



**STANDING COMMITTEE ON PUBLIC
ADMINISTRATION**

FOURTH REPORT

on its inquiry into

**THE EVENTS SURROUNDING THE DENIAL OF
TENURE TO THE LATE DR DAVID RINDOS BY
THE UNIVERSITY OF WESTERN AUSTRALIA**

**Presented by the Hon Kim Chance, MLC
(Chairman)**

**4
DECEMBER 1997**

Members of the Committee

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

Counsel to the Committee

Len Roberts-Smith QC

Advisory/Research Officer

Elizabeth Lawton

Committee Clerk

Jason Agar

Term of Reference:

To inquire into and report on:

1. The events surrounding the denial of tenure to Dr David Rindos by the University of Western Australia (“the University”), and more particularly to:
 - (a) investigate whether the procedures adopted by the University to review and determine the tenure of Dr Rindos and his subsequent appeals were deficient and amounted to a breach of the common law rules of fairness:

Address

Parliament House, Perth WA 6000, Telephone: 222 7222

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TABLE OF CONTENTS

Terms of Reference for the Standing Committee on Public Administration	1
Terms of Reference for the Inquiry into the University of Western Australia	3
Preamble to the Inquiry	5
Preamble to the Report	5
Preamble on the issue of ‘natural justice’ or ‘procedural fairness’ in the context of this inquiry	6
What did the University do?	
1. Dr Rindos’ appointment	7
2. First review of Dr Rindos	12
3. Review of the Department of Archaeology	14
4. Second review of Dr Rindos	15
5. The Archaeology Review Committee (“ARC”) Report, and Dr Rindos returns to the Department of Archaeology	19
6. Investigation of allegations in the ARC Report	21
7. Extensions of Dr Rindos’ appointment	21
8. Merger of Departments of Anthropology and Archaeology	23
9. Third review of Dr Rindos	25
10. Recommendation of Creation of Tenure Review Committee (“TRC”)	29
11. Further extension of Dr Rindos’ probation	31
12. Tenure Review Committee (“TRC”)	31
13. Processes of the TRC	33
14. Reasoning of the TRC	38
15. Vice-Chancellor clarifies Dr Rindos’ academic duties for 1993	41
16. Vice-Chancellor gives TRC report to Dr Rindos for comment	42

Standing Committee on Public Administration

17.	Dr Rindos' response to the TRC report	42
18.	Vice-Chancellor obtained legal advice prior to making decision	43
19.	Vice-Chancellor liaises with other departments for a position for Dr Rindos	44
20.	Vice-Chancellor meets with Dr Rindos	45
21.	Tenure denied	46
22.	Further explanations by Vice-Chancellor stating why tenure was denied	46
23.	Committee's conclusions and recommendations	57

APPENDIX 1 **Committee meetings regarding the inquiry**

APPENDIX 2 **Submissions**

APPENDIX 3 **Report to the Vice-Chancellor by Professor Clyde and Associate Professor Hotop on the Department of Archaeology (31 March 1992).**

**TERMS OF REFERENCE FOR THE STANDING COMMITTEE ON
PUBLIC ADMINISTRATION**

Schedule 1 of the Standing Orders establishes the Standing Committee on Public Administration. The Terms of Reference for the Standing Committee are:

- "1. A Standing Committee on Public Administration is established.
2. The Committee consists of 6 members.
3. The functions of the Committee are:
 - (1) to inquire into and report to the House on the means of establishing agencies, the roles, functions, efficiency, effectiveness, and accountability of agencies and, generally, the conduct of public administration by or through agencies, including the relevance and effectiveness of applicable law and administrative practises;
 - (2) to consider and report on any bill referred to it by the House providing for the creation, alteration or abolition of an agency, including abolition or alteration by reason of privatization; and
 - (3) except as provided in Standing Order 367(c), the Committee shall not proceed to an inquiry whose sole or principal object would involve consideration of matters that fall within the purview, or are a function, of another Committee.
4. In this order:

"Agency" means-

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

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

 - (c) a House of the Parliament, or any Committee or member of either House, or any officer or employee of a department of the Parliament;

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

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

To inquire into and report on -

1. The events surrounding the denial of tenure to Dr David Rindos by the University of Western Australia (“the University”), and more particularly to -
 - (a) investigate whether the procedures adopted by the University to review and determine the tenure of Dr Rindos and his subsequent appeals were deficient and amounted to a breach of the common law rules of fairness;
 - (b) determine what, if any, remedies might be available to Dr Rindos or to make any appropriate recommendations for the swift and equitable resolution of the dispute between Dr Rindos and the University; and
 - (c) make recommendations arising out of the events surrounding the denial of tenure to Dr Rindos concerning the need to maintain integrity, professionalism and international standing of State Universities generally, thereby reinforcing the public confidence in the State tertiary education system.
2. The internal management procedures of the University and the associated administrative decision-making process, including functions of:
 - (i) the Senate as the “governing authority” of the University;
 - (ii) the office of Vice-Chancellor in the internal administration of the University;
 - (iii) the Divisional and Departmental Heads in the decision-making processes of the University relative to other academic members of the Division and Departmental Heads respectively; and
 - (iv) filing and record-keeping systems, to the extent to which the University has installed proper mechanisms to prevent unauthorised interference.

The Committee also resolved that, subject to the operation of Standing Order 324 (repealed on 7 November 1996), all meetings held in relation to this inquiry would be held in public. Standing Order 324 stated that:

“The Standing Committee shall consider application by witnesses to be heard in private session and no evidence or testimony taken in private session may be released without the consent of the committee”.

Preamble to the Inquiry

On 7 November 1996, the Standing Orders of the Legislative Council were amended to repeal the former Standing Committee on Government Agencies, and to create the new Standing Committee on Public Administration (“the Committee”). As part of this process, all of the work and material of the Government Agencies Committee was transferred to the new Committee. This has allowed for the continuation of this inquiry, and for the Committee to report on this inquiry.

The Committee has received in excess of 60 written submissions relevant to this inquiry. They are over 30 volumes of documentation and material reviewed and investigated. In addition, the Committee has heard oral evidence from 20 witnesses (with certain witnesses appearing several times before the Committee). There has been considerable research into the issues of tenure, tenure review, research output and university procedure.

On 7 November 1996, an Interim Report in this matter was tabled by the former Standing Committee on Government Agencies. This report is available upon request from the Legislative Council Committee Office, 1110 Hay Street, West Perth.

Preamble to the Report

The Committee advises that this report is confined to Term of Reference 1(a), and does not attempt to address any issues other than the tenure review process employed by the University to assess Dr Rindos' application for tenure. In particular, this report does not attempt to address issues of personality or personal conflict, insofar as these issues are not relevant to the tenure review process implemented by the University to assess the application for permanency by the late Dr Rindos.

The structure of this report is that each step of the tenure process is examined and commented upon by the Committee. The Committee then raises its issues of concern at the end of the report, before outlining its final conclusions and recommendations.

The Committee acknowledges the assistance of the Clerk of the Legislative Council, Mr Laurie Marquet, and the Committee's two previous Advisory/Research Officers, Mr Chris Richards and Ms Jenny Cutri for their assistance with this inquiry. The Committee thanks Mr Len Roberts-Smith QC for his extensive legal advice to the Committee.

In addition, the Committee acknowledges the input and contribution of the previous members of the Standing Committee on Government Agencies involved in this inquiry, being the Hon Tom Stephens MLC, the Hon Doug Wenn MLC, and the Hon Tom Helm MLC.

Preamble on the issue of 'natural justice' or 'procedural fairness' in the context of this inquiry

In any case where the issue of procedural fairness arises, there are essentially two questions that need to be addressed. The first is whether the requirement for procedural fairness applies at all in the particular circumstances; the second is, if it does apply, what does it require (ie - what is its content) in those circumstances.

As to the first, the common law imposes a duty to observe fair procedures when making statutory decisions which directly and individually affect a person's rights, interests or legitimate expectations. Where a decision has such an effect, the duty will be presumed. It can be displaced, but only by clear legislative expression of an intent to do so.

A decision to deny academic tenure is clearly one which affects an individual's occupation and livelihood, and is in the category of which there is a strong presumption that procedural fairness must be observed.¹ There is nothing in the *University of Western Australia Act 1911* nor the University statutes or regulations which would exclude the rules of procedural fairness in relation to decisions on tenure. It seems to have been accepted on all sides throughout this inquiry that the University was bound to accord Dr Rindos procedural fairness.

The second issue is what procedural fairness actually requires in these particular circumstances.

Fundamentally, procedural fairness requires a fair hearing by an unbiased decision-maker. For a fair hearing, Dr Rindos had to be given notice of relevant matters and a reasonable opportunity to present his case. The decision then had to be made (and be seen to have been made) impartially and with the absence of prejudice.

To some extent, however, these broad statements of principle still beg the question of *exactly* what ought to have been disclosed to Dr Rindos, at what stage, and what opportunity he should have been given to respond. This is because what is required in an individual case depends upon the particular circumstances of it.

Although the need for procedural fairness is not negated merely because an appointment is on probation, its *content* may be adjusted having regard to the central question, namely the suitability of the person for continued employment. As Gibbs CJ said in *O'Rourke v Miller*².

"Natural justice does not require the application of fixed or technical rules; it requires fairness in all the circumstances."

So in Dr Rindos' case, and given the probationary nature of his employment, it was appropriate for the Vice-Chancellor to take into account the wider interests of the

¹Law v Australian Broadcasting Tribunal (1990) 170 CLR 70.

²(1985) 58 ALR 269 at 276.

University as a whole, provided of course that Dr Rindos had been given notice of the matters she was taking into account, and provided that he had a reasonable opportunity to respond to them.

The Committee will now address the specific events and circumstances raised by this inquiry.

WHAT DID THE UNIVERSITY DO?

1. DR RINDOS' APPOINTMENT

Background

- 1.1 In the 1970's, Archaeology as a discipline was first taught at the University as part of the Anthropology Department. The Department of Anthropology was part of the Faculty of Arts.
- 1.2 In 1983, the University established a Chair in Prehistory (in Archaeology) and appointed a Foundation Professor to coincide with the creation of the Centre for Prehistory. In addition to a Professor, two full-time academic staff were transferred from the Department of Anthropology to the Centre for Prehistory. Dr Bowdler was appointed to the position of Professor.
- 1.3 From 1983 to 1988, the Centre for Prehistory functioned as an academic department in terms of teaching and research, but also carried out archaeological consulting work for government departments and the private sector. The income received from this consulting work was used to help fund the academic endeavours of the Centre.
- 1.4 In late 1987, a University Review of the Centre for Prehistory recommended the creation of a Department of Archaeology, which was to be funded from general University funding³. The Centre for Prehistory was retained to co-ordinate and arrange all consulting work performed by both staff and student members of the Department. The Head of the Department of Archaeology was also to have administrative responsibility for the Centre for Prehistory. In 1987/88, two members of the academic staff of the Department of Archaeology left the University. They were replaced in 1989 by a tenurable Senior Lecturer and a contract Lecturer.
- 1.5 On or about 7 October 1988, the position of Lecturer / Senior Lecturer for the Centre for Prehistory (shortly to become the Department of Archaeology) was advertised⁴. The position advertised was at a tenurable Lecturer, or Senior Lecturer level. The advertisement stated that the appointee would be required to start in February 1989.

³The Centre for Prehistory at the University of Western Australia - A Review for the Planning & Appropriations Committee by Michael Scriven (Convener) & John Tonkin, with the assistance of Patricia Vinnicombe (dated 18 April 1988).

⁴Advertisement by the University of Western Australia (dated 7 October 1988) for a tenurable Lecturer / Senior Lecturer for the Centre for Prehistory. The advertisement appeared in the Australian, Nature and the Times.

- 1.6 Dr Rindos, a paleo-botanist with degrees in Sociology, Botany and Evolutionary Biology from Cornell University in the United States, applied for the position.
- 1.7 In a letter dated 6 December 1988 to the Deans of Science and Arts, Professor Bowdler (Head of the Centre for Prehistory) recommended the appointment of Dr Rindos to the position of tenurable Senior Lecturer⁵. Professor Bowdler described Dr Rindos as "*clearly the most senior application in terms of teaching experience*" and expressed the view that despite Dr Rindos being a bit of an unorthodox appointment, the University was "*very lucky to be able to get him*".
- 1.8 Professor Bowdler also referred to Dr Rindos having some five years full-time tertiary teaching experience, and that he had four substantial articles published in leading international journals between 1981 and 1986, as well as numerous other papers and articles. Professor Bowdler also noted that Dr Rindos was the author of a very well respected book, *The Origins of Agriculture; an evolutionary perspective*.
- 1.9 Professor Bowdler's only query was that Dr Rindos was not a mainstream archeologist, with degrees in Sociology, Botany and Evolutionary Biology, and that he had not published in any of the specified fields of Australian Prehistory, historical archaeology or Southeast Asian Prehistory. Professor Bowdler stated, however, that the Selection Committee, (which consisted of Professor Scriven from the Department of Education and Dr de Garis from the Department of History, and Professor Bowdler) agreed that given Professor Bowdler's own skills in mainstream archaeology, and compared with the background of the other suggested appointee, a proper balance within the Department would be achieved with the appointment of Dr Rindos.
- 1.10 Professor Bowdler also noted that Dr Rindos understood that he would need to act as Head of Department during Professor Bowdler's study leave absence from July 1989 to July 1990. Whilst Dr Rindos did not have extensive administrative experience, Professor Bowdler was confident that Dr Rindos would "*bring the same enthusiasm and dedication to bear on it as he does [did] to everything else*."
- 1.11 Professor Bowdler recommended on behalf of the Selection Committee the appointment of Dr Rindos as a tenurable Senior Lecturer in the Centre for Prehistory in her letter to Professor Kepert and Associate Professor Watt, dated 6 December 1988. Professor Kepert (Dean of Science) and Associate Professor Watt (Dean of Arts) were members of the University's Appointment Office.
- 1.12 On 5 January 1989, a letter of offer was sent by the Deputy Vice-Chancellor (Academic), Professor Clyde, to Dr Rindos⁶. This letter offered Dr Rindos an appointment as a tenurable Senior Lecturer at the University, the placement being initially at the Centre for Prehistory, as from February 1989 (or as soon as possible thereafter). The letter was signed by the Deputy Vice-Chancellor (Research), Professor Parfitt.

⁵Letter to Professor Kepert and Professor Watt from Professor Bowdler (dated 6 December 1988).

⁶Letter to Dr Rindos from Professor Clyde (dated 5 January 1989).

- 1.13 The appointment was made subject to the Conditions of Appointment attached to the letter, and subject to the submission of a current and acceptable medical certificate by Dr Rindos.
- 1.14 Clause 5(i) of the Conditions of Appointment stated that:
"A Lecturer will be appointed in terms of and subject to the regulations governing tenure and dismissal for academic staff (see attachment) and unless otherwise stated in the formal offer of employment will be appointed "permanent subject to review" for an initial period of three years from the date of taking up duties⁷."
- 1.15 Dr Rindos' appointment was therefore subject to the regulations governing tenure and dismissal, and was "Permanent subject to Review" for an initial period of three years from the date that he took up his duties.
- 1.16 The regulations governing tenure and dismissal for academic staff ("the regulations") were attached to the Conditions of Appointment. The relevant clauses of the regulations were:

"6(1) A permanent appointment subject to review means an appointment subject to review before the end of a specified initial period which will normally be up to three years of service subject to the power to extend as hereinafter appears. Normally, on the expiry of the initial specified period, an appointment subject to review will be converted into a permanent appointment not subject to review. However, if the Vice-Chancellor so desires he may extend the initial period up to a maximum term of four years before taking action either to convert an appointment to one not subject to review or not.

6(2) Should the Vice-Chancellor, after receiving a report from the Head of Department concerned or other appropriate person, decide not to approve the conversion of a permanent subject to review into a permanent appointment not subject to review, he will give the appointee concerned notice in writing before the expiration of the specified initial period, or any previously approved extension to it, that he does not intend to approve the conversion. Such written notice will set out the ground or grounds for not approving conversion of the appointment with particulars of each ground⁸."

- 1.17 The University also had a Procedures Manual which contained provisions on 'Permanent Appointments Subject to Review', as at 20 September 1991, being:

"A permanent appointment subject to review means an appointment subject to review before the end of a specified period which will normally be up to three years of service subject to the power to extend as hereinafter appears. At the end of each year during the initial three year term of engagement the appointee

⁷Regulations Governing Tenure and Dismissal for Academic staff at UWA (1988).

⁸See footnote 10.

will be required to complete a summary of activities form, and the head of department will be requested to complete a report on the staff member's work during the preceding 12 months. Normally, on the expiration of the initial specified period, an appointment subject to review is converted into a permanent appointment not subject to review. However, if the Vice-Chancellor so desires the initial period may be extended up to a maximum term of four years before taking action either to convert an appointment to one not subject to review or to recommend to the Senate that the conversion be not approved and that the appointment be annulled.

Should the Vice-Chancellor, after receiving a report from the head of department (through the head of division) concerned or other appropriate person, decide not to approve the conversion of a permanent appointment subject to review into a permanent appointment not subject to review, it is required that the appointee concerned be given notice in writing before the expiration of the specified initial period, or any previously approved extension to it, that the Vice-Chancellor does not intend to approve the conversion and will recommend to the Senate that the appointment be annulled on a specified date. Such written notice must set out the ground or grounds for not approving conversion of the appointment, with particulars of each ground. A decision to annul an appointment shall not take effect until notified by the Senate.

All permanent appointments subject to review carry full study leave and pension rights as provided in terms of the Superannuation Scheme for Australian Universities.

N.B. The procedures relating to tenure are currently under review⁹."

1.18 The University of Western Australia Statute No.10 provides at clause 2 that:

"Subject to the Acts, Statutes and regulations and to any resolutions of the Senate, the Vice-Chancellor:

(a) is charged with the duty of promoting the interests and furthering the development of the University;

(b) is responsible for the academic, administrative, financial and other business of the University;

(c) shall exercise a general supervision over the staff and students of the University¹⁰."

⁹An extract for UWA's Procedures Manual (2.4.3) containing the provisions on "appointments subject to review".

¹⁰Statute No 10 outlining the duties of the Vice Chancellor.

- 1.19 Dr Rindos signed the Conditions of Employment on 9 January 1989, accepting the position of Senior Lecturer in the Centre for Prehistory¹¹.
- 1.20 As there were some difficulties in Dr Rindos getting immigration approval, he did not commence work at the University until 13 June 1989. Dr Rindos took up his position as a tenurable Senior Lecturer at the Centre for Prehistory (which later became the Department of Archaeology).
- 1.21 In November 1989, Dr Rindos was first appointed Acting Head of the Department of Archaeology. Dr Rindos held the position of Head of the Department of Archaeology for the periods:
- 1.21.1 6 November 1989 to 8 December 1989¹²; and
- 1.21.2 19 February 1990 to 13 January 1991¹³.
- 1.22 Dr Rindos was also responsible for the running of the Agricultural Origins and North American Pre-History courses for second and third year students.

Committee's Findings:

- 1.23 ***Was the appointment of Dr Rindos as Acting Head of the Department of Archaeology appropriate and fair?***
- 1.24 *Although the selection procedures employed by the University in appointing Dr Rindos were appropriate and fair, the Committee considers that the appointment of Dr Rindos as Acting Head of the Department of Archaeology during the above periods was an error in management by the University, given that Dr Rindos was new to the jurisdiction, and had no experience as either a Head of Department, or as an academic at an Australian University.*
- 1.25 *It is suggested by the Committee that Dr Rindos may have been well served by some assistance or counselling by the University, to assist him in assuming the position of Acting Head of Department in a new jurisdiction. The Committee has been advised by Dr Rindos that he perceived a high level of interference by Professor Bowdler at this time, despite him assuming the position of Acting Head. Alternatively, Professor Bowdler has advised that she only maintained an involvement in the Department whilst on leave with respect to future planning decisions and meetings, and not in a day to day capacity. There is no conclusive evidence to support or refute either of these positions, although it appears to the Committee that the ongoing presence of Professor Bowdler (in whatever capacity) during her study leave, and during Dr Rindos' time as Acting Head of Department would have been disconcerting to Dr Rindos, and may have contributed to the management problems emerging within the Department at this time.*

¹¹Dr Rindos formal acceptance of the offer of employment by UWA (dated 9 January 1989).

¹²Letter to the Government Agencies Committee from Ms Key, UWA Legal Officer (dated 30 May 1996).

¹³Letter to Dr Rindos from Professor Clyde (dated 1 March 1990).

2. FIRST REVIEW OF DR RINDOS

- 2.1 On or about 13 June 1990, Dr Rindos provided a Statement of Academic Activities to Professor Oxnard, the then Head of the Division of Agriculture and Science at the University¹⁴.
- 2.2 On or about 8 August 1990, Professor Oxnard submitted the first year evaluation on Dr Rindos' progress to Mr Watters at the Personnel Services Department of the University¹⁵. Professor Oxnard noted that the Statement of Academic Activities submitted by Dr Rindos showed a satisfactory level of activities had been maintained by Dr Rindos, and that Professor Oxnard approved the continuation of Dr Rindos' appointment. A copy of Professor Oxnard's letter was sent to the Head of Department of Archaeology, who was Dr Rindos at that time.

Committee's Findings

- 2.3 *Was the first review of Dr Rindos' performance adequate and fair?*
- 2.4 *The first review by Professor Oxnard was not considered in the subsequent tenure review process. It is the Committee's view that in terms of the common law rules of fairness, it should have been considered. Although the evidence before the Committee is that Professor Oxnard was consulted by telephone during the subsequent tenure review process, he was not asked formally by the Tenure Review Committee about the performance of Dr Rindos at this stage of his career at the University, and why he was of the view that Dr Rindos' performance was considered satisfactory at this time.*
- 2.5 Sometime in January 1991, Dr Rindos (whilst assuming the position of Acting Head of the Department) met with Professor Oxnard to discuss what Dr Rindos considered to be serious problems within the Department of Archaeology. Dr Rindos had written a memorandum to Professor Oxnard earlier in December complaining of interference and misconduct by Professor Bowdler¹⁶. Dr Rindos also claimed that the Department operated in an environment of fear and intellectual suppression, and that there were questionable funding and employment decisions being made by Professor Bowdler. Dr Rindos further alleged that he had received confidential complaints from students concerning Professor Bowdler's conduct as Head of the Department.
- 2.6 On 15 February 1991, after returning from study leave and re-assuming the position as Head of the Department of Archaeology, Professor Bowdler sent a memorandum to Dr Rindos suggesting areas of his duties as a member of the Department which were "*in need of improvement, in the context of (his) probationary status*"¹⁷. Professor Bowdler further stated in her memorandum to Dr Rindos that some of the points

¹⁴Dr Rindos' Statement of Academic Activities from June 1989-June 1990.

¹⁵Letter to Mr Watters (dated 8 August 1990) from Professor Oxnard.

¹⁶Memorandum to Professor Oxnard from Dr Rindos (dated December 1990).

¹⁷Memorandum to Dr Rindos from Professor Bowdler (dated 15 February 1991).

outlined "arise from my own observation, some from letters of other members of staff, complaints in a less formal mode from students, staff, Faculty Personnel, etc."

Committee's Findings

- 2.7 ***Was the response of the University to Professor Bowdler's memorandum of 15 February 1991 fair and appropriate?***
- 2.8 *It is the Committee's view that Dr Rindos should have been formally counselled at this point by the University about his teaching and research output, and the areas in which his performance were perceived to be deficient by Professor Bowdler. Dr Rindos should have been given the opportunity to respond to these alleged deficiencies as outlined by Professor Bowdler, the Committee noting Professor Bowdler's evidence to the Committee that she allegedly discussed Dr Rindos' deficiencies with him prior to writing this memorandum, although she states that she did not counsel Dr Rindos given that it was not, in her view, her role to do so. The Committee notes that there is no other material critical of Dr Rindos' performance at this time other than Professor Bowdler's memorandum.*
- 2.9 *The Committee also notes the disparity in evidence between Professor Oxnard and Professor Bowdler regarding whether Professor Bowdler carbon copied her negative memoranda about Dr Rindos to Professor Oxnard. The Committee is unable to determine whose evidence is correct on this point, and acknowledges that recollections may differ and change over time. The Committee, however, notes that there is a consistent underlying thread running through the events in this inquiry of extreme tension, personal differences, personality conflicts, and a denial by the University that these issues had an impact on the events in question. The Committee acknowledges that such differences were not always within the control of the University, but the Committee finds it impossible to accept that such issues were NOT relevant to Dr Rindos' position and progress at the University, even at this early point in Dr Rindos' career at the University.*
- 2.10 As from 25 March 1991, Professor Oxnard arranged for Dr Rindos and three postgraduate students to be transferred to the Department of Geography. According to Professor Oxnard, the purpose of the transfer was to diffuse the personal conflict between Professor Bowdler and Dr Rindos, and to allow Dr Rindos to continue to supervise his postgraduate students in an academically compatible environment¹⁸.
- 2.11 The status of Dr Rindos in the Department of Geography, however, is not entirely clear to the Committee, except that the move was to be "budget and staffing neutral"¹⁹ to the Department of Geography. As a result of the transfer, Dr Rindos now was to report to Professor Taylor, Head of Geography, as his academic supervisor.
- 2.12 Following Dr Rindos' relocation to the Department of Geography, on 27 March 1991, Professor Bowdler sent a memorandum to Dr Rindos which specified Dr Rindos'

¹⁸Letter to Professor Gale from Professor Oxnard (dated 19 September 1991).

¹⁹Letter to Ms Smith from Ms Wallace (dated 26 March 1991).

teaching duties for the Archaeology Department for semesters 1 and 2 in 1991, and 1992²⁰.

- 2.13 On 9 and 17 April 1991, Professor Bowdler sent a memorandum to Professor Taylor who was the Head of the Department of Geography at the University²¹. This memorandum set out some matters concerning Dr Rindos' teaching of Archaeology 120, and a revised schedule of lectures for Archaeology 120, in the second semester of 1991. The memorandum also provided that Dr Rindos would not have any teaching duties in relation to Archaeology 120 in the second semester of 1991. Dr Rindos was still expected to co-ordinate and teach Archaeology 212/312, Origins of Agriculture.
- 2.14 On or about 25 June 1991, Dr Rindos was formally notified that he was not contracted to teach the second semester of Archaeology 120²².

3. REVIEW OF THE DEPARTMENT OF ARCHAEOLOGY

- 3.1 In April 1991, the University commissioned a review of the Department of Archaeology by a committee of academics chaired by Associate Professor Neville Bruce of the Department of Anatomy and Human Biology. This committee became known as the Archaeology Review Committee ("ARC"). The University has stated that this review was part of a rolling program of departmental reviews of which Archaeology was the fifth department to be reviewed. The other members of the ARC were Professors Moulden (Department of Psychology) and McBryde (Department of Archaeology - ANU)²³.
- 3.2 In December 1991, a draft report was completed by the ARC ("the ARC Report"). The ARC Report contained 12 recommendations, and highlighted some serious concerns within the Archaeology Department. These concerns included:
- 3.2.1 deep divisions within the Department which had an obvious detrimental effect on the Department in terms of its day to day operations, its image, and morale in terms of both staff and students;
 - 3.2.2 general low morale of students;
 - 3.2.3 serious allegations of inequitable behaviour within the Department, some staff and students had become afraid to speak freely due to fear of public ridicule;

²⁰Memorandum to Dr Rindos from Professor Bowdler (dated 27 March 1991).

²¹(a) Memorandum to Professor Taylor from Professor Bowdler (dated 9 April 1991).
(b) Memorandum to Professor Taylor from Professor Bowdler (dated 17 April 1991).

²²Letter to Dr Rindos from Professor Taylor (dated 25 June 1991).

²³Review of the Department of Archaeology by Professors Bruce, Moulden & McBride. (Archaeology Review Committee)

- 3.2.4 a lack of formalised provision for staff other than the Head of Department to be consulted on departmental issues and to participate in decision-making; and
 - 3.2.5 an oblique questioning of the appropriateness of some of Professor Bowdler's actions as Head of Department, without being specific.
- 3.3 The ARC expressed support for a number of initiatives introduced by Dr Rindos, and acknowledged the urgent need to resolve the division between Dr Rindos and the rest of the Departmental staff.
- 3.4 In its conclusion, the ARC recommended, amongst other matters that:
- 3.4.1 the Vice-Chancellor investigate, as a matter of priority, the management practices within the Department;
 - 3.4.2 the Vice-Chancellor resolve the divisions that had developed within the Department;
 - 3.4.3 the Vice-Chancellor in conjunction with the Equity Officer, investigate purportedly inequitable behaviour within the Department;
 - 3.4.4 that the activities of the Centre for Prehistory be discontinued for the time being. The Department, however, should continue its involvement in research oriented consultancies; and
 - 3.4.5 the Department take immediate steps to ensure that any perceived problems with research supervision are rectified.

4. SECOND REVIEW OF DR RINDOS

- 4.1 On or about 7 June 1991, Dr Rindos submitted to his supervisor, Professor Taylor, a statement (report) of his academic activities for the period from June 1990 to June 1991²⁴.
- 4.2 On or about 11 June 1991, Professor Taylor sent Dr Rindos' statement of academic activities to Professor Bowdler (although she was not currently Dr Rindos' supervisor), for her comments. The reason given by Professor Taylor for consulting Professor Bowdler at this point was that Professor Bowdler had been involved with Dr Rindos' teaching and academic work in the past year²⁵.

²⁴Dr Rindos' Statement of Academic Activities from June 1990 - May 1991 (dated 7 June 1991).

²⁵Letter to Professor Bowdler from Professor Taylor (dated 11 June 1991).

- 4.3 On or about 17 June 1991, Professor Bowdler provided a tenure report on Dr Rindos to Professor Taylor²⁶. The report was entirely negative with respect to Dr Rindos' performance, and his contribution to the University.
- 4.4 Professor Taylor sent Professor Bowdler's tenure review report on Dr Rindos to Professor Oxnard²⁷.
- 4.5 On 13 August 1991, Professor Taylor sent to Professor Oxnard his comments on Dr Rindos' academic performance for the four months he had been attached to the Department of Geography²⁸. Professor Taylor stated that *"he knows little of Dr Rindos' teaching or research work other than what has been reported to him by others."* Professor Taylor stated that although Dr Rindos is clearly colourful and eccentric and that students are either enthused or completely turned off by Dr Rindos' method of teaching, it appears that he is an enthusiastic researcher and *"is a pleasure to have in the Department."*
- 4.6 On 19 September 1991, Professor Oxnard provided a tenure report on Dr Rindos to Professor Gale, Vice-Chancellor of the University²⁹.
- 4.7 On 4 October 1991 Ms Wallace of the Personnel Services Department of the University informed Professor Oxnard that she thought it was appropriate that Dr Rindos be given a written summary of his perceived weaknesses as expressed by Professor Bowdler, and a brief comment as to the progress he had made³⁰. Ms Wallace did not think it appropriate that Dr Rindos see the full report written by Professor Bowdler. Furthermore, as Professor Bowdler wrote the original report, Ms Wallace considered it appropriate that Professor Bowdler be advised that, contrary to her view, Dr Rindos' overall assessment was concluded to be satisfactory.
- 4.8 By letter dated 18 October 1991³¹, Professor Oxnard informed Professor Bowdler that whilst he appreciated her report on Dr Rindos had been entirely negative, he was of the view that Dr Rindos' research and graduate study parts of his activities had proceeded quite well during his time in the Department of Geography. There were, however, elements of his teaching which he needed to pay attention to, and Dr Rindos had been advised of those elements by Professor Oxnard in writing. It appears on evidence before the Committee that Dr Rindos was never provided with a copy of the Professor

²⁶Letter to Professor Taylor from Professor Bowdler enclosing a tenure report on Dr Rindos (dated 17 June 1991).

²⁷Letter to Professor Oxnard from Professor Taylor (dated 17 July 1991).

²⁸Letter to Professor Oxnard from Professor Taylor (dated 13 August 1991).

²⁹Letter to Professor Gale from Professor Oxnard (dated 19 September 1991).

³⁰Memorandum to Professor Oxnard from Ms Wallace (dated 4 October 1991).

³¹Letter to Professor Bowdler from Professor Oxnard (dated 18 October 1991).

Bowdler's report, nor was he provided with a summary of the report other than in the form of Professor Oxnard's letter to him dated 18 October 1991, as outlined below³².

- 4.9 On 18 October 1991, Professor Oxnard wrote to Dr Rindos informing him that he had considered his Activities Report for the second year of his appointment, and had accepted Dr Rindos' performance as satisfactory³³. Professor Oxnard wrote in this letter that although Dr Rindos' research work had improved since he had been moved to the Department of Geography, there were still areas he needed to address, such as the "*logical sequencing of material and the question of assessment*".
- 4.10 On 31 October 1991, Professor Bowdler sent two further memoranda to the Vice-Chancellor (memoranda carbon copied to Professor Oxnard & the Director of Personnel Services). The first was headed "Dr David Rindos: Probation" and the second was headed "Staffing: Department of Archaeology". Both of these memoranda were again most critical of Dr Rindos³⁴.

Committee's Findings

- 4.11 ***Was it appropriate for Professor Taylor to seek the views of Professor Bowdler with respect to Dr Rindos' performance?***
- 4.12 *Professor Bowdler's memorandum of 17 June 1991 was provided to Professor Taylor at his request. Although Dr Rindos had by then been under Professor Taylor's direct supervision in the Department of Geography for four months, Professor Bowdler was the only person who could comment on his teaching in Archaeology. Professor Bowdler's 12 page report was entirely negative and extremely critical of Dr Rindos. It was potentially very damaging to Dr Rindos' prospects for tenure.*
- 4.13 *Given the well known history of animosity between Dr Rindos and Professor Bowdler, it could be viewed as inappropriate for the views of Professor Bowdler to be solicited by Professor Taylor. There is, however, evidence before the Committee that it is proper and courteous practice in academia for a Head of Department to request a report from an academic who specialises in the same particular area as the person being assessed. Although Professor Taylor may have been aware of the animosity between Professor Bowdler and Dr Rindos, the Committee acknowledges that Professor Taylor did not act improperly in consulting Professor Bowdler for her comments with respect to Dr Rindos' performance. In hindsight, however, the Committee suggests that Professor Taylor may have been better served by consulting Professor Oxnard (who was an evolutionary biologist like Dr Rindos), or at least noting Professor Bowdler's comments in his report, and providing a brief opinion in response to her comments.*

³²Dr Rindos transcript of evidence to the Government Agencies Committee (dated 23 May 1996).

³³Memorandum to Dr Rindos from Professor Oxnard (dated 18 October 1991).

³⁴(a) A probation report on Dr Rindos to Professor Gale from Professor Bowdler (dated 31 October 1991).

(b) Letter to Professor Gale from Professor Bowdler (dated 31 October 1991).

4.14 What reliance was placed on the reports of Professor Bowdler?

4.15 *The Committee expresses concern about the Second Review of Dr Rindos' performance. On the evidence before the Committee, it appears that Dr Rindos was not given a copy of Professor Bowdler's report of 17 June 1991, nor was he given a summary of the contents of the report other than in the form of Professor Oxnard's letter of 18 October 1991. In any event, there is evidence that Dr Rindos did not consider it necessary to respond to Professor Bowdler's report in that he assumed that it would be given no status given that he was no longer responsible to Professor Bowdler, since his transfer to the Department of Geography. It is also clear that neither Professor Oxnard nor Professor Taylor placed any weight on Professor Bowdler's report (even though the report had been solicited by Professor Taylor in the first place), given that both Professor Oxnard and Professor Taylor concluded that Dr Rindos' overall performance was satisfactory.*

4.16 *There is clear evidence before the Committee that Professor Bowdler's report of 17 June 1991 was not at any time available to Dr Rindos as part of his personnel file. The Committee considers it significant that the non-disclosure of Professor Bowdler's memorandum of 17 June 1991 to Dr Rindos (and possibly the two memoranda of 31 October 1991) was a deliberate decision made by the Personnel Services Department of the University, yet made with an appreciation of the relevance and importance of their content, however, the Committee also notes that the Personnel Services Department of the University did advise Professor Oxnard to raise these matters with Dr Rindos at this stage. This became apparent when in April 1992³⁵, Dr Partis queried why Professor Bowdler's "very negative" June memorandum and other documents had not been placed on Dr Rindos' personnel file.*

4.17 *The explanation given by the University was that University policy is such that members of staff can view their personnel files on application to the Director of Personnel Services. In his memorandum to the Director of Personnel Services dated 6 May 1992, Mr Slater (Principal Industrial Officer with the Personnel Services Department of the University) stated that:*

"There is only certain information which may be on file which cannot be open to the member of staff and this would be removed before it is made available for viewing. The policy also requires that no statement about a staff member's unsatisfactory work performance (actual or alleged) may be placed on the file without it first being sighted and signed and a copy made available to the officer.

In this situation it is then understandable that Professor Bowdler's comments, Professor Taylor's comments and the "warning notes" should not be on the file since they had not been provided to Dr Rindos.

In this particular case the issues are most sensitive and quite clearly personalities are involved. To place the Bowdler report and indeed Professor Oxnard's full report on Dr Rindos' file would of course mean that he (Rindos)

³⁵Letter to Mr Griffith from Dr Partis (dated 6 April 1992).

would have every right to see them. In the particular circumstances I cannot see that doing so will in any way enhance the situation. **However, those documents (and others) are relevant to the whole situation and must come into consideration**". (the Committee's emphasis added)

and a little later, Slater added:-

"Dr Partis, in his capacity as Head of the Department, should be aware of all the correspondence which has been received - including the "in confidence" memoranda to Professor Oxnard from members of the academic staff of the department (these cannot be put on Dr Rindos' file)³⁶."

- 4.18 It is certainly open to the Committee to conclude that if this material was regarded by the University administration as relevant and was regarded as essential to "come into consideration" with respect to any formal assessment of Dr Rindos (and ultimately of the decision in relation to his tenure), then it was necessarily material of which Dr Rindos should have been informed, and to which he should have been given a proper opportunity to respond - at that stage.
- 4.19 That would not necessarily mean that the reports themselves had to be disclosed. There may be good reasons in a particular case why that should not be done. The essential question is what degree of disclosure is necessary to afford the person concerned a fair opportunity to correct or contradict the allegations³⁷, and when such a disclosure ought to be made. In the present instance, it is open to the Committee to conclude on the evidence before it that neither the material, nor the substance of it was disclosed to Dr Rindos at all. This, in the Committee's view, did not afford Dr Rindos a fair opportunity to address the allegations.

5. THE ARCHAEOLOGY REVIEW COMMITTEE ("ARC") REPORT, AND DR RINDOS RETURNS TO THE DEPARTMENT OF ARCHAEOLOGY

- 5.1 Upon receipt of the ARC Report, the Vice-Chancellor gave a copy to Professor Bowdler to comment upon its factual accuracy.
- 5.2 On 16 January 1992, 2 members of the ARC, Professors Bruce and Moulden wrote to the Vice-Chancellor and the Heads of Science and Arts Divisions (Professor Robson and Professor Jory respectively), with further elaboration of their concerns as contained in the ARC Report³⁸.

³⁶Memorandum to Mr Bandt from Mr Slater (dated 6 May 1992).

³⁷per Lord Denning in *Kanda v Government of Malaya* [1962] AC 322, *Kioa v West* (1985) 159 CLR 550 and *NCSC v News Corp* (1984) 156 CLR at 314-315.

³⁸Letter to Professors Robson & Jory from Professors Bruce & Moulden (dated 16 January 1992).

- 5.3 By letters dated 20 January 1992, and 4 February 1992, Professor Bowdler provided her response to the Vice-Chancellor³⁹. Following receipt of these responses, the Vice-Chancellor temporarily stood down Professor Bowdler as Head of Department, pending further inquiries.
- 5.4 In February 1992, Dr Partis became Acting Head of the Division of Agriculture & Science, taking over from Professor Robson (who had replaced Professor Oxnard).
- 5.5 In or about February 1992, Dr Partis relocated Dr Rindos from the Department of Geography Department back to the Department of Archaeology⁴⁰. Dr Rindos' office was connected to the Department of Archaeology, by a hallway and some steps.
- 5.6 Dr Rindos now came under the direct supervision of Dr Partis, who had assumed the positions of Acting Head of the Department of Archaeology, and Acting Head of the Division of Science and Agriculture.
- 5.7 On 11 February 1992, Dr Rindos made a lengthy submission to the Vice-Chancellor outlining his experiences in the Department of Archaeology, in which he was quite scathing of Professor Bowdler⁴¹.

Committee's Findings

- 5.8 *Was it appropriate and fair to relocate Dr Rindos from the Department of Geography back to the Department of Archaeology?*
- 5.9 The University's evidence before the Committee is that the rationale for bringing Dr Rindos back into the Archaeology building was to reunite the Department, and to reintroduce stability into the Department. This has also been put forward as the reason for requiring Dr Rindos to attend staff meetings, and to reorganise the Department as a single Department rather than there being two rival archaeology programs operating at the one university. The Committee accepts that the University's motivation for transferring Dr Rindos back to the Department of Archaeology may have been a genuine management decision to reunite the Department, and to avoid criticism of the University for wasting public money by operating concurrent programs. The Committee, however, is also of the view that the University's actions were premature in light of the background of personal dispute and animosity between Professor Bowdler and Dr Rindos at this time.

³⁹Letter to Professor Gale from Professor Bowdler (dated 20 January 1992).
Letter to Professor Gale from Professor Bowdler (dated 4 February 1992).

⁴⁰Letter to Dr Partis from Professor Taylor (dated 18 February 1992).

⁴¹Letter to Professor Gale from Dr Rindos (dated 11 February 1992)

6. INVESTIGATION OF THE ALLEGATIONS IN THE ARC REPORT

- 6.1 On 28 February 1992, the Vice-Chancellor engaged Professor Clyde (Department of Civil Engineering) and Associate Professor Hotop (Department of Law) to investigate the allegations raised in the ARC Report⁴².
- 6.2 On or about 31 March 1992, Professor Clyde and Associate Professor Hotop gave a report on their investigation findings to the Vice-Chancellor (“the Clyde/ Hotop report”)⁴³. The Clyde/Hotop report was not released publicly⁴⁴.
- 6.3 The Clyde/Hotop report advised the Vice-Chancellor that further investigation would be necessary to fully substantiate the allegations in the ARC report, although the Clyde/Hotop report did recommend the disestablishment of the Department of Archaeology, and merging it with another Department. This took place in May/June 1992.

7. EXTENSION OF DR RINDOS' APPOINTMENT

- 7.1 Dr Rindos' initial period of employment was due to conclude on 13 June 1992.
- 7.2 By letter dated 13 May 1992, the Vice-Chancellor extended Dr Rindos' appointment by six months until 31 December 1992⁴⁵.

Committee's Findings

- 7.3 ***Was it appropriate and fair for the Vice-Chancellor to extend the appointment of Dr Rindos for a further 6 months?***
- 7.4 *Regulation 6 attached to the Conditions of Appointment states that:*

"6(1) A permanent appointment subject to review means an appointment subject to review before the end of a specified initial period which will normally be up to three years of service subject to the power to extend as hereinafter appears. Normally, on the expiry of the initial specified period, an appointment subject to review will be converted into a permanent appointment not subject to review. However, if the Vice-Chancellor so desires he may extend the initial period up to a maximum term of four years before taking action either to convert an appointment to one not subject to review or not.

6(2) Should the Vice-Chancellor, after receiving a report from the Head of Department concerned or other appropriate person, decide not to approve the

⁴²Letter to Professor Clyde from Professor Gale (dated 28 February 1992).

⁴³Letter to Professor Gale from Professors Clyde and Hotop (dated 31 March 1992).

⁴⁴Clyde/Hotop report was released publicly via the West Australian Newspaper on 9 March 1996.

⁴⁵Letter to Dr Rindos from Professor Gale (dated 13 May 1992).

conversion of a permanent subject to review into a permanent appointment not subject to review, he will give the appointee concerned notice in writing before the expiration of the specified initial period, or any previously approved extension to it, that he does not intend to approve the conversion. Such written notice will set out the ground or grounds for not approving conversion of the appointment with particulars of each ground."

- 7.5 *It was clearly within the Vice-Chancellor's power and jurisdiction pursuant to clause 6(1) of the Conditions of Appointment, that a permanent appointment subject to review could be extended from the initial term of three years to a maximum term of four years before the Vice-Chancellor was obliged to take action, either to convert the appointment to one subject to review or not. If the Vice-Chancellor did not intend to approve the conversion of the appointment of Dr Rindos, written notice had to be provided to Dr Rindos setting out the grounds for the non-approval. Under the terms of clause 6(2), the Vice-Chancellor was only obliged to inform Dr Rindos of the grounds for her decision not to approve the conversion of Dr Rindos' appointment. It is the Committee's view that the Vice-Chancellor acted in the spirit of clause 6(2), and within the rules of common law fairness given that the decision at this stage was merely to extend the initial period of three years, and not to deny approval for the conversion of the appointment of Dr Rindos to one which was 'Permanent Not Subject to Review'.*
- 7.6 By letter dated 5 June 1992, Professor Oxnard wrote to Dr Partis in support of Dr Rindos' teaching and research capabilities given that the case for Dr Rindos' tenure was to be addressed shortly. Professor Oxnard explained to Dr Partis that he wrote Dr Rindos' tenure report last year (September 1991) ..."*not only as his Head of Division responsible for making a contribution to his case, but also as an anthropologist and human biologist competent to discuss his direct scholarly work and teaching. And it is in this latter position that I comment again*"⁴⁶."
- 7.7 On 12 June 1992, Associate Professor Bruce sent a reference in support of Dr Rindos to Dr Partis⁴⁷. Associate Professor Bruce was an academic within the Department of Anatomy and Human Biology at the University, and had been the Convenor of the Archaeology Review Committee, which had reviewed the Department of Archaeology in December 1991.
- 7.8 On 16 June 1992, Associate Professor Bruce also wrote to the Vice-Chancellor in support of Dr Rindos being granted tenure⁴⁸.

⁴⁶Letter to Dr Partis from Professor Oxnard (dated 5 June 1992).

⁴⁷Letter to Dr Partis from Professor Bruce (dated 12 June 1992).

⁴⁸Letter to Professor Gale from Professor Bruce (dated 16 June 1992).

8. MERGER OF DEPARTMENTS OF ANTHROPOLOGY AND ARCHAEOLOGY

- 8.1 One of the recommendations contained in the 'Clyde/Hotop' Report was the dis-establishment of the Department of Archaeology, and the relocation of its members into a larger department. In light of this recommendation, and subsequent discussions between the departments, the Vice-Chancellor accepted the Department of Anthropology's conditions for a merger with the Department of Archaeology in May 1992⁴⁹.
- 8.2 The merger of the two departments was confirmed in the minutes of the meeting of the Academic Council held on 3 June 1992⁵⁰. The minutes of the Fifth Annual meeting of the Faculty of Science held on 9 June 1992 confirmed the merger of the two departments and the qualifications and conditions of the new arrangement⁵¹. By way of letter dated 22 May 1992 from Dr Gordon (Head of Anthropology) to the Vice-Chancellor, the Department of Anthropology agreed to take temporary responsibility for the administration and supervision of the staff and the teaching and research programs for the existing Department of Archaeology subject to qualifications, including⁵²:
- 8.2.1 Dr Rindos and his postgraduate students not be included in the merger arrangement;
 - 8.2.2 The Department of Anthropology only agreed to accept the majority of the Department of Archaeology's staff and postgraduate students as it believed the divisions within the Archaeology Department could only be resolved by separating the contesting parties. Dr Rindos and his postgraduate students were not accepted within the merger;
 - 8.2.3 That the Head of Anthropology receive compensation of a one-off, up-front departmental contribution of \$25,000;
 - 8.2.4 That the appropriate University authority give a commitment to continue the general and academic staffing levels of the existing Department of Archaeology; and that
 - 8.2.5 The arrangement for the administration and supervision of the staff, and the programs of the existing Department of Archaeology cease no later than 31 December 1994.
- 8.3 The acceptance of the Department of Anthropology's conditions resulted in Dr Rindos remaining with the Division of Agriculture and Science under the direct supervision

⁴⁹Letter to Dr Gordon from Professor Gale (dated 25 May 1992).

⁵⁰Minutes of a meeting of the UWA Academic Council (dated 3 June 1992).

⁵¹Minutes of the Fifth Annual Meeting of the UWA Faculty of Science (dated 9 June 1992)

⁵²Letter to Professor Gale from Dr J Gordon (dated 22 May 1992).

of Dr Partis. The postgraduate students supervised by Dr Rindos were attached to the Department of Geography.

Committee's Findings

8.4 *Was the merger of the departments of Anthropology and Archaeology detrimental to Dr Rindos?*

8.5 *Although the Committee recognises the University's management decision in merging the two departments, the Committee considers that the exclusion of Dr Rindos from the merger arrangement was clearly detrimental in terms of the personal impact on Dr Rindos' reputation and his self-esteem. The Committee also queries whether this reuniting of the departments was a legitimate attempt by the University to unite and reconcile the divisions within the Department of Archaeology at this time given that Dr Rindos was expressly excluded from the merger, even though his funding remained with the Department of Archaeology. This made it virtually impossible for Dr Rindos to be placed within any other department of the University given that he was not financially supported.*

8.6 *Was the merger of the departments of Anthropology and Archaeology fair and appropriate?*

8.7 *The Committee does not consider the merger of the two departments, to the exclusion of Dr Rindos, was fair and appropriate given that it was not a correct and reasonable implementation of the Clyde/Hotop report. The Clyde/Hotop report was concerned with the professional conduct of Professor Bowdler and the administration of the Department of Archaeology, and not the status of Dr Rindos. The Clyde/Hotop report put forward possible solutions to the problems that the Department was encountering, one such solution being the merger of the two departments to address the issue of Professor Bowdler and alleged (mal)administration within the Department. The Clyde/Hotop report's reasoning for this possible solution was:*

"It will be necessary to be seen to be addressing these matters [allegations that Professor Bowdler appeared to be indulging in academic thuggery] and one way this may effectively be done would be to disestablish the Department of Archaeology and locate its members in a larger department where Professor Bowdler would fall under the official supervision, in terms of the Industrial Award, of the Head of Department"⁵³. [See appendix 3 for full report]

8.8 *Further, it is clear to the Committee that a review of the terms of merger shows that personality differences and conflict were prevalent in the University's decision-making processes at this stage, despite later denials by University administration that issues of personality played no part in Dr Rindos' denial of tenure (the Committee's emphasis added).*

⁵³See footnote 42.

9. THIRD REVIEW OF DR RINDOS

- 9.1 On or about 15 July 1992, Dr Rindos submitted his 1992 (Third) Statement of Academic Activities to his appointed supervisor, Dr Partis⁵⁴.
- 9.2 In July 1992 and following discussions with Ms Evans (an Industrial Officer with the Federated Australian University Staff Association - 'FAUSA'), Dr Partis decided that two academics from the Eastern States would be invited to act as assessors in reviewing Dr Rindos' performance and research output. This decision to brief outside independent assessors was made in consultation with Dr Rindos and FAUSA⁵⁵.
- 9.3 One assessor, Professor Allen, Chairperson of the Department of Archaeology at La Trobe University, was nominated by Dr Partis, and the other assessor, Dr Jones of ANU, was nominated by Dr Rindos. Dr Partis approached the two academics and asked them independently to comment on Dr Rindos' research performance, the central issue being whether Dr Rindos' performance was of a quality that would be required to confirm tenure as a Senior Lecturer.
- 9.4 On 10 August 1992 Dr Partis sent letters to Professor Allen and Professor Jones asking them to act as independent assessors on the research performance of Dr Rindos⁵⁶.
- 9.5 The assessors were asked whether Dr Rindos' research performance was "*of the quality that would be required to confirm tenure as a Senior Lecturer.*" There have been claims by Dr Rindos that the documentation forwarded to the two assessors was incomplete and out of date. The evidence before the Committee, however, is that each of the assessors had the following documents on which to base their assessment:
- 9.6 **Professor Allen**
- 9.6.1 Although Professor Allen states that he no longer has the materials sent to him, he recalls that he was provided with the following documents⁵⁷:
- curriculum vitae of Dr Rindos, and an accompanying statement to Dr Rindos' application for tenure;
 - some of Dr Rindos' academic articles; and
 - as he was merely reviewing Dr Rindos' research output whilst at the University, Professor Allen states that he did not need to seek additional material, although

⁵⁴Dr Rindos' 1992 (Third) Statement of Academic Activities presented to Dr Partis (dated 15 July 1992).

⁵⁵ (a) Letter to Ms Evans from Dr Partis (dated 5 June 1992).
(b) Letter to Dr Partis from Ms Evans (dated 19 June 1992).
(c) Letter to Ms Evans from Dr Partis (dated 7 July 1992).

⁵⁶(a) Letter to Professor J Allen from Dr Partis (dated 10 August 1992).
(b) Letter to Professor R Jones from Dr Partis (dated 10 August 1992).

⁵⁷Letter to the Government Agencies Committee from Professor Allen (dated 21 October 1996).

Professor Allen has stated in correspondence that he had read much of Dr Rindos' earlier published work.

9.7 Dr (now Professor) Jones

- 9.7.1 • states that he had a full list of Dr Rindos' research publications and other relevant documents. This is understood to be Dr Rindos' curriculum vitae and the accompanying statement to Dr Rindos' application for tenure⁵⁸.

- 9.8 On 19 August 1992, Professor Allen provided a report on Dr Rindos' research performance to Dr Partis. Professor Allen concluded:

"The fact that none of these papers has yet appeared and that at most three are refereed papers does not reflect a strong research achievement by Dr Rindos. His central research interests seem better suited to a general anthropology department than a specific archaeological one and this also makes assessment of his research difficult. On face value, however, this research record would not offer strong support for Dr Rindos' appointment to a tenured senior lectureship if he were applying to this University⁵⁹."

- 9.9 On 5 October 1992, Dr Jones provided his report on Dr Rindos' research performance to Dr Partis. Dr Jones concluded:

"If however a decision has to be made now, then I think that the question that you have asked me should be phrased somewhat differently as 'Is Dr Rindos' research achievement, reputation and potential commensurate with the post and responsibilities of Senior Lecturer?' I have clearly indicated that I believe that Dr Rindos has an international reputation in the theoretical field of the relationship between archaeology and biology, and he is also widely recognised as having written an important book on one of the key questions of world prehistory. My answer to my own rhetorical question, is despite the slight reservations discussed above, the verdict must be 'yes'⁶⁰."

- 9.10 On 2 and 23 November 1992, Dr Partis sent reports to the Vice-Chancellor recommending that tenure not be granted to Dr Rindos⁶¹. One of Dr Partis' recommendations to the Vice-Chancellor in his letter of 2 November 1992 was that his recommendation of a denial of tenure to Dr Rindos be considered by a Tenure Review Committee consisting of the Vice-Chancellor, the Acting Deputy Vice-Chancellor, Professor Robson, Professor Jory and Dr Partis himself⁶².

⁵⁸Letter to the Government Agencies Committee from Professor Jones (dated 6 December 1996)

⁵⁹Letter to Dr Partis from Professor Allen (dated 19 August 1992).

⁶⁰Letter to Dr Partis from Dr Jones (dated 5 October 1992).

⁶¹ Letters to Professor Gale from Dr Partis (dated 2 November 1992 & 23 November 1992).

⁶²Letter to the Professor Gale from Dr Partis recommending that a Tenure Review Committee be established (dated 2 November 1992).

Committee's Findings

- 9.11** *Was it fair and appropriate for the University to appoint Professor Allen and Dr Jones to assess Dr Rindos' research performance?*
- 9.12 *Is it accepted by the Committee that the decision to brief outside and independent assessors was reached after consultation between the University and Dr Rindos, and his Union representative, Ms Evans. Dr Partis stated in his letter of 10 August 1992 to Professor Jones and Professor Allen that "it is unlikely that I can obtain an impartial and informed opinion from within this institution." Whilst commending this decision by Dr Partis to seek independent advice if impartiality was an issue, the Committee is of the view that the subsequent actions of Dr Partis appear incongruous with this effort to maintain impartiality and independence. Dr Partis felt the need to seek advice outside of the University for two reasons as stated to the Vice-Chancellor in his letter of 10 August 1992. These were firstly, the fact that he was not an archaeologist, and secondly, that he was not confident in the objectivity of any in-house process of review of Dr Rindos' performance. The Committee queries whether Dr Partis gave due consideration to the advice of the independent assessors, given that he recommended most conclusively that Dr Rindos be denied tenure, despite Dr Jones' supportive report.*
- 9.13 *Dr Partis also recommended to the Vice-Chancellor the creation of the Tenure Review Committee which was an in-house procedure to review Dr Rindos' application for tenure. This does not appear consistent with Dr Partis' earlier lack of confidence in the University to reach an impartial and informed opinion given the history of events surrounding Dr Rindos' application for permanency. The Committee does not question the independence or suitability of Professor Allen and Dr Jones to advise on this matter. The Committee only queries the subsequent actions of Dr Partis in light of this independent advice. Dr Partis could have provided both assessors and the TRC with a statement of his reasons for rejecting their advice, given that he was the instigator of soliciting their advice in the first place.*
- 9.14 *There has also been some contention as to the adequacy of the materials and information supplied to each of the assessors by Dr Partis. After an examination of all the evidence, the Committee is of the view that the data and information supplied to each of the assessors was adequate, and nor was it prejudicial to Dr Rindos' case for tenure. It is clear that the assessors' brief was to examine research output and performance in the time that Dr Rindos had been at the University, and at no time prior to this three year period.*
- 9.15 *On the balance of the evidence before the Committee, this is common procedure, and in any event, was at the discretion of the University.*
- 9.16 *Dr Rindos has claimed that he was never shown copies of the two separate reports Dr Partis provided to the Vice-Chancellor, and thereby he did not have a chance to rebut the allegation that he demonstrated an inability to work with other academics of the Department of Archaeology. On the evidence before the Committee, it is unclear whether Dr Rindos was shown the reports of Dr Partis, although it appears that he had at the very least been informed about them. It is the Committee's view, however,*

that Dr Rindos should have been given the opportunity to comment on the assertion by Dr Partis that he was unable to get along with, and work with, other members of the Department of Archaeology.

9.17 *Professor Bowdler's memorandum of 17 June 1991 is also relevant to Dr Partis' reports to the Vice-Chancellor dated 2 and 23 November 1992 recommending that tenure not be granted to Dr Rindos.*

9.18 *Although apparently conceding that Dr Rindos' inability to work within the Department was as much the fault of others as of Dr Rindos himself, Dr Partis noted that he was "unacceptable" to the Department of Anthropology (which by then had responsibility for teaching the courses in Archaeology), and as no other department would take him (it seems principally, but not exclusively, because the University administration would not provide any additional funding to do so - which Dr Partis fails to make clear), Dr Partis concluded that the situation in which Dr Rindos found himself was;*

".....largely of his own making"

and accordingly, Dr Partis recommended that Dr Rindos be denied tenure.

9.19 *The material which Dr Partis had before him when he made this recommendation included at least Professor Bowdler's memorandum of 17 June 1991, and probably all three of Professor Bowdler's memoranda, none of which Dr Rindos had seen.*

9.20 *The crux of Dr Partis' reasoning underlying his recommendation was the*

"internecine dispute in which Dr Rindos was a main player"

and that

"Dr Rindos has become - has allowed himself to become - the focal point of a dissident group which lost no opportunity to denigrate other individuals in the other faction...."

and that

"Dr Rindos was appointed as a staff member in the Department of Archaeology and proved quite incapable of working within that Department."

9.21 *In short, it appears to the Committee that the substance of Dr Partis' concern was that Dr Rindos was in conflict with Professor Bowdler and the remaining academic staff of the Department of Archaeology (Drs O'Connor, Veth & Lilley), could not work with them, and seemingly could not be put anywhere else.*

9.22 *Without itself attempting to go into the merits of this situation one way or another, the Committee is of the view that it was incumbent on Dr Partis to have addressed the merits of the situation before recommending denial of tenure.*

- 9.23 *For example, had Dr Rindos stance towards Professor Bowdler, and the remaining academic staff of the Department of Archaeology been shown to have been justified, a different recommendation on tenure might possibly have been made by Dr Partis.*
- 9.24 *This possibility seems not to have been entertained by Dr Partis, who appears to have proceeded on the assumption that if there was dissension within the Department, then it should be resolved by denying tenure to the 'newcomer' irrespective of the correctness of, or justification for his position.*
- 9.25 *It is therefore open to the Committee to conclude that Dr Rindos was denied procedural fairness in that the recommendation to deny tenure had been made on the basis of:-*
- 9.25.1 *material, which included adverse material which was never shown to Dr Rindos, and the substance of the material had not been made known to him; and*
- 9.25.2 *without regard to an important relevant consideration, namely the merits or otherwise of the reason for Dr Rindos' inability to work with Professor Bowdler and the remaining academic staff of the Department of Archaeology.*
- 9.26 *The Committee's finding that there had been a denial of procedural fairness at this stage does not necessarily entail a finding that the eventual decision to refuse tenure was vitiated for that reason. That is because this was only a recommendation made at one stage in the decision- making process, and the law recognises that when such a process involves different steps or stages before a final decision is made, the requirements of procedural fairness are satisfied if:*
- "the decision-making process, viewed in its entirety, entails procedural fairness⁶³."*
- 9.27 *The next stage at which Professor Bowdler's memorandum of 17 June 1991 became relevant was in the deliberations of the Tenure Review Committee (TRC).*

10. RECOMMENDATION OF CREATION OF TENURE REVIEW COMMITTEE ("TRC")

- 10.1 In a letter dated 2 November 1992 to the Vice-Chancellor (which accompanied Dr Partis' report on Dr Rindos), Dr Partis recommended the creation of the TRC, consisting of the Vice-Chancellor, Acting Deputy Vice-Chancellor, Professor Robson, Professor Jory and Dr Partis himself.

⁶³Ainsworth v Criminal Justice Commission (Qld) at ALJR 276 - supra
South Australia v O'Shea (1987) 163 CLR 378 per Mason J at 389.

- 10.2 In a letter dated 6 November 1992, Dr Partis called a meeting of the proposed TRC at 7.30 am on Thursday, 12 November 1992⁶⁴. This meeting of the TRC was cancelled by the Vice-Chancellory on the advice of the University's Personnel Services Department. Personnel Services was of the view that it would be inappropriate for the Vice-Chancellor and Dr Partis to serve on the TRC. The final members of the TRC were determined by the Vice-Chancellor on the advice of Personnel Services. These were Professor R Wood, Professor A Robson, Professor J Jory, Mrs B Robbins, and Professor A Cohen.
- 10.3 In his report of 2 November 1992, Dr Partis considered three broad areas of relevance. These were teaching activities, research and departmental/University activity.
- 10.4 In addition, Dr Partis recommended to the Vice-Chancellor that Dr Rindos be denied tenure.
- 10.5 In his supplementary report, which had been requested by Personnel Services, dated 23 November 1992, Dr Partis stated on page two that:

"In the first place it should be crystal clear that he [Dr Rindos] has been quite unable to work with the other specialists in the field. He has had a major destabilising effect on the discipline of Archaeology and, according to a number of reports, has been prepared to personally denigrate other staff members".

"The heart of the case for denying tenure is that Dr. Rindos has demonstrated no capacity for working with the other members of the academic staff....The Department of Anthropology, which is charged with responsibility for the discipline of Archaeology, is not prepared to accept him under any circumstances. Their stand is entirely justified by the behaviour of Dr. Rindos and by his unwillingness to work with other Archaeologists. I believe that the University has no option but to deny tenure⁶⁵."

Committee's Findings

- 10.6 *Was Dr Rindos given an opportunity to address the allegations contained in Dr Partis' report to the Vice-Chancellor?***
- 10.7 *Although it appears that Dr Rindos was not given the opportunity to respond to the specific allegations contained in the report of Dr Partis at the time, those allegations were raised by Dr Rindos in his response to the TRC's report.*

⁶⁴Letter to all members of the TRC from Dr Partis (dated 6 November 1992).

⁶⁵Supplementary tenure report on Dr Rindos by Dr Partis to Professor Gale (dated 23 November 1992).

11. FURTHER EXTENSION OF DR RINDOS' PROBATION

- 11.1 On 10 December 1992, the Vice-Chancellor exercised her discretion and extended Dr Rindos' probationary period of employment "*for the period necessary*"⁶⁶ to allow her to consider and decide on the report of the specially convened TRC.

12. TENURE REVIEW COMMITTEE ("TRC")

- 12.1 In December 1992 and following Dr Partis' recommendation, the Vice-Chancellor set up the special TRC, comprised of the following Members⁶⁷. (the final members of the TRC were appointed by the Vice-Chancellor on the recommendation of Ms Zanetic, Director of Human Resources⁶⁸)

Professor R Wood	:	Chair and Acting Deputy Vice-Chancellor
Professor A Robson	:	Senior Academic Member and former Head of Division of Agriculture and Science - acting as the Director of the Co-operative Research Centre for Legumes in Mediterranean Agriculture
Professor J Jory	:	Senior Academic Member and Head of the Division of Arts and Architecture
Mrs B Robbins	:	Senate Member (UWA)
Professor A Cohen	:	Senate Member (UWA)

Observers

Ms K Evans	:	FAUSA
Ms S Zanetic	:	Director of Human Resources

- 12.2 In letters of instruction dated 21 December 1992 to members of the TRC⁶⁹, the Vice-Chancellor asked for assistance in reaching a decision under regulation 6 of Dr Rindos' appointment. The Vice-Chancellor specifically requested "*a Report from the Committee with a recommendation as to whether or not Dr Rindos' appointment should be converted to a "Permanent Appointment Not Subject to Review.*" The Vice-Chancellor further advised that "*the report should clearly specify the reasons for the recommendation which is made.*"
- 12.3 In her letter of instruction to the TRC members, the Vice-Chancellor specifically stated that "*(s)hould the Committee members contemplate a recommendation that tenure not*

⁶⁶Letter to Dr Rindos from Professor Gale (dated 10 December 1992).

⁶⁷Memorandum to Professor Wood from Professor Gale (dated 7 December 1992).

⁶⁸Letter to Professor Gale from Ms Zanetic (dated 2 December 1992)

⁶⁹(a) Letter to Professor Wood from Professor Gale (dated 21 December 1992).
 (b) Letter to Professor Robson from Professor Gale (dated 21 December 1992).
 (c) Letter to Professor Jory from Professor Gale (dated 21 December 1992).
 (d) Letter to Professor Cohen from Professor Gale (dated 21 December 1992).
 (e) Letter to Ms Robbins from Professor Gale (dated 21 December 1992).

be granted, I would expect the Committee to first provide Dr Rindos with an opportunity to respond in writing to any matters adverse to his case which are of concern to Committee members."

Committee's Findings

12.4 Was the setting up of the TRC by the Vice-Chancellor appropriate and fair?

12.5 In principle, there can be nothing wrong with the decision by the Vice-Chancellor to establish a Committee to make inquiries and a recommendation to her in relation to a tenure application by a member of staff. It was incumbent upon the TRC to accord Dr Rindos procedural fairness. Were that done, the Vice-Chancellor would be entitled to have regard to the TRC's findings and recommendation when making her decision. The only qualification would be that if additional adverse information or material was before her which had not been before the TRC, this should have been disclosed to Dr Rindos and an opportunity given to him to respond to it⁷⁰.

12.6 In terms of common law fairness, it is clear that the Vice-Chancellor ensured that the TRC members were aware, and had to provide Dr Rindos with a right of written reply should any adverse allegations be made against him which were to be relied upon in a decision not to grant tenure by the TRC.

12.7 The Committee, however, reiterates its view that the setting up of an in-house review procedure appears incongruous with Dr Partis' earlier concerns about objectivity and impartiality within the University. The attribution of concern by Dr Partis seems to have its genesis in his letters to Professors Allen and Jones wherein whilst seeking their assistance as independent assessors of Dr Rindos' research performance he commented that:-

"The difficulty I face is that I am not myself an archaeologist, and it is unlikely that I can obtain an impartial and informed opinion from within this institution".

12.8 Later, in his tenure report to the Vice-Chancellor dated 2 November 1992, Dr Partis explained:

"Earlier in the year I decided it would be difficult to get an objective opinion on his research activities (sic:from) within this University."

⁷⁰South Australia v O'Shea (1987) 163 CLR 378;73 ALR 1; Haoucher v Minister for Immigration and Ethnic Affairs (1990) 169 CLR 648;93 ALR 51.

13. PROCESSES OF THE TRC

13.1 On the evidence before the Committee, it appears that the TRC met twice.

13.2 At the first meeting, the TRC members⁷¹:

13.2.1 Established that there would be three separate criteria for assessing Dr Rindos' case for tenure, these being teaching, research and University service. It was also agreed that in reaching a decision, the TRC would weight teaching and research most heavily;

13.2.2 Determined that discussion of each criterion should seek to establish the validity of the available data and, to the degree possible, avoid unsubstantiated opinions;

13.2.3 Discussed each criterion, and agreed privately to record their judgement as to whether or not they felt Dr Rindos' performance had already been satisfactory or not satisfactory on that criterion; and

13.2.4 Agreed to discuss all three criteria, and then provide their judgement on each criteria and their summary recommendation.

13.3 At the conclusion of the first meeting, the TRC unanimously recommended that Dr Rindos not be granted a "*Permanent Appointment Not Subject to Review*".

13.4 The TRC decided, however, to allow Dr Rindos an opportunity to provide further data and to answer questions which were raised during their discussions.

13.5 By letter dated 15 January 199[3] to Dr Rindos, Professor Wood asked Dr Rindos to answer some questions⁷². Professor Wood also requested additional information of Dr Rindos. The essence of the questions and information requested from Dr Rindos was the following:

13.5.1 A statement as to why Dr Rindos believed he had been removed from the teaching of Archaeology 120, and also the reasons he had been given as to why he had been removed.

13.5.2 A list of the courses Dr Rindos had taught since arriving at the University.

13.5.3 A statement as to the status of each of Dr Rindos' postgraduate students.

⁷¹Report of the Tenure Review Committee to Professor Gale from Professor Wood (dated 24 February 1993).

⁷²Letter to Dr Rindos from Professor Wood (dated 15 January 199[3]).

- 13.5.4 Advice as to the current status of Dr Rindos' 1992 publications listed in his statement of academic activities, as the TRC had found it difficult to judge the articles listed as "in press" and the three articles listed as "in review".
- 13.5.5 Advice as to whether any 1989 publications were published after Dr Rindos' arrival at the University.
- 13.5.6 A list of Dr Rindos' publications for the period 1989 - 1992, with each publication categorised as either: a book review; a book chapter; a refereed journal article or non-refereed journal article.
- 13.6 By memorandum dated 29 January 199[3], Dr Rindos provided his responses to the TRC's questions and request for additional information⁷³.
- 13.7 At the second meeting of the Committee, Dr Rindos' replies were discussed.
- 13.8 Professor Jory was absent overseas at the time of the second meeting. Consequently, he provided his final views, after reading Dr Rindos' responses to the TRC's questions, to Professor Wood in a letter dated 16 February 1993⁷⁴.
- 13.9 The material reviewed by the TRC was the responsibility of Professor Wood, and comprised the following:
- 13.9.1 Dr Partis' reports on Dr Rindos, and his recommendation that tenure be denied;
- 13.9.2 an assessment of Dr Rindos' teaching in Archaeology 120 in first semester prepared by the teaching assessment office at the University;
- 13.9.3 two statements of activities prepared by Dr Rindos titled "Yearly Report 1992" and "Statements of Academic Activities June 1991 - 1992";
- 13.9.4 two independent opinions on Dr Rindos prepared by Professor Allen and Dr Jones;
- 13.9.5 letters to the Head of Division and Vice-Chancellor about Dr Rindos, including testimonials from staff and students who wrote on Dr Rindos' behalf and from other Archaeological staff at the University stating they could not work with Dr Rindos;
- 13.9.6 interviews with Professors Moulden and Taylor. Professor Moulden was a member of the Archaeology Review Committee (ARC) convened in December 1991;

⁷³Letter to Professor Wood from Dr Rindos (dated 29 January 1993).

⁷⁴Letter to Professor Wood from Professor Jory (dated 16 February 1993).

- 13.9.7 report of a telephone conversation with Professor Oxnard; and
- 13.9.8 Dr Rindos' responses to the questions raised by the TRC.
- 13.10 After reviewing the above material the TRC voted unanimously, at its second meeting, to deny Dr Rindos tenure.
- 13.11 The TRC in reaching its recommendation stated that it focused its evaluations of Dr Rindos on his performance in the period since his appointment to the University. The evidence before the Committee is that there are no specific quantitative standards for evaluating teaching, research, and University service. Instead, the TRC sought to establish if Dr Rindos' performance in each of those areas for the period since he commenced at the University was at a level that would normally be expected of a Senior Lecturer. The members of the Committee relied largely on the experience of Professors Robson and Jory, to determine the level that would normally be expected of a Senior Lecturer.

Committee's Findings

13.12 *The TRC was provided with material which included:*

- 13.12.1 *the statement of academic activities submitted by Dr Rindos to Dr Partis; and*
- 13.12.2 *Dr Partis' reports to the Vice-Chancellor dated 2 and 23 November 1992.*
- 13.13 *It is not clear on the evidence before the Committee whether or not Professor Bowdler's 17 June 1991 memorandum was an attachment to either of Dr Partis' reports. In any event, it appears that favourable reports from Professors Oxnard and Professor Taylor were not referred to by Dr Partis in his submission and recommendation to the TRC.*
- 13.14 *Although the TRC Chair, Professor Wood, wrote to Dr Rindos on 15 January 199[3] seeking further information and answers to questions, neither the content nor the substance of Dr Partis' reports (nor of Professor Bowdler's 17 June 1991 memorandum) was at any time made known to Dr Rindos.*
- 13.15 *The TRC report of 24 February 1993 by Professor Wood sets out the approach taken by that Committee in coming to its unanimous recommendation that Dr Rindos be denied tenure.*
- 13.16 *On the issue of Dr Rindos' ability or inability to work with others, Professor Wood referred to Dr Partis' comments and to other counter veiling opinions and added:*

"The Committee accepted that there was a camp that felt that Dr Rindos could not work with others and another camp that felt he was highly capable and would succeed in the right environment. Several people in the camp that supported Dr Rindos partly agreed with the position stated by Dr Partis, in

that they doubted that the environment would ever be right for Dr Rindos at the University of Western Australia because of his personality and behaviour in relation to some colleagues. Others among his supporters felt that the problems that Dr Rindos has experienced in his dealings with colleagues were due to factors that were beyond his control. I mention all this to highlight that the Committee was not able to judge the correctness of the opinions expressed. Dr Rindos has attracted strong support from some people and harsh criticism from others. While recognising the issues involved on both sides, the Committee was of the view that neither the support for Dr Rindos nor the criticisms of him, were predominant. In this context, in which positive and negative views of Dr Rindos' performance counterbalanced each other, our judgments of Dr Rindos' performance were based on the most objective data that were available to us."

13.17 *On the interpersonal relationships Professor Wood wrote:*

"The Committee relied most heavily on the data that were provided by Dr Rindos himself...by individuals that Dr Rindos recommended to the Committee...and judgments from the two Archaeologists approached by Dr Partis...We did not consider the impact of interpersonal relationships and the actions of other staff on Dr Rindos' performance over the last three and a half years. This was not meant to refute the position taken by Dr Partis in presenting his recommendation that Dr Rindos not be granted a "Permanent appointment not Subject to Review". In his role as Head of Division, Dr Partis would have had more direct knowledge of these issues. The Committee felt that the documented evidence available to them could not be used to produce a valid assessment of how these factors impacted on Dr Rindos' performance or whether these factors were beyond Dr Rindos' control."

13.18 *According to Professor Wood, the TRC confined itself to three criteria as affording the most objective indicators, they being teaching, research and University service. Ultimately, the TRC set the University service criterion aside, and focused on Dr Rindos' teaching and research contributions. Their conclusion on the former was that:*

"Dr Rindos' teaching performance was judged to be satisfactory, but not any better";

and on the latter, the TRC concluded that Dr Rindos' research output had not been at a satisfactory level for the three and a half years since he joined the University. Professor Wood then observed that:

"As mentioned in my earlier comments, Dr Rindos' performance was satisfactory prior to his joining the University of Western Australia and we were unable to judge whether the drop in his research output over the last three and a half years was due to factors that were attributable to him or beyond his control. I would stress that the Committee based its judgments solely on the research output mentioned above and set aside the possible

effects of external circumstances that may have affected Dr Rindos' performance in this area."

13.19 *There is some indication that Professor Bowdler's 17 June 1991 memorandum was before the TRC and was taken into account by at least one member of it, as were the claims of Dr Rindos' inability to work with others.*

13.20 *The Committee considered the judgment of the TRC in context, and finds that the setting aside of external circumstances by the TRC, such as environment and Dr Rindos' ability to work with others was inappropriate, and such factors should have been given due weight as relevant considerations in Dr Rindos' application for tenure. In addition, such major issues of personality conflict and environment would, in the Committee's view, have had substantial influence on the TRC Members' background to Dr Rindos' application, and would certainly have affected the nature of the evidence before the TRC and therefore should have been acknowledged.*

13.21 *In a letter to Professor Wood dated 16 February 1993, one of the members of the TRC, Professor Jory wrote:*

"I understand that the tenure review committee which was considering the case of Dr David Rindos met and made a decision while I was overseas and that you now wish me to give my assessment of the case presented by Dr Rindos in response to your letter of 15 January 1992[3]. I have carefully read all the documentation provided once again and will respond according to the specific questions raised in that letter before giving a general summary."

and later, under the heading "General Conclusions", Professor Jory observed:-

"According to the documents, since his arrival Rindos has received an unfavourable report from his Head of Department (Bowdler), has been suspended from teaching first year students by his Head of Division (Oxnard), has produced little in the way of research considering his light teaching load, and most importantly for the University, has been involved in creating an atmosphere in which his colleagues and superiors find it impossible to co-operate with him or he with them. I also note the advice of the Head of the Division of Agriculture and Science (Partis) that tenure not be granted. All these considerations together with the discussion at the first meeting of the tenure review Committee and Rindos' subsequent response lead me to the conclusion that tenure not be granted. However, before the final decision is made I would urge the Committee seek some clarification from Professor Oxnard of the precise reasons he judged Rindos unsuitable for or incapable of teaching Archaeology 120."

(This first point was later resolved by Professor Oxnard informing the TRC that in his role as Head of Division, he took Dr Rindos off the Archaeology 120 course for Dr Rindos' own benefit, and not because he felt Dr Rindos was performing poorly).

13.22 *Notwithstanding his reference to the unfavourable report from Professor Bowdler, Professor Jory told the Committee that he thought he had seen Professor Bowdler's*

reports not as part of the tenure review process, but in the context of the Vice-Chancellor's (later) submission to the Ombudsman⁷⁵. The Chair of the TRC, Professor Wood stated that he had not read Professor Bowdler's reports nor did he do so after the event⁷⁶.

- 13.23 *The reference in Professor Jory's letter to the unfavourable report from Professor Bowdler may have been merely a reflection of the observation made in Dr Partis' second report that:*

"It should be recalled that at the time of the second progress review on Dr Rindos, in mid-1991, there was a hostile report from the then Head of Archaeology, Professor S Bowdler...."

although the Committee considers it is more likely that Professor Jory had read Professor Bowdler's report in the first instance.

- 13.24 *In the context of the considerations of procedural fairness, it could be argued that Professor Bowdler's memoranda were 'constructively' before the TRC, but that raises particularly difficult questions and becomes otiose in light of what follows.*

14. REASONING OF THE TRC

- 14.1 The TRC officially based its decision on three factors:

- 14.1.1 That the University recently had adopted a commitment to high quality teaching;
- 14.1.2 Increasing use of contract employment to avoid appointments until the University was sure of a candidate's quality; and
- 14.1.3 All staff granted tenure in the previous three years had a higher level of performance, although the Committee did acknowledge that if you were to look further back, you would find tenured academics with lower productivity.

- 14.2 The above conclusions were not verified at the time the TRC met, but were accepted on the verbal advice of Professor Robson who chaired the Promotions Consultative Committee at the University.

- 14.3 The TRC then explained the data they used in reaching their decision. The TRC noted that Dr Rindos had attracted strong support from some people and harsh criticism from others. While recognising the issues involved on both sides, the TRC was of the view

⁷⁵See transcript of evidence from Professor John Jory to the Government Agencies Committee (dated 31 May 1996, page 47).

⁷⁶See transcript of evidence from Professor Robert Wood to the Government Agencies Committee (dated 9 September 1996, page 3).

that neither the support for Dr Rindos nor the criticisms of him were predominant. According to the TRC, when positive and negative views of Dr Rindos' counterbalanced each other, the TRC's judgements of Dr Rindos' performance were based on the most objective data available to the Committee.

14.4 Notwithstanding these reservations, the TRC still came to very firm conclusions about Dr Rindos' performance. The members of the TRC found:

14.4.1 That it was difficult to judge Dr Rindos' contribution to university service independently of criticisms made by fellow archeologists at the University. The only evidence relating to Dr Rindos' university service was statements about his term as Head of the Department of Archeology, and in his own descriptions of service on departmental committees and projects. The latter was considered to be an acceptable level of input but not one which would have limited his teaching and research contributions in any way;

14.4.2 The TRC decided to place little weight on this criterion, and instead decided to focus upon Dr Rindos' teaching and research contributions;

14.4.3 Dr Rindos' teaching had been "satisfactory, but not any better" (than satisfactory); and that

14.4.4 Dr Rindos' research output had not been at a satisfactory level for the three and a half years since he had joined the University. Dr Rindos' performance prior to this time, however, had been satisfactory.

14.5 In deciding what constituted Dr Rindos' research output, the TRC made the following rules:

14.5.1 Only research from June 1989 was considered (ie after Dr Rindos' arrival at the University);

14.5.2 "In press" articles were only considered as research output if they were close to publication. Evidence of a manuscript being close to publication would include a signed book contract or a letter from an editor indicating likely publication;

14.5.3 Two of Dr Rindos' publications referred to in his Statement of Activities were "reprints" of earlier works and therefore were not included as research output;

14.5.4 Two out of three of Dr Rindos' 1989 publications were not included because they did not have a University of Western Australia address, notwithstanding that they were not credited to another University; and

14.5.5 None of Dr Rindos' published book reviews were included as research output.

*Committee's Findings***14.6** *Did the TRC fairly assess Dr Rindos' application for tenure?*

- 14.7 *The TRC did not ask Dr Rindos about his university service, or his ability to get on with the other members of the Archaeology Department, and this has been a strong point of contention before the Committee. The question of whether Dr Rindos' research output was affected by environmental factors around him was not taken into account by the TRC. Such environmental factors may include, for example, stress or personal conflict. Although the evidence before the Committee is that opinion is strongly divided on the weight to be given to this issue, the Committee is of the view that the TRC was under an obligation to take into account the serious environmental factors relevant to Dr Rindos' application for permanency. These environmental factors included, in Dr Rindos' case, his early placement as Acting Head of Department in an unknown jurisdiction and Department, his continuing dislocation and transferral between departments, and the degree of conflict between the various factions at the University. By isolating Dr Rindos' application for tenure from the environment in which he worked and taught, and constraining its deliberations to research output, the Committee suggests this impacted adversely on the TRC's decision-making process. It was not appropriate or realistic to ignore matters that were central to Dr Rindos' application for tenure.*
- 14.8 *The Committee notes that Professor Wood explained in his evidence that he stressed the circumscribed nature of the inquiry to his Committee members. The Committee is concerned that there are no minutes in existence to document these instructions from Professor Wood, nor to show any continuity between the first and second meetings of the TRC. By not minuting its proceedings, the TRC leaves itself open to the charge that proper procedures were not followed in its deliberations and findings. The Committee suggests that it would have been useful for all parties concerned for the proceedings of the TRC to have been recorded and made available to the interested parties to ensure accountability, and transparency of process.*
- 14.9 *Although the decision of the TRC clearly was unanimous, it is not clear to the Committee whether the members arrived at their conclusions on the basis of the circumscribed criteria. Professor Wood explained that he deliberately circumscribed the range of the criteria the TRC would examine. These were to be research, teaching and administration. The context in which these were performed was not to be considered by the TRC. It was to be left to the Vice-Chancellor to take account of context, and possible mitigating circumstances as she saw fit.*
- 14.10 *Professor Jory gave evidence that the review by the TRC actually did take 'other things...into consideration - his moves, dislocation, the move to geography.' It is therefore of concern to the Committee that members of the TRC were evaluating on different sets of criteria, and may not have adhered strictly to the criteria of research, teaching and administration, as outlined by Professor Wood. Some of the members of the TRC may have been influenced by Dr Partis' submission which was not concerned with the three criteria, as it appears that Dr Partis was satisfied with Dr Rindos' research and teaching performance and based his decision to deny tenure to Dr*

Rindos on the grounds of his alleged inability to work with other members of the Department.

- 14.11 *The TRC has been criticised by Dr Rindos and other parties for not including a member who had experience in the discipline of archaeology. Given that the archaeological community of Western Australia is small, it possibly would have been difficult for a member to be appointed to the TRC who would have been perceived as 'independent' by all parties involved. The TRC did not appear to explore the option of appointing an Eastern States academic in archaeology to sit on the TRC, although the views of Professor Allen and Dr Jones may have satisfied this requirement. The Committee considers that the TRC may have been better served by the input of a member who was, at the least, experienced in an area related to Dr Rindos' area of expertise.*
- 14.12 *The Committee is also concerned that the TRC, in assessing satisfactory performance and research output, did not peruse the academic history of Professor Bowdler as part of this process, given that she was the only other tenured archaeologist at the University. Her research output and academic performance may have provided guidance to the TRC as to what was considered as satisfactory research output in the archaeology discipline.*
- 14.13 *Further, the Committee is concerned that the TRC met for two brief meetings only, and had made a conditional decision at its first meeting to deny Dr Rindos tenure. The Committee is surprised that at its first one hour meeting, the members of the TRC felt sufficiently able to grasp complex issues such as research output and academic performance, and were able to digest and deliberate upon large submissions and a considerable amount of documentation in reaching their decision to deny tenure to Dr Rindos.*

15. VICE-CHANCELLOR CLARIFIES DR RINDOS' ACADEMIC DUTIES FOR 1993.

- 15.1 In a letter dated 1 March 1993, the Vice-Chancellor confirmed to Dr Rindos that pending the outcome of the University's decision on tenure, he would have no undergraduate teaching duties⁷⁷. Dr Rindos' duties included postgraduate supervision and research. The Vice-Chancellor also stated that the reduced workload was expected to assist Dr Rindos in doing research, and in achieving publication.

Committee's Findings

15.2 *Were the actions of the University fair and appropriate?*

- 15.3 *It should be noted that the letter from the Vice-Chancellor is addressed to Dr Rindos at the Department of Geography, and provides that Dr Rindos' supervisor was to be Professor Williams, Head of the Division of Agriculture and Science. The Committee considers that the University acted properly in advising Dr Rindos of his revised*

⁷⁷Letter to Dr Rindos from Professor Gale (dated 1 March 1993).

workload, and by giving him the opportunity to focus on his research and publication output. It is curious to the Committee, however, why the letter from the Vice-Chancellor to Dr Rindos dated 1 March 1993 was addressed to Dr Rindos, care of the Department of Geography. It appears possible that the Vice-Chancellor was not aware, or was not informed of Dr Partis' decision to relocate Dr Rindos back to the Department of Archaeology from the Department of Geography.

- 15.4 *There is not sufficient evidence before the Committee to conclusively state that the Vice-Chancellor was not aware of Dr Rindos' relocation, but the Committee suggests that there appears to have been an apparent breakdown in communication between the Vice-Chancellor and the Head of Division, Dr Partis, at this time.*

16. VICE-CHANCELLOR GIVES TRC REPORT TO DR RINDOS FOR COMMENT

- 16.1 By letter dated 2 March 1993, the Vice-Chancellor, before making her final decision on Dr Rindos' tenure, invited him to respond to the report of the TRC⁷⁸.
- 16.2 As Dr Rindos was under medical treatment until 9 April 1993, the Vice-Chancellor extended the time for his response until 16 April 1993⁷⁹.

Committee's Findings

- 16.3 ***Were the actions of the University fair and appropriate?***

- 16.4 *The Committee acknowledges the actions of the University at this point by the Vice-Chancellor's decision to afford Dr Rindos the opportunity to respond to the report of the TRC, and by extending Dr Rindos' response period due to his ongoing medical treatment.*

17. DR RINDOS' RESPONSE TO THE TRC REPORT

- 17.1 By memorandum dated 15 April 1993, Dr Rindos gave his response to the TRC report to the Vice-Chancellor⁸⁰.

Committee's Findings

- 17.2 ***Was Dr Rindos afforded a fair opportunity to respond to the TRC report?***

- 17.3 *The Committee acknowledges that Dr Rindos was afforded a fair opportunity to respond to the findings of the TRC's report.*

⁷⁸Letter to Dr Rindos from Professor Gale enclosing a copy of the TRC 's report (dated 2 March 1993).

⁷⁹(a) Letter to Dr Rindos from Professor Gale (dated 19 March 1993).
(b) Letter to Dr Rindos from Professor Gale (dated 29 March 1993).

⁸⁰Letter to Professor Gale (VC) from Dr Rindos (dated 15 April 1993).

18. VICE-CHANCELLOR OBTAINED LEGAL ADVICE PRIOR TO MAKING A DECISION

18.1 In or about May 1993 the Vice-Chancellor sought legal advice from Mr Zelestis QC on the status of Dr Rindos' employment contract.

18.2 On 4 May 1993 Mr Zelestis QC advised on the following issues⁸¹:

18.2.1 Whether the Vice-Chancellor had a discretion to grant tenure, notwithstanding a recommendation by an ad hoc Committee that tenure be denied?

[*Advice:* The discretion to grant or refuse tenure rests solely with the Vice-Chancellor, and therefore she is not bound by the recommendation of the TRC.]

18.2.2 In making a decision on tenure, was the Vice-Chancellor obliged to consider the individual merits of the applicant for tenure and, if so, to what extent could the Vice-Chancellor take into account the interests of the University?

[*Advice:* Pursuant to section 2 of the *University of Western Australia Statute No 10*, the Vice-Chancellor is "specifically charged with the duty of promoting the interests and furthering the development of the University", and she is responsible for the academic and administrative business of the University (see also s. 27(2) of the *University of Western Australia Act 1911*, as amended). Therefore, when exercising the power under regulation 6, the Vice-Chancellor must exercise the power consistently with the fundamental duty imposed on her by section 2 of the *University of Western Australia Statute No 10* ie she must exercise it bona fide in the best interests of the University as a whole.]

18.2.3 The weight that can be accorded to the Vice-Chancellor's assessment of the best interests of the University and the individual merits of the applicant.

[*Advice:* As there is no indication in the regulations as to the weight to be given to the various considerations, it is likely that it will be for the decision maker and not any court or other tribunal to determine. However if inadequate or excessive weight is attributed to a particular factor, this may result in a decision which is manifestly unreasonable and open to challenge.]

18.2.4 If the Vice-Chancellor elected to not grant tenure, may she then terminate the applicant's employment?

⁸¹Letter to Professor Gale from Mr Zelestis QC (dated 4 May 1993).

[*Advice:* An applicant who is appointed "permanent subject to review" does not come within the regulations which provide for suspension or termination of employment (regulation 8) in accordance with award provisions. An appointment "permanent subject to review" merely ends at the expiry of the relevant period of the appointment by virtue of a combination of the efflux of time and refusal to grant tenure.]

Committee's Findings

18.3 *Did the University act fairly and appropriately in seeking legal advice at this point?*

18.4 *The Committee considers it appropriate that the University sought independent legal advice at this point.*

19. VICE-CHANCELLOR LIAISES WITH OTHER DEPARTMENTS FOR A POSITION FOR DR RINDOS

19.1 On or about 6 May 1993, the Vice-Chancellor enquired whether the Department of Anatomy and Human Biology, or the Department of Geography were willing to find a suitable position for Dr Rindos within their respective Departments. The letter from the Vice-Chancellor stated that there was no central funding available for recurrent positions (ie) they would need to fund the position from funds generally allocated to the individual department⁸².

19.2 The Departments of Geography and Anatomy & Human Biology each responded to the Vice-Chancellor that they were unable to find a position for Dr Rindos, as they did not have the necessary required funding⁸³.

19.3 In his response dated 14 May 1993, Professor McGeachie (Head of the Department of Anatomy and Human Biology) noted Dr Rindos' international reputation as an archaeologist, his ongoing research and his teaching as worthy of support. However, given the Department's resourcing problems, it could not take on Dr Rindos, as his work was not directly related to the Department's academic endeavours.

19.4 Professor McGeachie concluded that after consulting with Professors Oxnard and Bruce, they agreed that Dr Rindos' academic status as a Lecturer should be maintained and if necessary, he could become affiliated with the Department of Anatomy and Human Biology. However, Dr Rindos would have to come fully-funded from the appropriate Division's resources because the Department did not have a recurrently funded position available for Dr Rindos.

⁸²(a) Letter to Professor McGeachie from Professor Gale (dated 6 May 1993).

⁸³(a) Letter to Professor Gale from Professor Taylor (dated 13 May 1993).

(b) Letter to Professor Gale from Professor McGeachie (dated 14 May 1993).

Committee's Findings**19.5 Were the actions of the University fair and appropriate in endeavouring to relocate Dr Rindos?**

19.6 *It is apparent that an effort was made to relocate Dr Rindos but it is also arguable that this effort was made too late, and was inadequate given that an offer to fund Dr Rindos' position was not forthcoming from the Vice-Chancellor. Further, the Committee considers that more discussion could have focused on the transfer of Dr Rindos' existing funding to another Department, particularly if he was simply performing the same duties but merely in another Department. The Committee also queries why the issue of funding was only raised at this late stage in the tenure review process given that it had been an issue since the merger of the Department of Archaeology with Anthropology in June 1992.*

19.7 *The Committee considers that there was a communication breakdown between the Vice-Chancellor and the Departments where she was attempting to re-allocate Dr Rindos. The Vice-Chancellor, in her letter to Professor McGeachie dated 6 May 1993 stated that "there was no central funding available for recurrent positions", to which Professor Taylor (Geography) and Professor McGeachie ((Anatomy & Human Biology) replied that they could not take on Dr Rindos as the position came unfunded. The Committee explored this issue with the Vice-Chancellor, who, in her transcript of evidence dated 8 July 1996 stated that:*

"Funding would have gone with the appointment [Dr Rindos'] if he had students and research grants because that is how people are paid. I was prepared to put in money from the emergency funding to see any department over a period".⁸⁴

19.8 *The Committee considers that as Dr Rindos had a relatively high number of postgraduate students, which would have greatly assisted him in attracting funding, it was incumbent on the Vice-Chancellor to outline, in greater detail, how Dr Rindos could have been financially absorbed into another department. The Vice-Chancellor stated in her evidence that Professor McGeachie was referring to a former system and therefore was out of date when he informed her that he could not fund Dr Rindos' appointment. Therefore, the Vice-Chancellor should have made Professor McGeachie aware of the new system whereby new staff funded their own appointment.*

20. VICE-CHANCELLOR MEETS WITH DR RINDOS

20.1 At a meeting between Dr Rindos and the Vice-Chancellor on 20 May 1993, the Vice-Chancellor informed Dr Rindos that no options existed for his placement at the University. The Vice-Chancellor said she would provide Dr Rindos with letters from the Departments of Geography, Anatomy & Human Biology and Anthropology confirming that they were unable, or unwilling to take him on [It appears that Dr

⁸⁴See transcript of evidence from Professor Gale to the Government Agencies Committee (dated 8 July 1996, page 35).

Rindos was provided with all these letters except from Geography]. The Vice-Chancellor, at this meeting, raised the issue of a voluntary separation package with Dr Rindos.

- 20.2 Dr Rindos made a submission to the Vice-Chancellor, by memorandum dated 24 May 1993, disputing the claim that other departments were unwilling or unable to appoint him to their departments⁸⁵. Dr Rindos made a number of submissions regarding his possible placement within other Departments at the University, and the contribution he could make to those departments. It is unclear whether the Vice-Chancellor requested this information from Dr Rindos.
- 20.3 On 24 May 1993, the Vice-Chancellor informed Dr Rindos that "*Further to the contact you have had with my office today, I advise I do not require any further communication from you regarding your possible placement in other departments within the University.*"
- 20.4 The Vice-Chancellor then asked immediate advice as to whether Dr Rindos was prepared to discuss a voluntary separation package.

21. TENURE DENIED

- 21.1 On 10 June 1993, the Vice-Chancellor informed Dr Rindos that she had decided not to convert his appointment to a "*Permanent Position Not Subject to Review*", and that accordingly his employment was to be terminated on 13 June 1993⁸⁶.

22. FURTHER EXPLANATIONS BY VICE-CHANCELLOR AS TO WHY TENURE WAS DENIED

- 22.1 On 17 June 1993 Mr Crampton, a Federal Industrial Officer with FAUSA, wrote to the Vice-Chancellor and requested further and better particulars of the reasons for her decision to deny tenure to Dr Rindos⁸⁷.
- 22.2 On 29 June 1993 the Vice-Chancellor replied to Mr Crampton stating that the TRC had been unanimous in its recommendation not to grant tenure⁸⁸.
- 22.3 The Vice-Chancellor confirmed she had also taken into account Dr Rindos' ability to be an effective member of an existing University academic programme. The Vice-Chancellor wrote that it was essential in granting tenure that there be a long term role for an academic, however this was not the case for Dr Rindos.

⁸⁵Memorandum to Professor Gale from Dr Rindos (dated 24 May 1993).

⁸⁶Letter to Dr Rindos from Professor Gale (dated 10 June 1993).

⁸⁷Letter to Professor Gale from Mr Crampton (dated 17 June 1993).

⁸⁸Letter to Mr Crampton from Professor Gale (dated 29 June 1993).

- 22.4 In a second response to Mr Crampton⁸⁹, the Vice-Chancellor stated that Dr Rindos had been given ample financial support as well as time to prove that he could be a productive member of the University. The Vice-Chancellor noted that Dr Rindos' academic performance since his appointment in 1989 had not met with the University's standard for conversion to permanency. Furthermore, there was no department or program within the University where he could be placed, and thereafter be able and expected to perform satisfactorily.

Committee's Findings

22.5 *Was Dr Rindos afforded a fair and reasonable opportunity to state his case?*

- 22.6 *The Vice-Chancellor (prior to making her final decision on Dr Rindos' tenure), gave Dr Rindos the opportunity to make submissions on the TRC's report and its recommendations on 2 March 1993. This period was also extended as Dr Rindos had been undergoing medical treatment at the time.*
- 22.7 *The Vice-Chancellor, prior to making her final decision, also received a submission from Dr Rindos on possible departments in which he might be placed. In the submission, Dr Rindos discussed the responses (provided by the Vice-Chancellor to Dr Rindos after the meeting of 20 May 1993) by the respective Heads of the Departments of Geography, Anatomy & Human Biology and Anthropology who had confirmed that they were unable or unwilling to employ him, on the terms provided by the Vice-Chancellor.*
- 22.8 *It is the view of the Committee, that the time given by the Vice-Chancellor to Dr Rindos to comment on the TRC's report appears to have been adequate. The Committee in particular notes that the Vice-Chancellor extended the time for reply due to Dr Rindos' illness. The Committee is unclear as to whether the Vice-Chancellor requested a submission from Dr Rindos on his possible placement within other departments, or that Dr Rindos made the submission of his own volition. Therefore, the Committee cannot comment on whether the Vice-Chancellor gave appropriate consideration to Dr Rindos' submission, given that she had previously (20 May 1993) raised with Dr Rindos the issue of a voluntary separation package in her meeting with him.*
- 22.9 *In terms of the question of procedural fairness, any notice should be adequate in the sense of giving the recipient sufficient time and information to prepare and present his case effectively, and arrange to attend a hearing or make written submissions.*
- 22.10 *The person likely to be affected by the decision should be given sufficient particulars of the allegation and the grounds upon which it is based, so that he or she is able to understand the nature and ambit of that allegation and is able to prepare a response to the allegation. Provision of the particulars of the allegations also assists in defining the issues⁹⁰. A reasonable opportunity to present a case should include a reasonable opportunity to prepare the case before being called upon to present it. This should*

⁸⁹Letter to Mr Crampton from Professor Gale (dated 6 July 1993).

⁹⁰Aerophore Seafood Products Pty Ltd v Landos (1988) 16 ALD 519 at 520.

include time to prepare supporting evidence and consider a tribunal's (or in this case the Vice-Chancellor's) evidence and case.

- 22.11 *In relation to the TRC's report and its recommendations, the report clearly contained sufficient particulars of the areas in which Dr Rindos' performance was considered not to be satisfactory, and the evidence upon which it relied.*
- 22.12 *Adverse material which is personal to the individual affected, and which has been obtained from another source, must be disclosed to the affected person and an opportunity provided to explain or rebut the material⁹¹. [often referred to as the disclosure requirement.]*
- 22.13 *In the case of Kioa v West⁹², the Court considered it a breach of procedural fairness to decide to deport a prohibited immigrant without disclosing adverse allegations made against him in a departmental report.*
- 22.14 *It is sufficient simply to disclose the substance of the adverse material, particularly if the issue of confidentiality arises.*
- 22.15 *It is immaterial that the decision-maker disclaims reliance on the undisclosed material⁹³. Provided it is affirmatively shown that the undisclosed material was not only available but actually consulted⁹⁴, the breach of procedural fairness will not be condoned merely because the breach was not shown to have affected the substantive decision⁹⁵. Such information creates a real risk of prejudice, albeit subconscious, as well as creating an appearance of unfairness⁹⁶. If it can be shown that the undisclosed material was consulted, then there will have been a breach of procedural fairness.*
- 22.16 *It is the Committee's view that the non-disclosure of adverse material supplied by another person is of particular importance to the case of Dr Rindos. If it can be shown that the TRC or the Vice-Chancellor had access to, or consulted adverse material on Dr Rindos which had not been disclosed to him, then there will have been a breach of procedural fairness. The fact that the undisclosed adverse material is claimed not to*

⁹¹Kioa v West (1985) 159 CLR 550.

⁹²Kioa v West (1985) 159 CLR 550.

⁹³Kioa v West (1985) 159 CLR 550.

⁹⁴Bromby v Offenders Review Board (1990) 22 ALD 249 (CA NSW). However, because liberty was at stake, Kirby P (dissenting) applied a more stringent test of whether the undisclosed material could have been considered.

⁹⁵Kioa v West (1985) 159 CLR 550, Wilson J at 603, Deanne J at 633; Minister for Immigration & Ethnic Affairs v Taveli (1990) 23 FCR 162 (FC), French J at 184 - 185; A University council was held to have proceeded unfairly when it instructed to set aside additional undisclosed adverse material (but at least one member of the body did take it into account) : Re Macquarie University: Ex P Ong (1989) 17 NSWLR 113 (visitor assessed by Hope JA).

⁹⁶Kioa v West (1985) 159 CLR 550, Brennan J at 629, Deanne J at 633; Minister for Immigration & Ethnic Affairs v Taveli (1990) 23 FCR 162, Foster J at 199.

have substantially affected the University's final decision to deny tenure to Dr Rindos is immaterial.

22.17 *Dr Rindos in his submission to the Vice-Chancellor dated 15 April 1993 stated that:*

22.17.1 *none of the negative evidence cited in the TRC report had been provided to him for response or rebuttal, including the names of the accusers, the nature of the complaints and the evidence on which the complaints were based; and*

22.17.2 *the written recommendations by Dr Partis had never been supplied to him. Dr Rindos alleged that he did not therefore have the opportunity to rebut any false or misleading statements made against him.*

22.18 *It also appears from evidence given by some members of the TRC (Professors Jory and Robson) that they also had seen adverse reports on Dr Rindos by Professor Bowdler. In the case of Professor Jory, it is evident that he consulted this adverse report in reaching his recommendation, as he refers to Professor Bowdler's report in the letter dated 16 February 1993 to Professor Wood, setting out his views and recommendation on whether Dr Rindos should be granted tenure.*

22.19 *The substance of the adverse comments by Dr Partis in his reports of 2 and 23 November 1992 and Professor Bowdler's reports of 17 June 1991 and 31 October 1991 should have been notified to Dr Rindos. It was not necessary that the entire reports be disclosed to Dr Rindos, only that the substance of the adverse comments should have been disclosed. It appears on this particular aspect, that there was a breach of the rules of procedural fairness by the University.*

22.20 *On 2 March 1993, the Vice-Chancellor sent to Dr Rindos a copy of the TRC Report and invited him to comment on it. He subsequently provided to her a twenty six page response dated 15 April 1993. In that, he specifically addressed, amongst many other issues, the effect of "whistle-blowing" on his tenure, and his alleged inability to work with other staff.*

22.21 *As to the former he argued that the issue of his tenure could not be separated from his complaints about professional and ethical problems within the Department of Archaeology.*

22.22 *As to the latter, he suggested that perception too had its genesis in those same complaints, and he sought further details of the material which had been relied upon so that he might respond to it.*

22.23 *More generally, Dr Rindos contended:-*

"These general problems are of prime relevance to the case regarding my tenure, and any judgment on my tenure can only be made after a full review of the effects of these problems upon myself and my students. There is no doubt that they have played a major role over the past several years, on my activities as Archaeology Head, on the quality and nature of interpersonal relationships

in that Department and its successor, and on my freedom and ability to carry out my normal academic activities."

22.24 *The Vice-Chancellor sought legal advice on the exercise of her tenure discretion. Zelestis QC provided an opinion dated 4 May 1993. One question upon which he was asked to advise was whether the Vice-Chancellor was obliged to consider the individual merits of the applicant for tenure and if so, to what extent she may take into account the interests of the University. The advice was that although individual merit was a relevant consideration, the ultimate criterion to be applied in deciding whether or not to grant tenure was whether the best interests of the University as a whole would be served by the grant or refusal of tenure.*

22.25 *Whilst the Committee agrees with this advice, that proposition in no way derogates from the requirement to accord with the requirements of procedural fairness. As Zelestis QC pointed out:-*

*"If a decision is taken to refuse tenure in this case, there should be careful compliance with the notice requirement contained in the concluding part of regulation 6(2) so as to ensure that reliance is placed upon all available grounds, that is, **grounds in respect of which Dr Rindos was given an opportunity to be heard and which led the Vice-Chancellor to her decision.**" (the Committee's emphasis added)*

22.26 *The Vice-Chancellor wrote to Dr Rindos on 10 June 1993 advising him of her decision not to grant tenure.*

22.27 *She stated that the grounds for her decision were those upon which the TRC recommendation was based and:*

22.27.1 *that in relation to the suggestion that interpersonal difficulties had militated against his research activities, his relocation to the Geography Department and the previous extension of probation were designed to assist him;*

22.27.2 *that in his response Dr Rindos had made it clear that difficulties between him and Professor Bowdler remained ever present;*

22.27.3 *the scope of the Archaeology program was under scrutiny and some reductions had already been made; and*

22.27.4 *"the broader implications for the University." (unspecified)*

22.28 *On the evidence as it stands, it is difficult for the Committee to determine whether or not the Vice-Chancellor did in fact take the negative memoranda from Professor Bowdler into account in deciding to deny tenure. There appears to be nothing in the documentation which would conclusively show that one way or another, subject to what is outlined below.*

22.29 *In her testimony to the Committee, the Vice-Chancellor was unable to say with certainty when she saw the memorandum dated 15 February 1991, although she conceded she was aware of its existence and of its negative content⁹⁷. The Vice-Chancellor did say that the memorandum did not influence her decision to deny tenure given that it:*

"was only one of many factors."

22.30 *The Vice-Chancellor was similarly uncertain about when she read the 17 June 1991 memorandum from Professor Bowdler, although she thought she had read it prior to making her decision to deny tenure.*

22.31 *It is certainly open to the Committee to find that the Vice-Chancellor was influenced by the memoranda from Professor Bowdler (any one of them), and thereby procedural fairness necessitated disclosure of them (or the substance of them) to Dr Rindos and that he must be given a fair opportunity to correct or contradict them⁹⁸. Although the Vice-Chancellor denies relying on the negative memoranda, it is clear that they were considered as one of a number of factors, and the Personnel Services Department of the University had considered their importance, and had chosen not to disclose them or their content to Dr Rindos. This, in the Committee's view, is a breach of procedural fairness.*

22.32 *Where adverse material has been received and not disclosed to the person affected, the law does not require him to show that it did in fact work to his prejudice, it will be sufficient that it might do so (the Committee's emphasis added). As Lord Denning said in Kanda⁹⁹,*

"The court will not go into the likelihood of prejudice. The risk of it is enough".

22.33 *In a similar vein, it is ordinarily immaterial that the decision-maker disclaims reliance on undisclosed adverse material, probably because such information creates a real risk of prejudice, albeit perhaps subconscious, as well as creating an appearance of unfairness¹⁰⁰.*

22.34 *In Re Macquarie; ex parte Ong¹⁰¹, a university council was held to have proceeded unfairly where it was instructed to set aside additional undisclosed material but which at least one member did take into account.*

⁹⁷Transcript of evidence provided by Professor Gale to the Government Agencies Committee (8 July 1996, page 16).

⁹⁸Lord Denning in *Kanda v Government of Malaya* (1962) AC 322, 337.

⁹⁹Lord Denning in *Kanda v Government of Malaya* (1962) AC 322 at 337.

¹⁰⁰*Kioa v West* (1985) 159 CLR 550 per Wilson J at 603 and Brennan J at 629 and Deane J at 633.

¹⁰¹(1989) 17 NSWLR 113

- 22.35 *In the present case, therefore, the Committee finds that the memoranda from Professor Bowdler were before the Vice-Chancellor and that procedural fairness required disclosure and a proper opportunity to respond to them. The next question is whether sufficient disclosure and opportunity to respond was given to Dr Rindos.*
- 22.36 *It is apposite here to bear in mind that it will not be a denial of procedural fairness to rely on material personal to the individual where he or she is aware of the relevance of the material and has had the opportunity to deal with it.*
- Nor is disclosure required of material which does not raise matters of fact calling for a reply because they have already been addressed by the person in detail¹⁰².*
- 22.37 *The Committee has considered whether in the end Dr Rindos was sufficiently apprised of the substance of Professor Bowdler's complaints (albeit without identifying their source) and (or alternatively) whether the effect of non-disclosure was obviated by him dealing with those matters in any event in his response to the Tenure Review Committee Report, before the Vice-Chancellor made her decision.*
- 22.38 *The Committee considers there was no such disclosure or opportunity, and that Dr Rindos did not have the opportunity with the relevant issues in his response of 15 April 1993. The Committee's finding in this regard goes to any earlier denials of procedural fairness in respect of that material.*
- 22.39 *Even a deficiency in procedural fairness which has arisen at a primary level due to a primary decision-maker's reliance on undisclosed adverse material may be cured by subsequent disclosure and opportunity to respond prior to the determination of an appeal from the primary decision¹⁰³.*
- 22.40 *Here, of course, neither Dr Partis nor the TRC were primary decision-makers; they were able to make recommendations only - so the critical question is whether all relevant adverse material (or sufficient of the substance of it) before the Vice-Chancellor was disclosed to Dr Rindos, and he was given a reasonable opportunity to respond to it, prior to the decision of the Vice-Chancellor to deny him tenure.*
- 22.41 *The decision not to show Dr Rindos this documentation, and thereby not maintain it on his personnel file was a decision made by the Personnel Services Department of the University. In light of this evidence, Dr Rindos should clearly have been provided with a copy of the full report, or at least a summarised version of the allegations contained in the report, in addition to Professor Oxnard's letter of 18 October 1991.*
- 22.42 *What reliance was placed on the three reports of Professor Bowdler in assessing Dr Rindos' application for tenure?***
- 22.43 *As has been previously discussed, it is not conclusive on the evidence before the Committee whether the Vice-Chancellor relied upon the content of the three negative*

¹⁰²Wickramasena v Griffin (1990) 19 ALD 547 per Wilcox J at 549.

¹⁰³Li Shi Ping v Milega (1994) 35 ALD 225 (FC,Fed Ct).

memoranda of Professor Bowdler in reviewing Dr Rindos' tenure status, although there is no doubt that she relied upon their existence in making her decision. On page three of Professor Wood's report to the Vice-Chancellor concerning the TRC, it is evident that the two memoranda from Professor Bowdler (17 June 1991 & 31 October 1991) were not formally presented as part of the data before the TRC. Professor Jory states that he thinks he had seen the reports, not as part of the tenure review, but in the context of the Vice-Chancellor's submission to the Ombudsman. Further, Professor Wood (Chair of the TRC) states that he did not read Bowdler's reports (nor has he done after the event).

22.44 *The Vice-Chancellor cannot with certainty say when she saw the report from Professor Bowdler on Dr Rindos dated 15 February 1991, although she admits that she was aware of its existence, and of its negative content. The Vice-Chancellor states that the 15 February 1991 report did not influence her decision to deny tenure given that it "was only one of many factors". This comment, however, does not seem to preclude the possibility that the Vice-Chancellor DID rely upon the report as one of those "many factors" in making her decision.*

22.45 *The Vice-Chancellor is similarly uncertain about when she read Professor Bowdler's later report dated 17 June 1991. The Vice-Chancellor states that she thinks she read this report prior to making her decision to deny tenure. In her denial of tenure dated 10 June 1993, she specifically cites the existing problems between Dr Rindos and Professor Bowdler as a relevant factor. The Vice-Chancellor stated:*

"Firstly, in your response you make it clear that difficulties between yourself and Professor Bowdler[,] which you strongly imply have interfered with your academic performance, remain ever present."

22.46 *It appears that none of these reports written by Professor Bowdler were placed on Dr Rindos' personnel file, nor were they shown to him.*

22.47 *On 6 August 1991, Professor Oxnard wrote to Personnel Services enclosing Dr Rindos' Summary of Activities for June 1990 - June 1991, together with Professor Bowdler's memorandum dated 17 June 1991. In a letter to Professor Oxnard dated 3 September 1991, the Vice-Chancellor noted that he had not yet provided his own response and added:-*

"In view of the comments by the Head of Department and other events which took place during the period it is most important that you complete your enquiries on this matter and submit your recommendations¹⁰⁴."

22.48 *The whole thrust of the Vice-Chancellor's letter was concerned with Dr Rindos' tenure review. It appears to the Committee that Professor Bowdler's critical memorandum of 17 June 1991 was before the Vice-Chancellor in this context. Professor Bowdler's third memorandum of 31 October 1991 was undisputably before the Vice-Chancellor given that it had been addressed and sent directly to her by Professor Bowdler.*

¹⁰⁴Letter to Professor Oxnard from Professor Gale (dated 3 September 1991).

22.49 *Professor Oxnard's own comments were provided in his memorandum to the Vice-Chancellor dated 19 September 1991. Professor Oxnard set out his understanding of the history of the matter and his views for accepting Dr Rindos' Statement of Activities Report as satisfactory, despite the highly critical complaints by Professor Bowdler in her report to Professor Taylor dated 17 June 1991.*

22.50 *In arriving at his positive second year report on Dr Rindos, Professor Oxnard indicated that although he had agreed that Professor Taylor ask Professor Bowdler for a report because previously she had been Dr Rindos' supervisor and as an academic courtesy to a senior figure in the discipline, he disregarded that report in making his positive second year recommendation. This probably resulted from his awareness of both the general atmosphere of antagonism that existed between Dr Rindos and Professor Bowdler, and the serious allegations by Dr Rindos about Professor Bowdler. Accordingly, although it was suggested to Professor Oxnard by Ms Wallace (Director, Personnel Services) by memorandum that he give a summary of these alleged failings to Dr Rindos, he did not do so, presumably because he had not accepted their validity in making his positive report.*

22.51 *As previously noted by the Committee, Professor Oxnard did write to Dr Rindos on 18 October 1991 but the letter was brief and said only:-*

"I have considered your Activities report for your second year of appointment and, as you will know, have accepted it as satisfactory.

I was pleased to see that your research work has improved greatly since the move to Geography and hope to see a number of publications in the near future.

I hope you will take the opportunity over the remaining period before your next report is due, to consider and act upon some of the comments about your teaching, such as logical sequencing of material and the question of assessment."

22.52 *That letter conveys, as Professor Oxnard testified was his intention, his view that Dr Rindos' performance for his second year was satisfactory. It is the Committee's view that the last paragraph of this letter could not in any way be properly regarded as conveying either in summary form or at all, mention of Dr Rindos' weaknesses as expressed by Professor Bowdler.*

22.53 *The Committee has given detailed consideration to whether Professors Oxnard and Taylor should have specifically advised Dr Rindos of the negative issues raised by Professor Bowdler in her 17 June 1991 memorandum. The Committee resolved that a high degree of subjectivity existed in the assessments that were made on this issue at the particular time by Professors Oxnard and Taylor. In this regard, the Committee is unable to reach to a firm conclusion as to the appropriateness of these actions and decisions, given that it is clear on the evidence before the Committee that these decisions were made with clear judgement as to what was in the best interests of Dr Rindos at the time. It is the absence of these negative memoranda on Dr Rindos'*

personnel file for him to read and respond to which lies at the core of the communication breakdown central to this dispute.

22.54 *In March 1995, Professor Oxnard was asked to advise what counselling sessions he had with Dr Rindos. His response is contained in his letter to Mr Keith Chambers dated 22 March 1995:-*

"This letter follows our telephone call yesterday afternoon.

You asked if I could tell you what counselling sessions I held with Dr David Rindos during the period when I was Head of the Division of Agriculture and Science.

First, I did no counselling in relation to the denial of his tenure because that occurred after I ceased being Divisional Head and against my yearly recommendations.

Second, because my yearly reviews were positive, I did no counselling other than to send him copies of those reviews. Given that following two such satisfactory reviews, positive tenure decisions were routinely made on or about the third year anniversary date at the University of Western Australia, counselling did not seem appropriate.

However, I did talk with Dr Rindos on numerous occasions and my memory of these is attached¹⁰⁵".

22.55 *The attachment to that letter confirms that in more detail, and concludes:-*

"You can see that I am not certain what counts as counselling and what other types of discussion. But there was no time that I felt Dr Rindos needed academic counselling in the therapeutic meaning of the term, though the effect of the interpersonal strife on his external well-being certainly meant that he might have needed counselling about that. Such counselling is not the task of a university administrator or academic".

22.56 *It is the Committee's view that where matters that were raised by Professor Bowdler were taken into account by other parties while making negative assessments about Dr Rindos, he should have been shown, at each stage, the substance of these reports and have been given an opportunity to respond to them as well as been counselled about them. Negative reports or preliminary determinations may themselves affect a person's interests, including that of reputation, and have been recognised as an interest attracting the protection of procedural fairness. Apparently these actions were not taken.*

¹⁰⁵Letter to Mr Keith Chambers from Professor Oxnard (dated 22 March 1995).

23. COMMITTEE'S CONCLUSIONS AND RECOMMENDATIONS

- 23.1. *The Committee finds that the University of Western Australia is a body subject to the common law rules of procedural fairness.*
- 23.2. *The decision not to grant tenure to Dr Rindos is clearly a decision to which the principles of procedural fairness apply, as it affected his:*
- 23.2.1 *occupation or livelihood; and*
- 23.2.2 *personal and professional reputation.*
- 23.3 *The question to be asked is not whether a statute provides for procedural fairness but whether procedural fairness is clearly excluded. Ainsworth v Criminal Justice Commission¹⁰⁶ established that procedural fairness applied to a reporting process which had the capacity to adversely affect reputation, notwithstanding that rights were not directly affected.*
- 23.4 *Since the decision of the High Court in Kioa v West¹⁰⁷, the application of a common law duty to act fairly in the making of administrative decisions which affect rights, interests and legitimate expectations, subject only to the clear manifestation of a contrary statutory intention, is well established.*
- 23.5 *The Committee finds that it was reasonable that at the time of his appointment, Dr Rindos had an expectation that he would be granted tenure at the end of his initial period of employment. It is concluded that Dr Rindos did not have adequate and fair opportunities to present his case and has not, in all the circumstances, been afforded common law procedural fairness, due to the University administration's apparent reliance on material not disclosed to Dr Rindos.*
- 23.6 *The Committee finds that the procedures adopted by the University to review and determine the tenure of Dr Rindos and his subsequent appeals were ad hoc, and overall, did not adhere sufficiently to the common law rules of procedural fairness given that all relevant information was not disclosed to Dr Rindos for his assessment and rebuttal.*
- 23.7 *The Committee suggests that the University could have significantly improved its handling of this matter in that:*
- 23.7.1 *The University did not provide Dr Rindos with sufficient opportunities for counselling with respect to his allegedly deficient performance at any stage during his period of employment with the University;*
- 23.7.2 *The University should have given more detailed consideration to the appointment of Dr Rindos as Acting Head of the Department of Archaeology on his arrival to the University, given that he was new to*

¹⁰⁶(1991 - 1992) 175 CLR 564.

¹⁰⁷(1985) 159 CLR 550.

the Australian system, and had no experience of an Australian university. The Committee acknowledges, however, that Dr Rindos was an experienced academic who should have had an understanding of the requirements of research output and the nature of tenure review. Further, if Dr Rindos did not understand the requirements of tenure review and research output, he was in a position to gather such information from the University in his capacity as Acting Head of Department; and

- 23.7.3 *Professor Oxnard should have been interviewed by the TRC given that he had been Dr Rindos' supervisor, and that he was, in Professor Oxnard's own words, "probably his [Dr Rindos'] closest academic peer at the University of Western Australia"¹⁰⁸.*
- 23.8 *It is the Committee's view that the performance and research output of Professor Bowdler should have been used by the TRC as a guide for what Dr Rindos supposedly needed to produce, given that Professor Bowdler was the only tenured archaeologist at the University at the time in question.*
- 23.9 *Had formal written guidelines been provided by the Vice-Chancellor to the TRC as a framework for its procedure and deliberations, the Committee believes this would have served to assist Dr Rindos in addressing the TRC's enquiries. Although the TRC's 'guidelines' were teaching, research and to some extent, community activities, these guidelines should have been formalised and structured in order to leave little open to speculation and assumption by any party. Similarly, the proceedings of the TRC should have been minuted to ensure accountability and transparency of process. The Committee also considers that the TRC should have had regard to those environmental factors directly relevant to the issue of Dr Rindos' application for tenure.*
- 23.10 *Dr Rindos did not pursue his case with the Visitor pursuant to section 7 of the University of Western Australia Act 1911. This is to be addressed in the Committee's later report on Term of Reference 1(c).*
- 23.11 *The decision to grant or refuse tenure rested solely with the Vice-Chancellor and although she was not bound to adhere to the findings of the TRC, the Vice-Chancellor was entitled to give due consideration to the Tenure Review Report, which she did. The Vice-Chancellor, however, should have ensured that any documentation she considered in reaching her decision to deny tenure had been made available for review and rebuttal by Dr Rindos. The Committee in particular finds that the 17 June 1991 tenure report by Professor Bowdler should have been disclosed in full to Dr Rindos if the Vice-Chancellor intended to rely upon its existence, even as one of a number of sources. The Committee notes that there were a number of other opportunities for Dr Rindos to have been acquainted with this evidence, but these earlier opportunities were not utilised for this purpose, for a variety of reasons.*

¹⁰⁸Letter to the Standing Committee on Government Agencies from Professor Oxnard (dated 27 April 1996, page 5).

- 23.12 *The Committee accepts, after substantial investigation and research, that there are no recognised national or international standards for assessing tenure. These are more accurately described as 'mores', or recognised customs, which most academic institutions invoke (although it is acknowledged by the Committee that there is a diverse variation in specific details between different institutions). Some of the 'conventions' or 'mores' which have been ascertained by the Committee's inquiry include a probationary period, the expectation that a certain level of performance is necessary and that peer assessment may be part of the final determination of tenure. The evidence before the Committee has revealed that tertiary institutions essentially can determine their own procedures for review and performance, and the University of Western Australia is no different in this regard. In this vein, the Committee accepts on the evidence before it that in all reality, assessments of people are often of necessity subjective, and based on a complex mix of experience and intuition. This, however, does not preclude the need for the University to act with fairness and consistency.*
- 23.13 *The Committee acknowledges the time spent by the University and by the late Dr Rindos in assisting the Committee with its inquiry. The Committee, however, is critical of the University's record keeping and document handling facilities which have often resulted in delays, misplaced documents, incomplete files and inadequate material before the Committee. This has not facilitated a smooth running inquiry for the Committee. The Committee, however, acknowledges that the University has subsequently addressed many of these issues as outlined in its Senate Inquiry Report.*
- 23.14 *The Committee maintains its recommendations that the University undertake a detailed assessment of its document and information management to avoid such inadequacies in the future. The University should also be mindful that it clearly is subject to the Committee's Terms of Reference and jurisdiction, and must consider itself accountable to the Western Australian Parliament and its Parliamentary committees.*
- 23.15 *The Committee also makes reference to the University's Senate Inquiry Report. Although the Committee has reviewed this report, the Committee does not intend to provide a detailed assessment of the Senate report's contents, but makes the following general comments.*
- 23.15.1 *One notable feature of the Senate report is that it has no regard to the historical fact that there were no concerns expressed by Professor Bowdler nor anyone else about Dr Rindos' academic performance until after, as Acting Head of the Department of Archaeology, he had formally raised with Professor Oxnard in December 1990, serious complaints about Professor Bowdler's administration of that Department. Although Professor Bowdler has advised the Committee that she had raised concerns with Dr Rindos prior to December 1990, the Committee has seen no evidence to substantiate this assertion. In any event, the Senate Report does not address the concerns still expressed by both students, staff and commentators that there has been serious mismanagement within the Department of Archaeology at the University, and this is of continuing concern to the Committee.*
- 23.15.2 *The Committee notes that the Senate's report makes certain recommendations about practice and procedure at the University. These include, for example:*

- *consideration of the introduction of a standard requirement for the induction of new staff, (recommendation 1.1);*
- *written records of staff interviews (recommendation 2.1);*
- *the preparation of an explicit statement on the requirements of natural justice to assist all internal bodies of review where applicable (recommendation 2.2);*
- *consideration be given to including in the Human Resources Policies and Procedures Manual a reference to all relevant provisions concerning grievance resolution contained in relevant awards and Acts (recommendation 2.4);*
- *the University give immediate attention to refining, documenting and effectively publicising all avenues of complaint available to students (recommendation 5.2);*
- *all academic staff acting as Head of Departments for three or more months normally be required to demonstrate possession of appropriate competency or access the management training available, to better equip themselves for their acting roles (recommendation 6.1); and*
- *all staff with supervisory responsibilities be strongly encouraged to participate in management development programmes (recommendation 8.1)*

23.16 *The Committee would request that these types of procedures which may assist proper process are implemented by the University as soon as possible, and subsequently monitored and assessed by the University administration.*

**HON KIM CHANCE MLC
CHAIRMAN**

December 1997

APPENDIX 1

COMMITTEE MEETINGS REGARDING THE INQUIRY

1. Thursday, 21 March 1996 from 11:00am to 12:20pm.
2. Thursday, 28 March 1996 from 11:07am to 12:20pm.
3. Wednesday, 3 April 1996 from 9:37am to 12:02pm.
4. Monday, 22 April 1996 from 10:04am to 12:50pm.
5. Thursday, 2 May 1996 from 11:22am to 12:40pm.
6. Thursday, 9 May 1996 from 11:10am to 12:41pm.
7. Thursday, 16 May 1996 from 11:10am to 12:35pm.
8. Thursday, 23 May 1996 from 11:05am to 12:30 pm.
9. Friday, 31 May 1996 from 8:55am to 5:20pm.
10. Wednesday, 26 June 1996 from 11:15 to 1:05pm.
11. Monday, 8 July 1996 from 10:34 to 5:05pm.
12. Friday, 19 July 1996 from 9:05pm to 1:45pm.
13. Friday, 2 August 1996 from 9:30am to 12:40pm (sub-committee).
14. Thursday, 22 August 1996 from 11:06am to 1:05pm.
15. Thursday, 29 August 1996 from 11:12am to 11:46am.
16. Thursday, 5 September 1996 from 11:07am to 12:25pm.
17. Monday, 9 September 1996 from 12:06pm to 6:04pm (sub-committee).
18. Thursday, 19 September 1996 from 11:09am to 12:29pm.
19. Thursday, 26 September 1996 from 12:30pm to 12:50pm.
20. Thursday, 24 October 1996 from 11:10am to 12:05pm.
21. Thursday, 31 October 1996 from 11:08am to 12:10pm.
22. Wednesday, 7 November 1996 from 6.05pm to 6.25pm.
23. Wednesday, 30 April 1997 from 9.00am to 11.00am.
24. Wednesday, 14 May 1997 from 9.00am to 10.30am.
25. Thursday, 29 May 1997 from 2:10pm to 4:10pm.
26. Wednesday, 11 June 1997 from 9:20am to 10:55am.
27. Wednesday, 18 June 1997 from 1:50pm to 3:24pm.
28. Wednesday, 25 June 1997 from 1:30pm to 3:00pm.
29. Wednesday, 2 July 1997 from 1:35pm to 3:55pm.
30. Friday, 11 July 1997 from 9:00am to 3:00pm.
31. Wednesday, 20 August 1997 from 1:30pm to 3:30pm.
32. Wednesday, 27 August 1997 from 1:40pm to 3:16pm.
33. Wednesday, 10 September 1997 from 1:40pm to 3:15pm.
34. Wednesday, 17 September 1997 from 1:30pm to 3:00pm.
35. Monday, 6 October 1997 from 10:38am to 12:45pm.
36. Wednesday, 22 October 1997 from 1:36pm to 3:20pm.
37. Wednesday, 29 October 1997 from 11:50am to 2:30pm.
38. Wednesday, 12 November 1997 from 2:05pm to 3:35pm.
39. Wednesday, 26 November 1997 from 1:30pm to 3:30pm.

APPENDIX 2

SUBMISSIONS

People who made written and oral submissions to the Committee.

Written Submissions

C. Oxnard
K. Sales
R. Parfitt
F. Gale
J. Collier
W. Ramsay
S. Lewandowsky
M. Price
S. Hallam
A. Budrikis
W. de Winter
J. Harris
B. Martin
D. Plowman
E. Webb
P. O'Brien
G. Quartermaine
J. Bauml
P. Ridgway
A. Robson
D. Kennedy
L. Deleuil
W. Jonas
D. Byrne
D. Gaughwin
I. McBryde
M. Caillot
H. Allen
G. Irwin
R. Holst
E. Zubrow
B. Machin
R. O'Connor
Anonymous
J. McDonald
V. Levchenko
C. Pardoe
C. Mattner
K. Kirsner
P. Taylor
D. Yerbury
C. Pybus
M. Hill

Oral Submissions

F. Gale
D. Rindos
J. Gordon
B. Robbins
A. Cohen
J. Jory
A. Robson
M. Partis
J. McGeachie
R. Wood
S. Zanetic
C. Oxnard
J. Poprzeczny
K. Evans
P. Nisbet
J. Schoombee
P. O'Brien
B. Gray
M. Webb
D. Farr

APPENDIX 3

**Report to the Vice-Chancellor by
Professor Clyde and Associate
Professor Hotop on the
Department of Archaeology**

31 March 1992



STRICTLY CONFIDENTIAL
AND IN STRICT CONFIDENCE

31 March, 1992.

Law School
Nedlands, Perth, Western Australia 6009
Facsimile: (09) 380 1045, Telex AA92092
Telephone (09) 380 2945

Professor F. Gale,
Vice-Chancellor,
THE UNIVERSITY OF WESTERN AUSTRALIA.

Dear Professor Gale,

Department of Archaeology

By letter dated 28 February 1992 you requested our advice on "what further action, if any, should be taken" in relation to the Department of Archaeology in the light of numerous confidential written submissions sent to you by interested parties following the recently-completed internal review of that Department. You subsequently confirmed that, in preparing our advice, we were to have regard only to the contents of these confidential written submissions and that our brief did not include consideration of any other material, including the report of the internal review committee. We now confirm that, in preparing this advice, we have had regard only to the abovementioned confidential written submissions. We also confirm that we have not seen or read the report of the internal review committee.

Our advice is divided into two parts:-

- (a) advice regarding the substance of the confidential written submissions and possible appropriate courses of action for you to take if satisfied that such are justified in all the circumstances; and
- (b) advice regarding the general procedure that you should follow in taking such courses of action.

(a) The Substance of the Confidential Written Submissions

Summary of the Submissions

The material to which we have had exclusive regard comprises 40 confidential written submissions. For convenience, we have divided them into eight categories, according to the class of the author, and we now summarise their contents on that basis.

1. *Department of Archaeology academic staff (current and retired)*

This category comprises six submissions, viz. those of:

The submissions of _____ are very critical of Professor S. Bowdler's administration of the Department of Archaeology and of her personal style. The other four submissions are supportive of Professor Bowdler and her administration of the Department and critical of D. Rindos' role as a member of the Department.

2. *Archaeology students (former and present) at The University of Western Australia*

This category comprises nine submissions, viz. those of

The submissions of [redacted] are supportive of the Department generally and of Professor Bowdler, I. Lilley and S. O'Connor (see 1. above) in particular. The other seven submissions contain criticisms, based on first-hand experience, of Professor Bowdler's academic supervision, administration of the Department and personal style - similar to the criticisms made in [redacted] submission (see 1. above).

3. *Academic Staff from other departments at The University of Western Australia*

This category also comprises six submissions, viz. those of

[redacted] as professionals in a field closely related to archaeology, confirmed Professor Bowdler's professional standing, advocated retention of the Department of Archaeology as a separate entity, and sought resolution of the problems in the interests of the Department. [redacted] also rejected allegations of conflict of interest arising out of the consultancy work of the Department and Professor Bowdler's membership of the Aboriginal Cultural Materials Committee but, nevertheless, advocated that the "consultancy wing" of the Department "be removed and placed elsewhere in the University" in order to remove the appearance or suggestion of a conflict of interest.

The other four submissions generally attest to Professor Bowdler's professional standing.

4. *Academic staff, in related professional fields, from other universities*

This category comprises five submissions, viz.

The submissions of [redacted] generally confirm Professor Bowdler's professional standing. [redacted] also comments favourably on the academic standard and administration of the Department, based on first-hand observation during a visit of three weeks during 1991.

[redacted] submission merely involves an offer to comment on Professor Bowdler "as a professional archaeologist of high standing", if required. [redacted] briefly notes that similar problems have been experienced in his Department and offers to supply more explicit information if necessary.

5. *W.A. Museum staff*

This category comprises two submissions, viz. those of:

[redacted] praises the work of U.W.A. archaeology students. [redacted]: attests to the professional standing of Professor Bowdler and the Department.

6. *Inter-State professionals*

This category comprises four submissions, viz. those

All attest to the high standing of the Department's work, and confirm Professor Bowdler's professional standing.

7. *Archaeological consultants and miners*

This category comprises six submissions, viz. those of

The submission of ; attests to Professor Bowdler's professional standing. The other five submissions express concern over what they describe as a conflict of interest arising out of the consultancy work of the Centre for Prehistory (within the Department of Archaeology) and Professor Bowdler's membership of the Aboriginal Cultural Materials Committee which, inter alia, reviews and evaluates the reports of consulting archaeologists.

also complains of Professor Bowdler's treatment of him in relation to his undergraduate honours thesis and his subsequent application for admission to postgraduate candidature.

8. *Miscellaneous*

This category comprises two submissions, viz. those of

notes "the high level of dissatisfaction expressed by a number of postgraduate students" on various issues relating to the Department of Archaeology, and calls for a speedy resolution of the matter in the interests of such students.

expresses general support for B. Veitch, C. Stokes, S. O'Connor and Professor Bowdler and for the Department of Archaeology.

General Comments

We believe that the submissions of : (see 1. above), relating to their experiences as academic staff members of the Department of Archaeology, and those of (see 2) above) and (see 7. above), relating to their experiences as students in the Department, should be taken seriously. In our view, the formulation of these submissions does not give rise to any inference or suggestion of collusion on the part of the authors.

The complaints of conflict of interest, albeit by professional competitors in some cases, are also cause for concern.

Great care must be taken in classifying the allegations made in these various submissions. We suggest the following categories:

- A. That Professor Bowdler has allowed her private relationships (which in themselves are no business of the University) to influence, either favourably or adversely depending on the circumstances, her decisions on matters of staff appointments, supervision of students and allocation of departmental resources.
- B. That Professor Bowdler has not supported the right to intellectual freedom of colleagues and students, but rather has consistently denigrated those who do not subscribe to the same theory as she does, within her own specialised field, and has belittled the value of any specialised field but her own.
- C. That Professor Bowdler has resorted to offensive reference and behaviour, verging on the insulting at times, towards those whom she opposes in these matters, in order to get her own way, and that this is particularly unfair when directed at one's juniors or students whose careers one is in a position to affect.
- D. That the administration of the Department of Archaeology and the supervision of certain research students have been lax.
- E. That Professor Bowdler's position on the Aboriginal Cultural Materials Committee has enabled the Centre for Prehistory - the so-called consultancy wing of the Department of Archaeology - to compete unfairly with private archaeological consultants on Aboriginal heritage matters.

Possible Courses of Action

Some extreme courses of action are provided for in the Australian Universities Academic Staff (Conditions of Employment) Award 1988, a copy of which is in the Procedures Manual. These relate to:

(i) *Unsatisfactory Performance* (Clause 8)

The supervisor of a member of the academic staff may report to the Vice-Chancellor that the performance of that staff member is unsatisfactory. Procedures are prescribed, including provision for appeal.

(ii) *Serious Misconduct* (Clause 9)

Any such allegations must be investigated in the first instance by the Vice-Chancellor and, in the event that further investigation is warranted, procedures are prescribed.

In this context we make the following comments in relation to the abovementioned classification of the allegations made in the relevant submissions.

- A. It seems clear that some of the authors of submissions believe that there is a case for finding that Professor Bowdler's behaviour constitutes misconduct.

expressly grants permission for you "to use" his full statement to the internal review committee, should you so desire.

authorises you to use her statement "in whatever way you feel necessary".

authorise you to refer publicly to the contents of their submissions, but request that their names be kept confidential.

offers to make himself available for "public testimony", if this is

deemed necessary.

authorises you to refer publicly to the contents of her submission, if necessary, but does not mention the issue of confidentiality of her name.

does not mention the issue of confidentiality of either the contents of her submission, or her name.

If a case of misconduct is to be made out, it will require careful preparation and working with the authors of the relevant submissions in order to identify actions, in a way that will be supported in public.

If this proves not to be the appropriate course it may nevertheless need to be demonstrated why it is not appropriate, before it is ruled out. In this event, it would still be appropriate for Professor Bowdler to be cautioned that behaviour, such as allegedly occurred on a field trip (see submissions of), is unacceptable and that it is essential that administrative processes be adopted that ensure that justice is seen to be done in staff and student-related matters.

B., C., and D. These fall rather into the category of unsatisfactory performance. For the purpose of implementing the procedures prescribed by the Industrial Award, the report of the internal review committee should be treated as the context. It should be easier to obtain agreement to provide public statements for this purpose but care must be taken to respect the sensitivities of the students concerned. The offers by to provide further information (see 4. above) should be followed up.

At the minimum Professor Bowdler should be advised that the allegations suggest that she appears to be prone to indulging in academic thuggery (or some equally strong descriptive expression) and that this is not acceptable in a community of scholars, and that some of the processes within the Department have been called into question partly as a result of such behaviour, partly as a result of concern about issues raised under A. above, and partly as a general questioning of her management style.

It will be necessary to be seen to be addressing these matters and one way this may effectively be done would be to disestablish the Department of Archaeology and locate its members in a larger department where Professor Bowdler would fall under the official supervision, in terms of the Industrial Award, of the head of that department.

E Professional issues must be addressed with fellow professionals. We suggest that the Centre for Prehistory be made a centre within the department to which the members of the Department of Archaeology are relocated (if the suggestion made in the previous paragraph were implemented). This would be consistent with the recommendation made by , his submission (see 3. above).

(b) Procedural Matters

In the light of the serious nature of the abovementioned allegations and the gravity of the possible consequential courses of action, it is vital that the requirements of natural justice be observed in the handling of this matter.

In the event that action is taken on the ground of unsatisfactory performance or serious misconduct, procedures are prescribed by clauses 8 and 9, respectively, of the Industrial

Award, which incorporate the requirements of natural justice, and those procedures must be fully complied with.

In the event, however, that you decide that some other, perhaps less extreme, form of action is appropriate, such as those suggested above, the following general comments should be borne in mind.

Natural justice essentially requires that a person, about whom adverse allegations have been made and in relation to whom an adverse decision is proposed or is being considered, be given a reasonable opportunity to reply to those adverse allegations and to present his or her case against the making of the adverse decision.

The right to be apprised of adverse allegations is, however, modified in the case of confidential information. In the present case certain authors of adverse submissions have requested that their names be kept confidential, although they have granted permission for their comments to be referred to publicly. In relation to such persons, care must be taken that disclosure of their comments does not reveal their identity. In cases of this kind, the appropriate course is to apprise the person, who is the subject of the allegations, of the *substance* of those allegations - but yet in sufficient detail to enable that person fully to understand the nature of the case that is made against him or her so that he or she has a reasonable opportunity to respond effectively to it.

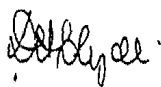
A reasonable opportunity to respond and to present one's case also involves being granted sufficient time in which to do so. What amounts to sufficient prior notice of allegations and proposed action cannot be prescribed in advance and will, of course, depend on the circumstances of the particular case.

We are of opinion that in the present case, and having regard to the fact that a speedy resolution of the matter is in the interests of all parties concerned and the University generally, a period of two weeks would be more than adequate. It would be appropriate, however, to ask Professor Bowdler how much time she would reasonably require to consider the allegations and prepare and present her response. We reiterate that if it is ultimately proposed to make a decision adverse to Professor Bowdler's interests, she should, at the appropriate time, also be given prior notice of the decision proposed and a reasonable opportunity to make contrary submissions.

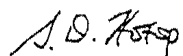
We hope these comments are helpful to you in dealing with this very important, and delicate, matter. Please contact us if you require clarification of anything abovementioned.

The forty submissions are returned herewith.

Yours sincerely,



D.H. Clyde



S.D. Hotop

Encl.