

Our Ref: JT 10/380

23 August 2010

Ms T Hamilton  
Deputy Commissioner  
Independent Commission Against Corruption  
Level 21, 133 Castlereagh Street  
SYDNEY NSW 2000

By Facsimile: (02) 9264 5364

Dear Ms Hamilton

Your ref: E09/2168 & E09/1399

I refer to your letter dated 9 March 2010 referring an allegation of possible corrupt conduct to the University for investigation under Section 53 of the ICAC Act, 1988.

As requested, an independent Investigator was appointed by the University, namely, Ms Linda Petterson of IAB Services (**the Investigator**). The University has received the Investigator's report and encloses the same. The report comprehensively sets out the allegations investigated, the scope of her investigation and her summary and conclusions. The depth of the investigation, which has taken a period of approximately 4 months, is revealed in the accompanying four volumes of the Investigator's report.

### **Allegations**

The allegations investigated were:

Allegation 1 – Recruitment and appointments

Allegation 2 – Inappropriate benefits paid on a favourable basis and misuse of allowances.

Allegation 3 – Detrimental action, victimisation and bullying. Failure to investigate or to take action or inadequate investigation/action thereof.

### **Summary**

1. The University notes that the Investigator did not find evidence of corruption in respect of any of the allegations.
2. The University regards the allegations of bullying as requiring further consideration.
3. The University also observes that a number of the allegations made by the complainants in their letter to the NSW Ombudsman dated 25 November 2009 were not substantiated by the Investigator. That is, those allegations are false. The Investigator

has failed to draw attention to the fact that allegations have been made which are false. As examples, I draw your attention to the following allegations:

- Dr Gerstl and Dr Helmke claimed an improper relationship and undue influence by Professor Anderson and the Senior Executive of Cochlear Limited. It is disappointing that the Investigator has not highlighted that there is no evidence to support Dr Gerstl's allegations that Professor Anderson has been given favourable treatment "because he introduced Cochlear to the University". As I stated to the Investigator, the opportunity to have Cochlear relocate to the University campus was introduced by Mr Peter Wills, at that time was the Executive Chairman of CRI.
  - Dr Gerstl and Dr Helmke claimed Professor Anderson may be on the payroll of Cochlear Limited. There is no evidence this is the case.
  - Dr Gerstl and Dr Helmke claimed that Professor Anderson made false accusations against Ms Sandra Bilson in order to employ Ms Rhonda Jenkins. There is no evidence of this.
  - Dr Gerstl and Dr Helmke claimed an "investigation" was conducted by Ms Alison Crook and implied that it was improperly done. Ms Crook conducted a review of PICT in respect to its place in the University's academic restructure. A number of recommendations were adopted by the University.
  - Dr Gerstl and Dr Helmke claimed the University's senior management "is in an illegal manner a beneficiary of Mr Anderson's role in securing deals for the university hospital". The Investigator found no evidence of illegality or corruption, and has failed to point out that Professor Anderson has had no role in the Macquarie University Hospital.
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These allegations were given as reasons by the complainants that senior management of the University had not investigated their complaints. For a balanced report, I suggest the Investigator should have referred to these allegations being false.

### **Recommendations**

The Investigator has made 19 recommendations which, in her opinion, address perceived system weaknesses. The University is considering the Investigator's recommendations and our response is attached. The Investigator has highlighted a number of points in relation to:

- Recruitment processes
- Alignment of the academic structure and workloads with University policies and practices
- Expenditure matters

Certain of these anomalies, such as the recruitment processes, the academic structure and alignment of PICT with the University had been identified in 2009 and remedied. I note that the Investigator has failed to record that a number of her recommendations including the recruitment processes, location of PICT within the Faculty of Arts, with the Director reporting to the Executive Dean, had already been undertaken by the University prior to this matter being referred by ICAC for investigation. PICT is already included in the University's audit program in the same manner as other academic areas.

**Scope of Investigation**

The Investigator appears to have gone beyond the scope of ICAC's reference in her investigation in some instances. An example of this is her suggestion that allegations of Dr Gregory Pemberton, now a former member of Macquarie University staff, be investigated.

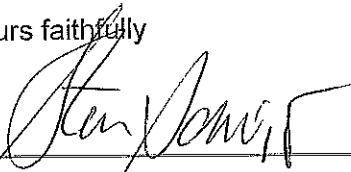
On 19 July 2010 a Misconduct Investigation Committee (chaired by former AIRC Commissioner Janice Macleay) was due to consider serious misconduct allegations in respect of Dr Pemberton.

Dr Pemberton had been provided with serious misconduct allegations which centred on alleged failings in his supervisory responsibility of a former doctoral student. As a result of the alleged circumstances, the doctoral student had his candidature terminated. Dr Pemberton resigned his employment on the afternoon of 16 July 2010.

**Conclusion**

The University will further report the action it has taken to ICAC in relation to the remainder of the recommendations.

Yours faithfully



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Steven Schwartz  
Vice-Chancellor

## ANNEXURE TO LETTER ON VC LETTERHEAD

### RECOMMENDATIONS: REMEDYING SYSTEM WEAKNESSES

The ICAC Guidelines for Section 54 Reports include a section on identification of system weaknesses.

The following recommendations have been made with respect to system weaknesses in the structures, processes and policies and PICT and in the broader University, with a view to enhancing corruption resistance in the areas that were the subject of this investigation.

### CENTRE FOR POLICING, INTELLIGENCE AND COUNTER TERRORISM

1. A management review of PICT should be undertaken in order to identify a strategic direction for PICT with regard to its mission for the next five years, or other period deemed appropriate and in line with current practice at the University. This should include:
  - evaluation of the achievements of PICT to date and areas where there has been little or no success, for example, engagement with outside partners
  - consideration of whether this next period is one of consolidation, or whether it should also include continued attempts to expand PICT's course offerings
  - whether the position of Director should become full-time to deal with the greater workload that has arisen from the expansion of PICT since its origins
  - whether the interests of staff, students and PICT would be better served by being located as a School/Department within the Faculty of Arts, with the Director reporting to the Dean, as for other Schools/Departments

*University comment:*

*Each Department of the University is reviewed every five years as a matter of course. The reviews are part of the University's quality assurance framework. A review of PICT will be conducted in 2011.*

*The University notes that Ms Alison Crook has conducted a review of the location of PICT within the University in 2009 as part of a broader review of academic structure within the University. The recommendations in that review have been implemented. As a result of those recommendations, PICT was located within the Faculty of Arts and is equal to a Department within the Faculty. The Director reports directly to the Executive Dean of the Faculty.*

2. Out of this strategic direction, clear responsibilities for academic and for administrative duties should be delineated and incorporated into new job descriptions which should undergo formal job evaluation. These positions should be referenced against other similar positions within MU.

*University comment:*

*The University will review current work task allocation. Any changes in job roles will be included in new job descriptions, and if job descriptions change, they will be assessed using the standard University Job evaluation benchmarks.*

3. A staffing profile should be developed which will guide the recruitment and selection of staff for that period.

*University comment:*

*The University will develop a staffing profile for PICT.*

4. A mix of tenures should be introduced so that PICT and its students gain the benefit of staffing stability and ongoing expertise in its operations.

*University comment:*

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*The staffing profile mentioned in 4. above will have a mixture of tenures. We note that the profile will be a guide to recruitment, not a prescription. One of the requirements for students in PICT, in a rapidly developing field, is to work with practitioners who have recent experience, and many of these practitioners are only available on short tenure as they can only leave their fields for short periods before their knowledge is no longer current.*

5. The current administrative staffing of PICT should be reviewed so that it more closely resembles the administrative structures of similar academic units at the University.

*University comment:*

*The University agrees and will review its administrative structures at the end of the year.*

6. In reviewing the staffing arrangements of PICT, particular attention should be paid to the position of Executive Manager, Business Development and Operations which currently includes a range of administrative and academic responsibilities that would seem to be at odds with other similar positions at the University and include a mix of skills that are unlikely to be found in one incumbent. This position should not be re-evaluated until it is re-configured in line with other similar positions at the University.

*University comment:*

*The review of the staffing arrangements will include a review of the position of Executive Manager, Business Development and Operations.*

7. All administrative staff positions eventuating from the review should be advertised.

*University comment:*

*If job changes result from the review in 5. above, the University will follow the procedures specified in the current Macquarie University Enterprise Agreement 2006-2009 and its recruitment policy. This means that if staff are displaced by organisational change, we have a commitment and obligation to explore redeployment for existing staff before advertising.*

8. Recruitment and selection of staff at PICT should be based on merit selection procedures as outlined in the University's *Recruitment and Selection* policy.

*University comment:*

*The University agrees.*

9. The University should make arrangements for all PICT staff, including senior management, to attend a mandatory course on the University's policies and procedures for dealing with complaints of Discrimination and Harassment, Grievance Procedures and Protected Disclosures.
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*University comment:*

*The University will ensure PICT staff receive training in the appropriate areas of compliance, Grievance Procedures and Protected Disclosures.*

10. The University should conduct a quality control/assessment/survey of student satisfaction with the courses and services provided by PICT. This survey should be conducted by an external body and focus on student satisfaction with courses and programs and with student administration. The results should be reported to the Dean of Arts and other senior management for review and follow up as necessary.

*University comment:*

*The University has a comprehensive program of student surveys of teaching quality and course experience questionnaires and student satisfaction. It also has a quality review program whereby all Faculties, Departments and Units are reviewed on rotation. The process of quality review and enhancement applies to all Departments. Reviews of Departments are conducted by a panel convened by a Chair external to the University. Reports do go to the Executive Dean of Arts, other senior management and are tabled at the Quality Enhancement Committee. Furthermore, Open Universities Australia which operate a number of PICT courses has its own systems for conducting student surveys.*

## HUMAN RESOURCES

11. The University's *Recruitment and Selection* policy should include procedures for advertising and calling for expressions of interest for short-term positions, so that the number of direct appointments can be minimised.

*University comment:*

*The University is currently reviewing its Recruitment and Selection policies and procedures and the process for on-boarding staff.*

12. A procedure should be developed for reviewing and investigating claims of victimisation, harassment, and other allegations of misconduct by staff who have resigned from their positions and have advised HR that these were factors leading to their resignations.

*University comment:*

*The University is reviewing its exit procedure, investigating an automated system for recording exit interviews, and progressing issues raised.*

13. A *Grievance Notification and Resolution* Policy should be developed. This policy should refer staff to the relevant provisions of the MU Enterprise Agreement and nominate a contact position within HR who can provide further advice on the application of those clauses to particular situations.

*University comment:*

*The Executive Director - Campus Experience is leading a team reviewing not only the Grievance Policy, but also the staffing structures and processes in place for the management of grievances. The initial review of the the policy has been completed and a draft has been sent to the Staff Consultative Committee as part of the staff consultation process on changes to staff policies.*

14. The material supplied by Greg Pemberton is of concern in that Dr Pemberton states he has been falsely accused of serious wrongdoing over a period of five years, after raising allegations of corruption and maladministration during the 1990's while employed in the Faculty of Arts, and then experiencing bullying at PICT in mid 2006 by Professor Anderson. In addition, Dr Pemberton raises issues relating to academic qualification and PICT. While Dr Pemberton has now resigned from the University, the matters he raises are of sufficient concern to warrant a further external investigation into those complaints, subject to his agreement to cooperate with an investigation.

*University comment:*

*Dr Pemberton's claims that he is being victimised for raising allegations of corruption and maladministration during the 1990's while employed in the Faculty of Arts are against the University as if the entity is a person. No member of the senior management of the University, with the exception of one DVC, has been employed at*

Macquarie for more than six years. This includes every Dean, Executive Dean, member of the Executive and the Vice Chancellor.

The accusations of serious wrong doing against Dr Pemberton in the last five years include grievances initiated by his students that University management was obliged to investigate.

While Dr Pemberton now claims he was bullied by Prof Anderson in 2006, he did not lodge a grievance, document these allegations or bring them to the University in a way they could be investigated and adressed.

Recently, Dr Greg Pemberton was provided with serious misconduct allegations which centred on alleged failings in his supervisory responsibility of a former doctoral student. As a result of the alleged circumstances, the doctoral student had his candidature terminated.

The Misconduct Investigation Committee (chaired by former AIRC Commissioner Janice Macleay) was due to consider the matter on 19 July 2010.

Dr Pemberton resigned his employment on the afternoon of 16 July 2010 before this final step in the University's misconduct process could be completed.

The University queries the utility of investigating events alleged to have occurred in the 1990's and in 2006 especially given the difficulty of investigating them with Dr.Pemberton after he has left the University while being investigated for misconduct .

However, the written allegations of 26 July 2010 and 27 July 2010 will be referred to the Executive Dean of the Faculty of Arts and the Director of Human Resources as a reference point should similar allegations be made in the future about the persons Dr Pemberton names. I am not aware of any allegations against these persons of current misconduct of the nature described by Dr Pemberton.

#### **CHIEF FINANCIAL OFFICER OR OTHER OFFICER RESPONSIBLE FOR RISK MANAGEMENT**

15. Ms Rhonda Jenkins should be required to reimburse the University for the cost of Cabcharges used for private purposes, as outlined in this report.

*University comment:*

*The University will put the matters alleged to Ms Rhonda Jenkins to provide her with an opportunity to respond, and, if it is not satisfied with her responses, will require her to reimburse the cost of the Cabcharges.*

16. A policy and guidelines should be drawn up with respect to conflicts of interest and their management at MU.

*University comment:*

*The University refers to its Code of Conduct which references conflicts of interest. Copy attached.*

17. An audit of PICT finances should be carried out by MU, unless PICT is already included in the University's audit program.

*University comment:*

*PICT is part of the Faculty of Arts and is already included in the University's audit program.*

18. The issue of payment for business class travel for Professor Anderson should be resolved, by either amending the *Travel* policy to include the Director of PICT as being eligible for business class travel or by ceasing the practice of approving business class travel contrary to the *Travel* policy.

*University comment:*

*The University's Travel policy applies to its staff members. Professor Anderson is contracted as a consultant to the University for the provision of his services to PICT. This contract, which expires on 31 December 2011, specifies that Professor Anderson can travel business class for international travel.*

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#### **APOLOGY FROM THE UNIVERSITY TO THE COMPLAINANTS**

19. The University should consider providing an apology to the complainants in accordance with the NSW Ombudsman Guidelines for the apparent failure in responding to their workplace grievances and taking appropriate action.

*University comment:*

*Will review the grievances and consider providing an apology to the complainants in accordance with the NSW Ombudsman Guidelines.*

# Code of Conduct

At Macquarie University, our values determine how we behave toward our students, our staff and our community. We are:

- Ethical
- Enquiring
- Creative
- Inclusive
- Agile
- Excellent

These values are what Macquarie University stands for. We will bring these values to life in everything we do.

This Code of Conduct confirms that commitment and outlines the expectations that can be made of all staff of Macquarie University. As a member of the Macquarie University community, all staff are expected to perform their duties and conduct the academic and business activities of the University with efficiency, fairness, impartiality, integrity, honesty, and compassion.

A number of the obligations and standards set out in this Code are also found in legislation. All staff are expected to act with integrity which includes being aware of and acting within the laws that apply to their conduct at the University. The University recognises that questioning and criticising laws can be a valid part of academic work. Such questioning and criticism is to be undertaken within the spirit of respect for individuals.

Staff are required to comply with this Code.

## Ethics

An ethical environment relies upon individuals having responsibility for their own professional behaviour. The University's Ethics Framework incorporates fundamental principles that apply to the University and members of the University community.

- Staff are expected to be familiar with and undertake their activities in accordance with the Ethics Framework, the provisions of this Code, and University policies and rules.
- Behaviour should be informed by the expectations of the University community and on advice of senior colleagues.

## Personal and Professional Behaviour

Staff members are to perform any duties associated with their position diligently, impartially and conscientiously, to the best of their ability.

In the performance of their duties, each staff member is to:

- treat members of the public, students and other staff members with courtesy and sensitivity to their rights;
- provide all necessary and appropriate assistance;
- strive to keep up-to-date with advances and changes in the body of knowledge and the professional and ethical standards relevant to their area of expertise;
- comply with any relevant legislative, industrial or administrative requirements, and all University rules, policies and procedures;
- maintain adequate records to support any decisions made;
- strive to obtain value for public money spent and avoid waste and extravagance in the use of public resources;
- conform with the principles of sustainability, as enunciated in the University's Sustainability Policy;
- maintain the confidentiality of official information in accordance with its Privacy Statement;
- avoid undertaking any activity that could potentially compromise the performance of their duties;
- facilitate compliance and adherence to this Code.

## **Equity, Diversity and Social Inclusion**

A central tenet of the University tradition is respect for a range of views and opinions. Staff will be instrumental in creating a work and study environment where all members of the University community are able to participate fully, find a sense of belonging, and have opportunity to engage meaningfully with the broader community.

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- Staff will act to create a fair, inclusive and safe University environment, where diversity is valued and where unlawful discrimination, harassment and victimisation in any form are considered unacceptable.
- Staff will seek to understand their rights and responsibilities in relation to State and Federal anti-discrimination legislation and integrate the principles of equality of opportunity, natural justice and inclusivity into their day-to-day practices and behaviours.

## **Conflicts of Interest**

Conflicts of interest are inevitable in modern universities and do not, of themselves, imply impropriety. A conflict of interest will arise, however, where a staff member engages in activities or advances personal interests at the expense of the University's interests or the interests of other staff members or students. In these circumstances, the staff member must declare the conflict to their supervisor and take immediate steps to resolve the conflict of interest.

Staff are to avoid any financial or other interest or undertaking that could directly or indirectly compromise, or appear to compromise, the performance of their duties. Staff faced with a potential conflict of interest must seek advice from their supervisor or other senior members of the University.

The following situations are provided as examples of where a potential for conflict of interest exists:

- A. Financial Interests
- B. Personal and family relationships between staff members
- C. Personal and family relationships between staff members and students
- D. Research

#### **A. Financial Interests**

- A staff member who has a financial interest in a company and is in a position to influence contracts for business between that company and the University should declare this potential conflict to their supervisor before acting for the University in matters with the company

#### **B. Personal and family relationships between staff members**

- Where staff are working with family members or with persons with whom they develop close personal relationships or such relationships exist with prospective staff they must be aware that this has the potential to create a conflict of interest if one staff member is:
  - involved in a decision relating to the selection, appointment or promotion of another;
  - in a supervisory relationship to another and is responsible for employment related decisions. Such decisions could include the provision of opportunities and resource allocation for research, conferences and staff training and development; and referee reports, or annual performance development reviews.

#### **C. Personal and family relationships between staff members and students**

- Staff members have the obligation to assess all student work fairly, objectively and consistently. A personal or family relationship between a staff member and a student for whom they have direct teaching or assessment responsibility will compromise this obligation. Such responsibility may include the supervision of students; the assessment of students; the selection of students for admission; the award of medals or scholarships; or the provision of referee reports.
- In such cases, the staff member must bring the matter to the attention of their supervisor and take immediate steps to resolve the conflict.
- Staff members, in many cases, will be best placed to identify such potential or actual conflict. Therefore, the onus is on the staff member to notify the appropriate senior member of staff if a potential or actual conflict of interest arises.

#### **D. Research**

- Conflicts of interest in research may occur when a staff member's responsibilities conflict with their private or personal interests, raising questions of objectivity and / or improper gain. Most conflicts can be successfully resolved without impeding research activity.

- Examples include:
  - A staff member undertaking research trials which are sponsored by a company in which the researcher or associate has a financial interest or holds an executive position.
  - A staff member holding an equity interest or executive position in a start-up company that has contracted with the University to conduct further research.
  - A staff member who chairs a committee responsible for allocating internal funding for research at a faculty of university level where funding is granted to the chairs' academic unit.
  - Staff members who are unsure about whether a conflict of interest in research exists must seek advice from a more senior member of staff.

## **Acceptance of Gifts or Benefits**

From time to time staff may be offered gifts such as equipment, consumables, entertainment and hospitality from external donors. As an employer, and a public authority, the University has an obligation to ensure compliance with relevant legislation and adopted codes of ethics and codes of practice. In relation to the receipt of a gift or benefit, all staff are subject to the provisions of the University's Gifts and Benefits Policy.

## **Public Comment**

Macquarie University is committed to the principles of academic freedom, and its expectation ~~that staff will challenge society's ideas and contribute to open debate by commenting publicly~~ within areas of their professional expertise. In commenting publicly, staff members are subject to the provisions of the University's Public Comment Policy.

## **Official Information**

Staff members have a duty to maintain the confidentiality, privacy, integrity and security of official information that they have access to in the course of their employment.

The collection, retention and release of personal or proprietary information must only occur in accordance with relevant legal authority and under the provisions of the Privacy Statement.

## **University Resources**

- Macquarie University recognises that some reasonable private use by staff of University resources (including facilities and equipment such as phones, PDAs and computers) is appropriate, but such usage remains at all times at the discretion of the University.
- Staff who are uncertain about personal usage must seek the advice of their supervisor.
- University resources must not be used for the purposes of private or individual commercial business.
- University facilities and equipment are the property of the University and are provided for University business.

## Outside Work

Staff members are permitted under certain conditions to engage in outside work. Such matters are governed by the provisions of the University's Outside Work Policy and the *Macquarie University Enterprise Agreement*.

## Compliance

All staff are required to comply with this Code.

- Breaches of standards or obligations in this Code may lead to criminal or civil proceedings or to disciplinary action, which can involve the possibility of dismissal, demotion or suspension.
- Staff should also be aware that the NSW Independent Commission Against Corruption (ICAC) has the power to investigate potential corrupt behaviour by employees of the University and to recommend prosecution in cases of potential criminal behaviour and activity.

## Reporting

If a staff member becomes aware of actual or potential breaches of this Code, they should deal with them in an appropriate manner. This involves, wherever possible, raising concerns or allegations internally in the first instance. Such actions do not preclude later referrals of matters to bodies external to the University. There are a number of avenues available to staff who wish to report actual or potential breaches of this Code, including notifying:

- a senior member of University staff;
- the Director, Equity and Diversity;
- the NSW Ombudsman;
- the NSW Independent Commission Against Corruption;
- through Protected Disclosure;
- the Human Rights and Equal Opportunity Commission.

## References

The main legislation which is relevant to this Code includes:

Anti-Discrimination Act 1977 (NSW)  
Crimes Act 1900 (NSW)  
Disability Discrimination Act 1992 (Cth)  
Government Information (Public Access) Act 2009 (NSW)  
Protected Disclosures Act 1994 (NSW)  
Independent Commission Against Corruption Act 1988 (NSW)  
Occupational Health and Safety Act 1983 (NSW)  
Public Finance and Audit Act 1983 (NSW)  
Macquarie University Act 1989 (NSW)

Sex Discrimination Act 1984 (Cth) with amendment 1992,1995  
Equal Opportunity for Women in the Workplace Act 1999 (Cth)  
Age Discrimination Act 2004 (Cth)  
Child Protection Legislation (NSW) – various  
Racial Discrimination Act 1975 (Cth)  
Privacy and Personal Information Protection Act 1998 (NSW)  
Ombudsman Act 1974 (NSW)  
Transgender (Anti-Discrimination and other Acts Amendment) Act 1996 (NSW)

### **Approval Authority**

Director, Human Resources

Date of Commencement May 2010

Date of Review May 2012

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