

**Executive Summary of Report to  
Chancellor of the Victoria University of Wellington  
PBRF Eligibility of Staff**

1. On 30 September 2011 Bruce Corkill QC was appointed by the Chancellor of the Victoria University of Wellington (VUW) to conduct an Investigation of allegations made by a staff member regarding Performance Based Research Funding (PBRF) eligibility of academic staff members. The allegations were that the University had improperly varied, or attempted to vary, the employment contracts of certain staff members so as to improve the University's 2012 PBRF result and that financial incentives were offered to the relevant employees; and that these matters amounted to accounting fraud or bribery.
2. The advisor to the Investigator was Graeme Mitchell, Chair of the University's Council Audit and Risk Committee.
3. The scope of the Investigation included:
  - a thorough investigation of the facts surrounding the allegations.
  - an assessment of the application of the PBRF eligibility criteria.
  - an assessment of any contractual arrangements made with staff members in terms of the PBRF eligibility criteria; and
  - an assessment of whether any member of the University (including members of the senior management) have acted in a manner which may constitute fraud or bribery.

4. The Investigator was required to review the circumstances of four named members of University staff who were not research active. It was alleged they had been "presented with proposals involving them temporarily disappearing around the forthcoming PBRF assessment dates so as to improve the University's assessment".
5. The Investigator reviewed the circumstances of the four named individuals. In addition he reviewed the circumstances of 13 randomly selected examples where the contractual arrangements of staff had been varied; in many of those instances the variations involved early retirement and post retirement contracts being entered into.
6. The Investigator interviewed 17 persons, including senior members of management directly involved in PBRF issues; he obtained documents relevant to PBRF eligibility generally, and relating to the staff whose circumstances were reviewed.
7. The Investigator was required to review the circumstances of staff in the context of provisions contained in Part 13A of the Education Act 1989, and the "PBRF Guidelines 2012", published by the Tertiary Education Commission (TEC).
8. The Investigator concluded that the Guidelines lay down basic rules and thereafter leave it to individual TEOs to make judgments as to what will best meet that Institution's interests. There is a requirement of adherence to the letter and spirit of the Guidelines, which means there is an expectation of consistency and good faith from TEOs, with the ability of the TEC to test individual decisions by its audit process and if necessary require amendment of relevant decisions. Gaming – that is, dishonest but apparently legal mechanisms – is not permitted.

9. The Investigator reviewed the chronology of events in relation to the Quality Evaluations undertaken in 2003 and 2006, and the embarkation of a strategy thereafter to achieve significant improvement for the purposes of the next Quality Evaluation in 2012. In the course of that review, the Strategic Plan approved on 25 August 2008 by the University Council was noted as including a goal to dramatically improve VUW's research performance. The Plan provided that management was to adopt strategies for weaker areas that would either improve research performance or reduce activity. This was regarded by senior management as a strong direction from Council to facilitate dramatic improvement in the University's research performance, including for PBRF purposes. The Plan was understood to be a mandate for the strategies which management was in the course of developing.
10. On 17 June 2009, a paper was submitted to the University Council analysing the preliminary results of the internal PBRF round which had been undertaken in 2009, and advancing preliminary proposals on actions for the next three months, which included steps that were ultimately undertaken by management. Council resolved to support these actions on 29 June 2009.
11. The Investigator reviewed the HR options which had been undertaken with regard to staff who were not research active. There was considerable evidence of the use of PDCP processes. As well, a variety of processes with regard to contractual variations have been adopted.
12. The Investigator found that an important contextual matter related to the reaction of staff to the above initiatives. There had been a wide range of reactions. Some staff had responded positively to the possibility of improving their research ratings; others had reacted negatively to the point of not wishing to engage in PBRF processes at all. Significant concerns had been vocalised including whether ethical processes had been followed. A key issue in that regard was whether staff had an accurate appreciation of the processes which have been adopted.

13. The Investigator then considered the cases referred to in the original allegations, and the circumstances of the further randomly selected cases. The Investigator concluded that:
- (a) Issues relating to research performance had resulted in willing parties reaching agreements as to retirement that were mutually acceptable, often involving post retirement contracts to teach or engage in the provision of other services.
  - (b) The arrangements did not infringe the letter or spirit of the PBRF Guidelines.
  - (c) There were some instances where there had been preliminary discussions as to possible contractual variations, but those discussions had not resulted in an agreement being reached.
  - (d) In one instance, there were some aspects of a proposal which would not have passed a best practice threshold, but it was most unlikely the proposal would have been implemented, due to the effective checks exercised through HR's oversight of all employment contract proposals.
  - (e) In another two instances, offers which had been discussed had been beset by misunderstandings and miscommunications which had led to a belief amongst members of the School involved that senior members of the University intended to act unethically, which was not the case.
  - (f) Although in some instances it was clear negotiations had been extended and perhaps difficult, there was no evidence of inappropriate inducements or undue pressure on individuals. Further, no personal grievances had resulted from the processes, and the Union was reported as being comfortable with the strategies adopted by management.

- (g) There was no evidence of accounting fraud, fraud, or bribery.
14. Arising from the PBRF Preparedness Report undertaken by TEC's auditors KPMG in mid 2011, a standard PBRF 2012 eligibility file note which was to be completed in respect of all staff members regarded as PBRF ineligible is being prepared. The Investigator considered such documentation will ensure there is an auditable record for the audit which TEC auditors will conduct after Census date (14 June 2012). The PBRF Guidelines require the inclusion of staff members in the Census of any staff who were employed or contracted for services at any time between 15 June 2011 and 14 June 2012. Such persons are not PBRF eligible if the contract has ended by the Census date, but there is a requirement to include them in the Census Report.
15. The Investigator concluded that the underlying thrust of the allegations of bad faith or cover up on the part of senior members of the University was unfounded. The responses they gave to the staff member who raised the allegations were truthful and clear. Nor can there be criticism of the decision making involved in setting up the independent Investigation .
16. However, there is a PR problem within some areas of the University. Miscommunications have occurred that resulted in uninformed conclusions being reached by staff. There appears to be an unwarranted belief that senior management is undertaking unethical processes.
17. Staff concerns have arisen because:
- (a) Confidentiality is an inevitable requirement to preserve the privacy of individual staff agreements, but this contributed to misunderstandings.
  - (b) Despite attempts to provide explanations to staff within the University, it appears some have not familiarised themselves with the detail of the Guidelines and/or do not understand them properly.

- (c) The strong focus on research performance has created pressures on staff and contributed to a willingness to criticise.
- 18. The Investigator concluded that complex PBRF processes are being implemented in a rational and constructive way. Steps are being taken in relation to employment agreements and contracts for services that are open to any employer which is required to implement complex statutory and other obligations and to maximise the performance of its employees in that context.
- 19. Staff can be assured:
  - (a) That the criteria for PBRF eligibility are properly understood and are being appropriately implemented by senior management, including HR. It is significant that the TEC auditors in the Preparedness Report did not raise any concerns of inappropriate steps.
  - (b) The Guidelines proceed on the assumption that there may well be individual cases where there is a legitimate difference of opinion as to whether a given candidate is either correctly included and/or correctly graded. They specifically allow for the possibility of those opinions being dealt with after the Census date. Any concerned party can be confident that there are appropriate checks and balances.
- 20. The first key requirement of the Terms of Reference was to assess the application of the PBRF eligibility criteria. The Investigator concluded the PBRF Guidelines and related documents specify some requirements in detail, but also leave some matters to the judgment of individual TEOs. There is a good faith expectation so that there has to be compliance not only with the letter but also the spirit or intent of the provisions of the Guidelines. Decision making is expected to be consistent and transparent, with auditable evidence of decision making to be available to the TEO's auditors after the Census date.

21. The second key requirement of the Terms of Reference was to assess the application of the PBRF eligibility criteria. In summary, the Investigator considered VUW is adopting a correct approach to the issue of PBRF eligibility under the Guidelines; in none of the cases which were reviewed has any infringement of the Guidelines occurred. There have been instances where the processes involved in exploring options have not been well executed and the Guidelines have not been well understood. The Investigator was confident there are sufficient checks and balances within VUW. The continued checking of employment related issues by members of the HR Team to ensure PBRF compliance would continue to be important. The Investigator encouraged more use of files notes and written communications to ensure misunderstandings are avoided.
22. The third key requirement of the Terms of Reference was to assess whether any member of the University, including members of the senior management, acted in a manner which may constitute fraud or bribery; the Investigator concluded there is no evidence of such in any of the cases which were reviewed.
23. The Investigator recommended to the Chancellor that the Vice-Chancellor be provided with the Report so that he may consider all relevant operational implications, including:
  - Adequacy of communication from senior management to others who are required to deal with PBRF eligibility issues.
  - Whether all appropriate record keeping is in place which will enable the TEO's audit expectations with regard to staff eligibility to be met.
  - What PR initiatives are now appropriate given misunderstandings which have arisen as to the University's approach to eligibility issues.

- What response should be conveyed (either from the Chancellor or the Vice-Chancellor) to TEC to inform it of the outcome of the Investigation.
  - Whether an announcement should be made to the VUW community as to the key conclusions reached in this Investigation.
  - How any specific requests for information relating to this Investigation, should be dealt with, whether under the Official Information Act 1982 or otherwise.
24. It was further recommended that because there is personal information that is confidential to individual staff members, the Report should remain strictly confidential. The Investigator accordingly provided this separate Executive Summary of conclusions and recommendations arising from the Report which does not contain confidential information, and which may be released as is appropriate.