

# **An examination of suspected official misconduct at the University of Queensland**

September 2013

CRIME AND  
MISCONDUCT  
COMMISSION



QUEENSLAND



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**CMC vision:**

That the CMC make a unique contribution to protecting Queenslanders from major crime, and promote a trustworthy public sector.

**CMC mission:**

To combat crime and improve public sector integrity.

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September 2013

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Mrs Liz Cunningham MP  
Chair  
Parliamentary Crime and Misconduct Committee  
Parliament House  
George Street  
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Dear Minister, Madam Speaker and Mrs Cunningham

In accordance with section 69(1)(b) of the *Crime and Misconduct Act 2001*, the Crime and Misconduct Commission hereby furnishes you its report *An examination of suspected official misconduct at the University of Queensland*.

The Commission has adopted the report.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Ken Levy', with a long horizontal flourish extending to the right.

Dr Ken Levy RFD  
Acting Chairperson

# FOREWORD

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Universities are an important component of the public sector in Queensland. They are units of public administration and their senior executives are public officials.

Merit, equity and transparency must be the guiding principles for public sector decisions. In the university sector, these principles extend to all decisions including the admission of students into tertiary education courses.

In December 2010, a decision was made at the University of Queensland for a student to receive an offer which was not warranted according to the admission criteria at the time. The student who received the offer was the daughter of the then Vice-Chancellor.

This matter has been the subject of considerable public interest given that the University of Queensland is an important institution, and that the decision resulted in the resignation of its two most senior officers.

The public have been told there was an irregularity in enrolment procedures. This report outlines how decisions made by senior executives at the University of Queensland led to the offer being made to the student.

It is inevitable that conflicts of interest will arise in organisations and it is important to recognise when this occurs. Conflicts of interest can be effectively managed when they are identified and declared, and when they are dealt with in a transparent manner. Conflicts of interest themselves are not a hazard to public sector agencies; it is the manner in which they are managed which can be problematic.

Perceived or actual misconduct involving the most senior officers within an organisation can be challenging to manage. However, transparency remains vital. Formal complaints about the December 2010 decision were not made until nine months later, although many within the University of Queensland community including staff suspected misconduct.

In this public report, the Crime and Misconduct Commission (CMC) has set out the circumstances and decisions which led to the forced offer to the student, the outcomes of the CMC's misconduct investigation following a referral from the Queensland Police Service, the review of the University of Queensland's handling of the matter, the results of a qualitative review of their integrity system and lessons learned for the broader public sector.

The CMC recognises that since the events of 2010 and 2011, the University has embarked on a major integrity and accountability reform program.

The CMC acknowledges the time taken to prepare this report. The CMC is satisfied that the duration of time, which included extended procedural fairness processes, has resulted in a report that is both fair to the parties involved in this matter and an accurate record of the events which occurred.

I encourage all public sector agencies to read this report to consider how they could manage conflicts of interest and misconduct involving senior management, thus ensuring that merit, equity and transparency remain core to decision making.

Dr Ken Levy RFD  
**Acting Chairperson**

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# INTRODUCTION

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In December 2010 the University of Queensland offered a place in its 2011 undergraduate medical program to a school leaver who had not met the entry requirements for admission into that particular course. The student in question was the daughter of the then Vice-Chancellor (VC) of the University, Professor Paul Greenfield, and the decision to force an offer to his daughter was made by his deputy and close colleague, Professor Michael Keniger, as Acting VC.

A small group of people at senior levels of the University, including those who had been instructed to enact the decision, knew of the offer to the VC's daughter, some suspecting that it may potentially have constituted misconduct. Over time, more people became aware of the circumstances of the VC's daughter's admission to the medical program. However, no formal complaint was made to the Chancellor until September 2011, nine months later. It was subsequently reported to the Crime and Misconduct Commission (CMC) in October 2011. Ultimately it became known to the broader Queensland community, who began to read media accounts of irregularities and nepotism at the University. By the end of 2011, Professors Greenfield and Keniger had resigned, but questions remained about the reasons for their departure.

This report sets out:

- the main events at the University of Queensland from the time of the forced offer for entry through to the resignation of Professors Greenfield and Keniger
- the actions taken by the University and the CMC in relation to the forced offer and, more generally, to management of misconduct
- issues of relevance for governance in contemporary organisations.

The place offered to the VC's daughter was a publicly funded one. While she had obtained an OP 1 score, it is a matter of public interest that not only did the VC's daughter not satisfy the entrance requirements for the course, but that 343 other applicants who were ranked above her based on merit did not receive an offer of a place.

The report highlights important issues not just for the University but for the whole public sector: merit and equity as the basis for appointment, the need to manage real or perceived conflicts of interest, and the balance between individual privacy and public disclosure in situations of suspected official misconduct.

This report is also intended to encourage discussion within units of public administration about their own internal culture and how they would deal with potential suspected misconduct, particularly at senior levels.

# 1 INVESTIGATION AND REVIEWS

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## Jurisdiction

Under the *Crime and Misconduct Act 2001* (the CM Act), the CMC has primary responsibility for continuously improving the integrity of, and reducing the incidence of misconduct in, the public sector.<sup>1</sup> If a complaint raises a reasonable suspicion of official misconduct, the CMC will undertake an investigation where the nature and seriousness of the alleged misconduct warrant one and where it is in the public interest to do so.

### Legal definitions of misconduct

Pursuant to s. 15 of the Crime and Misconduct Act:

**Official misconduct** is conduct that could, if proved, be:

- (a) a criminal offence; or
- (b) a disciplinary breach providing reasonable grounds for terminating the person's services, if the person is or was the holder of an appointment.

According to s. 14(b), conduct, as that term is used in s. 15, means:

- (b) for a person who holds or held an appointment, conduct, or a conspiracy or attempt to engage in conduct, of or by the person that is or involves —
  - (i) the performance of the person's functions or the exercise of the person's powers, as the holder of the appointment, in a way that is not honest or is not impartial; or
  - (ii) a breach of the trust placed in the person as the holder of the appointment; or
  - (iii) a misuse of information or material acquired in or in connection with the performance of the person's functions as the holder of the appointment, whether the misuse is for the person's benefit or the benefit of someone else.

**hold an appointment** means hold an appointment in a unit of public administration.

## Overview

On 4 October 2011, the Chancellor of the University of Queensland (UQ), Mr John Story, informed the CMC of a forced offer<sup>2</sup> for entry into the 2011 Bachelor of Medicine, Bachelor of Surgery (MBBS) program that had been made to the daughter of Professor Paul Greenfield, who was the Vice-Chancellor of the University of Queensland at the time. Ms Greenfield had not met UQ's published entry requirements for the MBBS program. It was alleged that Professor Greenfield had telephoned Professor David Wilkinson, the Head of the School of Medicine, to discuss his daughter's options for entry into the MBBS. Professor Wilkinson in turn phoned Professor Michael Keniger, who was the Acting Vice-Chancellor at the time, and who approved the making of a forced offer to Ms Greenfield.

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1 Section 4, CM Act.

2 A *forced offer* is a term used by the University where an offer to a student to enrol in a particular course is made manually into the computer system rather than letting the computer system automatically select the students to receive an offer based on certain conditions such as scores.

Mr Story had been informed of the incident about three weeks earlier. At the time of advising the CMC, UQ had already commissioned an independent investigation which was conducted by Mr Tim Carmody QC and Mr Eddie Scuderi,<sup>3</sup> and established a Senate sub-committee to oversee the internal investigation. Following that investigation, the CMC was informed that Professors Greenfield and Keniger had offered to resign their positions and their employment with UQ at a time convenient to the University. Initially the CMC was advised that those dates would be 31 December 2011 for Professor Keniger and 1 July 2012 for Professor Greenfield. On 5 October 2011 the CMC referred the allegations back to the University to deal with in accordance with its proposed course of action; the resignations were accepted by the Senate on 6 October 2011.

The CMC contends that at that time, it was not informed of the negotiated understanding upon which the resignations were to be accepted. The details of this are discussed in this report in Chapter 3.

### How the CMC is required to deal with complaints

Section 46(1) of the CM Act requires that when the CMC receives information that it assesses as suspected official misconduct:

- (1) The commission deals with a complaint about, or information or matter (also a complaint) involving, misconduct by —
  - (a) expeditiously assessing each complaint about misconduct made or notified to it, or otherwise coming to its attention; and
  - (b) taking the action the commission considers most appropriate in the circumstances having regard to the principles set out in section 34.

In this instance the CMC referred the complaint about official misconduct to the Senate, the Senate being the University's governing body,<sup>4</sup> to continue to deal with the suspected official misconduct. In most instances the CMC would refer the complaint to the public official or his/her delegate to deal with;<sup>5</sup> however, as the Vice-Chancellor was the public official it was not appropriate to take that course.

The circumstances surrounding Ms Greenfield's entry into the MBBS program became the subject of media interest on 5 November 2011 following a story about enrolment irregularities and the resignations of Professors Greenfield and Keniger. On 7 November 2011 the University published on its website a public statement about the enrolment and the resignations of the VC and the Senior Deputy Vice-Chancellor (SDVC), including that there had been no finding of misconduct with respect to any individual.

On 11 November 2011 the CMC asked the University to explain why the resignations were not to take effect until 31 December 2011 in the case of the SDVC and 1 July 2012 in the case of the VC, and asked the University by letter dated 29 November 2011 to reconsider its decision to defer the resignations. The CMC also took issue with the University about the public statement of 7 November on its website on the ground that it was potentially misleading.

On 5 December 2011, UQ wrote to the CMC and advised that Professor Greenfield's resignation had been brought forward to take effect from 13 January 2012, and that he would cease any executive role in the operations of UQ and be on annual leave from 16 December 2011.

On 19 December 2011 and 11 January 2012 the Queensland Police Service referred to the CMC the criminal complaints it had received, on the basis that the forced offer involved possible official

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3 A copy of the investigation report is attached as Appendix 1 to this report.

4 Section 8, *University of Queensland Act 1998*.

5 Sections 35(1)(b) and 46(2)(b), CM Act. Neither of these sections limits how the Commission may perform its misconduct function or deal with a complaint. The Commission was entitled to deal with the complaint in a way other than by referring the complaint back to the public official.

misconduct (referral under s. 38 of the CM Act), and possible commission of offences under ss. 92, 92A and 200 of the Criminal Code.

On 21 December 2011 the Commission, having regard to the complaints referred by the police and the other matters discussed above, resolved that the CMC would further examine the issues regarding UQ and the forced offer. In particular, the CMC determined it would formally embark on an investigation and a number of reviews as follows:

1. Commence a CMC investigation into whether any criminal conduct was involved.  
The CMC has the power under sections 35(1)(e) and 46(2)(a) to deal with a complaint about official misconduct itself. Dealing with a complaint about official misconduct includes (a) investigating the complaint and (b) gathering evidence for the prosecution of offences.
2. Review the broader aspects of this incident, including UQ's handling of the current allegations.  
A review of the broader aspects of the matter, including UQ's handling of the allegations, may be conducted under either the CMC's prevention function<sup>6</sup> or its misconduct function.<sup>7</sup>
3. Refer to the Queensland Ombudsman any relevant material regarding UQ's admission procedures that may be relevant to any activities within his jurisdiction.  
The CMC may give information coming to its knowledge, including by way of a complaint, to a unit of public administration if the Commission considers that the unit has a proper interest in the information for the performance of its functions.<sup>8</sup>
4. Undertake a quality review of UQ's management of official misconduct matters more broadly.  
Quality reviews are an element of both the CMC's monitoring framework and its capacity-building program.<sup>9</sup> The primary reason for a quality review is to identify, assist and support the development of best practice in preventing and dealing with official misconduct in the Queensland public sector. It is a method through which the CMC is able to promote public confidence in the integrity of the public sector and the way in which agencies, departments and local governments deal with official misconduct.

Investigations and reviews are different, so it is important to note that the CMC conducted an investigation into alleged official misconduct based on its referral from the police, but that the proposed review of how the University dealt with the allegations was not a misconduct investigation.

On 23 January 2012 the CMC wrote to UQ stating that in the public interest, the CMC would undertake its own investigation and the reviews referred to above.<sup>10, 11</sup>

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6 Sections 23 and 24, CM Act.

7 Sections 33(a), 34(d) and 35(1).

8 Section 60(2).

9 Section 48 of the CM Act allows the CMC to monitor, by way of a review or audit, the way a public official has dealt with official misconduct, in relation to either a particular complaint or a class of complaint.

10 The CMC issued a media release on 25 January 2012 in relation to the investigation and reviews that were being undertaken in relation to this matter.

11 One of the CMC's part-time Commissioners was also a member of the University of Queensland Senate during this time. Ms Bell took no part in the CMC's consideration of these matters and she was not interviewed by CMC officers as part of the misconduct investigation or either of the reviews.

## Conduct of the CMC investigation

The CMC's investigation into potentially criminal misconduct by Professors Greenfield and Keniger commenced with a review of the investigation report prepared by Mr Tim Carmody QC and Mr Eddie Scuderi. The Carmody/Scuderi investigation concluded:

... our investigation strongly indicates that the decision made to force an offer to [Ms] Greenfield was irregular and unjustified. The decision opens the spectre of perceived if not actual conflicts of interest and a lack of impartiality.<sup>12</sup>

The report also makes it clear that Mr Scuderi and Mr Carmody QC were not requested by UQ to make any findings as part of their investigation. Following a request from the CMC, UQ arranged for transcripts of the interviews undertaken during that investigation to be provided.

The CMC conducted additional interviews with other academic and administrative staff at UQ and with the Vice-Chancellor's daughter. Additional information relating to all persons suspected of having knowledge of the incident under investigation was requested and received from UQ. This included phone numbers and records and copies of emails sent and received from UQ's records.

Under s. 75 of the CM Act, the CMC also issued notices to discover on various parties, requiring them to provide certain information or documentation. Call charge records were obtained from telecommunication carriers for home, work or mobile phones of some people. Due to legislative restrictions not all the details of the telephone calls that were obtained by the CMC can be included in this report. The details that have not been included in this report have not adversely impacted upon the narrative. Most of the records cited in this report come from the University's records.

## Issue of a public report

On 28 May 2012 the CMC announced that it intended to prepare a public report in relation to the examination of issues associated with the forced offer for entry. It would cover three of the CMC's activities previously outlined (see page 4):

- (i) the outcomes of the investigation of potential criminal misconduct
- (ii) a review of the University of Queensland's handling of the allegations
- (iii) the quality review.

The CMC provided copies of its first draft report to the University and to other people mentioned in it as part of its procedural fairness process.<sup>13</sup> That process provided an opportunity for affected parties to respond to the CMC to clarify or raise any concerns in relation to the content, accuracy or treatment of the evidence in the report. Subsequent procedural fairness has also occurred with the officials from the University.

The CMC has taken into consideration all responses received and, as a result of carrying out extensive consultation, is satisfied that this report is a fair and factual representation of the evidence and the conclusions which can reasonably be drawn.

The CMC has considered the degree to which this report should identify individuals. It recognises that the identity of particular staff of the University may be apparent to those who may have worked with them, or who are otherwise familiar with the events to which the report refers. Where such people

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<sup>12</sup> Page 23, paragraph 12.3.

<sup>13</sup> *Ainsworth v. Criminal Justice Commission* (1992) 175 CLR 564.

have been referred to by name, it is solely for the purpose of clarification. In such cases, the CMC wishes to emphasise that no adverse inference should be drawn against those individuals.

In preparing this report, the CMC acknowledges the cooperation of the University Senate in making publicly available the Carmody/Scuderi investigation report which appears here as Appendix 1.

## 2 OUTLINE OF EVIDENCE ON THE FORCED OFFER (JULY–DECEMBER 2010)

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### Background: entry requirements for the UQ MBBS program

To study medicine at UQ, students must undertake the MBBS program (Bachelor of Medicine, Bachelor of Surgery). This can be as an undergraduate or as a graduate. For the purposes of this report, the focus is on admission rules for school leavers. For them to be considered for provisional entry into the MBBS program at UQ, the admission rules stipulate that they must meet the following requirements:

- obtain an OP 1 or equivalent<sup>14</sup>
- meet the threshold (or minimum) score in each section of the Undergraduate Medicine and Health Sciences Admission Test (UMAT).

The Overall Position (OP) is a tertiary entrance rank used in Queensland for selection into universities. The OP shows how well a student has performed in their senior secondary studies compared with all other OP-eligible students in Queensland. An OP 1 is the highest ranked score.

The Undergraduate Medicine and Health Sciences Admission Test (UMAT) is designed to assess general attributes and abilities gained through prior experience and learning. It is used to assist with the selection of students for medicine and dentistry programs at an undergraduate level at UQ and some other universities. Students normally undertake the test in July or August each year, and their results are usually available by September or October.

The UMAT consists of three sections:

1. logical reasoning and problem solving
2. understanding people
3. non-verbal reasoning.

A candidate receives a score for each section (a “sub-score”), and an overall score.

### The MBBS intake for 2011

Students who meet both the above criteria (that is, OP 1 + requisite UMAT threshold score) go into a pool from which the successful students will be selected into the MBBS program. UQ fills the quota set for provisional entry each year according to which students have the highest aggregate UMAT score.

The minimum threshold score in each section of the UMAT had been set at 50 for a number of years prior to 2010 and was unchanged when Ms Greenfield applied for entry. Thus, in 2010 only students who got an OP 1 and a minimum score of 50 in each of the three sections of UMAT were eligible to be considered for selection into the 2011 MBBS program. However, the final cut-off set by UQ for the 2011 program was 66 on the first of the three sections and 177 overall (this is further explained below).

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14 Where OP 1 is used in this report, it should be read as “OP 1 or equivalent”, unless the reference is to the actual OP obtained by an individual. Equivalent scores would include Australian Tertiary Admission Ranks (ATARs) of 99 from interstate and admission ranks of 99 obtained by Queensland students who have been awarded bonus ranks.

## Events leading up to the forced offer

### VC's daughter's eligibility (UMAT results)

On 28 July 2010 Professor Paul Greenfield's daughter sat her UMAT test, and on 22 September 2010 she was notified via an email to the address she had nominated (p.greenfield@uq.edu.au) that she could access her results.<sup>15</sup> She achieved the following UMAT scores:

Section 1	56
<b>Section 2</b>	<b>40</b>
Section 3	56
Aggregate	152
[Emphasis added]	

By not achieving a score of at least 50 for Section 2 of the UMAT, according to the university admission rules in place at that time, the VC's daughter was not eligible to be considered for a place in the MBBS program. Nor did she meet other cut-off scores set by UQ for the 2011 MBBS program: 66 for the first sub-score and 177 overall.

From 2 December to 20 December Ms Greenfield was overseas, and she received her OP 1 score in the mail when she returned around 21 December 2010. Her academic results were an OP 1 and the UMAT scores outlined above. Ms Greenfield and her family then went on holidays from 21 December 2010 to early January 2011.

### VC's daughter's overall ranking in order of merit

Of the students who applied for provisional entry to the MBBS in 2010, in descending order of merit:

- 275 had an OP 1, achieved at least 50 in each section in UMAT, and were above the UMAT cut-off score for that year (i.e. an aggregate of 177, and first sub-score of 66 or higher)
- 256 had an OP 1, achieved at least 50 in each section in UMAT, but were below the UMAT cut-off score for that year (i.e. aggregate below 177, and first sub-score below 66)
- 112 students, like the Vice-Chancellor's daughter, had an OP 1 but did not achieve at least 50 in one or more sections of UMAT. When ranked in order of their aggregate UMAT score, the VC's daughter was at position 88 out of those 112 students.

In summary, there were a large number of students (343) who had applied for entry into the MBBS program who were above the VC's daughter in order of merit but were not offered a place in the MBBS program.

### University scholarships; committee discussions to award scholarships

On or about 21 December 2010, UQ received notification of students' Interstate Transfer Index (ITI) scores. The ITI is calculated using the same information used to ascertain a student's OP score, but is a much finer graduation, with the top students receiving an ITI of 99.95. These scores are issued by the Queensland Studies Authority and enable the University to compare students from different states for the purpose of awarding Vice-Chancellor's (VC) scholarships.

UQ offers a number of academic scholarships to prospective students who receive an ITI of 99.95 or who have demonstrated outstanding leadership and/or significant community service achievements.

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<sup>15</sup> UMAT information and Ms Greenfield's UMAT results. UMAT results are accessed by logging onto the ACER website with an ID number and password. ACER does not keep records of when a student actually accessed their results.



The awarding of these scholarships is considered by the Scholarships Committee.

At 12.53 pm on 22 December 2010, in preparation for the committee meeting later that day, the Manager, Undergraduate Scholarships sent committee members an email with an attached spreadsheet of all the people who had applied for scholarships across all undergraduate programs that year. This document included details about each student, including:

- their first preference for entry into UQ
- OP score
- ITI score
- each UMAT sub-score.

The name of the VC's daughter appeared on page 34, in row 605. According to Ms Margaret Fairman, the Director of the Office of Prospective Students, Scholarships and Student Equity (OPSSSE), Ms Greenfield was too far down the list and she did not demonstrate significant leadership and/or significant community service achievements for her application for a scholarship to be competitive; her name was not discussed during the scholarship meeting and she was not considered for a scholarship.

### **UMAT requirements waived for five VC scholarship students**

Shortly before the Scholarship Committee met on 22 December, there were a number of communications between the Manager, Undergraduate Scholarships; Professor David Wilkinson, the Head of the School of Medicine; and Professor Michael Keniger, the Acting Vice-Chancellor.

The Manager, Undergraduate Scholarships had identified five students who qualified for a VC scholarship by virtue of their ITI, but had not obtained a score of 50 in one of the UMAT sections. As these students were considered the brightest in Queensland, there was concern that they might not take up a position at UQ if the University did not offer them their first preference, the MBBS program. After talking with the Manager, Undergraduate Scholarships, Professor Wilkinson had a conversation with Professor Keniger, who agreed that the UMAT entry requirements be waived for these students on the basis of their academic merit. Professors Wilkinson and Keniger agreed that the students should be offered a place in the MBBS program,<sup>16</sup> and that this would be done by giving them "forced offers" (see footnote 2).

### **UMAT requirements waived for two more VC scholarship students**

The following day (23 December), OPSSSE identified two more students who were recipients of a VC scholarship and who, although not meeting the UMAT requirements, were to be offered a place in the MBBS on the basis of their outstanding academic results. Including the five students considered the previous day, this made a total of seven VC scholarship recipients who were being given forced offers.

### **Vice-Chancellor Professor Paul Greenfield calls the Head of the School of Medicine, Professor David Wilkinson**

On Thursday 23 December 2010, while on leave interstate, Vice-Chancellor Paul Greenfield phoned the Head of the School of Medicine, Professor David Wilkinson.

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<sup>16</sup> Emails from Professor Wilkinson and Professor Keniger confirm this decision.

Professor Greenfield has given two accounts of that conversation. During his first interview (with UQ investigators) in September 2011, he stated:

- He had called Professor Wilkinson in relation to an unrelated matter and following that discussion he had asked Professor Wilkinson “what the school’s view was on the overall UMAT score versus the sub-scores<sup>17</sup> because there had been some confusion and some debate on that ...” When asked at his interview if he had related it to his daughter’s scores, he stated, “No, I didn’t know [her] scores so I didn’t.”<sup>18</sup>
- However, later in the interview, he said: “All I wanted to know was whether the school had decided whether it was going to be overall UMAT because that would affect [my daughter].”<sup>19</sup> He admitted knowing that his daughter had received an OP 1 and her overall UMAT score was 150-something.<sup>20</sup> He denied knowing her UMAT sub-scores.<sup>21</sup>
- He stated that he had only become aware of the decision to waive the UMAT requirements for the VC scholarship recipients around late January 2011.<sup>22</sup>
- He denied asking Professor Wilkinson during the conversation if there was anything that could be done for his daughter<sup>23</sup> and could not explain why Professor Wilkinson, following their phone call, had made contact with Professor Keniger.
- He recalled that after the conversation he thought his daughter’s chances of getting into medicine were not good.<sup>24</sup>

He also stated he was never aware, up until the time of the interview with the University investigators, that his daughter had been made a forced offer, but he had suspected that this was the case.<sup>25</sup> (This evidence is contradicted by Professor Wilkinson’s evidence about an SMS he sent to Professor Greenfield at 5.48 pm on 23 December 2010 [discussed further on page 16]).

During Professor Greenfield’s second interview, which was conducted by the CMC under notice, in May 2012, his version of events had changed considerably about the reason for the call.<sup>26</sup> In that interview, he stated that:

- Prior to making the telephone call to Professor Wilkinson, he had a discussion with his wife about their daughter and whether she should change her preferences to include Griffith University as it did not have the requirement to pass UMAT to gain entry into its medical program.<sup>27</sup>
- His primary reason for calling Professor Wilkinson was to find out “the state of play” regarding the UMAT requirements — that is, if the School of Medicine had changed its admission requirements into the MBBS program and whether it was necessary for students to still pass

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17 A reference to the individual scores for each section in UMAT, explained on page 7.

18 PG interview, 16 September 2011, page 8.

19 PG interview, 16 September 2011, page 9.

20 PG interview, 16 September 2011, page 9.

21 PG interview, 16 September 2011, page 9.

22 PG interview, 16 September 2011, page 5.

23 PG interview, 16 September 2011, pages 12 and 20.

24 PG interview, 16 September 2011, pages 12 and 13.

25 PG interview, 16 September 2011, page 7.

26 It is interesting to note that, at the beginning of Professor Greenfield’s second interview, he admitted that he had read his previous interview and the submission that was provided to the CMC on his behalf by Mr Peter Flanagan SC, and that there was nothing in either of those documents he wanted to amend.

27 PG interview, 1 May 2012, page 9.

each sub-score or just pass the aggregate UMAT score. In his words, while his daughter was the context of the call, the call was not specifically about her.<sup>28</sup>

- The only information he had provided to Professor Wilkinson about his daughter was that she had passed UMAT but had failed one section. He didn't know her individual UMAT scores.<sup>29</sup>
- He had not talked to his daughter about her not being eligible for the MBBS program at UQ.<sup>30</sup>
- Professor Wilkinson had indicated there were a group of students they were considering giving offers to who had not passed all sections of UMAT.<sup>31</sup>
- He had not asked Professor Wilkinson to do anything in relation to his daughter's admission into the MBBS program.<sup>32</sup>
- At the end of the call there was no expectation on his part that any further action was required. He left with an impression that was more negative than positive regarding his daughter's chances of getting into the MBBS program, but it was not a definite no.<sup>33</sup>

Their discussion had also included the relative merits of UMAT versus the OP score as a predictor of a student's performance. This was based on a paper that the School of Medicine had generated and of which he thought Professor Wilkinson was a co-author.<sup>34</sup> (In fact, this paper was not published until April 2011.)

The last part of the conversation was about the unrelated matter mentioned as the initial focus in the first interview. Professor Greenfield stated that the conversation went on for about 10 minutes.<sup>35</sup>

During his interview with the CMC, Professor Greenfield continually came back to the point that, at the time of his conversation with Professor Wilkinson, he believed that UQ was intending to change its entry requirements for the MBBS program. He claimed that during 2010 UQ planned to change the entry requirements and that the UMAT requirements had been changed in 2011, so that students only had to pass the aggregate UMAT score and did not have to pass each section in UMAT.

In fact, changes to MBBS entry requirements proposed by the University during 2010 related to the grade point average and not to UMAT results. These were passed at a Senate meeting in October 2010 (at which Professor Greenfield was present), at the end of which the University confirmed that the UMAT requirements were unchanged.

Although the medical school proposed changes to the UMAT requirements the following year, they were not approved by the Senate until late 2012. Ms Maureen Bowen, the then Acting Academic Registrar, confirmed that UQ's entry requirement for students to sit the UMAT exam and pass each section had been in place since approximately 2004 and remained unchanged until late 2012.

### **Professor Wilkinson's version of the conversation**

Professor Wilkinson's version of the conversation differs from Professor Greenfield's. During an interview with the UQ investigators:

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28 PG interview, 1 May 2012, page 10.

29 PG interview, 1 May 2012, page 10.

30 PG interview, 16 September 2011, page 14.

31 PG interview, 1 May 2012, page 11.

32 PG interview, 1 May 2012, pages 15–16.

33 PG interview, 1 May 2012, page 11.

34 PG interview, 1 May 2012, page 9.

35 PG interview, 1 May 2012, pages 14–15.

- He recalled receiving a call from Professor Greenfield. The conversation was relatively short, although he could not give a confident time estimate.
- There was a little conversation about general things but the conversation quickly turned to the VC's daughter.<sup>36</sup>
- He said it was possible that they had discussed the unrelated matter (although he had no specific recollection of that) but it certainly was not the main thrust of the call.<sup>37</sup>

According to Professor Wilkinson, Professor Greenfield stated that his daughter had received an OP 1 and "a pretty good UMAT score" but had missed out one of the "sub-scales" and he wanted to know whether she had any other options open to do medicine at UQ.<sup>38</sup>

Professor Wilkinson's recollection was that Professor Greenfield asked "Is there any other way we can get her into medicine at UQ?". Professor Wilkinson said that his initial response was "No, you know what the rules are".<sup>39</sup>

Professor Wilkinson stated he did not get the impression that Professor Greenfield wanted him to do something, but Professor Greenfield repeated the question. It was then that Professor Wilkinson stated he would contact the Acting Vice-Chancellor, Professor Michael Keniger, and Professor Greenfield stated he would accept whatever decision was made.<sup>40</sup>

Professor Wilkinson subsequently said that he felt under significant discomfort (even threat) due to Professor Greenfield's call. As a result of the call, Professor Wilkinson felt that he was expected to take action to please Professor Greenfield and that if he did not, then his career prospects at the University and elsewhere may have been adversely impacted by Professor Greenfield.<sup>41</sup>

Professor Wilkinson was interviewed three times as part of the University's internal investigation and once during the CMC investigation. He gave a fairly consistent account on each occasion; however, as discussed later, accounts by other witnesses contradicted some of his evidence.

### **Information from telephone records**

Telephone records confirm a series of calls between Professors Greenfield and Wilkinson on 23 December 2010. The first call was at 4.12 pm and was from Professor Greenfield's mobile to Professor Wilkinson's personal assistant; it appears that this call was transferred to Professor Wilkinson's mobile and a message was left on message bank. Professor Wilkinson accessed his messages at 4.23 pm.

There was then a call from Professor Wilkinson's mobile at 4.24 pm to Professor Greenfield's mobile for less than a minute. The call which appears to be most relevant occurred at 4.30 pm on 23 December 2010 and was from Professor Greenfield's mobile to Professor Wilkinson's mobile, lasting for approximately nine minutes.

During both of Professor Greenfield's interviews he recalled the details of the above phone calls where he had initially tried to call Professor Wilkinson but only left a message. Then Professor Wilkinson had attempted to call him and he finally returned Professor Wilkinson's call.

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<sup>36</sup> DW interview, 16 September 2011, page 4.

<sup>37</sup> DW interview, 16 September 2011, page 5.

<sup>38</sup> DW interview, 15 September 2011, page 18 and interview, 16 September 2011, page 4.

<sup>39</sup> DW interview, 15 September 2011, page 18 and interview, 28 March 2012, page 9.

<sup>40</sup> DW interview, 16 September 2011, page 4.

<sup>41</sup> Correspondence received by the CMC on behalf of Professor Wilkinson, 27 February 2013.

Professor Greenfield denied that there was any further contact with Professor Wilkinson that day or at any other time regarding this issue. However, there is evidence that there was further contact between him and Professor Wilkinson later that day (discussed on pages 15–16).

## **Professor Wilkinson telephones Acting Vice-Chancellor Professor Keniger**

Telephone records show that Professor Wilkinson’s phone conversation with Professor Greenfield finished at 4.39 pm. At 4.40 pm, Professor Wilkinson’s mobile called Professor Keniger’s personal assistant for approximately one minute. At 4.42 pm Professor Keniger’s UQ work number called Professor Wilkinson’s mobile for approximately four minutes.

During his interview with UQ investigators in September 2011, Professor Wilkinson stated that the call to Professor Keniger was short — a couple of minutes.<sup>42</sup> Professor Keniger’s recollection of the same phone call was that it went for considerably longer; he thought 15 or 20 minutes, although he did recall that he was in his office when he spoke with Professor Wilkinson.<sup>43</sup> Professor Wilkinson’s version is supported by telephone records with respect to the length of the call.

According to Professor Wilkinson:

- He told Professor Keniger that he had received a phone call from the VC about his daughter — that she had not obtained a sufficient score in one of the UMAT sections.<sup>44</sup>  
Professor Keniger made the decision to force an offer to the VC’s daughter quickly and did not ask Professor Wilkinson for any advice on the matter:<sup>45</sup> “... what ... struck me at the time ... was [Professor Keniger’s] instantaneous reaction ... ‘I will arrange for her to be accepted’ ”; and “... I still vividly remember that happening and it struck me as being unusual and out of character actually ... ”.<sup>46</sup>
- He denied that he had identified the VC’s daughter as fitting into the same category as the VC scholarship students discussed the previous day, and that that had been the prompt for him to call Professor Keniger.<sup>47</sup>
- He had been requested by Professor Keniger to contact student administration, but didn’t know who to contact.<sup>48</sup>

By comparison, according to Professor Keniger:

- Professor Wilkinson made no mention of having received a phone call from Professor Greenfield.<sup>49</sup>
- Professor Wilkinson had stated he had identified a further student (Ms Greenfield) who had also failed to achieve a score above 50 in one section of UMAT.<sup>50</sup>
- Professor Wilkinson had argued that she should also be made an offer — that it was Professor Wilkinson’s suggestion, and that he argued a case for her.<sup>51</sup>

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42 DW interview, 15 September 2011, page 23 and interview, 16 September 2011, page 2.

43 MK interview, 16 September 2011, page 18 and interview, 28 March 2012, page 18.

44 DW interview, 15 September 2011, pages 20–21.

45 DW interview, 15 September 2011, pages 20–21 and 36, and interview, 28 March 2012.

46 DW interview, 28 March 2012, page 11.

47 DW interview, 16 September 2011, page 6 and interview, 28 March 2012.

48 DW interview, 28 March 2012, page 11.

49 MK interview, 16 September 2011, page 16 and interview, 28 March 2012, page 17.

50 MK interview, 16 September 2011, page 12.

51 MK interview, 16 September 2011, pages 12–13.

- He (Professor Keniger) asked Professor Wilkinson about her academic standing, fitness for the program, capacity to undertake the program, and the issues to do with UMAT, and Professor Wilkinson had advocated strongly on her behalf.<sup>52</sup>

In some contrast to the above, during the CMC interview with Professor Keniger on 28 March 2012, he stated that Professor Wilkinson had said there were a group of students, the VC's daughter being one, who might also be disadvantaged by the UMAT requirements; this small group of students was separate from the VC scholarship students for whom an exemption had been made the previous day.<sup>53</sup>

Professor Keniger said that he assumed it was a small group and for reasons of equity (having regard to his decision the previous day) the decision was made to waive the UMAT for these students, including the VC's daughter. In his response to the CMC's draft public report Professor Keniger stated (via his legal representative) that the additional two VC scholarship students identified by Professor Wilkinson on 23 December 2010, and granted a forced offer, support Professor Keniger's version that these students were the small group of students referred to by Professor Wilkinson. However, the CMC was unable to locate evidence to conclude that Professor Wilkinson was aware of these students at the time of his phone call to Professor Keniger.

Professor Keniger also stated that he did not actually make the decision to waive the UMAT requirement for the VC scholarship students on 23 December 2010, though he tended to agree with Professor Wilkinson at that time. According to Professor Keniger, he reflected on it overnight and made his decision the following day.<sup>54</sup>

In summary, Professor Keniger stated that, in deciding to waive the UMAT requirement for the VC's daughter, he relied entirely on the advice provided to him by Professor Wilkinson; he was not aware through any independent information where she sat in a merit list compared with other students who had applied to get into the MBBS program, and he admitted that he (Professor Keniger) had made no attempt to ascertain this for himself.

There are significant differences between Professor Wilkinson's and Professor Keniger's versions of that conversation. A key difference is whether or not Professor Wilkinson informed Professor Keniger that his phone call was as the result of having received a call from Professor Greenfield. Both were adamant in relation to their recollection of this part of their conversation.

Professor Wilkinson stated that he informed Professor Keniger of the following:

I said that the Vice-Chancellor has just called me out of the blue. This is what he has told me. I told him that there is nothing I can do and he knows what the rules are and I said that I would call you and that what Paul had said was whatever decision is made is the decision that is made.<sup>55</sup>

Asked whether Professor Wilkinson informed him at any time that he had received a phone call from Professor Greenfield, Professor Keniger replied:

No, no, no absolutely not.<sup>56</sup>

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52 MK interview, 16 September 2011, pages 12–13.

53 MK interview, 28 March 2012, pages 7 and 14–15.

54 MK interview, 28 March 2012, pages 20–21.

55 DW interview, 15 September 2011, page 20.

56 MK interview, 28 March 2012, page 17.

## **Professor Greenfield attempts further phone contact with Professor Wilkinson**

Later in the day, at 5.14 pm, there was a call from Professor Greenfield's mobile to Professor Wilkinson's mobile for less than a minute. However, Professor Wilkinson was on a conference call at this time and Professor Greenfield would have been unable to speak with him. Professor Greenfield denied attempting to contact Professor Wilkinson at this time.

## **Discussions between Professor Wilkinson and Director of OPSSSE (Ms Margaret Fairman) to progress a forced offer to VC's daughter**

Following the conversation with Professor Keniger, Professor Wilkinson immediately made a series of calls. As Professor Wilkinson was not sure how to actually "force the offer" to the VC's daughter, he attempted to phone a number of staff members, all of whom worked in OPSSSE, and then sent emails to these persons requesting them to call him urgently.

At 5.31 pm Professor Wilkinson spoke with Ms Margaret Fairman, the Director of OPSSSE. He told Ms Fairman of Professor Keniger's decision (though not how it came to be made), that it involved the VC's daughter and that it was "a delicate matter".<sup>57</sup>

Ms Fairman states that she first became aware of the decision to force an offer to the VC's daughter either from an email or during a phone call with Professor Wilkinson. She recalls Professor Wilkinson mentioning Ms Greenfield by name, stating that she was to be given an exemption to be admitted to the MBBS program and he wanted to know how to go about that.

At this point Ms Fairman knew that:

- Ms Greenfield's UMAT score was not sufficient to gain entry into the MBBS program.
- Ms Greenfield had applied for a scholarship and had not been successful.
- A decision had been made the previous day to force offers to the VC scholarship students but that the VC's daughter was not in the same category as those students.

Ms Fairman stated that she did not discuss Ms Greenfield's academic standing or the appropriateness of forcing an offer to the VC's daughter with Professor Wilkinson. She told him she would contact Ms Maureen Bowen, the Acting Academic Registrar, about this as she was the one who could actually process this decision.<sup>58</sup>

After her phone discussion with Professor Wilkinson, Ms Fairman had a conversation with the Manager, Undergraduate Scholarships. She told the Manager she had just had a phone call from Professor Wilkinson and she had been asked if there was a way to force an offer to the VC's daughter.<sup>59</sup> The Manager said to Ms Fairman that it sounded "dodgy". Ms Fairman agreed but said, according to the Manager, they had been asked from "much higher up". The Manager was initially concerned that she was being asked to award the VC's daughter a scholarship. Both the Manager and Ms Fairman agreed that "there was no way she could be given a scholarship" and Ms Fairman would have to speak with Ms Bowen, the Acting Academic Registrar.<sup>60</sup>

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57 MF Interview, 30 March 2012, page 6.

58 Ms Fairman subsequently stated that she had a more detailed recall of her conversation with Professor Wilkinson and now recalls that she advised him Ms Greenfield was not in the same category as the VC scholarship students (or words to that effect). He replied that she was a high quality OP 1 student being approved for entry on the basis of academic merit. Ms Fairman also stated that she was neither happy nor comfortable about being asked to assist in implementing a decision she believed to be inappropriate and unethical (Correspondence MF to the CMC, 22 July 2013).

59 MF interview, 30 March 2012, pages 9–10.

60 Interview with Manager, Undergraduate Scholarships, 27 March 2012 (about 26 minutes into interview).

## **Professor Wilkinson sends SMS to Professor Greenfield**

At 5.48 pm two SMSs were sent from Professor Wilkinson's mobile to Professor Greenfield's mobile.

Professor Wilkinson made no mention of these SMSs during his interview as part of the University's investigation. During a later interview with the CMC, Professor Wilkinson stated that he did not recall attempting to contact Professor Greenfield at that time, nor had he any recollection of any further communications with Professor Greenfield. The CMC subsequently identified evidence of the SMS communication after Professor Wilkinson's interview and on 10 April 2012, at the CMC's request, Professor Wilkinson provided a supplementary statement about the communications:

My best recollection is that I dialled his number but disconnected and sent an SMS instead. I do not recall the exact wording but it was along the lines of "Spoken to MK and [Ms Greenfield] will receive an offer".

Professor Greenfield denied receiving an SMS from Professor Wilkinson.<sup>61</sup>

## **Professor Wilkinson emails confirmation of offer to Ms Fairman: "This decision is made on academic merit ..."**

At 5.52 pm Professor Wilkinson emailed Ms Fairman as follows:

Dear Marg

Further to our conversation I write to confirm that following a conversation with the SDVC, [Professor Greenfield's daughter] is to be offered a place in the MBBS provisional entry stream. [Professor Greenfield's daughter] has an OP 1 but has just missed the UMAT in 1 subsection. This decision is made on academic merit and makes note of the precedent from yesterday when a similar recognition was made for 5 students. We will of course consider future similar issues on merit.

I note, for the avoidance of any doubt, that the VC has not been involved in making the decision.

## **Professor Keniger confirms decision to make forced offer to VC's daughter**

At 9.08 am on 24 December 2010, Professor Keniger forwarded an email to Professor Wilkinson and Ms Fairman, confirming his decision to make a forced offer to the VC's daughter.

Dear David and Marg,

I confirm that this matter was discussed with me and that I have approved the decision based on academic merit as previously determined for the earlier recognition of 5 applicants with an equivalent profile. Future applicants with a similar profile will also be considered in terms of academic merit as set out by David.

For the record, this matter has not been discussed by me with the Vice-Chancellor and my decision with respect to all six cases has been taken in my role as acting Vice-Chancellor.

My regards,

Michael.

## **Discussion between the Director, OPSSSE (Ms Fairman) and the Acting Academic Registrar (Ms Bowen)**

On 24 December, following an exchange of emails,<sup>62</sup> Ms Fairman spoke with Ms Bowen in her office. Ms Bowen had the following objections to the offer to the VC's daughter:

- Unlike the VC scholarship students, the VC's daughter did not have an ITI of 99.95.
- The decision was very wrong, and unprecedented in the admission of students to UQ.

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<sup>61</sup> PG interview, 1 May 2012, page 17.

<sup>62</sup> Notes and emails provided by Ms Maureen Bowen.



- There was a very high risk that this decision would become public knowledge and damage UQ’s reputation.

Ms Bowen indicated that she intended to speak with Professor Keniger herself and advise him of these issues and that “there was no way this forced offer could be justified on the basis of academic merit ...”. However, Ms Bowen stated that Ms Fairman strongly advised her against it:

She urged me not to do so because it would force him into a position where he may have to acknowledge that the action he had authorised was wrong and inferred it would be a career-limiting move. She urged me to proceed with arranging the forced offer ...<sup>63, 64</sup>

Following this conversation Ms Bowen stated to Ms Fairman that she would need to think about this before she did anything. Ms Fairman’s recollection of the conversation is similar to Ms Bowen’s.

At 9.42 am Ms Fairman sent Professor Keniger an email,<sup>65</sup> apparently in response to his earlier email, in which she says:

Understood — thanks. Conversation this morning challenging but currently trying to work through things to effect the decision with discretion.

At 11.15 am Ms Fairman forwarded to Ms Bowen the email from Professor Keniger confirming his decision to force an offer to Professor Greenfield’s daughter.

Following this, Ms Bowen stated that she attempted to see Professor Keniger but he was not in his office. She did not have his mobile number, so she called Professor Wilkinson and advised him of the same issues. She stated that she “would not action the decision until he had conferred again with Michael to explain the risks”.<sup>66</sup>

## **Professor Wilkinson emails Professor Keniger: “another perfect OP student”**

Also on 24 December 2010, the School of Medicine, Admissions received an email from a student who had not passed one section in UMAT. The student wrote to the School of Medicine asking to still be considered for a position in the MBBS program. This student had been offered a VC scholarship, but had not been included in the list of students approved by Professor Keniger on 22 December 2010 for forced offers. This email was forwarded to a number of people including Professor Wilkinson, who forwarded it to Professor Keniger, as follows:

Dear Michael

Just FYI to close the loop, we found another “perfect OP” student who had not made the list. This has been rectified by the team. I thought that you might like to know this in light of the need to make yesterday’s decision.

Perhaps we need to revisit the role of UMAT for entry into the UQ MBBS program? My only hesitation is the hurdles that CAPP<sup>67</sup> will place in the path to achieving this ...

Anyway, happy holidays

Regards, David

[Footnote not in original email]

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63 File notes from Ms Bowen, page 1.

64 Ms Fairman, in her response to a copy of the draft public report, stated that this comment was made in the context of her experience in the corporate sector, in which one followed instructions from the CEO.

65 Email from Professor Keniger.

66 File notes from Ms Bowen, page 2.

67 CAPP is the Committee for Academic Programs and Policies, an internal committee at UQ.

## Phone call between Professor Wilkinson and Ms Bowen, who outlines risks

At 11.15 am Ms Bowen received Professor Keniger's email, forwarded from Ms Fairman and confirming his decision to force an offer to the VC's daughter. At 11.43 am she sent Professor Wilkinson an email which simply said, "Urgent – Can you please give me a call re an admission matter".<sup>68</sup>

Telephone records show that Professor Wilkinson called Ms Bowen at 11.47 am and that call went for approximately eight minutes. Both Professor Wilkinson and Ms Bowen recalled this conversation during their interviews.

Ms Bowen stated she informed Professor Wilkinson that the decision to make a forced offer to the VC's daughter could not be defended on academic merit, and that Ms Greenfield was not in the same position academically as the VC scholarship students. She advised that this matter was unlikely to stay confidential, and went on to state that she would not action the decision until her concerns had been conveyed to Professor Keniger.

According to Ms Bowen, Professor Wilkinson explained to her how the decision had come about and discussed the phone calls he had had with Professors Greenfield and Keniger: that Professor Greenfield asked him if there was anything that could be done because his daughter did not have the appropriate score of 50 in each section of UMAT, and that Professor Wilkinson stated to Professor Greenfield that there was nothing that could be done.

He then told her that it was later that he thought about the option of including the VC's daughter with the scholarship students. Ms Bowen stated that the VC's daughter was not the same as the scholarship students.<sup>69</sup> The conversation concluded with Professor Wilkinson undertaking to call Professor Keniger to advise him of Ms Bowen's concerns.

Professor Wilkinson's recollection of the call with Ms Bowen was that she had called him and he could recall advising Ms Bowen that Professor Greenfield had called him.<sup>70</sup> He stated that Ms Bowen said she was aware of what was going on, and that she understood the sequence of events. Professor Wilkinson recalled her saying:

I understand the position you're in, that you can't say no to this, but you need to talk to him [Professor Keniger] and see if you can get him to change his mind.

Professor Wilkinson recalls being at home when this conversation occurred; he said he suggested that she should go and see Professor Keniger and that she said she either had tried to or didn't want to do that. Accordingly Professor Wilkinson undertook to relay her concerns to Professor Keniger himself.<sup>71</sup>

Ms Bowen had a different recollection. She said that she had not made the comments attributed to her, partly because it was not Professor Wilkinson's decision to say yes or no to the offer, and also that her whole purpose in calling him was to get him to communicate with Professor Keniger (who was not on campus at the time) about the very significant risks being taken.

## Follow-up call from Professor Wilkinson to Professor Keniger

Telephone records indicate that, approximately seven minutes after Professor Wilkinson completed his conversation with Ms Bowen, he called Professor Keniger's mobile. Telephone records show a call at 12.02 pm for approximately one minute from Professor Wilkinson to Professor Keniger's mobile; at

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68 Notes and emails provided by Ms Bowen.

69 MB interview, 26 March 2012, approx. 12 minutes into interview.

70 DW interview, 15 September 2011, page 30 and interview, 20 September 2011, page 2.

71 DW interview, 28 March 2012, approx. 1 hour 28 minutes into interview.

12.41 pm Professor Keniger called Professor Wilkinson from his home phone and this call went for approximately four minutes.

Neither Professor Wilkinson nor Professor Keniger recalled this second phone call between the two of them.

Professor Wilkinson was adamant that he did speak with Professor Keniger after his conversation with Ms Bowen and conveyed to Professor Keniger her concerns about the process, the equity and the reputational risk to the University. According to Professor Wilkinson, Professor Keniger's response was: "Leave it with me, I have the authority, I will deal with that."<sup>72</sup>

Professor Wilkinson stated that he had no further contact with Professor Keniger or Ms Bowen about this issue.

Professor Keniger initially denied that he had been involved in a second phone call with Professor Wilkinson, claiming that he had no memory of such a conversation.<sup>73</sup> During Professor Keniger's interview with the CMC on 28 March 2012, he was shown the telephone records which detailed the two phone calls between him and Professor Wilkinson. When informed that Professor Wilkinson stated there was a conversation between them on 24 December 2010, he accepted that the call would have occurred but still claimed to have no independent recollection of the call or its content. He did state that he had no recollection of Professor Wilkinson passing on any information about Ms Greenfield's overall position compared with those of other students who had applied for the MBBS program.<sup>74</sup>

### **Forced offer made to VC's daughter**

At 12.45 pm on 24 December 2010, immediately after the call from Professor Keniger's home number to Professor Wilkinson's mobile, Professor Wilkinson phoned Ms Bowen back and confirmed that Professor Keniger wanted the matter to proceed. The Admissions section of the University then actioned the offer. Ms Greenfield was advised of her offer on or about 16 January 2011.

According to Professor Greenfield, he only became aware of the forced offer to his daughter after he was advised of the University investigation in September 2011. He said he never discussed this matter with either Professor Keniger or Professor Wilkinson, who also both stated that they never had any specific discussions with Professor Greenfield regarding the fact that his daughter had received a forced offer. However, Professor Keniger did recall briefing Professor Greenfield upon his return from leave:

... and so there was a handover meeting back to Paul on the 11th [January 2011] at 9.30 and there were a series of issues and I think ... more or less this would be the last issue as I was leaving the room indicating that there had been issues around his daughter's application and ... I just thought he should know that ... But I didn't say any more, I didn't say whether she got an offer or not but he would have known that by then because it was the 11th itself and pretty sure he would have known ...

He's a, he's a taciturn man he's not effusive and his response is he thanked me for that ...<sup>75</sup>

Professor Greenfield did not recall this conversation with Professor Keniger.<sup>76</sup>

The VC's daughter commenced studying in the provisional undergraduate program for medicine at the University of Queensland in 2011.

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72 DW interview, 28 March 2012, approx. 1 hour 30 minutes into interview.

73 MK interview, 16 March 2011, page 23 and interview, 28 March 2012, pages 36–37.

74 MK interview, 28 March 2012, page 37.

75 MK interview, 28 March 2012, page 29.

76 PG interview, 1 May 2012, page 34.

## Conclusion

The VC's daughter was not academically qualified to be offered a place in the 2011 MBBS intake. At least four people were fully informed about her ineligibility and knew that her being offered a place in the MBBS could not be justified on the basis of her achievements. These were:

- Margaret Fairman
- Maureen Bowen
- the Manager, Undergraduate Scholarships
- Professor David Wilkinson.

If Professor Wilkinson's account is correct, then Professor Keniger also knew that the offer was improper.

If Professor Wilkinson's and Professor Keniger's accounts are correct, and taking into account the above series of events, the VC must have known that his daughter had received a forced offer into the MBBS program, a program for which he knew she did not qualify on merit.

It is also noted that, if Professor Keniger's and Professor Wilkinson's role in forcing an offer to the VC's daughter was as a result of a misunderstanding on the part of Professor Wilkinson as to the nature of the telephone call from the VC on 23 December 2010, the VC could have at any time between January and September 2011 attempted to rectify any misunderstanding about his intentions. When later it was suggested to him that he withdraw his daughter from the MBBS program, on the basis that her admission was the result of an inappropriate decision, he discussed that option with his wife and daughter and the decision was made that she would stay in the program.

Chancellor Story later advised that the Senate sub-committee considered whether any action could be taken against Ms Greenfield, in particular whether she should or could be removed from the MBBS program. Mr Story advised that, as a result of the report finding no evidence of any wrongdoing by Ms Greenfield and on the basis of legal advice received by the Senate, it was decided that the University had no legal basis to remove Ms Greenfield from the program.

In the following months, the admission of the VC's daughter into the MBBS program would become more widely known among the university community. Questions about the integrity of the decision were asked. The following chapter outlines how the University dealt with the matter once the genesis of the forced offer, and the associated suggestion of misconduct, became known.

### 3 THE UNIVERSITY'S RESPONSE (DECEMBER 2010 – DECEMBER 2012)

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#### Growing knowledge at UQ of the forced offer (December 2010–September 2011)

From late December 2010 and throughout 2011, a number of people became aware that the Vice-Chancellor's daughter had received an offer in the 2011 MBBS undergraduate program. The information they received suggested that she had not qualified for admission into the program; some of these people had enough information to suspect, or ought to have suspected, official misconduct or at least misconduct under the University's policies. According to these persons and others interviewed by the CMC, rumour and innuendo were widespread within the University about this issue, yet no-one reported the matter officially either to Assurance and Risk Management Services (ARMS) or to the Senate until September of that year, nine months after the forced offer was made.

Among those who either were informed, or took the trouble to inform themselves, of the "irregularity" in making a forced offer to the VC's daughter were four professors (two members of the Senate and another a member of the senior executive) and a number of senior staff members.

Of the professors, two decided to take no action to report any suspicion of misconduct; two others spoke to Professor Keniger about the matter, and appear to have been satisfied with his explanation, despite his possibly being a party to any impropriety or directly implicated in any potential misconduct.

- Professor P1 was aware at the time the forced offer to the VC's daughter was being considered that the Acting Academic Registrar had raised serious concerns about it. P1 was advised in an email on 24 December 2010 that there were "significant risks" involved with the forced offer, that Professors Wilkinson and Keniger believed that these risks were "manageable" and that the admission would proceed "with discretion". In January 2011, P1 spoke with Professor Keniger, who advised that he felt it was an appropriate decision and that as Acting Vice-Chancellor he had the capacity to make the decision. According to P1, Professor Keniger was very open about having made the decision, and that was comforting.
- Professor P2 had become aware of the matter in the first or second week of January 2011 when speaking with Ms Maureen Bowen, who explained that forced offers had been made to VC scholarship recipients who had not passed all sections in UMAT, and also to the VC's daughter. According to P2, while the former was "out of the ordinary, but not alarming", "there was a country mile of difference" between the scholarship recipients and the VC's daughter, whose TER<sup>77</sup> was "nowhere near good enough" to get a scholarship; P2's understanding was also that the VC's daughter did not have one of the minimum scores in UMAT. Despite expressing concerns about a "culture of disregard for process" during an interview with the CMC, P2 ultimately did not formally report concerns about the incident to anyone.
- Professor P3, now an Executive Dean, first heard of the allegation at the end of January when he was informed by another professor that "a forced offer had been made to the VC's daughter in a way that had been inappropriate". P3 told the CMC that he spent a lot of time thinking about what he could do but ultimately did nothing. P3 believed that there were people who were "closer to this matter than [he was]" in whose integrity he trusted —

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77 Tertiary Entrance Rank (TER), Interstate Transfer Index (ITI) and Overall Position (OP) are different ways of measuring a student's performance in Grade 12. At the relevant time the University used a combination of OP and ITI to compare students' performances.

“if others weren’t doing anything then it may not have been true”. He stated that this rumour started to become more widely discussed among staff months later. P3 stated he now realises that he should have taken some action when he heard the rumours because, if true, it was clearly a matter that should have been reported and actioned; if not true, it should have been quashed as it was undermining the confidence of students and staff in the integrity of the University.

- Professor P4, also an Executive Dean, told the CMC that he became concerned about the matter after becoming aware of questions being asked about how the VC’s daughter got into the medical program. He therefore accessed spreadsheet data relating to the 2011 MBBS intake, where he found anomalies in the admissions of several students, namely, that they had not achieved the requisite UMAT score. Although most of those students had notes besides their names explaining the reason for their admission, there was no such notation indicating the basis for admitting the VC’s daughter. P4 spoke about the matter with two senior staff members, one of whom asked whether he had any evidence of this irregularity. Following this conversation P4 spoke to the other senior staff member, who said she knew of the situation and that it was Professor Keniger who had signed off on the offer to the VC’s daughter, not Professor Greenfield. P4 was told that this was part of a decision from the scholarships process and part of getting high-achieving students who would otherwise be lost to the University into the MBBS program. P4 stated that he did discuss the issue with Professor Keniger in July 2011, telling the CMC that he said:

“... look Michael, it’s awkward but I’m concerned about enrolments into the [MBBS], and in particular the Vice-Chancellor’s daughter, ah, it appears to me that she was admitted without meeting the entry requirements and — and I feel obliged to raise the matter with you, you know” ... and he assured me that it was all done as part of a broader process and there wasn’t any attempt to do it explicitly with the intention of admitting the Vice-Chancellor’s daughter, that she just happened to be sort of nearby on a list of high achieving students ...

## **Chancellor informed of alleged misconduct: initial response**

On 5 and 7 September 2011, Ms Maureen Bowen met with a senior officer of the University in relation to an unrelated investigation within the University.

During these interviews Ms Bowen disclosed that the daughter of the Vice-Chancellor was made a forced offer into the MBBS program without having met the University’s published admission criteria. She conveyed the details of conversations she had had with Ms Margaret Fairman and with Professor Wilkinson.

The senior officer in turn reported this matter on 8 September 2011 to a member of the University Senate and the Risk Committee. Arrangements were made for that officer to brief John Story, the Chancellor of the University, about this matter on 9 September 2011.

## **UQ investigation commenced**

Also on 9 September 2011, Mr Story arranged a meeting between the senior officer and Mr Eddie Scuderi of Corrs Chambers Westgarth, to assess the information that had been obtained. On the same day, Mr Story formed a sub-committee of the Senate. The following day it was determined that an independent and external investigation was to be undertaken.

The sub-committee decided to appoint a senior barrister, Mr Tim Carmody QC, to conduct the investigation with Mr Scuderi. After taking legal advice, the sub-committee decided that it would not report the matter to the CMC at that time as it wanted further information to form a preliminary view

about the allegations prior to reporting it. The University also engaged a communication and business advisory consultancy service, presumably to assist with handling the matter in the public domain.

On 14 September 2011, Mr Story met individually with Professors Greenfield, Keniger and Wilkinson and advised them of the investigation.

## UQ investigation report provided to sub-committee

The UQ investigators' report provided to the sub-committee on 23 September 2011 outlined the purpose and scope of their investigation and noted that they had not been asked to make findings. Nevertheless, it underlined the seriousness of the alleged misconduct, warned of the potentially serious consequences for the University's reputation, and proposed a way forward.

It relevantly stated:

### **2 Purpose and scope of investigation**

2.1 The purpose of our investigation was to examine, report and make recommendations to the sub-committee on the following matters:

...

(d) whether any of the student admissions give rise to grounds for a potential finding of misconduct or serious misconduct under the University's policies and procedures relevant to the staff concerned in the decision to make the relevant forced offers;

(e) whether any of the student admissions give rise to grounds for a potential finding of a breach of the law, employment arrangements or the University's Code of Conduct in relation to those staff members involved in making the decision to make the forced offers; and

...

### **12 Recommendations**

...

12.2 We are not in a position, nor have we been asked, to make findings (adverse or otherwise) in the context of the scope and purpose of our investigation.

12.3 However, our investigation strongly indicates that the decision made to force an offer to [Name] Greenfield was irregular and unjustified. The decision opens the spectre of perceived if not actual conflicts of interest and a lack of impartiality. The consequences for the University's reputation are potentially serious and leave it open to potential legal action.

It is apparent that the investigation conducted by Messrs Carmody and Scuderi had not been asked to make any findings of misconduct, and therefore could not. However, it did conclude that it was open for the Senate sub-committee to require both Professor Greenfield and Professor Keniger to show cause why disciplinary action should not be taken against them for serious misconduct, and to require Professor Wilkinson to show cause why disciplinary action should not be taken against him for misconduct.

## Senate sub-committee's response to the report

The UQ investigation report identified a number of alternative approaches available for the Senate to investigate and determine what, if any, disciplinary or other consequences should apply to Professors Greenfield and Keniger arising from the decision to offer a place in the medical undergraduate program

to the Vice-Chancellor's daughter<sup>78</sup> (see chapter 4). The sub-committee decided that Mr Story should approach both Professor Greenfield and Professor Keniger with the investigation report and the proposals it offered. Mr Story stated that the feeling of the sub-committee was that if they offered their resignations, this would be a preferable course to follow.

According to Mr Story a number of considerations led to this decision:

1. It would be difficult for misconduct charges to proceed as there were substantial differences in the evidence of Professors Greenfield, Wilkinson and Keniger.
2. The misconduct proceedings would be hugely disruptive to the University.
3. There was no assurance that they would get an outcome that would find either Professor Greenfield or Professor Keniger, or both, guilty of misconduct.

The Chancellor said he approached the meetings with Professors Greenfield and Keniger with the view that the best outcome would be an offer to resign by both men.<sup>79</sup> He said the approach he took was that Professors Greenfield and Keniger should "accept responsibility and accountability for what had occurred simply because of their respective positions".<sup>80</sup>

Mr Story stated he spoke with Professors Greenfield and Keniger on 26 September 2011 and advised them of the outcome of the investigation and options that were suggested in the investigation report as being available to the Senate. According to Mr Story, Professor Greenfield came quickly to the conclusion that it was in the best interest of the University that he should go. Mr Story said Professor Greenfield and he discussed the timing of his resignation and agreed the most appropriate timing, considering the interests of the University, would be the middle of 2012.

At the time that Mr Story initially approached Professor Keniger, he (Keniger) was overseas; according to Mr Story Professor Keniger did not fully appreciate the seriousness of his actions, but ultimately agreed to resign. Mr Story indicated to Professor Keniger that the best timing for the resignation would be the end of that calendar year (2011). Mr Story also prepared a statement which he intended to provide to the Senate and he gave a copy to Professors Greenfield and Keniger. It said that the basis for the resignations was that neither had been found to have acted improperly, but that they accepted responsibility for the outcome by virtue of their respective positions. According to Professor Keniger, he was assured that the Senate would be informed that he acted properly on the advice that he received at the time of his decision.<sup>81</sup> As the Chancellor told the CMC in his interview with them:

I had agreed with Michael and Paul that they would resign on the basis there had been no finding of misconduct ... if there had been a ... full hearing ... it may well be that ... they wouldn't [have] been able to have found misconduct so you know as far as I was concerned they were, they were innocent until proven guilty ...<sup>82</sup>

## The sub-committee's next steps

The Senate sub-committee again convened on 29 September 2011 and reviewed the substance of the conversations Mr Story had with Professors Greenfield and Keniger. The committee agreed with the dates on which the resignations should come into effect and agreed that it would make those recommendations to the Senate. The dates proposed were December 2011 for Professor Keniger and

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78 Investigative report, paragraph 12.4.

79 Interview, 2 August 2012, page 8.

80 Interview, 2 August 2012, page 11.

81 Email between Professor Keniger and Mr Story, 7 October 2011.

82 Interview, 2 August 2012, page 11.



July 2012 for Professor Greenfield. According to Mr Story, these were considered to be the most appropriate dates for the University as:

- it did not want to lose two of its top executives at the same time
- Professor Greenfield was involved in a number of ongoing important projects on behalf of the University, which would be disrupted
- it would provide sufficient time for the University to find a suitable replacement for the Vice-Chancellor.

The sub-committee also agreed that Mr Story ought now to contact the CMC and consider its views on what was intended to be recommended to the Senate at a special meeting the following week.

### **Chancellor's action to inform Senate members (1–2 October 2011) and the CMC**

Over the weekend of 1 and 2 October 2011, Mr Story individually contacted each member of the Senate and advised them of the alleged misconduct on the part of the VC and the SDVC. He later told the CMC that:

- the individual conversations with each member of the Senate went for between 1 and 2 hours each
- he provided the members with sufficient information for them to understand the seriousness of the allegations and the proposed way forward.

As he explained later to the CMC:

I was a bit reluctant to go into exactly who said what to whom ... I would have told everybody that Paul had rung Wilkinson and Wilkinson had spoken to Keniger and I would have said there were discrepancies between the versions. It's an issue as to whether Paul made the call with intent and it was an issue as to whether Michael [Keniger] had forced the offer knowing that the child was not qualified. I said that was the difficulty. I was at pains to try and keep everybody in the position that what had happened was unacceptable and we either go down formal misconduct proceedings which could be disastrous for the university or we accept resignations and that the resignations weren't admissions of guilt but the resignations were accountability with respect to the position ... [I] said the report would be available to be read. We didn't want to circulate copies of the report because we didn't want it floating around ... I didn't want the Senate to have a meeting where they made determination of innocence or guilt, but I did want them to recognise this [was] a serious occurrence.<sup>83</sup>

### **CMC informed of allegations**

On 30 September 2011, Mr Story attempted to speak to the then Chairperson of the CMC, the Honourable Justice Martin Moynihan AO QC; however, Mr Moynihan was unavailable. Mr Moynihan was on sick leave at the time and shortly afterwards would resign from the CMC on medical advice. On or about 4 October 2011, Mr Story spoke by telephone to Mr Moynihan at his home.

Mr Story states that, as well as giving Mr Moynihan details of the allegations, the establishment of the sub-committee to oversee the matter and the conclusions of the Carmody/Scuderi investigation report, he also told him two further things:

- That unless the CMC approved the intended course of action he (Mr Story) would not recommend that course to the Senate. According to Mr Story's version, he told the former Chairperson that the proposed course of action was unequivocally conditional on the CMC's approval.

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83 JS interview, 2 August 2012 at 1 hour 14 minutes into interview.

- That because of the damage the University's reputation would suffer if the allegations became widely known, it was intended that confidentiality be maintained over the reasons for the resignations, to which Mr Moynihan replied, "You wouldn't want to see that in the Courier-Mail."

Mr Story stated that at the conclusion of his conversation, it was his belief that he had advised the CMC of the University's intended course of action, and that in his view Mr Moynihan's comments amounted to a positive endorsement of the proposal to maintain confidentiality about the reasons for the resignations.

Mr Moynihan's account of that conversation differs from Mr Story's. He states that on Sunday, 2 October, he received a phone call at home from Mr Story, who said there had been an unfortunate incident or series of incidents at the University, involving the VC and others. Mr Story said he had great regard for the VC and thought he had done an excellent job. However, he and the Senate were having to consider whether the VC might have to resign as ultimately he was the responsible officer for all that occurred at the University.

Mr Moynihan stated that:

- Mr Story advised him that the CMC would be being formally notified within the next day or so, and did not ask for Mr Moynihan's approval to proceed in any particular way. Had Mr Story asked him for his approval to proceed in a particular way, he would not have given it over the phone with such scant knowledge of the facts at that stage.
- He advised Mr Story during the conversation that the matter would need to be considered by the Assistant Commissioner, Misconduct. Mr Moynihan recalled that he contacted the then A/C Misconduct, Mr Warren Strange, advised him of the call he received from Mr Story, and either requested that he contact Mr Story or that he should expect to be contacted by Mr Story. He did not recall that he passed any detail of the conversation on to Mr Strange.

According to Mr Moynihan, the conversation was quite brief; he was mainly listening and made few comments. When specifically asked whether he had said, "You wouldn't want to see that in the *Courier-Mail*", as per Mr Story's recollection, Mr Moynihan states that he may have agreed with Mr Story that he could understand why the University may not have wanted the matter published in the media, for obvious reasons (such as damage to the UQ reputation); however, he is certain that he would not have agreed with Mr Story to keep the matter out of the press.

According to Mr Moynihan, he viewed the conversation with Mr Story as an informal communication, and affirms that he did not give any undertaking to Mr Story on behalf of the CMC.

On 4 October 2011 the then Assistant Commissioner, Misconduct, Mr Strange, and Mr Story spoke on the telephone. Mr Strange did not recall any discussion with the Chancellor about the University's recommended course of action being subject to any response from the CMC, and noted that no such condition was contained in the email subsequently received from the University. However, he recalled Mr Story saying it was intended to accept the resignations of the Vice Chancellor and the Senior Deputy Vice Chancellor; and that the dates of the resignations "were in the best interests of the University rather than both go out at the same time and leave a void in the University's leadership".

On 4 October, following instructions from Mr Story, an email was sent from UQ to the CMC, notifying it in writing of the allegations and including a copy of the investigation report by Mr Carmody and Mr Scuderi. The email stated:

Mr Story has also asked me to confirm to you the following:

- After receipt of the Report, the Chancellor met with the Vice-Chancellor and the Senior Deputy Vice-Chancellor to discuss the matters addressed in the Report. As a result of that discussion both

the Vice-Chancellor and Senior Deputy Vice-Chancellor offered to resign their positions and their employment with the University at a time convenient to the University.

- After consultation with a sub-committee of the Senate of the University, the Chancellor has determined that the most appropriate times for those resignations to take effect, having regard to the best interests of the University, are 31 December 2011 in the case of the Senior Deputy Vice-Chancellor and 1 July 2012 in the case of the Vice-Chancellor.
- There is to be a meeting of the full Senate this Thursday when it will be proposed the Senate accept the offered resignations.
- The Vice-Chancellor [sic] has also met with the Dean and Head of the Medical School and censured him for his role in the making of the irregular “forced offer”.
- The University will be acting on the recommendations in the Report regarding a review and amendment of the admission rules.
- As a separate exercise the University will also investigate how best to improve the definitions applicable under its policies on Misconduct and Serious Misconduct.

Please do not hesitate to contact me if you wish to discuss any of the matters in question.

As noted on page 3, the CMC is required by legislation to expeditiously assess complaints about or information or matters involving misconduct.<sup>84</sup> The matter was formally assessed by the CMC’s Misconduct Assessment Committee on 5 October 2011, on the basis of the information provided in the email forwarded on 4 October 2011 and the Carmody/Scuderi investigation report. On 5 October, the CMC sent the University its response by email:

I confirm that this matter was considered today by our Assessment Committee.

The assessment was to agree to the University continuing to deal with the matter, in the manner outlined in the report and in your email.

The CMC will seek that a further/final report be provided in due course, after these actions have been completed.

We will confirm this assessment with correspondence and a formal “matters assessed” report in the coming days.

Please contact me if there are any queries.<sup>85</sup>

The Chancellor has expressed the view that his discussion with Mr Moynihan resulted in the CMC having been told of the University’s proposed course of action, and that this was effectively endorsed by the CMC. The CMC’s view is that some matters were not in fact included in the written correspondence received by the CMC from the University. Consequently, the CMC is of the view that:

- It was not informed that the resignations had been negotiated on a basis of “no finding of misconduct” and on the principle of generalised accountability rather than on the basis of personal conduct.
- It did not endorse the University’s intention not to publicly disclose the reason for the resignations.

### **Formal decision by Senate to accept resignations (6 October 2011)**

On 6 October 2011 the full Senate met at a closed meeting at which time Mr Story briefed the Senate collectively. The purpose of the meeting was in part to decide how the matter should be progressed and to agree on a communication strategy. It was proposed that the resignations of Professors Greenfield and Keniger be accepted; such a decision would mean that no further investigation was required as to whether the conduct of either person was misconduct or serious misconduct under the University’s policies.

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84 Section 46(1)(a), CM Act.

85 Email from the Assistant Commissioner, Misconduct, 5 October 2011.

Prior to the meeting Professor Keniger emailed the Chancellor, expressing his concern about the potential impact of the proposed course of action on his reputation, and reiterating his account of his actions in relation to the forced offer. The Chancellor replied:

The nature of the investigation, however, is that there has been no finding with respect to the conduct of any individual. The matter raises difficult issues, and these issues have not been tested. In the absence of such testing, it would be wrong for me, any member of the Sub-Committee or any member of the Senate to form any view. I am satisfied that I and the members of the Sub-Committee have not done so, and I will emphasise to the members of Senate tonight that they should not do so.

In the circumstances, I do not believe that it would be appropriate that I circulate your statement to the Senate tonight. It addresses issues that go beyond the resolution before the meeting, that is, to accept the resignations offered on the basis of a general accountability. It opens up the issue of the conduct of the respective parties who were involved, and that is not under consideration.

That having been said, I will include in my statement to the Senate unequivocal confirmation that you have strongly maintained that you acted on advice with respect to a number of factors that were thought relevant when you decided to approve the making of the offer to the Vice-Chancellor's daughter and that you believed her to be of equal standing with others who had received a similar offer. I shall also make clear that nothing in this matter should be taken as impugning your integrity or diminishing your great contribution to the University over many years.

The objective of the course that we are pursuing is to provide an accountability that reflects the gravity of the matter, but protects the reputation of the University and that of two of its officers who are held in the highest esteem by the University community. That will remain our objective.<sup>86</sup>

The minutes from the Senate meeting<sup>87</sup> reflect that Mr Story read a statement concerning the actions taken to date and the proposed way forward. The Senate members were also advised that Mr Story had referred the admission irregularity to the CMC and that the CMC had endorsed the proposed course of action. Also noted in the minutes were a number of matters about which the Senate had a discussion.

The Senate decided that it was in the best interests of the University and those involved if Professors Greenfield and Keniger resigned without proffering the reason for their resignation or making any public statement about the decision and the admission of the VC's daughter into the 2011 MBBS program.

On 21 October 2011 an email was sent to University of Queensland staff by Professor Greenfield outlining that he and Professor Keniger were resigning their positions at the University, without stating the reason for their departure.

### **University statement re “no finding of misconduct”**

On 5 November 2011 an article about the matter appeared in the media. It stated Chancellor John Story had ordered an investigation by a leading barrister after allegations of favouritism surfaced, and that the investigation confirmed irregularities in the enrolment process of a student. Chancellor Story was quoted in the media article saying:

I discussed the findings with Paul and he acknowledged there had been an irregularity involving the enrolment procedures and he offered to stand down.

Michael (Keniger) offered to stand down also.<sup>88</sup>

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<sup>86</sup> Email to Professor Keniger, 6 October 2011.

<sup>87</sup> Minutes of Closed Meeting of the Senate, 6 October 2011 (see Appendix 2).

<sup>88</sup> Courier Mail article 5 November 2011 - [www.couriermail.com.au/news/queensland/favouritism-probe-at-ug/story-e6freoof-1226186284276](http://www.couriermail.com.au/news/queensland/favouritism-probe-at-ug/story-e6freoof-1226186284276)

Emails show that considerable debate ensued, and would continue, among the leadership group about the nature and extent of public disclosure required in view of the media coverage.

On 7 November 2011 the University responded by releasing a statement from the Chancellor which included the following comments:

The matter was brought to my attention in September 2011 and I immediately initiated an independent external investigation by a Senior Counsel.

The investigation confirmed an irregularity had occurred in the admission process for a student, but there was no finding of misconduct with respect to any individual. Further, the investigation found no suggestions of wrong-doing on the part of the student, whose identity is protected under privacy provisions.

Professor Greenfield, as Vice-Chancellor, and Professor Keniger, as Acting Vice-Chancellor at the time, each accepted, by virtue of their positions, that they had ultimate responsibility and accountability for the irregularity and each offered his resignation.

Although factually correct, the media release by the University could fairly be interpreted to mean that there had been an investigation and its conclusion was that no misconduct was found to have occurred. It omitted to disclose that the investigation conducted on behalf of the University had not been tasked with making findings of misconduct.<sup>89</sup>

When questioned about the statement as part of the CMC's review, Mr Story defended it on three grounds:

1. It was factually accurate.
2. The words used to describe the outcome with respect to Professors Greenfield and Keniger were markedly different from those used to describe the conduct of the student. Mr Story suggested that a reasonable person would have been able to infer that, because the statement said there was no wrongdoing by the student and no such statement was attributed to Professors Greenfield and Keniger, by inference, Professors Greenfield and Keniger may not have been blameless in this matter.
3. The initial media report implied that there had been a finding of misconduct against Professors Greenfield and Keniger, and it was necessary to make a clear statement that there had been no finding of misconduct in response to the media's reporting of this matter.<sup>90</sup>

## **Increasing criticism re the University's perceived lack of transparency**

It appears from internal correspondence that there was a growing realisation that "no finding of misconduct" was not going to satisfy the public's interest in this matter, given the fact that Professors Greenfield and Keniger were resigning as a consequence.

As at 7 November 2011, it is apparent that there was a range of views among the members of the Senate — at least some of whom seemed more sympathetic to Professors Greenfield and Keniger. The Chancellor acknowledged that in his email of that date to a senior staff member, also saying:

... but maybe Senate needs to be reminded that what is not contradicted is that Paul, by his telephone call, initiated and thereafter allowed to proceed the admission of his daughter into a course for which she was not qualified, and that Michael, the principal decision-maker and ultimate check and balance, failed the University in that capacity. On any basis, their departure was necessary.

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89 Mr John Story stated that the sub-committee had invited Messrs Carmody and Scuderi to propose the terms of reference and scope for the investigation, which the sub-committee then signed off.

90 The press release and other statements from the University's website at that time are attached at Appendix 3.

He went on to point out that the University's response to that time had not been effective, and that further public clarification was necessary. In particular, he communicated in that email:

We need a new formula of words to explain the "no finding of misconduct".<sup>91</sup>

In that email he also went on to describe his interpretation of the outcome of the investigation report:

On my understanding, the investigation disclosed a sequence of events which involve a number of errors of judgement by several individuals. The cumulative effect of those errors was a serious irregularity. The identification of an error of judgement does not constitute a finding of misconduct ...

Mr Story stated that he found himself in a difficult position in trying to balance protecting the integrity of the University and the reputations of Professors Keniger and Greenfield against disclosure of the full story of how the VC's daughter came to be admitted to the MBBS.

During November and December 2011 there was a growing discontent within the University about two matters:

- the original allegations of improper admission of the VC's daughter into the MBBS program, and
- the way in which the University was dealing with the matter publicly.

### **Further issues raised by the CMC**

Although the CMC had approved the course of action set out in the University's email of 4 October, in the light of continuing media reports it became increasingly concerned about the seeming lack of transparency on the part of the University, its apparent unwillingness to acknowledge the real nature of what had taken place with respect to the forced offer, and the progressive damage to the University's reputation. On 11 November 2011 the CMC wrote to the University to further discuss:

- the delay in reporting the matter to the CMC
- the timing of the proposed dates of resignation for Professors Greenfield and Keniger.

On 21 November the University responded by letter, setting out the justifications for the deferred resignation dates (previously set out on page 25) as the most convenient for the University.

On 29 November, the CMC wrote back, stating that it was not satisfied with the explanation previously provided. It requested that the University revisit its position on the timing of the resignations, and considered that the University should either accept the resignations with immediate effect or start disciplinary proceedings. It also requested further information, including details of the VC's and the SDVC's employment contracts and a statement of the financial benefits which would accrue to them, according to the date of resignation.

### **Consideration of financial benefits related to resignation dates**

The CMC's review found emails between the Chancellor and others at the University which discussed an unspecified arrangement that had been reached with Professors Keniger and Greenfield in relation to their resignation dates, and the potential impact of the CMC's request for the University to reconsider the resignation dates, as per the following:

- 8 November 2011, between the Chancellor, external consultants, and others involved in decision making, the Chancellor writing:  
... I am sorry to raise this but I remain very conscious of keeping faith with the understanding reached with Paul and Michael ...

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91 Email from John Story, 7 November 2011.

- 17 November 2011, in which the Chancellor related a meeting with the six Executive Deans to other decision makers:
  - ... there are two issues for consideration. Firstly there are the terms of departure. Our deal was the middle of next year ...
- 24 November, Chancellor to others:
  - There is more than one way of skinning the cat. Can we suspend him or put him on “special duties” for six months. Alternatively can we pay him six months’ notice but still have him on holiday pay. Moving things past sixty-five is important.
- 29 November 2011, in which the Chancellor related a meeting with the Vice-Chancellor:
  - ... He [Greenfield] responded aggressively to the effect that I was reneging on the deal and raised the financial impact, which he had at his fingertips. I said that as a consequence of circumstances beyond the control of both of us, we were proposing changes to those arrangements but we would fulfil the financial aspects in that he would be on special leave through to 1 July ...
- 3 December 2011, in an email directed to the Chancellor:
  - ...I should have the superannuation impact of the leave to his [Professor Keniger’s] 65<sup>th</sup> birthday by Monday morning. It might be useful as a background should you end up meeting with Michael.

The University has advised the CMC that there was no discussion about financial benefits in deciding the original resignation dates for Professors Keniger and Greenfield, and that the “deal” with Professor Greenfield was colloquial language used in emails to refer to an agreement for his retention at the University until July 2012, solely for the purpose of progressing a number of important projects for the University with which he was involved.

## Growing concerns about reputational damage

Around 9 November 2011, Professor Greenfield made a public statement about his role in the forced offer:

As you will be aware, I have agreed to stand down as Vice-Chancellor in the middle of 2012. I offered to do this because I accept responsibility as CEO for a decision that, while neither requested nor made by me, was inappropriate and benefitted a close relative. The enrolment decision was as the result of an unfortunate misunderstanding of a conversation and a break down in the normal checks and balances that control such decisions ...<sup>92</sup>

On 17 November 2011, the Chancellor met with the six Executive Deans of the University, following their expression of disquiet to the Chief Operating Officer of the University, which was relayed to the Chancellor. In their view the Vice-Chancellor’s position had become untenable and he needed to resign immediately from the University.

The Chancellor later that morning emailed some members of the Senate about the outcome of that meeting. He told them that the Executive Deans unanimously viewed the position of Professor Greenfield as being untenable. The Chancellor advised in his email that Professor Greenfield’s leadership was ineffective in the view of the Executive Deans, and it was put by some of them that “there was no way that Paul did not know the full facts and circumstances, the punishment did not fully reflect the crime and the credibility of the University was damaged as a consequence”.<sup>93</sup>

The Chancellor emailed some members of the Senate and senior executive officers one week later expressing his concern that the University’s response to that date was untenable.<sup>94</sup>

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<sup>92</sup> Extract of a public statement by Professor Greenfield quoted in the *Courier-Mail*, 10 November 2011.

<sup>93</sup> Email from John Story to Senate members 17 November 2011.

<sup>94</sup> Email from John Story to Senate members and senior executive officers 24 November 2011.

On 29 November 2011, Mr Story met with Professor Greenfield to discuss bringing his resignation forward. In the course of that meeting Mr Story raised a number of considerations with Professor Greenfield, including the sustainability of his leadership within the University and the need for resolution of the situation.

Further issues about the then current approach to disclosure of information were summarised in an email from the Chancellor dated 2 December 2011 to other members of the Senate:

... The current position is fundamentally unsatisfactory and we are deluding ourselves to think that this will simply go away ...

It [the new media release] probably does indicate that we have been a little cute and not as fulsome as we might have been.

The Chancellor reiterated to the Senate his growing concerns about the inadequacy of the University's response to date and urged "more fulsome disclosure".<sup>95</sup> The Chancellor's position then became more robust on 3 December 2011 in an email containing a draft letter intended to be given to Professor Keniger about his position and conditions of departure. There, despite wishing to retain his previously agreed commitment to Professor Keniger such as leave until Professor Keniger turned 65, the Chancellor was clearly now placing personal responsibility for the issue on Professor Keniger rather than on the basis of general accountability.<sup>96</sup>

On 5 December 2011, the CMC was advised that Professor Greenfield had agreed to bring his resignation date forward to 13 January 2012 and would cease any operational role at the University on 16 December 2011. Professor Michael Keniger resigned with effect from 31 December 2011.

On 19 December 2011 and 11 January 2012, the Queensland Police Service referred criminal complaints it had received from a member of the public on the basis that the matters involved possible official misconduct (referral under s. 38 of the CM Act), and on 23 January the CMC advised UQ that in the public interest it would undertake a misconduct investigation into potential criminal misconduct.

On 28 January 2012, John Story wrote:<sup>97</sup>

To date, the approach has been to provide the minimum of information with an overlay of spin, and absorb the pain. The concern was that the disclosure of additional information opened up the Pandora's box which would ultimately lead to a CMC enquiry. That approach has failed in that we have the enquiry and it has done a lot of damage in the meantime. We need a more sophisticated approach going forward.

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95 Email from John Story, 2 December 2011.

96 Email from John Story 3 December 2011.

97 Email from John Story, 28 January 2012.



## 4 CONSIDERATION OF POSSIBLE SANCTIONS FOR OFFICIAL MISCONDUCT

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### Option to initiate disciplinary proceedings

The initial investigation conducted by Messrs Carmody and Scuderi was not sufficient for the Senate<sup>98</sup> to make findings of fact for the purpose of taking disciplinary action. Procedural fairness requires that other steps are undertaken, including allowing those who might be affected by any finding sufficient opportunity to respond to the allegations, before a finding is made. This is not to suggest that the initial investigation was deficient in any manner, but simply to highlight that further steps would have been required by the University prior to commencing formal disciplinary proceedings.

The options presented to the Senate in relation to the conduct of Professors Greenfield, Keniger and Wilkinson from the investigation report are contained in paragraphs 12.1 to 12.13 of that report (see Appendix 1).

In light of the qualifications contained in the investigation report<sup>99</sup> and the Senate's acceptance of the new resignation date for Professor Greenfield (13 January 2012), the pursuit of disciplinary proceedings ultimately became an irrelevant issue. For this reason the CMC acknowledged publicly on 9 December 2011 that "The now imminent resignations remove the necessity of disciplinary proceedings by the University".<sup>100</sup>

Professor Greenfield — in the position of Vice-Chancellor — may not have been subject to the University's disciplinary policies as he was appointed under a statutory provision by the Senate and not the University's Enterprise Agreement 2010–2013. The terms of the Vice-Chancellor's contract made no provision for termination of employment; the engagement was, however, subject to the *University of Queensland Act 1998*.

Section 35D of the *University of Queensland Act 1998* empowers the Senate to remove the Vice-Chancellor, if at least 15 members are satisfied the Vice-Chancellor has not complied with s. 26A(2), or a conduct obligation. In doing so the Senate must comply with subsection (2). The relevant sections of the Act are reproduced in the following box.

#### Relevant sections of the University of Queensland Act

##### Section 35D

###### 35D Senate may remove chancellor, vice-chancellor or president from office

- (1) The senate may remove the chancellor, vice-chancellor or president from office if at least 15 members are satisfied the chancellor, vice-chancellor or president has not complied with —
  - (a) section 26A(2); or
  - (b) a conduct obligation.
- (2) If the senate decides to remove the chancellor, vice-chancellor or president from office under subsection (1), the senate must as soon as practicable give the chancellor, vice-chancellor or president notice of the decision and the reasons for it.

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98 Or a person who is authorised under the University's policies.

99 Paragraphs 12.8 and 12.10.

100 CMC media statement, 9 December 2011.

- (3) The chancellor's, vice-chancellor's or president's term of office ends on the later of the following —
  - (a) the day he or she receives the notice;
  - (b) the day, if any, stated in the notice for that purpose.

## Section 26A

### 26A Member's function, and obligations about function

- (1) A member has the function of ensuring the senate performs its functions and exercises its powers appropriately, effectively and efficiently.
- (2) In performing the function, a member —
  - (a) must act honestly and in the best interests of the university; and
  - (b) must exercise reasonable skill, care and diligence; and
  - (c) must disclose to the senate any conflict that may arise between the member's personal interests and the interests of the university; and
  - (d) must not make improper use of his or her position as a member, or of information acquired because of his or her position as a member, to gain, directly or indirectly, an advantage for the member or another person.

### Definition of a conduct obligation

Schedule 2 of the University of Queensland Act defines a conduct obligation as follows:

**conduct obligation**, in relation to a member, means an obligation that —

- (a) is stated in the university's approved code of conduct under the *Public Sector Ethics Act 1994*; and
- (b) must be complied with by the member.

## The University's Code of Conduct

The University's Code of Conduct reflects ethical principles and values which apply to all public officials throughout the public sector. A significant departure from the Code of Conduct provisions may amount to misconduct as defined in the University's Enterprise Agreement 2010–2013, or provide grounds for the Senate to consider removal of the Vice-Chancellor pursuant to s. 35D of the *University of Queensland Act 1998*. Professors Greenfield, Keniger and Wilkinson were subject to the University's Code of Conduct.

The Code requires integrity in decision making and expressly requires that staff:

- conduct themselves with honesty, fairness and propriety (the Integrity Requirement)
- avoid conflicts between their private interests and University responsibilities and avoid situations where there is a reasonable basis for the perception of such a conflict (the Conflict Requirement).

Additionally, the Code requires diligence in the performance of duties (the Diligence Requirement) and expressly requires that staff:

- carry out their duties in a professional, responsible and conscientious manner, and be accountable for their official conduct and decisions
- carry out official decisions and policies faithfully and impartially
- exercise due care in undertaking their activities.

## Referral for consideration of criminal prosecution

On 25 May 2012 the Commission of the CMC resolved to refer a brief of evidence to the Office of the Director of Public Prosecutions (ODPP) pursuant to s. 49(2) of the *Crime and Misconduct Act 2001* for the purpose of determining if criminal proceedings should be commenced against Professor Paul Greenfield and Professor Michael Keniger in relation to sections 92A (Misconduct in relation to public office) and 408C(1)(d) (Fraud) of the Criminal Code.

An analysis of the evidence was not without complication for the following reasons:

1. Two of the interviews conducted by the CMC with Professors Keniger and Greenfield were conducted using the CMC's coercive interview powers. Evidence obtained during these interviews could not be used in any criminal proceedings against those witnesses without their consent. Both had declined to voluntarily take part in an interview.<sup>101</sup>
2. The key witness for any prosecution was Professor Wilkinson, but Professor Wilkinson may have been a party to the forced offer, albeit occupying a less senior role.
3. Professor Wilkinson's evidence, although largely consistent for each of his interviews, was at times difficult to reconcile with evidence from other witnesses and some of his own emails.

On 28 November 2012 the Director of the ODPP wrote to the CMC and advised that it was his view that on the current available and admissible evidence there were no reasonable prospects of a successful conviction with respect to either Professor Keniger or Professor Greenfield.

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<sup>101</sup> Statements made in a voluntary interview could have been used against them as evidence, should a criminal proceeding have been undertaken.

## 5 REVIEWS OF INTEGRITY AND RISK MANAGEMENT AT THE UNIVERSITY

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During 2011 and 2012, the University initiated or underwent a number of reviews relating to integrity and risk management. These were:

- a Quality Review of the University by the CMC
- a comprehensive Integrity and Accountability Reform Program.

### CMC Quality Review of the University

In January 2012, the CMC announced that it would, in the public interest, and as part of the CMC's monitoring, capacity building and prevention roles, conduct a Quality Review of the University of Queensland. Quality Reviews help the CMC evaluate the capacity of public sector agencies to deal with and prevent official misconduct. In conducting these reviews, the CMC can also determine what, if any, measures agencies could take to reduce the incidence of official misconduct and continuously improve integrity.

The CMC conducted the review by:

- examining and assessing certain organisation-wide policies, procedures and systems UQ has for dealing with and preventing official misconduct to determine their compliance with the *Crime and Misconduct Act 2001* (the CM Act) and other relevant legislation
- examining a sample of official misconduct complaints UQ had dealt with since 2005
- examining a targeted sample of matters UQ had considered could not potentially amount to official misconduct and had therefore not reported to the CMC
- assessing whether (and to what extent) UQ had applied its policies, procedures and systems in dealing with and preventing official misconduct
- interviewing a representative group of managers and other staff, including those officers responsible for dealing with or investigating official misconduct at UQ, to ascertain their views as to UQ's policies, systems and practices for preventing and dealing with official misconduct, and the culture of UQ with respect to matters of integrity
- assessing whether investigations considering allegations of official misconduct conducted by or on behalf of UQ had conformed to the best practice standards outlined in the CMC publication *Facing the facts: a CMC guide for dealing with suspected official misconduct in Queensland public sector agencies*
- assessing the outcome or effect of any capacity-building or prevention initiatives undertaken in UQ, either cooperatively with the CMC or otherwise.

The review made the following key findings:

1. A number of principal UQ policies needed improvement or development. In particular, UQ needed to implement a detailed policy/procedure in relation to the handling of complaints of suspected official misconduct; UQ was relying on a policy/procedure relating to misconduct/serious misconduct which did not reference the definition of official misconduct.
2. Corporate strategies for training staff in key integrity policies and processes (such as the Code of Conduct, public interest disclosures, reporting official misconduct) needed attention.

An ongoing program of awareness and education was also required if integrity was to be embedded in the organisational culture.

3. UQ needed to ensure that investigations of suspected official misconduct adhered closely to the standards outlined in *Facing the facts*.
4. Although UQ officers may have been aware that there was an obligation to report suspected official misconduct to the CMC, the staff, including those officers directly involved in investigating misconduct or serious misconduct, had difficulty identifying the types of conduct that might fall within the definition of official misconduct. Official misconduct needed to be clearly defined in UQ policy documents, and key officers required appropriate training in recognising and managing all types of misconduct.

The CMC also highlighted a number of fundamental principles which needed to underpin UQ's management of misconduct. These included a commitment to impartial fact finding, which the CMC regarded as critical to a transparent and ethical workplace culture.

Another issue raised by the CMC in the review was that UQ had used legal firms to conduct an investigation and then asserted that any material gathered during the investigation was subject to legal professional privilege. It is the CMC's view that such a practice is not appropriate and that claims of legal professional privilege should not be made over material gathered for the purpose of investigating possible official misconduct. There is a legitimate role for legal firms to provide legal advice to public sector entities and entities may also choose to engage a law firm to conduct an independent investigation or preliminary assessment into official misconduct. However, the CMC is of the view that the purpose of an investigation is, first and foremost, fact finding about the conduct alleged, rather than the provision of legal advice to the entity. Therefore, the CMC has recommended that UQ develop a clear policy on this matter so that claims of legal professional privilege are only made in appropriate circumstances.

The CMC's Quality Review report was provided to UQ in April 2013, and included 16 recommendations to assist UQ in the above areas. The CMC also acknowledged eight noteworthy practices undertaken by the University.

The University has indicated a willingness to support many of the recommendations arising out of the CMC's review and will give those recommendations further consideration as part of review processes under way at UQ. The CMC will continue to monitor UQ's implementation of all supported recommendations over the next 12 months.

## Integrity and Accountability Reform Program

On 17 May 2012 the University of Queensland announced a comprehensive Integrity and Accountability Reform Program designed to strengthen its overall governance framework. Acting Vice-Chancellor Professor Deborah Terry said the reform program was aimed at ensuring that the University's ongoing reform initiatives were best practice in terms of integrity and accountability:

The reform program includes a review of all of the relevant policies and systems across the University; and input from a number of independent external parties including a leading Australian ethics centre, the CMC, and the Tertiary Education Quality and Standards Agency.

... it [is] important to give the public a sense of our progress in these areas. As a result we will provide an Integrity and Accountability Report that will detail the University's performance in these crucial areas. The report, which will be completed by late 2012, will document our progress on all reform initiatives.<sup>102</sup>

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102 "UQ announces major Integrity and Accountability Reform Program" at <[www.uq.edu.au/news/index.html?article=24742](http://www.uq.edu.au/news/index.html?article=24742)>.

The reform program involved three focus areas:

1. Compliance – Governance and integrity
2. Capacity – Education and communication
3. Culture – Cultural development

Within these areas the program included:

- a review of admissions rules and procedures, including —
  - conflicts of interest
  - management and handling of misconduct and complaints
- strengthening of organisational structures to support assurance, investigation and risk management
- commitment to ongoing preventative educational programs for all levels of University leadership, of which the CMC has been a part
- implementation of communication and organisational development initiatives to ensure the highest standards of accountability
- review of internal culture in order to ensure a strong culture of integrity
- regular updates to the relevant external bodies, including the CMC and the Tertiary Education Quality and Standards Agency (TEQSA)
- development of programs focused on ethics, accountability and integrity for the University's key decision makers. These will be developed in conjunction with a leading Australian ethics centre.

In September 2012 the University further advanced its program with the appointment of Emeritus Professor Gerard Sutton AO, a former Vice-Chancellor of Wollongong University, and Dr David Watson, a former Queensland Government Minister to act as external assessors, to ensure that the University's review was comprehensive and far-reaching, and to seek to identify further opportunities for improvement.

The University's review has now been completed and the University publicly reported on it in March 2013.

## 6 CONCLUDING REMARKS FROM THE COMMISSIONERS

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After reviewing the University of Queensland’s handling of allegations of suspected official misconduct, the CMC notes the following matters:

- There was a nine-month delay before the Chancellor was informed about the forced offer.
- Among those who suspected the forced offer had involved official misconduct, but failed to report it, were a number of senior staff.
- Some senior staff members did take action to satisfy their suspicions about official misconduct by speaking with Professor Keniger. However, those officers would have done better to seek objective advice, rather than raise those concerns with someone who was directly implicated in the suspected official misconduct.
- The University did not immediately report suspected official misconduct concerning its most senior officers to the CMC; it completed an independent investigation before doing so. The CMC acknowledges, however, that the CM Act placed no obligation on the Chancellor or the Senate to report the matter. Under the Act, it is the public official —in this case the Vice-Chancellor —who is obliged to report such a matter.
- Written communication, not verbal, should be the standard in all cases where there is a statutory responsibility to report possible misconduct in a public sector environment.
- It may be considered that the right balance was not struck between the public interest on the one hand, and protecting the reputation of the University and the reputations of the two most senior officers on the other.
- The University demonstrated a lack of transparency in its public statements and in its statements to its own staff. The CMC review identified that the leadership of the University had difficulty knowing how to deal publicly with the suspected official misconduct of two of its most senior officers.
- The diligence of the Admissions staff in difficult circumstances must be acknowledged. It is unfortunate that the University’s public statements characterised what occurred as an irregularity in the admissions process when, in fact, it was the Admissions staff who raised and recorded objections to the decision to force an offer to the Vice-Chancellor’s daughter.

The events at UQ are a reminder that, within Queensland, universities constitute an important part of the public sector. Most universities are units of public administration; their senior executives are public officials, and they are bound by the provisions of the *Public Sector Ethics Act 1994* and the *Right to Information Act 2009*. Universities are the beneficiaries, in part, of public funds and therefore have an obligation to act in the public interest, particularly in relation to:

- disbursement of public funds
- the obligations set out in the Code of Conduct
- obligations under the Right to Information Act.

In 2002 the Independent Commission against Corruption (ICAC) conducted a study of the New South Wales university sector.<sup>103</sup> It found that many people working at universities did not identify with the broader ethos of public service or recognise that they owed a public duty to the community. It also

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103 Independent Commission against Corruption, *Degrees of risk: a corruption risk profile of the New South Wales university sector*, Sydney, August 2002.

identified a lack of awareness of conflict of interest issues and a continuing culture of keeping problems quietly “in-house”. Ten years on, the CMC found similar tensions in UQ’s handling of the forced offer and subsequent events.

## **Issues for the broader public sector**

The importance of what happened at the University of Queensland goes beyond the specific events of 2010. The originating issue — a conflict of interest involving persons of considerable power in the institution — could arise in any unit of public administration. The issues raised by this series of events at the University of Queensland are important ones, with wider application across the public sector.

Conflicts of interest can and will occur at all levels of the public sector. However, they may not always be immediately evident — they may arise out of a request for assistance, a casual conversation or an oblique suggestion, hence the difficulty in identifying them as a potentially improper exercise of influence.

To ensure that conflicts of interest are dealt with transparently, important principles or practices should be accepted and adopted by all publicly funded entities. In particular, it is essential to:

- have robust policies that help and encourage officers to identify, declare and report conflicts of interest
- ensure merit and equity is the basis for selection in publicly funded organisations
- keep documentation that details the matters in conflict and the parties involved, the process followed by the decision makers, and the manner in which the conflict was resolved
- develop a culture in which integrity issues can be raised openly with senior managers
- instil an attitude in staff that a perceived conflict between integrity and personal loyalty to senior colleagues should not prevent the reporting of suspected misconduct.

The lessons drawn from the CMC’s review of the University serve as a reminder of some fundamental principles and practices which apply to the wider public sector.

### **I. Issues relevant to staff and organisational culture**

- Timely reporting by staff members of suspected official misconduct is important.
- Individual and collective ethical leadership is key to creating a culture of ethical behaviour and fairness in organisations.
- Objectivity in decision making requires assessing the facts independently of those who may have some association with the conduct in question.
- Standards and policies relating to reporting or dealing with suspected misconduct should be widely promulgated within organisations. Where there is uncertainty, staff at all levels may find it valuable to call on the advice of confidential mentors or peer support officers.
- Staff welfare should be a primary concern throughout any investigation and after the issue is resolved.

### **II. Issues relevant to corporate governance in publicly funded organisations**

- Where there is a statutory obligation to report, early reporting is likely to minimise damage, including reputational damage, to the organisations involved.



- Objective decision making from the outset, after being apprised of all the facts, is the most appropriate course.
- Although conflicting loyalties may arise in publicly funded governance bodies, any conflict of interest must be resolved in favour of the public interest.
- The *Crime and Misconduct Act 2001* obliges the public official of a unit of public administration to report suspected misconduct to the CMC. However, in circumstances where the allegations of suspected official misconduct relate to the public official, under the Act there is no similar obligation requiring another person to report the alleged suspected misconduct.

The CMC has observed that most units of public administration have policies to cover situations in which the public official is the subject of the misconduct allegation, by placing the obligation on another person to report to the CMC. However, in order to remove the uncertainty regarding who must report official misconduct to the CMC in those circumstances, the CMC makes the following recommendation.

### **Recommendation**

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**That the *Crime and Misconduct Act 2001* be amended to prescribe who must report suspected official misconduct to the CMC in circumstances where the public official is the subject of the allegations.**

### **Recent work by the University of Queensland to address integrity issues**

The CMC accepts that the Chancellor and the Senate genuinely acted in what they believed to be the best interests of the University. However, the CMC also considers that the University had a public duty to the community.

The CMC acknowledges that, since the events of 2010–11, the University has undertaken significant work in the area of integrity and misconduct management. It has embarked on a major Integrity and Accountability Reform Program and a re-evaluation of its internal culture. The University's commitment to keeping the public informed of its progress has seen it provide details of its internal culture survey.

Such transparency is an example to the public sector. Knowing how to learn from mistakes, re-assessing values and putting in place new and better practices, are all important factors in any agency. The capacity to grasp a problem and respond of the organisation's own initiative sends an important message to staff, partner agencies and, most of all, the wider community that they can have confidence in the maturity and integrity of their public institutions.

**APPENDIX 1:**  
**Forced offers for entry into the 2011 MBBS Program:**  
**investigation report (University of Queensland)**

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Confidential and privileged

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Forced offers for entry into the  
2011 MBBS Program

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Investigation Report

Ref: ECS FileNo: 6127579/1  
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## Investigation Report

### Forced offers for entry into the 2011 MBBS Program

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#### 1 Introduction

- 1.1 This report sets out the findings and recommendations of an independent investigation into matters surrounding the making of 'forced offers' for entry into the 2011 MBBS Program offered at the Medical School of The University of Queensland.
- 1.2 The investigation has been conducted by The Honourable Tim Carmody SC and Eddie Scuderi, Partner in Charge, Corrs Chambers Westgarth, Lawyers.
- 1.3 The investigation and this report were commissioned by the Chancellor of the University in consultation with a sub-committee of the Senate comprising:



- 1.4 The investigation and this report were commissioned after the Chancellor and the sub-committee were made aware of potential irregularities in relation to the admission of three sets of students into the MBBS Program of the Medical School in 2011.
- 1.5 The matters under investigation were raised by the Acting Academic Registrar, Maureen Bowen on 5 September 2011 during an interview involving an unrelated matter with [REDACTED]
- 1.6 The matters in question involve the making of "forced offers" to the following students:
- Seven Vice-Chancellor Scholarship recipients, following a decision on 22 December 2010 (**December Group**)<sup>1</sup>;
  - The Vice-Chancellor's daughter, Ms [REDACTED] Greenfield ([REDACTED] **Greenfield**), following a decision made on either 23 or 24 December and confirmed on 24 December 2010; and

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<sup>1</sup> Seven offers were made but only five were ultimately accepted.

- Three Vice-Chancellor Scholarship recipients and eight UQ Excellence Scholarship recipients who were made forced offers in February 2011 (**February Group**)<sup>2</sup>.

1.7 In summary, the concern is that the students in question were made "forced offers" of admission into the MBBS Program despite the fact that they did not satisfy the standard qualification requirements for admission into that Program, namely that they had not achieved the required undergraduate medicine and health sciences admission test results (**UMAT scores**).

## 2 Purpose and scope of investigation

2.1 The purpose of our investigation was to examine, report and make recommendations to the sub-committee on the following matters:

- the manner in which the relevant admissions came about;
- whether there has been irregularity in the application of the admission rules and procedures in respect of the relevant admissions into the MBBS Program;
- whether the relevant admissions were made in the proper application of any exemption to the University's standard rules and procedures for admission;
- whether any of the student admissions give rise to grounds for a potential finding of misconduct or serious misconduct under the University's policies and procedures relevant to the staff concerned in the decision to make the relevant forced offers;
- whether any of the student admissions give rise to grounds for a potential finding of a breach of the law, employment arrangements or the University's Code of Conduct in relation to those staff members involved in making the decision to make the forced offers; and
- any changes considered appropriate or necessary to the admission rules and procedures or their application, particularly in respect of the making of forced offers.

## 3 Sources of information

3.1 In conducting this investigation:

- We have reviewed various statutes, policies and procedures of the University including:
  - The University's course and program admission rules;
  - Program rules for the MBBS Program;
  - The University's Code of Conduct – Policy No. 1.50.1; and

<sup>2</sup> A UQ Excellence scholarship recipient was also made a forced entry into the Bachelor of Dental Science degree at the same time as those forced offers made to students seeking entry into the MBBS Program. This report relates only to the MBBS students.

- The University's Misconduct and Serious Misconduct Policy – Policy No. 5.70.10.

(b) We interviewed the following University staff members:

- Acting Academic Registrar, Maureen Bowen;
- Dean and Head of the Medical School, Professor David Wilkinson (**Dean**);
- Senior Deputy Vice-Chancellor, Professor Michael Keniger (**SDVC** or **AVC**);
- Vice-Chancellor, Professor Paul Greenfield (**Vice Chancellor** or **VC**);
- Deputy Vice-Chancellor, Academic, Professor Debbie Terry;
- Director of the Office of Prospective Student Scholarships and Student Equity, Ms Margaret Fairman.

3.2 Some staff members were interviewed on more than one occasion to corroborate the account of others, to clarify earlier accounts and/or to check facts and circumstances. None of the staff members interviewed were cross-examined by or on behalf of other witnesses. One of the witnesses, Professor Wilkinson engaged legal representation prior to his last interview.

3.3 We were ably assisted by Mr Phil Procopis, the University's Director of The University's Assurance and Risk Management Services during the investigation. We are grateful to Mr Procopis for his assistance.

#### 4 The MBBS Program

4.1 The MBBS Program is a Bachelor of Medicine, Bachelor of Surgery program offered in the Faculty of Health Sciences, School of Medicine.

4.2 In 2011 the MBBS Program offered graduate admissions as well as undergraduate (provisional school leaver) admissions. This investigation is only concerned with the undergraduate (provisional school leaver) admissions that occurred in respect of the 2011 intake.

4.3 The undergraduate admissions are "provisional" in the sense that admitted students are required to undertake two years' of study in another degree course before commencing the MBBS stream of study and must complete the first degree in the minimum time permitted and must maintain a grade point average<sup>3</sup> of 4 for that first degree<sup>3</sup>.

#### 5 The Scholarships program

5.1 For a number of years the University has offered Scholarships in order to attract students to the University. These Scholarships offer financial benefits to students who receive them so as to assist those students with their transition to University and to meet living and study costs whilst studying.

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<sup>3</sup> Program Rules for MMBS Program.

- 5.2 The Scholarships have a range of titles and criteria and are assessed for award by committees established for that purpose. The Scholarships are administered by the Scholarships' Office of the University.
- 5.3 In 2009 the University established a new Scholarship to be known as the Vice-Chancellor's Scholarship. It was the most financially rewarding type of Scholarship offered by the University and remains so today. A number of such Scholarships are awarded each year. Their purpose is to attract "the best and brightest" students to the University and were created partially in response to similar scholarships offered by other major universities.
- 5.4 Students apply for a Scholarship whilst still at High School with the support of their School. The University decides which type of Scholarship, if any, a student will receive based on the agreed criteria.
- 5.5 In 2010 a number of Scholarship applicants listed the MBBS Program as their first choice of study at the University. However, some of them, including recipients of the Vice-Chancellor Scholarships, had not achieved the requisite UMAT scores to qualify for entry into that Program under the standard University admission rules for that Program.
- 5.6 Relevantly, to qualify for a Vice-Chancellor's Scholarship a student must have a minimum ITI (Interstate Transfer Index) score of 99.95. (ITI scores are issued by Queensland Studies Authority to the University solely for the purpose of use in awarding Scholarships. The ITI score for a student is based on that student's examine results. The ITI score gives more granularity in respect of a student's scholastic performance than an OP score and allows students to be more effectively ranked when assessing relative performance of all Australian students applying for the award of a Scholarship. ITI scores are calculated throughout Australia for year 12 students).
- 6 The admission rules into the MBBS Program**
- 6.1 The rules for admission into the MBBS Program at undergraduate level are contained in MBBS-specific admission rules (**Program Rules**).
- 6.2 The Program Rules relevantly require the student to have:
- an OP1 or equivalent;
  - a minimum UMAT score of fifty in each of three sub-categories of the UMAT test; and
  - an aggregate UMAT score above the cut-off score for entry in a particular year.
- 6.3 Students wishing to be considered for entry into the MBBS Program must sit a UMAT test. The UMAT test is designed to assess logical reasoning, communication skills and abstract problem solving. The UMAT test is normally taken in July/August each year and the results are generally known by September/October in the same year.<sup>4</sup>

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<sup>4</sup> UMAT website - <http://umat.acer.edu.au/> and from Professor Terry.

6.4 The cut-off score for the aggregate UMAT core requirement will vary from year to year and during the lead up to the making of offers for places in the MBBS Program based on the number of applications, the quality of the applicants' scores and the number of places available.<sup>5</sup>

6.5 The cut-off for 2010 was an aggregate score of 177.<sup>6</sup>

#### 7 The General Rules for admission and "forced offers"

7.1 The University also has general rules for admission to various undergraduate courses. The rules in 2010 were called the 2010 Admission Rules for Undergraduate Program (**Rules**). The Rules covered various matters dealing with the method of application for admission, quotas and general course requirements.

7.2 The Rules contained clauses 4.5 and 4.9 which permitted exceptions to the strict application of the standard rules so as to allow an admission that would not otherwise be permitted.

7.3 Clause 4.9 provides:

*"The vice-chancellor, after consultation with the executive dean, may, under exceptional circumstances, direct that strict application of these rules should be waived in respect of a particular applicant, subject to such conditions as the vice-chancellor may impose."*

7.4 Clause 4.5 provides a similar "exceptional circumstances" power in favour of the President of the Academic Board to "*increase the rank assigned to an applicant, or authorise the offer of a quota place*".

7.5 It was suggested to us by the Acting Academic Registrar, Maureen Bowen and by the Deputy Vice-Chancellor, Academic, Professor Terry that rules 4.5 or 4.9 might have been the source of power available to permit the forced offers under investigation, provided that the 'exceptional circumstances' test could be satisfied.

7.6 However, the 2010 Rules by their terms only applied to specified undergraduate programs listed in a schedule to the Rules and to non-award programs and courses.<sup>7</sup> The schedule did not list the MBBS Program. Consequently, the forced offers in question could not be justified under the Rules as they did not apply.

7.7 We should also note here that the Acting Vice-Chancellor, Professor Keniger, confirmed to us that he was not aware of the existence of clause 4.9 at the time he made the decision to force an offer for the December Group or for Ms Greenfield and that he thought he was acting in the exercise of an inherent power. He only became aware of the clause 4.9 power after the event.

7.8 We were told by Professor Terry and by Maureen Bowen that forced offers are primarily used to correct administrative errors and to allow admission after a

<sup>5</sup> School of Medicine website – Domestic Students page at [www.2.som.uq.edu.au](http://www.2.som.uq.edu.au) and from Deputy Vice-Chancellor, Academic.

<sup>6</sup> School of Medicine website – Domestic Students page at [www.2.som.uq.edu.au](http://www.2.som.uq.edu.au).

<sup>7</sup> Clause 1.1 of the Rules.



successful appeal. On the information before us such offers have never been used to admit students in circumstances such as those under investigation.

**7.9** There do not appear to be any guidelines or "rules" in place for the making of forced offers other than clauses 4.5 and 4.9 of the Rules. We make a recommendation in this regard later in this report.

**7.10** For completeness, we also note that the 2011 Rules, like the 2010 Rules, do not apply to the MBBS Program.

## **8 What happened in December 2010?**

**8.1** Set out below is a summary of the relevant accounts of witnesses, including the relevant disputes in recollection of those interviewed. The summary is based on the interviews we have conducted with the University staff referred to in paragraph 3.1(b) above, and our review of the relevant emails and other material provided to us by those interviewed.

### ***The December Group***

- (a) On or about 22 December 2010 the Dean and Head of the Medical School (Professor Wilkinson) (**Dean**) received a call from a person in the Scholarships' area who was directly involved in the consideration of the awarding of Scholarships, Michele Groves. Ms Groves is said to have asked the Dean whether it would be appropriate in the Dean's view to make "forced offers" to a group of Vice-Chancellor Scholarship recipients for entry to the MBBS Program.
- (b) The query was apparently based on a concern that despite these students being Vice-Chancellor Scholarship recipients, they would not be admitted to their first preference – Medicine at the University – because they did not have the requisite UMAT sub-category scores. Those considering the issue were concerned that these students would be lost to the University if a forced offer was not made.
- (c) As a result of that call the Dean spoke with the Acting Vice-Chancellor, Professor Keniger (**AVC**) on the same day. Both the Dean and the AVC agreed that the students should be made a forced offer for the MBBS Program and the AVC made that decision which was then communicated to Margaret Fairman in the Scholarships' area. (This group of students is referred to in this report as the December Group).
- (d) In making that decision the AVC says he took into account the advice from the Dean that UMAT, although a requirement for entry under the University's rules, was not a perfect tool. The Dean has published a paper arguing that UMAT is not an accurate predictor of successful performance in the MBBS Program based on an analysis of historical data.

**The offer to ██████ Greenfield**

**The call from the VC**

- (e) On a separate day (believed to be the following day by the Dean and consistent with other accounts this would appear to be correct) the Vice-Chancellor, Professor Greenfield (VC) made a call to the Dean. The VC was on leave at the time.
- (f) The Dean's and the VC's respective recollections about what was said by the VC in that conversation differ.
- (g) The VC:
- admits that he discussed with the Dean whether the School (of Medicine) had decided whether it was going to use "the overall UMAT because that would affect ██████
  - admits that he mentioned ██████ "without a doubt" in the conversation;
  - denies that he knew ██████'s UMAT sub-scores at the time of the call but admits that he thought her overall UMAT score "was 150 something" ;
  - denies mentioning anything about forced offers;
  - denies asking the Dean whether anything could be done for ██████ to get her into medicine at the University;
  - denies that he "rang the Dean with a view to having him go into bat for ██████
  - denies that he knew that the Dean was going to call the AVC about forcing an offer for ██████ or to see if anything could be done to assist ██████
  - admits that the offer he now knows as a result of this investigation to have been forced to ██████ was "Prompted almost certainly by the conversation [the Dean] had with me";
  - states that whilst "I did not try to pressure David....I can understand how someone standing outside me might see it in a different light"; and
  - stated to us that he still does not know whether ██████ received a forced offer and has never asked either the Dean or the SDVC if she received such an offer.
- (h) The Dean's recollection of the call from the VC is as follows:
- The VC told him "██████ had got an OP1, I think a pretty good total UMAT score but had missed out on one of the subclasses and he asked me whether she had any other options open and available to her for medicine";

- The Dean says he advised the VC that the criteria for entry were on the website and are known and that the matter *"could not be handled any other way"*.
  - At that point of the conversation the Dean says the VC *"sort of repeated the question"*.
  - The Dean goes on to say that he (the Dean) didn't get the impression that that the VC wanted him to do something but that when the VC repeated the question the Dean responded by telling the VC *"the only thing we can do is what we do with all the other appeals and talk to the AVC."*;
  - In response to that suggestion the Dean says the VC said *"Well if you can do that fine, whatever decision is made is made"*.
- (i) Given the disparity of recollections, the Dean was interviewed on three separate occasions regarding this and other relevant conversations. The Dean told us he was *"very sure, very sure"* that the VC said words along the lines of those quoted in the last dot point above in direct response to the Dean's suggestion that he would call the AVC to see if anything could be done to assist [REDACTED]
- (j) Having said that, the Dean gave a different version to Maureen Bowen of the conversation with the Vice-Chancellor as discussed below.

***The call to the AVC from the Dean***

- (k) According to the Dean, some minutes after the call from the VC he contacted the AVC, Professor Keniger, to tell him what had occurred.
- (l) In that conversation the Dean is adamant (*"100%"* sure) that he started by telling the AVC that the VC had phoned him about [REDACTED]
- (m) The Dean also says he told the AVC:
- all that the VC had told him in their call including the fact that he had been told that [REDACTED] had not met the required UMAT score in one sub-class ;
  - that he had responded to the VC by saying that there was nothing he (the Dean) could do;
  - that the VC knew the rules;
  - that he told the VC that he (the Dean) was going to phone the AVC and that the VC had responded by saying *"whatever decision is made is the decision that is made"*.
- (n) The Dean asserts that the conversation was relatively short, *"a couple of minutes"* and that the AVC's reaction was that the situation was *"very similar to the scores that we were dealing with yesterday – "I'll force an offer"*. (The reference to the scores yesterday is apparently a

reference to the UMAT scores of the December Group Scholarship recipients).

- (o) Professor Keniger's account of the call with the Dean is different. Professor Keniger says that the Dean did not mention that the VC had phoned the Dean or that any communication from the VC had triggered the call to him.
- (p) Instead, Professor Keniger asserts:
- the Dean told him that he (the Dean) had identified ██████ as being another student who had "dipped in the UMAT profile";
  - that the Dean "*made the case that he indicated that there was a concern that should the decision around the UMAT profile be widely known, more widely known to cover the issue of equity, but this was a case where somebody could feel that they had a right of entry. There was a kind of argument for entry and the suggestion [from the Dean] was that she be made an offer.*"
  - That he (Professor Keniger) asked about ██████'s academic standing and fitness for the program and after receiving some assurance from the Dean about that he indicated that he was inclined to make a forced offer but only finally decided to do so the next morning when he sent a confirmatory email to Margaret Fairman. (A copy of the emails to Ms Fairman from the Dean and the AVC are attached as **Annexure 1** to this report. Both emails seek to confirm the lack of any involvement by the Vice-Chancellor in the decision).
  - That the call took about 15 minutes.
- (q) Professor Keniger admits that:
- he did not take any step to check whether or not ██████ Greenfield was in fact in the same category as the December Group so that the December Group could be treated as an appropriate precedent justifying the offer to ██████ – claiming he assumed that she would be the same based on the Dean's advice and the fact that the UMAT score was an issue for the December Group as well as for ██████
  - he did not know how many other students apart from ██████ might be in the same position as ██████ namely not having a satisfactory UMAT score;
  - he did not consider the ramifications for the University or for other applicants in a similar predicament when making the decision to force an offer for ██████
  - he "*should have been more thoughtful*" when making the decision to force an offer for ██████ because of the

potential for other unquantified numbers of applicants to appeal on the same grounds and because it "put at risk" his decision in relation to the December Group (made the day before);

- he did not know the basis of any power to make a forced offer at the time and that he only learnt of clause 4.9 of the General Admission Rules some time later in the new year;
- he did not know how the Dean had identified ██████ Greenfield as being "in the same boat" as the December Group Scholarship recipients;
- he knew that unlike the December Group, ██████ was not a Scholarship recipient; and
- all he knew when making the decision to force an offer was that ██████ was the Vice-Chancellor's daughter and the information provided to him in a brief call with the Dean.

(r) Professor Keniger asserted that:

- he has a "sustaining principle" that there should be equity for all students and this motivated him to make the decision in ██████ Greenfield's favour because he considered her to be in the same category as the December Group students;
- if he had known that the Vice-Chancellor had made a call to the Dean about his daughter and that this had been the catalyst for the call to him, he "would have set it all aside" and "rung Paul and said this is not on. I cannot deal with this." ;
- he would have "set it all aside" because it would be "absolutely wrong" of the Vice-Chancellor as it would give rise to a "personal conflict of interest, he cannot do that";
- he mentioned to the Vice-Chancellor in January 2011 on the Vice-Chancellor's return from leave that there had been "extraordinary matters around the MBBS" but he never told the Vice-Chancellor that a forced offer had been made to ██████

#### **The interactions with Maureen Bowen**

##### *Margaret Fairman's interview*

- (s) By emails (being Annexure 1 to this report) the Dean and then the AVC advised the Director of the Office of Prospective Student Scholarships and Student Equity, Margaret Fairman, of the decision to make a forced offer to ██████ Greenfield. (This appears to be a misdirected set of emails because Ms Fairman is not responsible for the admission of undergraduate students).
- (t) Margaret Fairman took that decision and news of the decision to make forced offers to the December Group of Scholarship recipients

to the Acting Academic Registrar, Ms Maureen Bowen on 24 December 2010.

- (u) Ms Fairman's account to us was that she knew getting Maureen Bowen to action the decision would not be easy. She told us that Ms Bowen "*went ballistic*". According to Ms Fairman she told Ms Bowen that she too didn't think the decision was appropriate but that the decision had been made and now it had to be implemented. The conversation was apparently a "long hard" one.
- (v) Ms Bowen told Ms Fairman that she (Ms Bowen) was going to talk to Professor Keniger about the issue. Ms Fairman tried to talk her out of that arguing that the issue was now how to solve the problem. Ms Bowen was insistent that she needed to talk to one or both of Professors Keniger or Wilkinson because "*they need to understand the risks*".
- (w) Ms Fairman then left the matter to Ms Bowen to handle as Ms Fairman was going on leave that day.

*Maureen Bowen's interview*

- (x) Ms Bowen told us that she went to see Professor Keniger about the decision regarding ██████ Greenfield but that he was not in his office. She then tried to contact Professor Wilkinson who eventually called her back.
- (y) Ms Bowen told us that she advised the Dean that:
  - she didn't believe that the offer to ██████ could be defended on academic merit;
  - she had checked Ms Greenfield's ITI score and it wasn't 99, it was "*98 point something*" so "*it wasn't within a bull's roar of being the very highest score*";
  - Ms Greenfield was not a scholarship recipient so she was "*different from the other*" group who were being made forced offers;
  - if the decision became public it would be damaging to the reputation of the University and the individuals concerned; and
  - she insisted that he call Professor Keniger to apprise him of these matters and risks and that she would not action the decision until he had done so.
- (z) Ms Bowen also advised us that in that conversation with the Dean, he told her he wanted to explain what had happened and proceeded to tell her that he had been called by the Vice-Chancellor to see if anything could be done for his daughter who had not met the UMAT threshold. According to Ms Bowen the Dean said he told the Vice-Chancellor nothing could be done and that he had not been pressured by the Vice-Chancellor. It was after the call from the Vice-Chancellor

that the Dean said he thought about making the same concession for Ms Greenfield as he had made for the December Group of Scholarship recipients and that was the basis of the recommendation to the AVC. Ms Bowen responded by telling him again, that Ms Greenfield was not like the other students.

- (aa) According to Ms Bowen, approximately an hour and half after the conversation with the Dean he called her back and confirmed that he had spoken with the AVC and had conveyed her concerns to him and that the AVC had confirmed the original decision. In that call the Dean offered Ms Bowen the AVC's mobile phone number so she could reiterate her on-going concerns directly to him. Ms Bowen's is that she decided not to take up that option because she felt she had raised her concerns and trusted that the Dean had called the AVC as he told her that he had done so.
- (bb) Despite her misgivings and disappointment, Ms Bowen then instructed the admissions manager to implement the decision.
- (cc) Ms Bowen has examined the relevant scores for applicants into the MBBS Program for 2011 and has confirmed to us that 219 applicants had a better UMAT score than Ms Greenfield.

***The second call to the AVC***

- (dd) The Dean's account is that he called the AVC following his initial discussion with Ms Bowen to make good on his promise to relay her concerns about the forced offer to Professor Keniger.
- (ee) Professor Keniger does not recall receiving that call.
- (ff) Ms Bowen told us that when the Dean called her back to confirm that he had spoken to the AVC as requested he offered to give her the AVC's mobile number so she could reiterate her on-going concerns directly but she chose not to do so and to rely on the fact that the Dean was confirming that he had already done that.

**9 What happened in February 2011?**

- 9.1 The witnesses who were most involved in the decision to make forced offers to the February Group of applicants were Professor Terry and Professor Keniger. Their accounts are entirely consistent on the reasons and circumstances for making the offers to these applicants.
- 9.2 All of the members of the February Group were scholarship recipients although not all were VC Scholarship recipients, some were recipients of UQ Excellence Scholarships.
- 9.3 The applicants had either missed the aggregate UMAT cut-off score or one of the sub-category scores.
- 9.4 The decision was made on the basis that a small number of the applicants had appealed and on review, it was felt that the relatively small number of remaining Scholarship recipients, including those that had appealed, justified opening up the admissions to allow them entry.

9.5 According to Professor Keniger's account the offer was also on the basis that these scholarship recipients were "*the next band of scholarship, the next cohort*" and therefore they could be made "*a similar kind of offer as for the first.*"

## 10 Analysis

- 10.1 These events took place more than 9 months ago.
- 10.2 There is no record of and little agreement in the competing versions of the key figures about what exactly happened and when or who said what to whom.
- 10.3 Variations or conflicts in memory are understandable and no doubt due, at least, in part to the lapse of time.
- 10.4 However, divergent descriptions can also indicate deception or falsity related on the part of one, some or even all sources on the same or different topics.
- 10.5 Care is needed in assessing reliability and credibility of informants who are (or think they are) suspected of some form of misconduct or incompetence in an employment setting.
- 10.6 There is no reason for believing that either the SDVC or the Dean deliberately set out to advantage ████████ over other equally or more worthwhile candidates.
- 10.7 Both the SDVC and the Dean report to the VC and, no doubt, would not like to needlessly upset him or let him down if they could avoid it. They may even be prepared or willing (albeit reluctantly) to go out on a limb to help him out.
- 10.8 All have an interest in not being disciplined or embarrassed by adverse findings or conclusions.
- 10.9 They all know that in hindsight their combined actions created a perfect storm of circumstances to create speculation or reasonable suspicion on campus about nepotism and preferential treatment for ████████
- 10.10 They are equally aware that those actions are now being closely scrutinised for any sign of impropriety or procedural irregularity.
- 10.11 There will be a tension between wanting to be seen as cooperative on the one hand but being able to justify their actions and deny any contrary assertions on the other.
- 10.12 There will also be a natural tendency to avoid making admissions of fault or failure.
- 10.13 What we are looking for then is the most accurate, honest, credible and reliable historian.
- 10.14 The three main parties involved in key conversations are the VC, the Dean and the SDVC, the latter in his capacity as Acting Vice-Chancellor.
- 10.15 On the face of it and without the benefit of detailed responsive explanation or forensic cross questioning on behalf of the other main parties, the Dean's version seems, overall, to us to be the most probable in relation to material matters.



**10.16** His version of events has the least apparent flaws and is consistent with logical expectations. However, that is not to say that it is flawless and indeed, in some respects does not accord with his own statements at the relevant time to Ms Bowen and is substantially at odds with the recollection of events and conversations of the other major participants.

**Common ground**

**10.17** In any event, the following matters are not controversial as between the witnesses:

- (a) The VC did make a call to the Dean.
- (b) In that call the VC mentioned his daughter and UMAT scores.
- (c) After initially rejecting the notion that anything he said could have reasonably be misinterpreted as an implied plea for help, the VC accepted that despite honest intentions on his part it was possible that the Dean mistakenly gained that impression and then took the matter into his own hands.
- (d) After the call to the Dean the VC said that he was left thinking that ██████ had only a slim chance of getting an offer for the MBBS Program because of her UMAT result. However despite ██████ ultimately receiving such an offer, the VC never asked the SDVC or the Dean whether ██████'s offer had been forced and claims still not to know whether it was.
- (e) The VC accepts that the forced offer to ██████ was "almost certainly" prompted by his call to the Dean.
- (f) The VC's call did actually prompt the Dean to contact the AVC to seek a forced offer for ██████ Greenfield and one was made.
- (g) ██████ Greenfield did not have the requisite UMAT scores to qualify for an offer and was comparatively less deserving than other applicants who missed out on an offer even though those applicants had higher scores than ██████
- (h) The SDVC as AVC made the decision to force an offer for Ms Greenfield after speaking with the Dean.
- (i) Contrary to the view that this was justified on equity grounds because she was in the same category as the December Group of VC Scholarship recipients, she was not in fact in the same category because the justification for making the other forced offers was the very fact that they were being made to VC Scholarship recipients which ██████ was not.
- (j) The SDVC knew that ██████ was not a Scholarship recipient.
- (k) The SDVC did not make any independent inquiry of the matter on which he was relying to justify the offer, namely that ██████ was the same as the members of the December Group based on their UMAT scores. If he had made such an inquiry it would have revealed that ██████'s score was significantly lower than the scores of the other forced offer applicants.

- (l) The SDVC admits that he did not know the impact on the University and other potential applicants for the MBBS Program that would not gain entry as a result of their UMAT scores alone.
- (m) The SDVC concedes that he should have been "more thoughtful" in making the decision to force an offer for ██████ Greenfield.
- (n) Maureen Bowen raised serious concerns about the decision to make a forced offer to ██████ Greenfield with the Dean and refused to action the decision until they had been conveyed to the AVC.
- (o) The Dean claims to have done so (a matter which the SDVC says he cannot recall) and confirmed that he done so to Ms Bowen who then put in train the processing of the forced offer.

## 11 The Relevant Law

### 11.1 The University of Queensland Act, 1988 (Qld) (UQ Act)

- (a) The UQ Act relevantly:
  - (i) establishes a senate and invests the senate with the functions conferred on it under the UQ Act<sup>8</sup>;
  - (ii) appoints the vice-chancellor as a member of the senate<sup>9</sup> and as chief executive officer of the University<sup>10</sup>;
  - (iii) obliges the senate to act in a way that appears to it most likely to promote the University's interests<sup>11</sup>;
  - (iv) invests the senate with the power to manage and control the affairs of the University;<sup>12</sup>
  - (v) imposes on each member of the senate the function of ensuring that the senate performs its functions and exercises its powers appropriately, effectively and efficiently. In performing that function the senate member must, amongst other matters:
    - act honestly and in the best interests of the University;
    - exercise reasonable skill, care and diligence;
    - disclose to the senate any conflict that may arise between the member's personal interests and the interests of the University; and
    - not make improper use of his or her position as a member, to gain, directly or indirectly, an advantage for the member or another person.<sup>13</sup>

<sup>8</sup> Section 8.

<sup>9</sup> Sections 12 and 13.

<sup>10</sup> Section 32(4).

<sup>11</sup> Section 10.

<sup>12</sup> Section 9(2)(b).

- (b) We have considered whether the Vice-Chancellor's call that ultimately resulted in forced offer being made to his daughter could constitute a breach of obligations in section 26A, being those referred to in the last dot point of paragraph (a) above. We have concluded that it does not for the following reasons:
- (i) the obligations in section 26A fall on the Vice-Chancellor as a member of the senate and relate expressly by their terms to the performance of senate's functions;
  - (ii) the senate is not involved in and it is not a function of the Senate to make admission offers to students.
- (c) Section 35D of the UQ Act also provides that the senate may remove the Vice-Chancellor if at least 15 members are satisfied the Vice-Chancellor has not complied with a "conduct obligation".<sup>14</sup>
- (d) A "conduct obligation" is defined to mean an obligation that is stated in the University's approved code of conduct under the Public Sector Ethics Act, 1994 and that must be complied with by the member of the senate.<sup>15</sup>

#### 11.2 Public Sector Ethics Act 1994 (Qld) (Ethics Act)

- (a) The Ethics Act relevantly:
- (i) obliges the chief executive officer of a public sector entity to ensure that a code of conduct is prepared for the entity<sup>16</sup>;
  - (ii) defines a public sector entity to include a university<sup>17</sup>;
  - (iii) requires that the code of conduct provide standards of conduct that are consistent with certain ethics principles and values and that these apply to the public sector entity and public officials;
  - (iv) specifies the ethics principles and values to include:
    - a commitment to ethical standards including integrity and impartiality;
    - an undertaking that any conflict of interest issue will be resolved or appropriately managed in favour of the public interest;
    - a commitment to honest and fair engagement with the community; and

<sup>13</sup> Section 26A.

<sup>14</sup> The section also provides for removal if the Vice-Chancellor has not complied with section 26A(2). Although poorly drafted, later provisions make clear that "removal" means removal from the office of Vice-Chancellor and not just from the senate itself.

<sup>15</sup> Schedule 2 Dictionary.

<sup>16</sup> Section 15.

<sup>17</sup> Schedule Dictionary.

- a commitment to the exercise of proper diligence, care and attention.<sup>18</sup>
  - (v) defines public officials of a public sector entity to include an officer or employee of the entity<sup>19</sup>;
  - (vi) expressly obliges public officials of a public sector entity to comply with the standards of conduct in the entity's code of conduct<sup>20</sup>;
  - (vii) provides (relevantly) that the Senate of the University may approve a code of conduct prepared under the Act if certain pre-requisites regarding consultation in relation to the code are satisfied<sup>21</sup>; and
  - (viii) imposes various obligations on the chief executive of a public sector entity to publish, educate staff and manage the application of an approved code of conduct<sup>22</sup>.
- (b) The Ethics Act also provides that it is the intention of Parliament that disciplinary action for a contravention of a code of conduct by a public official should be dealt with (relevantly to this case), in accordance with the disciplinary processes of the University.<sup>23</sup>
- (c) In the context of the matters under investigation, the relevant obligation under the Ethics Act is the obligation for public officials (which as stated above would include the University's employees) to comply with the University's Code of Conduct.

### 11.3 The University's Code of Conduct

- (a) In apparent compliance with the obligations and provisions of the Ethics Act the Senate approved a Code of Conduct as policy number 1.50.1.<sup>24</sup> It purports to apply to all academic and general staff of the University.<sup>25</sup>
- (b) The Code of Conduct has a number of provisions relevant to the matters under investigation. These include:
  - (i) significant departures from the Code may amount to misconduct<sup>26</sup>;

<sup>18</sup> Sections 6 and 9.

<sup>19</sup> Schedule Dictionary.

<sup>20</sup> Section 18.

<sup>21</sup> Section 17.

<sup>22</sup> Sections 20, 21 and 22.

<sup>23</sup> Section 24.

<sup>24</sup> We have assumed for the purpose of this report that the Code of Conduct (Code) appearing on the University's website is current (despite the requirement that it be reviewed in 2008 and there being no record of it having been reviewed). We have also assumed that the Code was approved in accordance with the requirements in the Ethics Act.

<sup>25</sup> Clause 1.1.

<sup>26</sup> Clause 2.9.

- (ii) the Code requires integrity in decision making and expressly requires that staff:
  - "conduct themselves with honesty, fairness and propriety"<sup>27</sup> (**Integrity Requirements**); and
  - "avoid conflicts between their private interests and University responsibilities and should avoid situations where there is a reasonable basis for the perception of such a conflict"<sup>28</sup> (**Conflicts Requirement**).
- (iii) the Code provides as an example of a conflict of interest a situation "where a staff member makes or participates in decisions affecting another person with whom the staff member has a personal relationship"<sup>29</sup> ;
- (iv) the Code requires diligence (**Diligence Requirements**) in the performance of duties and expressly requires that staff:
  - "carry out their duties in a professional, responsible and conscientious manner, and to be accountable for their official conduct and decisions"<sup>30</sup>;
  - "carry out official decisions and policies faithfully and impartially"<sup>31</sup>; and
  - "exercise due care in undertaking their activities"<sup>32</sup>.

**11.4** Application of the Code to the common ground accounts

- (a) The information gathered in the investigation supports the following possible conclusions:
  - (i) In making the call to the Dean in which he raised his daughter's application for entry into the MBBS Program in the context of a discussion about UMAT scores and having regard to his position as the chief executive officer of the University, **the Vice-Chancellor** may have acted:
    - in breach of the Integrity Requirements by failing to act with propriety; and
    - in breach of the Conflicts Requirement by failing to avoid a conflict of interest or at least the perception of a conflict of interest;
  - (ii) **The Senior Deputy Vice Chancellor** in making the decision to force an offer to ██████ Greenfield may have acted:

<sup>27</sup> Clause 5.2.1.

<sup>28</sup> Clause 5.2.1.

<sup>29</sup> Clause 5.3.1.

<sup>30</sup> Section 6.2.

<sup>31</sup> Section 6.2.1.

<sup>32</sup> Section 6.4.1.

- in breach of the Integrity Requirements by failing to act with fairness and propriety;
- in breach of the Diligence Requirements by failing to act impartially and by failing to exercise due care in making the decision by:
  - not considering all those that might be adversely affected by the decision including other applicants for a position in the MBBS Program who had better scores than ██████ Greenfield;
  - not considering the potential reputational damage to the University or the impact on the proper administration of admissions into the 2011 MBBS Program;
  - not making any inquiry regarding ██████ Greenfield's score relative to the scores of other applicants for positions in the MBBS Program; and
  - forcing an offer without knowing the power under which such an offer was being made;

(iii) **The Dean** may have acted in breach of the Integrity Requirements by **failing** to act with propriety by participating in a process which led to the making a forced offer.

(b) We have also considered whether Acting Academic Registrar could be said to have breached the Integrity Requirements by acting on the instructions to implement the forced offer to ██████ Greenfield. We note that Ms Bowen challenged the decision when it was communicated to her and insisted on its review by the Dean and the Acting Vice-Chancellor before implementation. We also note that this response by her is consistent with the requirements of clause 2.12 of the Code of Conduct in that she consulted with a supervisor regarding her concerns before being told to proceed. In the circumstances we are satisfied that Ms Bowen did not act in breach of the Code and a finding to that effect is open.

#### 11.5 Fiduciary obligations and the employment relationship

- (a) As the University is likely to be<sup>33</sup> an exempt public authority under the *Corporations Act 2001* (Cth), the duties that are imposed on directors and officers under that legislation do not apply to the Vice-Chancellor or the SDVC.
- (b) However, it is well recognised that, in the absence of a contrary express intention in the contract of employment, persons in senior

<sup>33</sup> The definitions in the *Corporations Act* leave open the question and there is scant public or judicial commentary on the meaning of the phrase. However, the better view in our opinion is that the University would be an exempt public authority. If we are wrong about this it would simply mean that the VC and SDVC would be subject to the duties we say apply to them in any event albeit, they would apply under the *Corporations Act* which enlivens other potential consequences if the duties are found to have been breached.

management of an organisation such as a CEO, would owe fiduciary duties similar to those specified in the Corporations Act including:

- (i) a duty to avoid conflicts of interest;
  - (ii) a duty to exercise care and diligence in the performance of their role;
  - (iii) a duty of honesty in the performance of their role<sup>34</sup>;
  - (iv) a duty not to favour their own interests or the interests of someone else over the interests of their employer; and
  - (v) to act in the best interests of the employer.<sup>35</sup>
- (c) In light of legislation such as the Ethics Act it is also our view that in the modern era there is an overarching duty in public administration for public officer holders like the VC and AVC is to always act with integrity. This involves the responsible use of powers for proper purposes, reporting improper conduct, avoiding situations of conflict, obedience to University rules giving practical expression to its core values protecting its reputation and being mindful of its standing within the community.
- (d) We have not been provided with a copy of the VC's or the SDVC's contracts of employment. We would be surprised if they contained anything which would negate the duties described above. At some point it will be necessary to confirm this. We have proceeded on the assumption that our expectation is correct.
- (e) Having regard to the duties that are likely to apply to them, it seems to us that:
- (i) In making the call to the Dean regarding ██████████ and depending on the version of events finally accepted, the VC may have acted in breach of his duties to avoid conflicts of interest, not to favour his or his daughter's interests over those of the University and to act in the best interests of the University;
  - (ii) in making judgement calls about the forced offer to ██████████ Greenfield, the SDVC's arguably did not meet his duties to act with due care and diligence and in the interests of the University ;and
  - (iii) if the SDVC conferred a benefit on ██████████ knowing that she was not entitled to it or without having a reasonable basis for believing that she might be, in circumstances where the conferring of that benefit was at another person's

<sup>34</sup> In the absence of a special definition in the context of a particular case, conduct is regarded as dishonest if it offends or is repugnant to the standards applied by ordinary decent people without justification or excuse such as having a genuine and reasonable belief in a right to do so: *Peters v Queens* (1998) 198 CLR 493.

<sup>35</sup> *ASIC v Vines and Others* (2003)48 ACSR 322; *ASIC v MacDonald and Others (No11)* (2009)256 ALR 199; *Permanent Building Society (in liq) v Wheeler and Others* (1994) 14 ACSR 109; *Regal (Hastings) Ltd. v Gulliver* [1967] 2 AC 134; *Hospital Products Ltd v United State Surgical Corp* (1984) 156 CLR 41.1 .

expense, this would be in breach of the duty to act with honesty.

11.6 Crime and Misconduct Act 2001 (Qld)

(a) Conduct:

- (i) by a person that adversely affects or could adversely affect, directly or indirectly, the honest and impartial performance of functions or the exercise of powers of:
  - the University; or
  - of any person holding an appointment;
- (ii) by the holder of an appointment at the University that involves:
  - the exercise of powers in a way that is not honest or is not impartial;
  - a breach of the trust placed in that person as the holder of the appointment; or
  - a misuse of information,

may constitute official misconduct within the meaning of the Crime and Misconduct Act if (relevantly) it is of a nature that once proved, could constitute a disciplinary breach providing reasonable grounds for terminating the person's services if the person is or was the holder of an appointment.<sup>36</sup> (Emphasis added).

- (b) The Act places an obligation on the chief executive officer of the University to report suspected official misconduct to the Crime and Misconduct Commission (CMC)<sup>37</sup>. For reasons that are not apparent, there is no legal duty on others in the university to do so although the Act expressly contemplates that such other persons may do so.
- (c) If one accepts that the "common ground" accounts referred to in section 10.17 of this report is enough to lead to possible termination of employment for the VC, the SDVC or the Dean then the conduct could also amount to official misconduct within the meaning of the Act.
- (d) If that is the case, the CMC has the right but not the obligation to investigate the matter if it is reported to the CMC and may, depending on the findings it makes and the seriousness of the alleged conduct, refer the matter to the director of public prosecutions if a crime is involved (this does not appear relevant here) or refer the matter back to the University for monitored investigation or disciplinary action to be taken.

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<sup>36</sup> Sections 14 and 15.

<sup>37</sup> Section 38.



- (e) It is likely that the CMC would expect to be informed of a case like that under investigation. However, as noted above, there is no legal obligation on anyone other than the CEO to do so.

**12 Recommendations**

- 12.1** The statements of witnesses in our investigation were provided voluntarily and none of the witnesses were subject to cross-examination.
- 12.2** We are not in a position, nor have we been asked, to make findings (adverse or otherwise) in the context of the scope and purpose of our investigation.
- 12.3** However, our investigation strongly indicates that the decision made to force an offer to ██████ Greenfield was irregular and unjustified. The decision opens the spectre of perceived if not actual conflicts of interest and a lack of impartiality. The consequences for the University's reputation are potentially serious and leave it open to potential legal action.
- 12.4** In the circumstances there are a number of alternative approaches available to further investigate and determine, what, if any, disciplinary or other consequences should apply in relation to the VC and the SDVC arising from the forced offer to ██████ Greenfield.
- Serious Misconduct*
- 12.5** One course is for the Chancellor, in consultation with the sub-committee, to consider requiring each of the VC and the SDVC to show cause why their conduct should not be referred to the Senate for the commencement of a disciplinary investigation and potential action under the University's serious misconduct policy and procedures— Policy 5.70.10. The Senate would be acting in its capacity as supervisor of the VC/SDVC for the purposes of the Policy.
- 12.6** The basis of the potential serious misconduct in any such "show cause" process would be the potential breaches of duties and laws referred to in relevant parts of section 11 of this report, to the extent that those breaches fall within the definition of serious misconduct.
- Fiduciary duties and breach of contract*
- 12.7** An alternative course would be for the Chancellor, in consultation with the sub-committee, to consider requiring each of the VC and the SDVC to show cause why their conduct (as described in relevant parts of section 11 of this report) does not constitute a breach of their respective fiduciary obligations as senior executives and of their contracts of employment.
- 12.8** If this course is followed and the VC or SDVC, as applicable, is unable to "show cause", the Senate would need to devise a fair and reasonable process, with due regard to procedural fairness requirements, to investigate the matter and to allow for submissions in mitigation. Before embarking on this course further advice would be needed to see whether their respective contracts of employment address or prescribe the type of investigation and procedures that might apply in such cases and whether there is any basis on which any of the relevant duties might be excluded or restricted.

*Public Sector Ethics Act and Code of Conduct*

- 12.9** A third alternative course would be for the Chancellor, in consultation with the sub-committee, to consider requiring each of the VC and the SDVC to show cause why their conduct does not constitute a breach of the obligation in section 18 of the Public Sector Service Act 1994 which obliges them as public officials to comply with the University's approved Code of Conduct.
- 12.10** Again, if this course is to be followed further advice should be obtained on the appropriate process for investigation in the event that the VC or SDVC, as applicable, is not be able to "show cause". (While it is probable that the process to be followed will be the process for misconduct or serious misconduct under the University's policies, this needs to be further considered).

*Section 35D removal*

- 12.11** Finally, in the case of the VC, an alternative course would be for the Chancellor, in consultation with the sub-committee, to consider requiring the VC to show cause why his conduct should not be further investigated and if thought appropriate after that investigation, submitted to the process for removal from office by a vote of the Senate in accordance with section 35D of the UQ Act, this on the basis that the conduct, if found to have been engaged in, would be non-compliant with a 'conduct obligation', a term defined by reference to obligations under the University's Code of Conduct.

*Dean*

- 12.12** The Dean was a reluctant but key participant. His conduct may constitute a contravention of the University's Code of Conduct requirements for the reasons explained in paragraph 11.4(a)(iii) of this report.
- 12.13** On that basis, consideration should be given to asking the Dean to show cause why his conduct should not be referred to the Senate for the commencement of a disciplinary investigation and potential action under the University's misconduct policy and procedures— Policy 5.70.10. Based on the conduct in question, we have suggested that misconduct rather than serious misconduct would be the more appropriate route.

*Acting Academic Registrar*

- 12.14** For the reasons set out in paragraph 11.4(b) we do not consider on the accounts before us that Ms Bowen acted in contravention of the University's Code of Conduct and indeed appears to have acted consistently with it by immediately raising her concerns and seeking to have the decision to make a forced offer to ██████ Greenfield reversed.

*██████ Greenfield*

- 12.15** Our investigation did not reveal any suggestion that ██████ Greenfield was involved or even aware of the circumstances in which she was made a forced offer. There can be no blame fairly attributed to her. In light of this and the arguably unjust and harsh consequences for her should she be excluded from the MBBS Program, we make no recommendations in that regard.

*The December Group and the February Group*

- 12.16** Part of our investigation was to determine whether irregularities existed in relation to the forced offers made to the Scholarship recipients in December and February.
- 12.17** Based on our interviews with witnesses and their account of the rationale for those forced offers we are satisfied that they were not motivated by an improper motive. Their true motive was to achieve a key objective of the Scholarships program, namely to attract the best and brightest.
- 12.18** The criticism that can be made of those involved in making these offers is that in the case of Professor Keniger he did not know the power he was acting under to make the offers [REDACTED]
- 12.19** In the time available to prepare this report we have not been able to fully consider and investigate whether any of the decision makers (and in particular the SDVC in his capacity as AVC) have an inherent power to make forced offers. They may well do given the apparently long-standing practice in other circumstances and the seniority of their positions.
- 12.20** In any case, as you will see, we have recommended below some measures to ensure that appropriate processes and powers are applied in future to address any concerns in this regard. For present purposes, we make no recommendations or findings in relation to the December Group and February Group of offers.

*Forced offer and admission rule recommendations*

- 12.21** As part of our investigation we were asked to make recommendations for any changes we thought appropriate to the admission rules, particularly in regard to the making of forced offers. Our recommendations in this regard are as follows:
- (a) In recognition of the need to balance the flexibility afforded by the ability to make forced offers with the need for a fair and transparent process for the making of such offers, we recommend that a properly defined process be developed and published as part of the University's Admission Rules.
  - (b) If "exceptional circumstances" are to remain as the cornerstone for making such recommendations, a non-exhaustive list of examples to guide decision makers should be developed and published.
  - (c) The ability to make forced offers should apply to all courses and programs of study where there is a potential need to make such offers. The current clause 4.9 procedure does not apply to the MBBS Program.
  - (d) So as to get more consistency in decision making in relation to forced offers, they should ideally be dealt with at the same time or in relevant groupings rather than on an ad hoc basis.

- (e) Minutes of the reasons for decisions to make or not to make a forced offer should be kept. If a decision is challenged, reasons are potentially required to be given.
- (f) Given the strategic importance of the Scholarships program and its objectives - to attract the best and brightest – we recommend that the University formally amends its Admission Rules to expressly allow for forced offers to be made to Scholarship recipients (or at least for certain classes of Scholarship) where the applicants do not meet the requirements for their first preference at the University.
- (g) The decision to make forced offers should not rest with an individual office holder. The decision to make such offers should be made by a committee established for that purpose.
- (h) In relation to the MBBS Program, consideration should be given to replacing the UMAT scores as a condition of eligibility for admission. This recommendation is based on the strongly held view of the Dean as to the value (or more particularly lack of value) of the UMAT scores as a predictor of suitability and the fact that other competing medical schools apparently do not use the UMAT scores as an eligibility requirement.

**Eddie Scuderi**  
Partner  
Corrs Chambers Westgarth

**The Honourable Tim Carmody SC**

**Dated:** 23 September 2011

## Appendix 1

Chain of emails attached

**Subject:** Re: have left messages - but number again is [REDACTED]  
**Date:** Friday, 24 December 2010 9:08:27 AM AEST  
**From:** Senior Deputy Vice-Chancellor  
**To:** David Wilkinson, Margaret Fairman

Dear David and Marg,

I confirm that this matter was discussed with me and that I have approved the decision based on academic merit as previously determined for the earlier recognition of 5 applicants with an equivalent profile. Future applicants with a similar profile will also be considered in terms of academic merit as set out by David.

For the record, this matter has not been discussed by me with the Vice-Chancellor and my decision with respect to all six cases has been taken in my role as Acting Vice-Chancellor.

My regards,

My regards,

Michael.

**Professor Michael Keniger**  
Senior Deputy Vice-Chancellor  
The University of Queensland,  
St. Lucia, Australia, Q. 4072  
Telephone [REDACTED]

On 23/12/10 5:52 PM, "David Wilkinson" [REDACTED] wrote:

Dear Marg

Further to our conversation I write to confirm that following a conversation with the SDVC, [REDACTED] Greenfield is to be offered a place in the MBBS provisional entry stream. She has an OP1 but has just missed the UMAT in 1 sub-section. This decision is made on academic merit and makes note of the precedent from yesterday when a similar recognition was made for 5 students. We will of course consider future similar issues on merit.

I note, for the avoidance of any doubt, that the VC has not been involved in making this decision

Regards, David  
**Professor David Wilkinson**  
BSc(H) MBChB MSc MD PhD DSc FRCP FRACGP FAFPHM  
Dean of Medicine & Head, School of Medicine  
The University of Queensland, Brisbane, QLD, AUSTRALIA  
Tel + [REDACTED]

**From:** Margaret Fairman [REDACTED]  
**Date:** Thu, 23 Dec 2010 17:20:21 +1000  
**To:** David Wilkinson [REDACTED]  
**Subject:** have left messages - but number again is [REDACTED]

**From:** Margaret Fairman

**Sent:** Thursday, 23 December 2010 5:19 PM  
**To:** David Wilkinson  
**Subject:** RE: <no subject>

Dear David,

Have tried to ring twice. Please ring me on the mobile when you are free.

Regards  
Marg Fairman

**From:** David Wilkinson  
**Sent:** Thursday, 23 December 2010 5:01 PM  
**To:** Margaret Fairman  
**Subject:** <no subject>

Marg

Can you please call me urgently on [REDACTED]

Thanks, David

**Professor David Wilkinson**

BSc(H) MBChB MSc MD PhD DSc FRCP FRACGP FAFPHM  
Dean of Medicine & Head, School of Medicine  
The University of Queensland, Brisbane, QLD, AUSTRALIA  
Tel + [REDACTED]

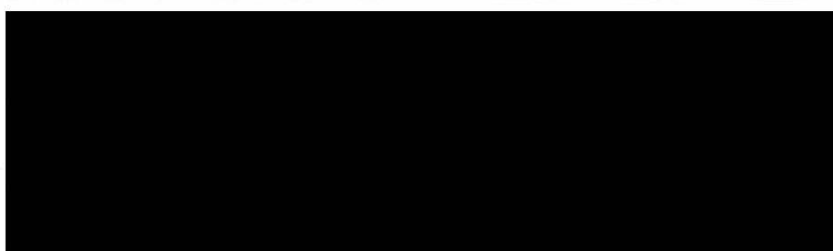
## APPENDIX 2: Minutes of Senate Meeting on 6 October 2011

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The University of Queensland

Minutes of a Closed Meeting of Senate held on 6 October 2011 at 5.30 pm in  
The Senate Room, Level 5, Brian Wilson Chancellery, St Lucia Campus

Confidential



### 1. Investigation Report – Admission Irregularity

The meeting was convened to discuss the Investigation Report – Admission Irregularity (the Report) commissioned by the Chancellor following concerns raised about a student being improperly offered a place in the MBBS Program.

The Chancellor read a statement concerning actions taken to date and the proposed way ahead. Members were advised that the Chancellor had referred the admission irregularity to the Crime and Misconduct Commission (CMC).

Following the statement there was discussions concerning:

- Some clarification of detail in the report.
- The reputation of UQ.
- Concern to protect staff who brought the matter forward.
- Privacy issues for individuals.
- Impact on the individuals and families.
- The considerable contribution by the VC and SDVC over decades, but the need to maintain ethical standards.
- The danger of the issue being leaked to the media versus the impact of making a public announcement now.
- That any public inquiry would at best only achieve the resignations that had been agreed.
- The legal issues of withdrawing an offer that had been accepted in good faith and no evidence of wrong-doing by the student.
- The requirement for an immediate review of the relevant procedures to ensure the situation could not happen again.
- The need to ensure that the culture, ethical framework, accountability and checks and balances were in place. A separate Senate committee would address these issues in 2012.
- The filling of the two positions, both temporarily and permanently.



It was noted that the Chancellor and the sub-committee had:

- Acted decisively to have an independent inquiry, and
- On receipt of the inquiry report had obtained the VC and SDVC resignations.
- Advised the CMC and the CMC had endorsed the proposed course of action.
- Called the Closed Meeting of Senate to update members and seek agreement to accepting the resignations.
- All actions reflected necessary speed, decisiveness and seriousness.

Members acknowledged the outstanding contributions the Vice-Chancellor and the Senior Deputy Vice-Chancellor had made to the University and the broader community. However, in the interests of accountability and integrity in the admissions process, members saw no option but to accept the resignations.

To facilitate the University's transition to a new Vice-Chancellor, members agreed to stagger the departure of the Vice-Chancellor and the Senior Deputy Vice-Chancellor as follows:-

- The Vice-Chancellor – 1 July 2012
- The Senior Deputy Vice-Chancellor – 31 December 2011

Senate unanimously resolved –

To accept the resignation of the Vice-Chancellor and noted the resignation of the Senior Deputy Vice-Chancellor.

Meeting concluded at 7.50 pm

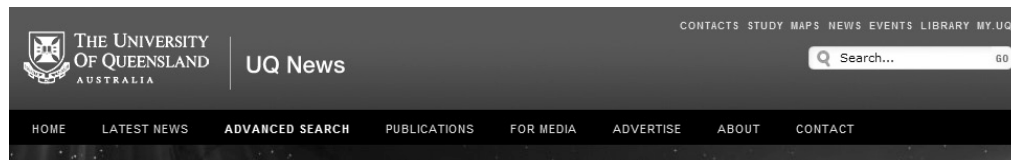
J.D. Story  
Chancellor

M.R. McNam AO  
University Secretary

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## APPENDIX 3: Statements from the University — 7, 9 and 11 November 2011

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Published: 07 November 2011

### Message to UQ community from Chancellor

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I am writing to advise what actions the University has taken in relation to an irregularity in the admission process of a UQ student.

The matter was brought to my attention in September 2011 and I immediately initiated an independent external investigation by a Senior Counsel.

The investigation confirmed an irregularity had occurred in the admission process for a student, but there was no finding of misconduct with respect to any individual. Further, the investigation found no suggestions of wrong-doing on the part of the student, whose identity is protected under privacy provisions.

Professor Greenfield, as Vice-Chancellor, and Professor Keniger, as Acting Vice-Chancellor at the time, each accepted, by virtue of their positions, that they had ultimate responsibility and accountability for the irregularity and each offered his resignation.

The 22-member University Senate, comprising independent members of the community, plus staff, students and alumni representatives, accepted their resignations.

I am deeply saddened by this matter, which should not have occurred, and I acknowledge that it has caused concern to our UQ community. We have taken all necessary steps to preserve the integrity of the University's practices and are committed to providing fair and just opportunities to students and staff alike.

In addition, the University has undertaken a thorough and extensive review of student admission processes across the University. As a result of this review, some changes to tighten relevant rules and processes have been recommended and will go to the Senate's Legislative Committee before being considered by the December 8 Senate meeting for approval.

I wish to stress that nothing in this matter should be seen as detracting from the huge and enduring contributions that Professor Greenfield and Professor Keniger have made to the University and the broader community. They have each dedicated more than 30 years of their careers as teachers, researchers and administrators at UQ, and have each made outstanding

contributions to their communities and professions.

To facilitate an orderly transition in the University's best interests, Professor Greenfield will step down in mid-2012 to enable a new Vice-Chancellor to be recruited. Professor Keniger will step down as Senior Deputy Vice-Chancellor in December 2011. As part of this process, the University has commenced an international search for a new Vice-Chancellor.

The Deputy Vice-Chancellor (Academic), Professor Deborah Terry, will take over as acting Senior Deputy Vice-Chancellor from 1 January 2012. Please be reassured that it is very much business as usual.

It has been a full year for the University, starting with the Brisbane floods and continuing with tremendous international successes in international rankings and outstanding staff, student and alumni achievements.

I would like to reassure you that The University of Queensland remains in capable hands and we will continue to strive for the highest standards for which we are internationally renowned.

The University of Queensland is a robust institution with 101 years history and outstanding strength and depth in its staff, students and alumni. I have every confidence that with your support, UQ's performance and reputation will continue to grow.

Yours sincerely,  
John Story  
Chancellor of The University of Queensland

Published: 09 November 2011

## University of Queensland reaffirms commitment to integrity of its academic system

The University of Queensland's (UQ) governing body, the Senate, today expressed regret at the admission irregularity that led to the resignation of the University's Vice-Chancellor and Senior Deputy Vice-Chancellor, but reaffirmed its commitment to the integrity of its academic system.

Speaking on behalf of the Senate, Chancellor Mr John Story said the credibility of the University's student admissions process was integral to its reputation and reinforced the University's commitment to the highest standards of corporate governance.

"Future, current and past UQ students and their employers can be confident in the robustness and integrity of the University's practices and our commitment to ensuring fair and just opportunities are provided to students and staff alike," he said.

Mr Story said he had initiated an independent investigation in September 2011 immediately after concerns were raised about a student being improperly offered a place in one of the University's programs.

The investigation confirmed an irregularity had occurred in the admission process for a student, but found no suggestion of wrongdoing on the student's part. The student's identity is protected under the Information Privacy Act 2009 and without their permission they cannot be named. The student achieved the appropriate OP score, but did not meet the additional criteria to warrant entry into the program. Under an admission rule that did not apply in the circumstances, an offer of an additional place was made. The entry did not disadvantage any other eligible students.

The Honourable Tim Carmody SC, was commissioned to undertake the investigation to assist the Senate in reviewing the matter.

The report to the Senate is bound by legal privilege and contains confidential information about the student and those asked to participate in the investigation. Interviewees agreed to participate confidentially in the knowledge that the findings would be made available only to the Senate.

Given these circumstances, the University cannot release the investigation report, Mr Story said.

As a further probity safeguard, the University voluntarily provided a copy of the investigation report to the Crime and Misconduct Commission (CMC). The CMC confirmed its acceptance of the University's process.

The University also took immediate steps to review relevant procedures to ensure the situation could not happen again, including a thorough and extensive review of student admission processes across its campuses. As a result of this review, changes to tighten relevant rules and processes have been recommended and will go to the Senate's Legislative Committee before being considered by the 8 December 2011 Senate meeting.

Accepting their responsibility and accountability for the matter, Vice-Chancellor Professor Paul Greenfield and Senior Deputy Vice-Chancellor Professor Michael Keniger offered their resignations to the University Senate. In the interests of maintaining the highest standards of accountability and the integrity of the student admissions process, the Senate accepted their resignations.

Mr Story said the Senate wished to acknowledge the outstanding contributions both men had made to the University and the broader community.

“Professor Greenfield and Professor Keniger have dedicated more than 30 years of their careers as teachers, researchers and administrators at UQ, and have each made outstanding contributions to their communities and professions,” he said.

Mr Story said the Senate was committed to maintaining the University's outstanding reputation, which had been built on the highest levels of governance, ethics and academic rigour.

“Any matter that questions the integrity of the University's processes is regrettable, but the events of the past few days demonstrate that the University will not hesitate to act to uphold these standards – regardless of whom is involved,” he said.

UQ is a large and complex organisation and to enable an orderly transition and allow the University time to conduct an international search for replacements, the Senate considered it to be in the best interests of the University that the Professors' departures will be staggered – Professor Keniger will stand down on 31 December 2011 and Professor Greenfield will stand down on 1 July 2012.

The Deputy Vice-Chancellor (Academic), Professor Deborah Terry, will take over as acting Senior Deputy Vice-Chancellor from 1 January 2012.

**Media inquiries: Kathy Grube (0418 524 297)**

Published: 11 November 2011

## Full facts reported promptly and voluntarily

The University of Queensland moved quickly to ensure an appropriate level of external scrutiny in relation to an admission irregularity by voluntarily providing the investigation report to the Crime and Misconduct Commission (CMC).

The CMC confirmed its acceptance of the University's process in relation to the matter that led to the resignations of the University's Vice-Chancellor and Senior Deputy Vice-Chancellor.

The University of Queensland Executive Director (Operations) and University Secretary, Mr Maurie McNarn, said the University was committed to the highest levels of probity in relation to this matter as evidenced by the CMC's acceptance of its processes.

“We appreciate there is a view that, in addition to reporting to the CMC, the University should have reported the matter more publicly. This view, however, overlooks a number of facts.

“One is that there were, and still are, serious issues of student privacy associated with the matter. Another is that Professors Greenfield and Keniger accepted responsibility for the matter and offered their resignations.

“The action we took sought to balance the privacy of the student and those asked to participate in the investigation with the broader public interest.

“This was and still is a difficult balance to strike.

“The University has found itself in extraordinary circumstances in recent weeks but has demonstrated that it will not hesitate to act – regardless of who is involved – in protecting the integrity of its academic standards.”

**Media: Kathy Grube 0418 524 297, [k.grube@uq.edu.au](mailto:k.grube@uq.edu.au)**



CRIME AND  
MISCONDUCT  
COMMISSION



QUEENSLAND

## **Crime and Misconduct Commission**

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