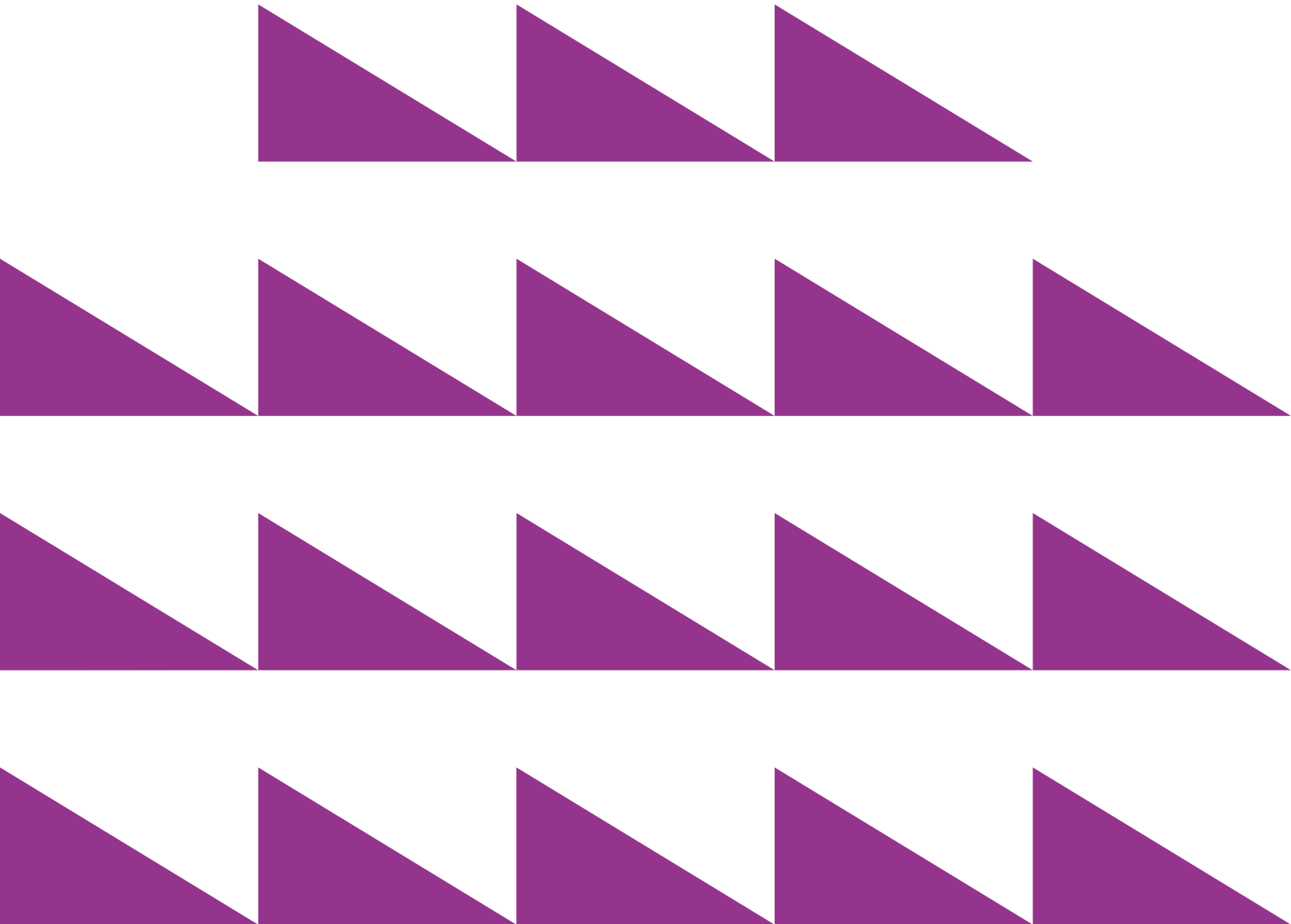
ibac independent broad-based anti-corruption commission
Victoria

Operation Nepean

An investigation into the conduct of former employee of Dame Phyllis Frost Centre, Jeff Finlow

April 2017



Authorised and published by the
Independent Broad-based Anti-corruption Commission,
Level 1, 459 Collins Street, Melbourne.

April 2017

If you need this information in an accessible format, please call 1300 735 135 or email communications@ibac.vic.gov.au. This document can also be found in formats on our website www.ibac.vic.gov.au

Ordered to be published by the Victorian Government Printer. [PP No 282 Session 2014-17]

ISBN 978-0-9954266-9-6 (print)
ISBN 978-0-9954266-8-9 (online)

© State of Victoria 2017
(Independent Broad-based Anti-corruption Commission)



You are free to re-use this work under a Creative Commons Attribution 4.0 licence, provided you credit the State of Victoria (Independent Broad-based Anti-corruption Commission) as author, indicate if changes were made and comply with the other licence terms. The licence does not apply to any branding, including Government logos.

Table of contents

Letter of transmittal		1
List of abbreviations		2
1	Summary of investigation and outcomes	4
2	Allegations against Jeff Finlow	10
3	Adequacy of systems and controls at Dame Phyllis Frost Centre	18
4	Corruption risks in the corrections sector	24
5	Conclusions and recommendations	26
6	Appendices	30
	Appendix A: Natural justice requirements and responses	31
	Appendix B: Previous IBAC special reports	32

Letter of transmittal

To

The Honourable President of the Legislative Council

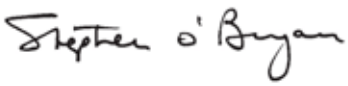
and

The Honourable Speaker of the Legislative Assembly

In accordance with section 162(1) of the *Independent Broad-based Anti-corruption Commission Act 2011* (IBAC Act) I present IBAC's report on its Operation Nepean investigation into the conduct of former employee of Dame Phyllis Frost Centre, Jeff Finlow.

IBAC's findings and recommendations to date are contained in the report.

Yours sincerely



Stephen O'Bryan QC
Commissioner

List of abbreviations

APU	Accredited Purchasing Unit
BEBS	Built Environment and Business Sustainability
DJR	Department of Justice and Regulation
DPFC	Dame Phyllis Frost Centre
IMT	Invoice Management Team
MWCC	Deer Park Metropolitan Women's Correctional Centre

1 Summary of investigation and outcomes

1 Summary of investigation and outcomes

1.1 Introduction

This report concerns an investigation by the Independent Broad-based Anti-corruption Commission (IBAC) into allegations that Jeff Finlow, the former manager of the facilities department at women's prison, the Dame Phyllis Frost Centre (DPFC), was involved in serious corrupt conduct.

IBAC investigated allegations that Mr Finlow subverted procurement processes and failed to fully declare and manage conflicts of interest when awarding contracts to his son, Adam Finlow. Between 2009 and 2014, Adam Finlow, through companies owned or operated by him, received payments from the Department of Justice and Regulation (DJR) totalling around $1.56 million.

IBAC also investigated allegations that Mr Finlow facilitated the recruitment of another son, John Finlow, as a senior prison officer.

IBAC identified that DPFC did not adequately supervise Mr Finlow and failed to address staff complaints about his conduct. Mr Finlow flouted procurement policies and processes in awarding his son, Adam Finlow, work for a period of approximately five years. Mr Finlow also used his position to help facilitate the recruitment of his son, John Finlow.

Through Operation Nepean, IBAC identified that Mr Finlow's conduct contributed to substandard works which sometimes posed safety risks. More broadly, Mr Finlow's conduct denied other businesses work opportunities and was not an efficient use of public resources.

1.2 The early stages of the investigation

On 1 September 2014, IBAC received formal notification from DJR, previously known as the Department of Justice, pursuant to section 57(1) of the *Independent Broad-based Anti-Corruption Commission Act 2011* (IBAC Act). The notification concerned allegations about the serious corrupt conduct of Mr Finlow during his tenure as manager of the facilities department at DPFC.

The notification arose after an unknown person at DJR contacted a building surveyor at Melton City Council to query whether a shed at DPFC had the required building permit. Enquiries by the council identified anomalies with the construction of the shed, including a failure to comply with the required building approval process.

This resulted in DJR commencing preliminary enquiries into the procurement process relating to the shed and Mr Finlow's conduct. It identified suspicious emails between Mr Finlow, Adam Finlow and Adam's wife, Deanna Finlow. This led to the notification to IBAC.

On 8 September 2014, IBAC determined to conduct an investigation in accordance with section 60(1) of the IBAC Act. The investigation was called Operation Nepean.

For the purpose of this report, Jeff Finlow is referred to as Mr Finlow. Adam and John Finlow are referred to by their full names.

1.3 The entities and people involved

1.3.1 Dame Phyllis Frost Centre

Background

DPFC is a women's maximum security prison, located in the west of Melbourne and managed by Corrections Victoria. Corrections Victoria is a business unit in DJR and is responsible for the direction, management and operation of Victoria's adult correctional system.

DPFC commenced operation in 1996 as the Deer Park Metropolitan Women's Correctional Centre (MWCC), a privately run prison. In November 2000, the ownership and management of the prison transferred to the public sector. DPFC has an operating capacity of around 400 prisoners and is required to comply with DJR policies and procedures.

The day-to-day management of DPFC is the responsibility of the general manager. The relevant minister is the Minister for Corrections.

Built Environment and Business Sustainability

Built Environment and Business Sustainability (BEBS) is a branch that was situated in the former Corporate Governance and Infrastructure division of DJR. It is now part of the Finance, Infrastructure and Governance division. BEBS typically manages large, complex capital projects at the direction of Corrections Victoria and charges a fee for its services. IBAC understands there is no policy or dollar threshold that determines when Corrections Victoria must engage BEBS. The decision to engage BEBS appears to be determined on a case by case basis.

1.3.2 Jeff Finlow

Mr Finlow was appointed as a correctional security officer at the then MWCC in July 1996. In August 2007 he was appointed to the position of manager of the facilities department at DPFC (also known as the maintenance department) with general responsibility for the repair and upkeep of the prison. Mr Finlow organised contractors for general maintenance works and also had responsibility for ensuring they had the necessary qualifications and expertise. He reported to a number of business services managers during this time.

Mr Finlow was responsible for seeking quotes, awarding contracts and arranging for works to be done. However, he had no financial delegation and therefore could not authorise the payment of invoices. The authoriser was usually the business services manager or another nominated delegate on the Oracle payment system.

Mr Finlow was suspended from his position in December 2014 while under internal investigation by DJR.

He resigned in June 2015.

1.3.3 Adam Finlow

Adam Finlow is the eldest son of Mr Finlow.

During the time of the investigation, Adam Finlow was a registered and qualified plumber, and was the owner and operator of a number of business entities. He started receiving minor works contracts at DPFC in 2009. During this time he also had a number of relatives and friends work for him including his two brothers.

Adam Finlow is married to Deanna Finlow who actively managed the accounts and payments on behalf of entities associated with Adam Finlow.

Adam Finlow ceased being awarded contracts at DPFC following an internal DJR investigation in 2014.

1.3.4 John Finlow

John Finlow is the son of Mr Finlow and younger brother of Adam Finlow.

In 2012, John Finlow worked as a sub-contractor to his brother on a number of occasions, doing general maintenance work and fitting lights. Later that year he was recruited as a senior prison officer at DPFC, reporting to his father, Mr Finlow, in the facilities department. In this role he carried out electrical work including the wiring of air conditioners and changing exterior lights over to LED.

Prior to working at DPFC, John Finlow was employed as an apprentice electrician but did not complete his apprenticeship after failing his 'A' Grade electrical examination. He applied for the DPFC position after his father encouraged him to do so.

DJR conducted an internal investigation into John Finlow carrying out electrical work despite his lack of electrical qualifications. This resulted in the termination of his employment at DPFC.

1.3.5 Business entities owned or operated by Adam Finlow

Companies

Sharp Plumbing and Drainage Pty Ltd
Between January 2011 and March 2014, Sharp Plumbing and Drainage Pty Ltd provided DJR with various ABNs and was paid a total of $1.289 million for work carried out at DPFC. The company was placed under external administration in March 2014.

Conquest Plumbing Solutions Pty Ltd
At the time of IBAC's investigation, Adam Finlow was the director, secretary and shareholder of Conquest Plumbing Solutions Pty Ltd. Between March 2013 and March 2014, DJR paid Conquest Plumbing Solutions Pty Ltd $178,354. The company was placed into liquidation in March 2014.

Conquest Plumbing Pty Ltd
At the time of IBAC's investigation, Adam Finlow's mother was the director and secretary of Conquest Plumbing Proprietary Ltd while Deanna Finlow was a shareholder. From March 2014 to August 2014 DJR paid Conquest Plumbing Pty Ltd $93,362.

Trust

Finlow Family Trust
The Finlow Family Trust became active from January 2011. Sharp Plumbing and Drainage Pty Ltd and Conquest Plumbing Solutions Pty Ltd were trading under the Finlow Family Trust.

Businesses

Sharp Plumbing and Drainage
Sharp Plumbing and Drainage was registered as a business trading name in January 2008, the individual sole trader being Adam Finlow.

Sharp All Trade Services (trading as)
Sharp All Trade Services was registered as a business trading name in September 2009 and renewed in September 2012. At the time of the investigation, Adam Finlow was listed as the individual sole trader. A review of invoices submitted by Sharp All Trades Services to DPFC suggests that payment was made to Sharp Plumbing and Drainage and the Finlow Family Trust.

1.4 The allegations

Allegations made against Mr Finlow were that he:

- failed to comply with proper procurement processes and policies when awarding contracts to his son, Adam Finlow
- failed to declare a conflict of interest
- influenced the successful recruitment of his son, John Finlow, as a senior prison officer at DPFC in the facilities department.

1.5 The conduct of the investigation

1.5.1 Information obtained

Entities and individuals involved in this investigation provided a substantial amount of documentation to IBAC, either voluntarily or by way of summons.

IBAC also obtained statements from more than 50 witnesses and conducted interviews with witnesses including a number of current and former officers from DPFC and DJR.

1.5.2 Execution of search warrants

A search warrant was executed on Mr Finlow's home and at Adam and Deanna Finlow's then residence in December 2014. A number of documentary and digital exhibits were seized as part of this process.

1.5.3 Private examinations

IBAC summonsed 17 witnesses to attend private examinations to assist the investigation.

The private examinations were conducted in late 2015.

1.6 Recommendations

Pursuant to section 159(1) of the IBAC Act, IBAC makes the recommendations outlined below:

Recommendation 1

That DPFC reviews its policies and procedures to address the corruption vulnerabilities identified in Operation Nepean and to ensure:

- corruption risks associated with procurement (including failure to comply with policies and procedures such as the requirement to obtain three quotes) are addressed
- there is improved awareness of and compliance with public sector values and the code of conduct, and policies and procedures relating to conflict of interest and gifts and benefits
- there is adequate supervision and rotation of employees in high risk positions, such as positions with responsibility for procurement
- there are mechanisms in place to encourage and support employees to speak up and report suspected misconduct or corruption, and to ensure appropriate assessment, escalation and investigation of such matters
- recruitment processes are robust, including conducting checks to ensure applicants and employees have the required skills and qualifications
- there are appropriate controls to mitigate risks associated with staff reporting to family members.

Recommendation 2

That DPFC report to IBAC on the implementation of Recommendation 1 by 10 October 2017.

Recommendation 3

That Corrections Victoria review its policies and procedures to address the corruption vulnerabilities identified in Operation Nepean and take steps to ensure those vulnerabilities are addressed by other prison facilities under its control.

Recommendation 4

That Corrections Victoria report to IBAC on the implementation of Recommendation 3 by10 October 2017.

2 Allegations against Jeff Finlow

2.1 Failing to comply with procurement processes

2.1.1 Awarding of contracts to companies owned or operated by Adam Finlow

IBAC's investigation found that Mr Finlow repeatedly ignored DJR procurement policy which required competitive processes (either quotation or tender processes) when goods or services exceeded a certain value. For works under $25,000 one quote was required, while for works between $25,000 and $150,000 three quotes were required. Works more than $150,000 were subject to a tender process and large, complex, capital projects would typically be managed by BEBS, which sits in DJR.

Purchases more than $100,000 also needed to be approved by the then DJR Accredited Purchasing Unit (APU) which had responsibility for monitoring and reporting on the Department's purchasing processes and procedures.

In 2009, Mr Finlow began awarding minor works contracts to Adam Finlow's company, Sharp Plumbing and Drainage. The contracts related to the installation or repair of hot water systems, installation of taps, and the supply and installation of gutters and downpipes at DPFC. DPFC had previously engaged another contractor for these types of jobs. That contractor started to lose the plumbing contracts, and over the following 12 months, only received emergency call outs to DPFC. In a statement provided to IBAC, an employee of that company reported that to go from being awarded work for a number of years at DPFC, to 'all of a sudden [losing] the plumbing work', and then to receive 'no work at all, was unusual'.

The investigation found that after Adam Finlow started receiving contracts from DPFC, Mr Finlow was in regular contact with Adam and Adam's wife, Deanna, via his work email account. On more than one occasion he advised on competitor quotes, scopes of works and how to prepare quotes. He also advised on keeping quotes under the $25,000 threshold so that multiple quotes did not need to be obtained.

Examples of how Mr Finlow flouted procurement processes to award contracts to his son are outlined on the next two pages.

Example 1: Derwent project, 2010

In 2010, BEBS awarded Adam Finlow's company, Sharp All Trade Services, the contract for the plumbing, concreting and carpentry components of the Derwent project.

The Derwent project was managed by BEBS and involved the transfer of accommodation units from Ararat Prison (now known as the Hopkins Correctional Centre) to DPFC.

Mr Finlow was instrumental in awarding the work to Adam Finlow. Mr Finlow was seconded to this project from DPFC and reported to a manager from BEBS. His manager asked him to recommend a contractor for the trade works required for the project. Mr Finlow provided the details of Adam Finlow's business, Sharp All Trade Services, but did not mention that his son owned the company. Mr Finlow submitted quotes directly to his manager, with Adam Finlow submitting the cheapest quote and subsequently being awarded the contract.

IBAC identified that:

- Mr Finlow did not declare a conflict of interest, namely the familial connection with entities to whom the contract was awarded
- significant variations were claimed on top of the original quote and contract.

Example 2: Gatehouse extension contract, 2011

In 2011, $91,300 was paid to Adam Finlow's company, Sharp Plumbing and Drainage, to construct a 10 by five metre kitchenette for staff at DPFC.

Mr Finlow awarded Adam Finlow the contract for the work.

IBAC identified there was no evidence that three quotes had been obtained prior to Mr Finlow awarding the work to Adam Finlow, as required by DJR procurement policy.

His manager, the business services manager at the time, was later advised by finance and business services that the invoice from Sharp Plumbing and Drainage could not be paid as there were no quotes related to these works recorded on the Oracle payment system. His manager emailed Mr Finlow asking him to provide details of the three quotes obtained for the work. Mr Finlow replied 'Sharp Drainage and Plumbing (sic), Total Trade Management and A Grade Maintenance'. His manager entered this information into Oracle, indicating to the relevant delegate that three quotes had been obtained and approving payment. The manager told IBAC he could not recall sighting the quotes.

Example 3: Insurance concreting contract, 2014

In March 2014, Deanna Finlow submitted a quote of $29,700 to Mr Finlow from Conquest Plumbing Pty Ltd to repair concrete paths in DPFC that had been identified as tripping hazards. Conquest Plumbing Pty Ltd was awarded the contract for the work.

In his evidence, Adam Finlow said he was awarded the contract after submitting a quote, but that DPFC required another quote so it didn't look as if the insurance company (through which the work was partially being funded) had just given him the job. He said he was told by the business services manager at the time, to just get a quote. According to Adam Finlow the manager said they didn't care where the quote came from as long as they got one. According to Adam, Mr Finlow said to him 'just do another dodgy [quote] and send it over to us'. The business services manager said they could not recall this conversation.

In April 2014, Deanna Finlow sent a quote to Mr Finlow from another contractor for the same work for $38,500. This quote was falsified; the owner of that business gave evidence that he was a friend of Adam Finlow's but did not submit the quote (noting that he did not do concreting).

Mr Finlow forwarded this quote to the DPFC human resources manager who was involved in the procurement process, advising that he could obtain a third quote if necessary. This did not occur, contrary to DJR procurement policy.

In May 2014, DPFC received confirmation the insurer had approved funding for the works to be undertaken and Mr Finlow allocated the work to Conquest Plumbing Pty Ltd.

In the same month, at the direction of the business services manager, Mr Finlow emailed Deanna Finlow asking if the Conquest Plumbing Pty Ltd quote could be split into two, contrary to DJR procurement policy. This included one quote for path grinding for $14,000 and one quote for the installation of railings and raising of pit lids for $13,000 (both exclusive of GST). IBAC understands this occurred to split the expenditure over two financial years.

2.1.2 Receipt of gifts and benefits

The investigation found Mr Finlow acquired a fishing boat and trailer after playing a critical role in the electrical component of the Derwent project being awarded to Tristan Kokkinos, an electrician and the owner of DKK Construction Services (trading as AllSafe Power). This is contrary to the DJR hospitality and gifts policy.

Mr Kokkinos gave evidence that in January 2010, he was approached by Adam Finlow who told him that his father was the maintenance manager at DPFC and that there was an opportunity to submit a quote for electrical work associated with the Derwent project. Mr Kokkinos did not know Adam Finlow directly, but was friends with Adam's wife Deanna.

Mr Finlow told IBAC that he advised Adam Finlow of competitor quotes for the electrical component of the Derwent project, knowing it was likely he would pass this information onto Mr Kokkinos. Mr Kokkinos admitted Adam Finlow informed him of a competitor quote for the Derwent project which allowed him to quote three days after his competitor at a cost of $44,850 (excluding GST) for that work. This figure was approximately $3000 less than the competitor quote. Mr Kokkinos' quote was accepted.

After being awarded the contract for the Derwent project in around April 2010, Mr Kokkinos gave a fishing boat and trailer to Mr Finlow and Adam Finlow. Mr Kokkinos gave evidence that the boat and trailer was a gift to both of them because he was appreciative of the work he was receiving at DPFC.

The boat was registered to Mr Kokkinos until the registration expired in January 2013. In April 2013, the boat was registered under Mr Finlow's name. Mr Finlow then sold the boat for $3300 after the commencement of the IBAC investigation.

The DJR hospitality and gifts policy states that all employees, contractors and consultants must refuse all offers of gifts, benefits or hospitality that could be reasonably perceived as undermining the Department's integrity and impartiality. While Mr Finlow denied the goods were a gift from Mr Kokkinos (he stated in evidence that the boat and trailer were a Father's Day gift from Adam), the situation clearly created a perceived conflict of interest as Mr Kokkinos was a contractor with DPFC and Mr Finlow exerted control over procurement processes for maintenance work.

Demonstrating impartiality is a central tenet of the *Code of Conduct for Victorian Public Sector Employees.* The code states that public sector employees should not – for themselves or others – accept gifts and benefits that could be perceived as undermining their integrity or that of the organisation. Mr Finlow failed to uphold the code of conduct.

2.1.3 Excessive charges and variations

IBAC found that numerous contracts awarded by Mr Finlow were subject to significant costs and variations.

Adam Finlow had a number of personal friends sub-contract to him on the Derwent project. He reportedly told one sub-contractor he could 'get what I want and make what I want' and encouraged them to charge more for their services.

Once Adam Finlow secured the contract for work on the Derwent project, IBAC understands he then submitted quotes directly to Mr Finlow for variations totalling approximately $150,000. These variations were submitted to a quantity surveyor for review prior to approval but were not competitively assessed. Mr Kokkinos did likewise, submitting 12 variations during the Derwent project and receiving total variation payments of between $100,000 and $150,000. It is possible that the value of these works was under-estimated from the outset to circumvent the need for a competitive tender process.

2.2 Failure to declare and manage a conflict of interest

'Looking back, in hindsight, it was all wrong … all of the quotes should have been going to the business services manager.'

Mr Finlow, interview with IBAC

IBAC's investigation established that Mr Finlow failed to fully declare and manage a conflict of interest when he did not remove himself from the procurement process when dealing with his son, Adam Finlow. The evidence suggests Mr Finlow was aware he was failing to comply with his obligations around declaring and managing conflicts of interest.

Mr Finlow was familiar with public procurement processes having previously worked on several BEBS-related projects. His manager from the Derwent project gave evidence that he had asked Mr Finlow to complete conflict of interest and confidentiality forms for two separate projects. The manager stated '[Jeff] knew from that process that the relationship with his son was wrong, and it's not something we would accept'. No records of these completed forms could be located.

The failure to fully declare a familial connection is illustrated by the Derwent project. When asked if he could recommend a contractor for components of the trades work, Mr Finlow recommended his son's business, Sharp All Trades. At that time, his manager from BEBS was not aware of the relationship between Mr Finlow and Adam Finlow. When his manager noticed the name 'Finlow' on the invoice and queried the connection, Mr Finlow reportedly said '[Adam] works for the company'. After the manager discovered the conflict and reported it to his superior (who could not recall the conversation) it was agreed Adam Finlow should continue the work due to the time pressures associated with the project.

Another example of Mr Finlow failing to fully declare a conflict of interest concerned a minor works project. In December 2010, DJR paid Sharp Plumbing and Drainage $14,300 for the construction of a gymnasium. This involved laying a concrete slab floor and erecting a pre-fabricated metal building. Mr Finlow awarded Adam Finlow the contract for the work. After receiving a complaint about the quality of the workmanship, his manager inspected the building and deemed it posed potential safety risks. When his manager asked Mr Finlow who constructed the building, Mr Finlow advised him that it was his son and that the project had been allocated to Adam's company. Prior to this, Mr Finlow had not advised his manager that Sharp Plumbing and Drainage was owned by Adam Finlow.

Mr Finlow was advised on several occasions by business services managers to be mindful of his role in relation to the engagement of Adam Finlow. One business services manager told IBAC that Mr Finlow approached them in 2009 to ask if his son could bid for work at DPFC. They said they told him that his son could not be excluded but that Mr Finlow was to have nothing to do with the process. Mr Finlow said he could not recall this conversation but recalled a similar discussion with the business services manager who told him to fill out a conflict of interest form. No record of this completed form has been located.

IBAC obtained evidence that numerous DPFC staff and executives were aware that Mr Finlow was awarding work to his son. His manager formed the view that the fact Mr Finlow could obtain quotes from Adam Finlow and allocate him work was 'known and accepted by the DPFC management on the condition that proper process was followed and documented'.

This is confirmed in a 2010 independent review of controls over procurement in prisons which stated:

> *There was an instance where a conflict of interest arose where a staff member responsible for procuring had a conflict of interest but had formally declared this in writing. The employee [Mr Finlow] was still involved in the procurement process (under management supervision) even though the conflict was reported to management. We note that an independent assessment of the value for money of the procurement was undertaken.*

This review recommended prison staff receive training regarding their obligations in relation to conflicts of interest. It does not appear that any further action was taken in relation to Mr Finlow.

In 2012, Mr Finlow participated in a procurement compliance training session. This resulted in him submitting a conflict of interest form. On the form he noted he would manage the risk associated with awarding work to his son by ensuring 'Sharp Plumbing and Drainage are the first company to quote on projects and then two more quotes are sort (sic) from their companies'. This was an inadequate strategy that should not have been accepted by DPFC; Mr Finlow should have been excluded from any procurement process involving his son.

Evidence also suggests Mr Finlow did not always follow the agreed risk mitigation strategy which was compounded by a failure by DPFC to implement systems or checks to ensure the integrity of the process. His managers accepted his actions at face value. As a supervisor of staff tasked with procurement responsibilities, Mr Finlow must have understood the ramifications of a perceived, let alone actual, conflict of interest. In his statement to IBAC, one prison officer observed 'I think management should have stopped it but I think Jeff should have stopped it happening too'.

2.3 Involvement in the recruitment of John Finlow

The investigation revealed that Mr Finlow used his position to assist the recruitment of his son, John Finlow as a senior prison officer. The evidence shows Mr Finlow was influential by:

- requesting a person with electrical qualifications when funding was sought for additional staff to cope with the increasing number of prisoners
- suggesting to staff that the facilities department 'might have to get a sparky or a plumber', to advantage his son
- drafting two questions for his son's interview specifically related to the electrical trade, thereby providing John Finlow with an advantage.

Mr Finlow was aware that his son did not have the appropriate electrical qualifications to perform the role yet encouraged him to apply. Mr Finlow also knew the role would be reporting directly to him but did nothing to address the conflict of interest, nor did the business services manager to whom Mr Finlow reported at the time.

John Finlow had previously been employed as an electrical apprentice but did not complete his qualification after failing his 'A' Grade examination. During the recruitment process, he said he intended to complete his final exam however this did not eventuate. Mr Finlow failed to inform his business services manager of this. As an interim measure, Mr Finlow intended to organise a qualified electrician to sign-off on John Finlow's electrical work, however, this did not occur. A diligent manager would be expected to ensure their staff had the appropriate qualifications to perform their duties.

On one occasion, John Finlow himself approached a qualified 'A' Grade electrician seeking a certificate of electrical safety for works he carried out at DPFC. John Finlow disclosed to the contractor that he had done his electrical apprenticeship but had not completed his 'A' Grade test. The contractor provided the certificate although he did not sight the work. John Finlow paid the contractor $50 in return for the provision of the certificate and $50 for the actual cost of the certificate.

3 Adequacy of systems and controls at Dame Phyllis Frost Centre

3 Adequacy of systems and controls at Dame Phyllis Frost Centre

Maintaining a workplace culture with sound ethics and integrity is an essential part of good governance and is fundamental to organisational performance. In the public sector, this is underpinned by a range of accountability requirements and standards, including policies, procedures and systems in relation to:

- code of conduct and values
- conflict of interest
- gifts, benefits and hospitality
- financial management, including procurement and contracting
- employment, including recruitment and vetting
- handling complaints, detecting and investigating integrity breaches, and ensuring protections for those who report.

Regular training and awareness raising are essential to ensure employees understand their obligations and feel confident to speak up and report concerns. Equally important is the commitment demonstrated by senior leaders to maintain an ethical culture, and their modelling of the standards and behaviours expected of all public sector employees.

In the course of this investigation, IBAC identified a number of specific organisational or systemic corruption vulnerabilities at DPFC, at odds with the accountability requirements and standards expected of a Victorian public body and its employees.

3.1 Failure to comply with conflict of interest policy

Mr Finlow knowingly failed to abide by DJR policy and procedures relating to conflicts of interest when awarding contracts to his son Adam Finlow. The ongoing conflict of interest was known among executives and staff at DPFC, yet it was not effectively monitored or managed for approximately five years.

When Mr Finlow submitted a conflict of interest form in 2012, he neglected to fully disclose the extent of Adam Finlow's business entities. He did not submit the form correctly and failed to follow the agreed process to mitigate the conflict by ensuring Adam Finlow's quote was the first quote received.

The *Code of Conduct for Victorian Public Sector Employees* states that public sector employees must use their powers in a responsible way and not use them to provide a personal benefit to themselves, their families or associates. Mr Finlow failed to remove himself from the procurement process and this enabled him to provide a benefit to his son.

A conflict of interest, whether actual or perceived, which is not properly declared or managed, is a serious red flag for potential corruption, putting a public sector agency's reputation and finances at risk. It is essential that clear and thorough policies and procedures are put in place to ensure all employees understand their obligations regarding identification and management of conflicts. The Victorian Public Sector Commission has prepared a model of conflict of interest policy which outlines expected standards for managing conflicts of interest in public sector agencies. The model policy identifies that procurement is a high risk function, requiring increased vigilance in identifying and managing conflicts of interest.

3.2 Vulnerabilities in procurement processes

Procurement policies and procedures were systemically circumvented and red flags failed to prompt an effective response. Red flags included:

- a 2010 review of prison procurement identifying the conflict of interest in relation to Mr Finlow and Adam Finlow requiring 'active management'
- failure to obtain three quotes when required by DJR policy
- additional quotes submitted after work was performed and invoiced
- lack of purchase orders for amounts more than $2000
- splitting of invoices to ensure they fell below thresholds that would otherwise require further quotes or subject a job to tender
- excessive variations
- failure to segregate duties, with Mr Finlow exercising significant autonomy over the procurement process, contrary to DJR procurement policy
- complaints from staff who advised proper processes were not being followed.

In 2012 DJR attempted to improve financial management and probity practices by introducing the Invoice Management Team (IMT). The IMT was designed to centralise the finance system rather than having individual correctional facilities dealing with payments. However, IBAC identified that the system remained flawed. Mr Finlow continued to award contracts to Adam Finlow after the IMT was introduced, for example, by providing the names of contractors who provided quotes without verification that the quotes had been sighted.

IBAC also identified structural issues in DJR that may have contributed to Mr Finlow's conduct, as well as potentially encouraging other employees to bypass policies and procedures to meet timeframes. Mr Finlow gave evidence that it was standard practise at DPFC to split quotes to avoid going to the APU, because of the 'delay in getting it done'. This would also have the effect of avoiding at least some degree of scrutiny.

The investigation also identified some reluctance in DPFC to engage BEBS for significant works. One example concerned the construction of a horticulture shed in the grounds of DPFC in 2012. One DPFC project manager suggested that the company leading a separate project under BEBS' control should construct the shed. However, it was identified that a number of pre-conditions (such as confirming sub-contracting arrangements) needed to be met before this could occur. Instead, Mr Finlow and the general manager at the time, arranged different contractors to do the job, including Sharp All Trades. One justification for this approach was that funding for the project needed to be expended in the current financial year, and that involving BEBS would have unduly delayed the project.

3.3 Inadequate oversight of Jeff Finlow

It was known among some executives and staff at DPFC that Mr Finlow was awarding work to his son, Adam. Although this should have prompted the removal of Mr Finlow from any procurement decisions involving Adam Finlow, this did not occur.

In August 2011, DPFC engaged a quantity surveyor to review some of Adam Finlow's work, amid concerns regarding the conflict of interest issues. The quantity surveyor reported that in his view the total costs paid were within reasonable limits. However, there were limitations with the review. The quantity surveyor did not comment on the quality of the work. Nor was he provided with quotes or itemised invoices when reviewing the works; instead he was shown the work and then emailed the total costs paid for the projects he reviewed. The quantity surveyor's report was very brief (no more than half a page) and did not specifically reference work he had reviewed. Some DPFC executives, including the general manager at the time, frequently cited this 'report' in defence of their lack of oversight of Mr Finlow.

The conflict of interest was red flagged in a review of prison procurement as early as 2010, yet it was not addressed by DPFC management.

During his time at DPFC, Mr Finlow mostly reported to the business services manager. However, he effectively worked in a largely autonomous manner without any real oversight. He was taken at his word and there were no rigorous checks on his work. One DPFC staff member told IBAC 'I don't actually know who was controlling him' while another stated 'I felt that Jeff controlled the [business service managers], not them supervising him'.

One business services manager who was acting in the role at the time, observed it was difficult to keep track of what Mr Finlow was doing and there was 'no real structure in place by the [general managers] to have him carry out his work through any specific channel'. This lack of supervision was exacerbated by high management turnover, poor handovers and record keeping. Between 2009 and 2014, he reported to four business services managers, with others acting in the role on an interim basis. Mr Finlow successfully exploited his position by leveraging others' ignorance of reporting lines, context and accountabilities.

3.4 Culture at DPFC

Evidence obtained by IBAC suggests Mr Finlow had generally positive working relations with senior DPFC managers. He was known for his knowledge of the prison and its day-to-day operations, and for being responsive. One executive noted 'at times he dropped anything he was doing to come into the prison and do works that were required'. However, Mr Finlow's working relationships with others was more challenging; he was described by numerous colleagues as 'rude', 'arrogant', 'a law unto himself', and a 'classic bully' who attempted to stand over people.

Staff had complained on several occasions about the quality of Adam Finlow's work and raised safety concerns with management. There was no clear process, however, as to how complaints should be managed or reported. Numerous statements provided to IBAC suggest some DPFC executives maintained, at times, a dismissive attitude. One staff member said when they raised concerns 'I never felt as though I was taken seriously'.

IBAC received evidence that Mr Finlow sometimes used intimidation to deter staff from making complaints about him awarding work to Adam Finlow. One prison officer said 'I asked Jeff if he was going to get the contractors back in to fix the building under warranty and I asked him who the contractor was, he replied "you know it was Adam" and then he told me to stop asking questions around the place because he's getting asked questions, and that my life would become difficult, words to that effect'.

It appears it is not unusual for family members to work at prisons. One staff member noted 'prisons seem to have all their family members working there, it's just something I think I have gotten used to'. Evidence obtained by IBAC indicated a number of DPFC employees were related to or had a connection with other DPFC employees. This may have influenced or clouded senior managers' judgment in responding to Mr Finlow's conflict of interest.

3.5 Safety risks

The investigation found Mr Finlow's conduct gave rise to a waste of public funds in substandard works posing a number of safety risks:

- DPFC executive received numerous complaints both verbally and in writing from prison officers regarding Adam Finlow. The complaints related to his attitude towards strict security protocols and poor quality of work. Adam Finlow's work on the horticulture shed, for example, had to be rectified by other contractors before a certificate of compliance could be issued for the structure.
- Mr Finlow started arrangements for the construction of the horticulture shed without a building permit, despite being advised on two occasions one was required. This resulted in a building notice being issued to the Minister for Corrections.
- John Finlow carried out electrical works without the required qualifications and this potentially placed prisoners and staff at risk. An electrical inspection company prepared a report on John Finlow's work and identified a number of defects requiring rectification.

4 Corruption risks in the corrections sector

4 Corruption risks in the corrections sector

DPFC is one entity within the Victorian corrections sector. In Victoria, there are 11 publicly operated prisons, two privately operated prisons and one publicly operated transition centre. A new, privately operated prison at Ravenhall is currently under construction and is scheduled for completion in late 2017.

The corrections sector faces heightened risks of corrupt procurement activities because of the significant proportion of the overall corrections budget which is allocated to capital expenditure. Although DJR has controls in place in relation to procurement practices, Operation Nepean highlights how these can be undermined by poor supervision, poor record keeping and the evolution of workplace cultures that tolerate misconduct and corruption.

Rapid workforce expansion also presents challenges around attracting suitable applicants, establishing a strong integrity culture in newly established units, and undertaking thorough and consistent vetting of applicants. The Victorian corrections sector has been undertaking high volume recruitment that can give rise to integrity issues. In the four years between 2009 and 2012, the Victorian prison population rose by approximately 11 per cent. In the subsequent three years, this growth more than doubled to 25 per cent.[1]

Operation Nepean identified that nepotism and associated conflict of interest risks can also be prevalent in this sector. Corrections facilities and community corrections services based in regional areas can face additional challenges to maintaining strong integrity standards, particularly in relation to attracting suitable employees and managing conflict of interest issues.

IBAC is undertaking further research on the broader corruption risks and vulnerabilities within the corrections sector, and will publish its findings in due course.

[1] Victorian Ombudsman, *Investigation into the rehabilitation and reintegration of prisoners in Victoria*, 2015. Accessed at: https://www.ombudsman.vic.gov.au/getattachment/5188692a-35b6-411f-907e-3e7704f45e17

5 Conclusions and recommendations

5.1 Conclusion

IBAC's investigation resulted in the allegations against Mr Finlow being substantiated.

The *Code of Conduct for Victorian Public Sector Employees* states that public sector employees must use their powers in a responsible way and not use them to provide a personal benefit for themselves, their families or associates. It also states that public sector employees must observe the highest standards of integrity by avoiding conflicts of interest and demonstrating impartiality by making decisions without favouritism or self-interest. They should also refuse all offers of gifts and benefits that could be perceived as influencing them or undermining integrity.

Mr Finlow, in his position as manager of the facilities department at DPFC, breached the code of conduct and DJR policies and procedures applicable to DFPC. He circumvented the procurement process for the purpose of awarding contracts to his son, Adam Finlow, and did so with the intention of providing him with an income which would allow him to establish his business. He also failed to properly declare and manage his clear conflict of interest, and accepted a valuable gift from a contractor contrary to the gifts and benefits policy.

Mr Finlow was in a position where he was in control of the procurement process relating to maintenance work carried out by contractors. By informing Adam Finlow of competitors' quotes and failing to consistently obtain the required number of quotes for jobs, Mr Finlow helped his son to submit cheaper quotes and win contracts, and deprived other businesses of work opportunities.

IBAC found that Adam and Deanna Finlow acquired around $1.56 million in payments from DJR, significantly aided by Mr Finlow.

Mr Finlow also used his position to obtain his son John Finlow a position at DPFC, despite John Finlow not having the electrical qualifications required.

The failure of senior managers to adequately oversight Mr Finlow, or to respond appropriately to his clear conflicts of interest, helped facilitate Mr Finlow's conduct.

Mr Finlow was stood down from his position while DJR conducted an internal investigation. He resigned in June 2015.

After due consideration, IBAC decided there was insufficient evidence to substantiate allegations which might amount to criminal behaviour on the part of Mr Finlow.

5.2 Recommendations

Pursuant to section 159(1) of the IBAC Act, IBAC makes the following recommendations:

Recommendation 1

That DPFC reviews its policies and procedures to address the corruption vulnerabilities identified in Operation Nepean and to ensure:

- corruption risks associated with procurement (including failure to comply with policies and procedures such as the requirement to obtain three quotes) are addressed
- there is improved awareness of and compliance with public sector values and the code of conduct, and policies and procedures relating to conflict of interest and gifts and benefits
- there is adequate supervision and rotation of employees in high risk positions, such as positions with responsibility for procurement
- there are mechanisms in place to encourage and support employees to speak up and report suspected misconduct or corruption, and to ensure appropriate assessment, escalation and investigation of such matters
- recruitment processes are robust, including conducting checks to ensure applicants and employees have the required skills and qualifications
- there are appropriate controls to mitigate risks associated with staff reporting to family members.

Recommendation 2

That DPFC report to IBAC on the implementation of Recommendation 1 by 10 October 2017.

Recommendation 3

That Corrections Victoria review its policies and procedures to address the corruption vulnerabilities identified in Operation Nepean and take steps to ensure those vulnerabilities are addressed by other prison facilities under its control.

Recommendation 4

That Corrections Victoria report to IBAC on the implementation of Recommendation 3 by 10 October 2017.

6 Appendices

Appendix A: Natural justice requirements and responses

Some parts of this special report were considered to be covered by section 162(4) of the *Independent Broad-based Anti-corruption Commission Act 2011* (IBAC Act) which requires that non-adverse comment or opinion about any person be shown to them in advance. Therefore such persons were extended the opportunity to inspect relevant parts.

To the extent that persons are identified in the report and are not the subject of adverse comment or opinion, IBAC is satisfied in accordance with section 162(7) of the IBAC Act that:

- it is desirable to do so in the public interest
- it will not cause unreasonable damage to any such person's reputation, safety or wellbeing
- each such person is not the subject, nor for that matter intended to be the subject, of any adverse comment or opinion.

To the extent that public bodies and persons are identified in the report and are the subject of adverse findings[1], comment or opinion[2], they have been given a reasonable opportunity to respond to same by being shown in draft material parts relating to them.

No responses were received.

[1] In relation to public bodies.

[2] In relation to persons.

Appendix B: Previous IBAC special reports

Publications date	Report title
November 2013	Special report concerning certain operations in 2013
February 2014	Special report concerning allegations about the conduct of Sir Ken Jones QPM in relation to his dealings with certain confidential Victoria Police information
April 2014	Special report following IBAC's first year of being fully operational
October 2014	Operation Fitzroy: An investigation into the conduct of former employees of the Department of Transport/Public Transport Victoria, Barry John Wells and Hoe Ghee (Albert) Ooi, and others
August 2015	Special report concerning Police Oversight
April 2016	Operation Ord: An investigation into the conduct of officers at the Department of Education and Early Childhood Development
May 2016	Operation Darby: An investigation of Mr Nassir Bare's complaint against Victoria Police
October 2016	Operation Exmouth: An investigation into the conduct of former Victorian public servant, Carmine Petrone
November 2016	Operation Ross: An investigation into police conduct in the Ballarat Police Service Area
December 2016	Special report concerning illicit drug use by Victoria Police officers: Operations Apsley, Hotham and Yarrowitch
January 2017	Operation Dunham: An investigation into the conduct of officers of the Department of Education and Training, including Darrell Fraser, in connection with the Ultranet project and related matters
March 2017	Operation Liverpool: An investigation into the conduct of two officers of Bendigo Health, Adam Hardinge and John Mulder

ibac independent broad-based anti-corruption commission
Victoria

Level 1, North Tower
459 Collins Street, Melbourne Victoria 3000
GPO Box 24234 Melbourne Victoria 3000
Phone 1300 735 135 | Fax (03) 8635 6444

www.ibac.vic.gov.au