



# **CORRUPTION AND CRIME COMMISSION**

**REPORT ON THE INVESTIGATION OF ALLEGED  
PUBLIC SECTOR MISCONDUCT BY ANY PUBLIC  
OFFICER IN RELATION TO THE CONDUCT OF THE  
INTERNATIONAL ENGLISH LANGUAGE TESTING SYSTEM  
BY CURTIN UNIVERSITY OF TECHNOLOGY  
OR ANY OTHER PUBLIC AUTHORITY**

**18 September 2012**

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## CORRUPTION AND CRIME COMMISSION

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Hon. Grant Woodhams, MLA  
Speaker of the Legislative Assembly  
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PERTH WA 6000

Dear Mr President  
Dear Mr Speaker

In accordance with section 84 of the *Corruption and Crime Commission Act 2003*, the Corruption and Crime Commission presents its *Report on the Investigation of Alleged Public Sector Misconduct by Any Public Officer in Relation to the Conduct of the International English Language Testing System by Curtin University of Technology or Any Other Public Authority*.

Yours faithfully

A handwritten signature in black ink, appearing to read 'Mark Herron'.

Mark Herron  
**ACTING COMMISSIONER**

18 September 2012



## ABBREVIATIONS AND ACRONYMS

("Cambridge ESOL")	University of Cambridge ESOL Examinations
("the CCC Act")	<i>Corruption and Crime Commission Act 2003</i>
CELC	Curtin English Language Centre
CESOL	University of Cambridge ESOL Examinations
("the Code")	<i>Code of Conduct</i> , June 2009, Curtin University of Technology
("the Commission")	Corruption and Crime Commission
("the CPC Act")	<i>Criminal Property Confiscation Act 2000</i>
("Curtin")	Curtin University of Technology
("Curtin University")	Curtin University of Technology
DIAC	Department of Immigration and Citizenship
DPP	Director of Public Prosecutions for Western Australia
IDP	IDP Education Pty Ltd
IELTS	International English Language Testing System
("IELTS Australia")	IELTS Australia Pty Ltd
IT	Information Technology
OMR	Optical Mark Reader
("the Parliament")	Parliament of Western Australia
PSCU	Professional Standards and Conduct Unit
("the SD Act")	<i>Surveillance Devices Act 1998</i>
SMS	Short Message (or Messaging) Service
("the TIA Act")	<i>Telecommunications (Interception and Access) Act 1979</i> (Cwlth)
TRF	Test Report Form
UWA	University of Western Australia



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# EXECUTIVE SUMMARY

## Commission Investigation

- [1] This is a report on the investigation by the Corruption and Crime Commission (“the Commission”) of alleged public sector misconduct by any public officer in relation to the conduct of the International English Language Testing System (IELTS) by Curtin University of Technology (“Curtin University”) or any other public authority.
- [2] The investigation commenced following a notification made to the Commission by the Vice-Chancellor of Curtin University, Professor Jeanette Hackett, on 13 August 2010, pursuant to section 28(1)(c) of the *Corruption and Crime Commission Act 2003* (“the CCC Act”). The notification was made as a consequence of Curtin University being advised by IELTS Australia Pty Ltd (“IELTS Australia”) of anomalies in IELTS Test Scores as detected during a routine systemic review by Cambridge ESOL.<sup>i</sup>
- [3] It was alleged by Professor Hackett, in the aforementioned notification, that IELTS Test Scores of “approximately 17 [sic: 18] candidates”, who had sat the IELTS Test at the Curtin University IELTS Test Centre, had been altered to reflect higher scores than each of the candidates had legitimately obtained.
- [4] Initial inquiries by the Commission led to a suspicion that Mr Kok Keith Low, an employee of Curtin University during the period February 2008 to July 2010, may have engaged in misconduct as defined by sections 3 and 4 of the CCC Act. Ultimately, in relation to Mr Low, it was alleged that he used his position to gain a monetary benefit in exchange for increasing the IELTS Test Scores of candidates.
- [5] During the period relevant to the Commission investigation, principally June 2009 to June 2010, Mr Low was an Administrative Support Officer in the IELTS Test Centre at Curtin University. The IELTS Test Centre was at the time located within the Curtin English Language Centre (CELC) in the Faculty of Humanities.<sup>ii</sup>
- [6] Curtin University was contracted by IELTS Australia to conduct IELTS as a “Test Centre”. The Curtin University IELTS Test Centre was responsible for running all aspects of IELTS, and Test Centre officers were employees of Curtin University. IELTS Australia is the administrator of IELTS throughout Australia and is the sole provider of English language

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<sup>i</sup> The IELTS Test is jointly owned by the IELTS Test Partners, that is, IELTS Australia Pty Ltd (which is a company owned by IDP Education Pty Ltd based in Melbourne), the British Council and the University of Cambridge ESOL Examinations, commonly referred to as Cambridge ESOL or CESOL.

<sup>ii</sup> As a consequence of the Commission investigation Curtin University commissioned an external business review of the operations of the IELTS Test Centre. The IELTS Test Centre closed on 13 August 2011 due to review findings, coupled with the fact that the operation of the IELTS Test Centre was not considered to be part of the core business of Curtin University.

competency testing to the Department of Immigration and Citizenship (DIAC). The security and integrity of IELTS in Australia is integral to the integrity and reliability of the Australian migration program and is fundamental to maintaining public confidence in that program. The deliberate falsification of IELTS Test Scores threatens the integrity of the migration program and public confidence in that program. In his remarks at the commencement of the March 2011 public examinations Acting Commissioner Mark Edward Herron noted the number of IELTS Test Centres in Australia at that time, that is, 34 including four in Western Australia.<sup>iii</sup>

[7] In addition to a review and analysis of documentation and materials the Commission investigation encompassed:

- interviews of various persons (both public and non-public officers);
- physical surveillance by Commission officers;
- execution of search warrants granted pursuant to section 101 of the CCC Act, during which relevant material was seized by Commission officers;
- use of surveillance devices, authorised by warrants granted pursuant to section 13 of the *Surveillance Devices Act 1998* and telecommunications intercepts, authorised by warrants granted pursuant to section 46 of the *Telecommunications (Interception and Access) Act 1979* (Cwlth);
- private and public examinations (hearings),<sup>iv</sup> which were conducted by the Commission pursuant to sections 137, 139 and 140 of the CCC Act during March 2011; and
- the issuing of warrants, pursuant to section 148(2)(b) of the CCC Act, for the apprehension of persons whose evidence was desired and was necessary and relevant to the Commission investigation, as the Commission was satisfied that those persons were making preparation to leave Western Australia and that, as a consequence, their evidence would not be obtained.

[8] The Commission investigation was undertaken in cooperation with Curtin University, IELTS Australia and DIAC.

## **Scheme to Alter IELTS Test Scores**

[9] A number of IELTS Test candidates and intermediaries gave evidence during Commission examinations conducted in March 2011 (refer

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<sup>iii</sup> Transcript of Proceedings, Public Examination, Opening Remarks by Acting Commissioner Mark Edward Herron on 21 March 2011, p.8.

<sup>iv</sup> Although the *Corruption and Crime Commission Act 2003* refers to examinations (of persons for the purpose of obtaining information to advance an investigation), there is a general tendency for those examinations to be described by the media as “hearings”. Examinations or “hearings” conducted by the Commission are compulsory examinations of persons before it.

Appendix to this report), in relation to the network involved in the scheme to alter IELTS Test Scores. In general, the intermediaries acted as the contact point between IELTS Test candidates and Mr Pritesh Shah with the intermediaries organising the transfer of money from candidates to Mr Shah, some of whom retained a portion as payment for their services. Although Mr Shah was himself also an intermediary, he was the only intermediary who had direct contact with Mr Abdul Kader. Mr Kader had formerly resided at the same address as Mr Low and acted as the point of contact between Mr Low and the intermediaries via Mr Shah. Mr Kader provided the details of candidates to Mr Low, at which time he transferred a portion of the money to Mr Low, retaining a portion for himself as payment for services.

## **Consequences of Commission Investigation**

- [10] As a consequence of the Commission investigation Mr Low and others involved in the scheme to alter IELTS Test Scores were charged with Bribery of Public Officer pursuant to section 82 of *The Criminal Code*. That section of *The Criminal Code* states that:

*[a]ny public officer who obtains, or who seeks or agrees to receive, a bribe, and any person who gives, or who offers or promises to give, a bribe to a public officer, is guilty of a crime and is liable to imprisonment for 7 years.*

### **Mr Kok Keith Low**

- [11] Mr Low, as an employee of Curtin University, was a public officer during the period relevant to the Commission investigation. On 29 March 2011 the Commission charged Mr Low with one count of Bribery of Public Officer and on 6 April 2011 he was charged with a further 14 counts of Bribery of Public Officer.
- [12] Mr Low pleaded guilty to all charges in the Perth Magistrates Court on 13 May 2011 and was committed for sentence in the District Court of Western Australia (“the District Court”).
- [13] On 9 August 2011 Mr Low was sentenced in the District Court by His Honour Judge Michael John Bowden to 12 months immediate imprisonment for each offence. Counts five and 15 were to be served cumulatively and the balance was to be served concurrently. Therefore, Mr Low was sentenced to a total of two years immediate imprisonment, being eligible for parole after serving one year.

### **Others (Non-Public Officers)**

- [14] Eleven persons who were non-public officers during the period relevant to the Commission investigation were charged by the Commission between 6 April 2011 and 2 March 2012 with a total of 58 counts of Bribery of Public Officer. All persons subsequently pleaded guilty to all charges (at various times between 25 May 2011 and 5 April 2012) and were sentenced at various times between 9 August 2011 and 6 July 2012. The

sentences ranged from immediate terms of imprisonment and suspended imprisonment to a fine of \$20,000 (\$10,000 for each of two counts).

### Summary of Charges and Sentences

<b>Public Officer (During Period Relevant to Commission Investigation.)</b>				
<b>No.</b>	<b>Charge Dates</b>	<b>Details of Charges (Pursuant to section 82 of <i>The Criminal Code.</i>)</b>	<b>Plea Date</b>	<b>Details of Sentence</b>
1.	29 March 2011 and 6 April 2011	1xBribery of Public Officer and 14xBribery of Public Officer.	13 May 2011	Sentenced on 9 August 2011 to two years immediate imprisonment, with eligibility for parole after serving 12 months.
<b>Non-Public Officers (During Period Relevant to Commission Investigation.)</b>				
1.	6 April 2011	3xBribery of Public Officer.	25 May 2011	Sentenced on 9 August 2011 to nine months imprisonment, suspended for 18 months.
2.	6 April 2011	5xBribery of Public Officer.	11 May 2011	Sentenced on 16 August 2011 to nine months imprisonment, suspended for 18 months.
3.	6 April 2011	2xBribery of Public Officer.	13 April 2011	Sentenced on 9 August 2011 to nine months imprisonment, suspended for 18 months.
4.	6 April 2011	14xBribery of Public Officer.	13 April 2011	Sentenced on 9 August 2011 to 12 months immediate imprisonment, with eligibility for parole after serving 6 months.
5.	6 April 2011	3xBribery of Public Officer.	11 May 2011	Sentenced on 16 August 2011 to seven months imprisonment, suspended for 18 months.
6.	6 April 2011	14xBribery of Public Officer.	13 April 2011	Sentenced on 16 August 2011 to 18 months immediate imprisonment, with eligibility for parole after serving 9 months.
7.	5 April 2011	1xBribery of Public Officer.	25 May 2011	Sentenced on 18 August 2011 to nine months imprisonment, suspended for 12 months.
8.	4 April 2011	2xBribery of Public Officer.	18 April 2011	Sentenced on 18 August 2011 and fined \$20,000 (\$10,000 on each count).
9.	1 November 2011 and 7 March 2012	4xBribery of Public Officer and 6xBribery of Public Officer.	11 November 2011 and 13 March 2012	Sentenced on 26 March 2012 to 14 months immediate imprisonment, with eligibility for parole after serving seven months (sentence backdated to 2 November 2011).
10.	1 March 2012	3xBribery of Public Officer.	22 March 2012	Sentenced on 13 June 2012 to eight months imprisonment, suspended for 10 months.
11.	2 March 2012	1xBribery of Public Officer.	5 April 2012	Sentenced on 6 July 2012 to six months and one day imprisonment, suspended for 12 months.
<b>Total:</b> A total of 12 persons (including one public officer) were charged with 73 counts of Bribery of Public Officer pursuant to section 82 of <i>The Criminal Code</i> .				

## Confiscation Proceedings

- [15] The potential application of the *Criminal Property Confiscation Act 2000* (“the CPC Act”) is considered for Commission investigations, as applicable.
- [16] An examination of the financial circumstances of the five persons who received monetary payments as a result of involvement in the scheme to alter IELTS Test Scores, revealed that Mr Kader, an intermediary, was the only person to whom asset confiscation could apply. Mr Kader held significant funds in bank accounts with Bankwest, that is, a Student Account, Telenet Saver Account and a Smart eSaver Account.
- [17] The Commission considered two options under the CPC Act for asset confiscation in relation to Mr Kader:
- (1) to obtain a Freezing Notice pursuant to section 34 of the CPC Act for Crime-Derived Property (through his involvement in the scheme to alter IELTS Test Scores), being cash totalling \$7,900 that was deposited in Mr Kader’s Student Account with Bankwest; or
  - (2) to seek a Criminal Benefits Declaration pursuant to section 15 of the CPC Act, in conjunction with a Freezing Order, pursuant to section 41 of the CPC Act, for the net benefit derived by Mr Kader (through his involvement in the scheme to alter IELTS Test Scores), being a sum of \$32,500.
- [18] The Commission preferred to seek a Criminal Benefits Declaration in conjunction with a Freezing Order as outlined in option (2) above, and briefed the Director of Public Prosecutions for Western Australia (DPP) accordingly. Following a consideration of the matter, the DPP agreed with the Commission, but also recommended that a Crime-Used Property Substitution Declaration be sought in relation to monetary payments passed from Mr Kader to Mr Low, being a sum of \$33,900, pursuant to section 21 of the CPC Act.
- [19] The Commission provided an affidavit and supporting documentation to the DPP, and the DPP filed a Notice of Motion for Criminal Benefits Declaration (\$32,500) and Crime-Used Property Substitution Declaration (\$33,900) with the District Court. On 20 June 2011 the District Court made the Order to Freeze Mr Kader’s Bankwest Smart eSaver Account (as this account contained funds sufficient to cover the sum of the Declarations sought).
- [20] The proceedings were resolved by negotiated settlement between the legal advisor for Mr Kader and the DPP, with Mr Kader consenting to the agreed sum being taken from the aforementioned frozen Bankwest Smart eSaver Account.

## University of Western Australia

- [21] During the public examinations conducted by the Commission in March 2011 evidence was given that IELTS Test Scores were being, or had been, altered in exchange for monetary payments at the University of Western Australia (UWA) IELTS Test Centre. A Commission investigation, however, found no evidence that this was the case.
- [22] Professor Alan Robson, AM, CitWA, Vice-Chancellor, UWA, was formally advised by the Commission on 26 May 2011 that the Commission investigation had “not detected the falsification of any [IELTS] Test Scores” and, accordingly, “has formed an opinion that misconduct, as described ... [by] section 22(1) of the *Corruption and Crime Commission Act 2003*, has not been identified” in relation to the conduct of IELTS Tests at the UWA IELTS Test Centre.

## Conclusion

- [23] Specifically, the investigation by the Commission was to determine whether:
- any public officer, or former public officer, employed by Curtin University engaged in misconduct in connection with the conduct of IELTS Tests;
  - the policies, practices and operating environment of CELC were sufficient to detect misconduct in a timely manner; and
  - IELTS has been compromised at IELTS Test Centres operated by any other public authorities.
- [24] Having considered and assessed the material and evidence gathered during the investigation the Commission has concluded that it is unable to form an opinion that any public officer, or former public officer, other than Mr Low, engaged in either serious misconduct or misconduct (as set out in sections 3 and 4 of the CCC Act) in relation to the conduct of IELTS Tests at the Curtin University IELTS Test Centre or any other IELTS Test Centre in Western Australia. However, in relation to policies, practices and operating environment of the IELTS Test Centre (located within CELC in the Faculty of Humanities during the period relevant to the Commission investigation), the Commission investigation identified a number of deficiencies. These are outlined in Chapter Three of this report (at [121]–[131]) and relate essentially to:
- security measures (including sharing of usernames and passwords);
  - audit; and
  - management.

In addition, the limited audit trail capability of the IELTS ESOLCOMMS database contributed to circumstances which enabled misconduct by Mr Low to continue without being detected for a considerable period of time (refer [132]–[135], Chapter Three of this report).

- [25] The Commission acknowledges the support and cooperation of Curtin University, IELTS Australia and DIAC during the investigation.
- [26] Although the Curtin University IELTS Test Centre closed on 13 August 2011, the issues identified by the Commission investigation as they relate to the conduct of IELTS Tests enables informed action to be taken by public authorities to address the misconduct risks identified by the circumstances revealed in this report, being particularly relevant to those authorities that have a regulatory function and, therefore, provide “high value” services which have, as a consequence, increased risks of bribery and corruption of persons in positions of authority. Improper influence-related misconduct risk is well documented in the regulatory sector because of the considerable power held by authorities in that sector and the value attached to the services provided by those authorities that are subject to regulation.<sup>v</sup>
- [27] Enabling informed action to be taken by public authorities to address misconduct risks identified as a consequence of a Commission investigation is integral to the achievement of one of the two main purposes of the Commission pursuant to section 7A of the CCC Act, that is, “to improve continuously the integrity of, and reducing the incidence of misconduct in, the public sector”.
- [28] In conclusion, the misconduct risks identified by the circumstances revealed in this report highlight the importance of secure passwords to mitigate against unauthorised access to computers and the need for management at all levels to be vigilant, and provide proper supervision, to ensure that processes to deal with misconduct are not only established but that all officers are aware of associated policies, the need for compliance with those policies and their responsibilities in relation to the prevention, identification and management of misconduct. The need for compliance should be regularly reinforced by management, for example, at regular meetings, and through the issue of warnings and notices, and alerts on the intranet. This is reflected, in the view of the Commission, in action taken by Curtin University to address the misconduct risks identified as a consequence of the Commission investigation.

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<sup>v</sup> The term “improper influence” is used above generically to describe the actions and behaviours of customers intended to improperly affect the outcome of a business activity or process to gain a benefit which they would not otherwise have obtained. Put simply, to divert public officers from fidelity to the public interest because of other personal interests (that is, a way of corruptly influencing a public officer). Improper influence can manifest itself in a number of ways, including: offers of cash and other bribes; an offer of a gift or beneficial “arrangement”; emotional pressure related to personal needs or hardship; intimidation or threats; or a favour on the basis of assumed friendship or associations.





# CHAPTER ONE

## INTRODUCTION

### 1.1 Background

#### 1.1.1 Introduction

- [1] This is a report on the investigation by the Corruption and Crime Commission (“the Commission”) of alleged public sector misconduct by any public officer in relation to the conduct of the International English Language Testing System (IELTS) by Curtin University of Technology (“Curtin University” or “Curtin”) or any other public authority.
- [2] The term “misconduct” has a particular and specific meaning in the *Corruption and Crime Commission Act 2003* (“the CCC Act”) and it is that meaning which the Commission must apply. Misconduct is defined in section 4 of the CCC Act, and described for “kinds” of misconduct set out in sections 4(a), 4(b), 4(c) and 4(d) respectively. Misconduct of a kind described in sections 4(a), 4(b) and 4(c) is defined as “serious misconduct” by section 3 of the CCC Act. Misconduct of a kind described in section 4(d)(i)–(iv) must not only involve the type of conduct described there, but must also be serious enough to meet the criteria set out in section 4(d)(v) or (vi).
- [3] Misconduct as defined by sections 3 and 4 of the CCC Act applies only to the conduct of public officers. The term “public officer” is defined in section 3 of the CCC Act by reference to the definition in section 1 of *The Criminal Code*. The term “public officer” includes employees “of any authority ... established under a written law”. By definition, therefore, employees of Curtin University, as employees of an authority established under a written law, that is, the *Curtin University of Technology Act 1966*, are public officers for the purposes of the CCC Act. Also, Curtin University is a public authority pursuant to (c) of the definition of “public authority” referred to in section 3 of the CCC Act.
- [4] The Commission investigation encompassed a review and analysis of documentation and materials provided to the Commission voluntarily and in response to notices served on persons pursuant to sections 94 and 95 of the CCC Act, which included records provided by financial institutions. Section 94 of the CCC Act relates to the Commission’s power to obtain information from a public authority or officer and section 95 of the CCC Act relates to the Commission’s power to obtain documents and other things. Call Charge Records (CCRs) were obtained pursuant to section 178 of the *Telecommunications (Interception and Access) Act 1979* (Cwlth) (“the TIA Act”).
- [5] In addition to a review and analysis of documentation and materials the Commission investigation encompassed:
- interviews of various persons (both public and non-public officers);

- physical surveillance by Commission officers;
- execution of search warrants granted pursuant to section 101 of the CCC Act, during which relevant material was seized by Commission officers;
- use of surveillance devices, authorised by warrants granted pursuant to section 13 of the *Surveillance Devices Act 1998* (“the SD Act”), and telecommunications intercepts, authorised by warrants granted pursuant to section 46 of the TIA Act;
- private and public examinations (hearings),<sup>1</sup> which were conducted by the Commission pursuant to sections 137, 139 and 140 of the CCC Act during March 2011; and
- the issuing of warrants, pursuant to section 148(2)(b) of the CCC Act, for the apprehension of persons whose evidence was desired and was necessary and relevant to the Commission investigation, as the Commission was satisfied that those persons were making preparation to leave Western Australia and that, as a consequence, their evidence would not be obtained.

[6] The Commission investigation was undertaken in cooperation with Curtin University, IELTS Australia Pty Ltd (“IELTS Australia”) and the Department of Immigration and Citizenship (DIAC).

### **1.1.2 Genesis of Commission Investigation**

[7] The investigation commenced following a notification made to the Commission by the Vice-Chancellor of Curtin University, Professor Jeanette Hackett, on 13 August 2010, pursuant to section 28(1)(c) of the CCC Act, about a matter that “concerns or may concern misconduct”. The notification was made as a consequence of Curtin University being advised by IELTS Australia of anomalies in IELTS Test Scores as detected during a routine systemic review by Cambridge ESOL.<sup>2</sup>

[8] It was alleged by Professor Hackett, in the aforementioned notification, that at various times during the period January 2010 to June 2010 the IELTS Test Scores of “approximately 17 [sic: 18] candidates”, who had sat the IELTS Test at the Curtin University IELTS Test Centre, had been altered to reflect higher scores than each of the candidates had legitimately obtained.

[9] Initial inquiries by the Commission led to a suspicion that Mr Kok Keith Low, an employee of Curtin University during the period February 2008 to

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<sup>1</sup> Although the *Corruption and Crime Commission Act 2003* refers to examinations (of persons for the purpose of obtaining information to advance an investigation), there is a general tendency for those examinations to be described by the media as “hearings”. Examinations or “hearings” conducted by the Commission are compulsory examinations of persons before it.

<sup>2</sup> The IELTS Test is jointly owned by the IELTS Test Partners, that is, IELTS Australia Pty Ltd (which is a company owned by IDP Education Pty Ltd based in Melbourne), the British Council and the University of Cambridge ESOL Examinations, commonly referred to as Cambridge ESOL or CESOL.

July 2010, may have engaged in misconduct as defined by sections 3 and 4 of the CCC Act. Ultimately, in relation to Mr Low, it was alleged that he used his position to gain a monetary benefit in exchange for increasing the IELTS Test Scores of candidates.

- [10] The period relevant to the Commission investigation was principally June 2009 to June 2010, as during the investigation it was established that IELTS Test Scores of candidates were being altered prior to the date referred to in the notification to the Commission by Professor Hackett (refer [7]–[8] above). During that period Mr Low was an Administrative Support Officer in the IELTS Test Centre at Curtin University. The IELTS Test Centre was at the time located within the Curtin English Language Centre (CELC) in the Faculty of Humanities.<sup>3</sup> Mr Low ceased to be employed by Curtin University on 13 July 2010, having tendered his resignation on 30 June 2010, and commenced employment with Murdoch University on 22 November 2010. Mr Low’s employment with Murdoch University was terminated on 25 March 2011 (having given evidence at Commission public examinations on 24 and 25 March 2011).

### **1.1.3 Scope and Purpose of Commission Investigation**

- [11] Before the Commission conducts an examination, either private or public, pursuant to section 138 of the CCC Act, it is to inform the witness of the general scope and purpose of the investigation, unless the Commission considers that in the circumstances it would be undesirable to so inform the witness. Accordingly, during the private and public examinations conducted in March 2011 Acting Commissioner Mark Edward Herron so informed each witness prior to examination.<sup>4</sup> The general scope and purpose of the Commission investigation was to determine:

*if any public officer, or former public officer, employed by Curtin University of Technology has engaged in misconduct in connection with the conduct of the International English Language Testing System; whether the policies, practices and operating environment of the Curtin English Language Centre were sufficient to detect misconduct in a timely manner; and whether the International English Language Testing System has been compromised at testing centres operated by any other public authorities.*

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<sup>3</sup> As a consequence of the Commission investigation Curtin University commissioned an external business review of the operations of the IELTS Test Centre. The IELTS Test Centre closed on 13 August 2011 due to review findings, coupled with the fact that the operation of the IELTS Test Centre was not considered to be part of the core business of Curtin University.

<sup>4</sup> Acting Commissioner Mark Edward Herron was appointed by the Governor of the State of Western Australia (“the Governor”) on 25 January 2011 to act in the office of Commissioner with effect from 27 January 2011. Acting Commissioner Herron undertook the functions of the Commission under the *Corruption and Crime Commission Act 2003* and any other written law with all of the powers and responsibilities of the Commissioner from that time until the appointment of Commissioner Roger Macknay, QC, on 15 November 2011 by the Governor to be the Commissioner of the Corruption and Crime Commission with effect from and including 21 November 2011.

#### 1.1.4 International English Language Testing System (IELTS) and the Curtin University IELTS Test Centre

- [12] Curtin University was contracted by IELTS Australia to conduct IELTS as a “Test Centre”. The Curtin University IELTS Test Centre was responsible for running all aspects of IELTS, and Test Centre officers were employees of Curtin University. IELTS Australia is the administrator of IELTS throughout Australia and is the sole provider of English language competency testing to DIAC. The security and integrity of IELTS in Australia is integral to the integrity and reliability of the Australian migration program and is fundamental to maintaining public confidence in that program. The deliberate falsification of IELTS Test Scores threatens the integrity of the migration program and public confidence in that program. In his remarks at the commencement of the March 2011 public examinations Acting Commissioner Herron noted the number of IELTS Test Centres in Australia at that time, that is, 34 including four in Western Australia.<sup>5</sup>
- [13] IELTS is a method of measuring English language competency over four bands, that is, listening, reading, speaking and writing, and is used in over 130 countries. The Commission investigation established that the majority of candidates seeking permanent Australian residency sought an IELTS score of 7.0 in each of the four bands in order to be assessed as meeting the requirements of the highest English skill level, that is, proficient English, and thereby achieving maximum points (25) for the English language qualifications component of a visa application.<sup>6</sup>
- [14] The Curtin University IELTS Test Centre conducted IELTS Tests approximately once per fortnight on a Saturday. Due to high demand some of the speaking tests were conducted on a Thursday and Friday prior to the Saturday on which IELTS Tests were conducted.
- [15] During the period relevant to the Commission investigation Curtin University employed five full-time officers and one part-time officer to administer the IELTS Tests, which included processing application forms, manual entry of scores into the IELTS ESOLCOMMS database,<sup>7</sup> managing test papers, organising test materials and the printing and distribution of test results. Curtin University also employed numerous officers on a casual basis as invigilators and examiners on those days during which IELTS Tests were conducted, and clerical markers on days subsequent to the conduct of IELTS Tests.

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<sup>5</sup> Transcript of Proceedings, Public Examination, Opening Remarks by Acting Commissioner Mark Edward Herron on 21 March 2011, p.8.

<sup>6</sup> The *Migration Regulations 1994* (Cwlth) identify a number of English skill levels, with proficient English being the highest skill level, and applicants assessed as being included in this skill level are awarded 25 points (or maximum points).

<sup>7</sup> In response to the letter from Acting Commissioner Mark Edward Herron of 16 March 2012 (refer [38] of this report), IELTS Australia advised the Commission in April 2012 that the IELTS ESOLCOMMS database had been replaced by IWAS (IELTS Web Administration System).

- [16] Each full-time and part-time officer had access to a secure storeroom in the IELTS Test Centre where test materials were stored, including official rubber stamps which were used to authenticate the Test Report Forms (TRFs). Officers employed on a casual basis did not have access to the secure storeroom.
- [17] A TRF is the official document by way of which IELTS Test Scores are issued to candidates and is submitted to DIAC in cases where IELTS Test Scores form part of the visa assessment criteria.
- [18] The IELTS Test consists of 14 scored components across the four bands as follows: 1 x listening; 1 x reading; 4 x speaking; and 8 x writing. Where more than one component exists, for example, in the speaking and writing bands, the band score is determined by averaging all of the scores in that band rounded to the nearest 0.5.
- [19] The listening and reading test papers were completed by candidates in pencil and this document is known as an OMR (Optical Mark Reader). OMRs are graded by clerical markers who mark the answers based on answer sheets supplied by IELTS Australia. OMRs were retained by Curtin for two months before being sent to Cambridge ESOL. The writing tests are completed in either pencil or pen. Both the speaking and writing tests are scored by IELTS approved examiners. The speaking examiner's records and the writing answer booklet were held by Curtin University for two years before they were destroyed.
- [20] As mentioned previously, the scores from IELTS Tests were entered manually into the IELTS ESOLCOMMS database by officers of the Curtin University IELTS Test Centre, generally within three to ten days of the IELTS Tests having been taken by candidates.<sup>8</sup> To enter the scores into the IELTS ESOLCOMMS database an officer had to first logon to the Curtin IT Network using their username and password, then logon to the IELTS ESOLCOMMS database using an additional username and password.
- [21] Access to the IELTS ESOLCOMMS database was restricted to the Coordinator and the five full-time officers and one part time officer of the IELTS Test Centre. The IELTS ESOLCOMMS database captured the date, time and username of the person who entered data (scores), while the Curtin IT Network captured the date and time that each user logged on to, and logged off from, the Curtin IT Network.
- [22] Once the scores had been entered into the IELTS ESOLCOMMS database the TRFs were printed between seven and 12 days of the IELTS Tests having been taken by candidates. The information on the TRF was automatically populated from data in the IELTS ESOLCOMMS database. Once the TRFs were printed they were manually stamped with the CELC and IELTS rubber validation stamps, and signed by either the Curtin University Test Centre Coordinator or the "Test Day Organiser" to certify

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<sup>8</sup> IELTS Test Scores were subsequently uploaded into a central database held by Cambridge ESOL on behalf of the IELTS Test Partners.

that the TRF was a valid document. The TRFs were either mailed to the candidate or collected by the candidate during business hours on a Friday, approximately 13 days after the IELTS Tests had been taken by candidates.

## 1.2 Commission Examinations

- [23] As mentioned previously, for the purposes of the investigation the Commission conducted private and public examinations pursuant to sections 137, 139 and 140 of the CCC Act. A private examination was conducted on 16 March 2011 and public examinations were conducted between 21 and 28 March 2011. The evidence given during the private examination was later made public with the non-disclosure restriction being lifted by Acting Commissioner Herron. A list of witnesses called to give evidence under oath or by affirmation during the examinations, pursuant to section 141 of the CCC Act, is provided in the Appendix to this report.
- [24] In all 17 witnesses were called to give evidence during the examinations (of whom six were public officers and 11 were non-public officers during the period relevant to the Commission investigation). Mr Low, a former Administrative Support Officer in the Curtin University IELTS Test Centre (refer [9]–[10] above), gave evidence on 24 and 25 March 2011, and nine IELTS Test candidates and/or Intermediaries gave evidence between 22 and 25 March 2011.
- [25] In relation to the conduct of examinations by the Commission, it should be noted that witnesses may be called for examination before the Commission for a variety of reasons. Witnesses may be called because they can assist the Commission by giving information about events, circumstances, systems, procedures or the activities of other persons, and not because their own conduct is in question.
- [26] At the conclusion of the public examinations on 28 March 2011 Acting Commissioner Herron advised that persons “other than counsel assisting will not be permitted to cross-examine a witness unless and until they have provided to counsel assisting a signed statement of evidence advancing material contrary to the evidence of that witness”. Further, Acting Commissioner Herron advised that, in order to “avoid unnecessary repeated cross-examination and acknowledging that affected persons may be unaware of the totality of relevant evidence until the end of the examinations the Commission ... [deferred] cross-examination until that time and ... [now affords] legal representatives the opportunity to apply for witnesses to be recalled for the purpose of cross-examination”. The Commission did not receive any applications for witnesses to be recalled for the purposes of cross-examination.<sup>9</sup>

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<sup>9</sup> Transcript of Proceedings, Public Examination, Closing Remarks by Acting Commissioner Mark Edward Herron on 28 March 2011, pp.701-702.

[27] Written submissions were not required to be submitted by Senior Counsel Assisting the Commission nor were any written submissions received from any other person. However, Professor Hacket did provide the Commission with an *Interim Statement Relating to the Corruption and Crime Commission's Public Hearing Into Matters Associated with International English Language Testing* during the 28 March 2011 public examination ("the Interim Statement"). That Interim Statement has been taken into account by the Commission in finalising this report.

### 1.2.1 Decision to Conduct Public Examinations

[28] Section 139(1) of the CCC Act stipulates that, "[e]xcept as provided in section 140", an examination is not to be open to the public. Section 140(2) allows the Commission to "open an examination to the public if, having weighed the benefits of public exposure and public awareness against the potential for prejudice or privacy infringements, it considers that it is in the public interest to do so". That weighing process must be applied with respect to the examination of each witness.

[29] In this case the Commission weighed the benefits of public exposure and public awareness against the potential for prejudice or privacy infringements in respect of **each** person to be examined, and decided that it was in the public interest to conduct examinations of witnesses in public.<sup>10</sup>

[30] In his remarks at the commencement of the March 2011 public examinations Acting Commissioner Herron provided a number of reasons why those examinations should be conducted in public.

*Specific considerations to which the Commission has had regard in relation to whether the examinations in this instance should be public include. First, in relation to the benefits of public exposure and public awareness ... —*

- (1) *[T]he conduct to be investigated involves the alleged bribery of a public officer to falsify or furnish false records to enable certain individuals to circumvent the accredited International English Language Testing System [IELTS] which is used to substantiate competency in the English language for many purposes including permanent residency, work and student visas.*
- (2) *[T]o show the seriousness of the alleged conduct and the deliberate actions of the people involved.*
- (3) *[T]he likelihood that public exposure may generate further reports of similar conduct, there being 34 IELTS [T]est [C]entres in Australia including four in Western Australia.*
- (4) *[T]he need to increase public awareness of these issues and encourage members of the public to provide the Commission with information about the public officer or others involved in similar activities.*

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<sup>10</sup> Mr Talwinder Pannu, IELTS Test Candidate, gave evidence during a private examination conducted by the Commission on 16 March 2011. The evidence given by Mr Pannu during that private examination was later made public with the non-disclosure restriction being lifted by Acting Commissioner Mark Edward Herron.

- (5) *[P]ublic exposure will highlight systematic issues giving rise to particular misconduct risks within the university sector in a timely way enabling public authorities to take appropriate action at this stage.*
- (6) *[T]o prevent further misconduct by public officers who are yet to be identified. Public exposure will operate not only as a specific deterrent but also as a general deterrent across the public sector.*
- (7) *[T]he need to educate the public and service providers to public authorities about proper processes.*
- (8) *[T]o assist in ensuring that weaknesses identified in systems and processes are promptly and properly dealt with in the university sector and elsewhere*
- (9) *[P]ublic examinations will give necessary and appropriate transparency to the Commission's work and processes.*

*Secondly, considerations which the Commission has taken into account in relation to the potential for prejudice or privacy infringements ... —*

- (1) *[T]here is evidence that disciplinary or criminal offences may have been committed. At their highest the allegations on which the evidence is based may constitute criminal offences of bribery, corruption and the falsification of records.*
- (2) *[T]he evidence to be adduced is substantial direct evidence of persons who are involved in the events about which they will be examined, is not likely to be speculative, will be directed towards identifying any relevant pattern of conduct and will be largely based on contemporaneous documents.*
- (3) *[S]uch prejudice as may or will flow to the reputations of individuals would be the consequences of exposure of those individuals own conduct of which the Commission already has some evidence.*
- (4) *[T]he conduct to be investigated appears at this stage, and subject to further evidence, to have been deliberate, serious and sustained and to demonstrate at least a clear disregard of applicable policies and procedures, with serious consequences and on the face of it the conduct is not likely to have been merely mistaken or inadvertent.*
- (5) *[T]he potential for prejudice or privacy infringements appears to be limited to those persons who are apparently actively involved in the conduct being investigated.*
- (6) *[N]o-one has yet been charged with any criminal offence in relation to the matters which are to be examined and should any person or persons be charged at some later time, those charges would not be likely to get to trial for many months, if not a year or more, and if prejudice or privacy issues then arise, appropriate orders or other arrangements could be made.*

*Although ... I have in deciding to hold these examinations in public considered and weighed the potential for prejudice or privacy infringements of each person to be called as a witness during the examinations, I will review the position of each witness before they are called to give evidence*



*as to whether I remain of the view that it is in the public interest for them to be examined in public or whether to close the public examination.*<sup>11</sup>

(emphasis added)

- [31] Further to the above reasons provided by Acting Commissioner Herron, Mr Peter Damien Quinlan, SC, Senior Counsel Assisting the Commission, made the following remarks during his opening address at the commencement of the public examinations in March 2011.

*... the IELTS system ... is one which is operated in over 130 countries around the world and is recognised by thousands of institutions worldwide, both public and private, as a secure and reliable indicator of English language skills and competencies.*

*Of principal relevance in Australia is the fact that the IELTS system is directly relied upon by the Commonwealth Department of Immigration and Citizenship for the purposes of English language requirements and visa applications, including skilled migrant visas. As will be seen, the proficiency of an applicant for a visa, as determined by an IELTS score, will influence both the eligibility of applicants for visas and the type of visas that may be applicable or available.*

*The security and integrity of IELTS testing in Australia is therefore obvious; it forms part of the integrity and reliability of Australia's immigration system. The deliberate falsification of IELTS test results, therefore, threatens the integrity of that immigration system ...*<sup>12</sup>

(emphasis added)

- [32] Concern has been expressed in the past when Commission examinations have been conducted in public. Commissioner Terence Cole, RFD, QC, in his conduct of the *Royal Commission Into the Building and Construction Industry*, in addressing the need to conduct hearings by Royal Commissions in public stated:

*In deciding to conduct hearings primarily in public, I was conscious that the conduct of hearings in public has the capacity to injure the reputation of both people about whom evidence was given and people who gave evidence. Often any damage to such a person's reputation resulted simply from the public revelation of his or her conduct. In that circumstance, it was really the person's conduct, rather than the Commission's revelation of it, that damaged their reputation. In other circumstances, however, where for example false, misleading or unfounded evidence was given to the Commission, people's reputations were damaged through no fault of their own.*

*It was necessary for me to weight the risk that reputations might be unfairly damaged against the public interest in the matters that I was required by my Terms of Reference to investigate. I had to make a judgment regarding*

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<sup>11</sup> Transcript of Proceedings, Public Examination, Opening Remarks by Acting Commissioner Mark Edward Herron on 21 March 2011, pp.8-9.

<sup>12</sup> Transcript of Proceedings, Public Examination, Opening Remarks by Mr Peter Damien Quinlan, SC, Senior Counsel Assisting the Commission, on 21 March 2011, p.14.

*the competing interests. Reasonable minds may differ in relation to which portions of evidence should be taken in public and which in private. But the public interest in a Royal Commission conducting its hearings in public should not be underestimated. Public hearings are important in enhancing public confidence in a Royal Commission as they allow the public to see the Commission at work. They also enhance the ability of Commissions to obtain information from the public, as they demonstrate to the public the types of matter with which the Commission is concerned, and they allow potential witnesses to see that they would not be alone in giving assistance to a Commission. Summarising concerns of this type, Mason J emphasised in the Australian Building Construction Employees' and Builders Labourers' Federation case that conducting Royal Commission hearings in private:*

*“seriously undermines the value of the inquiry. It shrouds the proceedings with a cloak of secrecy, denying to them the public character which to my mind is an essential element in public acceptance of an inquiry of this kind and of its report”.*

*The Commission was required to inquire into a subject matter of widespread public interest and importance. In my judgment, because of the factors outlined above, it was appropriate that hearings were conducted in public wherever possible.*

- [33] The Commission agrees with the comments made by Commissioner Cole and has taken those considerations into account in deciding to hold public examinations. During the five-year period 1 July 2007 to 30 June 2012 the Commission has conducted public examinations in relation to only seven matters and private examinations in relation to 39 matters, that is, 85 per cent of Commission examinations have been conducted in private since 1 July 2007.

### **1.3 Jurisdiction of the Commission**

- [34] The Commission refers to and incorporates into this report [17]–[18] of the *Special Report by the Corruption and Crime Commission on its Reporting Function with Respect to Misconduct Under Part 5 of the “Corruption and Crime Commission Act 2003” (WA)* (“the Special Report”), tabled in the Parliament of Western Australia (“the Parliament”) on 21 October 2010.<sup>13</sup>

### **1.4 Definitions**

- [35] Further to [2]–[3] above, the Commission refers to and incorporates into this report [24]–[30] inclusive of its Special Report.

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<sup>13</sup> Sections 83-86 of the *Public Sector Management Act 1994* (“the PSM Act”) were deleted by Amendment No. 39 of 2010 s. 99. Any reference to these sections in the *Special Report by the Corruption and Crime Commission on its Reporting Function with Respect to Misconduct Under Part 5 of the “Corruption and Crime Commission Act 2003” (WA)* (“the Special Report”) should be disregarded. In addition, parts of [31]–[38] of the Special Report are no longer applicable as a result of other amendments made to the PSM Act by Amendment No. 39 of 2010.

## **1.5 Reporting by the Commission**

- [36] The Commission refers to and incorporates into this report [40] and [41] inclusive of its Special Report.
- [37] Section 86 of the CCC Act requires that before reporting any matters adverse to a person or body in a report under section 84 the Commission must give the person or body a reasonable opportunity to make representations to the Commission concerning those matters.
- [38] A number of bodies and/or persons were notified by letter dated Friday 16 March 2012 or Thursday 30 August 2012 of matters which it was proposed to include in this report. They were invited to make representations about those and other matters about which they might wish to do so by Tuesday 3 April 2012 or Friday 7 September 2012 respectively. They were advised that they and/or their legal advisor could inspect the transcripts of examinations before the Commission and evidentiary material going to matters identified. All those persons and bodies invited to make representations by 3 April 2012 did so by the due date and the Commission has given consideration to them. Of the persons invited to make representations by 7 September 2012 one person did so by the due date and the Commission has given consideration to it.
- [39] The Commission has taken all representations into account in finalising this report.

## **1.6 Telecommunications Interception Material**

- [40] The Commission refers to and incorporates into this report [47]–[48] inclusive of its Special Report.

## **1.7 Disclosure**

- [41] The Commission has powers that include the capacity to apply for warrants to lawfully intercept telecommunications, utilise surveillance devices, conduct searches, compel the production of documents and other things, compel attendance at examinations and to compel responses to questions on oath, or by affirmation in examinations conducted by the Commission. Section 151 of the CCC Act controls the disclosure of a “restricted matter”, which includes evidence given before the Commission, any information that might enable a person who has been examined by the Commission to be identified and the contents of any statement of information or document produced to the Commission. A “restricted matter” cannot be disclosed unless particular criteria are met.
- [42] The Commission takes decisions about releasing information to the public very seriously.
- [43] The decision to report on the investigation by the Commission of alleged public sector misconduct in relation to the conduct of IELTS by Curtin University or any other public authority goes to its statutory purpose of

improving continuously the integrity of, and reducing the incidence of misconduct in, the public sector. Reporting on the investigation is also necessary in the public interest to enable informed action to address the corruption and other misconduct risks identified by the circumstances revealed in this report.

[44] Further, the Commission refers to and incorporates into this report [44]–[46] inclusive of its Special Report.

## 1.8 Privacy Considerations

[45] In formulating this report the Commission has considered the benefit of public exposure and public awareness and weighed this against the potential for prejudice and privacy infringements. As a result of these considerations the Commission has decided not to include names of various individuals in this report who assisted the Commission during its investigation or the full names of others whose names have been, in part, suppressed in accordance with Suppression Orders issued by Acting Commissioner Herron during the course of the 2011 public examinations, pursuant to section 151(3) of the CCC Act. Section 151(3) of the CCC Act states that:

*[u]nless the Commission orders otherwise, a restricted matter may be disclosed if that matter has already been disclosed at a part of an examination that was open to the public.*

## 1.9 Opinions of Misconduct

### 1.9.1 Publication of an Opinion

[46] The Commission refers to and incorporates into this report [49]–[51] inclusive of its Special Report.

### 1.9.2 Balance of Probabilities

[47] The Commission refers to and incorporates into this report [52]–[57] inclusive of its Special Report.

### 1.9.3 Meaning of Corruption

[48] Misconduct is defined by section 4 of the CCC Act, and misconduct of a kind described in section 4(a), (b) and (c) is defined as “**serious misconduct**” by section 3 of the CCC Act. Section 4(a) deals with public officers who act corruptly, or corruptly fail to act, in the performance of the functions of their office or employment and section 4(b) deals with public officers who corruptly take advantage of their office or employment to obtain a benefit or cause a detriment to any person.<sup>14</sup>

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<sup>14</sup> Section 4(c) of the *Corruption and Crime Commission Act 2003* deals with public officers who whilst acting of purporting to act in their official capacity commit an offence punishable by two or more years imprisonment.

[49] Corruption is a notoriously difficult concept to define. The word is not defined in the CCC Act. Although there are many cases which discuss the meaning of corruption, each is a product of the statutory provision (or common law concept) being considered and the circumstances then at hand. Refer [60]–[68] inclusive of the Commission’s Special Report.

[50] It is sufficient to state, for present purposes, that the Commission takes the law to be that “corruptly” in section 4(a) and (b) of the CCC Act connotes conduct done deliberately, which is contrary to the duties incumbent upon the public officer by virtue of their office and attended by moral turpitude in the sense explained in [60]–[68] of the Commission’s Special Report.

#### **1.9.4 Section 4(c), Section 23(1) and Section 23(2) of the *Corruption and Crime Commission Act 2003***

[51] Section 23(1) of the CCC Act prohibits the Commission from publishing or reporting a finding or opinion that a particular person has committed, is committing or is about to commit a criminal offence or a disciplinary offence. However, section 23(1) of the CCC Act allows the Commission to publish or report that a person has been convicted of, or pleaded guilty to, a criminal offence or disciplinary offence. In such a case the Commission would be reporting a fact, not its opinion, as to that. Further, section 23(2) of the CCC Act provides that an opinion that misconduct has occurred, is occurring or is about to occur is not, and is not to be taken as, a finding or opinion that a particular person has committed, or is committing or is about to commit a criminal offence or disciplinary offence.

[52] In the Commission’s opinion section 23(2) allows the Commission to publish or report a finding or an opinion that the relevant conduct constitutes misconduct under section 4(c) of the CCC Act without the person having been convicted of an offence punishable by “2 or more years’ imprisonment”. Acknowledging that whether a criminal offence has been committed can only be determined by a court and that the elements of the offence must be proved beyond reasonable doubt, and further acknowledging that the Commission is not a court, does not make legally binding determinations and may form an opinion as to misconduct on the balance of probabilities, the Commission, in expressing and reporting an opinion that the misconduct constitutes serious misconduct under section 4(c) of the CCC Act is expressing and reporting an opinion that facts if proved beyond a reasonable doubt in a court could satisfy the elements of an offence, not that a particular person has committed an offence.

#### **1.9.5 Expression of Opinion**

[53] The Commission has borne all of the foregoing considerations (as set out in 1.9.1 to 1.9.4 above) in mind in forming its opinions about matters the subject of the investigation. Any expression of opinion in this report is so founded.



## **CHAPTER TWO**

### **COMMISSION INVESTIGATION**

#### **2.1 Introduction**

- [54] As mentioned previously, the investigation by the Commission of alleged public sector misconduct by any public officer in relation to the conduct of IELTS by Curtin University or any other authority commenced in August 2010 following a notification to the Commission on 13 August 2010, pursuant to section 28(1)(c) of the CCC Act.
- [55] Initial inquiries by the Commission led to a suspicion that Mr Low, an employee of Curtin University during the period relevant to the Commission investigation (and, hence, a public officer as explained in [3] above), may have engaged in misconduct as defined by sections 3 and 4 of the CCC Act. Ultimately, in relation to Mr Low, it was alleged that he used his position to gain a monetary benefit in exchange for increasing the IELTS Test Scores of candidates. During the period relevant to the Commission investigation, principally June 2009 to June 2010, Mr Low was an Administrative Support Officer in the IELTS Test Centre at Curtin University.
- [56] The Commission investigation identified that at various times during this period Mr Low, by virtue of his position, used the usernames and passwords of other officers to access the IELTS ESOLCOMMS database to gain a monetary benefit in exchange for altering IELTS Test Scores of numerous candidates. The altered scores were higher than those obtained legitimately by those candidates.
- [57] At the outset of the Commission investigation the extent of the scheme to alter IELTS Test Scores of candidates, which involved Mr Low, was not realised. Further investigation by the Commission revealed that, with one exception, Mr Low did not have direct contact with, or even know, candidates whose IELTS Test Scores he altered. A complex network of “intermediaries” was involved. Several of the intermediaries had been IELTS Test candidates. The intermediaries liaised with candidates and organised a monetary payment to Mr Low in exchange for altering the IELTS Test Scores of those candidates. Candidates involved in the scheme paid between \$1,500 to \$12,000 each to have their IELTS Test Scores altered, with Mr Low receiving between \$500 and \$1,500 for altering the IELTS Test Scores of each candidate. The remaining amounts were divided between the intermediaries involved, with some intermediaries making up to \$6,000 per candidate.
- [58] In addition to a review and analysis of documentation and materials (which included CCRs and records provided by financial institutions) the Commission investigation encompassed:
- physical surveillance of Mr Low and meetings between Mr Low and intermediaries;

- interviews of various persons (both public and non-public officers);
- execution of search warrants granted pursuant to section 101 of the CCC Act, during which relevant material was seized by Commission officers;
- use of surveillance devices, authorised by warrants granted pursuant to section 13 of the SD Act, and telecommunications intercepts, authorised by warrants granted pursuant to section 46 of the TIA Act;
- private and public examinations, which were conducted by the Commission pursuant to sections 137, 139 and 140 of the CCC Act during March 2011; and
- the issue of warrants pursuant to section 148(2)(b) of the CCC Act for the apprehension of persons whose evidence is desired and is necessary and relevant to the Commission investigation.

A number of these investigative techniques, in addition to the review and analysis of documentation and materials, are considered in detail below.

## **2.2 Review and Analysis of Documentation and Materials**

- [59] The initial phase of the Commission investigation concentrated on the analysis of documentation and materials (“information”) obtained from Curtin University, IELTS Australia and DIAC.
- [60] Analysis of information obtained from Curtin University and IELTS Australia, including IELTS application forms, IELTS test papers and computer data, confirmed that the test scores entered into the IELTS ESOLCOMMS database did not match the test scores which appeared on original IELTS test papers. In some instances there were visible signs that answers and scores (which had been entered in pencil) on OMRs (listening and reading test papers) had been erased and altered.
- [61] Information obtained from Curtin University established that IELTS Test Scores were usually entered into the IELTS ESOLCOMMS database by officers of the Curtin University IELTS Test Centre, within three to 10 days of the IELTS Tests having been taken by candidates. However, analysis revealed that in the majority of cases where test scores had been altered to reflect higher scores than had legitimately been obtained those test scores had been entered into the IELTS ESOLCOMMS database after the 10-day period.
- [62] The standard practice for the issue of TRFs was that they be issued to candidates approximately 13 days after the IELTS Test had been taken. Further analysis revealed that for several candidates whose test scores had been altered, to reflect higher scores than they had legitimately obtained, the TRF had been issued after the 13-day period. Initially, Commission investigators considered that a candidate would first take the IELTS Test, receive a TRF with scores of less than 7.0 and then arrange for test scores to be altered, thereby receiving an additional TRF with the



altered scores. However, further investigations revealed that in the majority of cases candidates organised for test scores to be altered prior to taking the IELTS Test, generally receiving only one TRF (with altered scores).

- [63] It was also established that on a number of occasions the test scores of candidates had not been altered despite arrangements to do so having been made prior to the taking of the IELTS Test by those candidates who subsequently received a TRF with scores of less than 7.0. Further arrangements were then made for Mr Low to alter the test scores and issue a second TRF with the altered scores. On those occasions when a second TRF was issued Mr Low requested that the original TRF be returned, prior to the candidate being given the second TRF, as a preventative measure to avoid his conduct being discovered. However, this did not occur on at least two occasions, as two original TRFs with unaltered scores were seized during authorised searches of premises by Commission officers. It is significant to note that in relation to those occasions the two candidates involved, unbeknown to Mr Low, paid a further \$1,000 each to an intermediary to ensure that a second TRF with the correct scores was issued, but the original TRFs were inadvertently not retrieved by that intermediary.
- [64] Commission analysis of computer data obtained from Curtin University revealed that Mr Low was the only IELTS Test Centre officer who had been consistently logged onto the Curtin IT Network at those times that IELTS Test Scores had been altered on the IELTS ESOLCOMMS database. The computer data revealed that Mr Low would logon to the Curtin IT Network using his own username and password and then logon to the IELTS ESOLCOMMS database using the username and password of another officer prior to altering test scores in an attempt to avoid detection. In one instance Mr Low used the username and password of an officer who was on leave and overseas at the time that Mr Low logged on.
- [65] Information received from DIAC enabled Commission investigators to prepare profiles of IELTS Test candidates and intermediaries. Those profiles were fundamental to Commission investigators being able to determine links between candidates and intermediaries and locating persons of interest for the purposes of executing search warrants. Information received from DIAC included current visa and residency status, family background and educational qualifications.

## **2.3 Search Warrants**

- [66] Analysis by Commission investigators of information provided to the Commission, including data entry details from the IELTS ESOLCOMMS database, indicated that there were, in the main, two types of candidates involved in the scheme to alter test scores. These were:
- (1) candidates whose IELTS Test Scores were altered within the 13-day period and who received a TRF with altered scores within that period (and it was considered likely that these candidates had received only one TRF); and

- (2) candidates whose IELTS Test Scores were altered after the 13-day period (and it was considered likely that these candidates had been issued with two TRFs, one with legitimate test scores and the other with altered scores).

Commission investigators considered that those candidates whose test scores had been altered after the 13-day period may have retained possession of both the TRF with unaltered test scores and the TRF with altered test scores.

- [67] Twelve search warrants were issued pursuant to section 101 of the CCC Act for residential premises associated with 16 candidates (as a number of candidates resided at the same address). Search warrants were executed during the period 12 January 2011 to 1 February 2011, during which relevant material was seized by Commission officers.
- [68] The TRFs seized by Commission officers during the searches were mostly signed by Mr Low. In some instances multiple TRFs for one candidate relating to one IELTS Test were seized. The seizure of multiple TRFs, accompanied by admissions made by some candidates, provided evidence that Mr Low had altered the IELTS Test Scores of candidates from a score of less than 7.0 to a score of at least 7.0. In addition, the seizure of several mobile telephones during the searches enabled data to be extracted and analysed by Commission investigators. Analysis of this extracted data established that, in the case of two candidates, relevant details such as passport number, date of birth, IELTS Candidate Number and the test scores required were sent via an SMS (Short Message (or Messaging) Service) message to an intermediary. The intermediary then passed this information onto Mr Low together with the agreed amount of monetary payment prior to Mr Low making the alterations to the test scores of candidates on the IELTS ESOLCOMMS database.

## 2.4 Interviews

- [69] Commission Investigators initially conducted interviews with the Coordinator of the Curtin University IELTS Test Centre and an Administrative Support Officer (other than Mr Low) in that Test Centre. Both the Coordinator and the Administrative Support Officer held those positions during the period relevant to the Commission investigation. However, neither was involved in the scheme to alter IELTS Test Scores in exchange for monetary payment and neither was aware that Mr Low was involved in the scheme. The Coordinator and the Administrative Support Officer provided the Commission with information about the instability of the IELTS ESOLCOMMS database as it would regularly “crash” causing the system to freeze. They said that IELTS Test Centre officers, in relation to the entry of test scores into the IELTS ESOLCOMMS database and the issue of TRFs, had deadlines to meet. In order to achieve those deadlines in an environment where the IELTS ESOLCOMMS database was unstable (and, therefore unreliable) IELTS TEST Centre officers would share passwords so that they could re-enter the IELTS ESOLCOMMS database using another officer’s logon details

and complete the entry of data required for test scores and TRFs to be issued during the required period.

[70] Commission investigators also interviewed other Curtin University IELTS Test Centre officers, other than Mr Low, who all denied altering IELTS Test Scores, except for those alterations authorised subsequent to a successful candidate appeal. Those officers denied having any knowledge of any other officer making unauthorised alterations to test scores. Officers interviewed said that the IELTS ESOLCOMMS database usernames and passwords were shared, and that details of these were accessible to Test Centre officers.

[71] Following the execution of the search warrants (refer [67] above) several candidates and intermediaries participated in video-recorded interviews with Commission investigators and made full admissions in relation to their involvement in the scheme, and provided information about the involvement of others. In all but one instance (where a candidate had paid money directly to Mr Low), candidates paid money to an intermediary in exchange for an increase in IELTS Test Scores. Information obtained during the video-recorded interviews enabled Commission investigators to pursue further lines of inquiry and to employ additional investigative techniques. There were, however, a number of candidates and intermediaries who refused to speak with Commission investigators following the execution of the search warrants.

## **2.5 Analysis of Call Charge Records (CCRs) and Telecommunications Intercepts**

[72] The Commission initially obtained and analysed CCRs and subsequent to that was granted 12 telecommunications intercept warrants pursuant to section 46 of the TIA Act. As a consequence of the analysis of CCRs Commission investigators were able to determine links between the various intermediaries and candidates involved in the scheme to alter IELTS Test Scores. Further to that, documentation obtained from Curtin University and IELTS Australia enabled Commission investigators to understand how Mr Low had manipulated the IELTS ESOLCOMMS database by using the usernames and passwords of other officers. Telecommunications intercepts, authorised by the aforementioned warrants, were also analysed.

[73] Telecommunications intercepts provided the Commission with information about planned activities of intermediaries and Mr Low.

## **2.6 Surveillance**

[74] The Commission utilised physical surveillance to assist with the identification of a number of persons of interest and the determination of the movements and whereabouts of those persons at specific times. Physical surveillance, for instance, enabled the Commission to determine with whom, and where, Mr Low was meeting, and other persons of interest

were meeting, thereby providing Commission investigators with further information about the way in which Mr Low operated. It was also established that, to avoid detection, Mr Low destroyed IELTS material that he had in his possession, used usernames and passwords of other officers when logging into the IELTS ESOLCOMMS database to alter test scores, manipulated the somewhat dated IELTS ESOLCOMMS database (refer [84] below) to his advantage and used the monetary payments (cash) to purchase goods.

## 2.7 Financial Analysis

- [75] A number of financial institutions were served with notices pursuant to section 95 of the CCC Act. The notices required the financial institutions to provide banking records in relation to Mr Low, intermediaries and several candidates.<sup>15</sup> Analysis of these records established that cash had been deposited into the bank accounts of Mr Low and several intermediaries at times similar to those times that withdrawals were made from bank accounts of IELTS Test candidates.
- [76] Of particular interest to the Commission was the significant decline in both the frequency and amount of cash withdrawals from Mr Low's bank accounts between December 2009 and July 2010.
- Cash withdrawals fell from an average of eight withdrawals per month, for an average monthly total of \$2,058, between January 2009 and November 2009 to an average of two and a half withdrawals per month, for an average monthly total of \$376.25, between December 2009 and July 2010.
- [77] As a consequence of further analysis of the records obtained from financial institutions and interviews with Mr Low and others involved in the scheme to alter IELTS Test Scores, the Commission established that Mr Low had access to a significant amount of cash during the period December 2009 and July 2010, obtained primarily as payment for increasing the IELTS Test Scores of candidates.
- [78] As a result of the analysis of records obtained from financial institutions, information obtained during interviews by Commission investigators of Mr Low and others involved in the scheme to alter IELTS Test Scores and evidence given by Mr Low and others during Commission examinations (refer Appendix to this report), the Commission established that IELTS Test candidates paid a total of \$129,600 to have test scores altered. Of that amount Mr Low received approximately \$35,400, with the remaining \$94,200 having been divided amongst intermediaries.

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<sup>15</sup> Section 95 of the *Corruption and Crime Commission Act 2003* ("the CCC Act") relates to the Commission's power to obtain documents and other things. Section 158 of the CCC Act states that a "person who fails, without reasonable excuse, to comply, with a notice served on the person under section 94 or 95 ... or furnishes information knowing it to be false or misleading ... is in contempt of the Commission".

## 2.8 Commission Examinations

[79] The Commission conducted private and public examinations during March 2011 for the purposes of the investigation of alleged public sector misconduct by any public officer in relation to the conduct of IELTS Tests. In all six public officers and 11 non-public officers were called to give evidence during the examinations (refer Appendix to this report), including those whose evidence is considered below.

### 2.8.1 Mr Byron Peter Speldewinde

[80] Mr Byron Peter Speldewinde, Assistant Secretary, Migration and Visa Policy Division, Labour Market, DIAC, gave evidence as follows during a public examination on 21 March 2011 in relation to IELTS and the need to maintain the integrity and credibility of the Australian migration program.

*... The IELTS testing regime is the principal objective determinant of an applicant's [that is, Skill Visa Applicant] English language ability ... [and] in the main, IELTS is the principal English language testing vehicle for the Australian immigration system at the moment.*

...

*... The integrity of the [migration] program is fundamental to maintaining public confidence ... [p]ublic confidence is really about making sure that the people who come to Australia make a contribution, they help to improve the living standards of all of us and if we are giving visas to people who do not meet those requirements, in fact we're undermining the credibility of the [migration] program.*

In response to a question, from Senior Counsel Assisting, about the impact of fraudulent IELTS Test Scores on the migration program Mr Speldewinde stated the following.

*... It would have a profound impact depending on the scale of the fraud. The [migration] program is calibrated ... to ensure ... that the person being given the visa has the skills and the language ability and the qualifications to enable them to compete successfully in the Australian labour market ... if someone has defrauded the system they're essentially stealing a visa place from someone who actually has met the requirements. The department [DIAC] looks at this very, very seriously. The integrity of the [migration] program is fundamental to maintaining public confidence ... Australia has operated a very large migration program ... since we became a nation but fundamental to its success is public confidence. Public confidence is really about making sure that the people who come to Australia make a contribution, they help to improve the living standards of all of us and if we are giving visas to people who do not meet those requirements, in fact we're undermining the credibility of the [migration] program.*

...

*... the department [DIAC] intends or the government intends to introduce a provision on 2 April this year which will give the department [DIAC] far-ranging powers in terms of the ability to refuse visas on the basis of fraud,*

*particularly on the basis of fraud to third parties, and third parties would be organisations such as IELTS ...*<sup>16</sup>

(emphasis added)

## **2.8.2 Ms Elizabeth Megan Kerrison**

[81] Ms Elizabeth Megan Kerrison, Manager, Quality and Compliance, IELTS Australia, gave evidence during public examinations on 21 and 25 March 2011 and in relation to the “performance” of the Curtin University IELTS Test Centre stated that “[w]e’ve not identified any issues at all ... [w]e’ve worked with Curtin ... since approximately 1993 and there has been several administrators in that time and we have been very fortunate to have very dedicated staff members there, good communicators ... and we’ve always had a very productive relationship with the Curtin [University IELTS] Test Centre”.<sup>17</sup>

[82] In relation to audits of IELTS Test Centres and security measures associated with the IELTS ESOLCOMMS database Ms Kerrison stated as follows during the aforementioned public examinations.

*[In relation to] [a]uditing generally ... there are both internal audits [self-audits of] ... a [Test] [C]entre that are required to be done and there are external audits done by IELTS Australia ... [that is] a site audit every two years to [sic; of] a [T]est [C]entre or they can be done sort of on demand if we have any concerns about a [T]est [C]entre ... all things being well, it's - every two years we conduct a site audit. We go there for three days and we do two days with what we call the back office, so the general management systems, and then we look at the delivery of the test day and the post-test procedures.*

In relation to security measures associated with the IELTS ESOLCOMMS database Ms Kerrison gave evidence as follows.

*... We ask [Test] [C]entres to ensure that the ESOLCOMMS computers, the computers that have ESOLCOMMS loaded onto them ... are kept in a non-public area and it's what we call a secure area. There's a password access, there's - we have a double entry of results protocol, level one and level two users. This is to help mitigate any error because we don't want genuine candidates to receive erroneous results so we have [a] staff member who does the initial entry and then a staff member who confirms that the correct result has been put in. Each of those have different user access and each has their own password.*

...

*... We send out reminders to centres to ensure that there is no sharing of passwords ...*

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<sup>16</sup> Transcript of Proceedings, Public Examination of Mr Byron Peter Speldewinde, Assistant Secretary, Migration and Visa Policy Division, Department of Immigration and Citizenship, on 21 March 2011, pp.31, 38 and 40.

<sup>17</sup> Transcript of Proceedings, Public Examination of Ms Elizabeth Megan Kerrison, Manager, Quality and Compliance, IELTS Australia Pty Ltd, on 21 March 2011, p.52.

...

... [There are two levels of users.] [I]f you are a level 1 user you have access to the system, you have the open access to the system, and it has always been the assumption that the administrator is the level 1 user. They may allocate off one other level 1 user, but most of the people in the [T]est [C]entre would be level 2, so they would have restricted access. For instance, if you're a level 2, you can't print a TRF.

... You can enter data, but you can't confirm it, you can't change scores ...<sup>18</sup>

[83] However, Ms Kerrison acknowledged, during the public examination on 25 March 2011, that the audit trail capability of the IELTS ESOLCOMMS database was limited to identifying the details of the last scores entered, that is, any previous scores entered into the database could not be identified.<sup>19</sup>

[84] Ms Kerrison, while acknowledging that “ESOLCOMMS may be dated”,<sup>20</sup> explained during the 25 March 2011 public examination that:

... ESOLCOMMS identified this fraud [scheme to alter IELTS Test Scores of candidates] and ESOLCOMMS gave the dates so that the Curtin service could be interrogated against the time stamps in that system. If all of the other integrity measures were in place ... ESOLCOMMS could not have been manipulated ...<sup>21</sup>

[85] In relation to “integrity measures”, Ms Kerrison gave evidence that Curtin University IELTS Test Centre officers had been using IELTS test material that had been withdrawn,<sup>22</sup> and that, unless there were exceptional circumstances (such as “a house fire or something very cataclysmic”) additional copies of a TRF are not permitted to be issued to IELTS Test candidates.<sup>23</sup> Ms Kerrison also gave evidence that problems with the IELTS ESOLCOMMS database (such as “the frozen screen issue”) had not been raised “with ESOL IT support in Cambridge” as they should have been by Curtin University IELTS Test Centre officers.<sup>24</sup>

[86] The Commission was advised by IELTS Australia in April 2012 (in response to the letter from Acting Commissioner Herron of 16 March 2012 (refer [38] above) that IELTS ESOLCOMMS had been replaced by IWAS

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<sup>18</sup> Transcript of Proceedings, Public Examination of Ms Elizabeth Megan Kerrison, Manager, Quality and Compliance, IELTS Australia Pty Ltd, on 21 March 2011, pp.50-51, and on 25 March 2011, pp.627-628.

<sup>19</sup> Transcript of Proceedings, Public Examination of Ms Elizabeth Megan Kerrison, Manager, Quality and Compliance, IELTS Australia Pty Ltd, on 25 March 2011, p.628.

<sup>20</sup> The Commission was advised in April 2012, by IELTS Australia Pty Ltd, that the IELTS ESOLCOMMS database had been replaced by IWAS (IELTS Web Administration System), a “new system” (refer [86] of this report).

<sup>21</sup> Transcript of Proceedings, Public Examination of Ms Elizabeth Megan Kerrison, Manager, Quality and Compliance, IELTS Australia Pty Ltd, on 25 March 2011, p.630.

<sup>22</sup> *Ibid*, pp.615-616.

<sup>23</sup> *Ibid*, pp.616-617.

<sup>24</sup> *Ibid*, p.621.

(IELTS Web Administration System). During the 25 March 2011 public examination Ms Kerrison gave evidence as follows in relation to IWAS.

*... in the new system can a level 1 promote a level 2 to a level 1 by their own access?---No. In the new system there's going to be a something called a level zero, which is going to be held centrally at head office ... in Melbourne for IELTS Australia [Test] [C]entres, and they will allocate the ...*

*... user level and they will allocate the passwords, the initial password, and then of course each person will change their own.*

*...*

*... As I understand it ... there will be a full test taker's history, not just restricted to one test but each sitting ... [y]ou'll be able to look at their entire history ... so this will be a single audit trail available in a more streamlined form ...<sup>25</sup>*

*...*

*... The new system, as I understand it, will have the feature of full audit trail, so a single test taker's history will be available. Any changes made, any changes to score or to photo or any interaction with that result will be documented.*

*...*

*... as far as the allocation of the password goes as far as the access to the system, all of that in the new system will be centrally controlled, and there will be some training support material under that, so that prior to commencement of interaction with the new system, each person will have been trained in password management.*

*...*

*Would those people accessing ESOLCOMMS or wanting to access ESOLCOMMS have to pass that training ... before that's done?---Yes, that's right. Yes, the new system will be called IWAS ...*

*And you have also given evidence about the fact that passwords will be centrally controlled?---That's correct.*

*By head office?---That's right. They'll be allocated to each individual user by the regional management team.<sup>26</sup>*

### **2.8.3 Former Coordinator of the Curtin University IELTS Test Centre**

[87] The Coordinator of the Curtin University IELTS Test Centre during the period relevant to the Commission investigation gave evidence as follows during a public examination on 21 March 2011 in relation to the IELTS ESOLCOMMS database.

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<sup>25</sup> Transcript of Proceedings, Public Examination of Ms Elizabeth Megan Kerrison, Manager, Quality and Compliance, IELTS Australia Pty Ltd, on 25 March 2011, pp.627-628.

<sup>26</sup> *Ibid*, pp.636-637.



... When I commenced [April 2009] I think they were averaging about 150 candidates per test, and they were doing two per month ... I increased the number of tests so that we used every Saturday that was available, and within the first four months I think we actually got up to 420 for one test, but decided for the sake of our sanity that we would go back to 350, which we could manage within one building, so we basically aimed for seven rooms of 50 candidates and we had absolutely no trouble, except for a couple of months, filling those; the market [sic: market] was certainly there.

...

The ESOLCOMMS ... [database] is very labour intensive ... and not very resilient, I wouldn't describe it as robust in the least and everything is manually done. All of the details, every person's name, all of their information has to be manually entered so it's a huge amount of data entry.

...

... only three people [with higher authority] ... could do the second entry, did they have to individually enter the numbers in, or simply check that they had already been entered in - - -?---They entered them in over the top.

They entered them in?---But having done that, there was no reference to what the first entry was. There was no trail whatsoever, so once a new entry had gone in, that was it ...

...

It crashed regularly ... The ESOLCOMMS ... [database] would often crash two, three times in a day.

What would a crash manifest itself as?---It would just go ... blank.

...

... sometimes it was only possible to get one person logged on out of five or six of us.

What, so it wouldn't recognise your password?---No, it wouldn't. It wouldn't, and that person could ... run from machine to machine and log us all on or sometimes ... we would try her [a part-time officer] password. And we were constantly changing them but it just crashed all the time and it depended on who was in the office or what was happening.

... It was ... a case of, "I can't get on" - and I'm not really sure if everybody understands the 13-day turn around that - the pressure that we were under, attempting to get all of that data in and having everything run, to the point where sometimes it was - you know, I was there till 10 o'clock on a Friday night and my staff were also, trying to get everything ready for a test. We could not afford one hour to be without those machines, and sometimes it could take three or four hours for the IT guys to come ...

...

The former Coordinator gave evidence that she had advised the Director of CELC that the IELTS ESOLCOMMS database was "unusable", but that:

*he was pretty clear about the fact that those test numbers needed to be up. It was very important that we generated that income, he certainly didn't want a situation where we showed declining numbers ...<sup>27</sup>*

(Refer [96] and [99] below for evidence given by the former Director of CELC in relation to the above.)

#### **2.8.4 Former Administrative Support Officer in the Curtin University IELTS Test Centre**

[88] A former Administrative Support Officer in the Curtin University IELTS Test Centre during the period relevant to the Commission investigation (other than Mr Low) gave evidence as follows during a public examination on 21 March 2011 in relation to the IELTS ESOLCOMMS database and the sharing of usernames and passwords by Test Centre officers.

*As part of the role in, amongst other things, data entry, was there a security system in place in terms of access to computers and then access to the software that was operating in the centre?---There was only one time log-in to have access to computer and another one time long-in [sic] to the ESOLCOMMS, the IELTS system. At the time when I started I didn't really know what's happening because the computer, the software just crashed all the time, and Keith Low was the first person to, you know, he just told us to use his account number because he was not using it; so it was sort of like a habit thing, it's like a common practice. Even before we started to put all our account numbers and the passwords on the board to share - - -*

...

*I think you said that in the course of using ESOLCOMMS, it was a system that crashed from time to time?---That's right.*

*How did it crash? What happened once it crashed?*

*---Everything you were doing would just stop doing, and the computer won't allow you ... to do anything, so we have to restart the computer, but somehow the system still recognise you as already logged in, so you can't be logged in under your own account name.*

*I think you said that the first time you used somebody else's password was as a result of it having crashed and you not being able to log in in your own password? Is that right?---That's right.*

*And it was Keith Low's password that you used?---Yeah.*

...

*... Did you ever use other people's passwords?---Yes, I did.*

...

*I would use my own password to start, but if the system didn't work, I have to have somebody else's password to log on to the system.*

...

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<sup>27</sup> Transcript of Proceedings, Public Examination of the former Coordinator of the Curtin University IELTS Test Centre on 21 March 2011, pp.62, 65, 68 and 70-71.

You said in answer to one of the earlier questions that there was a time with having passwords on a board. Did I understand you correctly there?--- Yes. It was a locked cupboard, so every time - if like I think in the early stage I was only employed for two or three days ... [s]o constantly when I was not at work somebody from office would ask me to have my password and the account names.

Where did you leave that?---It was in a locked cupboard.

...

... How did you write it down? Was it in a book? Was it - - -?---In like a Post-it note.

Okay. So you would put your password and your user name on a Post-it note and leave it inside the cupboard so that when you weren't there, other people could access your account?---Yes.

And did other people do that as well?---I believe so.

Which other people? Were you able to see other people's passwords - - -?---If I'm not in the office I would have no idea who's using it.

Yes, you would have no idea who is using your password?---Yes.

When you were in the office, did you see other people's passwords being put up on a note in that cupboard?---All of our passwords and account names were there.

All other?---Yeah.

So that every member of the IELTS centre who had a username and password, their username and password would be in this cupboard. Is that right?---Yes. It was only for a period of time, I can't really remember for how long and - yes, all of our account names and passwords were written.

So if any of you wanted to log onto somebody else's username and password you could go to that cupboard, find out what their username and password is and use it?

---That's correct. Yeah.

When did they happen?---I can't really remember. It was in - it started in 2009 but I can't really remember which month, and it was only there for - before November, before the first audit we had.

So was it there when you had that first audit?---No, it was already taken off.

Did everybody have a key to that cupboard?---No, only... [the Coordinator] has it.

... [The Coordinator] had it, so we had to ask her to have the key and open the cupboard.

Where was that key kept?---In ... [the Coordinator's] drawer.

Where was that cupboard?---In the corner of our office.

*Who's idea was it, if you can remember, to write down the passwords and the user IDs so that other people would be able to access them?---It's sort of, like, everybody's idea because every time we have to ask people, you know, "What is your account? Can I use your account and password?" So it happened too often and then we just came up with this idea to have the password and account name on the board.*

*So do you remember any particular person coming up with the idea or was it something that everybody seemed to talk about and come up with?---Well, every time after our test we would have a meeting to discuss all the problems we had during the test or before the test, so one of the problems was on the test day, the people who were doing the work, using ESOLCOMMS, couldn't log onto the system and that was, that created a really stressful job for them so on the test day we had to ring up some other people to find out their account and password, so in the end it just - an idea from all of us, actually. We were willing to share the password and accounts.*

*Did the passwords have to be changed from time to time?*

*---Yes ...<sup>28</sup>*

- [89] In response to a question from Senior Counsel Assisting about the sharing of passwords and usernames by Curtin University IELTS Test Centre officers the former Administrative Support Officer explained that she allowed other Test Centre officers to use her username and password “[i]f they needed to” because:

*... the 13-days turnover was quite like - like a requirement we need to meet and because we constantly got a lot of abuse from candidates who desperate want the results and it was not fair for our receptionist to take over all of those abuse most of the time. So we tried to work out, you know, within the office.<sup>29</sup>*

### **2.8.5 Mr Derek Silvester**

- [90] Mr Derek Silvester, Information Technology Specialist, Curtin University, gave evidence during a public examination on 23 March 2011. Mr Silvester, during the period relevant to the Commission investigation, was a Systems Administrator who had responsibility for “humanities servers”, which were servers “provided by the IT Support Team to enable specific needs of certain ... areas within humanities which weren’t met by the corporate systems ... [and] were ... stored in a dedicated server room which was ... more secure and protected”.<sup>30</sup> One of the “certain areas” was CELC, in which the Curtin University IELTS Test Centre was located.
- [91] Mr Silvester said that, following a request from the Commission, he conducted an audit of “logons” to the Curtin IT Network by IELTS Test

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<sup>28</sup> Transcript of Proceedings, Public Examination of a former Administrative Support Officer, Curtin University IELTS Test Centre, on 21 March 2011, pp.109-114.

<sup>29</sup> *Ibid*, p111.

<sup>30</sup> Transcript of Proceedings, Public Examination of Mr Derek Silvester, Information Technology Specialist, Curtin University, on 23 March 2011, p.281.

Centre officers and supplied “logs for logging in on certain dates”.<sup>31</sup> The audit enabled Commission investigators to determine that on all occasions that IELTS Test Scores had been altered Mr Low was the only IELTS Test Centre officer consistently logged on and at times was the only officer logged on when test scores had been altered.<sup>32</sup>

- [92] In relation to Test Centre officers being “locked out” during use of the IELTS ESOLCOMMS database Mr Silvester gave evidence as follows, and explained that IT assistance was required to “clear the connection”.

*... There were various support calls from the IELTS team from time to time relating to problems with lockouts ...*

*...*

*... One consistent problem we had was where the ESOLCOMMS program itself on the work station for some reason lost communication with the ESOLCOMMS program on the server and the work station says it's not connected any more but when they try to reconnect the server said, "Well, you've already connected" and you're only allowed one connection per user. This basically required me ... to clear the connection*

*...*

*So what you're saying is basically ... it would lock out so they would no longer be able to access the ESOLCOMMS application once they had already logged in?---That's right.*

*However, when they then tried to get back into the system it was still recognising them as being logged in and wouldn't allow them to log in again?--- Yes. This was quite a persistent problem so in June 2009 we actually created a program which did this automatically ... it needed all the people to log out, double click on this application [program] and it stopped and started the server and from that time on we didn't really hear that much about it. I'm not sure how often it happened for them but they were able to clear it themselves quite quickly.*

*So the employee was able to do that restarting of the server instead of calling the IT support out?---Yes.<sup>33</sup>*

#### **2.8.6 Mr Kok Keith Low**

- [93] Mr Kok Keith Low gave evidence during public examinations on 24 and 25 March 2011. In relation to problems experienced by Curtin University IELTS Test Centre officers during use of the IELTS ESOLCOMMS database Mr Low gave evidence as follows.

*... It crashes very often ...*

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<sup>31</sup> Transcript of Proceedings, Public Examination of Mr Derek Silvester, Information Technology Specialist, Curtin University, on 23 March 2011, p.287.

<sup>32</sup> *Ibid*, p.290.

<sup>33</sup> *Ibid*, pp.291-293.

*... There were times when you log in and later on which [sic] you try and use ESOLCOMMS again, it wouldn't allow you to, so you have to restart your computer and try logging in again; it says that you have been logged in. So at times like this I had to contact Derek Silvester [Systems Administrator] to restart the server for ESOLCOMMS.*

Mr Low stated that he was aware of “staff within the [IELTS Test] [C]entre using another employee’s password and logon in order to access the system when the system wouldn’t let them log on” and explained how that eventuated.

*... I can't remember exactly when, but at one point ... [we wrote] all our password and login IDs on a piece of paper and it was stuck in one of our cupboards in the office. The reason being so that in the event that when ESOLCOMMS crashes or in the event that one of us are not around, but someone else needed to use the computer to log into ESOLCOMMS, then we will have access, we will have the password and login information into ESOLCOMMS.<sup>34</sup>*

- [94] Mr Low made full admissions during the examinations in relation to his involvement in the scheme to alter IELTS Test Scores, and said that “frustration at work” caused him to alter scores between June 2009 and June 2010 in exchange for monetary payment.<sup>35</sup> Mr Low gave evidence that he received “between 500 to a thousand five [\$1,500]” on each occasion that he altered IELTS Test Scores for a candidate.<sup>36</sup> Mr Low also gave evidence that he did not have direct contact with candidates whose scores he altered, except in the case of one candidate.<sup>37</sup>

### **2.8.7 Former Director of the Curtin English Language Centre (CELC)**

- [95] The former Director of CELC gave evidence during a public examination on 28 March 2011. The former Director stated that he “wasn’t aware of what was happening day to day in that area [that is, the IELTS Test Centre, which was located in CELC]”, but “relied on the reporting mechanism through the centre manager [that is CELC Manager] and any issues from that would be brought up to my attention”.<sup>38</sup> In relation to that it should be noted that during the period relevant to the Commission investigation the CELC Manager reported to the Director of CELC, and the IELTS Test Centre Coordinator reported to the CELC Manager (except during a period of approximately 12 weeks when the Director of CELC became the line-manager), with IELTS Test Centre officers reporting to the Coordinator.

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<sup>34</sup> Transcript of Proceedings, Public Examination of Mr Kok Keith Low, former Administrative Support Officer, Curtin University IELTS Test Centre, on 24 March 2011, pp.480 - 481.

<sup>35</sup> *Ibid*, p.527.

<sup>36</sup> *Ibid*, p.519.

<sup>37</sup> *Ibid*, pp.486-488.

<sup>38</sup> Transcript of Proceedings, Public Examination of the former Director of CELC, Curtin University, on 28 March 2011, p.649.

- [96] The former Director said that he was not aware that IELTS Test Centre officers were sharing passwords<sup>39</sup> or that the keys to “the storeroom and locked cupboards and storage room” in which IELTS test materials were located were not kept in a secure location.<sup>40</sup> The former Director said that he was aware of some ongoing problems being experienced by IELTS Test Centre officers during use of the IELTS ESOLCOMMS database as he had seen a letter from the former IELTS Test Centre Coordinator to IDP Education Pty Ltd (refer Footnote <sup>2</sup>) “regarding a number of issues”, which he checked and endorsed prior to it being sent (in March 2010).<sup>41</sup> However, in relation to not being advised about the keys to “the storeroom and locked cupboards” not being kept in a secure location and, therefore, accessible to anyone with access to the IELTS Test Centre, he considered that this was because “no-one saw that as a breakdown in security at the time and so as a result it wasn’t passed on or reported”.<sup>42</sup>
- [97] The former Director agreed that, in relation to exchange of usernames and passwords and the non-secure location of keys to “the storeroom and locked cupboards”, management should have taken an “active interest in the culture of the centre” which was “lax towards issues of security”, which “is something which happens now”.<sup>43</sup>
- [98] The former Director said that he “got heavily involved” in the running of the IELTS Test Centre during, and subsequent to, the August 2010 audit by IELTS Australia, which identified a number of issues that needed to be addressed.<sup>44</sup> He said that Curtin University had worked very closely with IELTS Australia to address those issues, particularly those relating to security measures. In relation to this the former Director gave evidence as follows during the 28 March 2011 public examination.

*... We've worked very closely with IELTS Australia to ... fix any issues ... We've ... ensured things like the keys have very clear procedures around there and so, for example, I don't - I don't have access to those keys, no-one can access those keys and we've been very strict about following up to make sure, doing spot - regular checks, the centre manager and both myself to find out where are the keys and we're happy with the way that's happening now. We've ensured - the whole issue about passwords, we've made it very clear to staff about passwords and on the first of every month they are required to change their passwords; and on top of that I've also asked them, I think three times since then, to change their password while I'm standing in the room as well, so I make sure they all change it. So everyone's - everyone's very clear about password policies, and also with*

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<sup>39</sup> Transcript of Proceedings, Public Examination of the former Director of CELC, Curtin University, on 28 March 2011, p.659.

<sup>40</sup> *Ibid*, p.661.

<sup>41</sup> *Ibid*, pp.659-660.

<sup>42</sup> *Ibid*, p.662.

<sup>43</sup> *Ibid*, p.663.

<sup>44</sup> *Ibid*, p.661.

*our induction program we have added further items into the induction program, especially related to some of these issues ...*<sup>45</sup>

- [99] The former Director said that “[i]n terms of numbers [number of candidates] ... we had a budget which we were trying to meet ... I think we made it clear that we wanted to make targets of course ... but there was never [an] indication that we were trying to do bigger and better than that ... we weren’t looking at growing more than what our budgeted numbers were ...”.<sup>46</sup> In relation to the pressure created by the 13-day turnaround requirement (that is, TRFs were required to be issued to candidates within 13 days of the date that the IELTS Test had been taken) the former Director said that “we had increased the staff to allow for those [pressures] ... and actually when IELTS visited us for the audit in August they commented on the large size of our staff for a centre running that many tests [that is, between 330-350 IELTS Tests]”.<sup>47</sup>

### **2.8.8 Professor Jeanette Hacket**

- [100] Professor Jeanette Hacket gave evidence during a public examination on 28 March 2011, at which time she provided the Commission with the Interim Statement (refer [27] above). In relation to the Curtin University IELTS Test Centre Professor Hacket gave evidence as follows.

*... The revenue of the IELTS [T]est [C]entre in 2009 was \$1.5 million and in 2010 was \$2.1 million. The number of test candidates in 2009 was 5378 and in 2010 it was 6616, and I haven't actually done the calculation but I think that's probably about 23 or 24 per cent increase in the candidate numbers, driving by what I understand has been quite a significant demand in the community. I might just say, the suggestion that this was particularly a profit-making activity, it was not - that was not the purpose essentially of the conduct of this service sector. You have heard the question about there was a surplus of revenue over expenditure after direct expenses of about \$400,000 in 2010 but that was prior to the payment of all indirect costs, so that was only after the payment of the salaries and any promotional material, for example. After generating that revenue it's then necessary to meet the real costs of the space, for example ... the security, the utilities costs, our HR costs, and it goes on. The reality is that an activity like the IELTS testing centre is it's primarily undertaken because of the service which it provides the community and certainly does not particularly provide the university with a significant surplus.<sup>48</sup>*

(emphasis added)

Further, in relation to the IELTS Test Centre Professor Hacket stated as follows in the Interim Statement.

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<sup>45</sup> Transcript of Proceedings, Public Examination of the former Director of CELC, Curtin University, on 28 March 2011, p.675.

<sup>46</sup> *Ibid*, pp.653-654. Refer [87] of this report.

<sup>47</sup> Transcript of Proceedings, Public Examination of the former Director of CELC, Curtin University, on 28 March 2011, p.655.

<sup>48</sup> Transcript of Proceedings, Public Examination of Professor Jeanette Hacket, Vice-Chancellor. Curtin University, on 28 March 2011, pp.693-694.



*I have paid close attention to the matters discussed at this hearing and acknowledge that adherence to practices and processes with the IELTS Test Centre have fallen short. While the IELTS testing is regulated by IELTS' operating procedures, systems and software, the University has acted to address deficiencies within its control.*

*This hearing has also highlighted the risks inherent in this type of operation where Curtin staff are required to deliver an externally managed and controlled service. The service provided is not core to Curtin's operations and we are reviewing ["the review"] our continued involvement in offering this testing.*

...

*... IELTS Test Centre total revenue for 2010 was 0.3 percent of Curtin's total revenue of \$713.5 million for this same year.<sup>49</sup>*

Professor Hacket advised the Commission on 8 July 2011 that the aforementioned review, and the associated consultation process, had been completed and stated as follows.

*The review found the high stakes testing would always carry associated risks and responsibilities. This risk, coupled with the fact that the testing is not core business for the University, has lead [sic] to a decision to discontinue the IELTS testing service. The last test at Curtin will be on 13 August [2011].*

...

*The University has advised IELTS Australia of its decision, and provided the notice required to terminate the contract to provide the testing.*

*I am confident the decision is in the best interests of the University.<sup>50</sup>*

[101] In relation to misconduct management, that is, systems and policies in place to prevent, detect and report misconduct, Professor Hacket gave evidence during the 28 March 2011 public examination, providing supplementary information in the Interim Statement, relating to:

- establishment of the Professional Standards and Conduct Unit (PSCU) in June 2010 "to provide a more streamlined, consistent and centralised approach to the handling of complaints and reports of possible misconduct";
- strengthening extant policies or issuing new policies, including those relating to IT security, for example, the *Password Security Policy*,

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<sup>49</sup> *Interim Statement Relating to the Corruption and Crime Commission's Public Hearing Into Matters Associated with International English Language Testing*, 28 March 2011, pp.1-2 and p.5 [01919-2010-1504].

<sup>50</sup> Letter to Commissioner, Corruption and Crime Commission, of 8 July 2011 from Professor Jeanette Hackett, Vice-Chancellor, Curtin University.

and staff conduct, for example, *Professional Integrity and Standards Policy and Procedures*; and

- the June 2009 *Code of Conduct* (“the Code”) and the conduct of mandatory information sessions by PSCU on the Code and ongoing promotion of the Code by PSCU through distribution of booklets entitled *Valuing Integrity: Guide for the Workplace* and *Student Conduct: Your Rights and Responsibilities*.<sup>51</sup>

### **2.8.9 Additional Witnesses**

[102] A number of IELTS Test candidates and intermediaries gave evidence during Commission examinations conducted in March 2011 (refer Appendix to this report), in relation to the network involved in the scheme to alter IELTS Test Scores. In general, the intermediaries acted as the contact point between IELTS Test candidates and Mr Pritesh Shah with the intermediaries organising the transfer of money from candidates to Mr Shah, some of whom retained a portion as payment for their services. Although Mr Shah was himself also an intermediary, he was the only intermediary who had direct contact with Mr Abdul Kader. Mr Kader had formerly resided at the same address as Mr Low and acted as the point of contact between Mr Low and the intermediaries via Mr Shah. Mr Kader provided the details of candidates to Mr Low, at which time he transferred a portion of the money to Mr Low, retaining a portion for himself as payment for services.

## **2.9 Consequences of Commission Investigation**

### **2.9.1 Charging and Sentencing of Mr Kok Keith Low and Others Involved in the Scheme to Alter IELTS Test Scores**

#### **2.9.1.1 Mr Kok Keith Low**

[103] Mr Low, as an employee of Curtin University between February 2008 and July 2010, was a public officer during the period relevant to the Commission investigation. On 29 March 2011 the Commission charged Mr Low with one count of Bribery of Public Officer and on 6 April 2011 he was charged with a further 14 counts of Bribery of Public Officer pursuant to section 82 of *The Criminal Code*. That section of *The Criminal Code*, which relates to “Bribery of public officer”, states that:

*[a]ny public officer who obtains, or who seeks or agrees to receive, a bribe, and any person who gives, or who offers or promises to give, a bribe to a public officer, is guilty of a crime and is liable to imprisonment for 7 years.*

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<sup>51</sup> Transcript of Proceedings, Public Examination of Professor Jeanette Hackett, Vice-Chancellor, Curtin University, on 28 March 2011, pp.678 and 680, and *Interim Statement Relating to the Corruption and Crime Commission’s Public Hearing Into Matters Associated with International English Language Testing*, 28 March 2011, pp.7-10 [01919-2010-1504].

- [104] Mr Low pleaded guilty to all charges in the Perth Magistrates Court on 13 May 2011 and was committed for sentence in the District Court of Western Australia (“the District Court”).
- [105] On 9 August 2011 Mr Low was sentenced in the District Court by His Honour Judge Michael John Bowden to 12 months immediate imprisonment for each offence. Counts five and 15 were to be served cumulatively and the balance was to be served concurrently. Therefore, Mr Low was sentenced to a total of two years immediate imprisonment, being eligible for parole after serving one year.
- [106] In sentencing Mr Low on 9 August 2011 Judge Bowden made the following remarks.

... immediate imprisonment is the only manner in which this case can be disposed of ... you have pleaded guilty this morning to 15 counts of obtaining a bribe ... each of those offences ... carries a maximum penalty of seven years’ imprisonment.

...

... in essence, what you did was corruptly alter those results [IELTS Test Scores] in exchange for payments of money.

...

*Now, one of the matters that I do have to take into account is of course your personal circumstances. I accept that you pleaded guilty at the first available opportunity. That’s treated as evidence of remorse. That is, that you know that what you did was wrong, that you’re prepared to accept the consequences and to facilitate the court in going about their business.*

*I also accept that you cooperated with those that were investigating, and that you are genuinely remorseful as far as your conduct is concerned. That does entitle me to impose a lighter sentence on you than I would have otherwise imposed.*

*I accept without reservation that you have come from a good upbringing, that you’ve got a supportive family, you’re very well educated, you’ve got a good employment record. I have been provided with documents which show that you have obtained a Bachelor of Media from Murdoch University; a Graduate Diploma in Education from Curtin University.*

*I have been provided with references from various people, and everybody that’s had anything to do with you prior to your involvement in these criminal offences speaks very, very highly of you. And they are important considerations, which of course I must take into account.*

*You have no prior record, and I accept that this will be your first period of imprisonment that will be imposed upon you. Your criminal conduct continued for a period of around about 10 months.*

*As I have indicated, it involved you on 15 separate occasions in accepting money. It involved you in altering a large number of results. And as I am sure you will understand, that affects everybody in the community.*

*The reality is that persons taking the tests are entitled to expect that theirs and other persons taking the test's [sic] results are honestly reported. The organisations which rely on those results are also entitled to expect the results have been honestly recorded.*

*The public are entitled to expect that public officers performing a public function do so honestly, without altering results as a result of receiving a cash incentive.*

*And also your employer is entitled to expect that its officials will again perform honestly, and the result of your conduct corrupts the whole system. It erodes public confidence in the tests. It erodes public confidence in the department that employs you. It erodes public confidence in the departments that rely on the results, and that is the reason why it is treated so seriously.*

...

*I have to consider the need to punish you for your wrongdoing, to protect the community from this sort of behaviour, to deter you from such conduct, to deter other people who are in public positions from taking bribes, and also I have to aid in your rehabilitation.*

...

*... I do consider that the offence is so serious that a period of imprisonment is called for. And I do consider that anything other than an immediate sentence of imprisonment would simply fail to reflect the seriousness of this offence.*

...

*... there does need to be a clear message sent out to public officials that if you corruptly perform your official functions that very serious consequences will follow.*

(emphasis added)

### **2.9.1.2 Others (Non-Public Officers)**

- [107] Eleven persons who were non-public officers during the period relevant to the Commission investigation were charged by the Commission between 6 April 2011 and 2 March 2012 with a total of 58 counts of Bribery of Public Officer pursuant to section 82 of *The Criminal Code*. All persons subsequently pleaded guilty to all charges (at various times between 25 May 2011 and 5 April 2012) and were sentenced at various times between 9 August 2011 and 6 July 2012. The sentences ranged from immediate terms of imprisonment and suspended imprisonment to a fine of \$20,000 (\$10,000 for each of two counts).

### 2.9.1.3 Summary of Charges and Sentences

<b>Public Officer (During Period Relevant to Commission Investigation.)</b>				
<b>No.</b>	<b>Charge Dates</b>	<b>Details of Charges (Pursuant to section 82 of <i>The Criminal Code.</i>)</b>	<b>Plea Date</b>	<b>Details of Sentence</b>
1.	29 March 2011 and 6 April 2011	1xBribery of Public Officer and 14xBribery of Public Officer.	13 May 2011	Sentenced on 9 August 2011 to two years immediate imprisonment, with eligibility for parole after serving 12 months.
<b>Non-Public Officers (During Period Relevant to Commission Investigation.)</b>				
1.	6 April 2011	3xBribery of Public Officer.	25 May 2011	Sentenced on 9 August 2011 to nine months imprisonment, suspended for 18 months.
2.	6 April 2011	5xBribery of Public Officer.	11 May 2011	Sentenced on 16 August 2011 to nine months imprisonment, suspended for 18 months.
3.	6 April 2011	2xBribery of Public Officer.	13 April 2011	Sentenced on 9 August 2011 to nine months imprisonment, suspended for 18 months.
4.	6 April 2011	14xBribery of Public Officer.	13 April 2011	Sentenced on 9 August 2011 to 12 months immediate imprisonment, with eligibility for parole after serving 6 months.
5.	6 April 2011	3xBribery of Public Officer.	11 May 2011	Sentenced on 16 August 2011 to seven months imprisonment, suspended for 18 months.
6.	6 April 2011	14xBribery of Public Officer.	13 April 2011	Sentenced on 16 August 2011 to 18 months immediate imprisonment, with eligibility for parole after serving 9 months.
7.	5 April 2011	1xBribery of Public Officer.	25 May 2011	Sentenced on 18 August 2011 to nine months imprisonment, suspended for 12 months.
8.	4 April 2011	2xBribery of Public Officer.	18 April 2011	Sentenced on 18 August 2011 and fined \$20,000 (\$10,000 on each count).
9.	1 November 2011 and 7 March 2012	4xBribery of Public Officer and 6xBribery of Public Officer.	11 November 2011 and 13 March 2012	Sentenced on 26 March 2012 to 14 months immediate imprisonment, with eligibility for parole after serving seven months (sentence backdated to 2 November 2011).
10.	1 March 2012	3xBribery of Public Officer.	22 March 2012	Sentenced on 13 June 2012 to eight months imprisonment, suspended for 10 months.
11.	2 March 2012	1xBribery of Public Officer.	5 April 2012	Sentenced on 6 July 2012 to six months and one day imprisonment, suspended for 12 months.
<b>Total:</b> A total of 12 persons (including one public officer) were charged with 73 counts of Bribery of Public Officer pursuant to section 82 of <i>The Criminal Code</i> .				

## 2.10 Confiscation Proceedings

- [108] The potential application of the *Criminal Property Confiscation Act 2000* (“the CPC Act”) is considered for Commission investigations, as applicable.
- [109] An examination of the financial circumstances of the five persons who received monetary payments as a result of involvement in the scheme to alter IELTS Test Scores, revealed that Mr Kader, an intermediary, was the only person to whom asset confiscation could apply. Mr Kader held significant funds in bank accounts with Bankwest, that is, a Student Account, Telenet Saver Account and a Smart eSaver Account.
- [110] The Commission considered two options under the CPC Act for asset confiscation in relation to Mr Kader:
- (1) to obtain a Freezing Notice pursuant to section 34 of the CPC Act for Crime-Derived Property (through his involvement in the scheme to alter IELTS Test Scores), being cash totalling \$7,900 that was deposited in Mr Kader’s Student Account with Bankwest; or
  - (2) to seek a Criminal Benefits Declaration pursuant to section 15 of the CPC Act, in conjunction with a Freezing Order, pursuant to section 41 of the CPC Act, for the net benefit derived by Mr Kader (through his involvement in the scheme to alter IELTS Test Scores), being a sum of \$32,500.
- [111] Section 34 of the CPC Act provides for the issue of a Freezing Notice by a Justice of the Peace “for any property if there are reasonable grounds for suspecting that the property is crime-used or crime-derived”.
- [112] Section 15 of the CPC Act provides for an application to be made by the Director of Public Prosecutions for Western Australia (DPP) to the court for a Criminal Benefits Declaration, which may be made “in conjunction with an application for a [F]reezing [O]rder, in proceedings for the hearing of an objection to confiscation, or at any other time”.
- [113] The Commission preferred to seek a Criminal Benefits Declaration in conjunction with a Freezing Order as outlined in option (2) above, and briefed the DPP accordingly. Following a consideration of the matter, the DPP agreed with the Commission, but also recommended that a Crime-Used Property Substitution Declaration be sought in relation to monetary payments passed from Mr Kader to Mr Low, being a sum of \$33,900, pursuant to section 21 of the CPC Act.
- [114] Section 21 of the CPC Act provides that an application for a Crime-Used Property Substitution Declaration may be made “in conjunction with an application for a [F]reezing [O]rder, in proceedings for the hearing of an objection to the confiscation of property, or at any other time”.
- [115] The Commission provided an affidavit and supporting documentation to the DPP, and the DPP filed a Notice of Motion for Criminal Benefits

Declaration (\$32,500) and Crime-Used Property Substitution Declaration (\$33,900) with the District Court. On 20 June 2011 the District Court made the Order to Freeze Mr Kader's Bankwest Smart eSaver Account (as this account contained funds sufficient to cover the sum of the Declarations sought).

- [116] The proceedings were resolved by negotiated settlement between the legal advisor for Mr Kader and the DPP, with Mr Kader consenting to the agreed sum being taken from the aforementioned frozen Bankwest Smart eSaver Account.

## **2.11 University of Western Australia**

- [117] During the public examinations conducted by the Commission in March 2011 evidence was given that IELTS Test Scores were being, or had been, altered in exchange for monetary payments at the University of Western Australia (UWA) IELTS Test Centre. A Commission investigation, however, found no evidence that this was the case.
- [118] Professor Alan Robson, AM, CitWA, Vice-Chancellor, UWA, was formally advised by the Commission on 26 May 2011 that the Commission investigation had "not detected the falsification of any [IELTS] Test Scores" and, accordingly, "has formed an opinion that misconduct, as described ... [by] section 22(1) of the *Corruption and Crime Commission Act 2003*, has not been identified" in relation to the conduct of IELTS Tests at the UWA IELTS Test Centre.





## CHAPTER THREE

### ASSESSMENT, OPINIONS AND CONCLUSION

#### 3.1 Introduction

[119] Section 7A of the CCC Act specifies the main purposes of the Commission and section 7B specifies how these purposes are to be achieved. One purpose of the Commission is “to improve continuously the integrity of, and to reduce the incidence of misconduct in, the public sector”. The Commission achieves this in a number of ways, which include:

- (1) the conduct of investigations which may/may not involve the conduct of public examinations;
- (2) organisational reviews of misconduct management to assess the capacity of public authorities to deal effectively and appropriately with misconduct and to prevent, identify and manage misconduct;
- (3) monitoring action taken by public authorities to address issues identified by Commission investigations and reviews, and monitoring implementation of recommendations arising from investigations and reviews (monitoring which occurs within the context of an ongoing relationship between the Commission and public authorities); and
- (4) tabling reports in the Parliament.

[120] As mentioned previously (refer [5] above), the Commission investigation, in addition to a review and analysis of documentation and materials, and other investigative techniques, encompassed the conduct of private and public examinations. In his remarks at the commencement of the March 2011 public examinations Acting Commissioner Herron acknowledged the “prompt and positive response by Curtin University ... to recommendations arising from [past] Commission investigations in relation to the prevention, detection, reporting and management of misconduct within the [U]niversity” and stated further as follows.

*In its interaction with Curtin University ... the Commissioner [sic: Commission] has observed a genuine and strong commitment from the [V]ice-[C]hancellor and the university administration to develop and strengthen the notice [sic: notion] of integrity as a core part of the university's culture. In the Commission's view, the ongoing positive response and commitment to integrity displayed by Curtin University ... has significant potential to enhance the reputation of the university as an ethical and professional place to work and study. The Commission looks forward to an ongoing relationship with Curtin University ... and will continue to assist it to create a misconduct-resistant culture which ultimately will determine the extent to which an institution can detect and manage misconduct and protect and maintain integrity.<sup>52</sup>*

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<sup>52</sup> Transcript of Proceedings, Public Examination, Opening Remarks by Acting Commissioner Mark Edward Herron on 21 March 2011, p.4.

[121] During a public examination on 28 March 2011 Professor Hacket provided an Interim Statement to the Commission (refer [27] and [100]–[101] above). In that Interim Statement Professor Hacket acknowledged “that adherence to practices and processes ... [by] the IELTS Test Centre have fallen short. While the IELTS testing is regulated by IELTS’ operating procedures, systems and software, the University has acted to address deficiencies within its control”. Those deficiencies related essentially to:

- sharing of usernames and passwords by IELTS Test Centre officers;
- lack of control of TRFs (Test Report Forms); and
- management of the IELTS Test Centre.

A further deficiency (outside the control of Curtin University) related to:

- the limited audit trail capability of the IELTS ESOLCOMMS database (refer [83] above).

[122] These deficiencies, each of which is considered briefly below, contributed to circumstances which enabled Mr Low to use his position as an Administrative Support Officer in the IELTS Test Centre to gain a monetary benefit in exchange for increasing the IELTS Test Scores of candidates during a 10-12-month period without being detected.

### **3.1.1 Sharing of Usernames and Passwords**

[123] During interviews conducted by Commission investigators and public examinations conducted by the Commission Curtin University IELTS Test Centre officers explained that usernames and passwords were shared in an effort to overcome difficulties associated with “crashing” of the IELTS ESOLCOMMS database (whereby a user was “locked-out”, necessitating the use of an alternative username and password). While the former Director of CELC was unaware that this was occurring, the former Coordinator of the IELTS Test Centre was aware and also participated in the practice.

[124] Ms Kerrison, Manager, Quality and Compliance, IELTS Australia, gave evidence during a public examination on 21 March 2011 that “[w]e send out reminders to centres to ensure that there is no sharing of passwords ...”.

[125] As noted previously, to enter the scores into the IELTS ESOLCOMMS database an officer had to first logon to the Curtin IT Network using their username and password, then logon to the IELTS ESOLCOMMS database using an additional username and password. Although Mr Low used the usernames and passwords of other IELTS Test Centre officers to logon to the IELTS ESOLCOMMS database, he logged on to the Curtin IT Network using his own username and password (as usernames and passwords to access the Curtin IT Network had not been shared). This enabled the Commission to determine (from an audit of “logons” by Mr Silvester, Information Technology Specialist, Curtin University) which

officer(s) had been logged on to the Curtin IT Network during those times that IELTS Test Scores had been altered. During a public examination on 23 March 2011 Mr Silvester gave evidence that an audit of “logons” had identified that on all occasions that IELTS Test Scores had been altered Mr Low was the only IELTS Test Centre officer consistently logged on and at times was the only officer logged on when test scores had been altered (refer [91] above).

- [126] As mentioned previously, the Commission was advised by IELTS Australia in April 2012 that IELTS ESOLCOMMS had been replaced by IWAS (IELTS Web Administration System). During the 25 March 2011 public examination Ms Kerrison gave evidence as follows in relation to IWAS, specifically allocation of user levels and passwords (with a Level 1 user having open access to IWAS (usually the administrator) and the authority to print TRFs).

*... in the new system can a level 1 promote a level 2 to a level 1 by their own access?---No. In the new system there's going to be a something called a level zero, which is going to be held centrally at head office ... in Melbourne for IELTS Australia [Test] [C]entres, and they will allocate the ...*

*... user level and they will allocate the passwords, the initial password, and then of course each person will change their own.<sup>53</sup>*

*...*

*... as far as the allocation of the password goes as far as the access to the system, all of that in the new system will be centrally controlled, and ... prior to commencement of interaction with the new system, each person will have been trained in password management.*

*...*

*And you have also given evidence about the fact that passwords will be centrally controlled?---That's correct.*

*By head office?---That's right. They'll be allocated to each individual user by the regional management team.<sup>54</sup>*

### **3.1.2 Lack of Control of Test Report Forms (TRFs)**

- [127] It was established during the course of the Commission investigation that, in relation to the storage, handling and distribution of TRFs, certain procedures were required to be followed. IELTS test materials (including TRFs), for example, needed to be stored under double-lock and key (that is, inside a locked cupboard and locked storeroom), unused TRFs were to be subject to a periodic audit by IELTS Test Centre officers and

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<sup>53</sup> Transcript of Proceedings, Public Examination of Ms Elizabeth Megan Kerrison, Manager, Quality and Compliance, IELTS Australia Pty Ltd, on 25 March 2011, pp.627-628 and 636-637.

<sup>54</sup> *Ibid*, pp.636-637.

candidates were not to obtain a second TRF except in particular circumstances (such as “a house fire or something very cataclysmic”).<sup>55</sup>

[128] As the Commission investigation progressed it became evident that periodic audits of unused TRFs were not occurring, keys to “the storeroom and locked cupboards and storage room”<sup>56</sup> were not kept in a secure location and Mr Low had on several occasions issued numerous TRFs to candidates in circumstances where he had altered test scores in exchange for a monetary payment. The Commission investigation identified that at least two TRFs were issued to each of at least 11 candidates, with one candidate receiving four TRFs for one IELTS Test. If the periodic audits had occurred as required discrepancies may have been detected (as there would have been a number of TRFs which had been used for purposes other than intended), as would the ready availability of keys to “the storeroom and locked cupboards and storage room” been detected, prompting an internal investigation.

### **3.1.3 Management of the IELTS Test Centre**

[129] As considered previously, during a private examination on 28 March 2011, the former Director of CELC agreed that, in relation to exchange of usernames and passwords and the non-secure location of keys to “the storeroom and locked cupboards”, management should have taken an “active interest in the culture of the centre” which was “lax towards issues of security”, which “is something which happens now” (refer [96]–[98] above).<sup>57</sup>

[130] The Commission investigation established that keys to the secure storeroom and locked cupboards were kept in a drawer in the IELTS Test Centre, readily accessible by any IELTS Test Centre officer. There was no record of which officers had used the keys or which officers had gained access to the secure storeroom in which IELTS test materials (including TRFs) were located. Therefore, an audit of access to the secure storeroom, or use of keys, could not be undertaken. This, combined with the fact that the required periodic audits of unused TRFs were not being undertaken, and that usernames and passwords to logon to the IELTS ESOLCOMMS database were being exchanged, contributed to circumstances which enabled Mr Low’s misconduct to go undetected for a considerable period of time. However, if Mr Low had acted to alter IELTS Test Scores within the 13-day period for all candidates involved in the scheme to alter test scores (with only one TRF being issued to each candidate), an audit of unused TRFs would not have detected any anomalies.

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<sup>55</sup> Transcript of Proceedings, Public Examination of Ms Elizabeth Megan Kerrison, Manager, Quality and Compliance, IELTS Australia Pty Ltd, on 25 March 2011, p.617.

<sup>56</sup> Transcript of Proceedings, Public Examination of the former Director of CELC, Curtin University, on 28 March 2011, p.661.

<sup>57</sup> *Ibid*, p.663.

[131] Mr Low's actions demonstrate the need for security measures to be scrutinised on a regular basis and for management to take an active role in overseeing day-to-day operations to ensure adherence to relevant policies, practices and procedures.

#### **3.1.4 Limited Audit Trail Capability of the IELTS ESOLCOMMS Database**

[132] During a public examination on 25 March 2011 Ms Kerrison acknowledged that the audit trail capability of the IELTS ESOLCOMMS database was limited to identifying the details of the last scores entered, that is, any previous scores entered into the database could not be identified.<sup>58</sup>

[133] During the period relevant to the Commission investigation the IELTS ESOLCOMMS database recorded only the last test score entered, in addition to the date, time and logon details of the officer entering that score. It did not record the first set of scores entered, nor the date, time or logon details of the officer who entered the first score. The practical effect of the limited audit trail capability of the IELTS ESOLCOMMS database was that when an officer entered a score it would erase all previously entered scores and identifying particulars of when those scores were entered and by whom.

[134] This situation enabled Mr Low to alter IELTS Test Scores without fear of the altered test scores, through manipulation of data, being detected, except in circumstances where those test scores were compared with test scores recorded on hardcopy test papers for applicable candidates. However, if Mr Low had corrected answers on OMRs (as answers were entered in pencil, which could be easily erased), his misconduct may not have been detected during a routine systemic review by Cambridge ESOL (refer [7] above).

[135] As noted above, the Commission was advised by IELTS Australia in April 2012 that IELTS ESOLCOMMS had been replaced by IWAS (IELTS Web Administration System). During the 25 March 2011 public examination Ms Kerrison gave evidence as follows in relation to the audit trail capability of IWAS.

*... As I understand it ... there will be a full test taker's history, not just restricted to one test but each sitting ... [y]ou'll be able to look at their entire history ... so this will be a single audit trail available in a more streamlined form ...*

*...*

*... The new system, as I understand it, will have the feature of full audit trail, so a single test taker's history will be available. Any changes made, any changes to score or to photo or any interaction with that result will be documented.<sup>59</sup>*

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<sup>58</sup> Transcript of Proceedings, Public Examination of Ms Elizabeth Megan Kerrison, Manager, Quality and Compliance, IELTS Australia Pty Ltd, on 25 March 2011, p.628.

<sup>59</sup> *Ibid*, pp.628 and 636.

## **3.2 Commission Assessment and Opinions as to Misconduct**

### **3.2.1 Mr Kok Keith Low**

- [136] Mr Low, as an employee of Curtin University between February 2008 and July 2010, was a public officer during the period relevant to the Commission investigation. On 29 March 2011 the Commission charged Mr Low with one count of Bribery of Public Officer and on 6 April 2011 he was charged with a further 14 counts of Bribery of Public Officer pursuant to section 82 of *The Criminal Code*.
- [137] Mr Low pleaded guilty to all charges in the Perth Magistrates Court on 13 May 2011.
- [138] On 9 August 2011 Mr Low was sentenced in the District Court by Judge Bowden to a total of two years immediate imprisonment, being eligible for parole after serving one year.
- [139] Consequently, in the opinion of the Commission, the conduct of Mr Low as outlined in this report constitutes serious misconduct under section 4(c) of the CCC Act.
- [140] Mr Low ceased to be employed by Curtin University on 13 July 2010 (having resigned on 30 June 2010) and commenced employment with Murdoch University on 22 November 2010. Mr Low's employment with Murdoch University was terminated on 25 March 2011.
- [141] As Mr Low is no longer a public officer, the Commission makes no recommendations for further action in relation to him.

### **3.2.2 Other Public Officers**

- [142] The Commission makes no recommendations in relation to any other public officer, or former public officer, in connection with the conduct of IELTS Tests at the Curtin University IELTS Test Centre or any other IELTS Test Centre in Western Australia.

## **3.3 Conclusion**

- [143] The investigation by the Commission was to determine whether:
- any public officer, or former public officer, employed by Curtin University engaged in misconduct in connection with the conduct of IELTS Tests;
  - the policies, practices and operating environment of CELC were sufficient to detect misconduct in a timely manner; and
  - IELTS has been compromised at IELTS Test Centres operated by any other public authorities.
- [144] Having considered and assessed the material and evidence gathered during the investigation the Commission has concluded that it is unable to

form an opinion that any public officer, or former public officer, other than Mr Low, engaged in either serious misconduct or misconduct (as set out in sections 3 and 4 of the CCC Act) in relation to the conduct of IELTS Tests at the Curtin University IELTS Test Centre or any other IELTS Test Centre in Western Australia. However, in relation to policies, practices and operating environment of the IELTS Test Centre (located within CELC in the Faculty of Humanities during the period relevant to the Commission investigation), the Commission investigation identified a number of deficiencies. These are outlined in [121]–[131] above and relate essentially to:

- security measures (including sharing of usernames and passwords);
- audit; and
- management.

In addition, the limited audit trail capability of the IELTS ESOLCOMMS database contributed to circumstances which enabled misconduct by Mr Low to continue without being detected for a considerable period of time (refer [132]–[135] above).

- [145] The Commission acknowledges the support and cooperation of Curtin University, IELTS Australia and DIAC during the investigation.
- [146] Further, the Commission acknowledges the commitment of, and immediate response by, Professor Hackett, as Vice-Chancellor of Curtin University, and senior management of Curtin University to address deficiencies identified by the Commission investigation in relation to the conduct of IELTS Tests by the Curtin University IELTS Test Centre (refer [100]–[101]). As a consequence of the Commission investigation, as outlined in [100] above, Professor Hackett instigated a review of the IELTS Test Centre and advised the Commission on 8 July 2011 that the “review found the high stakes testing would always carry associated risks and responsibilities ... [and as IELTS] is not core business for the University, has lead [sic] to a decision to discontinue ... IELTS ... [t]he last test at Curtin will be 13 August [2011]”.
- [147] Although the Curtin University IELTS Test Centre closed on 13 August 2011, the issues identified by the Commission investigation as they relate to the conduct of IELTS Tests enables informed action to be taken by public authorities to address the misconduct risks identified by the circumstances revealed in this report, being particularly relevant to those authorities that have a regulatory function and, therefore, provide “high value” services which have, as a consequence, increased risks of bribery and corruption of persons in positions of authority. Improper influence-related misconduct risk is well documented in the regulatory sector because of the considerable power held by authorities in that sector and

the value attached to the services provided by those authorities that are subject to regulation.<sup>60</sup>

[148] Enabling informed action to be taken by public authorities to address misconduct risks identified as a consequence of a Commission investigation is integral to the achievement of one of the two main purposes of the Commission pursuant to section 7A of the CCC Act, that is, “to improve continuously the integrity of, and reducing the incidence of misconduct in, the public sector”.

[149] A recommendation contained in the Commission report entitled *Protecting Personal Data in the Public Sector*, tabled in the Parliament in September 2005, is of particular relevance to computer access matters considered in this report. The Commission considers that it is timely to reinforce the specifics of that recommendation as they relate to safeguards to mitigate against unauthorised access. The relevant parts of the recommendation are as follows.

*It is recommended that all agencies re-evaluate their information management systems to ensure that safeguards are in place to mitigate against unauthorised access ... including ensuring that:*

- *audit tracking of access ... is available and that access is monitored to identify anomalous use;*
- *agencies review their supervision arrangements to ensure that staff only access information that is relevant to their work;*
- *agencies include in their policy and induction manuals acknowledgement that unauthorised access ... is misconduct pursuant to the CCC Act and that suspected cases will be reported to this Commission; and*
- *agencies adopt pro-active measures to reduce the opportunities for unauthorised access ... rather than responding to individual incidences in isolation.*

[150] In conclusion, the misconduct risks identified by the circumstances revealed in this report highlight the importance of secure passwords to mitigate against unauthorised access to computers and the need for management at all levels to be vigilant, and provide proper supervision, to ensure that processes to deal with misconduct are not only established but that all officers are aware of associated policies, the need for compliance with those policies and their responsibilities in relation to the prevention, identification and management of misconduct. The need for compliance

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<sup>60</sup> The term “improper influence” is used above generically to describe the actions and behaviours of customers intended to improperly affect the outcome of a business activity or process to gain a benefit which they would not otherwise have obtained. Put simply, to divert public officers from fidelity to the public interest because of other personal interests (that is, a way of corruptly influencing a public officer). Improper influence can manifest itself in a number of ways, including: offers of cash and other bribes; an offer of a gift or beneficial “arrangement”; emotional pressure related to personal needs or hardship; intimidation or threats; or a favour on the basis of assumed friendship or associations.



should be regularly reinforced by management, for example, at regular meetings, and through the issue of warnings and notices, and alerts on the intranet. This is reflected, in the view of the Commission, in action taken by Curtin University to address the misconduct risks identified as a consequence of the Commission investigation (refer [100]–[101] above).



**APPENDIX**  
**Witnesses Called to Give Evidence**  
**During Private and Public Examinations (March 2011)**



## **1. Witness Called to Give Evidence During Private Examination**

[151] The following witness, a non-public officer, was called to give evidence under oath or by affirmation, pursuant to section 141 of the CCC Act, during a private examination conducted by the Commission on 16 March 2011.

- Mr Talwinder Pannu, IELTS Test Candidate.

## **2. Witnesses Called to Give Evidence During Public Examinations**

[152] The following witnesses were called to give evidence under oath or by affirmation, pursuant to section 141 of the CCC Act, during public examinations conducted by the Commission between 21 and 28 March 2011.

### **Public Officers — During the Period Relevant to the Investigation**

- Former Coordinator of the Curtin University IELTS Test Centre (on 21 March 2011).
- Former Administrative Support Officer in the Curtin University IELTS Test Centre (on 21 March 2011).
- Mr Derek Silvester, Information Technology Specialist, Curtin University (on 23 March 2011).
- Mr Kok Keith Low, former Administrative Support Officer in the Curtin University IELTS Test Centre (on 24 and 25 March 2011).
- Former Director of CELC, Curtin University (on 28 March 2011).
- Professor Jeanette Hackett, Vice-Chancellor of Curtin University (on 28 March 2011).

### **Non-Public Officers**

- Mr Byron Peter Speldewinde, Assistant Secretary, Migration and Visa Policy Division, Labour Market (now known as the Skilled Migration Policy Branch), DIAC (on 21 March 2011).
- Ms Elizabeth Megan Kerrison, Manager, Quality and Compliance, IELTS Australia Pty Ltd (21 and 25 March 2011).
- Mr Rikenkumar Vaishnani, IELTS Test Candidate and Intermediary (on 22 March 2011).
- Mr Harinder Jit, IELTS Test Candidate and Intermediary (on 22 March 2011).

- Mr Vishal Pandya, IELTS Test Candidate and Intermediary (on 22 March 2011).
- Mr Dalwinder Singh, IELTS Test Candidate (on 22 March 2011).
- Mr Satinderpal Gill, IELTS Test Candidate and Intermediary (on 22 and 25 March 2011).
- Mr Satinderpal Sidhu, IELTS Test Candidate (on 23 March 2011).
- Mr Pritesh Shah, IELTS Test Intermediary (on 23 March 2011).
- Mr Abdul Kader, IELTS Test Intermediary (on 24 March 2011).
- Mr Talwinder Pannu, IELTS Test Candidate (on 25 March 2011).