 1 April 2016 and the Commissioner and she were able to meet. The Commission then followed its usual policy and gave a draft of the report to affected persons for comment.
- [27] In accordance with s 86 of the *Corruption, Crime and Misconduct Act 2003* (CCM Act) the Commission is required to give any person or body adversely named in this report an opportunity to make representations to the Commission concerning these matters. The Commission took an expansive approach as to who might adversely be affected. The Commission acknowledges that this report has the potential to damage reputation when made public. The Commission carefully considered representations received from various parties. Where those representations have been accepted the draft report has been changed prior to finalisation.

⁴ Contract of Agreement and Contract of Employment between Murdoch University and Richard Higgott, clause 9.

⁵ Internet Use Policy 14 June 2010 (1) (3) (7) (9); IT Use Policy 30 July 2014 (2).

⁶ The Commission retained jurisdiction over serious and less serious misconduct until jurisdiction was restricted to serious misconduct on 1 July 2015 but may continue to report on any matters that arose prior to that date.

- [28] Mr Baldwin made strong representations that his name should be removed from the report. He co-operated with the Commission and the circumstances of his departure were in his view reprehensible.
- [29] The focus of Chapter Two of this report is on the actions of Professor Higgott. So intertwined are they with Mr Baldwin that it has not proved possible to remove reference to the latter.
- [30] The Commission emphasises that it has formed no adverse opinion in respect of Mr Baldwin's time as a public officer in Western Australia.
- [31] It has formed no opinion as to Mr Baldwin's honesty. His contemporaneous written documents are what they are.

CHAPTER ONE

THE APPOINTMENT OF PROFESSOR CAPLING AS DEPUTY VICE-CHANCELLOR (EDUCATION)

- [32] What follows should not be read as adverse to Professor Capling's abilities or suitability for appointment to DVCE. To be abundantly clear, such a question is beyond the scope and purpose of the Commission's investigation and no criticism of her ability is intended or should be inferred.
- [33] The focus is on the actions of Vice-Chancellor Professor Higgott.
- [34] Professor Higgott commenced his appointment as Vice-Chancellor determined to appoint his good friend, Professor Capling, to a senior position. Shortly thereafter, Professor Capling was part of the University Senior Leadership Group with responsibility for the overall curriculum. This position called for both exemplary leadership and scholarship, was generously remunerated and directly reported to Professor Higgott. It should have been an appointment that followed a rigorous, transparent and equitable recruitment process. It was not.
- [35] Professor Higgott was delegated authority from the Senate to conduct recruitment at Murdoch. He was able to appoint himself chair of the selection panel comprising Professor Gary Martin, Senior Deputy Vice-Chancellor, other Murdoch personnel including a Senate representative and an independent academic leader. Administrative advice and support was provided by the Director Human Resources, Ms Karen Lamont, and her staff. Despite receiving 12 applications for the position the selection panel were left with only one interviewee - Professor Capling. Professor Higgott achieved this in part by actively deceiving the other panel members and by secret communications with Professor Capling.
- [36] The deception was twofold - a failure to declare the full extent of the close personal relationship of many years standing with Professor Capling together with a sham declaration to the selection panel that he had a professional association at arm's length. If Murdoch had known the truth Professor Higgott may not have been chair of the selection panel. Murdoch's close personal relationship policy indicated he should not have been.
- [37] Ms Lamont, having been shown for the first time a selection of emails passing between Professors Higgott and Capling, stated that if the true position had been communicated:

I believe that the emotional flavour of the emails indicate a much closer relationship than was stated and my advice to the vice-chancellor on those grounds would've been not to be involved in the interview process for that position.⁷

⁷ Transcript of Private Examination of K Lamont on 4 November 2015, p37.

- [38] Only by failing to declare adequately his association with Professor Capling could Professor Higgott control and exert influence to progress her appointment. Professor Higgott was so confident that his wish would prevail that Professor Capling and her partner Dr Michael Crozier were told before the application period had closed they would both be employed by Murdoch.
- [39] Professor Higgott took every opportunity available to meet with Professor Capling or communicate by email prior to her interview. Together they tailored the job description to suit her attributes. He provided his curriculum vitae (CV) as a template for her application (although she says she did not use it). He had dinner, paid for using his Murdoch Corporate Credit Card,⁸ with Professor Capling and Dr Crozier two nights before the panel interview. A handwritten note on the tax invoice referred to the dinner as a "Business Meeting" with "DVC Candidate" Professor Capling and Dr Crozier.
- [40] When asked during his examination if he disclosed the dinner to members of the DVCE selection panel and/or the Human Resources Director, Professor Higgott stated "No, I didn't."⁹
- [41] Professor Higgott's conduct deprived the selection panel from effectively performing their role.
- [42] Whether or not Professor Higgott received a formal induction on his appointment, it was his obligation to familiarise himself with the relevant statutes, policies and codes operating within Murdoch. He was bound by them through his contract of employment which required him to comply with the Code of Conduct and the Code of Ethics, among others.
- [43] The Murdoch Code of Conduct is intended to identify and resolve issues of ethical conduct that may arise in the course of employment.
- [44] The policy deals with close personal relationships:
- 4.1 Close Personal Relationships "CPRs" are relationships between family members or someone with whom a person has, or has had a personal or other significant relationship. Staff of the University should strive to achieve high professional and ethical standards. CPRs between members of the University community may place this objective at risk, or might reasonably be seen by others to involve a breach of trust and/or a conflict of interest.*
- In order to avoid a breach of trust and/or conflict of interest staff are required to*
- 4.1.1 avoid situations requiring them to supervise or assess a student with whom they have, or have had, a CPR;*

⁸ \$307.50 billed to Murdoch from Professor Higgott's corporate credit card.

⁹ Transcript of Private Examination of R Higgott on 23 September 2015, p44.

- 4.1.2 *avoid situations requiring them to supervise another member of staff with whom they have or have had a CPR;*
- 4.1.3 *not be included in any recruitment activity involving an applicant with whom they have or have had a CPR.*
- 4.2 *Where both a supervisory role and significant relationships between staff members are unavoidable, supervision must be openly seen to be of the highest professional standard and neither unfairly advantaging or disadvantaging the supervisee.*
- 4.3 *Staff involved in CPRs whether publicly known or not and where there could be, or could reasonably be seen to be, a breach of trust and/or conflict of interest, are required to declare the relationship to their School Dean, or Head of Office or equivalent.¹⁰*

[45] The selection panel guidelines provided that chairs have specific responsibilities to ensure that:

- 1.3 *Any special interest or conflict of interest is declared by any panel member at the beginning of the process.¹¹*

[46] In 2011, the circumstances of Professor Capling's appointment, among others, were referred to Murdoch by the Commission for report. Murdoch's response included a report from Ms Lamont. In respect of the selection panel with Professor Capling, Ms Lamont recorded:

... Professor Higgott advised the panel of his prior knowledge and acquaintance of the applicants, specifically Professor Capling and Professor Morrison. He advised that he met both Capling and Morrison in the period from the early 1980's to the early 1990's when he was working in Australia. He further advised that he had co-written a paper with Capling (albeit via email) and actually met with her 6 times in the 20 years since their first meeting at ANU.¹²

[47] Emails in the five years preceding Professor Capling's application reveal a close friendly relationship between the two, demonstrable by their shared use of terms of endearment and dialogue of occasions where Professor Higgott and his wife and Professor Capling and her partner Dr Crozier have socialised. Email correspondence between Professor Capling and Professor Higgott between 2008 and 2011 suggests they are close friends as Professor Capling addresses Professor Higgott as "My dearest Higgy", "Higlet" and "Your Higginess" and signs off with "xoxo". He refers to her as "Honey", "Capling my luv" and "Capling my dear".

¹⁰ Murdoch University *Staff Code of Conduct* as at 8 December 2012.

¹¹ Murdoch University *Selection Panel Guidelines*, p1.

¹² Report from Director, Human Resources in Relation to Anonymous Allegations of Misconduct, p2 enclosure to letter from Jeremy Rigg, General Counsel, Murdoch University to Chancellor Terry Budge dated 3 February 2012.

- [48] Professor Higgott told the Commission that at the time he did not categorise his relationship with Professor Capling as a close personal relationship and accordingly there was no attempt to deliberately conceal information from Murdoch.
- [49] In examination he conceded that the relationship met the definition of a "close personal relationship". Professor Higgott described their email contact as "friendly", "facetious", "gossipy and chatty".¹³ The two have also collaborated on academic research projects over the past 20 years.¹⁴
- [50] Professor Higgott thought it a sufficient declaration to the selection panel to merely state "this candidate is known to me".¹⁵ In the context of the evidence known about the nature of the relationship this statement by Professor Higgott was seriously deficient.
- [51] The danger of not disclosing a close personal relationship is that a recruitment process becomes biased.
- [52] The email correspondence between Professor Higgott and Professor Capling also shows conduct calculated to maximise Professor Capling's chances of being appointed. This commenced even before Professor Higgott had taken up his own appointment as Vice-Chancellor.
- [53] On 9 June 2011, about the time coinciding with Professor Higgott's signing his contract of employment, he emailed Professor Capling advising her that the job would be advertised in six weeks' time: "Head hunters will contact you but it would be good to have your up to date CV."¹⁶ Subsequently he provided a copy of his own CV to her, for reference.
- [54] Professor Higgott had a number of email accounts including an account at Warwick. On 1 August 2011, his first day in office as the Murdoch Vice-Chancellor, he emailed Professor Capling attaching his CV and advised: "Only use warwick email." This is an indication of the clandestine nature he intended for future communications.
- [55] On 10 June 2011, Professor Capling confirmed by email her interest in the positions of DVCE or Deputy Vice-Chancellor (Research) (DVCR).¹⁷ Professor Higgott replied: "My desire is to get together a good team with you as part of it. If DVC Academic fits you better than DVCR that would be fine by me. Talk to you soon. You can still call me higgott!!"¹⁸

¹³ Transcript of the Private Examination of R Higgott on 23 September 2015, p18.

¹⁴ List of academic publications co-authored by Higgott and Capling (EXH 03235-2013-0196).

¹⁵ Transcript of the Private Examination of R Higgott on 22 September 2015, p53.

¹⁶ Email from Richard Higgott to Ann Capling on 9 June 2011 at 8:51 AM.

¹⁷ Email from Ann Capling to Richard Higgott on 10 June 2011 at 00:41 AM.

¹⁸ Email from Richard Higgott to Ann Capling on 10 June 2011 at 10:11 AM.

- [56] On 19 July 2011, Professor Higgott emailed Professor Capling a draft job description for DVCE and asked if she wanted to "add, detract anything from it? ASAP".¹⁹ At this date the job description had yet to be finalised between Professor Higgott, Professor Martin and the Director Human Resources.
- [57] Professor Gary Martin, an experienced higher education administrator whose opinion the Commission accepts, regarded the invitation to contribute to the job description as "highly inappropriate".²⁰ Ms Lamont similarly was unaware that Professor Higgott had given Professor Capling draft selection criteria and job description criteria. It was a matter of concern to her.²¹
- [58] In his evidence, Professor Higgott explained, that it is often necessary for a Vice-Chancellor to "court" the persons regarded as most suitable for a particular position within a university in order to obtain their services. He was at pains to explain that his vision for Murdoch included attracting scholars of international repute. Professor Higgott genuinely thought Professor Capling was the best candidate. While this can be accepted, Murdoch's employment policies still had to be followed. A senior academic position should be filled on merit, judged by a panel, following a fair and transparent process. It should not be filled on one person's evaluation, especially when a close friendship may affect objectivity.
- [59] Dr Michael Crozier is Professor Capling's partner. A job would need to be found for him if Professor Capling's application was successful. On 16 August 2011, Professor Higgott, Professor Capling and Dr Crozier had dinner at the Grand Hyatt, Melbourne, paid for by Murdoch.²² A handwritten note on the tax invoice referred to Professor Capling as "DVC candidate". During his private examination, Professor Higgott explained the dinner:

*Do you recall having that conversation?---I'm sure we did. I was trying to attract her to come ... Perth. What I should say here, by the way, even though these emails look like she was keen to come, it was a very difficult conversation early on to persuade her to leave Melbourne University. Part of the courting process, when you've got someone as good as that, is to make the job attractive, so I was probably there having that conversation with her. By then she was convinced that she would be a candidate.*²³

¹⁹ Email exchange between Ann Capling and Richard Higgott on 19-20 July 2011.

²⁰ Transcript of Private Examination of G Martin on 22 October 2015, p31.

²¹ Transcript of Private Examination of K Lamont on 4 November 2015, p21.

²² \$515 billed to Murdoch from Professor Higgott's corporate credit card.

²³ Transcript of Private Examination of R Higgott on 23 September 2015, p37.

[60] The emails Professor Higgott referred to included an email from Professor Capling on 9 June 2011, two months before the dinner:

As for our chat, Mike and I are both at the stage where we would be open to a move. ... So your timing is impeccable.

[61] By the 31 July 2011 Professor Higgott had a particular position in mind for Dr Crozier and communicated that to Professor Capling.²⁴ By 16 August 2011 Professor Capling was likely to be a candidate. It is probable that a major purpose of the dinner was to discuss Dr Crozier's possible employment.

[62] Professor Higgott conceded he would have talked about the job at dinner and the specifications for the position to which he intended to appoint Dr Crozier. Dr Crozier was tasked with writing up the specification for his own position.²⁵

[63] Dr Crozier prepared a document titled *Murdoch University: Professorial Fellowship in Office of the Vice-Chancellor* detailing possible specific projects. Professor Capling "polished up the front end" and suggested Dr Crozier send it to Professor Higgott at his Warwick email address.²⁶

[64] In due course, a position was created as Vice-Chancellor's Senior Fellow and classified as an Associate Professor (reporting to the Vice-Chancellor).

[65] The key purpose of the role was to assist the Vice-Chancellor and Senior Executive at Murdoch to track policy directions, to interpret the policy world and the wider environment for higher education and to shape internal strategy accordingly.

[66] Under the Staff Recruitment Policy, the Vice-Chancellor "[h]as the authority to appoint a person to a position for up to three years without undertaking a recruitment process. However, any further appointment beyond the initial term of three years must satisfy merit selection requirement under this Policy."²⁷

[67] On 7 October 2011, Professor Higgott emailed Ms Lamont: "Michael Crozier's papers attached. I think we need to form a small group to confirm the appointment so that we have gone through some sort of due process."²⁸

²⁴ Transcript of Private Examination of R Higgott on 23 September 2015, p35.

²⁵ Transcript of Private Examination of R Higgott on 23 September 2015, p39.

²⁶ Email from Ann Capling to Michael Crozier on 7 September 2011 at 11:07:54 +1000.

²⁷ Murdoch University Staff Recruitment Policy, p2.

²⁸ Email from Richard Higgott to Karen Cooper [Lamont] on 7 October 2011 at 08:28:39 +0800.

[68] However, a week before, Professor Capling had sent an email to members of her family stating:

...

Richard (the Murdoch VC/President) is having a quiet drink with Mike before we go out together on Saturday night to discuss the new role that he has planned for Mike as a Professorial Fellow in the VC's office providing policy advice. It sounds like fun and will certainly be a huge (and welcome) change for Mike after more than 25 years in the classroom.²⁹

[69] The appointment of Dr Crozier by Professor Higgott was part of his strategy to recruit Professor Capling. Whilst the Commission accepts the evidence of Professor Higgott that this is not an unusual recruitment strategy, it is the timing of the appointment of Dr Crozier that is instructive. Professor Higgott had negotiated Dr Crozier's appointment prior to Professor Capling being interviewed by the selection panel.

[70] In a report Ms Lamont commented:

It is my opinion, as an experienced HR practitioner, that the DVC recruitment process was undertaken in line with our policy and at all times in an ethical and appropriate manner. In addition I believe that the process achieved a highly successful outcome with the appointment of two internationally renowned academics both of whom held senior appointments at G08 University's.³⁰

[71] At the time of this report, Ms Lamont was unaware of the closeness of the relationship between Professor Capling and Professor Higgott during the recruitment phase. She was similarly unaware of the dinner appointment less than 48 hours before the selection panel interview, an opportunity not given to other candidates.

[72] Murdoch advertised the DVCE and DVCR positions in August 2011. On 1 September 2011, Professor Capling submitted her written application for the DVCE position. She was one of 12 applicants.

[73] On 2 September 2011, Professor Capling emailed her application to one of her referees. Professor Capling indicated that interviews would be on 2 or 3 October 2011 and that her referee would be contacted over the next month or so.³¹ This was before the closing date for applications and before the shortlisting process had begun. In examination, Professor Higgott said he would have told Professor Capling she could assume she would be a shortlisted candidate.³²

²⁹ Email from Ann Capling to [various family members] on 30 September 2011 at 10:00:09 +1000.

³⁰ Report from Director, Human Resources in Relation to Anonymous Allegations of Misconduct, p2.

³¹ Professor Capling had not advised her colleagues at her current employment that she had applied for the Murdoch position and did not wish her application to be widely known at that time.

³² Transcript of Private Examination of R Higgott on 23 September 2015, p38.

- [74] Between 5 and 7 September 2011, two HR managers shortlisted the 12 applicants for the DVCE position. The HR Shortlisting Worksheet showed that three applicants other than Professor Capling were recommended as "YES" and Professor Capling was proposed as "YES(?)".
- [75] The recommended shortlist prepared by HR was disregarded by Professor Higgott on the basis that the HR managers did not have the relevant credentials to assess senior academic appointments.³³
- [76] On 8 September 2011 the shortlisting of candidates was finalised. This process was undertaken by Professor Higgott in consultation with Professor Martin. Despite 12 original applicants and an initial shortlist of four applicants, only Professor Capling was selected for interview. There is a divergence of evidence between Professor Higgott and Professor Martin as to the process which resulted in the choice of just one candidate to go to the selection committee, however, probabilities from all the evidence are that the decision was made in accordance with Professor Higgott's stated wish.
- [77] On 8 September 2011, Professor Capling sent an email to an associate advising that she had been "head-hunted for a Deputy Vice Chancellor job" and that the interview would be held on 3 October 2011.³⁴
- [78] However, an email from the HR manager to Ms Lamont at 14.41 pm on 8 September 2011 indicates that the HR manager had "just had a meeting" with Professor Higgott to finalise the shortlist. The HR manager did not advise Professor Capling that she had been selected for an interview until the next day, on 9 September 2011 at 11.46 am.
- [79] There is also a divergence of evidence between Professor Higgott on one side and Professor Martin and Ms Lamont on the other as to the extent to which Professor Higgott's close personal relationship to Professor Capling was revealed.
- [80] Professor Martin stated categorically, that whilst he was aware of a professional relationship, he had no sense of their friendship until after Professor Capling was appointed.³⁵ Ms Lamont felt the emotional flavour of the email correspondence between Professor Higgott and Professor Capling indicated a much closer relationship than what had been stated to her.³⁶
- [81] By letter dated 6 October 2011, Ms Lamont sent Professor Capling an offer from Murdoch for the position of DVCE. Professor Capling signed the employment agreement on 12 October 2011.

³³ Interview of HR Manager on 6 March 2015 at 12:32 PM, p4.

³⁴ Email from Ann Capling to Shane Carmody on 8 September 2011 at 13:11:03 (EST).

³⁵ Transcript of Private Examination of G Martin on 22 October 2015, p46.

³⁶ Transcript of Private Examination of K Lamont on 4 November 2015, p37.

[82] After her appointment as DVCE, Professor Higgott continued to minimise his close personal relationship with her.

[83] In response to an anonymous communication circulated widely in Murdoch, Professor Higgott sent a statement to Ms Lamont on 7 December 2011:

Capling I knew briefly at ANU. From the time I left in 1991 to go to the UK I saw her exactly 6 times in 20 years. We co-wrote a paper - by email correspondence. And yes, I took her to see a house (on the way to another meeting). Call me a softy, but I would do that for many a new senior colleague.³⁷

[84] This may be contrasted with his evidence:

... if we draw the distinction between Capling and Crozier, then he I don't know him well. She I do know well. I'd met him maybe half a dozen times - I'm not sure - maybe less.³⁸

[85] In respect of Dr Crozier's appointment, Professor Higgott wrote: "The appointment was made after Capling's appointment; not as a condition of it."³⁹

[86] In view of the email correspondence between Professor Higgott and Professor Capling, which included discussions about Dr Crozier, these statements were misleading. They reflect a continuing desire by Professor Higgott to minimise the close personal relationship between the parties.

[87] Above all, a Vice-Chancellor is expected to uphold the policy and codes of the University. Part of the Staff Code of Conduct requires staff to behave honestly and with integrity and not to make improper use of inside information or the employee's duties, status, power or authority in order to gain or seek to gain a benefit or advantage for the staff member or any other person.

[88] Misconduct occurs if a public officer engages in conduct that adversely affects, or could adversely affect, directly or indirectly, the honest or impartial performance of the functions of a public authority or public officer.⁴⁰ Serious misconduct occurs when a public officer acts corruptly in performing the functions of his office for an improper purpose so as to gain an advantage for himself or for another person.⁴¹ The conduct must lack

³⁷ Email attachment from Richard Higgott to Karen Cooper [Lamont] on 7 December 2011 at 10:33:46 AM WST.

³⁸ Transcript of Private Examination of R Higgott on 23 September 2015, p36.

³⁹ Email attachment from Richard Higgott to Karen Cooper [Lamont] on 7 December 2011 at 10:33:46 AM WST.

⁴⁰ CCM Act, s 4(d).

⁴¹ CCM Act, s 4(a)(b).

integrity. A corrupt purpose is not necessarily a dishonest purpose,⁴² it is a purpose without integrity or tainted.⁴³ It shows an element of fault, some perversion of the proper performance of the duties of office.⁴⁴ While not essential, there is likely to be some deceptive conduct to disguise the corrupt purpose.

- [89] Professor Higgott's conduct during the period of the recruitment of Professor Capling was directly related to his role as a public officer. He had been delegated the power by the Senate to recruit staff at the most senior level. Following the recruitment process the Senate ratified the appointment of Professor Capling on the advice of the selection panel, as led and directed by Professor Higgott.
- [90] The selection panel relied on the information provided to them about applicants that were worthy of an interview.⁴⁵ Professor Higgott was instrumental in ensuring that for the DVCE position, the selection panel were in a position to only assess one interviewee. Professor Higgott initially shortlisted the applicants for the position with the assistance of Professor Gary Martin.⁴⁶ Professor Martin recalls that Professor Higgott expressed his view as to who should be interviewed very firmly. Professor Higgott's recollection is to a degree different although he acknowledges that his first choice was Professor Capling.
- [91] The improper use of his position could have been avoided by following the Staff Code of Conduct that required him to excuse himself from a recruitment activity where he had a close personal relationship with an applicant. Professor Higgott knew he needed to make some type of declaration so he minimised the association to a declaration of professional contact as co-authoring a paper by email. This was the least contact which he could disclose without risking questions as to whether he should chair the panel.
- [92] Ms Lamont, Professor Martin and the other selection panel members were left in the dark about the assistance given to Professor Capling in formulating her application and preparing for interview.
- [93] The panel's ignorance of the true nature of the relationship meant they were unable to calibrate Professor Higgott's comments as to the merits of Professor Capling's application against any bias or conflict of interest in his strongly held opinion that she should be appointed.

⁴² *DPP v Hogarth* (1995) 93 A Crim R 452.

⁴³ *ICAC v Cunneen* [2015] HCA 14 [76].

⁴⁴ *Williams v R* (1979) 23 ALR 369.

⁴⁵ Transcript of Private Examination of K Lamont on 4 November 2015, p29. Evidence given that only the selection panel members who were internal University staff met to shortlist the applicants for interview.

⁴⁶ Transcript of Private Examination of G Martin on 22 October 2015, p60.

- [94] The Senate and selection panel believed at the time that the recruitment was transparent, equitable and free from conflict of interest. In fact, the process was none of these things. No doubt that has adversely affected Professor Capling who due to the actions of Professor Higgott cannot now be sure whether she won the position entirely on her own merit. In minimising the depth of his relationship with Professor Capling, in failing to declare a close personal relationship and in giving her opportunities denied to other candidates for the office of DVCE, Professor Higgott has engaged in conduct that adversely affects Murdoch.
- [95] Professor Higgott gave strong evidence to the effect that his vision for Murdoch included the appointment of world class scholars of whom Professor Capling was one.
- [96] He set out to restore Murdoch's reputation and increase its academic standing. Professor Capling was in his view an outstanding applicant but if a better qualified person had applied he would have chosen that person.
- [97] Professor Higgott strongly denied that he was motivated by an improper purpose and claimed all actions he took were designed to advantage Murdoch.
- [98] The Commission has carefully considered his testimony and subsequent representations in this respect but has reached a contrary opinion, based principally on his own actions and words in contemporary documents.
- [99] Professor Higgott's purpose in seeking the appointment of Professor Capling was tainted and without integrity. He did not follow Murdoch's procedures because if he had done so, Professor Capling might not have been appointed. He wanted her.
- [100] To disguise his purpose he deceived the selection panel and the Senate to believe that he was not in a close personal relationship with Professor Capling and was at arm's length. He gave her substantial assistance not given to any other applicant. He perverted the selection process.
- [101] The Commission is always cautious in forming an opinion of serious misconduct. Although it has no legal consequence, such an opinion may cause reputational and other damage.
- [102] The Commission has formed an opinion of serious misconduct under the CCM Act s 4(a). His involvement as Vice-Chancellor and as chair of the selection panel in the appointment of Professor Capling was motivated by an improper purpose. His actions and misleading statements corrupted the selection process.

CHAPTER TWO THE APPOINTMENT AND TERMINATION OF MR JONATHAN BALDWIN AS DEPUTY VICE-CHANCELLOR (PROFESSIONAL SERVICES)

- [103] Universities are prone to creative titles. A secretary in one university may be a registrar in another and a deputy vice-chancellor in another.
- [104] Mr Baldwin, the Registrar of Warwick, worked with Professor Higgott who was Pro Vice-Chancellor.
- [105] On 30 January 2013⁴⁷ Mr Baldwin was appointed DVCPS at Murdoch responsible to the Vice-Chancellor - a position more or less equivalent to Registrar.
- [106] On 20 November 2013 he and Professor Higgott negotiated his termination including a sum of money to be paid to Mr Baldwin.
- [107] In aspects of Mr Baldwin's appointment and termination Professor Higgott seriously misled the Chancellor, Mr Flanagan and indirectly the Commission.
- [108] Ms Lamont's report to the Chancellor about the appointment of Mr Baldwin for forwarding to the Commission in February 2012:

John Baldwin is not a stranger to Murdoch University and has visited the university several times during the last 6 months. Until recently Mr Baldwin was the Registrar of Warwick University in the UK and his initial visits were in order to share information with Australian Universities and offer reciprocal support.

...

[Mr Baldwin visited Murdoch for the week of 14 November 2011]

Around this time two other significant but unrelated events occurred. Mr Baldwin resigned his position at Warwick University and the Senior DVC of Murdoch University, Professor Gary Martin, resigned his position. I would like to make it clear that at this time no offer of employment had been made to Mr Baldwin.

...

Given the change in circumstances, and after consultation with several key members of the Senior Leadership Group, the Vice Chancellor began discussions with Mr Baldwin about the possible role at Murdoch University

⁴⁷ Although initially employed in the position of Senior Advisor to the Vice-Chancellor at Murdoch on 30 January 2012.

*leading the administrative areas but also having a significant role in the university's restructure and review of governance.*⁴⁸

- [109] The Commission does not suggest Ms Lamont deliberately misled the Chancellor. She was the conduit of information provided by Professor Higgott.
- [110] Professor Higgott contributed to the report being sent to the Chancellor. It was misleading as emails between Professor Higgott and Mr Baldwin demonstrate. Discussions between the two men began much earlier. Mr Baldwin's resignation from Warwick was linked to an offer of employment at Murdoch.
- [111] On 23 August 2011 Professor Higgott wrote to Mr Baldwin: "Btw, only I can read this email account. Have some very positive news about how we can appoint you."⁴⁹
- [112] Mr Baldwin responded two days later: "This account does indeed work so feel free to use. Look forward to hearing the news and am (very) keen to get/keep things moving. The suspense is frustrating (if understandable)."⁵⁰
- [113] In an email trail commencing on 25 August 2011, Professor Higgott wrote: "For noting, there is a bona fides way of appointing you for 3 years in the first instance without advertising. So we could offer VERY quickly when you are ready."⁵¹
- [114] Mr Baldwin replied on 26 August 2011: "Seeing Nigel at 11.30 tomorrow. Don't quite know what to expect but if we can touch base tomorrow evening (your time) or over the weekend, I'll update."⁵² The reference to Nigel is a reference to the Vice-Chancellor of Warwick, Sir Nigel Thrift.
- [115] Mr Baldwin wrote again to Professor Higgott on 28 August 2011 welcoming a draft contract as his opinion was they are:

... moving into the end game here at Warwick.

...

*It's a slightly odd situation (!) but I'm grateful for the way that you're handling things and for your confidence in me. I'll remain focussed at this end but write with significant excitement and anticipation.*⁵³

- [116] Professor Higgott had written on 28 August 2011:

⁴⁸ Report from Director, Human Resources in Relation to Anonymous Allegations of Misconduct, Attachment E, pp3-4.

⁴⁹ Email from Richard Higgott to Jonathan Baldwin on 23 August 2011 at 11:32 PM.

⁵⁰ Email from Jonathan Baldwin to Richard Higgott on 25 August 2011 at 03:53:07 +0800.

⁵¹ Email from Richard Higgott to Jonathan Baldwin on 25 August 2011 at 11:10 AM.

⁵² Email from Jonathan Baldwin to Richard Higgott on 26 August 2011 at 4:57 AM.

⁵³ Email from Jonathan Baldwin to Richard Higgott on 28 August 2011 at 03:43.

*Jon, Understand. Will send you a draft contract late this week or, more likely, next week. I have come up with a way to sweeten the financial pot quite considerably I think. Need to check it out with Karen. Will keep you posted.*⁵⁴

- [117] Deception by Professor Higgott continued. On 18 October 2011 he sent an email with the heading "FYEO - as they say in the James Bond Movies" to Mr Baldwin saying: "a draft of the kind of thing I could send to Nigel. Play with it and let me know when (if) you would want me to send it."⁵⁵ Mr Baldwin added some comments and on 28 October 2011, Professor Higgott emailed Professor Thrift. The email is an illustration of the depth of deception.

Dear Nigel,

Hope you are well. Couple of comments and a question.

I note the announcement of Jon's departure with considerable interest. ... I presume Jon has something in the pipe line. If not, this not entirely surprising turn of events is of more than passing interest for me.

...

But, and here is the question to you before I put it to him, do you think he might be interested in a short term consultancy as, excuse the cliché, 'change manager' overseeing the implementation of the reform of the university administration? I ask you in confidence for two reasons. (i) Presumably you have some inkling of his intended movements. I cannot imagine that he does not have irons in the fire. If he does there is no point pursuing the issue. (ii) I would value your advice on whether you think this is a good idea or not. Having him here for say 12 months or so might be very good for me and who knows it might be good for him (and Warwick) to be the other side of the world for a while...

*Happy to call you.*⁵⁶

- [118] Sir Nigel responded to say: "Happy to talk on the phone. It's all been amicable, as you'd expect. In brief, he might be interested."⁵⁷
- [119] Professor Higgott responded: "Thanks Nigel, interested you think he might be interested. I will try to call you this weekend if I cannot hook up Friday lunch time. If we do not talk, do you think I should pitch a proposal to him? I am minded to Best, Richard."⁵⁸

⁵⁴ Email from Richard Higgott to Jonathan Baldwin on 28 August 2011 at 2:15 AM.

⁵⁵ Email from Richard Higgott to Jonathan Baldwin on 18 October 2011 at 07:54:42 +0800.

⁵⁶ Email from Richard Higgott to Nigel Thrift on 27 October 2011 at 12:21 PM.

⁵⁷ Email from Nigel Thrift to Richard Higgott on 27 October 2011 at 3:09 PM.

⁵⁸ Email from Richard Higgott to Nigel Thrift on 28 October 2011 at 08:20:32 +0800.

- [120] On 30 October 2011 Professor Higgott emailed Mr Baldwin: "RE: A Proposition".⁵⁹ The terms of the email were designed to mislead any reader to the effect that this was the first time a proposition that Mr Baldwin might come to Murdoch was floated.
- [121] Deception of a former colleague, Sir Nigel Thrift, is unbecoming. The deception of the Chancellor disguising the earlier communications is more serious. Discussions about possible employment did not commence after 14 November 2011 but months earlier.
- [122] Professor Higgott allowed Ms Lamont's report to be forwarded, uncorrected, to the Chancellor for transmission to the Commission.
- [123] In due course, Mr Baldwin was appointed with responsibility for administration. He was appointed by the Vice-Chancellor who had been delegated authority by the Senate to make appointments of up to three years without a formal selection process.
- [124] However, Professor Higgott's euphoria on Mr Baldwin's appointment soon evaporated. From a fairly early stage the working relationship between Mr Baldwin and Professor Capling and later Professor Morrison deteriorated beyond repair. The reasons why are controversial and the Commission has not attempted to assign blame for the breakdown to any party. But Mr Baldwin's performance does not appear to have been in issue.
- [125] On 2 September 2013 Professor Higgott left a letter for Mr Baldwin on Mr Baldwin's keyboard. In that letter he "cleared the decks":
1. *There is no doubt that you are a brilliant university administrator; the best I have ever known.*
 2. *There is equally no doubt that Murdoch is a vastly better place for you having brought your brand of professionalism to our agenda over the last near 2 years.*
 3. *There is no doubt that 1 and 2 DVCs have learned skills from you that we did not have 2 years ago.*
 4. *There is also no doubt that the job is only part done and there is a long way to go and things need to be consolidated if Murdoch is to continue on the positive path we have mapped out for it.*⁶⁰
- [126] The letter then listed a number of matters indicating a breakdown in the relationship between all parties and the need for some resolution.
- [127] That letter evoked a response from Mr Baldwin "in sorrow" on 9 September 2013 which led to subsequent negotiations between them in meetings and in correspondence. Professor Higgott did not inform the

⁵⁹ Email from Richard Higgott to Jonathan Baldwin on 30 October 2011 at 09:12.

⁶⁰ Letter from Richard Higgott to Jonathan Baldwin on 2 September 2013.

Chancellor at any stage that he was in the process of terminating a senior appointment or the possible cost to Murdoch. Professor Higgott's evidence was that under the terms of Murdoch's statutes he was not required to do so. Regardless of the correct legal position, the Commission accepts that Professor Higgott genuinely held that belief at the time. In failing to inform the Chancellor at the time though, Professor Higgott deprived himself of any counsel or assistance the Chancellor may have proffered to resolve a situation where performance was not an issue though clash of personalities was.

[128] On 20 November 2013 a Deed of Release⁶¹ between Murdoch and Mr Baldwin was executed.

[129] Professor Higgott explained his motivation for the settlement. He said that Ms Lamont was involved, and he relied on her advice:

Did you not think that given the size of the payout that it was something that should be discussed with him?---That's a good question and my answer is quite clear on that, I asked Karen quite specifically whether we were entitled to do this and she said yes, we were. I also was quite clear that staff matters in the university were within the purview of the vice-chancellor. I'd not had conversations with the chancellor about hiring or firing of staff and I wasn't – in retrospect would I have done it different? Maybe I would but at the time I didn't think that I was doing anything untoward and no, I didn't discuss it with Flanagan until it was a done deal.

My view at the time was if that buys a peaceful, non-media fuelled departure, it was a very important thing to do at a very strategic time in the university's – things were going so well publicly for the university, the last thing I wanted was some adverse publicity given all the bad publicity that had gone on three years previously. I didn't knowingly do anything I didn't think I could do, I wasn't allowed to do.⁶²

[130] Ms Lamont has agreed that she was involved in the negotiations between Professor Higgott and Mr Baldwin but denied negotiating the final payout figure to Mr Baldwin:

Prof Higgott certainly suggested the figure. I was quite shocked and that's when I advised him that I hadn't been involved in this level of payment before ... and I advised him that he should speak with the CFO and [the head of legal].

...

I clearly remember that the VC had a piece of paper in front of him. He had three, six and nine written on the paper and he said to me, "What should we do next?" and I said, "You could go to six and see how that goes," and he said, "Let's just go straight to nine," and that's when I said, "I'm not experienced in this."⁶³

⁶¹ Deed of release between Murdoch and Mr Baldwin dated 20 November 2013.

⁶² Transcript of Private Hearing of R Higgott on 22 September 2015, pp39-40.

⁶³ Transcript of Private Hearing of K Lamont on 4 November 2015, pp47-48.

[131] Professor Higgott's recollection is different and is to the effect that Ms Lamont said we can be generous and give him nine months equivalent.⁶⁴

[132] Professor Higgott was unable to satisfactorily explain why he agreed to these terms. He said: "... it seemed quite a decent thing to do". "Tragically with hindsight" it did not occur to him to refer the termination to the Chancellor's Committee.⁶⁵

[133] Professor Higgott prepared a message for public consumption:

We agree that how we control the roll out of the message will be important that we should be joined up on it. I think we have arrived at an elegant solution that safeguards your reputation and preserves your dignity. I will follow your lead, and I am happy for you to script it, but I think I know what my messages are:

- a. Jon came for one year in the first instance as a consultant 'change manager'. We were lucky to get him for 2 to oversee the implementation of that process of structural change and create a more professional PST.*
- b. But it was clear, although never publicly stated, that family reasons would force a decision at the end of this year as to what the next stage was.*
- c. For family reasons it is time to go home. I will leave you to articulate this message (it is not for me to talk about them first). I will then take my lead from you.⁶⁶*

[134] Professor Higgott published a staff announcement on 26 November 2013 copied to the Chancellor which included: "I am sad to advise that Jon Baldwin, DVC Professional Services, will be leaving the University in March next year. For family and personal reasons Jon has indicated a desire to return to the UK."⁶⁷ The actual reason was that the breakdown of relations at senior level had led to a negotiated departure.

[135] There are no doubt reputational reasons why Mr Baldwin would wish such an announcement. It may be that Murdoch's position was uppermost in Professor Higgott's mind when he agreed to a public announcement that was not true. However, there is no basis for Professor Higgott to mislead the Chancellor. Nothing is more calculated to destroy a relationship of trust than for one party to be less than honest.

⁶⁴ Transcript of Private Hearing of R Higgott on 22 September 2015, pp39-40.

⁶⁵ Transcript of Private Hearing of R Higgott on 22 September 2015, pp49-50.

⁶⁶ Letter from Richard Higgott to Jonathan Baldwin (undated). This letter was composed after a meeting on 8 November 2013 but before the Deed of Separation was executed on 20 November 2013.

⁶⁷ Staff Announcement 26 November 2013 5:17:01 PM WST.

[136] When the Chancellor discovered the truth he wrote to Professor Higgott: "As you know, you have misled me, intentionally or otherwise, as the Chancellor of Murdoch University."⁶⁸

[137] Professor Higgott responded on 29 November 2013 following a face-to-face meeting:

*I am distressed to think I have let you down early in your post as Chancellor by not informing you of what was happening. I cannot apologise enough for the fact that I did not keep you informed. In fact I am quite distraught at this fact. My intention was to limit any aggravation to you in the role of Chancellor. It was never to misinform you. But I can see of course after the event (and we are all wise after the event) that it was stupid of me that it could be interpreted that way and I can understand you might feel let down so once again please accept my sincere apology. It was genuine stupidity not malfeasance.*⁶⁹

[138] In the course of his evidence to the Commission:

*But at all events, it would appear that you deliberately misled the chancellor as to the real reasons why the person was departing?---Initially, that's true.*⁷⁰

[139] The relationship between a Chancellor and Vice-Chancellor is crucial in any university. It is founded on mutual trust. From comments made in emails, Professor Higgott was disdainful of the Chancellor and of members of the Senate opining in one email: "Fucking cheek off [sic] these people."⁷¹ Professor Higgott has told the Commission that he held the view that the Chancellor did not understand the workings of a University but has accepted that with the benefit of hindsight he should have consulted with him and that it affected the trust between himself and the Chancellor. The Commission has seen no evidence that the Chancellor misunderstood the role and responsibilities of the Senate as the governing body. The Chancellor's referral of the matters comprising this report to the Commission for investigation is a cogent example of the Senate exercising its proper role.

[140] Within months of his apology to the Chancellor, Professor Higgott wrote of him: "This is making me feel sick to my stomach. I cannot decide whether simply to ignore him or have it out with him. I will not spend the next 2 to 3 years thinking he is the boss and I must seek approval before I fart."⁷² This email was in response to a report commissioned by Murdoch from PwC which raised questions about aspects of Professor Higgott's conduct.

⁶⁸ Letter from David Flanagan to Richard Higgott (undated).

⁶⁹ Email from Richard Higgott to David Flanagan on 29 November 2013 at 4:18:54 PM WST.

⁷⁰ Transcript of Private Hearing of R Higgott on 22 September 2015, pp48-49.

⁷¹ Email from Richard Higgott to Jonathan Baldwin on 14 May 2012 at 21:42:01 +0800.

⁷² Email from Richard Higgott to Ann Capling on 16 February 2014 at 2:31:42 PM AWST.

- [141] Professor Higgott allowed the Chancellor and subsequently the Commission to be misled as to the circumstances of Mr Baldwin's appointment as outlined by Ms Lamont. He knew that he had commenced negotiations months earlier than the dates specified in Ms Lamont's report. Professor Higgott deliberately misled the Chancellor as to the reasons for Mr Baldwin's departure from Murdoch. In each instance he did not perform his duties honestly and his actions were a breach of the trust placed in him. These two matters would constitute a disciplinary offence providing reasonable grounds for termination.
- [142] Under the CCM Act s 228 and s 4(d)(ii),(iii),(vi) the Commission has formed an opinion of misconduct.

CHAPTER THREE

THE BREACH OF MURDOCH'S POLICIES BY ACCESSING ADULT MATERIAL ONLINE

- [143] The Vice-Chancellor symbolises the values and ethics of Murdoch.
- [144] Professor Higgott was issued a laptop computer and required to comply with Murdoch's policies for its use which prohibited access to adult material.⁷³ Between 10 January 2012 and 9 September 2014, Professor Higgott accessed 486 adult rated files.
- [145] On 18 September 2014, Professor Higgott received written notification⁷⁴ from the Murdoch Chancellor that his employment at the university had been suspended, pending an investigation into allegations of misconduct against him. In the notification, Professor Higgott was "... requested to immediately ..." return the laptop to the Chancellor.
- [146] On 21 September 2014, Professor Higgott downloaded computer hard drive scrubbing software onto the laptop for the purpose of deleting evidence of his access (not completely successfully). He then returned his laptop computer to Murdoch later that day.
- [147] Professor Higgott candidly acknowledged these facts: "I put my hand up, I accessed adult sites; mistakes I know. I can't do anything other than plead stupidity."⁷⁵ He agreed that his actions were contrary to the Murdoch Code of Conduct.
- [148] In relation to the scrubber he said: "I downloaded a scrubber ... Well, ... I didn't know that it was not allowed, to clean your computer, but the reasons I was doing it were obvious."⁷⁶
- [149] It is not suggested that the files contained illegal material defined by the *Censorship Act 1996*, but Professor Higgott directly breached Murdoch's IT usage policies as he had done with Murdoch's Code of Conduct and recruitment policies, and it was contrary to his contract of employment.⁷⁷
- [150] Moreover, how could he fairly exercise discipline over staff or a student who similarly breached the policy? Such a person might expect suspension or dismissal. It is conduct that involves a breach of the trust placed in the public office of Vice-Chancellor, is a misuse of the laptop that has been acquired by him in connection with his functions as a

⁷³ IT Conditions of Use Policy and Internet Use Policy, both in place from 14 October 2010.

⁷⁴ Murdoch Notice of Suspension of Employment to Professor Higgott, dated 18 September 2014.

⁷⁵ Transcript of Private Examination of R Higgott on 23 September 2015, p54.

⁷⁶ Transcript of Private Examination of R Higgott on 23 September 2015, pp54-55.

⁷⁷ Employment Agreement and Contract of Employment between Murdoch University and Richard Higgott dated 6 June 2011, particularly clauses 9 and 21.

Vice-Chancellor and could constitute a disciplinary offence which could provide reasonable grounds for termination of office.⁷⁸

[151] Under the CCM Act s 218 and s 4(d)(i),(iii) the Commission has formed an opinion of misconduct.

⁷⁸ Appeal by Christos against decision of Blain DP of 22 March 2006 [PR970172] - *Re: Curtin University of Technology, Harrison SDP, Cartwright SDP, Larkin C*, Australian Industrial Relations Commission, 25 September 2006 [PR974099].