



ACTIONS AND REACTIONS

AT THE PRINCE CHARLES HOSPITAL

**Report of a CMC investigation into allegations
flowing from the appointment of a nursing director**

October 2006

CRIME AND
MISCONDUCT
COMMISSION



QUEENSLAND

CMC vision:

To be a powerful agent for protecting Queenslanders from major crime and promoting a trustworthy public sector.

CMC mission:

To combat crime and improve public sector integrity.

© Crime and Misconduct Commission 2006

Apart from any fair dealing for the purpose of private study, research, criticism or review, as permitted under the *Copyright Act 1968*, no part may be reproduced by any process without permission. Inquiries should be made to the publisher, the Crime and Misconduct Commission.

Crime and Misconduct Commission
140 Creek Street, Brisbane, Queensland, Australia 4000
GPO Box 3123
Brisbane Qld 4001
Tel.: (07) 3360 6060
Fax: (07) 3360 6333
Email: mailbox@cmc.qld.gov.au

Contents

Abbreviations	iv
List of people mentioned	v
Role of the CMC	1
Summary	3
Chronology of main events	7
Analysis of the issues	11
Appointment of Ms Hancl	11
Dr Davis's whistleblower claims	23
Actions of Dr Cleary, Ms Wallace and Ms Dawson	27
Involvement of the Minister for Health.....	38
Other allegations and concerns	39
Conclusions	42

Abbreviations

AMA	Australian Medical Association
AMAQ	Australian Medical Association of Queensland
AORB	Audit and Operational Review Branch, QH
ARU	Assessment and Rehabilitation Unit, TPCH
ESU	Ethical Standards Unit, QH (a unit within AORB)
HR	human resources
HRS	Human Resource Services
CMC	Crime and Misconduct Commission
MPA	Master of Public Administration
PID	public interest disclosure
QH	Queensland Health
QIRC	Queensland Industrial Relations Commission
OPSME	Office of Public Service Merit and Equity
TPCH	The Prince Charles Hospital

List of people mentioned

Brian Bell. Associate Professor, Executive Director Medical Services, Gold Coast Base Hospital. Dr Bell coauthored the Volp–Bell investigative report.

Cheryl Burns. Executive Director Nursing Services, and chair of the selection panel that recommended the appointment of Virginia Hancl to TPCH.

Grant Cameron. Director of Palliative Care, and member of the selection panel that recommended the appointment of Ms Hancl to TPCH.

Ann-Marie Carroll. External consultant engaged to help the selection panel for the Nursing Director position. Ms Carroll contacted the referees and prepared the selection report.

John Cartwright. Manager of Employee Services within Human Resource Services at TPCH Health Service District. Mr Cartwright answered to Mr Patmore and acted in the position of director when Mr Patmore was absent. It was Mr Cartwright who informed Dr Davis that a review of the process leading to Ms Hancl's appointment had found 'no flaws'.

Veronica Casey. Executive Director, Age and Disability Residential Services, and member of the selection panel that recommended the appointment of Ms Hancl to TPCH.

Michael Cleary. Acting District Manager of TPCH Health Service District. Dr Cleary approved the appointment of Ms Hancl. During most of the events described in this report Dr Cleary was the Executive Director of Medical Services at TPCH. As such he was Dr Davis's *professional* supervisor. District Manager Gloria Wallace was Dr Davis's direct line manager.

Karen-Lee Conroy. Nurse Unit Manager, Assessment and Rehabilitation Unit, TPCH. Ms Conroy lodged a grievance against Dr Davis and was herself the subject of a grievance lodged by several nurses.

Linda Dawson. Acting General Manager of Central Area Health Service. Ms Dawson assumed responsibility for the disciplinary action against Dr Davis after Dr Cleary stepped aside due to concerns about a conflict of interest.

Chris Davis. Medical Director and one of three people who oversaw the Acute Geriatric and Rehabilitation Program of TPCH (the others being Nursing Director Virginia Hancl and Business Manager Loryn Einstein).

Loryn Einstein. Program Business Manager, Acute Geriatric and Rehabilitation Program, TPCH.

Virginia Hancl. Program Nursing Director (Acute Geriatric and Rehabilitation Program), TPCH. Ms Hancl was formerly Assistant Director of Nursing, Rosary Gardens, Southern Cross Care, Tasmania.

Elaine Hart. An academic associated with research undertaken by Ms Hancl, and Ms Hancl's second nominated referee.

Bruce Hayward. Team Leader of the Corporate Human Resource Industrial Relations Policy and Strategies Centre in Corporate Office of QH. Mr Hayward acted in the position of Director of HRS when Mr Patmore was absent. It was Mr Hayward who conducted the review of the process leading to Ms Hancl's appointment.

Barry Leahy. Executive Director, Industrial Relations, Queensland Health.

Rebecca McMahon. Acting Director of the Ethical Standards Unit (part of the Audit and Operational Review Branch, QH). Ms McMahon advised in 2005 that Dr Davis did not qualify as a whistleblower. In 2005 she advised that fresh allegations raised the possibility of official misconduct and that Dr Davis might now be a whistleblower.

Linda Moule. Acting Principal Policy Officer, Strategic Management Branch, Corporate Office. Ms Moule was initially appointed by Ms Wallace to review the Assessment and Rehabilitation Unit and Day Hospital. She also took on the role of Nursing Director and Nurse Unit Manager when Ms Hancl and Ms Conroy took extended leave.

Coral Muskett. Director of Nursing, Mental Health Services, Tasmania. Ms Hancl nominated Ms Muskett as an additional referee when asked to supply someone who was either her current or former manager. Ms Muskett was a former manager.

Mark O'Brien. Director, Cognitive Institute. Dr O'Brien was appointed by Ms Gloria Wallace to mediate between Ms Hancl and Dr Davis.

Peter Patmore. Director, Human Resource Services, TPCH Health Service District. Dr Cleary said he checked with Mr Patmore about the appropriateness of contacting Ms Hancl's direct manager in Tasmania. In December 2003, TPCH became part of a Shared Service Provider District and Mr Patmore took up a position there, leaving the director position vacant.

Jon Roberts. Executive Director, Corporate Services, and member of the selection panel that recommended the appointment of Ms Hancl to TPCH.

Uschi Schreiber. Director-General of Queensland Health. Ms Schreiber stood down Ms Wallace, Dr Cleary and Ms Dawson for taking disciplinary action against Dr Davis.

Alan James ('Jamie') Shepherd. Acting Director of Nursing, Sandown Village Apartments, Southern Cross Care. Mr Shepherd was the first of four referees given by Ms Hancl in her résumé. He was also, at times, Ms Hancl's de facto partner.

Kym Volp. Nurse Manager, Toowoomba Base Hospital, and coauthor of Volp-Bell investigative report.

Carolyn Wallace. Director of Nursing, Rosary Gardens, Southern Cross Care, Tasmania. Ms Carolyn Wallace was Ms Hancl's manager at Rosary Gardens and the person Dr Davis contacted about Ms Hancl.

Gloria Wallace. General Manager, Central Area Health Service, Queensland Health. During most of the events described in this report Ms Gloria Wallace was the District Manager of TPCH Health Service District and had overall responsibility for the Acute Geriatric and Rehabilitation Program. As such, she sought to defuse the interpersonal conflict between Dr Davis and Ms Hancl.

Role of the CMC

The Crime and Misconduct Commission (CMC) has a statutory responsibility to improve integrity and reduce misconduct in the Queensland public sector. Our jurisdiction covers all units of public administration.

What is 'misconduct'?

Under the *Crime and Misconduct Act 2001*, 'misconduct' refers to **official misconduct**, which applies to all public sector officials, including elected officials, and anyone who seeks to corrupt a public official.

Official misconduct is conduct relating to the performance of an officer's duties:

- that is dishonest or lacks impartiality, or
- involves a breach of the trust placed in an officer by virtue of their position, or
- is a misuse of officially obtained information.

For public servants, the conduct in question must either be a criminal offence *or* serious enough to justify dismissal. For elected officials it *must* amount to a criminal offence.

How did the CMC become involved in this matter?

The Crime and Misconduct Act encourages all public sector agencies to deal with the misconduct of their own staff. This is known as the devolution principle. At the same time, the Act empowers the CMC to monitor how public sector agencies handle cases of suspected official misconduct. The Act also empowers the CMC to assume responsibility for an investigation if the public interest requires it or the relevant agency is not equipped to handle the investigation.

In this case, the CMC received a complaint from the Director-General for Health, Ms Uschi Schreiber, on 4 May 2006. We advised Ms Schreiber that the allegations were suitable for Queensland Health to investigate, with outcome advice only to be provided to the CMC.

On 13 May 2006, in light of the sensitive circumstances surrounding the allegations, Ms Schreiber requested that the CMC undertake the investigation rather than Queensland Health. We agreed to do so.

Challenge to our jurisdiction

In September 2006 lawyers for Ms Hancl submitted on her behalf that her alleged conduct fell outside the concept of 'official misconduct', as defined in the CM Act, because she was not at the time of the alleged conduct a holder of an appointment in a unit of public administration.

The CMC considered this matter and concluded that it does have jurisdiction to undertake this investigation and to report its findings.

The combined effect of sections 14(a) and 16(2)¹ of the CM Act provide that conduct engaged in before a person becomes a holder of an appointment can be official misconduct if there is potential for it to adversely affect the honest and impartial performance of the person once appointed.

Ms Hancl through her lawyers challenged our jurisdiction in the Supreme Court. That challenge was unsuccessful.

¹ A more detailed consideration of the meaning of the identical provision under the *Criminal Justice Act 1989* can be found in the CJC report *Allegations of electoral fraud: report on an advice by PD McMurdo QC*, September 2000, pages 7–10. That report can be found on the CMC's website: <www.cmc.qld.gov.au>.

Summary

In May 2006, Question Time in Queensland Parliament was dominated by debate about whether a certain senior nurse had lied in her résumé about her qualifications and whether she had nominated her de facto partner as a referee for the position. There was also much speculation about whether the senior doctor who had first raised these matters had been the subject of reprisal by Queensland Health. The extensive media attention given to these issues exposed a long-standing, messy quarrel between high-ranking staff at The Prince Charles Hospital, Brisbane, and embroiled the CMC in sorting out what had happened and who was responsible.

In September 2003 Ms Virginia Hancl from Southern Cross Care, Tasmania,² applied for the position of Nursing Director, Acute Geriatric and Rehabilitation Program, at The Prince Charles Hospital (TPCH), Brisbane. Twelve applications were received; hers was scored the highest.

In her application, she appeared to claim possession of a Master of Public Administration (MPA), which was not a mandatory requirement for the position (although qualifications in leadership and management were specified as desirable in the position description). Later, during the CMC investigation, only one of the members of the selection panel clearly recalled noting the MPA reference at the time and none saw it as a significant factor in her being short-listed or appointed. Nonetheless, the selection report recommending her appointment twice made mention of it.

As part of the referee-checking process, Ms Hancl's first-nominated referee — Mr Alan Shepherd — was contacted. At first the panel assumed that he was her line manager because his title was 'Acting Nursing Director' and he also worked for Southern Cross Care. When this proved not to be the case, and when none of Ms Hancl's other three referees appeared suitable, Ms Hancl was asked to supply an additional referee who was a nursing director and a former or current manager. She supplied the name of Nursing Director Coral Muskett, who was a former manager. Ms Muskett referred to Ms Hancl as having an MPA.

Before approving her appointment, Acting District Manager Dr Michael Cleary undertook a further referee check, because he was concerned that no-one had spoken to Ms Hancl's current manager. He contacted a person at Southern Cross Care whom he believed to be her manager. (He could not later recall who this person was.) Satisfied with what he learned, he approved the appointment.

Ms Hancl commenced duty on 5 January 2004 as one of three people in charge of the Acute Geriatric and Rehabilitation Program — another being Medical Director Dr Chris Davis who until that time had overseen the program on his own.

The relationship between Dr Davis and Ms Hancl was a troubled one almost from the start, but it did not begin to noticeably break down until 15 months later, in late March 2005, when Ms Karen-Lee Conroy took over the management of the Assessment and Rehabilitation Unit (a component of the Acute Geriatric and Rehabilitation Program).

² Southern Cross Care Australia is one of the largest providers of aged care accommodation in the voluntary, not-for-profit sector in Australia. It is represented in all states and the ACT, and is a leading provider of such services in Tasmania.

Ms Conroy made some profound changes to the way the unit operated. These changes were supported by Ms Hancl, but not by other staff of the area, who complained to Dr Davis. He became their spokesperson, and the relationship between him and Ms Hancl began to seriously erode from this point on.

Believing Ms Hancl to be incompetent as a manager, and doubtful of the extent of her clinical experience, Dr Davis contacted her previous manager at Southern Cross Care, Ms Carolyn Wallace. He learned from her that she had not been contacted as a referee for Ms Hancl. He immediately relayed this fact, along with some adverse comments made by Ms Carolyn Wallace about Ms Hancl, to management within the hospital and to District Manager Gloria Wallace. He claimed that the selection process for Ms Hancl had been flawed because Ms Hancl's current line manager had not been contacted. He also claimed whistleblower protection for himself.

Both claims were rejected by Queensland Health. He was advised that his complaint did not constitute a public interest disclosure because the issues did not amount to maladministration, and that any problems he had with Ms Hancl's performance should be dealt with through performance management, especially as it was now 15 months since her appointment. Dr Davis's request for a copy of Ms Hancl's résumé was denied on the basis that he had no right to see it.

At the same time as all this was occurring, Ms Hancl and Ms Conroy were lodging grievances against Dr Davis for bullying and harassment, and staff of the unit were lodging grievances against Ms Hancl and Ms Conroy also for bullying and harassment. In an effort to resolve the escalating conflict from multiple sources, managers within the hospital and the region — in particular, Dr Michael Cleary and Ms Gloria Wallace — instigated a series of measures, including an independent investigation into the grievances (the Volp–Bell investigation), mediation, and a review of patient safety levels in the unit. The review of patient safety revealed that there were 'no increases in adverse events' since Ms Hancl's appointment nor since the changes in the unit.

In September 2005, as a result of the findings of the Volp–Bell investigation, Dr Cleary proposed disciplinary action against Dr Davis for breaching Ms Hancl's privacy in making an unauthorised referee check and distributing the results. Dr Davis immediately contended that he had been denied natural justice (because he was not given prior notice of the allegations) and asked that Dr Cleary step aside on the basis that, as the person who had approved the appointment of Ms Hancl, he had a conflict of interest in the matter. A more senior manager, Ms Linda Dawson, then took over the decision-making role and, in January 2006, issued Dr Davis with a reprimand. Dr Davis appealed to the Office of Public Service Merit and Equity (OPSME)³ over the disciplinary action and to the Queensland Industrial Relations Commission (QIRC) over his whistleblower claim.

More than 12 months after first officially raising his concerns about Ms Hancl and asking for a copy of her application, Dr Davis finally gained a copy as part of the exchange of documents in relation to his QIRC appeal. Concerned that there was a high incidence of embellishment of job applications in the profession, he wanted to check the facts contained in Ms Hancl's. His research uncovered that she did not have an MPA, as was implied, and, moreover, that her first-nominated referee was her de facto partner, Mr Alan Shepherd. Dr Davis advised the Australian Medical Association Queensland of this, which in turn provided the information to the Director-General of Queensland Health.

3 Now called 'Office of the Public Service Commissioner'.

The Acting Director of the Ethical Standards Unit of Queensland Health, Ms Rebecca McMahon, who had earlier advised that Dr Davis was not a whistleblower (in relation to his claim of a flawed selection process) was consulted again. Her advice was that the matter should be referred to the CMC as the new allegations raised a suspicion of official misconduct. She went on to say that she believed that this additional information should not affect the original assessment of Dr Davis's purported public interest disclosure in May 2005. The further information had arisen 12 months later and should not be 'added' to the information raised by Dr Davis previously to provide him with retrospective protection under the Whistleblowers Act.

On 5 May 2006 the Director-General of QH, Ms Uschi Schreiber, and the Minister for Health, the Honourable Stephen Robertson MP, met with Dr Davis. As a result, Ms Schreiber decided that he was a whistleblower and apologised to him on behalf of the department. At first she saw no reason to stand down the QH officers who had been involved in reprimanding Dr Davis — not until 12 May 2006, when the OPSME upheld Dr Davis's appeal against the disciplinary action and set aside the action.

The next day Ms Schreiber suspended Dr Cleary, Ms Wallace and Ms Dawson, pending an investigation into whether their actions against Dr Davis constituted a reprisal against a whistleblower.

The CMC was tasked with investigating whether:

1. Ms Hancl's reference to a Master of Public Administration in her résumé could constitute official misconduct
2. Ms Hancl's nomination of her partner, Mr Alan James Shepherd, as a referee, and her non-disclosure of a potential conflict of interest, could constitute official misconduct
3. the actions of Dr Cleary, Ms Wallace and Ms Dawson in taking disciplinary action against Dr Davis could constitute a reprisal in breach of the *Whistleblowers Protection Act 1994*.

In addition, the CMC was asked by the Opposition to investigate the actions of the Minister for Health. In this regard, the CMC was limited by its jurisdiction to investigate only whether there was any evidence that the minister might have committed a criminal offence. During the course of the investigation, a number of other general issues arose, which were also examined.

Conclusions

The CMC's conclusions are as follows:

- We recommend that Queensland Health consider initiating disciplinary proceedings against Ms Hancl on the basis that she ought to have known that an objective reader of her résumé could have been misled by her claim to have a Master of Public Administration, and that she did nothing to correct any wrong impression.
- We also note that Ms Hancl's conduct in nominating her de facto partner as a referee, without declaring the nature of the relationship, calls into question her judgment about such basic issues as disclosing a potential conflict of interest. The issue of disciplinary action for a possible breach of the code of conduct for failing to disclose such a conflict should also be considered by Queensland Health.
- On the reprisal matter, we make no adverse recommendations against Dr Cleary, Ms Dawson and Ms Wallace for the following reasons:
 - » Dr Davis did not make a public interest disclosure in May 2005 and so was not entitled to protection under the *Whistleblowers Protection Act 1994*.

- » In any event, there is no evidence that any of the subject officers took disciplinary action against Dr Davis 'because or in the belief that' he had made a public interest disclosure.
- Regarding the Minister for Health, the CMC found no reason to investigate his involvement in this matter as it clearly amounted to no more than receiving briefings from his department.

Our comments on the other matters are contained in the body of the report.

Finally, the CMC notes that in June 2006 Queensland Health's recruitment and selection policy was amended (Circular ER46/06) to provide selection panels with a greater ability to explore, clarify and verify information provided by the applicant in their application or at an interview. All referees contacted as part of the process must now be asked whether a potential conflict of interest could be seen to exist. Such a conflict does not automatically render a referee's report ineligible for consideration by the selection panel, but it must be declared. Also, job applicants must now supply proof of tertiary qualifications 'irrespective of whether or not the qualification claimed is relevant to the position applied for.'

Furthermore, the CMC recommends that applicant information packages be amended to inform applicants of these changes, in particular that they and their referees should declare any actual or perceived commercial or personal conflict of interest.

Chronology of main events

September 2003	The position of Nursing Director, Acute Geriatric and Rehabilitation Program, TPCCH, is advertised.
5 October 2003	Virginia Hancl, from Southern Cross Care, Tasmania, applies for the position. She is scored the highest of 12 applicants.
16 October 2003	Four interviews are conducted and Ms Hancl is scored the highest.
20 October 2003	A referee report is received from the first of Ms Hancl's nominated referees: Acting Nursing Director Alan James Shepherd.
3 November 2003	A second referee report is obtained from Director of Nursing Coral Muskett, who refers to Ms Hancl as having an MPA.
6 November 2003	Acting District Manager Dr Michael Cleary approves the appointment of Ms Hancl.
5 January 2004	Ms Hancl begins working at TPCCH as one of three managers in charge of the Acute Geriatric and Rehabilitation Program. Dr Chris Davis is another.
29 March 2005	Ms Karen-Lee Conroy is appointed Nurse Unit Manager of the Assessment and Rehabilitation Unit (ARU), a unit within the Acute Geriatric and Rehabilitation Program.
April 2005	Ms Conroy, with Ms Hancl's support, makes some changes to the ARU that are not welcomed by staff. Staff relay their concerns to Dr Davis and he becomes their spokesperson.
April 2005	Dr Davis begins making inquiries into the recruitment and selection process leading to Ms Hancl's appointment.
21 April 2005	Dr Davis informs executive directors Veronica Casey and Cheryl Burns of his misgivings about Ms Hancl's performance and about the process that led to her appointment. He is told that it is a performance management issue.
22 April 2005	Dr Davis puts his concerns in writing in an email to Ms Burns (copied to Ms Casey and Dr Cleary). He admits to contacting Ms Hancl's former manager, Ms Carolyn Wallace, and relays unfavourable comments she has made about Ms Hancl. He says he does not believe that this is a performance management issue.
26 April 2005	Dr Davis requests a copy of Ms Hancl's application and is refused. He meets with District Manager Gloria Wallace, Ms Casey and Dr Cleary. Ms Gloria Wallace suggests that the problem should be managed through a formal grievance process; Dr Davis does not wish to do this. Ms Gloria Wallace requests a review of the process leading to Ms Hancl's appointment.

28 April 2005	HR produces a report that describes the appointment process as 'flawless'.
3 May 2005	Dr Davis invokes his rights under the Whistleblowers Protection Act.
5 May 2005	Dr Davis announces his intention to stand down from his position, citing patient safety and quality of care as part of his reason.
13 May 2005	Ms Gloria Wallace urges Dr Davis to specify, in writing, the precise nature of his concerns so that they can be properly investigated. Dr Davis replies that gathering and evaluating the requested information would be extremely resource intensive.
17 May 2005	Ms Gloria Wallace again writes to Dr Davis seeking specific details so that this information can be provided to Dr Mark O'Brien, whom she has engaged to mediate a solution. In response, Dr Davis gives Ms Wallace draft terms of reference for an inquiry.
17 May 2005	Dr O'Brien advises Ms Gloria Wallace that immediate mediation is unlikely to bring about any significant resolution to the issues, given the attitudes held. He sees no reason for Ms Hancl to be asked to stand aside and recommends that a senior experienced nursing director be asked to join the unit temporarily to assist Ms Hancl and to form an opinion as to the validity of the claims about her poor nursing management.
19 May 2005	Ms Gloria Wallace appoints Acting Principal Policy Officer Linda Moule to review the unit and assist Ms Hancl and Ms Conroy. (Ms Moule's subsequent report makes 22 operational recommendations to improve the functioning of the unit.)
20 May 2005	Ms Hancl lodges a grievance against Dr Davis, for bullying and harassment.
26 May 2005	Ms Conroy also lodges a grievance against Dr Davis for bullying and harassment.
2 June 2005	The nursing staff of the ARU tell Ms Gloria Wallace of their concerns with the profound and widespread changes 'enforced' upon the unit, claiming that they have not been made in accordance with Queensland Health Guidelines for Managing Organisation Change. There are accusations of bullying against Ms Hancl and Ms Conroy.
6 June 2005	Ms Gloria Wallace appoints Dr Helen Ward to review patient safety within the unit.
9 June 2005	Nurses lodge a grievance against Ms Hancl and Ms Conroy.
14 June 2005	Ms Gloria Wallace authorises Volp-Bell investigation into the various grievances lodged by staff in the program. She informs Dr Davis of the pending investigation and that, should it find any reason to initiate disciplinary action against him, he will be told the specific allegations and be given an opportunity to respond.

17 June 2005	A briefing note is prepared for the minister.
20 June 2005	Dr Ward's review concludes that there 'was no increase in adverse patient incidents since Ms Hancl commenced at TPCH'.
7 July 2005	Ms Gloria Wallace asks HR to seek further external advice from QH head office in relation to the recruitment and selection process. The advice is: 'it would appear that the required elements of the selection process have been satisfied in accordance with the policy applicable at the time'. The advice also notes that Dr Davis's complaint was made some 15 months after Ms Hancl's appointment and suggests that the issues should be pursued through a performance management process.
26 July 2005	Ms Gloria Wallace becomes Acting Deputy Director-General, QH, on 26 July and responsibility for dealing with the outcomes of the Volp–Bell investigation falls on Dr Cleary.
5 August 2005	Dr Cleary receives the Volp–Bell investigation report. He describes it as 'very complex'. In essence, the report is critical of Ms Hancl and Ms Conroy for their treatment of nursing staff. It also finds that Dr Davis's action in seeking and distributing the results of an unauthorised reference regarding Ms Hancl was tantamount to undermining her position. During the course of the Volp–Bell investigation, Dr Davis admitted to tape-recording Ms Hancl without her knowledge.
25 August 2005	Dr Cleary receives legal advice that Dr Davis has not breached the <i>Invasion of Privacy Act 1971</i> in taping a conversation between himself and Ms Hancl.
25 August 2005	Dr Cleary advises Ms Hancl and Ms Conroy that they are each liable for disciplinary action under the <i>Public Service Act 1986</i> , in relation to allegations of bullying from staff members.
31 August 2005	Ms Hancl learns for the first time about Dr Davis contacting Ms Carolyn Wallace and tape-recording a conversation with herself. She requests either a formal apology from Dr Davis or appropriate action to be taken against him by the District. Dr Cleary gives no undertaking in relation to these requests.
7 September 2005	Dr Cleary informs Dr Davis that he is liable for disciplinary action regarding the unauthorised reference check. He gives him seven days to show why a penalty should not be imposed but does not list the specific allegations against him. He has been advised by HR that this is not necessary because Dr Davis has already admitted to the action.
10 September 2005	Ms Hancl denies allegations of bullying from her staff.
10 October 2005	Dr Davis contends that he has been denied natural justice and asks Dr Cleary to stand aside due to concerns about a conflict of interest. As a result, the decision-making role is passed to Acting General Manager of Central Area Health Service Linda Dawson.

13 December 2005	The director-general meets with Ms Hancl at Ms Hancl's request to hear her side of the story. To the director-general, it looks like a workplace disagreement, and she refers the matter back to Dr Cleary.
23 December 2005	Dr Cleary issues official reprimands against Ms Hancl and Ms Conroy for not treating other employees honestly and fairly and with proper regard for their rights and obligations.
4 January 2006	Ms Dawson formally reprimands Dr Davis under section 87(1)(f) of the <i>Public Service Act 1996</i> .
25 January 2006	Dr Davis lodges an appeal with the OPSME against disciplinary action.
30 January 2006	Dr Davis applies to the QIRC seeking an order that he is a whistleblower.
31 January 2006	Ms Hancl appeals to the OPSME against the disciplinary actions against her. She claims she was not afforded natural justice.
1 February 2006	Ms Conroy makes a similar appeal to the OPSME. (Their appeals are on hold awaiting the outcome of the CMC investigation.)
Late April/early May	Dr Davis sees Ms Hancl's résumé for the first time. He uncovers that (a) Ms Hancl does not have an MPA, as suggested, and (b) her first-nominated referee is her de facto partner. He advises the Australian Medical Association Queensland of these facts. The AMAQ informs the Director-General of Queensland Health.
3 May 2006	Mr Leahy (Industrial Relations, QH) informs Dr Cleary that inquiries with the University of Tasmania have revealed that Ms Hancl does not hold a degree from that university. This is the first time that Dr Cleary has specific information that raises concerns regarding her appointment.
5 May 2006	The director-general formally advises Dr Davis that she considers him to be a whistleblower, and apologises to him on behalf of the department. She asks that the matter be referred to the CMC.
12 May 2006	The OPSME rules that Dr Davis was not afforded natural justice, and that the decision to discipline him should be set aside.
13 May 2006	The director-general suspends Dr Cleary, Ms Wallace and Ms Dawson from duty, with pay, until further notice pending the outcome of an investigation.

Analysis of the issues

The main issues examined by the CMC related to:

- the appointment of Nursing Director Virginia Hancl
- Medical Director Dr Davis's whistleblower claims
- the actions of Executive Director Dr Cleary, District Manager Gloria Wallace and Acting General Manager Linda Dawson.

Appointment of Ms Hancl

The CMC examined the following two allegations concerning Ms Virginia Hancl's appointment to The Prince Charles Hospital:

1. That she falsely claimed on her résumé that she had a Master of Public Administration from the University of Tasmania.
2. That one of her nominated referees, Alan James Shepherd, was in a personal relationship with her at the time of the appointment, and neither she nor Mr Shepherd disclosed this potential conflict of interest to the selection panel.

Allegation of false claim of Master of Public Administration

Overview

Under the heading 'Education' in her application for the position of Nursing Director, Ms Hancl listed a Master of Public Administration. While this was not a mandatory qualification for the position, the position description did note that postgraduate leadership and management qualifications were desirable. The selection report recommending her appointment twice referred to her having this degree.

The following is an excerpt from the first page of her résumé (dated 5 October 2003):

QUALIFICATIONS

I hold a Bachelor of Health Science (Nursing), an Executive Certificate in Health Service Management, a formal academic background in management and seven (7) years management experience ... I also have a further 2 years experience in the redevelopment and restructure of aged care health services within a large accredited private sector health service provider ...

EDUCATION

2003	Master of Health Service Management, Edith Cowan University (WA) — Current Enrolment
2002	Executive Certificate of Health Service Management, Edith Cowan University (WA)
2001	Management Skills for Women Program, Tasmanian State Service Commission
2000	Master of Public Administration, University of Tasmania
1997	Bachelor of Health Science (Nursing)
1991	Registered Psychiatric Nurse, Royal Derwent Hospital (Tas.)
...	

In the absence of any notation indicating whether the MPA from the University of Tasmania was completed or not (as with the Master of Health Service Management from Edith Cowan University), the CMC considers that the objective reader of Ms Hancl's résumé is likely to believe that she does indeed hold a Master of Public Administration.

CMC investigations revealed that she had also listed an MPA in her 2002 résumé for the position at Southern Cross Care, and in one of her responses to selection criteria for that position had said:

I've also been involved in the Master of Public Administration with the University of Tasmania where I have also completed subjects relevant to this position that include ... [here 10 subjects are listed]

The University of Tasmania has since confirmed, in a statement to the CMC, that Ms Hancl has only completed three subjects towards an MPA from that institution. Ms Hancl states that she was enrolled in an MPA in 2000 but the university ceased to offer the course before she could complete it (see Ms Hancl's direct testimony on page 16).

In the copy of the selection report prepared by Ms Carroll, which was approved by the panel and subsequently signed by Dr Cleary, the following paragraph appears in relation to Ms Hancl's written application:

Demonstrated experience and skills of leadership and management within a complex and multidisciplinary hospital health care organisation in her application.

Virginia described her experience in leadership and management including her current position at Rosary Gardens and a range of previous positions. She also referred to academic qualifications including completion of the Executive Certificate in Health Service Management and a Master of Public Administration.

Then in the same selection report, as part of the written referee report by Ms Coral Muskett (prepared by Ms Carroll), the following statement is attributed to Ms Muskett in describing Ms Hancl:

She has a Master of Public Administration and her participation in this course has certainly influenced her knowledge and skills in relation to the way she treats others, assertively addresses problems and ensures natural justice principles are applied.

Documents viewed

Unfortunately, the CMC was not able to obtain all relevant documents, as the original selection report and attachments were destroyed by Queensland Health some time in 2004. Queensland Health advised that, due to space limitations at TPCH, original applications and selection reports are culled after 12 months, which is the minimum period required for retention of such documents by an OPSME directive.

Despite not being able to sight the original hard-copy documents, CMC investigators were able to obtain the following:

- position description for Nursing Director, Program Management Team, Geriatrics and Rehabilitation (version date 8 September 2003) with closing date of 6 October 2003

- résumé of Ms Virginia Hancl dated 5 October 2003, including copies of the Bachelor of Health Science (Nursing), Charles Sturt University, and the postgraduate Certificate of Health Service Management, Edith Cowan University
- blank scoring sheet for the position of Nursing Director, Acute Geriatric and Rehabilitation Program
- an electronic copy of the unsigned selection report for the position of Nursing Director (Geriatrics and Rehabilitation)
- Attachment G of the selection report, which contains individual assessments of Ms Hancl and the three other interviewees
- Attachment H of the selection report containing referee reports by Mr Jamie (Alan James) Shepherd and Ms Coral Muskett, dated 22 October 2003 and 3 November 2003 respectively
- copy of appointment letter from Dr Michael Cleary to Ms Virginia Hancl dated 6 November 2003
- a briefing note to the Executive Director, Medical Services, from the Acting Manager, Human Resources, dated 28 April 2005.

Witnesses interviewed

CMC officers interviewed all witnesses, with the exception of Ms Hancl who was summoned to a CMC hearing after she indicated through her lawyers that she was not prepared to volunteer to be interviewed.

Versions of witnesses

There was no great disparity of opinion between the witnesses in relation to the appointment of Ms Hancl. The main points of difference related to the extent to which the panel members considered the Master of Public Administration when considering Ms Hancl's application and the weight panel members placed on that qualification.

The passages below summarise the essence of witnesses' responses to questions put to them by CMC investigators.

From Cheryl Burns (chair of selection panel)

Ms Burns said she did not rely solely on academic qualifications when appointing someone to a senior position. The one mandatory qualification for the position of Nursing Director is Queensland nursing registration eligibility. Management qualifications are desirable, but not essential. Applicants for the position are expected, at interview, to tie their academic qualifications and studies into their work performance.

After reading Ms Hancl's résumé, she saw that Ms Hancl was eligible for registration as a nurse, she had completed a Bachelor of Nursing and she had a Graduate Certificate from Edith Cowan University. It was Ms Burns's responsibility, as chair of the panel, to verify the contents of Ms Hancl's résumé and application. She recalled seeing photocopies of Ms Hancl's Bachelor of Nursing and Graduate Certificate in Management attached to her résumé. She did not see, or ask for, certified copies of those qualifications. She expected that these would be produced at the start of employment. She said a human resources officer was responsible for certifying educational qualifications. She did not recall seeing an MPA certificate attached to Ms Hancl's résumé, nor did she check to see whether the MPA was authentic because it did not seem to be relevant, as Ms Hancl had two other, relevant certificates attached to her résumé. She explained it would have been an enormous job to validate or check the qualifications of all applicants; however, in hindsight she felt she should have validated Ms Hancl's qualifications.

When shown the statement in Ms Hancl's résumé about the MPA, she said she took that to mean that Ms Hancl had completed it.

She said she did not recall the panel asking any questions about the MPA, nor recall Ms Hancl mentioning it during the interview. Ms Carroll from Merit Solutions compiled the individual assessment of Ms Hancl; Ms Burns played little or no part in this.

When shown a copy of Ms Carroll's assessment report, Ms Burns said she agreed that it read as though Ms Hancl had completed an MPA, but she could not say how Ms Carroll had reached this conclusion.

From Jon Roberts (selection panel member)

Mr Roberts said that, when short-listing the applicants for interview, he was not interested in someone who could quote academic theory but in clear demonstrations of how the applicant achieved outcomes in relation to each of the selection criteria.

He pointed out that the only mandatory requirement for the position was eligibility for Queensland Nursing Council registration; he was not looking for any management qualifications and so would not have weighted more highly someone with management qualifications as opposed to someone without them.

He admitted he only skimmed through the résumés, focusing more on responses to selection criteria. He could not clearly recall Ms Hancl's résumé. He said, to verify the contents of the applicants' résumés, the panel considered how the applicant addressed the selection criteria, the judgment call obtained from the interview process, and whether the applicants confirmed their experience and expertise in the way they answered specific questions put to them. Finally, the referee checks confirmed their assessment of the preferred candidate.

When shown a copy of Ms Hancl's résumé dated 5 October 2003, he said this showed that Ms Hancl held a Master of Public Administration from the University of Tasmania, as there was no notation to the contrary.

He said the panel placed no weight on the MPA, as it was not a mandatory requirement for the position. He did not recall the panel querying Ms Hancl during the interview regarding it and did not recall her making any comment about it in answer to any of the panel's questions.

The selection panel report concerning Ms Hancl was presented to the panel in draft form to ensure members concurred with what was written. Ms Carroll drafted the report and he agreed with her comments. He took the passage in the selection report concerning the MPA to mean that Ms Hancl had completed that qualification.

He commented that an MPA would certainly have been desirable for a senior management position such as a director of nursing; however, he did not place any significant weight on Ms Hancl holding that qualification.

From Veronica Casey (selection panel member)

Ms Casey said that registration as a nurse in Queensland was the essential requirement, and anything else was desirable. She did not consider an MPA as desirable. People with a masters degree, she believed, did not necessarily make better nursing directors. She said she read all the résumés and applications, including Ms Hancl's, and recalled Ms Hancl's as being reasonably impressive.

She did not know who was responsible for verifying the contents of Ms Hancl's résumé, but presumed it was someone in HR. When shown a copy of Ms Hancl's résumé dated 5 October 2003, she said:

Looking at it now, I would interpret the statement about a Master of Public Administration to mean that it was completed, so I think that that's what I would have thought when I first read it in 2003.

She did not recall the panel discussing the masters among themselves or with Ms Hancl and could not offer an explanation as to why the selection report asserted that Ms Hancl had referred to the completion of an MPA.

From Dr Grant Cameron (selection panel member)

Dr Cameron said he would have expected candidates to have experience of nursing but not necessarily to have any type of tertiary qualification. He said the panel was looking at a higher executive level job and therefore would have been expecting significant experience. However, if someone had an academic qualification, 'then that would be positive too'. He recalled Ms Hancl's application and was impressed by the content of her résumé. He recalled that she scored high on her written application and again during the interview.

He recalled the Master of Public Administration appearing on Ms Hancl's résumé and understood this to mean that she had completed her masters from the University of Tasmania. He said that this was 'quite significant' in terms of the applicant's academic ability, as the university had a good reputation. While an MPA was not needed, such a qualification for a nurse would be, in his opinion, rare, and this he said was noted by the panel.

From Anne-Marie Carroll (HR consultant who assisted the panel)

Ms Carroll explained that her role was to act as a scribe during the interviews, prepare the selection report and conduct referee checks. Her role did not include asking the applicants questions. She was not involved in the short-listing of the applicants, but did provide advice concerning clarification of ratings and selection strategy.

She said that it was a requirement for the position that applicants be eligible for Queensland nursing registration. The selection criteria also required applicants to have demonstrated experience and skills in leadership and management and demonstrated expertise in clinical practice. The selection criteria were weighted in favour of people with experience over people who only had educational qualifications. Educational qualifications might have played an incidental part in the interview process, she said, but they were not the primary focus.

Ms Carroll said that she understood from reading Ms Hancl's résumé that she had completed an MPA from the University of Tasmania. She could not recall if the panel asked any questions of Ms Hancl about this.

When shown Ms Hancl's selection report, in which she is twice described as holding an MPA, Ms Carroll confirmed that she was the author of the report. She said she drew her assessment from Ms Hancl's written application, including the résumé and responses to section criteria. Ms Muskett's referee report also included a comment that Ms Hancl held an MPA. Ms Carroll did not discuss with Ms Muskett how she had come by that information.

She said she could not recall the panel discussing the MPA and did not believe that the panel placed much weight on the educational qualifications. She said Ms Hancl rated a 7 for the first selection criterion. She believed the removal of the

words 'Master of Public Administration' from the assessment sheet would not have affected the scoring, although admitted that it might have made a minor difference.

She said she provided the selection report to Ms Burns for review and any changes that were deemed necessary. The panel did not make any changes. It was the responsibility of HR, at the pre-appointment stage, to check Ms Hancl's birth certificate and copies of her qualifications.

From Coral Muskett (referee)

In relation to her comment to Ms Carroll that Ms Hancl had a Master of Public Administration, Ms Muskett said she had obtained that information directly from Ms Hancl.

Virginia told all and sundry that she had this qualification. In 2002 under our enterprise bargaining agreement, all nurses could qualify for extra pay if they had a postgraduate degree. Had Virginia remained employed by the department I would have been asking to see all original documentation in relation to her degree before she could be paid this additional pay.

From Alan James Shepherd (first of Ms Hancl's nominated referees)

Mr Shepherd said he was aware of the contents of Ms Hancl's résumé and did not detect anything false in it. He pointed out that Ms Hancl made a distinction between 'Qualifications' and 'Education'. In his view, 'Qualifications' included professional qualifications such as nursing registration, and completed degrees such as a bachelors degree. The 'Education' heading included uncompleted degrees or degrees currently enrolled in. Ms Hancl's résumé was accurate, in his opinion, because no reference was made to the Master of Public Administration under the 'Qualifications' heading.

From Virginia Hancl

Ms Hancl stated that she did not have an MPA. She explained that she had enrolled in one at the University of Tasmania but the university ceased to offer the course before she could complete her studies. The university offered to transfer students to a Master of Business Administration, but she was not interested. Instead she transferred her enrolment to an Executive Certificate in Health Service Management with Edith Cowan University.

Under the heading 'Education' in her résumé she entered subjects or courses she had finished but did not have qualifications in; the heading 'Qualifications' included completed courses and actual formal qualifications. Ms Hancl stated:

Qualifications are those courses of study which you have completed and education [is] those courses that you are doing or have done. So, no, I do not believe it is misleading.

She said she did not know why she had not indicated that the MPA was not completed or was deferred. She denied that she had included it to exaggerate her educational qualifications, or to impress the selection panel because the position description had noted that postgraduate qualifications in leadership and management were desirable. She conceded that under the heading 'Education' she had included claims about being a Registered Psychiatric Nurse and under the heading 'Qualifications' she had listed 'experience in restructuring aged care facilities'. She said she did not know why she had included those claims under 'Education' and not under 'Qualifications', but that she had not included the claim about the MPA in the hope that somebody would believe that she had that degree.

When shown a copy of her application for the job with Southern Cross Care in January 2002, she explained that she had used the same template résumé when applying for both the position with Southern Cross Care and the one with Queensland Health.

She admitted that she had not completed 10 subjects as part of an MPA, as claimed in the Southern Cross application. She conceded that her statement of academic record issued by the University of Tasmania stated that she had completed only three subjects. However, she added that she was in a dispute with the university over this as, in her view, she had completed five subjects. She conceded that she had listed in her application to Southern Cross Care subjects from other degrees under the MPA claim and had listed subjects twice under different degrees. She stated that this was an oversight on her part and that she had had no intention of misleading anyone.

She agreed that an objective reader of her Southern Cross Care application (résumé plus responses to selection criteria) could be left with the impression that she had received the MPA and, as part of that degree, had completed 10 subjects that were relevant to the position at Southern Cross Care. But she denied deliberately attempting to mislead the Southern Cross Care selection panel in wording her application that way.

When shown copies of Southern Cross Care's annual report of 2001–2002, where a statement appears that Ms Hancl holds a Master of Public Administration, she said that she had no knowledge of that annual report and was not consulted during its preparation. However, she accepted that someone had believed she held an MPA for that statement to appear in the annual report.

When shown extracts from the selection report prepared by Ms Carroll, which states that she holds a Master of Public Administration, she pointed out that she did not include any claims in her selection criteria responses about the MPA. In support of this claim she provided the CMC with her copy of her selection criteria responses, which make no mention of her having an MPA.

When shown Ms Muskett's statement, she denied that she had told other people in Tasmania about holding an MPA. She agreed that it appeared as though a number of people had arrived at that conclusion, but said it had never been her intention to give people such an impression. She rejected the suggestion that she had included the reference to the MPA in order to mislead, or to 'pad out' her application, apart from accepting that she had made an error in her application for the position with Southern Cross Care by including subjects she had not completed.

Conclusion re false claim of a Master of Public Administration

The evidence shows that Ms Hancl has included a statement in her résumé that could lead the objective reader into believing she has obtained a Master of Public Administration from the University of Tasmania, notwithstanding Mr Shepherd's explanation or her own.

Ms Hancl does not hold that degree. The evidence shows that she has previously used the same claim in applying for at least one other position: her 2002 application for the position with Southern Cross Care in Tasmania.

There is evidence that a number of people who have read Ms Hancl's résumé — including the members of the selection panel for the position of Nursing Director and the author of the 2001–2002 annual report for Southern Cross Care — have been left with the belief that Ms Hancl holds an MPA.

The evidence shows that the selection panel for the Nursing Director position did not place any great weight, if any, on the MPA claim. Only one panel member, Dr Cameron, recalled it and thought it significant at the time.

The evidence shows that Ms Hancl's inclusion of the MPA claim was not the determining factor in her obtaining the position of Nursing Director at TPCH. The evidence of the selection panel members is that Ms Hancl would have been successful in her application had she not included the claim.

Ms Hancl denied the proposition that she included the claim deliberately to mislead others into believing that she held an MPA. There is some evidence to support the contrary view, such as the exaggeration in the Southern Cross Care application and the evidence from Ms Muskett that 'Virginia told all and sundry'.

At the best for Ms Hancl, it could be concluded that she included the reference to the masters in such a way that she ought to have known could lead others to believe that she had that degree, and then did nothing to correct that erroneous belief.

Section 502 of the Criminal Code makes it an offence for someone to falsely represent that the person has obtained a certificate from an authority authorised by statute to issue certificates testifying that the holder of that certificate is entitled to any right or privilege or to enjoy any rank or status. Section 502 was considered by the CMC as part of its investigation, but the Commission has come to the conclusion that, in all the circumstances, it should not report to the Director of Public Prosecutions to consider prosecution proceedings. This is because, to prove the criminal offence contained in section 502, a jury would have to be satisfied beyond a reasonable doubt that Ms Hancl falsely intended to misrepresent the true state of affairs; something that is by no means assured because there is no objective evidence of Ms Hancl's state of mind when preparing her application.

If postgraduate education in leadership or management had been an essential criterion for the position, then the decision might have been different, as this would lend more weight to the argument that Ms Hancl could not have innocently misrepresented her status. Another factor, albeit not determinative, is the fact that the panel did not consider that the masters was a significant consideration in reaching the conclusion that Ms Hancl was the most meritorious for the position. Nonetheless, the CMC recommends that Queensland Health consider disciplinary action against Ms Hancl, at least on the basis that she ought to have known that an objective reader of her résumé could be misled, and she did nothing to correct this.

Allegation of conflict of interest

The second major allegation relating to the appointment of Ms Hancl is that Ms Hancl nominated Mr Shepherd as a referee when she was in a personal relationship with him and did not disclose this potential conflict of interest to the panel; neither did Mr Shepherd disclose it when he was asked to supply a referee report.

Ms Hancl herself claims the relationship with Mr Shepherd was 'on again/off again'; that at the time of her application to TPCH, it was in the 'off' phase; and that at the time of travelling to Brisbane to take up the appointment it was in the 'on' phase. Mr Shepherd claims they were merely 'cohabitating' at the time of travelling to Brisbane. Travel expenses claimed by Ms Hancl reveal that she and Mr Shepherd travelled together by car to Queensland and shared accommodation.

Initially, when interviewed by CMC investigators, Mr Shepherd could not recall signing any referee report for Ms Hancl; however, when shown a written referee report in his name, he conceded that it was prepared by him.

Versions of witnesses

The passages below summarise the essence of witnesses' responses to questions put to them by CMC investigators.

From Cheryl Burns (chair of the panel)

Ms Burns said that Ms Hancl had nominated Mr Alan James Shepherd as her first referee and Ms Elaine Hart as her second. She said that Ms Hancl did not mention during her interview anything about any type of relationship she might have had with Mr Shepherd.

She explained that she did not herself contact the referees but instructed Ms Carroll to do so. Because Ms Hart was not a director of nursing, Ms Burns instructed Ms Carroll to ask Ms Hancl to nominate a director of nursing who could provide a referee report. This is how Ms Muskett, Director of Nursing, Mental Health Services, Tasmania, came to be contacted.

Ms Burns said she did not draft the questions asked of Ms Hancl's referees. She explained that Ms Carroll completed the referee reports and she read them. There was no mention of any personal relationship with Ms Hancl. If she had known about the relationship between Ms Hancl and Mr Shepherd at the time, she would have asked Ms Hancl to provide an alternative referee. She recalled that Ms Hancl referred to her partner as 'Jamie'; however, that was sometime after she had commenced in the position.

From Anne-Marie Carroll (assisted the panel)

Ms Carroll confirmed that Ms Burns gave her the responsibility of contacting Ms Hancl's referees. She explained that her normal process involved taking referees' comments by phone and then providing them with a draft report for verification.

She contacted Mr Shepherd by phone and sent him a draft report to which he added further information. When it became clear to her that Mr Shepherd was not Ms Hancl's current direct manager (the panel had assumed that he was, because in her résumé he was described as 'Acting Director of Nursing'), she informed Ms Burns that none of Ms Hancl's referees was her current manager. In her experience, she said, there was an expectation that a direct manager would be contacted as a referee. Ms Carroll said that either she or Ms Burns then asked Ms Hancl to provide a referee who was a current or former direct manager. Ms Hancl nominated Ms Coral Muskett.

Ms Carroll explained that it was not her usual practice to ask referees about their personal relationship with the applicant. She asks them how long they have known the applicant, how long they have worked together and in what capacity. She expects applicants and referees to disclose any conflict of interest. Neither Mr Shepherd nor Ms Hancl made any disclosure about a past or current relationship. She believed that Ms Hancl had a responsibility to disclose their relationship so that the panel could make an assessment about Mr Shepherd's comments. Had she known of Mr Shepherd and Ms Hancl's personal relationship, she would have advised the panel against using him as a referee.

From Jon Roberts (panel member)

Mr Roberts did not play any role in contacting Ms Hancl's referees and assumed it was Ms Carroll who contacted them. He could not recall which referees were contacted. He believed he would have seen Mr Shepherd's referee report at the time, but could not recall its contents.

He could not recall either Ms Hancl or Mr Shepherd disclosing any relationship between them. He said he would expect disclosure of the relationship as the panel was seeking two professional references, not personal references. Disclosure of a personal relationship would result in the panel asking for an alternative professional referee. He thought the non-disclosure to the panel of Ms Hancl and Mr Shepherd's relationship was inappropriate.

From Veronica Casey (panel member)

Ms Casey did not recall Ms Hancl disclosing a personal relationship with a referee. In her view, both Ms Hancl and Mr Shepherd had an obligation to disclose their relationship to the panel even if they were just close friends. If she had known of the relationship between them, she would have insisted on another referee being used.

From Dr Grant Cameron (panel member)

Dr Cameron had no input into the referee checks. He assumed they were completed by the chair of the panel but could not recall; nor could he recall any disclosure by Ms Hancl that one of her referees was a close friend. He said, had he known about the relationship, it would have had some bearing on the decision-making process.

From Alan James Shepherd (first-nominated referee)

Mr Shepherd explained that he had known Ms Hancl since 1986. During that time they had worked together a number of times, either as peers or with Mr Shepherd as her mentor. They began a de facto relationship in 2001. After a break in the relationship, it resumed in 2003. They lived together for a short time in Hobart before moving to Brisbane in January 2004. When they left the employment of Southern Cross Care towards the end of 2003 to move to Brisbane they were in a 'cohabiting relationship', not a de facto relationship.

Mr Shepherd went on to explain that about five or six years ago he was a character referee for Ms Hancl after she asked him to provide a referee's report.

He said he had no recollection of receiving a phone call indicating that Queensland Health was seeking a referee report on Ms Hancl. He admitted that it was possible that he had received a phone call from a recruitment agency, but had no recollection of the name of the agency or whom they represented. He said if he had received any request for a referee report about Ms Hancl, he would have disclosed their personal relationship.

When shown the referee report prepared by Merit Solutions and attributed to him, he conceded that he had provided the report. He said that he would have provided it on a professional level that dealt with Ms Hancl's capabilities as an administrator and nurse.

From Virginia Hancl

Ms Hancl said that her de facto relationship with Jamie Shepherd began some time in 2002. Throughout 2003, they were in an 'on again/off again' relationship and lived in the same residence. In about August 2003, they ended their relationship. When she applied for the Nursing Director position with Queensland Health and attended the interview in October 2003, she said she was not in a relationship with Mr Shepherd, nor when she was offered the position in November 2003.

Their relationship resumed later in the year, and they moved to Queensland together on 26 December 2003. Mr Shepherd travelled to Queensland with her to study law at the Queensland University of Technology.

Throughout 2004 and 2005 they shared the same residence, but were in an 'on again/off again' de facto relationship.

She agreed that, before accepting the position at TPCCH, she never told any members of the selection panel nor anyone from Queensland Health that she had been in a de facto relationship with Mr Shepherd. She said that this was because she was not asked by the selection panel about her relationships with her referees.

Hearing transcript:

- CMC In October 2003 ... did you think it might have been a conflict of interest to nominate Mr Shepherd as your referee?
- Ms Hancl No, I didn't, because he had actually been a referee for me going back many years ... for many jobs I'd applied for and ... he also was the person who had worked with me or interacted with me across a number of different roles, so he was quite well versed ... so from the perspective of someone who knew my work extremely well, no, I didn't think it was a problem ...
- CMC Do you think it was incumbent upon you to advise Queensland Health that you ... had been or were in a relationship with Mr Shepherd?
- Ms Hancl I was never asked a question about anything to do with referees. I followed the section in the information I was provided ... attached to the position description about referees. ... the information in the employment information says you can nominate a previous supervisor. Mr Shepherd had been a previous supervisor, so no-one asked me, I followed the instructions ... in the district's package.
- CMC So, against the backdrop ... [of] ... having been on selection panels, gone through this process, you didn't think that it would be worth mentioning the fact that you were in a relationship or had been in a relationship with Mr Shepherd?
- Ms Hancl Whenever I sat on a selection panel ... I take it as my responsibility to ask either applicants or referees those questions ... The [Queensland Health] instructions around how to ... do recruitment and selection are very clear that there are certain questions that have to be asked of referees.
- CMC Were you happy to just nominate Mr Shepherd, not disclose the fact that you had been in a relationship with him and then if no-one asks then all's well?
- Ms Hancl I think that implies a fair amount of intent on my part to mislead, which I didn't have. I nominated a referee that had lengthy experience of my work performance. No-one in Queensland Health asked me any question in relation to my relationship with Mr Shepherd until Mr Cartwright asked me in May this year.
- CMC What you're saying is you didn't disclose it, you weren't trying to hide it and given your experience on ... selection panels you would have thought that that would have been one of the first questions ... Mr Shepherd was asked?
- Ms Hancl Absolutely. Because it's one of the first questions I would ask of a referee.

The relevant section of the applicant information package accompanying the position description for the position states:

REFERENCE CHECKS

You should consider carefully the persons you nominate as referees. One referee should be your present supervisor if possible. If you are not currently employed, you should list your immediate past supervisor.

Referees may be contacted prior to interviews being concluded. Referee checks are normally used to verify other information gathered during the assessment process.

Conclusions re allegations of conflict of interest

The evidence shows that Ms Hancl and Mr Shepherd had been in a close, personal relationship prior to her nomination of him as a referee for the director of nursing position. There is some disparity in their accounts of when the relationship ended and restarted but the evidence shows that Ms Hancl and Mr Shepherd travelled to Queensland together on 26 December 2003.

While there is no direct evidence to suggest that Ms Hancl and Mr Shepherd were in a de facto relationship at the time she applied for the job or was interviewed, this is, in the CMC's view, beside the point.

Ms Hancl has been employed in nursing-related positions since 1985. She has over 20 years' experience in nursing and a number of years in supervisory or management roles, many of those in public sector environments. She has been on selection panels herself and, by her own admission, is aware of government recruitment methods including the requirement to obtain written referee reports from professional referees.

Given Ms Hancl's experience and seniority, she must have been aware that a potential public sector employer seeks referee reports from a referee in a professional capacity. This is the implication in the information package provided to Ms Hancl.

The CMC believes it would clearly be a conflict of interest for an applicant to nominate a current or former de facto partner as a professional referee without disclosing the nature of the relationship with the referee, even if the referee knew the applicant well professionally.

In the CMC's view, the nomination of Mr Shepherd as a referee without disclosing the nature of the relationship Ms Hancl had with him demonstrated a lack of judgment on Ms Hancl's part. Her insistence that it was not her responsibility to reveal the relationship to the selection panel, or afterwards to Queensland Health, could be interpreted as an attempt by Ms Hancl to absolve herself of responsibility.

In the CMC's view, this shows a lack of insight and reflection on Ms Hancl's part that would reasonably be expected from someone with her level of experience and seniority in the public sector. However, while Ms Hancl's conduct calls into question her judgment about such basic issues as disclosing a potential conflict of interest, it does not constitute official misconduct as, in the CMC's view, the failure to disclose a conflict of interest would not be sufficient on its own to dismiss Ms Hancl from her employment.

The issue of disciplinary action for a possible breach of the code of conduct for failing to disclose such a conflict remains for Queensland Health to consider.

Dr Davis's whistleblower claims

As indicated earlier in this report, Dr Davis did not raise the issue of possible improper processes in the recruitment of Ms Hancl until 15 months after her appointment. When he first expressed dissatisfaction with her clinical experience and management style he was advised that it was a matter for performance management; however, he chose instead to probe into how she had been selected for the position in the first place. He took it upon himself to contact her previous manager, Ms Carolyn Wallace, and, armed with the discovery that Ms Wallace had not been asked to provide a referee report on Ms Hancl at the time of her appointment and various unfavourable remarks about Ms Hancl, he reported what he saw as maladministration.

Dr Davis first claimed to be a whistleblower in an email to Acting Human Resources Manager Mr John Cartwright, on 3 May 2005. The email was prompted by advice from Mr Cartwright that he could not identify any flaws or shortfalls in the recruitment and selection process that led to Ms Hancl's appointment.

In his email Dr Davis referred to the OPSME Directive 01/03 section 6.7 relating to referee checks, and quoted as follows:

Referee checking includes seeking employment related information about an applicant from present or past supervisors and other people with a direct knowledge of the applicant's work behaviour or performance.

He stated that:

- the only known experience Ms Hancl had in aged care was with Southern Cross Care as an Assistant Director of Nursing
- the Director of Nursing in that organisation was not contacted for a referee check on Ms Hancl
- the process appointing Ms Hancl failed to comply with the letter and intent of the directive.

Dr Davis then relayed the adverse comments he had received from Ms Wallace about Ms Hancl's abilities to meet key selection criteria for the position.

Dr Davis asked for advice on the apparent breach of the OPSME directive and the failure to obtain a referee report from the only person in the organisation able to provide such a report or, alternatively, the basis upon which alternative referees were deemed suitable.

Dr Davis went on to declare:

I also hereby wish to invoke my rights under the *Whistleblowers Protection Act 1994*. Of particular relevance is section 16: Public officer may make a public interest disclosure about someone else's conduct if—

- (a) the officer has information about the conduct; and
- (b) the conduct is maladministration that adversely affects anybody's interests in a substantial specific way.

Section 8(3) Maladministration is widely defined to cover illegal, arbitrary, oppressive or improper public sector 'administrative action'.

I believe that maladministration has occurred in relation to this seriously flawed appointment process resulting in a situation where there is an apparent lack of demonstrated relevant clinical and management background required for this position, and instead there is a statement to the contrary from a reliable source in respect of the only known experience in aged care. The appointee is in turn

unilaterally appointing staff without any transparency as to their ability in this field. Instead, reliance is apparently being placed on techniques that have seen a previous unit manager relocate from this service, and another senior RN take stress leave. In my opinion, staff stress and an apparent inability to provide skilled clinical leadership poses a significant risk to patient care and Queensland Health's interests.

After receiving this email from Dr Davis, Mr Cartwright sought advice from Ms Rebecca McMahon, then Acting Director of the Ethical Standards Unit of Queensland Health. (The unit provides advice to all Queensland Health business areas in relation to the application of the Whistleblowers Protection Act, including determining whether a purported public interest disclosure is actually a public interest disclosure.)

Ms McMahon advised Mr Cartwright as follows:

To constitute a PID [public interest disclosure] under Section 16 Dr Davis must be providing information in relation to maladministration. Maladministration is 'illegal, arbitrary, oppressive or improper public sector administrative action that specifically, substantially and adversely affects someone's interests'. On the information provided I am of the view that the issues he has raised in relation to a recruitment process do not fall within this definition. I will assume that you will advise Dr Davis of this assessment.

Mr Cartwright quoted this advice in a reply to Dr Davis on 6 May 2005, which stated:

I have sought advice from the QH Audit and Operational Review Branch in relation to coverage in regards to the matter you raise. They have confirmed my opinion that your complaint would not constitute a public interest disclosure under Section 16 of the Act and that you would therefore not be entitled to statutory protection under the Act.

The email then went on to quote section 16 of the Act and advised that:

on the information provided AORB and myself are of the view that the issues raised in relation to a recruitment process do not fall within this definition.

Mr Cartwright further advised Dr Davis that four referees were nominated in Ms Hancl's application, including an acting director of nursing at Southern Cross Care, and referee reports were obtained. Mr Cartwright confirmed his previous advice that he was not able to identify any flaws in the process.

The passages below summarise the essence of Ms McMahon's responses to questions put to her by CMC investigators.

Ms McMahon said she had a brief telephone discussion with Mr Cartwright at the time of receiving the email in May 2005. She did not seek any further information other than what was on the email because the process in ESU was not to seek further information, but to look at the original complaint being provided by the person as the purported public interest disclosure and make their assessment based on that.

She read the issues of concern to Dr Davis and considered those against the various provisions within the Whistleblowers Protection Act. She considered what Dr Davis was disclosing to see if it related to official misconduct, and she did not believe it did.

She then considered whether the conduct involved maladministration. She focused on this because recruitment was an administrative process. She considered section 16 of the Act.

She was aware of the QH recruitment and selection directive and that a candidate can nominate two referees, not necessarily a current supervisor. She did not consider that the failure by Ms Hancl to nominate as a referee the person referred to in Dr Davis's email raised a suspicion of maladministration by the panel members. Her understanding of Dr Davis's concerns were that maladministration had occurred in a flawed appointment process. She considered that complaints about Ms Hancl's performance in the workplace or clinical competency alone should be matters for a performance process, and not be treated as a whistleblower complaint.

She considered whether Dr Davis's concerns could be a public interest disclosure under section 18 of the Act relating to public health and safety. She explained that she regularly considered the provisions of section 18 in considering whistleblowing claims.

She came to the conclusion that this section did not apply as Dr Davis's complaint was focused on the administrative action in undertaking the referee checking. Dr Davis also raised questions concerning Ms Hancl's clinical and management background without any particulars to support those allegations. She concluded that Dr Davis's complaint did not raise information about a 'substantial and specific danger to public health and safety'.

Ms McMahon said her next involvement with Dr Davis's whistleblower claim occurred almost 12 months later, on 3 May 2006, when she was asked to meet the Director-General of Queensland Health, Ms Schreiber, and Mr Leahy (Industrial Relations, QH) in the director-general's office to discuss the Davis complaint. During this meeting she was told that there was further information that indicated that Ms Hancl's qualifications might have been falsified and that one of her referees might have been her partner. She was asked for advice on what the department should do.

On being given a copy of Ms Hancl's referee reports and her résumé, and shown the claim about the MPA, she advised that — in view of the allegations concerning the masters degree and the referee — the matter should be referred to the CMC as it could raise a suspicion of official misconduct.

She went on to say that she believed that this additional information should not affect the original assessment of Dr Davis's purported public interest disclosure in May 2005. The further information had arisen 12 months later and should not be 'added' to the information raised by Dr Davis previously to provide him with retrospective protection under the Act.

She said she gave no further advice on the matter, and was not asked by the director-general to assess whether Dr Davis should have been given whistleblower protection in May 2006.

Conclusions on Dr Davis's whistleblower claims

2005 disclosure

Based on the information that was available to Ms McMahon at the time, the assessment she made in May 2005 — that Dr Davis was not making a public interest disclosure — was reasonable.

Dr Davis's complaint related to the selection process. The fact that the original selection panel had not contacted Ms Hancl's line manager (Ms Carolyn Wallace) for a referee report, coupled with his concerns about Ms Hancl's clinical experience, led

Dr Davis to believe there were shortcomings in the original selection process. His complaint was directed, whether intentionally or not, at the conduct of the selection panel members.

The issues raised by Dr Davis in his email of 3 May 2005 do not seem to fall within the definition of maladministration in the *Whistleblowers Protection Act 1994*, which says:

Maladministration is administrative action that is unlawful, arbitrary, unjust, oppressive, improperly discriminatory or taken for an improper purpose.

The essence of Dr Davis's complaint was about the selection panel not seeking a referee report from a particular person who was not nominated as a referee. This does not amount to unlawful, unjust, oppressive administrative action or action taken for an improper purpose. Although it is common practice for a preferred applicant's line manager to be contacted, this is not mandatory.

Administrative action that is 'arbitrary' implies uninformed or random choice. The evidence shows that the selection panel followed the recruitment and selection process, interviewed candidates and obtained referee reports. There was no random, uninformed or arbitrary action. It is equally difficult to see how the actions of the selection panel could be regarded as improperly discriminatory. Therefore it was not maladministration on the panel's part to fail to speak to Ms Hancl's line manager.

In the CMC's view, the assessment that Dr Davis's disclosure in 2005 was not a public interest disclosure was correct.

2006 disclosure

In April 2006, as a result of his appeal to the QIRC, Dr Davis received a copy of Ms Hancl's application for the Nursing Director position at TPCH. He set about checking the facts contained in her résumé, establishing that Ms Hancl did not have a masters degree from the University of Tasmania, as indicated. He also raised concerns over her first-nominated referee, Mr Shepherd, as his inquiries had resulted in the discovery of a personal relationship between Ms Hancl and Mr Shepherd.

Dr Davis disclosed his discoveries to a representative of the AMAQ, who in turn informed the Director-General of Queensland Health, Ms Schreiber. Ms Schreiber met with Dr Davis and others on 5 May 2006. At the meeting Dr Davis repeated his discoveries about the false MPA claim and the personal relationship with the referee. Ms Schreiber advised Dr Davis that she considered the disclosures he was making to be public interest disclosures.

In the CMC's view, the assessment by Ms Schreiber at that time was correct. The disclosures Dr Davis made to the director-general indicated potential official misconduct on Ms Hancl's part.

Dr Davis was accordingly entitled to protection under the *Whistleblowers Protection Act 1994* in respect of the disclosures he made on 5 May 2006.

Actions of Dr Cleary, Ms Wallace and Ms Dawson

Dr Cleary, Ms Wallace and Ms Dawson were all stood down by the Director-General of Queensland Health on 12 May 2006 pending the outcome of the CMC investigation. They were suspended from duty for reasons related to:

- the appointment of Ms Hancl
- the alleged denial of natural justice to Dr Davis in the matter of his being liable for disciplinary action
- allegations that the disciplinary action against Dr Davis was a reprisal against him, which is prohibited under the *Whistleblowers Protection Act 1994*.

Versions of witnesses

The passages below summarise the essence of witnesses' responses to questions put to them by CMC investigators.

From Dr Michael Cleary

The appointment of Ms Hancl

Before signing off on the selection of Ms Hancl in November 2003, Dr Cleary noticed that her current line manager had not been contacted as part of the reference checks. He spoke to Mr Peter Patmore, who at that time was the Acting Director of Human Resource Services at TPCH, and sought his advice regarding contacting Ms Hancl's then line manager in Tasmania. Mr Patmore advised him that it would be appropriate. He said either he or Ms Burns told Ms Hancl that he intended to contact her line manager and he did not receive any objection from Ms Hancl.

Sometime between receiving the selection report and 6 November 2003, he telephoned Southern Cross Care and asked to speak to the Director of Nursing. He eventually spoke to a woman who he believed was acting in the position, as the Director of Nursing was away. He did not recall this woman's name. After quizzing her about Ms Hancl's role, responsibilities and capabilities, he was satisfied with this further referee check.

When asked by CMC investigators how he reconciled the comments made by this woman with the complaints later made by Dr Davis, after Dr Davis had allegedly spoken to somebody in an apparently equivalent position at Southern Cross Care, he responded that he was concerned that there was a difference; however, he was happy that the District Manager, Ms Gloria Wallace, had referred it to the HR department to look into. He said he was comfortable that there was a process for resolving those differences to the degree that they were in existence.

He was asked if he had ever discussed with Dr Davis in the ensuing 12 months the fact that he had conducted the referee check and the impression he was left with. He said he did not believe he had. When asked if it had ever occurred to him to contact Southern Cross Care Director of Nursing Carolyn Wallace himself, as suggested by Dr Davis, he said it had not occurred to him as he was 'happy the District Manager had handed it over to the Human Resources Department and asked them to undertake the review'.

Responding to the workplace conflict

When Ms Gloria Wallace took up a more senior position, Dr Cleary was appointed Acting District Manager.

Up until this point, while he was aware of the emerging workplace conflict involving Dr Davis, Ms Hancl, Ms Conroy and other staff, he had no real involvement. He had been kept informed of events by Ms Gloria Wallace and had been copied into a number of emails sent by Dr Davis. Ms Gloria Wallace had already commissioned Ms Volp and Dr Bell to investigate the matter and other associated issues in relation to the ARU and its staff. As part of this investigation, he said he was interviewed by Ms Volp and Dr Bell.

On 5 August 2005, he received a copy by email of the Volp–Bell investigation report. He described this report as ‘very complex’ and ‘as I’m not an expert in human resource management or industrial relations, I sought expert advice from human resource professionals and industrial relations lawyers’. He also availed himself of supplementary material, including grievances lodged by Ms Hancl and Ms Conroy against Dr Davis. Between 5 and 10 August, Dr Cleary said he participated in a teleconference with Ms Volp and Dr Bell to discuss their report in detail.

On 10 August 2005, Dr Cleary met with Ms Casey and Mr Hayward to review the Volp–Bell report and to develop an action plan to address the issues raised. He then wrote to ARU staff, enclosing sections of the report relating to operational and systems issues, and sought legal advice from McCullough Robertson Lawyers in relation to (a) Dr Davis taping a conversation with Ms Hancl and (b) Dr Davis making and distributing the results of an unauthorised reference check of Ms Hancl.

As Dr Davis was a subject of the Volp–Bell investigation, Dr Cleary provided him with extracts of the report. The extracts did not include the matters referred to McCullough Robertson Lawyers, as they were still under consideration by that firm. He also provided Ms Hancl and Ms Conroy with extracts of the Volp–Bell report containing matters relevant to them. Again, those extracts did not contain references to the matters referred to the lawyers. He also wrote to Ms Hancl and Ms Conroy asking them to respond to allegations against them that the report had found to be substantiated. Between 11 and 25 August 2005, he received Ms Hancl’s and Ms Conroy’s responses.

Advice from the lawyers

On 23 August 2005, Dr Cleary received this advice from the lawyers:

- If it were at all possible, the best way to address the issues was not through the legal process but through mediation and conciliation.
- If the parties could not reach an agreement, then the matter should be dealt with in accordance with the usual policy, which might involve a disciplinary process.
- As Dr Davis was not Ms Hancl’s line manager but an equal, he could not seek a reference check on Ms Hancl.

On 25 August 2005, Dr Cleary received further legal advice that Dr Davis had not breached the *Invasion of Privacy Act 1971* (Qld) in taping a telephone conversation between himself and Ms Hancl.

Action in response to Volp–Bell report

After considering the Volp–Bell report and Ms Hancl’s and Ms Conroy’s responses, Dr Cleary advised Ms Hancl and Ms Conroy that he considered that they had been intimidating, hostile and bullying towards staff and were therefore each liable for disciplinary action, and that the possible penalty of a reprimand would be considered. He also asked them to show cause within seven days as to why the penalty should not be imposed. On 28 August 2005, he approved a proposal by Ms Burns that Ms Hancl and Ms Conroy have a change of roles, which removed them from active roles within the ARU but kept them within the Acute Geriatric and Rehabilitation Program.

On 31 August 2005, he met with Ms Hancl and an HR representative to discuss the Volp–Bell report in general terms, and specifically the issues in relation to Dr Davis taping a conversation with Ms Hancl and Dr Davis undertaking and distributing the results of an unauthorised reference check of Ms Hancl. This was the first time Ms Hancl had become aware of the actions of Dr Davis in relation to her. Ms Hancl requested either a formal apology from Dr Davis or appropriate action taken against Dr Davis by the District. Dr Cleary gave no undertaking in relation to these requests.

In early September 2005, Dr Cleary met with HR to discuss ways of informally resolving the conflict between Ms Hancl and Dr Davis. On 5 September 2005 he chaired a meeting with Dr Davis, Dr O’Brien and a representative from the AMAQ. During this meeting the issues of Dr Davis taping a conversation with Ms Hancl and Dr Davis conducting an unauthorised reference check on Ms Hancl were discussed. He asked Dr Davis if he would consider advising Ms Hancl of his involvement in the matter and expressing regret that it had occurred. Dr Davis indicated that he did not support this approach. At the end of the meeting, Dr Cleary informed Dr Davis that he would receive a written explanation of the issues being considered and the action the District proposed to take.

Letters of 7 September 2005 to Dr Davis, Ms Hancl and Ms Conroy

On 7 September 2005, HR presented Dr Cleary with a letter addressed to Dr Davis for him to sign. Upon asking why the usual ‘first letter’ (as had been sent to Ms Hancl and Ms Conroy) setting out the allegations was not required, he was advised by HR that this was because Dr Davis had disclosed the matters himself and had confirmed his actions with Ms Volp and Dr Bell. On that basis Dr Cleary signed the letter and it was hand delivered to Dr Davis. The letter said in part:

The evidence in this case raises serious concerns regarding your behaviour. As a Queensland Health Employee, you occupy a position of considerable trust and responsibility. Your actions did not project the desired image of a health sector employee in that all staff should be treated with respect and dignity in a professional manner.

I find you are liable for disciplinary action pursuant to section 87(1)f of the *Public Service Act 1996*. I have found that on the balance of probabilities that your actions contravened, without reasonable excuse, a provision of this Act or a code of conduct I that your actions contravene the Queensland Health Code of Conduct Principle 2 in that you have not:

- Treated other employees honestly and fairly and with proper regard for their rights and obligations.

It now remains for me to determine an appropriate penalty pursuant to section 88 of the *Public Service Act 1996*, taking into consideration all the relevant factors in this case. In considering an appropriate penalty, I have given serious deliberation to imposing an official reprimand on you.

In terms of the principles of natural justice, no final determination of disciplinary penalty will be imposed until you have had the opportunity to comment on the proposed penalty.

Accordingly, you are now provided with a period of seven (7) days from the date of receipt of this letter to show why this disciplinary penalty should not be imposed.

Also on 7 September, Dr Cleary signed letters to Ms Hancl and Ms Conroy regarding the Volp–Bell investigation and attached a complete copy of the report. Further, he wrote to the Queensland Nurses Union and confirmed Ms Hancl and Ms Conroy had received full copies of the Volp–Bell report and that he required their responses within seven days.

On 3 October 2005, he granted Dr Davis an extension of time to respond to the letter of 7 September. He also granted extensions to Ms Hancl and Ms Conroy.

Perception of bias

In his response, Dr Davis raised the possibility that Dr Cleary might be biased because it was he, Dr Cleary, who had signed off on Ms Hancl's appointment. Dr Cleary sought legal advice on this issue and as a result, on 18 October, decided to step away from the process, asking Ms Linda Dawson to take over as the decision maker. Ms Dawson agreed.

On 30 November 2005, Dr Cleary advised Dr Davis that he would no longer be the decision maker with regard to any proposed disciplinary action. He had no further dealings with the grievances.

Dr Cleary learns that Ms Hancl does not have an MPA

At Mr Leahy's request, in early May 2006 Dr Cleary arranged for another review of Ms Hancl's personnel file. As a result of this review, he told Mr Leahy that there was 'ambiguity' in relation to Ms Hancl's masters degree. Mr Leahy told him that his inquiries with the University of Tasmania had revealed that Ms Hancl did not in fact hold a degree from that university. Dr Cleary said that this was the first time that he had specific information that raised concerns regarding Ms Hancl's appointment.

Dr Davis recognised as a whistleblower

On 5 May 2006, Ms Schreiber advised Dr Cleary that she had recognised Dr Davis's whistleblower status and directed him to meet with Dr Davis to progress matters. Dr Cleary and Mr Cartwright met with Dr Davis on 10 May to clarify what action Dr Davis wished taken to ensure he would be protected as a whistleblower and what information he was happy to have disclosed and to whom.

Dr Cleary suspended

On 12 May 2006, the OPSME handed down its decision upholding the appeal by Dr Davis against his reprimand. The OPSME overturned the decision to discipline Dr Davis on the basis that Dr Davis had not been afforded natural justice in that he was not provided with a complete list of allegations against him prior to Dr Cleary's decision to find him liable.

Later that day Ms Schreiber advised Dr Cleary that he was suspended.

Dr Cleary reiterated that in these matters he took advice 'every step of the way' because he was not an expert and had to rely on the industrial relations team, the human resources team and the lawyers. All the advice he received was to the effect that the approach Ms Gloria Wallace and he took was appropriate.

The Audit and Operational Review Branch advised me that Dr Davis was not a whistleblower, the human resources and industrial relations professionals advised

me the disciplinary process was satisfactory, and the lawyers advised me that Dr Davis was not a whistleblower and the process was satisfactory. I have done more than what was normally required.

He said he did not at any time have any intention of taking reprisal action against Dr Davis.

At no time did I consider it improper or inappropriate for Dr Davis to raise concerns about Ms Hancl and I consider that I have dealt with Dr Davis's concerns fairly, appropriately and in the best interests of patients and Queensland Health. At no time did I have any intention to extract a reprisal as a consequence of an alleged public interest disclosure.

From Gloria Wallace

Ms Wallace was the District Manager for The Prince Charles Health Service District from April 2004 until 26 July 2005 when she started as the Acting Deputy Director-General, Queensland Health. She took no part in the appointment of Ms Hancl.

Conflict in the workplace

Ms Gloria Wallace was aware of emerging workplace conflict when she was copied into an email sent by Dr Davis on 22 April 2005 to Ms Burns advising of his concerns with the appointment process for Ms Hancl.

She became concerned that Dr Davis had contacted Ms Carolyn Wallace (Ms Hancl's former supervisor) without authority; that the comments made by Ms Carolyn Wallace might have been made in any context, not necessarily in the context of giving a referee report. The public service, she said, was strict in the way that referee checks were managed. The contact was inappropriate because it breached Ms Hancl's privacy: Ms Carolyn Wallace was not a nominated referee.

Ms Wallace said that she was prepared to act on any concrete evidence that was given to her.

She pointed out that Ms Hancl had been in the organisation long enough for any problems with her performance to have become apparent. She said she had observed Ms Hancl's work and did not have any problem with her performance in terms of the issues spelt out by Dr Davis.

She felt that the whole program management team (including Ms Hancl and Dr Davis) should be considered for diminished work performance. The issue was an interpersonal conflict and the executive team running the program needed to put the responsibility of patients first; in her view, that was not being done. The management team was exacerbating the issues.

The issues

Ms Wallace explained that there were a number of issues that had contributed to the conflict between Ms Hancl, Dr Davis and others in the unit. She said that Ms Hancl had permitted the following changes to be made by Nurse Unit Manager Karen-Lee Conroy and that these changes had proved to be unpopular:

1. The Rehabilitation Ward was no longer a step down unit for high-dependency patients. The medical staff believed that their current role should continue and Ms Wallace tended to concur.
2. The nursing whiteboard, which contained patient information, had been transferred to a diary.
3. Doctors on their rounds were no longer accompanied by the Nurse Unit Manager.

4. Team patient allocation nursing had been introduced, as opposed to individual patient allocation nursing.

Moreover, staff of the unit felt that Queensland Health change-management guidelines had not been followed when introducing these changes; that is, no consultation had taken place.

Steps taken to manage the situation

Ms Wallace said she engaged Dr O'Brien of the Cognitive Institute to help resolve the issues. She also contacted Dr Cleary and Ms Burns to express her concerns regarding the working relationship between Dr Davis and Ms Hancl, and to let them know of her decision to appoint Dr O'Brien to 'improve team functioning'.

The options available were for Dr O'Brien to resolve the issues, or for a formal grievance to be made if staff believed the matter could not be resolved in any other way.

She said she became aware that Dr Davis had sought whistleblower protection on 6 May 2005 when Mr Cartwright's email advised her that Dr Davis's complaint did not constitute a public interest disclosure. Dr Davis later raised the issue of patient safety in an open letter to staff. She said she asked Dr Davis to specify the precise nature of his concerns to enable them to be investigated. Meetings took place regarding the patient safety issue and it was believed that the best avenue was to forward the issue through the Medical Advisory Committee to the Patient Safety Committee.

On 17 May 2005, Ms Veronica Casey (Executive Director, Age and Disability Residential Services, TPC Health Service District) advised Ms Wallace that the data did not reveal any issue concerning patient safety. Further, since the arrival of Ms Hancl there had been no serious sentinel event that would require her standing aside.

After receiving additional patient safety information from Dr Davis, Ms Wallace appointed Dr Helen Ward to investigate his claims with the intention of forwarding the results to the Patient Safety Committee.

On 19 May 2005, Dr O'Brien advised her that mediation was not a suitable resolution strategy, given the attitudes expressed during his investigation. He said he was concerned about Nursing Director Hancl continuing unsupported with serious allegations being made about her competency. These allegations, he said, posed significant risk to her personally and to her professional status. Dr O'Brien also expressed concern for the safety and well-being of patients in the unit and the effect this whole process was having on the morale of the unit. As a result, Ms Wallace appointed Ms Linda Moule to review the unit and provide assistance to Ms Hancl.

On 20 May 2005, Ms Hancl submitted a grievance alleging that Dr Davis had bullied and harassed her. A week later, Ms Conroy also submitted a grievance alleging that Dr Davis had bullied and harassed her.

Early in June Ms Wallace received a letter from nursing staff from the ARU highlighting their concerns about the changes that had been made in the unit. On 6 June 2005, she met with the nursing staff, and left with concerns that the conflict had not settled and this might have an impact on patient care. She then wrote to Dr Davis, Ms Hancl and Ms Einstein advising that the grievances would be examined in accordance with QH guidelines, and appointed Ms Veronica Casey as the program management team's single point of accountability.

She then appointed Ms Kym Volp (a nurse manager from the Toowoomba Base Hospital) and Dr Brian Bell (an associate professor from the Gold Coast Base Hospital) to investigate the grievances against Dr Davis, as well as a grievance made by nurses against Ms Hancl and Ms Conroy.

On 14 June 2005, Ms Wallace wrote to Dr Davis advising him that Ms Hancl and Ms Conroy had submitted allegations concerning his professional conduct. She further advised him that she had appointed Ms Volp and Dr Bell to conduct an investigation. Ms Wallace wrote:

If, on receipt of the Investigation Officers report, I decide to initiate disciplinary action against you, at the time I will ask you to show cause why I should not take disciplinary action. The process will provide you access to documentation concerning the allegations that is reasonably a consideration and detrimental in your interests. In terms of the principles of natural justice, you would then have the opportunity to formally respond to the allegations and available evidence within fourteen days.

On 20 June 2005 the AMAQ expressed a concern that Dr Davis was not receiving natural justice in relation to his whistleblower claim. Ms Wallace responded by advising that the Volp–Bell investigation would be proceeding in accordance with QH policy. The final terms of reference for the investigation were completed on 22 June.

On 7 July 2005, Ms Wallace received the findings from Dr Ward's review of patient safety, which revealed there were no increases in adverse events. At this time, she also became aware that the review of Ms Hancl's appointment process had not been referred to QH's AORB. She agreed that this should occur.

On 14 July 2005, Ms Wallace was copied into an email from corporate HR to Mr Hayward advising that any deficiencies on the part of Ms Hancl should be managed through the performance appraisal and development process. Dr Davis was informed of this.

When, later in July, Ms Wallace took up the position of Acting Deputy Director-General, QH, Dr Cleary filled her position in an acting capacity. Dr Cleary was now responsible for making any decision following the receipt of the Volp–Bell report. Subsequently, the director-general advised that Ms Wallace was to play no further part in the management of the grievance or its outcomes.

Ms Wallace said that she has had little involvement in the matter since that time. She was generally aware that negotiations were under way between Mr Leahy and the AMAQ to attempt to resolve Dr Davis's concerns.

While in England on official QH business, she received a phone call from the director-general advising her that the OPMSE finding was in Dr Davis's favour, that the director-general was required to stand her down and give whistleblower protection to Dr Davis, and that the minister would be making a public apology to Dr Davis. The director-general gave her a very general reason for standing her down, including the issues surrounding the whole matter and the context.

From Linda Dawson

Since the middle of 2005 Ms Dawson had been employed by QH as the Executive Director of Statewide Health and Community Services Branch. On 14 November 2005 she took up an acting position as the General Manager of Central Area Health Service until 16 January 2006. This included responsibility for TPCH.

Involvement in the Davis matter

Ms Dawson said her first knowledge of the issues concerning Dr Davis and Ms Hancl was when she received a written briefing note to the minister in November 2005. She signed off on that briefing note in the first week she was acting in the position. She said she understood that this matter had been mentioned in parliament and that was why the briefing note was prepared.

She said she understood that there had been an investigation by two external investigators and many grievances and complaints. The investigators' report was complete and the District was considering taking disciplinary action against Medical Director Dr Davis, Director of Nursing Ms Hancl and Nurse Unit Manager Ms Conroy. The District had sought legal advice regarding the disciplinary action.

At the time of this briefing note she had not seen the investigators' report and had not considered it. It was attached to the briefing note along with other documents. She said she did not normally read every attachment, but did skim through them.

Her next involvement in this matter was on 22 November 2005 when she received an email from Dr Cleary asking her to take over as decision maker. After meetings with the Workplace Investigations Unit of QH, she asked the unit to inform Dr Davis that Dr Cleary was no longer the decision maker and that she had assumed responsibility for that role.

Steps leading up to the decision to reprimand Dr Davis

After receiving correspondence on 2 December 2005 from Dr Davis's legal representatives claiming a denial of natural justice (because he had not been given a list of the allegations beforehand) and a denial of Dr Davis's whistleblower status, she sought advice from the Workplace Investigations Unit and McCullough Robertson Lawyers. She understood that the unit had considered Dr Davis's claims, including speaking with Ms McMahon from the ARU. Ms McMahon had confirmed her previous advice that Dr Davis was not entitled to whistleblower protection.

She decided to take no further action for 14 days. During that time, she received advice from the lawyers dated 23 December 2005. The advice was that (a) Dr Davis had been given natural justice, (b) Dr Davis should be advised that QH did not consider him to be a whistleblower, and (c) the decision maker should consider all relevant matters prior to proceeding with any disciplinary action.

Ms Dawson said she was satisfied that she had received proper advice and it was correct for her to make the decision on the outcome of the disciplinary action.

Accordingly, on 4 January 2006 she advised Dr Davis that she found him liable for the disciplinary action and that the appropriate penalty was a reprimand. She wrote to him in these terms:

On the balance of probabilities, the allegations relating to the seeking of references for Ms Hancl outside of a recruitment process are substantiated, and that your actions in that regard were improper.

I find that you are liable for disciplinary action pursuant to section 87(1)f for the *Public Service Act 1996*. I have found on the balance of probabilities that your actions contravened, without reasonable excuse, a provision of this Act or a code of conduct in that your actions contravened the Queensland Health Code of Conduct Principle 2 in that you have not treated other employees honestly and fairly and with proper regard for their rights and obligations.

I have decided that the appropriate disciplinary action in these circumstances is an official reprimand.

Ms Dawson said that in arriving at this conclusion she had considered:

- the advice she had received from HR, Workplace Investigation and the lawyers about the appropriateness of the process
- the investigation report concerning the allegations about Dr Davis, and Dr Davis's replies.

She decided that Dr Davis was liable for this action because she considered his seeking the unauthorised referee check, and then communicating his findings, was an improper thing to do, and he had not denied doing it. She considered Dr Davis was trying to undermine Ms Hancl. She appreciated that there were performance issues raised by Dr Davis with Ms Hancl, but considered the District had recognised those issues and were taking action to manage them.

In Ms Dawson's opinion, while Dr Davis had raised his concerns with the right people, he had not waited for those people to take appropriate action, and this was improper. She said that in an environment where three people were in charge of a unit there were better ways for Dr Davis to manage any concerns he had with the performance of Ms Hancl.

She did not take into account the other grievances because she did not believe that they were relevant. She considered whether Dr Davis should be given a warning, but decided a reprimand was more appropriate.

What happened next?

Ms Dawson said that she finished acting in that position on 15 January 2006. She was later advised that Dr Davis had appealed against the disciplinary action to the OPSME. She said this came as no surprise as the option of appealing to the OPSME was mentioned in the letter to Dr Davis.

She was asked in March 2006 to provide a written statement to McCullough Robertson Lawyers, as Dr Davis had taken action in the QIRC.

She later became aware that QH were trying to negotiate with Dr Davis and the AMA to try to settle the matter, but had no role in those negotiations.

Her next involvement in this matter was when the director-general notified her and Ms Wallace that Dr Davis had been granted whistleblower protection, based on his making a public interest disclosure to the director-general and the minister. She received that letter on 8 May 2006 and faxed it directly to Dr Cleary, asking him to note the information and take whatever action needed to ensure there were no reprisals against Dr Davis.

She signed off on a briefing note to the minister on 12 May 2006. The briefing note was in response to questions in parliament concerning the exact position and requirements Ms Hancl needed to undertake her job.

On Friday 12 May 2006 she received a phone call from Ms Schreiber who told her that she was stood down. She recalled Ms Schreiber referring to an OPSME appeal that had found she was biased and, as a consequence, Ms Schreiber was standing her down. She received a letter confirming that advice from the following Tuesday.

She said she knew Dr Davis but had not seen him for years. She sent him an email saying she had not seen the OPSME decision, but understood that his appeal had been upheld.

I simply said I accepted that and would like him to know that there was no malice or bias in my decision.

In relation to the allegation of reprisal action against Dr Davis, Ms Dawson stressed that on every available decision point she specifically sought advice on whether Dr Davis was a whistleblower. The advice she received from both HR and McCullough Robertson Lawyers before she made the decision to reprimand Dr Davis assured her that Dr Davis was not a whistleblower and that she had the right to make the decision she did.

Ms Dawson told CMC investigators that she had only once before been required to be the decision maker on disciplinary action and had never received any training in this area.

From Uschi Schreiber (Director-General QH, appointed July 2005)

Ms Schreiber said that she might have been aware of this matter in a general way before it was raised by the Opposition Spokesperson in parliament on 10 November 2005, but her attention was certainly aroused from that point on. She said she had some conversations with members of the AMAQ, and was keen to find a solution for all parties concerned, rather than continue with an 'endless warfare'.

Accordingly, she met with Ms Hancl on 13 December 2005 at Ms Hancl's request. Ms Hancl told the director-general her side of the story, which essentially consisted of her stating that Dr Davis did not like her and 'had it in' for her, and that she simply wanted a stop to the dispute so she could get on with her work. To Ms Schreiber it sounded like a workplace disagreement, and she referred the matter back to Dr Cleary to manage at the local level.

About that time Dr Davis lodged appeals with the OPSME and the QIRC. It was at this point that Ms Schreiber involved Mr Leahy, the Executive Director of Industrial Relations at QH, as he was managing a range of similar cases. She asked Mr Leahy to negotiate with the AMAQ so there would be a mutually agreed process for a way forward. She said she questioned in her own mind whether this issue was of such significance between a senior doctor and a senior nurse that it had to go to the QIRC.

In May 2006, soon after documents were exchanged in the QIRC appeal, she met with a representative of the AMAQ, who told her that the AMAQ had been informed that Ms Hancl's résumé had been made available to Dr Davis for the first time.

The AMAQ representative alerted her to the fact that a check of the claims made in the résumé had revealed that Ms Hancl did not have an MPA. Further, the AMAQ advised that an annual report of Ms Hancl's previous employer, Southern Cross Care, said that Ms Hancl had an MPA, and that there was a question mark over a referee nominated by Ms Hancl. She asked Mr Leahy to investigate these anomalies; he in turn asked Dr Cleary to look into them.

Conclusions on actions of Dr Cleary, Ms Wallace and Ms Dawson

The main allegation against the three officers is they may have taken reprisal action against Dr Davis after Dr Davis had made a public interest disclosure.

Section 42 of the *Whistleblowers Protection Act 1994* provides that taking reprisal action against someone who has made a public interest disclosure is a criminal offence.

For those officers to have committed this offence, the following must be proved:

1. Dr Davis was a public officer.
2. Dr Davis made a public interest disclosure.
3. Dr Davis made a public interest disclosure to an appropriate entity.
4. Ms Gloria Wallace, Dr Cleary or Ms Dawson caused Dr Davis detriment for doing so.
5. This happened, because, or in the belief that, Dr Davis made or may make a public interest disclosure.
6. The making of the public interest disclosure by Dr Davis was a 'substantial' ground for taking the action.

There is no doubt that Dr Davis was a public officer, that he made a disclosure to an appropriate entity and that he suffered detriment within the meaning of the *Whistleblowers Protection Act 1994*.

Who 'caused' the detriment to Dr Davis? Ms Wallace initiated the investigation by Ms Volp and Dr Bell, Dr Cleary used the conclusions of the Volp–Bell report to justify starting disciplinary action against Dr Davis, and Ms Dawson made the final decision to discipline Dr Davis.

Initiating an investigation does not in itself cause detriment, so Ms Wallace did not 'cause' Dr Davis any detriment. Her sole involvement in this matter related to her doing her best to manage escalating workplace conflict from multiple sources. The evidence shows that she advised Dr Davis in writing that an investigation into the grievances against him would be undertaken and that, should any cause to initiate disciplinary action against him be found, he would be told the allegations and given an opportunity to respond. The fact that this did not occur was not due to Ms Wallace as she was by then no longer in the decision-making role.

The evidence shows that Dr Cleary and Ms Dawson did 'cause' detriment to Dr Davis as Dr Cleary made the decision to initiate disciplinary action and Ms Dawson was the officer who actually took the disciplinary action.

However, as explained earlier, Dr Davis's disclosure in 2005 was not a public interest disclosure. Even assuming it was, there is no evidence that Dr Cleary or Ms Dawson took disciplinary action against Dr Davis 'because or in the belief' that he made or may make a public interest disclosure.

The evidence shows that each of these officers sought and relied upon advice from human resources staff, the AORB and independent legal advice. The advice from the AORB and McCullough Robertson Lawyers was to the effect that Dr Davis had not made a public interest disclosure. Dr Cleary and Ms Dawson relied upon that advice before starting any disciplinary action against Dr Davis.

In the CMC's view, there is no evidence that any of the officers took reprisal action against Dr Davis.

Involvement of the Minister for Health

The then Leader of the Opposition and the then leader of the Liberal Party asked the CMC to investigate the involvement of the Minister for Health, the Honourable Stephen Robertson MP, in this matter, as well as the quality of the briefings to the minister.

The CMC's jurisdiction in investigating elected officials is limited to criminal offences. As there was nothing in the minister's behaviour to give rise to a suspicion of criminal conduct, there was no need for the CMC to investigate his involvement in this matter.

Apart from the statements in parliament and the meeting with Dr Davis on 5 May 2006, there is no evidence of any involvement of the minister at all, and certainly not in the form of a reprisal action against Dr Davis.

The minister's only involvement was that he was briefed by his department. The statements the minister made in parliament were consistent with the briefing notes provided to him. In any case no criticism can be levelled at the minister for any shortcomings in briefings provided to him.

In short, the CMC found no reason to investigate his involvement of the minister this matter as it clearly amounted to no more than receiving briefings from his department.

Other allegations and concerns

During the course of the investigation, other matters arose. These related to:

- concerns about the judgment of Ms Wallace, Dr Cleary and Ms Dawson
- the reasons nobody contacted Ms Carolyn Wallace after Dr Davis's disclosure
- the failure of anyone in Queensland Health to check Ms Hancl's education claims
- the failure of anyone to discover the fact that Ms Hancl had nominated her current or past de facto as a referee
- the failure to afford Dr Davis natural justice.

Concerns about the judgment of the three officers

Through the course of the investigation, issues were raised about the handling of the disciplinary action by Dr Cleary, Ms Wallace and Ms Dawson against Dr Davis. This was particularly so in view of the OPSME finding that Dr Davis had not been afforded natural justice and the process used to discipline Dr Davis was flawed. The following general comments are made about the actions of the three officers involved in managing what was undoubtedly a difficult situation.

The evidence shows that there was no official misconduct on the part of Ms Wallace, Dr Cleary and Ms Dawson. Ms Wallace, having been made aware of the dispute between Ms Hancl and Dr Davis, initiated or approved the following actions:

- the review of the recruitment and selection process by Mr Hayward (April 2005)
- the review of Dr Davis's whistleblower claims by Mr Cartwright and Ms McMahon (May 2005)
- the appointment of Ms Moule to assist the unit and Ms Hancl (May 2005)
- the attempted mediation by Dr O'Brien (June 2005)
- the patient safety review by Dr Ward (June 2005)
- the investigation of the grievances by Ms Volp and Dr Bell (June 2005)
- the further review of Dr Davis's whistleblower claims made by Queensland Health (June 2006).

Dr Cleary, having assumed responsibility for managing the issue in August 2005, undertook the following actions:

- considered the Volp–Bell investigation report and its recommendations
- sought advice from HR about the appropriateness of the disciplinary action
- on more than one occasion, sought and relied upon advice from external solicitors about the process, and about Dr Davis's claim to be a whistleblower.

Ms Dawson's involvement was limited to finalising the disciplinary action against Dr Davis. Ms Dawson:

- considered the investigation report, the legal advices, the previous assessments of whether Dr Davis was a whistleblower and correspondence from Dr Davis's solicitors
- sought, and relied on, further legal advice from external solicitors.

In the CMC's view, the actions taken by each of these three officers were reasonable in the circumstances and do not constitute official misconduct.

Failure to contact Ms Carolyn Wallace

The Director-General of Queensland Health expressed concern about why nobody contacted Ms Carolyn Wallace, the person mentioned in Dr Davis's email as expressing reservations about Ms Hancl's capabilities in the past.

Ms Gloria Wallace said she considered doing so but, ultimately, decided against this course of action as she believed any concerns with Ms Hancl's performance should be managed through the performance management process. She thought this course more appropriate than revisiting an appointment process that occurred over 12 months earlier. In any event, she felt that she, and other managers, had ample opportunity to observe Ms Hancl's on-the-job performance. Her observation was that Ms Hancl was able to undertake the duties of the position.

Similarly, Ms Dawson stated that she did not think of doing so because for her the issue was about Ms Hancl's performance. She said she did not think it necessary to go back to probe Ms Hancl's initial appointment. She said that she understood from the briefings she had read that the issue of Ms Hancl's appointment had been examined twice, once by HR within TPCCH and once again by someone within HR at QH Head Office. The briefings had concluded that the appointment process had been proper.

Ms Gloria Wallace also thought that, if Ms Carolyn Wallace was contacted and confirmed Dr Davis's comment, she would then be obliged to relay this information to Ms Hancl. This, in Ms Gloria Wallace's view, would only further inflame the dispute between Dr Davis and Ms Hancl, especially as Ms Hancl was not at that time aware that Dr Davis had contacted her former manager. In short, Ms Gloria Wallace was trying to defuse the interpersonal conflict between the two and address any concerns about Ms Hancl's performance through the performance management process.

Failure to check education claims

The failure of anyone in Queensland Health to check Ms Hancl's claims about her qualifications and education was an obvious oversight. However, it is understandable how this occurred. The only mandatory qualification for the position of Director of Nursing was registration as a nurse. Ms Hancl provided proof of this prior to her commencement with Queensland Health. There was no requirement to validate all non-mandatory education claims.

Referee checks

The failure of anyone to discover the fact that Ms Hancl had nominated her current or past de facto as a referee stems from the failure of Ms Hancl to advise the panel of this in the first place and of Mr Shepherd to do so when he supplied his referee report. It is true that no-one on the panel, nor Ms Carroll when she spoke to Mr Shepherd, specifically asked about a personal relationship between them, but their failure to do so is understandable given that Mr Shepherd was described as an 'Acting Nursing Director'. The assumption that he was purely a professional referee was a natural one to make.

Failure to afford Dr Davis natural justice

The OPSME overturned the decision to discipline Dr Davis on the basis that Dr Davis had not been afforded natural justice in that he was not provided with a complete list of allegations against him prior to the decision against him.

The evidence shows that Ms Gloria Wallace on 14 June 2005 advised Dr Davis in writing that an investigation into the grievances against him would be undertaken. Dr Davis was advised that, if any disciplinary action was to be initiated against him, he would receive documentation concerning the allegations and an opportunity to respond to those allegations.

The evidence shows this did not occur. On 7 September 2005 Dr Cleary advised Dr Davis by letter that he had found Dr Davis liable for disciplinary action and provided him no opportunity to respond to this finding. Dr Cleary stated he asked the then Director of Human Resources why the usual first letter setting out the allegations was not being sent to Dr Davis. He was advised that Dr Davis had admitted the conduct giving rise to the disciplinary action, namely performing an unauthorised referee check on Ms Hancl.

While the process used by Dr Cleary was found to be flawed and the flaw in the process affected Ms Dawson's later decision, there is no evidence of official misconduct on Dr Cleary's part. The evidence shows Dr Cleary sought and relied on advice from human resources personnel. Dr Cleary has received no special training in managing workplace disputes and disciplinary action. There is no evidence that Dr Cleary was motivated by ill will or malice.

Conclusions

The CMC recommends that Queensland Health consider initiating disciplinary proceedings against Ms Hancl on the basis that she ought to have known that an objective reader of her résumé could have been misled by her claim to have a Master of Public Administration, and she did nothing to correct any wrong impression. We also note that Ms Hancl's conduct in nominating her de facto partner as a referee, without declaring the nature of the relationship, calls into question her judgment about such basic issues as disclosing a potential conflict of interest. The issue of disciplinary action for a possible breach of the code of conduct for failing to disclose such a conflict should also be considered by Queensland Health.

On the matter of the reprisal, the CMC makes no adverse findings against Dr Cleary, Ms Dawson and Ms Wallace for the following reasons:

- Dr Davis did not make a public interest disclosure in May 2005 and so was not entitled to protection under the *Whistleblowers Protection Act 1994*.
- In any event, there is no evidence that any of the subject officers took disciplinary action against Dr Davis 'because or in the belief that' he had made a public interest disclosure.

Regarding the Minister for Health, the CMC found no reason to investigate his involvement in this matter as it clearly amounted to no more than receiving briefings from his department.

Our comments on the other matters are contained earlier in this report.

Finally, the CMC notes that in June 2006 Queensland Health's recruitment and selection policy was amended to provide selection panels with a greater ability to explore, clarify and verify information provided by the applicant in their application or at an interview.⁴ All referees contacted as part of the process must now be asked whether a potential conflict of interest could be seen to exist. Such a conflict does not automatically render a referee's report ineligible for consideration by the selection panel, but it must be declared. Also, job applicants must now supply proof of tertiary qualifications 'irrespective of whether or not the qualification claimed is relevant to the position applied for.'

Furthermore, the CMC recommends that applicant information packages be amended to inform applicants of these changes, in particular that they and their referees should declare any actual or perceived commercial or personal conflict of interest.

⁴ Circular ER 46/06.