



**REPORT OF THE
STANDING COMMITTEE ON
PUBLIC ADMINISTRATION**

IN RELATION TO

**THE APPEALS AND REVIEW PROCESSES FOR
WESTERN AUSTRALIAN UNIVERSITIES**

Presented by Hon Kim Chance MLC (Chairman)

Report 15

STANDING COMMITTEE ON PUBLIC ADMINISTRATION

Date first appointed:

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Members of the Committee:

Hon Kim Chance MLC (Chair)
Hon Barbara Scott MLC (Deputy Chair)
Hon Cheryl Davenport MLC
Hon Dexter Davies MLC
Hon Helen Hodgson MLC
Hon Barry House MLC

Staff of the Committee:

Ms Christina Eftos, Advisory Officer
Ms Lisa Hanna, Committee Clerk

Terms of Reference:

See Appendix 1

Address:

Parliament House, Perth WA 6000, Telephone (08) 9222 7222

Website:

www.parliament.wa.gov.au

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CHAPTER 1

FINDINGS AND RECOMMENDATIONS

SUMMARY OF FINDINGS

- 1.1 The following is a summary of the Standing Committee on Public Administration's report findings, by chapter.
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Chapter 3: Role of the Visitor

- 3.24 *The Visitor is an inefficient means of redress given that there are neither formal nor well known procedures in place which can assist petitioners in raising their complaints.*
- 3.25 *The person appointed by the empowering legislation, the Governor, is not in a position to carry out the task at hand.*
- 3.26 *Particularly for the individual, the cost of taking a complaint to the Visitor is prohibitive in that universities invariably brief counsel. All costs of investigation by the Solicitor-General or others must be borne by the State when an investigation is conducted making it an enormously expensive exercise for both sides. The lack of procedural guidance within the Visitor jurisdiction leads to increased costs and bewilderment.*
- 3.27 *Courts in an administrative law setting are reluctant to interfere where institutions have their own internal governance, such as a Visitor procedure at a university.*
- 3.28 *The Visitor's current review role is no longer necessary in light of the other avenues of redress available:*
- 3.28.1 *The Ombudsman;*
 - 3.28.2 *The Anti-Corruption Commission;*
 - 3.28.3 *The Ministry of Fair Trading (it is Ministry policy to refer such matters to the Ombudsman);*
 - 3.28.4 *The Auditor General;*
 - 3.28.5 *The Director of the Equal Opportunity in Public Employment; and*
 - 3.28.6 *The Equal Opportunity Commission.*

Chapter 4: Alternatives to the Visitor

- 4.45** *The Visitor's jurisdiction as it stands restricts access to the Western Australian Industrial Relations Commission in respect of certain "domestic" issues of a public university in Western Australian, namely the examining of privileges, rights and duties of an employer (the relevant university) and employees.*
- 4.46** *The WA Ombudsman is a more efficient and cost effective method for reviewing internal university administrative decisions than the Visitor but can only afford limited redress to the complainant in the form of recommendations.*
- 4.47** *More consideration should be given to the feasibility of establishing a panel of experts to assist the WA Ombudsman in investigating disputes that arise from academic matters at the Western Australian public universities.*

Chapter 5: Internal Dispute Resolution Processes

- 5.22** *The Western Australian public universities have a tradition of academic freedom and institutional autonomy and the right to adopt appropriate internal dispute resolution structures.*
- 5.23** *The Western Australian public universities examined should give further consideration to the adoption of Student Ombudsmen.*
- 5.24** *In the event that the role of the Visitor is reduced to being purely ceremonial, each institution should be given the flexibility to adopt an independent internal process of review of individual matters and dispute resolution processes as a whole. These must comply with the rules of procedural fairness.*

RECOMMENDATIONS

Recommendation 1: The Committee recommends the amendment of the Acts empowering all the publicly funded universities in Western Australia to abolish the position of the Visitor within these institutions, as it is inappropriate, outdated and unnecessary.

Recommendation 2 : The Committee recommends that the WA Ombudsman should use his discretionary power to consult relevant experts to expedite dispute resolution.

Recommendation 3: The Committee recommends that Western Australian public universities assess and review the effectiveness of internal dispute and appeals mechanisms within their institutions on a periodic basis ensuring that the principles of procedural fairness are expressed within those mechanisms.

CHAPTER 2

BACKGROUND

THE FOURTH REPORT

2.1 In December 1997 the Standing Committee on Public Administration (the Committee) tabled its fourth report titled *The Events Surrounding the Denial of Tenure to the Late Dr David Rindos by the University of Western Australia* as part of its inquiry into the University of Western Australia.

2.2 This report dealt with term of reference 1(a) of this inquiry, namely:

“To inquire into and report on -

1. *The events surrounding the denial of tenure to Dr David Rindos by the University of Western Australia (“the University”), and more particularly to -*

(a) *investigate whether the procedures adopted by the University to review and determine the tenure of Dr David Rindos and his subsequent appeals were deficient and amounted to a breach of the common law rules of fairness; ...”*

2.3 The Committee subsequently resolved to report on term of reference 1(c) of that inquiry, which was to:

“...(c) *make recommendations arising out of the events surrounding the denial of tenure to Dr Rindos concerning the need to maintain integrity, professionalism and international standing of State Universities generally, thereby reinforcing the public confidence in the State tertiary education system.*”

2.4 As some time has lapsed since the Committee last reported on this issue, the Committee has resolved to report not only on this term of reference 1(c) but to include a more general term of reference 1(d) which is to:

“(d) *examine the mechanisms in Western Australian Universities for review of decisions relating to student grievances, internal disputes involving academic staff, internal disputes arising from performance assessments of academic staff, with a particular focus on the role of the Visitor, merit and procedural*

*issues, and the necessity for a general external review
mechanism applying to all Western Australian Universities...”*

- 2.5 The Committee believes that the university administrators in Western Australia have an obligation to staff, students and to the State as a whole to maintain integrity and strong academic and social standing.

CHAPTER 3

ROLE OF THE VISITOR

JURISDICTION

3.1 The University Visitor (the Visitor) is established under the respective founding legislation of the four publicly funded universities in Western Australia:

3.1.1 *University of Western Australia Act 1911*, section 7;

3.1.2 *Murdoch University Act 1973*, section 9;

3.1.3 *Edith Cowan University Act 1984*, section 42; and

3.1.4 *Curtin University of Technology Act 1966*, section 27.

3.2 The University of Notre Dame is founded under the *University of Notre Dame of Australia Act 1989* and is a private university in Western Australia. This University does not have a provision establishing the role of the Visitor.

3.3 A Visitor in this context refers to the Governor of Western Australia and not the Governor acting with the advice and consent of the Executive Council.

3.4 The Visitor concept evolved from English medieval ecclesiastical law as a mechanism for the resolution of internal university disputes, and for the regulation and control of universities. Consistent with the nature of the Visitor's jurisdiction in a medieval society, the Visitor is biased towards the maintenance of the university's power, privileges and rights.¹

*"The visitor of an eleemosynary² corporation is appointed by a founder with the special function of supervising a particular foundation to ensure that it is governed in conformity with his wishes as expressed in the statutes given to the foundation by the founder...."*³

3.5 The whole ethos and history of the jurisdiction is that the rights of the persons within the university tend to be subrogated to the rights of the institution itself. Therefore the

¹ Transcript of meeting with Mr Peter Nisbet QC, August 28 1997, p.3.

² 'Of or dependent on, alms; charitable', Concise Oxford Dictionary, 7th Ed., Oxford IUP, 1985.

³ Smith, P. M., "Jurisdiction of University Visitor", *Law Quarterly Review*, Vol. 97, October 1981, p.610.

Visitor, when making decisions, must take into account the welfare of the university as a whole, as a priority.⁴

*“The University Visitor concept evolved from English medieval ecclesiastical law as a mechanism for the resolution of internal university disputes, and for the regulation and control of universities. Ecclesiastical foundations were liable to visitation by the relevant bishop for the purpose of supervising their activities. Subsequently, the concept was preserved with the development of civil corporations of an eleemosynary nature, particularly the colleges within the universities of Oxford and Cambridge in the twelfth and thirteenth centuries.”*⁵

- 3.6 The Visitor became an “integral and largely unquestioned characteristic of universities in many countries including Australia” with the spreading of influence of the British Empire.⁶ Whalley and Price in their paper presented at the University of Tasmania Law School Symposium in 1996 identified three characteristics of the Visitor’s function and role:

3.6.1 **The ceremonial role:**

*“In the ceremonial role, the Visitor may attend a university as an honoured and distinguished guest for formal duties such as the installation of a chancellor or a vice-chancellor, or the presentation of university honours.”*⁷

3.6.2 **The appellate role:**

“The essential issue relates to the nature of the academic process and the assumption that courts are neither suited nor equipped to resolve university disputes: whether, in fact, there is something so unique, or precious, about Academe that it should merit a special form of review.

⁴ Transcript of meeting with Mr Peter Nisbet QC, August 28 1997, p.5.

⁵ Whalley P. and Price D., “The University Visitor in Western Australia”, *Western Australian Law Review*, Vol. 25, July 1995, p.146.

⁶ Whalley P. and Price D., “The Role of the Visitor: A Symposium”, *University of Tasmania Law School Occasional Paper Number 5*, edited by Snell R., University of Tasmania Law Press, 1997, p.10.

⁷ *Ibid.*, p.11.

The traditional common law view of the visitorial jurisdiction has been to restrict or limit the circumstances in which Visitor's decisions are subject to judicial review, and to deny courts jurisdiction, or concurrent jurisdiction, to consider matters which properly fall within the competence of the Visitor.”⁸

3.6.3 The original interventionist role:

“Whether the Visitor's jurisdiction is limited to ceremonial and appellate functions or whether this third interventionist role still exists today is arguably the most important question that can arise from an examination of this office. Opinions differ about whether this aspect of visitorial jurisdiction is obsolete, or whether it is merely dormant, not having been exercised in recent years simply because there has been no appropriate occasion.”⁹

- 3.7 In Western Australia the jurisdiction of the Visitor is ill-defined and amorphous.¹⁰ In practical reality the Governor acts in this role through an appointee, usually a retired judge.¹¹
- 3.8 Former Chief Justice of the Supreme Court of Western Australia, Sir Francis Burt described the Visitor's role as a “*mischievous anachronism*”.¹² In a modern context, the presence of the Visitor is confusing and seldom used, despite legislative provisions establishing this role. At law it is quite settled that the employment relationship between universities and non-academic staff is outside the jurisdiction of the Visitor. However, confusion arises about the impact of the Visitor's jurisdiction on the contracts of employment between universities and its academic staff.¹³ Courts have been reluctant to interfere where institutions have their own internal governance.¹⁴
- 3.9 The procedures for invoking the jurisdiction of the Visitor are unclear. This leads to a reluctance to use this as an avenue for review, causes confusion and means additional cost to the individual seeking to appeal from an internal decision of a university. There

⁸ *Ibid.*, p.11.

⁹ *Ibid.*, p.113.

¹⁰ Transcript of meeting with Mr Peter Nisbet QC, August 28 1997, p.1.

¹¹ *Ibid.*, p.3.

¹² *The University Visitor*, by Sir F. Burt at the First Meeting of UWA Graduates Association, Perth, March 18 1994.

¹³ Transcript of meeting with Mr Peter Nisbet QC, August 28 1997, p.1.

¹⁴ *Ibid.*, p.2.

is no comprehensive or published procedure on exactly how to confront the Visitor to have a matter considered by him or her.¹⁵

3.10 Visitors' decisions have never been published in Western Australia. Hearings are not open to the public. It is therefore difficult to ascertain how the Visitor operates in practice other than to note that the application is by petition, and that there are initial assessment's made by the Visitor as to jurisdiction and the standing of the applicant. This in turn makes the cost of seeking the Visitor's review of a matter prohibitive because legal counsel becomes a practical necessity.

3.11 The Committee has received a submission from the Official Secretary to his Excellency the Governor that stated that between 1923 and 1987 the Governor had received only 6 initial letters (or petitions) to him in his role as Visitor. Between 1987 and 1997 the Governor had received 18 initial letters (or petitions).¹⁶ Regarding procedural practices, the Official Secretary to his Excellency the Governor informed the Committee of the following:

"When an initial approach is received from a Petitioner, either in the form of a letter or a Petition, the Petitioner is informed that the reference to the Visitor is the avenue of appeal of last resort and that His Excellency would not generally entertain a petition unless he was satisfied that all other accessible avenues of appeal within the University have been exhausted. The Petitioner is informed also that the jurisdiction of the Visitor is confined to matters concerning the internal management of the University.

*The form of the Petition is then described, being similar in form to a statement of claim as is prepared by a plaintiff in a court action. The Petition should be addressed to His Excellency as Visitor and should set out all the material facts and circumstances upon which the Petitioner's complaints rest and outline what action the petitioner believes should be taken... Once the Assessor advises His Excellency that he considers the Petitioner has standing and that there are issues falling within the Visitor's jurisdiction, a formal inquiry takes place. At this stage the parties decide whether or not they will be legally represented at the inquiry."*¹⁷

¹⁵ *Ibid.*, p.9.

¹⁶ Written submission of Mr Kevin Skipworth, Official Secretary to His Excellency the Governor of Western Australia, Government House Perth, October 28 1997, p.1, attached at Appendix 5.

¹⁷ *Ibid.*, pp. 1-2.

- 3.12 In Western Australia, as a matter of practice, the Visitor will generally only investigate a decision under review for procedural irregularity and will not consider the merits of a matter under review.¹⁸ The Visitor will only consider the merits of decisions made by a university in exceptional circumstances and may, if necessary, be assisted by counsel or by the Solicitor-General's Office.
- 3.13 Due to the ambiguity of the process of seeking a review by the Visitor, the structure of proceedings is unclear. Whether confidentiality is appropriate and the extent of this confidentiality has also been unclear in the past.¹⁹

CURRENT USE OF THE ROLE

- 3.14 From the Committee's more recent investigations into the role of the Visitor at Western Australian universities, it appears that the position has been largely superseded by other review and dispute resolution mechanisms. It appears in practice that the Visitor's role is largely ceremonial.
- 3.15 The universities currently are within the jurisdiction of the following:
- 3.15.1 The Ombudsman;
 - 3.15.2 The Anti-Corruption Commission;
 - 3.15.3 The Ministry of Fair Trading (it is Ministry policy to refer such matters to the Ombudsman);
 - 3.15.4 The Auditor General;
 - 3.15.5 The Director of the Equal Opportunity in Public Employment; and
 - 3.15.6 The Equal Opportunity Commission.²⁰
- 3.16 At the time of writing this report, the Committee is aware that the Department of Higher Education has examined the possible amendment of the relevant "Visitor" provisions in legislation for the University of Western Australia and Murdoch University. It is the Committee's understanding that such amendment would have the effect of allowing the Visitor at those universities *discretion* as to whether or not to consider a matter submitted

¹⁸ Whalley P. and Price D., "The University Visitor and University Governance", *Journal of Higher Education Policy and Management*, Vol .18, No. 1, 1996, p.53.

¹⁹ Transcript from meeting with Dr Jannes Schoombee, Barrister, August 25 1997, p.2.

²⁰ Written submission of Ombudsman's Office, Western Australia, October 14 1997, p.11.

for review. This is already the case with Edith Cowan University and Curtin University of Technology.²¹

3.17 Murdoch University informs the Committee that:

“...the State Government has indicated that it prefers a common system whereby all four public universities have Visitorial jurisdiction, but with a discretion in the exercise of that role, as is already the case at Curtin and Edith Cowan universities. This would reduce the likelihood that the Visitor would entertain a petition which had already been the subject of a thorough investigation by the Ombudsman. The draft Universities Legislation Amendment Bill 2000 includes amendments to this effect to s.9 of the Murdoch University Act. The University recommends that the Committee support this change.”²²

3.18 The University of Western Australia has submitted to the Committee that it is concerned with the open-endedness of the definition of the Visitor.²³ The University noted that since the relevant legislation was enacted other positions such as the Parliamentary Commissioner for Administrative Investigations (WA Ombudsman) and the Equal Opportunity Commissioner have been established. Therefore the role of the Visitor is viewed as prolonging the dispute resolution process and generating unnecessary work which ultimately disadvantages the institution from where the process began.

“Our concern quite simply is that a complainant who does not get satisfaction through internal procedures, now has the opportunity to try a number of external agencies to seek redress to perceived grievances.”²⁴

3.19 This view is also reiterated by Murdoch University:

“The current system allows for jurisdiction-shopping in the hope that if one appeal body finds that the claims are unsustainable, then perhaps another body might view it differently.”²⁵

²¹ See written submission of the Ombudsman's Office, Western Australia, October 14 1997, p.7. Also see section 42(1) of the *Edith Cowan University Act 1984* and section 27(1) of the *Curtin University of Technology Act 1966*.

²² Written submission of Murdoch University, March 21 2000, p.2.

²³ Written submission of the University of Western Australia, December 17 1999, p.1.

²⁴ *Ibid.*, p.1.

²⁵ Written submission of Murdoch University, March 21 2000, p.2.

- 3.20 Edith Cowan University submitted to the Committee that the Visitor at that university had not considered a complaint since 1990.²⁶
- 3.21 Presently, the Edith Cowan University Council is considering reforming the role of the Visitor so that it is officially reduced to a ceremonial role only. The Committee has been informed that the university Council is awaiting this report being tabled by the Committee before commencing further with the proposal.²⁷
- 3.22 At a symposium on the role of the Visitor held at the University of Tasmania in August 1996, those present did not support the retention of the current role:

*“There is no support for retaining the status quo”.*²⁸

- 3.23 The conclusion drawn from the symposium was that procedures for accessing the Visitor were not well known. Although generally cheaper than traditional courts, there was anecdotal evidence to suggest that accessing this jurisdiction was usually “extremely expensive”.²⁹

FINDINGS

- 3.24 *The Visitor is an inefficient means of redress given that there are neither formal nor well known procedures in place which can assist petitioners in raising their complaints.*
- 3.25 *The person appointed by the empowering legislation, the Governor, is not in a position to carry out the task at hand.*
- 3.26 *Particularly for the individual, the cost of taking a complaint to the Visitor is prohibitive in that universities invariably brief counsel. All costs of investigation by the Solicitor-General or others must be borne by the State when an investigation is conducted making it an enormously expensive exercise for both sides. The lack of procedural guidance within the Visitor jurisdiction leads to increased costs and bewilderment.*
- 3.27 *Courts in an administrative law setting are reluctant to interfere where institutions have their own internal governance, such as a Visitor procedure at a university.*

²⁶ Written submission of Edith Cowan University, November 10 1999, p.1.

²⁷ *Ibid.*, p.2.

²⁸ Written submission of Murdoch University, March 21 2000 at attachment “Symposium on the Role of the Visitor” by Andrew Bain Deputy Registrar, September 1 1996, p.1.

²⁹ *Ibid.*, p.2.

3.28 *The Visitor's current review role is no longer necessary in light of the other avenues of redress available:*

3.28.1 *The Ombudsman;*

3.28.2 *The Anti-Corruption Commission;*

3.28.3 *The Ministry of Fair Trading (it is Ministry policy to refer such matters to the Ombudsman);*

3.28.4 *The Auditor General;*

3.28.5 *The Director of the Equal Opportunity in Public Employment; and*

3.28.6 *The Equal Opportunity Commission.*

RECOMMENDATION

Recommendation 1: The Committee recommends the amendment of the Acts empowering all the publicly funded universities in Western Australia to abolish the position of the Visitor within these institutions, as it is inappropriate, outdated and unnecessary.

CHAPTER 4

ALTERNATIVES TO THE VISITOR

MODIFYING THE ROLE

- 4.1 The Committee has considered whether the role of the Visitor could be reformed but has concluded that the Visitor's jurisdiction is an anachronism and believes that the Visitor's role is beyond reasonable reform.
- 4.2 The Western Australian universities' submissions suggest that the role of the Visitor is not often utilised and appears unnecessary as a form of review of internal dispute outcomes in light of the ability of the jurisdiction of other agencies such as the Ombudsman's Office and the Equal Opportunity Commission.³⁰
- 4.3 This Committee's predecessor, the Standing Committee on Government Agencies in its thirty sixth report titled *State Agencies - Their Role and Function*, noted that:
- "Western Australia has no Administrative Law Act codifying the rights and obligations of parties to administrative appeals or review, the qualifications of adjudicators, the remedies available, and defining the Supervisory jurisdiction of the [Supreme] Court."*³¹
- 4.4 The Committee considered options to address this issue including various forms of appeal tribunal but ultimately it seemed inappropriate to the Committee to address this broader issue in isolation. The Committee consider this to be a whole-of-Government issue rather than one that can be addressed within these terms of reference.
- 4.5 The Committee identifies as an administrative deficiency that there are multiple avenues available once the internal dispute process has been completed without disputes being resolved. Several of the submissions received by the Committee identify this as stifling efficiency and increasing the cost of reviewing unresolved internal disputes at Western Australian universities.³² In addition to this, such a system appears to cause confusion amongst those seeking an appeal or review of such matters.

³⁰ Written submission of the University of Western Australia, December 17 1999, p.1.

³¹ The Standing Committee on Government Agencies Report No. 36, *State Agencies - Their Nature and Function*, April 1994, p.20.

³² For example, written submission from Murdoch University, November 17 1999 and written submission from the University of Western Australia, December 17 1999.

OTHER AUSTRALIAN JURISDICTIONS

- 4.6 In Victoria, the *Administrative Law (University Visitor) Act 1985* amended the *Administrative Law Act 1978*, to provide that the Visitor's jurisdiction at Victorian universities is not exclusive:

*"A person affected by a decision of a tribunal may apply for and be granted an order for review under this Act notwithstanding that the matter which is the subject of the application is within the jurisdiction of the Visitor of a University."*³³

- 4.7 In New South Wales, the *University Legislation (Amendment) Act 1994* amended the various Acts relating to New South Wales universities to reduce the Visitor's role to being purely ceremonial:

"(1) the Governor is the Visitor of the University but has ceremonial functions only.

*(2) Accordingly, the Visitor has no functions or jurisdiction with respect to the resolution of disputes or any other matter concerning the affairs of the University (other than a matter involving the exercise of ceremonial functions only)."*³⁴

- 4.8 In June 1994 the University of Sydney approved the appointment of a Student Ombudsman to investigate complaints by students at the university against staff. This Student Ombudsman is responsible to the Vice-Chancellor of the University and may only investigate matters that are not subject to any hearings under the legislation or by-laws affecting the university.³⁵

- 4.9 The terms of reference for the Student Ombudsman at the University of Sydney provides that the Student Ombudsman has discretion as to whether complaints fall within his or her function. The Student Ombudsman only has recommendatory powers and must refer any matter that cannot be resolved by either informal consultation or at a conference with the relevant parties to either the relevant Departmental Head or the Vice-Chancellor.³⁶ One major distinction is that the decisions of the Visitor are binding and not merely recommendatory. The position of Student Ombudsman at the University of Sydney

³³ Section 14(1) *Administrative Law Act 1978* (Victoria).

³⁴ For example, section 1 *University Legislation (Amendment Act) 1994* Schedule 1 (New South Wales).

³⁵ University of Sydney Administrative Policy 027, *Student Ombudsman Terms of Reference* (see www.usyd.edu.au/su/planning/policy/admin27_0omb.html), p.1.

³⁶ *Ibid.*, p.2.

illustrates that the role of Student Ombudsman generally is part of the internal dispute resolution process rather than a review of the overall process, as the Student Ombudsman is responsible to the Vice-Chancellor of the University.

WA OMBUDSMAN'S SUBMISSION

- 4.10 The WA Ombudsman, in his written submission to the Committee on 14 October 1997, provided a comparison of the roles of the Visitor and the Ombudsman as well as examining alternatives to the Visitor.
- 4.11 The WA Ombudsman noted that in Alberta (Canada), New Zealand and in South Africa the office of Visitor has been abolished.³⁷
- 4.12 Both the WA Ombudsman and the Visitor are meant to be avenues of last resort to redress unresolved grievances.³⁸ The roles are the same in that both the WA Ombudsman and the Visitor require written submissions to be lodged, they carry out investigations in private and they require all internal avenues for appeal to be exhausted before commencing inquiries. Previous decisions from the WA Ombudsman and the Visitor on merit review issues have been dealt with in a similar manner, namely seeking an independent second opinion as to the merit of a student's work.³⁹
- 4.13 The basis of the WA Ombudsman's power arises from legislation while the power and scope of the Visitor's jurisdiction flows mainly from common law.⁴⁰ The roles differ in that the Visitor's decisions are binding on universities while the WA Ombudsman can only make recommendations.
- 4.14 On the other hand, the WA Ombudsman's jurisdiction is broader in that he has the power to investigate complaints about *all* administrative matters relating to the university, such as complaints relating to parking infringements or actions of university staff acting as consultants to the public.⁴¹
- 4.15 There are also procedural differences with the WA Ombudsman more generally conducting investigations by letter, telephone calls, examining files and by informal interviews rather than by formal hearing. The Visitor by contrast usually appoints an

³⁷ Written submission of Ombudsman's Office, Western Australia, October 14 1997, p.1. Also see *Parliamentary Commissioner Act 1971*. (Also see Appendix 6.)

³⁸ *Ibid.*, p.3.

³⁹ *Ibid.*, p.2.

⁴⁰ *Ibid.*, p.1.

⁴¹ *Ibid.*, p.2.

assessor to conduct a formal hearing where there is dispute about fact, at which a complainant can be legally represented.⁴²

- 4.16 Part III of the *Parliamentary Commissioner Act 1971* sets out the jurisdiction and functions of the WA Ombudsman. Section 14(4)(a) states that the Ombudsman shall not conduct an investigation in respect of matters where the complainant has a right of appeal, reference or review to another tribunal. Section 14(5) qualifies this by stating that the Ombudsman may conduct investigations regardless of this if he is satisfied that in the particular circumstances it is not reasonable to expect the complainant to resort to such measures.

- 4.17 In a written submission to the Committee, the WA Ombudsman noted the overlap in jurisdiction with the Visitor and stated that he believed that (at that time) legislative amendment was not likely.⁴³ He added:

*“In the short term I have decided to adopt the stance that I will continue to consider complaints without requiring complainants to go to the Visitor, notwithstanding that I recognise that there is a possibility that the complainants will approach the Visitor if they are not satisfied with my findings. In my view, it is generally not reasonable to expect complainants to approach the Visitor before approaching the Ombudsman...”*⁴⁴

- 4.18 This appears to be a different position to that taken by the WA Ombudsman when Dr Rindos made the initial application to the office.

- 4.19 The reasons given for the WA Ombudsman’s stance are:

- 4.19.1 the Visitor’s role has operational uncertainties and ambiguities;
- 4.19.2 the Visitor process can involve significant legal costs and procedural formalities;
- 4.19.3 at the time of writing the submission, the WA Ombudsman was aware of only two matters in which complainants dissatisfied with the WA Ombudsman’s findings had approached the Visitor; and
- 4.19.4 in any case, the WA Ombudsman doubted that the Visitor (the Governor) would be able to commit the necessary resources (which would have resulted

⁴² *Ibid.*, pp. 2-3.

⁴³ *Ibid.*, p.4.

⁴⁴ *Ibid.*, p.5.

in a high cost to the State) to handle the numbers of cases the WA Ombudsman has investigated.⁴⁵

4.20 The WA Ombudsman's submission to the Committee suggests the following possible options to clarify the ambiguity in relation to the jurisdictions of the WA Ombudsman and the Visitor:

4.20.1 exclude universities wholly or partially from the WA Ombudsman's jurisdiction;

4.20.2 alter the Visitor's role to remove the complaint-handling function so that it becomes purely ceremonial;

4.20.3 the Governor adopt a policy of appointing the WA Ombudsman as the assessor;

4.20.4 give the Visitor a clear discretion to refuse to take up complaints in the case of all universities; and/or

4.20.5 make university decisions reviewable by a general administrative review process.

4.21 As noted previously in this report, the Committee is aware that the Department of Higher Education is currently examining the option of amending legislation to enable the University of Western Australia and Murdoch University Visitors to have the discretion to refuse to take up complaints. This is already the case with Edith Cowan University and Curtin University of Technology.

4.22 The Committee considered amendments that would have allowed uniformity across all four universities and prevented the necessity of the Visitor reviewing matters dealt with in other more appropriate ways, or that the WA Ombudsman had already considered.⁴⁶ The Committee has concluded that the role should be abolished altogether as stated in Recommendation 1.

⁴⁵ *Ibid.*, p.5.

⁴⁶ *Ibid.*, p.10.

4.23 The WA Ombudsman in his submission to the Committee concludes:

*“There is no case for universities to be any less accountable for their actions than they presently are or than other public sector entities. It is for Parliament and the community to determine what form the accountability mechanisms should take. However I believe that the role of the Visitor has been overtaken by events. In the days where universities were small and relatively cloistered institutions, with little government funding, the Visitor no doubt provided a “swift, cheap and final” form of alternative dispute resolution. Now that universities are large, publicly funded bodies there appears to be no reason they should not have the same external accountability mechanisms as other public sector bodies.”*⁴⁷

4.24 The WA Ombudsman identifies the “need for a grievance-resolution process for those (staff, students and others) affected by university decisions and actions”.⁴⁸ He believes that the Visitor’s role should at least be clarified and a discretion given to the Visitor as to whether or not to become involved in particular matters.⁴⁹ The WA Ombudsman also submitted that if the option was adopted of establishing a general administrative review body in Western Australian, the function of the Visitor would be unnecessary and should be dispensed with altogether.⁵⁰

4.25 The WA Ombudsman also suggested that consideration be given to bringing universities within the jurisdiction of the Public Sector Standards Commission as a means for informal, external specialist grievance mechanism for complaints about human resources management issues.⁵¹

THE WA INDUSTRIAL RELATIONS COMMISSION

4.26 When the Rindos matter came before the Western Australian Industrial Relations Commission (the Commission), the Commission decided that it did not have jurisdiction to hear the application for wrongful dismissal by Dr Rindos as he had an avenue of appeal by way of the Visitor.⁵² Section 23(3)(d) of the *Industrial Relations Act 1979*

⁴⁷ *Ibid.*, pp. 10-11.

⁴⁸ *Ibid.*, p.11.

⁴⁹ *Ibid.*, p.11.

⁵⁰ *Ibid.*, p.11.

⁵¹ *Ibid.*, p.11.

⁵² *David John Rindos v The University of Western Australia* WAIRC No 1486 of 1993, February 21 1995, Commissioner R. N. George.

provides that the Commission cannot determine matters relating to termination of employment if there is a provision in another Act for an appeal in a matter of that kind.⁵³ The current state legislation regarding the Visitor therefore restricts access to the Commission. In the federal jurisdiction, staff covered by federal awards, are not restricted from access to relevant dispute resolution mechanisms within that jurisdiction by virtue of the Visitor.⁵⁴

- 4.27 In the Supreme Court decision of *Murdoch University v Bloom and Kyle*⁵⁵, Chief Justice Burt stated that it was well established that the Visitor's jurisdiction was confined to internal or "domestic" matters within the university.⁵⁶ Commissioner Fielding of the Western Australian Industrial Relations Commission, in his *Review of the Western Australian Labour Relations Legislation* in 1995⁵⁷, noted that the Commission's jurisdiction was defined in the *Industrial Relations Act 1979* in "very general terms". More specifically the Commission's jurisdiction was subject to other provisions of that Act, namely section 23 discussed above. Commissioner Fielding said of the jurisdiction of the Commission:

*"The decided cases make it abundantly clear that not every dispute between an employee and the employer is an industrial matter, only matters that affect or relate to the work, privileges, rights or duties of the employer or employee come within the scope of the Commission. In short, there needs to be an industrial flavour about the matters."*⁵⁸

- 4.28 In light of the above, it appears to the Committee that the Visitor's jurisdiction as it stands restricts access to the Commission in relation to such industrial matters.

IS ANOTHER REVIEW ENTITY NECESSARY TO REPLACE THE VISITOR?

- 4.29 Edith Cowan University, in its written submission to the Committee, stated that the Visitor had not considered a complaint since 1990, at which time the university was not under the jurisdiction of the WA Ombudsman. The University Council had postponed considering reducing the role of the Visitor to a ceremonial one until this Committee had

⁵³ Section 23(3)(d) *Industrial Relations Act 1979*.

⁵⁴ Written submission of Ombudsman's Office, Western Australia, October 14 1997, p.8.

⁵⁵ *Murdoch University v Bloom and Kyle* (1980) WAR 194.

⁵⁶ *Ibid.*, p.197.

⁵⁷ *Review of the Western Australian Labour Relations Legislation* by Commissioner Fielding, July 1995.

⁵⁸ *Ibid.*, p.69.

reported on the matter.⁵⁹ This is indicative of the general lack of use of the Visitor as a mechanism for appeal and review.

- 4.30 The Committee believes that there is duplication of process with the Visitor and the WA Ombudsman's roles. In addition to this, the WA Ombudsman's Office appears to be better resourced and have a clearer jurisdiction than the Visitor's role.

- 4.31 Chapter 5 of the April 1996 report of Commission on Government examined the role, function and purpose of the WA Ombudsman. One of its recommendations was that:

*"A panel of experts should be appointed to assist the State Ombudsman as and when necessary, in the investigation of matters which require specialist knowledge."*⁶⁰

- 4.32 The Committee believes that more consideration should be given to the feasibility of establishing such a panel of experts.

- 4.33 The Committee believes that this would acknowledge the freedom and autonomy of Western Australian public universities as well as providing expert assistance.

- 4.34 The Committee notes that presently the WA Ombudsman has the power to seek expert advice generally⁶¹, but sees merit in formalising the process in this context.

OTHER POSSIBLE AVENUES OF REVIEW AND ADMINISTRATIVE APPEAL

- 4.35 The Committee heard that there may be considerable merit in establishing uniform procedures through state law to apply to all public universities with regards to review of decisions relating to internal disputes.

- 4.36 The Clerk of the Legislative Council provided advice to the Committee on March 11 1998. He submitted to the Committee that it should consider the establishment of a general university appeal body made up of an appointee from the university upon which an appeal related and two other appointees from the other public universities in Western Australia.⁶²

⁵⁹ Written submission of Edith Cowan University, November 10 1999, p.2.

⁶⁰ Commission on Government Report No. 3, April 1996, p.87.

⁶¹ See section 20(1)(a) *Parliamentary Commissioner Act 1972* and section 7 *Royal Commissions Act 1968*.

⁶² Transcript of oral advice of the Clerk of the Legislative Council, Mr Laurie Marquet, March 11 1998, p.4.

“...you are then in a situation where the universities through this appellate mechanism can standardise both procedure and merit”.⁶³

4.37 If such a body was to be established, the Committee anticipates that it would have the power to make decisions binding on the universities as opposed to being recommendatory as is the case with the WA Ombudsman. The Committee believes that such a body needs to be established by legislative amendment to allow it to exercise discretion as to which matters should be reviewed or investigated. This is to avoid overlapping with the WA Ombudsman’s jurisdiction. It would also offer individuals a greater avenue for redress compared to the limited form of redress available through the WA Ombudsman by way of recommendations only.⁶⁴

4.38 Generally speaking, there are two basic aspects to review of administrative decisions:

4.38.1 merit review; and

4.38.2 judicial review.

4.39 The term “merit review” refers to either a review of the evidence considered in the original decision or a fresh hearing making a new decision affirming, varying or setting aside the original decision.⁶⁵

4.40 The term “judicial review” refers to a review of matters of law. In the present context this is also linked to “procedural fairness” whereby matters of procedure and process are reviewed.

4.41 Legislation could specify that judicial review be carried out by a single judge.⁶⁶ In the United States of America the *Administrative Procedures Act 1946* section 3105 provides for the appointment of administrative law judges as follows:

“Each agency shall appoint as many administrative law judges as are necessary for proceedings required to be conducted in accordance with sections 556 and 557 of this title. Administrative law judges shall be assigned to cases in rotation as far as practicable, and may not

⁶³ *Ibid.*, p.4.

⁶⁴ Commission on Government Report No. 4, July 1996, p.120.

⁶⁵ *Ibid.*, p.107.

⁶⁶ Transcript of oral advice of the Clerk of the Legislative Council, Mr Laurie Marquet, March 11 1998, p.10.

perform duties inconsistent with their duties and responsibilities as administrative law judges.”⁶⁷

4.42 The Committee notes the view expressed by Murdoch University that:

“...external review bodies have to be careful not to encroach on matters which fall within University autonomy. The role of an external review body is to review University processes or whether University actions in relation to an individual have followed due process and are fair. It is not the role of an external body to seek to impose its judgement over that of the University on academic matters, e.g. whether a particular piece of student work warrants a better grade than that awarded, or whether the merit of a member of academic staff warrants promotion. External bodies are generally very sensitive to this distinction. A fine line may need to be drawn, but it is an important one.”⁶⁸

4.43 In its thirty sixth report, the Standing Committee on Government Agencies, examined in detail the nature and function of Government Agencies.

4.44 The report proposes a “*State Agencies Act*” which would enable the creation of agencies by regulation and provides for rulemaking, decision-making and judicial review, ministerial responsibility and directives.⁶⁹

FINDINGS

4.45 *The Visitor’s jurisdiction as it stands restricts access to the Western Australian Industrial Relations Commission in respect of certain “domestic” issues of a public university in Western Australian, namely the examining of privileges, rights and duties of an employer (the relevant university) and employees.*

4.46 *The WA Ombudsman is a more efficient and cost effective method for reviewing internal university administrative decisions than the Visitor but can only afford limited redress to the complainant in the form of recommendations.*

⁶⁷ *Administrative Procedures Act 1946* (United States of America) PART III – EMPLOYEES sub-part B, Chapter 31, Subchapter I, section 1305.

⁶⁸ Written submission of Murdoch University, March 21 2000, pp. 2-3.

⁶⁹ The Standing Committee on Government Agencies Report No. 36, *State Agencies – Their Nature and Function*, April 1994.

- 4.47** *More consideration should be given to the feasibility of establishing a panel of experts to assist the WA Ombudsman in investigating disputes that arise from academic matters at the Western Australian public universities.*

RECOMMENDATION

<p><u>Recommendation 2</u> : The Committee recommends that the WA Ombudsman should use his discretionary power to consult relevant experts to expedite dispute resolution.</p>

CHAPTER 5

INTERNAL DISPUTE RESOLUTION PROCESSES

GENERAL

- 5.1 The Committee appreciates that universities have a tradition of academic freedom and institutional autonomy and the right to adopt internal dispute resolution structures. In focussing on the external review process the Committee has identified the need for achieving an effective, accessible, fair, uniform, and affordable system, which delivers a timely outcome.
- 5.2 The Committee believes that internal dispute resolution structures are relevant to the overall administrative review process and the issue of natural justice.
- 5.3 The Committee has requested and received submissions from the four publicly funded Western Australian universities outlining the current internal dispute resolution structures. A tabulated summary of this information is included in Appendix 3 of this report.
- 5.4 The Committee notes that there have been changes and refinements to internal dispute resolution processes at these universities since the tabling of the Committee's related report for this inquiry,⁷⁰ which surrounded the denial of tenure to Dr David Rindos by the University of Western Australia.⁷¹
- 5.5 The Commission on Government, in its July 1996 report observed that:

*"Internal review offers the appellant the possibility for quick and inexpensive redress. It can help in achieving improvements in the quality of agency decision-making and it may operate as a filter before matters go to external appeal. A person can be notified of their rights and any time restraints on the appeal. However, internal review can act as a barrier to access because it adds another layer to the review process."*⁷²

⁷⁰ See Appendix 7.

⁷¹ See the Standing Committee on Public Administration Report No. 4, *The Events Surrounding the Denial of Tenure to the Late Dr David Rindos by the University of Western Australia*, December 1997.

⁷² Commission on Government Report No. 4, July 1996, p.118.

- 5.6 The Commission on Government recommended that all public agencies should have a process in place for internal review of administrative decisions.⁷³ The Committee believes that is also true in relation to universities.

PROCEDURAL FAIRNESS

- 5.7 There is a presumption that principles of procedural fairness apply when a decision affects a person's rights, interests or legitimate expectations.⁷⁴ This presumption is only displaced when the terms of the legislation are clear and unequivocal, and state that the principle is excluded.⁷⁵
- 5.8 Where a decision-making process takes place in stages, a full and fair hearing before a recommending body may satisfy procedural fairness. The question is whether the process when viewed in its entirety satisfies the requirements of procedural fairness.
- 5.9 The final decision-maker may arrive at an independent decision, adopting the findings of the recommending body without the necessity for a further hearing, provided that the recommending body has proceeded fairly and no new fact or matter is introduced at the final stage.
- 5.10 If the final decision-maker proposes to take new material into account, on which the person affected is entitled to comment, a further opportunity must be provided to that person to address the new material.⁷⁶
- 5.11 A decision-maker must act logically and not merely on speculation or suspicion. This means that the decision to make the finding must be based upon some material that tends logically to show the existence or non-existence of facts consistent with the finding.⁷⁷
- 5.12 It is also important to note that a decision-maker should act without bias. This means that there should **not** be a reasonable perception of **unfairness** where a decision-maker has a material interest in the outcome of the decision, or where there is partisanship, personal prejudice or prejudgement on the part of the decision-maker.

⁷³ Commission on Government Report No. 4, July 1996, p.127.

⁷⁴ "In administrative law, a reasonable expectation that a legal right or liberty will be obtained or renewed, or will be unfairly withdrawn without hearing A legitimate expectation falls short of being a legal right but has been recognised as an interest protected by procedural fairness." Butterworths Australian Legal Dictionary, Butterworths, 1997, p.683.

⁷⁵ *Annetts v McCann* (1990) 170 CLR 596 per Mason CJ, Deane and McHugh JJ at 598.

⁷⁶ *South Australia v O'Shea* (1987) 163 CLR 378 per Mason CJ at 389, Mason CJ, Wilson and Toohey JJ at 403, Brennan J at 409.

⁷⁷ *Minister of Immigration and Ethnic Affairs v Pochi* (1980) 31 ALR 666 per Deane J at 690.

- 5.13 Therefore a person should not be a decision-maker in a matter where they have expressed clear views about a question of fact which is a significant issue or about the credit of a witness whose evidence is significant on a question of fact.⁷⁸

DISPUTE RESOLUTION SCHEMES

- 5.14 In *Fair Trading Codes of Conduct*, prepared by Commonwealth, State and Territory Consumer Affairs Agencies, how and why codes of conduct are formulated is examined in a fair-trading context.⁷⁹ Part of the report examines complaints, dispute procedures and sanctions.
- 5.15 Using the issues dealt with in the above-mentioned report, the Committee has identified some key points that it believes are relevant to dispute resolution in the context of this report.⁸⁰ These include:
- 5.15.1 having a procedure in place for addressing disputes encourages openness and highlights any shortcomings in the administrative system;
 - 5.15.2 Stage 1 should involve direct negotiation between the parties, which could in this context involve the person aggrieved approaching the person with whom the complainant has a problem, provided it is suitable to do so;
 - 5.15.3 Stage 2 of the process should provide for an independent complaint body or person to handle difficult complaints not resolved initially. This complaint body or person should act as an independent referee with conciliation powers;⁸¹
 - 5.15.4 Stage 3 then involves an arbitrating body⁸², which must be independent of previous involvement in the matter and must have a clearly defined role; and
 - 5.15.5 the collection of information regarding the matter of dispute is important as it provides an insight into the cause and origin of the complaint. This may also in turn help to prevent a problem occurring in the future.⁸³

⁷⁸ *Livesey v The New South Wales Bar Association* (1983) 151 CLR 288.

⁷⁹ *Fair Trading, Codes of Conduct – Why have them. How to prepare them*, Commonwealth, State and Territory Consumer Affairs Agencies, October 1996.

⁸⁰ *Ibid.*, p.10.

⁸¹ *Ibid.*, p.11.

⁸² *Ibid.*, p.12.

⁸³ *Ibid.*, p.12.

- 5.16 Sanctions are important to the whole process as they give codes of conduct, rules or regulations credibility and provide a means of remedy for a complainant.⁸⁴
- 5.17 The Committee believes that a dispute resolution system as a whole should strive to be accessible, independent, fair, accountable, efficient and effective.⁸⁵ The Committee also believes that it is appropriate for the universities examined in this report to periodically evaluate the effectiveness of their respective internal dispute resolution and review mechanisms with reference to the following goals:
- 5.17.1 “Accessibility” involves promoting the existence of avenues of redress and formulating a system that is easy to use;⁸⁶
- 5.17.2 “Independence” refers to independence in the decision-making process and the general administration of the system;⁸⁷
- 5.17.3 “Fairness” refers to fair decision-making by observing principles of procedural fairness and having specific criteria upon which decisions are based;⁸⁸
- 5.17.4 “Accountability” is achieved by publishing determinations and information about complaints where appropriate;⁸⁹
- 5.17.5 “Efficiency” can be achieved by having in place a process for handling complaints and ensuring that they are dealt with appropriately. This also involves regularly reviewing the performance of a system that is in place;⁹⁰ and
- 5.17.6 “Effectiveness” should be measured periodically via an independent review process.⁹¹

⁸⁴ *Ibid.*, p.12.

⁸⁵ See *Benchmarks for Industry-Based Customer Dispute Resolution Schemes*, Commonwealth, Consumer Affairs Division, Department of Industry, Science and Tourism.

⁸⁶ *Ibid.*, Benchmark 1.

⁸⁷ *Ibid.*, Benchmark 2.

⁸⁸ *Ibid.*, Benchmark 3.

⁸⁹ *Ibid.*, Benchmark 4.

⁹⁰ *Ibid.*, Benchmark 5.

⁹¹ *Ibid.*, Benchmark 6.

STUDENT OMBUDSMAN

- 5.18 The Committee has examined the dispute resolution mechanisms in universities in other Australian states and considered them along with the mechanisms in place in Western Australia. The Committee notes with interest that at the University of Sydney:

“Students who are dissatisfied with the manner in which they have been dealt with by academics or administrative staff have recourse to a Student Ombudsman. The role of the Student Ombudsman is to investigate complaints by students, to conciliate where appropriate and to report to the Vice-Chancellor for action if necessary. On academic matters students also have a right of appeal to the University Senate.”⁹²

- 5.19 The Committee has noted earlier in this report that the Student Ombudsman provides recommendations to the Vice Chancellor of the particular university and therefore has a different role to the present role of the Visitor in Western Australia.

- 5.20 The University of Sydney Policy 027 outlines the Student Ombudsman’s Terms of Reference:

“The Vice-Chancellor shall appoint a person to be Student Ombudsman who shall be responsible to the Vice-Chancellor for investigating complaints by enrolled students of the University against staff of the University other than the Vice-Chancellor, except that a matter which is the subject of a hearing under the Act or By-Law shall not be at the same time the subject of an investigation of the Student Ombudsman.”⁹³

- 5.21 The Committee is aware that Murdoch University has considered establishing a Student Ombudsman but has not proceeded with establishing such a position at this stage.⁹⁴

⁹² Written Submission of the University of Sydney, June 24 1997.

⁹³ University of Sydney Administrative Policy 027, *Student Ombudsman Terms of Reference* (see www.syd.edu.au/su/planning/policy/admin27_0omb.html) at clause 1.

⁹⁴ E-mail from Mr Andrew Bain, Murdoch University, ‘Student Ombudsman: Public Administration Committee Inquiry’, May 18 2000.

FINDINGS

- 5.22 *The Western Australian public universities have a tradition of academic freedom and institutional autonomy and the right to adopt appropriate internal dispute resolution structures.*
- 5.23 *The Western Australian public universities examined should give further consideration to the adoption of Student Ombudsmen.*
- 5.24 *In the event that the role of the Visitor is reduced to being purely ceremonial, each institution should be given the flexibility to adopt an independent internal process of review of individual matters and dispute resolution processes as a whole. These must comply with the rules of procedural fairness.*

RECOMMENDATION

Recommendation 3: The Committee recommends that Western Australian public universities assess and review the effectiveness of internal dispute and appeals mechanisms within their institutions on a periodic basis ensuring that the principles of procedural fairness are expressed within those mechanisms.



Hon Kim Chance MLC
Chairman

May 29 2000

APPENDIX 1

TERMS OF REFERENCE OF THE COMMITTEE

1. A Standing Committee on Public Administration is established.
2. The Committee consists of 6 members.
3. The functions of the Committee are:
 - (1) to inquire into and report to the House on the means of establishing agencies, the roles, functions, efficiency, effectiveness, and accountability of agencies and, generally, the conduct of public administration by or through agencies, including the relevance and effectiveness of applicable law and administrative practises;
 - (2) to consider and report on any bill referred to it by the House providing for the creation, alteration or abolition of an agency, including abolition or alteration by reason of privatization; and
 - (3) except as provided in Standing Order 339(c), the Committee shall not proceed to an inquiry whose sole or principal object would involve consideration of matters that fall within the purview, or are a function, of another Committee.
4. In this order:

"Agency" means-

 - (a) an agent or instrumentality of the State Government, established for the purpose of developing, implementing or administering any program or policy with a public purpose or any such program or policy that relies substantially for its development, implementation or administration on public monies or revenue;
 - (b) any person empowered by a written law to make a decision enforceable at law whether by that person or otherwise,

and, where appropriate, includes any agency officer or employee acting, or having ostensible authority to act, as the agent or delegate of the agency, but does not include:

- (c) a House of the Parliament, or any Committee or member of either House, or any officer or employee of a department of the Parliament;
- (d) a court of law or a court of record, or a judge or other member of either court;
- (e) any person whose functions are solely of an advisory nature and the failure to obtain or act in accordance with advice given by that person does not invalidate or make voidable a decision made by another person;
- (f) a police officer or other person in the course of exercising a power conferred by a written law to arrest or charge a person with the commission of an offence, or to enter premises and seize or detain any object or thing;
- (g) a local government within the meaning of the Local Government Act 1995;”

APPENDIX 2

TERMS OF REFERENCE FOR THE INQUIRY INTO THE UNIVERSITY OF WESTERN AUSTRALIA

To inquire into and report on -

1. The events surrounding the denial of tenure to Dr David Rindos by the University of Western Australia (“the University”), and more particularly to -
...

- (c) make recommendations arising out of the events surrounding the denial of tenure to Dr Rindos concerning the need to maintain integrity, professionalism and international standing of State Universities generally, thereby reinforcing the public confidence in the State tertiary education system.

- (d) To examine the mechanisms in Western Australian universities for review of decisions relating to student grievances, internal disputes involving academic staff, internal disputes arising from performance assessments of academic staff,

with a particular focus on the role of the Visitor, merit and procedural issues, and the necessity for a general external review mechanism applying to all Western Australian Universities...

APPENDIX 3

OVERVIEW OF THE INTERNAL DISPUTE RESOLUTION, GRIEVANCE APPEAL MECHANISMS AT WA UNIVERSITIES

Note: This table is a general overview only and does not necessarily refer to all aspects of the internal dispute resolution mechanisms at the universities mentioned.

Grievances	University of Western Australia
Intimidating and Inappropriate Behaviour	<p>Guidelines for Conduct in the Workplace</p> <ul style="list-style-type: none"> • The individual affected should approach the other party directly to seek resolution if possible. • Otherwise the matter can be directed to the Department Head or Supervisor. • The Head or Supervisor then informs the complainant that he/she will meet with the other party to discuss the substance of the concern. • The Head or Supervisor speaks to the other person. If acknowledgment of behaviour and undertaking to stop, this is recorded in writing and situation monitored. • If behaviour recurs, undertake formal disciplinary procedures advised by guidelines. • The Head or Supervisor may initiate mediation to resolve the issue. • Failing resolution at “local level”, the complainant can either seek resolution by mediation conducted by the University Mediator OR through industrial processes (staff) or under UWA <i>Statute No. 17</i> (students).
Equity Grievances	<p>Policy and Procedure for Dealing with Equity Enquiries and Grievance</p> <ul style="list-style-type: none"> • A person who feels discriminated against or harassed may choose to discuss the matter with the other person in a constructive manner.

	<p>OR</p> <p>Complain through the University's 4 stage procedures (Equity Adviser, complaint resolution by relevant Supervisor or Manager, complaint resolution by Senior University Managers, formal complaint to the Vice-Chancellor).</p> <p>OR</p> <p>Complain to the WA Commissioner for Equal Opportunity.</p> <p>OR</p> <p>Choose to pursue the complaint through another appropriate representative body such as a relevant union or student guild.</p>
Student Misconduct	<ul style="list-style-type: none"> • UWA <i>Statute No.17</i> deals with student misconduct and states the penalties imposed including fines, exclusion from examinations and expulsion. • The statute provides that the Vice-Chancellor may for any instance of misconduct by a student, fine the student, suspend the student for 14 days of any or all rights and privileges within the university. • The Vice-Chancellor can suspend a student from between 14 –28 days but such matters must also be referred to the university Board of Discipline, which may hear the matter. The student also has a right to appeal to the Appeals Committee. • The Registrar also may fine the student and may exclude the student from university tests or examinations. • A Dean or Department Head may also fine a student for misconduct if they are enrolled for a degree in that faculty or unit offered by the Department, suspend a student for 7 days or cancel student credits. • Written notice must be given to the student and a report written to the Registrar. • The University Librarian may also fine a student and suspend him/her from the Library for up to 14 days. • The Board of Discipline is empowered to hear and adjudicate on: <ul style="list-style-type: none"> - a charge of misconduct referred by the Vice-Chancellor, Deputy Vice-Chancellor, Executive Dean, Dean or Department Head, the Registrar or the University Librarian; and

	<p>- any appeal against the Vice-Chancellor exercising summary jurisdiction.</p> <ul style="list-style-type: none"> • If the penalty is expulsion from the university, it shall have effect only after confirmation from the University Senate. All of the student's rights and privileges are to be suspended until a determination is made. • If the Board of Discipline believes that the misconduct was trivial (or for any other reason), it may decline to record a finding or impose a penalty. • The Board of Discipline is made up of: a chair appointed by the University Senate; the Chair of the Academic Board or nominee; the President of the Guild of Undergraduates or nominee; one person selected from a panel by the Chair of the Academic Board; and one person selected from a panel by the President of the Guild of Undergraduates. • The Board of Discipline shall hear charges against a student separately from other charges against him/her or another student UNLESS they arise from the same instance of misconduct. • The Board of Discipline may refrain from hearing or desist from proceeding further with charges or appeals in the interests of justice. • The Registrar shall give a student charged with misconduct before the Board of Discipline no less than 10 university working days written notice of a hearing. • Every decision of the Board of Discipline shall be produced in writing.
Academic Assessment	<p>University Regulations for Appeals against Academic Assessment</p> <ul style="list-style-type: none"> • Unit Assessment Mechanism Statement must be available to all students of a particular department. • A student has a right to lodge, at a Departmental level, an appeal challenging the academic judgement in arriving at the assessment AND the process that lead to the disputed academic assessment if he or she believes it is unfair in relation to his or her individual case. • A student may appeal to a Head of Department by submitting a

	<p>comparison with another student with a higher grade.</p> <ul style="list-style-type: none">• A student may then submit an Appeal Against Academic Assessment to the Executive Dean, then appeals through the following stages: the Faculty Appeals Committee; Appeals to the Vice-Chancellor against procedural irregularity by a Faculty Appeals Committee.
Other	<ul style="list-style-type: none">• <u>Academic Staff</u>: Staff dispute resolution procedures under the <i>Academic, Academic Research and Related Staff Agreement 1997</i>.• <u>General Staff</u>: <i>General Staff Agreement 1997</i>.• <i>Guide to Procedures for the Resolution of Grievances for Postgraduate Student Engaged in Research</i>.

Grievances	Edith Cowan University
Intimidating and Inappropriate Behaviour	<p>Policy on Prevention of Harassment and Guidelines for the Resolution of Reported Complaints</p> <ul style="list-style-type: none"> • A complaint may be discussed confidentially with the Supervisor or Manager of the area, a University Contact Officer, the Manager Equity and Diversity, the Director Human Resources, or the Student Guild. • The complainant has the right to approach, at any time, the external bodies such as their union or the Equal Opportunity Commission. • <u>Stage 1</u>: The Supervisor or Contact Officer clarifies the complaint and the complainant's desired outcome. • The complainant may choose to leave the other person's name anonymous at this Stage. • If the complainant agrees, the Manager Equity and Diversity, the Director Human Resources or an external consultant may be consulted. • <u>Stage 2</u>: The conciliation process follows unless the complaint is of such a serious nature that it is referred, in case of staff, to the Human Resources Division for action under the appropriate award or, in the case of students, to a Board of Discipline as detailed in <i>ECU Statute 22</i>. • Temporary relocation of either party may be negotiated. • The Manager Equity and Diversity or the Direct Human Resources must monitor any resolution at this stage. • <u>Stage 3</u>: The matter is referred to the Vice-Chancellor, the Vice-Chancellor's Group or other appropriate University bodies such as the Board of Discipline or may be dealt with under the appropriate award. • The Vice-Chancellor's Group consists of a Chairperson and two members of staff appointed by the Vice-Chancellor who were not directly involved in the informal resolution procedures. • Where a matter involves a student, a student representative may be

	<p>appointed.</p> <ul style="list-style-type: none"> • The Chairperson will report findings to the Vice-Chancellor with recommendations (which may involve referral to the University Employee Conditions of Service Agreements or University Regulations). • Within 14 days of receiving an appeal, the Vice-Chancellor will convene a hearing of an Appeals Committee. • The Appeals Committee will comprise of: a non-staff member of the University Council nominated by the Chancellor (who will act as Chairperson of the Committee); two staff members not involved in the matter; and a Student Representative when the grievance involves a student. • The University should take all reasonable steps to ensure confidentiality of any grievance. • Record of the complaint should be kept for 2 years and conciliation agreements may be documented.
Equity Grievances	As above
Student Misconduct	<ul style="list-style-type: none"> • ECU <i>Statute No. 22</i> sets out student obligations, penalties and the Board of Discipline and Board of Appeal. • Students may be subject to the penalties of fine, cancellation or suspension of university rights and privileges, and restitution of any university property lost, damaged or stolen by the student. • The Vice-Chancellor may impose fines and suspend rights and privileges. • A Head of a Division may also impose fines or exclude students from examinations. • The University Registrar may impose fines or exclude a student from examinations. • The University Librarian may impose fines and exclude a student from the Library's rights and privileges. • A Board of Discipline may hear and adjudicate upon any charge of misconduct referred to it by the Vice-Chancellor, Head of a Division, Head of a Department, the Registrar or the University Librarian.

	<ul style="list-style-type: none"> • The Board of Discipline may impose any penalty set out in the Statute (as referred to above). • If the Board of Discipline believes that the misconduct was trivial (or for any other reason), it may decline to record a finding or impose a penalty. • The Board of Discipline shall consist of: a chairperson who is a member of the University Council or academic staff (who must either be a qualified legal practitioner) or have a degree in law; two members of the full-time academic staff nominated by the Executive of the University Academic Staff Association; and two students nominated by the Student Guild. • The Board of Appeal is empowered to hear and adjudicate upon an appeal by a student against any penalty imposed. • The Board of Appeal consists of a chairperson appointed by the Council, two members of the academic staff and two students nominated by the Student Guild.
Academic Assessment	<p>Edith Cowan University (Admission, Enrolment and Academic Progress) Rules</p> <ul style="list-style-type: none"> • A student who is dissatisfied with any decision regarding his or her academic progress may within 10 days of being notified of the grade, result or decision, discuss the matter with the lecturer concerned or the Head of the Department (or nominee). • A student is permitted to view his or her examination script. • A student may request a review of the grade etc in writing to the Campus Registrar within 14 days. • The Campus Registrar shall refer the request for review to the Dean of the relevant Faculty who shall nominate an academic staff member (not concerned with the original decision) to conduct the review. • The nominated staff member must consult with the student and usually give a decision within 10 days. • Where the decision the student seeks to be reviewed, is a decision of a Board of Examiners, the request for review shall be referred to the Dean of the Faculty that established the Board of Examiners.

	<ul style="list-style-type: none"> • The student can then appeal to a Committee of Review. This Committee may inform itself in any manner it thinks fit to obtain information including consulting other students or members of academic staff. • The Campus Registrar shall inform the student of the Committee of Review's decision in writing. • The student who is still aggrieved by this decision may (within 10 days) appeal against the decision to the Academic Appeals Committee. • This notice of appeal cannot include new issues not identified to the Committee of Review. • The Academic Appeals Committee may regulate its own procedures. • The Academic Registrar shall publish a timetable to provide for the expeditious hearing of reviews and appeals.
Other	<p>A Guide for the Management of Non-effective Performance of Academic and General Staff</p> <ul style="list-style-type: none"> • <u>Academic Staff</u>: the agreements and awards are consulted in the following order - <i>Edith Cowan University Academic Staff Certified Agreement 1997; Higher Education Contract Employment Award 1998; Higher Education (Non Continuing Contract Employment) Interim Award 1996; Universities and Post Compulsory Academic Conditions Award 1995; Academic Award Restructuring Agreement 1991 (Agreed Document - Part 1); Australian Post Compulsory and Higher Education Academic Salaries (Consolidated) Award 1989; and Edith Cowan University Academic Staff Award 1988.</i> • <u>General Staff</u>: the agreements and awards are consulted in the following order - <i>Edith Cowan University General Staff Certified Agreement 1997; Higher Education (Non Continuing Contract Employment) Interim Award 1996; Higher Education General and Salaried Staff Interim Award 1989; and WACAE Non-Academic Salaried Staff Award 1981.</i> • <u>All Staff</u>: <i>Higher Education (Non Continuing Contract Employment) Interim Award 1996, and Workplace Relations Act 1996.</i>

	<ul style="list-style-type: none">• <u>ELICOS</u>: <i>Teachers (English Language Centres Of Australian Universities) Conditions Of Employment Award 1996 (ELICOS)</i>.
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Grievances	Curtin University of Technology
Intimidating and Inappropriate Behaviour	<p>Grievance Resolution Policy</p> <p>Grievance Procedure</p> <p>Grievance Resolution Protocol for Staff and Students</p> <ul style="list-style-type: none"> • Grievance policy does not replace existing policies and procedures which provide formal avenues for appeal against decisions of the University. • Staff has the option of initially seeking a resolution to their grievances formally and informally. • If staff wish to make a formal complaint, initially or after an attempt at an informal resolution, he or she must provide written details of the grievance to his or her Supervisor, Supervisor's Supervisor or Human Resources. • The informal stage of the grievance resolution process refers to procedures preceding a written submission being made to the Grievance Resolution Officer. • Where appropriate, the Supervisor may initiate action under the Student Discipline Statute (<i>Statute 10</i>). • <u>Informal Stage</u>: The complainant should seek to resolve the grievance with the relevant person in question, then the relevant Supervisor OR go to the person with management responsibility for a university decision, process or activity the subject of the grievance. • Advice may be sought at any stage and the Grievance Resolution Officer should be approached for procedural advice if it is difficult to approach the Supervisor in the circumstances. • The Supervisor must then clarify the issues separately with both parties within 5 days, seek assistance if necessary, and inform all parties of a grievance resolution plan within 21 days. • If all parties agree to mediation or other assistance, they may approach the University Counselling Service. • If a grievance is not resolved within 21 days, the Head of the School/Area shall inform the relevant Executive Dean/Director or

	<p>Deputy Vice-Chancellor of the grievance.</p> <ul style="list-style-type: none"> • The Deputy Vice-Chancellor or Executive Dean/Director may either initiate further action at this point or instruct the Head to move the matter to the formal stage. • <u>Formal Stage</u>: The process is managed by the Grievance Resolution Officer. • The Grievance Resolution Officer: (on request) is to assist the complainant to prepare a written complaint; submit a copy to the Head of the School etc within 2 days; request a written report of actions taken during the informal stage; provide the complainant with a copy; and invite the complainant to outline the actions which have occurred during the informal stage. • Any records held by officers of the university in relation to grievances are confidential and unavailable to persons other than a party to the grievance. • If the matter is not resolved at this level, the Grievance Resolution Officer shall submit a detailed report to a Grievance Resolution Committee. • The Grievance Resolution Committee may initiate investigations, conduct formal hearings, or other action it deems appropriate (consistent with the principles of natural justice) and advise the Vice-Chancellor of its findings and make recommendations if appropriate.
Equity Grievances	<p>Harassment Policy and Resolution Procedures</p> <ul style="list-style-type: none"> • <u>Stage 1</u>: The complainant is to talk to the alleged harasser OR talk to a Harassment Contact Officer OR see a Counsellor at the University Counselling Service. • <u>Stage 2</u>: Follow the Grievance Resolution Policy Protocol (see above). • <u>Stage 3</u>: Submit a formal complaint to the Vice-Chancellor. • Complainant can also seek advice from external bodies i.e. the Union, Student Guild, Equal Opportunity Commission, Human Rights and Equal Opportunity Commission and the Police (if a criminal matter).

<p>Student Misconduct</p>	<ul style="list-style-type: none"> • <i>Statute No. 10 – Student Disciplinary Statute.</i> • The Statute outlines the penalties that may be imposed for misconduct including fines, suspension from classes, suspension from examinations, exclusion from a unit or course, refusal of re-enrolment, expulsion from the university, cancellation or deprivation of examination or assignment credits. • Academics are empowered to exclude a student from a class for up to 24 hours before reporting the matter to a superior. An Academic may also be empowered by the Vice-Chancellor to exclude a student from classes for up to 5 days. • The Dean of a Faculty or a Head of a School may suspend a student's rights and privileges within the Faculty or School for up to 14 days OR for academic misconduct, cancel credits or deprive a student of credit for an examination or academic work for a semester. • Penalties imposed must be reported to the Deputy Vice-Chancellor or the Director of the Branch or College within 24 hours. • The Deputy Vice-Chancellor or the Director of the Branch or College may fine a student for misconduct, suspend him or her for up to 15 teaching days, deprive him or her of credits for a semester or impose more than one of these penalties at once. • The Academic Registrar may fine a student and exclude a student from examinations. He or she may also suspend a student of rights and privileges of the university if the student does not pay fines. • The Vice-Chancellor may also fine a student or suspend a student for up to 20 teaching days OR alternatively charge a student with misconduct and refer the matter to the Board of Discipline. • A student may appeal to the Registrar to suspend a penalty within 7 days of it being imposed. • A student may appeal then appeal within 7 days to the Board of Discipline (with leave of the Registrar) the penalty imposed. • The Registrar must prior to granting leave to an appeal notify the President of the Student Guild in writing seeking his or her views. • The Board of Discipline consists of a chairperson appointed by the Vice-Chancellor (who must be a legal practitioner), two members
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	<p>of the full-time academic staff from a panel of 6 nominated by the Academic Staff Association; and two students selected by the Vice-Chancellor from a panel nominated by the Student Guild.</p> <ul style="list-style-type: none"> • The Board of Discipline shall hear and determine any appeal by hearing the matter again from the beginning and confirming or setting aside the decision or penalty (or reducing or increasing either). • If the Board of Discipline makes a finding of misconduct, it may decline to record that finding if the misconduct is in its opinion trivial (or for any other reason). • The Board of Discipline is not bound by the rules of evidence or legal technicalities (but is subject to procedural fairness). • A student (or the university) may appeal to the Appeals Committee against any decision of a Board of Discipline. • The Appeals Committee may confirm or set aside a decision or reduce or increase a penalty or impose another penalty. • A decision of the Appeals Committee is final. • An Appeals Committee consists of a chairperson who is a qualified legal practitioner, two members of the university Council (one of whom is a student). • Students are entitled to legal representation at hearings of the Board of Discipline or an Appeals Committee.
Academic Assessment	<ul style="list-style-type: none"> • <i>Student Appeals Against Assessment.</i> • A student may firstly discuss any disputed assessment with appropriate members of staff. In any such discussion students and staff members may each be accompanied by another person from the university. • A student may appeal a result in writing (in the appropriate form) within 21 days after official publication of results to the Head of School controlling the unit. • The relevant Executive Dean may (on the recommendation of the Head of School) disallow the appeal if the student has not completed all the essential requirements of the course, or at least three knowledgeable people in the field have provided their

	<p>written reports to the Executive Dean.</p> <ul style="list-style-type: none"> • Any student aggrieved then has a right to appeal to the Vice-Chancellor. • The Head of School is then to inform the Unit Controller, request the student to resubmit the assessed work, and request the Unit Controller supply the criteria used to assess the student's work. • The work is then re-assessed by staff members nominated by a staff member and student respectively. • The student is to be notified in writing of the decision and the Academic Registrar notified of the outcome of the appeal.
Other	<ul style="list-style-type: none"> • <u>Staff</u>: <i>General Staff Enterprise Agreement 1997</i> – developed to provide a clear process for staff to follow when lodging a formal grievance. • <i>Regulations for the Degree of Master (by Research)</i>. • <i>Doctoral Degree Regulations</i>.

Grievances	Murdoch University
Intimidating and Inappropriate Behaviour	<p>Discrimination and Harassment Grievance Procedures</p> <ul style="list-style-type: none"> • <u>Stage 1</u>: Staff or students may make a written or oral submission to a Grievance Officer or the Dean/Unit or Office Head who should in turn inform the complainant of his/her rights and options. • Grievance Officers will inform the complainant of their rights regarding victimisation and the relevant legislation. • If the Grievance Officer approaches the alleged harasser, he or she will be informed his/her responsibilities in this matter. • <u>Stage 2</u>: A formal complaint may be submitted to a Grievance Officer, which gives a detailed outline of the alleged incident. • The Grievance Officer will interview the parties involved and seek resolution of the issue by conciliation to the satisfaction of all parties. • If resolution is not achieved the Grievance Officer will write a report to the Senior Grievance Officer outlining the main issues and noting that conciliation was not achieved (as well as reminding the complainant of the external avenues of complaint). • <u>Stage 4</u>: The Senior Grievance Officer will: interview the complainant and other relevant person; arrange an interview with the person or group against whom the complaint is made and inform them of the investigation process and their rights; seek resolution of the issues by conciliation; or otherwise inform the Vice-Chancellor that in his or her opinion the matter should be investigated.
Equity Grievances	<ul style="list-style-type: none"> • A person may make a complaint of sexual harassment by: approaching a Grievance Officer for support and advice, requesting the Grievance Officer to mediate; make a formal complaint through a Senior Delegated Officer; going directly to the Vice-Chancellor; or pursuing the matter through the Equal Opportunity Commission. • See discrimination and harassment grievance procedures.

Student Misconduct	<p>Codes of Ethics and Conduct</p> <p>Section 5, Student Information Handbook-Dishonesty in Assessment</p> <ul style="list-style-type: none"> • <u>Stage 1</u>: Plagiarism – The penalty is a warning or reprimand, rewrite, failure of part or all of the course and/or suspension for 1 or 2 semesters. • Unauthorised or improper collaboration – The penalty is a warning or reprimand, failure of part or all of the course and/or suspension for 1 or 2 semesters. • Examination misconduct – The penalty is a warning, or reprimand, failure of examination, failure of course and/or suspension for 1 or 2 semesters. • Theft of another student’s work – The penalty is failure of course and suspension for 1 or 2 semesters, expulsion. • <u>Stage 2</u>: Plagiarism – The penalty is failure of course and suspension for 1 to 2 semesters, expulsion. • Unauthorised or improper collaboration – The penalty is failure of course and suspension for 1 to 2 semesters, expulsion. • Examination misconduct - The penalty is failure of course and suspension for 1 to 2 semesters, expulsion. • Theft of another student’s work - The penalty is failure of course and suspension for 1 to 2 semesters, expulsion. • Mitigating and aggravating factors taken into account are: the seriousness of the offence; the impact on other students; and whether the offence committed was intentional or spontaneous.
Academic Assessment	<ul style="list-style-type: none"> • A student has 10 days to appeal a result from the time it is posted to him/her. • All appeals must be in writing to the Appeals Committee and lodged with the Executive Officer of the Division responsible for the unit. • Students are entitled to view their examination scripts and to discuss the marking with the Unit Coordinator or nominee. • Academic Council guidelines state the valid grounds for

	<p>submitting an appeal.</p> <ul style="list-style-type: none"> • A student appeal is sent to the Unit Coordinator and Programme Chair for comment. • These comments can be made available to the student upon request and the student allowed a chance to respond before the Appeals Committee meeting. • The Appeals Committee hears appeals and its decisions on the merits of appeals are final. • The membership includes a student member who may be briefed by the appellant student but who represents the wider student interest.
Other	<ul style="list-style-type: none"> • <u>Academic Staff</u>: <i>Murdoch University (Academic Staff) Enterprise Agreement 1997.</i> • <u>General Staff</u>: <i>Murdoch University (General Staff) Enterprise Bargaining Agreement 1997.</i> • <i>Guidelines for the Management of Sub-Standard Performance.</i>

APPENDIX 4

LIST OF SUBMISSIONS AND MATERIALS RECEIVED

Curtin University of Technology

Edith Cowan University

Mr Kevin Skipworth, Official Secretary to His Excellency the Governor of Western Australia

Macquarie University, Sydney

Minister for Primary Industry and Fisheries Western Australia

Murdoch University

Northern Territory University

University of Adelaide

University of Melbourne

University of Sydney

University of Tasmania*

University of Western Australia

WA Parliamentary Commissioner of Administrative Investigations

* copies of information sent from other sources.

APPENDIX 5

COMPLAINTS RECEIVED BY THE GOVERNOR

From the written submission of the Official Secretary to his Excellency the Governor, February 22 2000.

APPLICATIONS MADE TO THE GOVERNOR OF WESTERN AUSTRALIA AS UNIVERSITY VISITOR

PETITIONER	RESPONDENT /UNIVERSITY	NATURE OF ISSUE OR DISPUTE	SUCCESSFUL PARTY OR OUTCOME	APPROACH/ PETITION DATE	DECISION DATE
**Unknown	UWA	Refusal to admit to honours degree	Respondent v declined decision		1923
BLOOM, W R	Murdoch	Application for 12 months study leave refused - 6 months approved	Respondent Pet. dismissed	30.10.79	5.80
REPACHOLI, Paul	UWA	Refusal to allow enrolment in a non-award course	Petition not pursued	4.80	
NICHOLS, P W	UWA	Assessment of Masters Degree - fail graduate challenged	Formal Petition not lodged	1981	
DE LA HUNTY, P L	UWA	Exclusion from Faculty of Medicine	Respondent Pet. Dismissed	21.1.82	9.83
RUMLEY, D	UWA	Request for leave without pay refused	Respondent Pet. premature - jurisdiction declined Pet. dismissed	12.84	1.85
PENSALFINI, R	UWA	Issue involving the Guild	Formal petition not lodged	1987	
PEARCE, S R A	WACAE	Promotion of academic staff	Respondent Pet. dismissed	2.6.88	12.9.88
HANSFORD-MILLER, F H	Murdoch	Refusal to award Ph.D. and assessment of thesis	Respondent Pet. dismissed	8.6.88	30.9.88
CULLEN, J C	UWA	Industrial dispute	Jurisdiction declined	9.89	17.11.89
FLANIGAN, S M	WACAE	Withholding degree	Pet. premature - avenues of appeal not exhausted; Degree subsequently awarded	3.4.90	12.90
GAJIC, S	UWA	Withholding degree	Petitioner did not proceed	10.90	10.90
MEOTTI, J	Curtin	Issue involved Student Guild	Not a matter for the Visitor	11.91	
YOUNG, PA	Curtin	Overseas student claimed to have been misled	Formal Petition not lodged	28.11.91	30.3.92
NAIR-MARSHALL, O W	Murdoch	Expulsion for cheating - plagiarism	Respondent Pet. dismissed	28.1.93	
RINDOS	UWA	Unfair dismissal - probationary appointment not confirmed	Not finalised		<i>Rindos died in late 1996</i>
POULTON	UWA	Expulsion from Post-Graduate Course	Formal Petition not lodged	5.4.95	
JEVONS, F	Murdoch	Wrongful withdrawal from Hon. Membership	Petition dismissed	29.6.95	25.3.98
HILL, M	UWA		Not pursued by Hill	2.8.95	
TAYLOR	Curtin	Unfair Dismissal	Not pursued by Taylor	10 Feb '96	
HANCOCK, A	Edith Cowan	Contract not renewed	Formal Petition not lodged	21 Jun '96	

**APPLICATIONS MADE TO THE GOVERNOR OF WESTERN AUSTRALIA
AS UNIVERSITY VISITOR**

cont.....

PETITIONER	RESPONDENT /UNIVERSITY	NATURE OF ISSUE OR DISPUTE	SUCCESSFUL PARTY OR OUTCOME	APPROACH/ PETITION DATE	DECISION DATE
BURROWS, B	Edith Cowan	Withhold of B.Ed. Cert.	Appeal dealt with by E.C.U.	21 Oct '96	
ROCHESTER, G	Edith Cowan	Denied justice & fairness	Not a matter for Visitor	8 Feb '97	
ANDERSON, M	Edith Cowan	Students don't have access to Ombudsman	Not a matter for Visitor	17 Jul '96	
SCHIBECI, R	Murdoch	Application for promotion - procedure	Not pursued by Schibeci	11 Aug '98	
BUTLER, T	Curtin	School of Accounting - Administration	<i>under consideration</i>	28 Sept '99	
REED, D W	UWA	Disciplinary action - reprimanded by Medical Faculty	<i>under consideration</i>	1 Oct '99	
KELMAR, J	Curtin		<i>under consideration</i>	23 Oct '99	

APPENDIX 6

COMPLAINTS RECEIVED BY THE WA OMBUDSMAN

From the written submission of the Ombudsman's Office Western Australia, October 14 1997.

APPENDIX 1

Number of complaints against each university

The complaints finalised against Universities for the financial years ending 30th of June for the years 1972 to 1997 were as follows:

Year	Edith Cowan	Murdoch	UWA	Western Australian Institute of Technology/ Curtin	
1972	n/a	n/a	0	0	
1973	n/a	n/a	0	0	
1974	n/a	0	2	0	
1975	n/a	0	2	0	
1976	n/a	0	0	0	
1977	n/a	0	0	4	
1978	n/a	1	3	1	
1979	n/a	0	1	3	
1980	n/a	0	0	2	
1981	n/a	0	2	1	
1982	n/a	1	0	1	
1983	n/a	0	2	4	
1984	n/a	0	1	1	
1985	n/a	0	1	6	
1986	n/a	1	2	1	
1987	n/a	1	2	4	
1988	n/a	1	4	3	
1989	n/a	1	4	8	
1990	n/a	0	0	1	
1991	n/a	1	5	3	
1992	n/a	1	1	1	
1993	n/a	4	3	4	
1994	n/a	2	4	5	
1995	n/a	5	4	3	
1996	n/a	4	4	6	
1997	<u>1</u> 1	<u>5</u> 29	<u>7</u> 54	<u>7</u> 69	
30.6.97 On hand	0	4	0	1	Grand Total 153

APPENDIX 7



**THE UNIVERSITY OF
WESTERN AUSTRALIA**

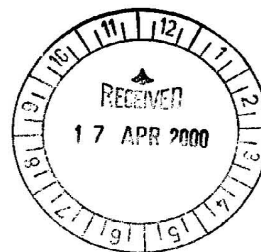
Legal Services Office

Nedlands, Western Australia 6907
Telephone +61 8 9380 2517
Facsimile +61 8 9380 1328
Email lkey@acs.uwa.edu.au
<http://www.admin.acs.uwa.edu.au/legal/>

Our Ref: 0504007020
Your Ref: PBCR 035

11 April, 2000

The Hon. Kim Chance, MLC
Chairman
Standing Committee on Public Administration
Legislative Council
Parliament House
PERTH WA 6000



Dear Sir

DISPUTE RESOLUTION INQUIRY

I refer to your letter to the former Registrar of 16th March 2000.

You have sought comments from the University on the system that was in place around the time of denial of tenure to Dr Rindos and the changes that have been implemented since that time. I assume that the comments are sought in the context of paragraph 1(d) of the expanded terms of reference for the inquiry into The University of Western Australia of which the Vice-Chancellor was advised by your letter of 10 December 1999.

Dr Rindos was denied tenure in 1993.

I refer to the Vice-Chancellor's letter to you of 3 June 1998 which detailed the various student grievance procedures and other arrangements put in place since 1977 for post graduate student grievances.

Undergraduate student grievances, other than appeals against assessment, are not presently addressed by any separate policy of the University. That there is no specific undergraduate student grievance policy is common in Australian universities, although the trend is currently to put them in place. The University Senate through its Audit Committee is currently reviewing all current procedures for student appeals and grievances undergraduate student grievance procedures.

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The following current University policies contain provisions to which an aggrieved student might have recourse. All are readily available in print and electronic publications:

1. Procedure for Appeals Against Academic Assessment (including Preamble, Regulations and Question and Answer Guide)- [this is for all students other than PhDs]

Accessible on the Web at

<http://www.acs.uwa.edu.au/reg/appeals.html>

2. Appeals Procedure for PhD

<http://www.acs.uwa.edu.au/research/phd/policy.html>

3. Grievance resolution procedures for postgraduate research students

<http://www.acs.uwa.edu.au/research/phd/policy.html>

This document and Web site refer students to many other avenues through which they might get satisfaction in various areas of concern e.g.

Code of Good Practice in Postgraduate Research and Supervision

Procedures for the Resolution of Grievances for Postgraduate Students Engaged in Research

Appeals Procedure for PhD (including PhD/MPsych) and PhD Preliminary Course Candidates

PhD Regulations

Appeals against Academic Assessment (all other degrees)

Intellectual Property Policy

Confidentiality Agreements (Evaluation Purposes)

Confidentiality Agreements (Students, Staff, Visitors)

Sexual Harassment Policy and Procedures

Racial Harassment Statement

Occupational Safety & Health Policy

Policy and Procedures for Dealing with Equity Enquiries and Grievances

4. Code of Good Practice

<http://www.acs.uwa.edu.au/research/policy/pg/code.html>

5. Resolution of Grievances

<http://www.acs.uwa.edu.au/research/policy/pg/grievance/>

6. Discrimination, Racial Harassment, Equal Opportunity

<http://www.acs.uwa.edu.au/hrs/policy/part04/9.html>

7. Appeals Procedure for PhD

<http://www.acs.uwa.edu.au/research/phd/policy.html#appeal>

8. Intellectual Property

<http://www.acs.uwa.edu.au/research/policy/ip/ipguide.html>

9. Confidentiality

<http://www.acs.uwa.edu.au/research/policy/ip/ugssv.html>

10. Sexual Harassment

<http://www.acs.uwa.edu.au/hrs/policy/part04/4.html>

11. Racial Harassment

<http://www.acs.uwa.edu.au/hrs/policy/part04/9.htm>

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12. Occupational Health and Safety

<http://www.admin.uwa.edu.au/sho/policy/osh.html>

13. Equity Enquiries and Grievances

<http://www.acs.uwa.edu.au/hrs/policy/part04/2.htm>

14. Scholarships Appeals Procedure

<http://www.publishing.uwa.edu.au/spe/scholarships/postgraduate/Appeals.html>

15. Human Rights and other possible "grievance" issues

There could be issues beyond the confines of previous headings.

For example of a specific additional area, the University has a Human Research Ethics Committee (formerly the Committee for Human Rights)

Also of possible relevance are principles and cases recorded by the State Equal Opportunity Act and Commission:

<http://www.equalopportunity.wa.gov.au/>

and principles and cases recorded by the State Ombudsman (Parliamentary Commissioner for Administrative Investigations)

<http://www.wa.gov.au/cog/html>

The University thus has a multi-dimensional system which enables appeals to be lodged and grievances to be expressed over a wide range of possible issues.

In relation to internal disputes involving academic staff and internal disputes arising from performance assessments of academic staff in addition to many of the policies specified above, the industrial awards add another avenue of potential recourse. At the time Dr Rindos was employed and tenure denied these were the Australian Universities Academic Staff (Conditions of Employment) Award 1988 and the Australian Universities Academic Staff (Contract of Employment and other matters) Interim Award 1988 (copies of which are attached). These contained procedures for dealing with unsatisfactory performance. Subsequent certified agreements contain similar provisions, negotiated in each case with the respective academic unions.

Such internal staff disputes were and are dealt with in the first instance in the context of faculty and departmental management. This is a standard management role. Additionally all academic staff have, and have had, access to the Visitor under Section 6 of the University of Western Australia Act 1911 in respect of internal disputes which are not satisfactorily resolved internally. Additionally, any academic staff member can have recourse to the courts to resolve any dispute with the University.

It would be unusual to have duplicative internal staff grievance procedures for employees in any employment context. Internal procedures run the risk of duplicating and conflicting with external dispute resolution regimes. Where institutions and systems already exist in the community which are expressly set up for resolution of the various classes of complaints and disputes such as the procedures

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under industrial legislation and by way of external administrative review, the University sees no role for additional internal processes.

Kind regards

A handwritten signature in black ink, appearing to be 'Linda Key', with a long, sweeping horizontal line extending to the right.

LINDA KEY
University Solicitor