



STATEMENT ABOUT AN INVESTIGATION

**Misconduct by the Vice-Chancellor
of the University of Adelaide**

26 August 2020

A STATEMENT BY
THE HON. BRUCE LANDER QC
INDEPENDENT COMMISSIONER AGAINST CORRUPTION



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of the University of Adelaide.

By the Hon. Bruce Lander QC
The Independent Commissioner Against Corruption

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By the Hon. Bruce Lander QC.

On 11 April 2019 two women (who I will call Ms A and Ms B so as not to identify them), employed by the University of Adelaide (the University), attended a function conducted by the University at which the Vice-Chancellor (Professor Peter Rathjen) was present.

Later that evening the Vice-Chancellor engaged in conduct that was entirely inappropriate by treating the women with egregious disrespect. It was all the worse having regard to his position within the University and the two women's relative positions in the University.

I have carried out an investigation into that conduct, the manner in which the University addressed the complaint made about that conduct, and the consequences of that conduct, including a serious claim of victimisation. Counsel Assisting me provided me with submissions as to findings that should be made. I provided those persons who might have been affected by adverse findings suggested by Counsel Assisting with an opportunity of making submissions in reply. The submissions were also provided to other parties who had cooperated in the investigation. After conducting the investigation and hearing submissions, I wrote a report (the report) of about 170 pages in length in which I discussed those issues and a number of further issues and made findings and recommendations.

I provided that report to the same persons who had received Counsel Assisting's submissions to allow them to make further comments upon the report before its publication.

I had at that stage intended to make the report public under s.26(3) of the *Ombudsman Act 1972* (Ombudsman Act) which allows for a report on an investigation to be published if it is in the public interest to do so, in such manner as is thought fit.

Ms A and Ms B, who were the victims of the Vice-Chancellor's conduct, have implored me not to publish the report publicly. Both of them have said it would cause them significant embarrassment and distress and would further victimise them for having assisted in the investigation. They also claimed that it has and would affect their health.

The University has also asked me not to publish the report publicly for the reasons that the two women would suffer the consequences which they claim. The University has said wide publication would discourage other persons in the future from reporting claims of sexual harassment or misconduct.

Other persons who participated in the investigation have also asked that the report either not be published or be published in a redacted or shorter form.

It would be inappropriate for me to conduct an investigation into conduct, of the kind of which the complaint is made, and inflict on the victims of that misconduct, further embarrassment and humiliation.

For that reason I do not now intend to publish my report publicly but instead I make this Statement About an Investigation so that the matters under investigation and my conclusions can be known. This statement is authorised by s.26(3) of the Ombudsman Act.

It may be because of the brevity of this statement compared with the report, that the seriousness of the conduct will not be understood. However, that is better than the victims

suffering further hurt. It is my hope that this statement does not embarrass those women or any of the persons who have innocently become embroiled in the events.

I have found that the evidence given by the two women about the events at the function was true and I have accepted both of them as witnesses of truth.

I have rejected the Vice-Chancellor's evidence in every respect where he sought to disagree with the account given by the two women or to minimise his conduct.

I have found that after the function, the Vice-Chancellor engaged in the following conduct which was both unwanted and unwelcome by the two women:

- ▶ Hugged and deliberately touched Ms A's bottom whilst they were at a hotel;
- ▶ Deliberately touched Ms A's bottom on the walk to another hotel;
- ▶ Hugged Ms A and deliberately touched her bottom on two occasions while they were at the second hotel;
- ▶ Kissed Ms A on the mouth on two occasions;
- ▶ Deliberately placed one hand on Ms B's waist at the top of her bottom whilst they were at the hotel; and
- ▶ Hugged Ms B whilst they were at the hotel and in doing so deliberately placed both of his hands around her waist.

I have found contrary to the evidence given by Professor Rathjen that his conduct was sexual in nature and advertised by him to the women as sexual.

A complaint was made by one of the women to her manager who confronted the Vice-Chancellor about his conduct. He did not deny the conduct and offered to apologise if there had been a misunderstanding.

Ms A also wished to bring the conduct to the attention of the Human Resources Department (HR) at the University which happened later in April 2019. Ms B did not wish to escalate the complaint.

Both women however requested that their identities not be disclosed and continued to maintain that position throughout April and May 2019. They have continued to maintain that position.

The HR Department sought advice from a solicitor in private practice, who was retained on behalf of the University to give advice in relation to matters of this kind.

That solicitor advised the member of the HR Department and later the Chancellor (Rear Admiral Kevin Scarce AC CSN RAN (Rtd)) that the matter should be dealt with by the Chancellor confronting the Vice-Chancellor with the allegations and obtaining his reaction.

The solicitor's advice was that the matter need not be referred to the Council of the University or its constituent committees of which there are two. I do not agree with that advice. I think the University Council should have been advised because it was the body who employs the Vice-Chancellor. I think that the Senior Executive Review Committee (SERC) which is the committee which has the responsibility of monitoring the Vice-Chancellor's performance should also have been told. However, that was not the advice given to the Chancellor.

Both the HR Department and the Chancellor accepted that advice. Both also relied upon the two women's wishes that their identity be kept as confidential as possible.

On 13 May 2019 the Chancellor met with the Vice-Chancellor and put the allegations to him. The Vice-Chancellor did not deny the allegations and accepted the reproof given by the Chancellor at that meeting.

On 14 May 2019 the Chancellor wrote to the Vice-Chancellor admonishing him for his conduct and warning him that if there was any further conduct of the kind reported it would warrant a very serious consequence.

The University accepted that if I found the conduct of the Vice-Chancellor was as I have found, that the conduct amounted to a clear breach of the University's Code of Conduct and Behaviour and Conduct Policy and amounted to serious misconduct.

The University also accepted that the conduct was "repugnant to the University's values of honesty, respect and fairness as those terms are defined in the University's Code of Conduct".

I have found that the Vice-Chancellor's conduct amounted to a breach of the University's Behaviour and Conduct Policy and a breach of the Code of Conduct for the University employees. I have also found that he was in breach of his contract of employment. He was also in my opinion in breach of his statutory duty as a Council member to act in the University's best interests. In my opinion his conduct, having regard to the serious power imbalance between him and the victims, amounted to serious misconduct for the purposes of the *Independent Commissioner Against Corruption Act 2012* (ICAC Act).

In accordance with the advice which he received, and relying on the women's wishes not to have their identities made known, the Chancellor did not report the matter to the University Council or its committees.

Although the Deputy Chancellor (Ms Branson AC QC) later criticised the Chancellor for his failure to advise the Council or its committees of the conduct, that is not a criticism that I would embrace. I think the Chancellor was entitled not to report the conduct for the two reasons he gave. First because of the women's wishes not be identified. Secondly because he was given legal advice to that effect. He is not himself a lawyer which is why he sought advice from a lawyer.

Unfortunately the two women were not advised that the Chancellor had provided the Vice-Chancellor with the 14 May 2019 letter. That was not the Chancellor's decision. The Chancellor was unaware that they had not been told of the letter until he was interviewed as part of this investigation.

I have found that the conduct should have been reported to the Office for Public Integrity (OPI). All public officers in South Australia, which in my opinion includes all employees of the University and members of the University Council, have an obligation to report serious or systemic misconduct or maladministration to the OPI in accordance with directions and guidelines that were published by me on 2 September 2013.

I do not think however that anyone applied their minds to their reporting obligations at that time.

In July 2019 a blog was published by a man called Michael Balter in which he made an allegation of previous sexual harassment on the part of the Vice-Chancellor "going back to his earlier days as a professor".

The Chancellor took advice in relation to the blog from the same solicitor from whom he had taken advice in April/May 2019 and was advised that he should ask the Vice-Chancellor a question which included:

"I seek your response to the claims made in the blog that you have a history of engaging in sexual harassment, I also ask you to come back and let me know if there is anything else that I or the University should be made aware of in relation to your past conduct."

I think the Chancellor was right to seek that advice and I agree with the advice which he was given.

On 5 August 2019 the Chancellor asked the question of Vice-Chancellor in those terms and asked him to respond in two weeks' time.

It was appropriate of the Chancellor to ask the questions and allow the Vice-Chancellor a fortnight to reply.

Two or three days after the Chancellor asked that question, and sought that response, the Vice-Chancellor was advised by way of letter by Senior Counsel practising in Melbourne that she was carrying out an investigation into historical claims of sexual harassment or abuse by the Vice-Chancellor, of a female post graduate student, whilst he was an academic at the University of Melbourne. The allegations were very serious. It was not important for the purpose of my investigation whether the claims are true, only that they were made.

On 8 August 2019 the Vice-Chancellor was provided with a written copy of her proposed findings and invited to comment on those most serious allegations.

The Vice-Chancellor instructed a lawyer to act for him in relation to the letter from the Barrister and he was advised to adopt certain strategies which are unimportant for the purpose of this statement.

On 19 August 2019 the Vice-Chancellor responded to the Chancellor advising him there was nothing that the Chancellor needed to know in relation to his past conduct. Plainly that was untrue.

The Vice-Chancellor said that he did not advise the Chancellor that he was being investigated in relation to his conduct at the University of Melbourne because he had received advice from his lawyer not to do so.

I have specifically found that the lawyer did not give any advice to the Vice-Chancellor in respect to the question that had been posed of him by the Chancellor.

In my opinion the Vice-Chancellor's evidence that he received advice from a lawyer to effectively mislead the Chancellor was false.

I have found that the Vice-Chancellor lied to the Chancellor because he knew, if he told the Chancellor the truth, that he was subject to investigation in relation to a previous claim of sexual misconduct it would jeopardise his tenure at the University of Adelaide.

Some time later in 2019 it came to the attention of the Chancellor, the Deputy Chancellor and at least one member of the Council, that there were rumours circulating that the Vice-Chancellor had engaged in sexual conduct or sexual relations with a woman in circumstances which might impact upon his position as Vice-Chancellor.

The Chancellor was asked to inquire of the Vice-Chancellor whether the rumours were true, which he did. The Vice-Chancellor replied in words to the effect that there was no truth in the rumours.

I have found that the Vice-Chancellor also lied to the Chancellor in that regard.

During the course of his evidence before me it was put to the Vice-Chancellor that he had engaged in sexual conduct with the woman about whom the Chancellor had made the inquiry. He denied, in evidence, any such conduct with the woman.

Later in his evidence when it became clear to him that information had been provided to me that would establish that answer to be false, he admitted that he had engaged in that conduct. He also admitted that he lied to me.

In that respect I have found that he lied in his evidence.

He said that he lied to protect the woman involved, but I do not believe him.

The Vice-Chancellor resigned from his position with the University the day after he gave evidence before me.

In late January 2020 Ms A, who was one of the victims, wrote to the University seeking to disengage from her employment and seeking compensation in relation to the Vice-Chancellor's misconduct. She also sought compensation for the way in which the University had handled her complaint and for having been victimised as a consequence of her complaint.

The Chancellor brought those allegations to the attention of the Deputy Chancellor and later gave an oral briefing to SERC, which was charged with overseeing the Vice-Chancellor's performance.

When the Chancellor made that report he was criticised by the Deputy Chancellor for not having brought the matter to the attention of the Council or that Committee in April/May 2019.

The Chancellor rejected that criticism and still does.

Ms A made very serious allegations of victimisation following upon her complaint in relation to the Vice-Chancellor's conduct.

The University has always maintained that Ms A has not been victimised although, it accepted she might well have perceived she was victimised.

SERC resolved to make an offer to Ms A which was significantly less than that which she had claimed.

I have found that notwithstanding the criticism of the Chancellor, the members of SERC at that stage did not see the Vice-Chancellor's conduct as having been as serious as they later determined.

The then Deputy Chancellor, Ms Branson AC QC, said that was the case because at that meeting, no documents that were created, at the relevant time, were produced to SERC, and SERC was unaware of the seriousness of the conduct.

On 28 February 2020 the Chancellor texted the Deputy Chancellor and advised her (as he had intimated to her in November 2019) that it was not his intent to seek to continue his term as Chancellor after the completion of his current term which was due to complete about six months later. He also told the Vice-Chancellor.

On 16 March 2020 Ms A's lawyers wrote to the University renewing her claims and providing further information in relation for the basis upon which the claims were made.

Essentially the claims relied on the Vice-Chancellor's conduct on 11 April 2019, the manner in which the University had dealt with her complaint in April/May 2019, and that she had been victimised between that time and January 2020.

On 23 March 2020 the Convenors' Committee (which was the Committee that acted as the University's executive) met. It resolved that the Chancellor should report the matter to my office.

It also resolved to accept Ms A's lawyers' claim for monetary compensation, subject to one matter which is unimportant.

The Convenors' Committee was of the opinion that Ms A had not been victimised but was prepared to accept that was her perception. I thought that exhibited a decent approach by the University.

The Convenors' Committee also resolved that the Chancellor should meet with the Vice-Chancellor and speak to him about a number of matters including:

"Confirm with the Vice-Chancellor that there have not been any events prior to or after the reported incident that could be characterised as similar conduct (even if reports or complaints have not been made)."

The Chancellor did so but the Vice-Chancellor did not tell him of the allegations arising from his time at the University of Melbourne which he knew were the subject of investigation.

I have found the Vice-Chancellor again deliberately misled the Chancellor to protect his position as Vice-Chancellor.

On 12 and 30 March 2020 the Deputy Chancellor met with the Vice-Chancellor. On the first occasion they had lunch at her instigation. On the second occasion they met at her beach house, at the instigation of the Vice-Chancellor, who in that regard was prompted to do so by the Chancellor. On the first occasion the Deputy Chancellor told the Vice-Chancellor she was interested in becoming Chancellor and wanted to know if he felt he could work with her. She admitted to me that this might have been an error of judgement.

On the second occasion they discussed Ms A's complaint. She advised him how he should present to the Council. They again discussed whether, if she were to become Chancellor, they could work together.

I have said in the report that I find the discussion surprising having regard to the seriousness of the allegations upon which the Convenors' Committee, of which the Deputy Chancellor was a member had been briefed.

However, Ms Branson said that her meetings with the Vice-Chancellor had to be put in context. At the time of the lunch meeting on 12 March 2020, she said did not have all the information about the incident of 11 April 2019. She did not receive that information until 21 March 2020.

She was also in some doubt about whether the University would be able in 2020 to dismiss the Vice-Chancellor and was conscious of the fact that the Chancellor was committed to retaining the Vice-Chancellor to guide the University through COVID-19.

As a consequence of these more serious allegations the Chancellor decided to report the matter to me and he did so in a letter dated 27 March 2020 which he handed to me at a meeting on 30 March 2020.

I responded to the Chancellor's letter on 2 April 2020 advising that I intended to investigate the three issues identified in his letter being:

1. Vice Chancellor Professor Peter Rathjen's alleged conduct towards Ms A in April 2019 and his conduct towards another staff member of the University Ms B.
2. The manner in which the University and its staff dealt with Ms A's report about Professor Rathjen's alleged conduct during April 2019 (including the delay in reporting the matter to the OPI).
3. Ms A's treatment by the University and its staff since making her report about Professor Rathjen's alleged conduct.

On the next day the Convenors' Committee met again when the Chancellor advised the Committee that I would carry out an investigation.

On 6 April 2020 the Council accepted the Convenors' Committee recommendation to settle Ms A's claim in the terms requested in her lawyer's letter.

In the meantime the Convenors' Committee formed what Ms Branson said was the Rump, which she chaired and consisted only of four members.

The Rump decided that the Chancellor should be advised there would be a risk that if he did not resign a motion would be put to Council for him to be stood down during the investigation.

The Deputy Chancellor requested that the Chancellor meet with her at her home on 26 April 2020.

At that meeting the Chancellor was advised that for the good of the University and for his own good he ought to consider resigning. Otherwise a recommendation would be made to the Council that he be stood down.

The Deputy Chancellor also advised him that she wished to become Chancellor.

The Chancellor was given a *fait accompli*. If he did not resign he would be stood down. That would have been extraordinarily embarrassing for him.

On 27 April 2020 the Chancellor resigned. On 30 April 2020 the Deputy Chancellor met with the Vice-Chancellor and told him that I was investigating his conduct and that a resolution would be taken to Council to stand him down. He took leave.

I do not think that the Chancellor should have been put in the position in which he was put. I do not think my investigation could have embarrassed him or the University such that he needed to resign. However, he elected to put the University's interests above his own by resigning.

On 4 May 2020, without further explanation it was announced that the Chancellor had resigned and on 5 May 2020 it was announced that the Vice-Chancellor had taken an indefinite period of leave.

That announcement without explanation caused the University reputational harm. An explanation should have been given.

If the Council were concerned about the secrecy provisions of the ICAC Act it could have, but did not, seek an authorisation to explain the events.

The University claims that it would have preferred that the timing had been otherwise but said in view of the fact my investigation had commenced it had no choice but to invite the Vice-Chancellor to stand down at the same time as the Chancellor resigned.

I have considered the report made to me. As I have said I accept all the allegations made about the Vice-Chancellor's conduct on 11 April 2019.

I have found the Vice-Chancellor lied to the Chancellor on three occasions.

He lied in his evidence to me.

I have found that he has lied when it suited him to do so.

I have specifically found that the Chancellor was entitled to rely on the advice he obtained from the University lawyers and the HR Department in May 2019 not to report the complaint to the Council or its committees. I have found that he also took into account that Ms A and Ms B did not want their identities to be known within and outside the University.

I disagree with the advice but that is not to the point. He was entitled to act as he did.

The University responded to the complaint when it was made appropriately.

I have examined each of the complaints of victimisation made by the complainant. I have carefully examined the evidence. In my opinion Ms A was not victimised by the University or any of its officers. I accept however that, because of the circumstances, she perceived that she was victimised. The University was therefore right to respond to her claim in full even though it did not think she had been victimised. Like me the University accepted that was her perception.

Apart from the Vice-Chancellor none of the University public officers including the Chancellor engaged in misconduct or maladministration as those terms are defined in the ICAC Act.

This Statement does not purport to record or reflect the whole of the report.

I have made recommendations to the University in respect of its policies and procedures and the implementation of those policies and procedures for complaints of this kind, which I have attached to this statement (Attachment A). I hope they will be of assistance to the University.

This Statement is an attempt to balance the privacy of the victims with the public right to know of egregious conduct by a senior person in public administration.

Attachment A

Recommendations

1. The University should consider introducing a policy on the briefing of external lawyers. Such a policy should require that the General Counsel receives a copy of advices from external lawyers through the Legal Advices Register and that such matters are not excluded from monthly reports to General Counsel;
2. The University review its three-tiered system of policies, procedures and guidelines on inappropriate sexual contact and sexual harassment with a view to introducing a policy or policies that are understandable;
3. The University should consider an education program for all existing members of staff and for future employees about sexual harassment and the policy process to be followed;
4. Ensure the University's policy on sexual harassment and inappropriate sexual contact between staff members is easily accessible to staff online;
5. As part of its review, the University should consider:
 - a. assigning an independent support person to any staff member who reports unwanted sexual contact or sexual harassment that is substantiated. The support should not cease at the end of an investigation, but be made available to a victim beyond the resolution of the matter and for as long as necessary; and
 - b. mandating that complainants be formally advised, in writing, of the outcome of an investigation or process.
6. All reports of substantiated misconduct, irrespective of the seniority of the staff member, should be included in the University's records management system;
7. The University review its education of staff to ensure that there is a program with respect to the reporting obligations to the OPI and in particular, those obligations with respect to conduct which is not corruption. This review should also extend to the University's induction program to ensure it includes reference to the ICAC's jurisdiction on serious or systemic misconduct and maladministration in public administration; and
8. The University review its education of staff about conflicts of interest.



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