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27 OCT 2008

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Submission No. 57a
Date Received

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Regulatory Failure

1. Regulatory failure is well illustrated by the following case. After I appeared before the Senate Inquiry into Higher education in 2001, I was approached by an academic from a multi-tier university, that is tertiary and TAFE, who asked me to raise concerns about a matter that had occurred in the university in 1998. It concerned a shortfall in enrollments in their TAFE sector.
2. Staff in the tertiary sector were requested to sign up for one (or two) online courses in the TAFE sector in order to correct an under-enrollment problem. Staff advised me that
 - 2.1. Some staff enrolled, did the assessment associated with the course, but received no formal feedback. They received a grade.
 - 2.2. Other staff logged in once, did no assessment, and received the grade.
 - 2.3. Other staff signed up, but nothing more.
3. In October 1998, the minutes of a meeting of a faculty read

"Members were informed that the University had grave concerns about under enrolment in the VET sector. The University is under enrolled by 10.4%. The Acting Dean commended Entrée as a programme to increase VET numbers. The programme is available to students and is also offered to staff as a Staff Development Project. The programme would be offered free of charge to staff."

In November 1998, the minutes of a meeting of the same faculty read
"Members were informed that under enrolment in the VET sector was reduced to 5.8%. The Acting Dean wished to have his thanks noted to all those in the Faculty who had helped rectify the problem."
4. In January 1999, the Vice-Chancellor issued a statement

"One of the major issues which caused considerable concern in 1998 was the slow progress we were making toward the achievement of our VET student contact hours target. Failure to achieve this would have resulted in considerable financial penalties for the University.

You will be pleased to know that we have exceeded our target, in the third week of December.

I write to thank everyone who has responded to the need to achieve this target. Some excellent work has been undertaken. Congratulations to all involved."

5. I referred these matters to the relevant regulator in June 2001. They indicated to me that they had information from another informant that the same university was taking names from the phone book and inserting them in class lists. I was assured that the issue would be examined.
6. However, I heard no more from the regulator. I called the regulator in February 2002 to inquire what had transpired. I was advised that there had been, nor would be no investigation of the matter.
7. In the US, the action of the university would have constituted a false claim, because the university was manipulating enrolments so as to claim government funds.
8. The case illustrates the problem for the whistleblower, in particular
 - 8.1. The homogeneous culture. How many staff thought this was wrong?
 - 8.2. To whom does the whistleblower refer the problem?
 - 8.3. The risk of disclosing to an outside regulator who does not regard the matter as material, does not investigate, nor seek to protect the whistleblower.
 - 8.4. The regulator minimizes the risk of the institution. The whistleblower is without standing.
9. Does it matter? It does because
 - 9.1. There is a policy implication. When a university faces a decline in demand, all they have to do is to "encourage" the staff to enroll to meet the shortfall.
 - 9.2. There is no penalty for wrongdoing.
 - 9.3. The whistleblower is encouraged to remain silent in the future.
 - 9.4. The whistleblower is not protected.
10. The problem is that failure to act now leads to future systemic failures.