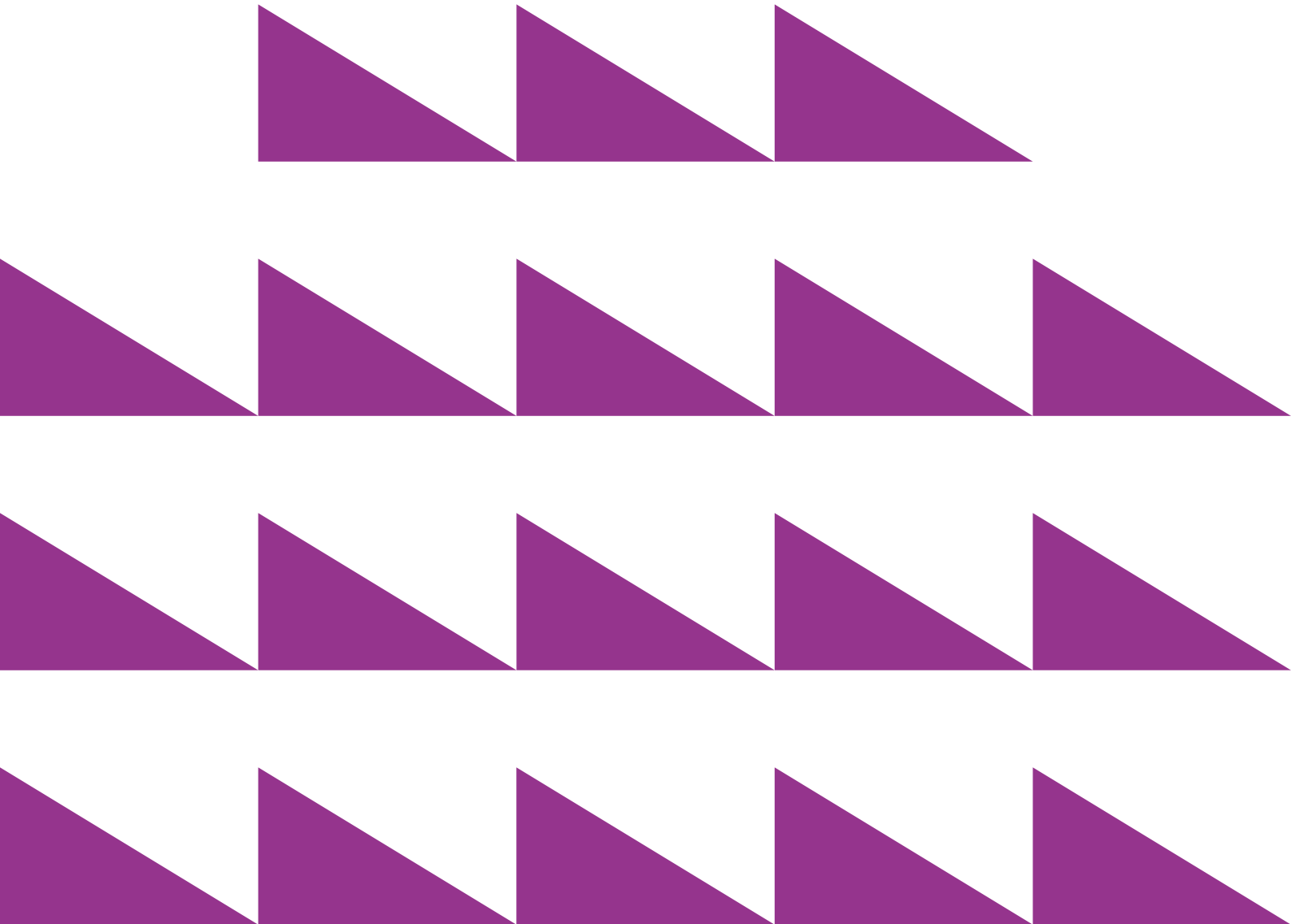
ibac independent broad-based anti-corruption commission
Victoria

Operation Betka

An investigation into alleged corrupt conduct by a former contractor of the Department of Education and Training

May 2020



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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 Betka investigation into the conduct of a former contractor of the Department of Education and Training.

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

Yours sincerely



The Honourable Robert Redlich QC
Commissioner

List of abbreviations

DET	Department of Education and Training
DPC	Department of Premier and Cabinet
DTF	Department of Treasury and Finance
IBAC	Independent Broad-based Anti-corruption Commission
IT	Information technology
ITD	Information Technology Division of DET
PSD	People Services Division (previously Human Resources) of DET
SPC	State Purchase Contract
VAGO	Victorian Auditor-General's Office
VGPB	Victoria Government Purchasing Board
VPSC	Victorian Public Sector Commission

1 Summary of investigation and outcomes

1 Summary of investigation and outcomes

1.1 Introduction

In the Victorian public sector a significant proportion of employees are engaged on fixed-term contracts.[1] In many cases, contractors are engaged because they have specialised skills to help public sector agencies deliver complex, limited-tenure projects.

The community expects that the processes under which contractors are engaged are sound and that contractors who perform a public sector function act with integrity, in the public interest, and in accordance with the *Code of Conduct for Victorian Public Sector Employees.*

Operation Betka was an investigation by the Independent Broad-based Anti-corruption Commission (IBAC) into allegations a contracted Senior Project Manager (the Project Manager) in the Information Technology Division (ITD) of the Department of Education and Training (the Department) was involved in serious corrupt conduct.

IBAC investigated allegations that the Project Manager used his position with the Department to provide business opportunities to a company he owned (Company A). This company provided almost $14 million in contracted staffing resources to the Department between 2003 and 2016.

IBAC's investigation identified that the Project Manager used his departmental position to further his private business interests in ways that gave rise to a conflict of interest with his public duties. This involved misusing departmental information, influencing processes for procuring contracted staffing services, and circumventing those processes to obtain an unfair advantage over other IT contractor suppliers.

IBAC identified that the Project Manager had verbally and informally declared his conflict of interest to some departmental managers, including his line managers. However, there were occasions when he should have, but did not, formally declare his conflict to departmental officers who were unaware of his connection to Company A.

Managers in the public sector have a responsibility to develop effective strategies to manage conflicts of interest and to monitor these conflicts to ensure the integrity of processes, including procurement and recruitment, is not undermined. IBAC's investigation identified that the Project Manager's supervisors at the Department did not consistently do this.

Conflicts of interest must not only be identified and declared, but must be recorded, communicated to relevant parties, and managed effectively.[2] Operation Betka highlighted how conflicts of interest, if not properly declared, managed or avoided altogether, can undermine the integrity of public sector agencies and expose them to the risk of corrupt conduct.

This investigation also highlights the vital nature of effective senior leadership and supervision to an agency's defences against corruption. The failures of supervisors at the Department to effectively address the Project Manager's clear conflict of interest constituted a significant institutional failing. Had these supervisors developed and implemented a plan to manage the Project Manager's conflict of interest, he would not have been able to improperly influence the Department's procurement processes for his own benefit.

People who hold management positions have an obligation to promote integrity and ensure public sector values are upheld. This includes being vigilant in relation to conflicts of interest and taking meaningful action to address them when they arise.

The corruption vulnerabilities highlighted in Operation Betka are likely to exist more broadly in the Victorian public sector. Therefore, there is value in other public sector agencies considering the issues highlighted in this report regarding the engagement and operation of contractors, and taking action to strengthen their systems, processes and controls.

The Department ceased the Project Manager's engagement in July 2016.

[1] As at June 2018, the proportion of fixed-term employment in the Victorian public sector was 16 per cent. Victorian Public Sector Commission, *Statistical compendium to the state of the public sector in Victoria* 2017–2018, p 15.

[2] More information is available in IBAC's report, *Managing corruption risks associated with conflicts of interest in the Victorian public sector*, October 2019.

1.2 Background to the allegations

During April and May 2016, the Department's Integrity and Assurance Division conducted an internal audit of the Edugate Extension Project, an IT project that commenced in 2013. The audit was conducted in response to concerns about a possible overspend.

Among other things, the audit found ITD had engaged Company A to provide IT services, including the development and delivery of the Department's 2013–2017 Information and Communication Technology Strategy. The audit also found Company A staff were contracted to fill management roles within ITD. Such contracting was not permitted under the Victorian Government's eServices Register; these positions should have been filled as Victorian Public Service (VPS) positions or contracted via the Staffing Services State Purchase Contract (SPC).

eServices Register

The eServices Register is an online marketplace that provides suppliers with a way to respond to requests from Victorian government departments and agencies for specified IT services.

The eServices Register is used to provide backup or support services from an external organisation for a specific technology project. It is not to be used to engage on-hire workers (where an employment agency employs the worker, and the government body pays the agency for the use of the worker for agreed hours or a set period), which should be engaged via the Staffing Services SPC.

Staffing Services SPC

The Staffing Services SPC is used when a Victorian department or agency wants to contract an individual for a temporary or casual role within their organisation. It is mandatory for all departments and entities subject to Victorian Government Purchasing Board (VGPB) policies to use the Staffing Services SPC for all temporary and on-hire staffing requirements related to IT.

The Staffing Services SPC is comprised of recruitment agencies referred to as 'master vendors'. Five master vendors are approved to provide staffing services under the IT category.

These master vendors are approved to provide a range of services. In some instances, a master vendor may use a third party approved by the Department of Treasury and Finance (DTF), which are referred to as tier two suppliers. Purchasers of staffing services (such as the Department) are unable to raise orders directly with tier two suppliers.

DTF is responsible for actively managing and monitoring the performances of master vendors at a whole-of-Victorian-government level to ensure compliance with the contract and value for money.

The Staffing Services SPC uses a procurement model, with policy and information provided through the VGPB.

Master vendors and conflict of interest

Under the Staffing Services SPC, a master vendor must ensure its employees and contractors (including tier two suppliers) do not have any conflicts of interest.

When entering into Staffing Services SPC agreements, master vendors also commit to performing their obligations in compliance with public sector values, a range of government policies and the *Public Administration Act 2004.*

Further investigation by the Department established the Project Manager was the sole director of Company A, and that no conflict of interest had been declared when Company A resources were being procured for the Edugate Extension Project or other projects.

In June 2016, the Department received a separate complaint that the Project Manager's engagement was inappropriate given he was the director of Company A, a company that supplied contractors to the Department.

In June 2016, a recruitment agency (the Recruitment Agency) notified the Department of an issue regarding the awarding of employment contracts to Company A, which was not a master vendor or tier two supplier approved by DTF under the Staffing Services SPC.

The recruitment agency also advised the Department that payments to individual contractors were being made to Company A's company bank account instead of directly to the individuals concerned, which was not permitted under the Staffing Services SPC. The Department's Integrity and Assurance Division was informed of the issues raised by the recruitment agency on 6 July 2016.

1.3 The early stages of the investigation

In July 2016, IBAC received a notification from the Department pursuant to section 57(1) of the *Independent Broad-based Anti-Corruption Commission Act 2011* (IBAC Act). The notification concerned allegations about the suspected corrupt conduct of the Project Manager.

In August 2016, IBAC determined to conduct an investigation in accordance with section 60(1)(b) of the IBAC Act. The investigation was called Operation Betka.

Operation Betka investigated allegations that the Project Manager:

- failed to declare his interest in Company A when working in the Department
- failed to manage his conflicts of interest
- obtained property or a financial advantage by deception.

1.4 The entities involved

1.4.1 The Project Manager

The Project Manager was contracted to the Department while also owning and playing an active role as director of Company A.

The Project Manager first commenced with the Department in 2003. He subsequently worked for the Department for around 13 years in a variety of IT management roles. His contracts were renewed and rolled over for periods of between one year and 18 months.

His managers at the Department described him as an exceptional project manager with a reputation as a 'go-to guy'.

The Department ceased his engagement on 7 July 2016.

1.4.2 Company A

In April 2000, the Project Manager established Company A as an IT consultancy providing project management and business analyst services to clients. After 2005, the Project Manager was the sole shareholder and director.

Company A provided sub-contractors to the Department for project management and project support services from 2003 to 2016.

Company A submitted an application to deregister as a company in October 2016.

Company A's status in relation to the Victorian Government eServices Register

Although Company A was listed on the eServices Register, it was not listed as being able to supply 'Project Management Services' – its core service. This meant approval from the relevant departmental deputy secretary was required for Company A to provide project management services to the Department.

As this exemption approval process was considered onerous, Company A established a relationship with the Recruitment Agency so Company A staff could be supplied to the Department via the Staffing Services SPC.

Such an arrangement was not allowed under the Staffing Services SPC.[3] Although the Recruitment Agency was an approved master vendor, Company A was neither a master vendor nor an approved tier two supplier.

1.5 The conduct of the investigation

1.5.1 Information obtained

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

IBAC also conducted 10 interviews with key witnesses.

1.5.2 Private examinations

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

The examinations were conducted between July and September 2017.

[3] The Recruitment Agency disputes IBAC's assessment that such an arrangement was a breach of the Staffing Services SPC.

1.6 Recommendations

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

Recommendation 1

The Department of Education and Training to address the corruption vulnerabilities identified in Operation Betka in relation to procurement including:

- strengthening controls regarding the engagement and oversight of contractors
- strengthening controls to ensure compliance with the eServices Register and the Staffing Services SPC
- reviewing contracting arrangements to verify that relevant suppliers are approved under the Staffing Services SPC
- undertaking reasonable checks and analysis to identify any actual, potential or perceived conflicts of interest between contractors engaged by the Department and other departmental staff or contractors.

Recommendation 2

The Department of Education and Training to advise IBAC how it will ensure that employees and contractors comply with the Department's conflict of interest framework, including ensuring:

- supervisors understand their obligation to actively and effectively manage the conflicts of interests of the employees and contractors they manage
- employees and contractors understand their obligations to identify, declare and manage conflicts of interest, including avoiding conflicts of interest where possible
- declarations of conflicts of interest and any associated management plans are recorded, communicated to relevant supervisors, and reviewed as appropriate
- if the Department engages companies or other suppliers in which departmental employees or contractors have an interest, a robust risk management approach is adopted to address conflicts of interest and other inherent risks.

It is requested that the Department report to IBAC on the implementation of the above recommendations by 30 November 2020.

IBAC notes that the Department has already commenced work to address the vulnerabilities identified in Operation Betka, including in relation to procurement processes and conflicts of interest.

2 Allegations against the Project Manager

2.1 Failure to declare and manage conflicts of interest

2.1.1 Did the Project Manager disclose his relationship with Company A?

It was alleged the Project Manager failed to declare his interest in Company A when working in the Department.

IBAC did not substantiate this allegation.

Some departmental managers, including two of his line managers, were aware of the Project Manager's connection with Company A.

IBAC heard evidence the Project Manager had disclosed his relationship with Company A at various times in conversation with senior ITD managers.

However, the Project Manager's relationship with Company A was less well known across the rest of the Department.

2.1.2 Did the Project Manager manage his conflicts of interest?

It was alleged the Project Manager failed to manage his conflicts of interest.

IBAC found evidence to substantiate this allegation.

Under examination by IBAC, the Project Manager repeatedly claimed he had told people he was the director of Company A. However, as a contractor in the Department, this was not the extent of his responsibility.

The Project Manager was required to follow departmental policies and procedures, and to act in accordance with the *Code of Conduct for Victorian Public Sector Employees.*

It was therefore the Project Manager's responsibility to be aware of the Department's conflict of interest policies and procedures, and to declare and to manage his potential conflicts of interest.

The Project Manager failed to:

- document his declaration of a conflict of interest as director of Company A
- develop an adequate management plan (beyond a verbal agreement he had with ITD managers)
- comply with the verbal agreement he had with ITD managers (as outlined below).

When situations arose where there was an actual, potential or perceived conflict of interest, he did not further disclose his interest with Company A. This meant departmental staff responsible for procurement were unaware of the potential risks the Project Manager's conflicts of interest presented and were unable to manage those risks.

While working at the Department, the Project Manager actively promoted Company A to departmental managers and officers responsible for procurement. During IBAC examination, he admitted he engaged in 'sales' type activities to generate further business for Company A within the Department. He failed to appreciate that such activities conflicted with his role and responsibilities as a contractor within the Department.

2.2 Failure to document conflicts of interest

The Project Manager failed to record his conflict of interest in writing.

Under the Department's conflict of interest policy at the time, there was no central register for recording conflicts of interest. However, given the ongoing and commercial nature of the Project Manager's conflict, it should have been recorded and communicated to relevant areas of the Department so it could be effectively managed.

The failure of the Project Manager's supervisors to document that conflict of interest once they became aware of it is discussed in the next chapter.

2.2.1 The verbal agreement

In response to the Project Manager's verbal declaration of his involvement with Company A, the Project Manager made an agreement with the managers of ITD that:

- he would not engage any contractors from Company A on projects for which he was responsible
- Company A contractors would not work on projects for which the Project Manager was responsible
- the Project Manager would not seek to influence the engagement process for resources that would favour contractors from Company A
- the Project Manager would not personally engage in any commercial dealings between the Department and Company A.

IBAC regards this verbal agreement as inadequate.

Reliance on a verbal agreement lacks rigour and fails to follow the Department's conflict of interest policies and processes, which state that decisions in relation to the management of conflicts of interest should be recorded in a manner which ensures transparency and accountability.

The Project Manager's interest in Company A and the plan for managing his conflict of interest should have been properly documented and recorded. The plan for managing the conflict of interest should also have been actively oversighted by relevant managers.

The Project Manager subsequently worked alongside Company A contractors on departmental projects in breach of his verbal agreement. He used his position to influence the contractual relationship between Company A and the Department. This included preventing staff (both Company A contractors and departmental employees) from voicing concerns, thereby helping him evade oversight in regard to the cost effectiveness of Company A's contracts, as demonstrated in the following case study.

Case study 1 – Impact of the Project Manager's breaches of the verbal agreement

Contractor X was a Company A contractor who worked in the Department. Contractor X had a departmental manager and an operational supervisor. Despite this, Contractor X stated the Project Manager treated her as if she reported to him because she was engaged through Company A.

Contractor X stated the Project Manager was 'very controlling' and would threaten dismissal if she did not comply with his directions. This included not telling her line managers that a particular project was 'off the rails' because it would reflect badly on the Project Manager. Contractor X claims the Project Manager was often openly hostile towards her and that this behaviour was witnessed by others.

Contractor X stated on several occasions she raised concerns with her line managers about the Project Manager's behaviour, believing his behaviour stemmed from a conflict of interest given his role at Company A. However, Contractor X said her line managers may have thought her concerns were about the hostile behaviour, rather than the conflict of interest. Contractor X's complaint remained unresolved at the time her contract ended.

2.2.2 Last-minute email documentation

On the day the Project Manager's contract was terminated by the Department in mid-2016, an ITD manager responded to advice that Company A was being contracted as an unapproved third party via the Staffing Services SPC.

The ITD manager emailed the Project Manager stating that, as a result of 'increased scrutiny', he wished to have the Project Manager formally acknowledge the 'long standing agreement' regarding the following conditions of his engagement with the Department:

- *You will not engage any contractor from your company in the projects for which DET has made you responsible.*
- *No contractor for your company may work in the projects for which DET has made you responsible.*
- *You will not seek to influence the engagement process for resources in favour of any contractor from your company in other projects associated with your projects.*
- *You will not personally engage in any commercial dealings between DET and your eServices company.*

The ITD manager said that, at the time, he believed these conditions to be sufficient in managing any conflict of interest arising from the Project Manager's relationship with Company A while working for the Department.

2.3 Failure to subsequently acknowledge his conflict of interest

There were instances when the Project Manager should have raised his conflict of interest and taken steps to manage its impact, but did not:

- He failed to disclose his potential conflict of interest when being interviewed for the role of program manager in 2003.
- He failed to advise departmental managers of his conflict of interest when participating on interview panels to procure candidates for IT roles within People Services Division (PSD). He was aware that Company A contractors had been submitted as candidates and he had helped those candidates prepare for interview. Under examination by IBAC, he acknowledged he should have withdrawn from the procurement process.
- When departmental staff asked him to review position descriptions for roles that needed to be filled, he failed to declare his potential conflict of interest. In such cases, there was a potential conflict because Company A contractors would apply for these roles. The Project Manager's involvement created at least a perception he could give Company A contractors an unfair advantage.
- In 2015, the Project Manager introduced Company A's Account Manager to a departmental manager who was looking to fill two contractor positions. Under examination by IBAC, the departmental manager stated the Project Manager did not disclose his relationship with Company A at this time, meaning she was unaware he had a conflict of interest in being involved with the procurement of IT services from Company A.

Case study 2 – Engagement of Contractor X

In June 2015, Company A posted an advertisement for a position within the Department's PSD. The Project Manager authored the Department's position description.

Contractor X responded to the advertisement, met with Company A staff and was subsequently invited to attend an interview with the Department.

The night before the interview, Contractor X received a call from the Project Manager. The Project Manager talked about the role, the Department, the project and what he thought the panel was looking for.

On the day of the interview, the Project Manager was invited to replace a staff member who was no longer able to sit on the interview panel.

Under IBAC examination, the Project Manager claimed he made the panel chair aware that he was director of Company A prior to participating in any interviews. The chair was adamant that he had made no such declaration.

Contractor X was offered the role, signed contracts with Company A, and resigned from her previous position.

Soon after, the panel chair identified that the Project Manager was the director of Company A. Concerned, she notified the then Director of Application Services in ITD, who advised the recruitment process should be redone.

Contractor X subsequently received a call from Company A's Account Manager, who advised proper processes had not been followed and the contract had to be cancelled.

New interviews were scheduled.

On 28 July 2015, Contractor X attended a further interview with the Department (with a panel that did not include the Project Manager) and was offered a contract with Company A for the role at the Department.

Contractor X commenced with the Department in August 2015, working in PSD.

2.4 Influencing procurement processes

Operation Betka found that the Project Manager and Company A's Account Manager actively fostered relationships with key managers within the Department to gain access to information and favourable treatment for Company A.

2.4.1 Forwarding CVs of Company A contractors

The Project Manager and Company A's Account Manager would regularly send CVs of Company A contractors directly to hiring managers at the Department. This circumvented the Recruitment Agency and undermined the Staffing Services SPC and the Department's policies.

Sometimes, the Project Manager would be approached by departmental hiring managers and asked if Company A had people with certain skills on their books.

Other times, the Project Manager would suggest certain Company A contractors to the then Director of Application Services, before sending the Director the contractors' CVs. The Director would then forward the CVs to hiring managers in Application Services.

Under IBAC examination, neither the Project Manager nor the then Director of Application Services appeared to appreciate that by providing CVs, the Project Manager was influencing procurement decisions from which he would financially benefit.

Both the Project Manager and the then Director of Application Services considered they were sufficiently distanced from the procurement process because they were not the hiring managers. However, when the Director passed CVs to hiring managers, this likely carried weight in the decision-making processes of hiring managers.

2.4.2 Using insider knowledge for advantage

Because of his position within the Department, the Project Manager had access to information about upcoming roles in the Department and used this knowledge to inform Company A staff, who would then identify candidates in advance.

For example, in numerous instances Company A's Account Manager would approach the Recruitment Agency before a position was advertised, and ask to put forward a candidate when the role came up.

In this way, the Project Manager used information he obtained in his role with the Department to financially benefit Company A, Company A contractors and himself.

2.4.3 Briefing Company A candidates before interview

The Project Manager also used his knowledge to brief candidates about the Department before interviews (see the case study at 2.3.1).

The then Director of Application Services said he was unaware that the Project Manager had told candidates about how the Department worked, the hiring managers, what hiring managers were looking for, and what to focus on during interviews.

The then Director of Application Services appeared indifferent to this practice and commented it was not 'particularly unwelcome' because the Project Manager's candidates were usually good. The Director failed to appreciate that this breached the confidentiality of departmental information during the hiring process.

2.4.4 Willingness to 'influence'

In December 2015, a role for an analyst became available in the ITD team.

The Project Manager and Company A's Account Manager favoured Contractor Y as the candidate for the job. Contractor Y was represented by Company A and Company A stood to gain agent fees if Contractor Y was engaged by the Department.

The Project Manager and the Account Manager were in frequent contact about this position. In a message from the Project Manager to the Account Manager in December 2015 he stated:

- *Have told [redacted] we have 1 and maybe 2 high quality candidates and to wait*
- *I'll be fucked if I'm giving this away*
- *I'll pressure if necessary*
- *Been fucked over downstairs – will influence upstairs*
- *… so long as our candidate gets it …*

Under examination, the Project Manager stated he could not recall the message exchange and could not explain what he meant by the term 'pressure'. Nor could he recall whom he would 'influence upstairs'.

In January 2016, Contractor Y commenced work within ITD as an analyst.

2.4.5 Seeking extensions for Company A contracts

Toward the end of 2015, the Project Manager was operating Company A by himself. Rather than Company A's Account Manager contacting the Department, the Project Manager directly sought contract extensions for Company A staff engaged at the Department.

The Project Manager did so while acting in his departmental role and using his departmental email account to submit contract extension requests to the Staffing Services area of ITD, as if this was connected to his departmental role. In doing so, he again failed to disclose his conflict of interest.

2.4.6 The Project Manager writes his own position description

Towards the end of the Project Manager's last contract with the Department, the Department decided his role would need to be procured through the Staffing Services SPC.

At the same time, the Department also identified the need for a second senior project officer role that would report to the position held by the Project Manager.

The Manager of Corporate Services asked the Project Manager for position descriptions for both roles, with the intention of using them in the submission to Staffing Services within ITD.

Not only did the Project Manager write his own position description, he provided the Manager of Corporate Services with instructions on how to progress the procurement. For example, he provided content to be used in the email to Staffing Services, including that the request should go to the Recruitment Agency, details of when to interview, and when the role would start.

The Manager of Corporate Services followed the Project Manager's instructions, using the position descriptions authored by the Project Manager, and making only minor changes to the prepared email content – for example, interview and start dates.

Under examination, the Manager of Corporate Services was adamant he had changed the position descriptions. IBAC found no evidence to support this.

Although he was required to apply through the Recruitment Agency, the Project Manager played an integral role in his own procurement. This was clearly inappropriate.

2.5 Other integrity concerns

2.5.1 Non-compete clauses and payment of wages

In July 2016, the Department terminated all Company A contracts after it identified that Company A was not a master vendor or an approved tier two supplier.

At this time, the Project Manager reminded Company A contractors of clauses in their contracts that restricted them from working with the Department independently from Company A for six months.

Company A also withheld payment of salaries from some of its contractors to deter them from doing further work with the Department through contracts with master vendors. While some staff eventually received payment for their outstanding amounts, others did not.

There is limited legal recourse for these contractors, as Company A has submitted an application to be deregistered.

Case study 3 – Contractor X's non-compete clause

Contractor X's contract with Company A contained a post-employment restriction clause that prohibited her from working for a Company A client for six months, without written permission from Company A.

Following the Department's termination of all Company A contracts, Contractor X pursued an extension of her contract with the Department via the Recruitment Agency. The Project Manager refused to lift the six-month post-employment restriction. The relevant Director at the Department eventually decided not to fill the role due to the Project Manager's refusal to release Contractor X.

Company A withheld 17 days of wages from Contractor X (estimated to be around $14,500). The Project Manager offered to lift the post-employment restriction clause *if* Contractor X rescinded her claim to that money.

Contractor X claims she never received payment for the 17 days and initiated legal action to reclaim the payment.

Under IBAC examination, the Project Manager claimed his actions regarding Contractor X's non-compete clause were legitimate, stating he legitimately contracted Contractor X under the Staffing Services SPC.

The Project Manager had not, however, read the SPC User Guide, which stipulates departments cannot use unapproved tier two suppliers and that payments must be made directly to contractors. (Tier two suppliers are discussed further in Chapter 4.)

2.6 The Project Manager's response

Under examination by IBAC, the Project Manager failed to acknowledge the conflicts of interest between his public duties as a departmental contractor and his private interests in Company A.

Despite having worked for the Department for over a decade, the Project Manager did not appear to understand his obligations in relation to conflicts of interest and requirements around effectively declaring and managing them.

The Project Manager did not recognise that his involvement in procurement involving, or potentially involving, Company A contractors was inappropriate, nor did he acknowledge he had failed to demonstrate ethical leadership.

The Project Manager's language in correspondence also showed he did not appreciate the rules of the Staffing Services SPC. He referred to the Department and DTF as having 'changed the arrangements' when Company A's contracts were terminated in July 2016.

This was not the case. The 'arrangements' were never legitimate in the first place and did not reflect the requirements of the Staffing Services SPC.

3 Adequacy of policies, systems and controls at Department of Education and Training

3 Adequacy of policies, systems and controls at Department of Education and Training

To help prevent and detect corruption and misconduct and promote integrity, Victorian public bodies need a framework of policies, systems and controls that clearly outline the standards expected of employees and contractors, including in relation to:

- conflicts of interest
- procurement and contracting
- record keeping
- complaint handling.

Operation Betka identified issues with the Department's policies, systems and controls in these areas and how they failed to detect and prevent the Project Manager's activities.

IBAC also identified cultural issues within the Department – including a high-pressure culture within ITD that relied on contractors to meet project and budget deadlines – that may have contributed to a failure to question the Project Manager's conduct.

3.1 Failure to comply with the Department's conflict of interest requirements

The Department has a conflict of interest framework, which includes an online policy, a toolkit, a quick guide, checklists for identifying and managing conflicts of interest, and best practice case studies.

The Department's conflict of interest policy states conflicts of interest should be considered by recruitment panels and panels dealing with the procurement of goods or services. The policy states the management of conflicts of interest by these groups should include an assessment of conflict of interest risks, reporting, and management of panel members' conflicts of interest. Any steps taken to address or manage conflicts of interest should be recorded.

Operation Betka found that in many instances, recruitment and procurement panels did not comply with these obligations.

For example, in the case of the Project Manager, most conflicts of interest were managed informally and verbally, contrary to the policy requiring reasonable steps to be taken, including properly documenting the conflict. Further, decisions made in response to the Project Manager's conflicts of interest were not recorded, except on his last day at the Department.

The Department's conflict of interest policy requires that declared conflicts should be reviewed periodically and in response to any changes in circumstances. This is to ensure that plans to manage conflicts of interest are effective and remain relevant. Such reviews did not occur in the Project Manager's case.

The failure to record the Project Manager's conflicts of interest, and any management strategies put in place, meant the Department was unable to properly monitor the Project Manager's conflicts. It also made it difficult to reconcile the conflicting accounts by different departmental managers of the steps the Project Manager took in relation to his conflicts of interest.

It is noted that since the allegations examined in Operation Betka were notified to IBAC in 2016, the Department has worked to improve awareness of conflicts of interest among its staff. This has occurred, at least in part, in response to IBAC's Operation Ord and Operation Dunham. The Department has also refreshed its conflict of interest framework and has resources in place to support the identification, management and monitoring of conflicts of interest, including a central electronic register and an online declaration form. This is good practice.[4]

Operations Ord and Dunham

IBAC's Operation Ord examined the conduct of then senior officers of the Department and others, in connection with the use of 'banker schools' and related activities.

IBAC's investigation focused on allegations that senior departmental officers misappropriated funds from the Department's budget, through false and inflated invoicing as well as arranging payment of inappropriate expenses such as excessive hospitality, travel and personal items.

IBAC's Operation Dunham investigated the conduct of officers of the Department in connection with the Ultranet online learning portal and related matters.

IBAC examined how contracts around the Ultranet were tendered for and awarded, the connections between department employees and businesses involved in the Ultranet project and whether department employees received payments, gifts or other benefits because they were involved in the Ultranet tender or procurement processes. IBAC also examined department procurement and conflict of interest processes, and associated integrity cultures within the Department.

3.2 Failure of leadership

Departmental officers responsible for managing the Project Manager failed to read, understand and comply with the obligations around conflict of interest.

When these managers were questioned by IBAC, none were aware that a User Guide existed to ensure those procuring contractor resources under the Staffing Services SPC and those authorising such procurements understood conflict of interest requirements.

The Victorian Public Sector Commission (VPSC) also provides guidance to managers engaging contractors, which is available online.[5] This guidance highlights that contractors who perform a public sector function are required to comply with the code of conduct, which includes the obligation to avoid conflicts of interest.

Departmental managers failed to:

- ensure that the Project Manager's conflicts were formally recorded and managed
- notify other managers across the Department who were involved in procuring resources from Company A
- record conversations, decisions and actions in regard to the Project Manager's conflict of interest
- adequately investigate a complaint from an IT recruitment agency about the Project Manager's treatment of a contractor (see section 3.6.1) and did not inform DTF that the complaint had not been resolved, as required by the Staffing Services SPC
- consider broader implications and risks from conflicts of interest across the Department.

These collective failures of leadership constituted a significant institutional failing. They enabled the Project Manager's improper conduct to continue unchecked and compromised the integrity of the Department's procurement and complaints management processes.

[4] More information is available in IBAC's report, *Managing corruption risks associated with conflicts of interest in the Victorian public sector*, October 2019, p 49.

[5] Victorian Public Sector Commission, *Guidance for managers engaging contractors and consultants,* March 2015. <vpsc.vic.gov.au/wp-content/pdf-download.php?postID=37581>

3.3 Failure to keep records

IBAC identified failures by some departmental officers to record important conversations and to document decision making.

For example, when the Director PSD raised her suspicions with her manager regarding the Project Manager's conflicts of interest, she did so without recording the outcome of the discussion in writing. She and her manager also failed to record subsequent interactions with the Project Manager when they discovered another conflict of interest in the procurement process.

Two managers of the Project Manager failed to record conversations with him about his conflicts of interest and any decisions on how these conflicts would be managed and monitored. Such failures breached the Department's conflict of interest policy and made it difficult to effectively monitor the conflicts.

The absence of records also impeded the ability of parties to substantiate their accounts when questioned by IBAC.

3.4 Poor application of procurement controls

In 2014, DTF changed the Staffing Services SPC to restrict suppliers of staffing services to eight key master vendors.[6] This did not include Company A. The then Director of Application Services said he approached the Project Manager about the implications of this for Company A, but was assured by the Project Manager that it was okay because Company A had an arrangement with the Recruitment Agency. The Director said he assumed the Recruitment Agency /Company A arrangement was legitimate, failing to conduct his own checks as was his responsibility.

Had the Director contacted DTF, the Recruitment Agency, internal procurement staff or read the Staffing Services SPC User Guide (available online), he would likely have discovered that only master vendors and their DTF-approved tier two suppliers could provide IT contracted services.

When the Department, DTF and the Recruitment Agency identified Company A was not an approved tier two supplier, Company A's contracts were terminated. This left contractors without work, without warning. Further, as Company A enforced 'non-compete' contractual obligations on Company A contractors, the Department was exposed to risks to their projects and deliverables due to loss of staff.

[6] Five of these master vendors can be used for the engagement of IT staff.

3.5 Culture of relying on IT consultants

During Operation Betka, IBAC was advised that at one stage, there were 70 active projects within ITD. At the same time, the budget for hiring VPS staff had been reduced. This led to increased expenditure on IT contractors hired on a temporary basis under tight timeframes within a busy and demanding environment.

Within this environment, managers did not always take the time to follow the proper process by developing a business case and using the eServices Register to contract for the delivery of specific IT projects.

IT contractors often had their contracts repeatedly renewed. It was not uncommon for individuals to be contracted for more than five years.

However, there are generally less stringent processes for engagement and oversight of contractors that may not test contractors' awareness, understanding and commitment to the public sector values and code of conduct. This can present risks to the integrity of a public sector agency.[7]

3.6 Failure to respond to complaints

Ensuring complaints are responded to effectively is vital to the integrity of an organisation. Strong complaint management processes help ensure that those who have engaged in improper conduct are identified and dealt with appropriately. Effective complaint processes can also help clear those who have been wrongly suspected or accused. Complainants should also have confidence that when matters are raised in good faith, they will be assessed and, where appropriate, investigated.

During its investigation, IBAC became aware of two complaints against the Project Manager, both of which were poorly managed by the Department and were missed opportunities to effectively deal with the Project Manager's conflict of interest.

[7] See for example, IBAC's Operation Exmouth - https://www.ibac.vic.gov.au/publications-and-resources/article/case-study---operation-exmouth

Case study 4 – Complaint about the Project Manager's conflict of interest

In April 2016, the Manager of People Systems and Services in PSD received a complaint from an account manager at an IT recruitment agency. The complaint alleged there was a conflict of interest with Company A supplying contractors to the Department for two projects, as the Project Manager was working on these projects.

Senior departmental managers met with the complainant to discuss the complaint. The then Director of Application Services raised the matter with the Project Manager, who replied via email confirming the following controls:

- *I do not have the necessary security function to raise and approve purchase orders in the Ariba procurement system;*
- *I do not have [Company A] contractors as part of ITD project teams that I program or project manage; and*
- *I am not personally involved in the Department selection process to engage on behalf of the Department via briefings or purchase orders, contracts that have been engaged by the Department that have a direct contractual relationship with [Company A].*

The complainant was advised by the Manager of People Systems and Services that the Department had 'put steps in place to prevent a conflict of interest occurring with the procurement of contractors'.

However, the actions taken in relation to this complaint were not recorded by the Department; no further action was taken to manage and monitor the Project Manager's conflicts of interest; and the matter was not reported to the SPC category manager at DTF as required by the Staffing Services SPC agreement.

Case study 5 – Complaint regarding bullying

The Department's Manager of Corporate Services stated he received a verbal complaint from an IT recruitment agency alleging a contractor was being unfairly treated by the Project Manager.

Under examination by IBAC, the Manager of Corporate Services stated he spoke to the Project Manager about the complaint but did not speak to the contractor. He said this was because he had full trust in the Project Manager, whereas the contractor had appeared to be under-performing.

He did not investigate the complaint any further.

The actions taken and decisions made in relation to this complaint were not recorded.

4 Adequacy of systems and controls within Staffing Services State Purchase Contracts

4 Adequacy of systems and controls within Staffing Services State Purchase Contracts

Operation Betka identified issues with how the Staffing Services SPC was used by the Department, the Recruitment Agency and Company A.

These issues are unlikely to be unique to the organisations associated with Operation Betka, given the wider application of the Staffing Services SPC and the frequency with which contractors are engaged across the Victorian public sector. Agencies should consider whether their existing systems, processes and controls are sufficient to identify and prevent such risks.

4.1 Breaches of the Staffing Services SPC

4.1.1 Use of unapproved tier two suppliers

IBAC found the Recruitment Agency breached the Staffing Services SPC by treating Company A as if it was an approved tier two supplier, even though it knew this was not the case.

As Company A was not a master vendor or approved tier two supplier, Company A could not invoice the Department. To bypass this control, Company A developed an informal arrangement with the Recruitment Agency to supply IT contractors. Between 2011 and 2016, Company A provided 33 contractors to the Department via a relationship with the Recruitment Agency and in breach of the Staffing Services SPC.

At least two unapproved tier two suppliers, in addition to Company A, were used by the Recruitment Agency to provide IT services to the Department.

In July 2016, the Recruitment Agency reported the arrangement with Company A to the Department and has since worked with the Department and DTF to address this situation.

The Recruitment Agency disagrees with IBAC's findings. It maintains that it was not in breach of the Staffing Services SPC because Company A did not provide 'recruitment services' and was not therefore an unapproved tier two supplier.

4.1.2 Use of incorrect personal information

The Recruitment Agency provided the login details for individual contractors to Company A, which enabled Company A to assume the identity of its contractors. This allowed Company A to subtract its commission from contactors' payments before transferring the balance to the contractor. This also prevented the Recruitment Agency from having a direct relationship with the contractors.

The Recruitment Agency's paperwork that was given to Company A contractors and submitted to the Department was almost entirely completed by Company A. This included terms of engagement forms and career history forms. Company A completed these forms to list all contact and bank details as those of Company A, rather than those of the relevant contractor. Copies of these documents were never returned to the contractor once they had been signed.

In some instances, Company A contractors had no memory of signing or seeing the Recruitment Agency's forms and were unaware the Recruitment Agency had involvement in their contracting arrangements. As the following case study shows, the process for submitting timesheets was complicated and masked Company A's relationship with the Department.

Case study 6 – Contractor Z's timesheets

Contractor Z was engaged in ITD after responding to a Company A job advertisement. The contractor completed Company A timesheets.

Without Contractor Z's knowledge, Company A's Account Manager would complete the online timesheet belonging to the Recruitment Agency which was automatically sent to Contractor Z's departmental manager for approval. The Recruitment Agency would then invoice the Department and forward payment to Company A, who would then make a payment to Contractor Z.

This enabled Company A to deduct its fees and circumvent the Staffing Services SPC, which restricted payment of invoices by the Department to master vendors.

Contractor Z was unaware they were contracted to the Department via the Recruitment Agency.

4.2 Risks associated with the Staffing Services SPC

4.2.1 Unapproved tier two supplier risks

The use of unapproved tier two suppliers may have grown out of efforts to preserve commercial relationships between these suppliers and the Department that pre-dated the introduction of the first SPCs.

Their use undermined the restrictions established by these SPCs, which sought to provide greater transparency and value for money.

4.2.2 Poor understanding of and compliance with the Staffing Services SPC

DTF has published a Staffing Services SPC User Guide. This is available online and contains a general overview of the SPC, purchaser guidelines and master vendor guidelines.

The Department did not take steps to ensure those involved in the procurement of contractors through the Staffing Services SPC had read the SPC User Guide and understood their obligations.

These responsibilities included ensuring master vendors and tier two suppliers:

- decline any requests from public sector bodies to use unapproved tier two suppliers
- understand conflict of interest requirements, and have conflict of interest policies, information, training and processes to adequately identify and manage conflicts
- report breaches and integrity concerns.

4.3 Actions taken by DTF

DTF has updated the Staffing Services SPC User Guide to emphasise that master vendors should not engage unapproved third parties and public sector agencies should not request contractors from unapproved suppliers.

This information has since been formally communicated to all state government departments and all master vendors. DTF also met with the Recruitment Agency to convey its concerns around the breach of the Staffing Services SPC.

4.4 Other oversight of the Staffing Services SPC

In addition to the guidance provided by DTF, VGPB monitors compliance with SPCs, including the Staffing Services SPC. Victorian Government departments and specified entities must submit an Annual Supply Report to VGPB each year that summarises procurement activity and reports instances of non-compliance with VGPB policies, including SPCs.

In 2018, the Victorian Auditor-General's Office (VAGO) tabled its independent assurance report on State Purchase Contracts.[8] VAGO's audit assessed whether government agencies realise financial and other benefits by using SPCs, including the Staffing Services SPC.

[8] VAGO (2018), State Purchase Contracts, available at <www.audit.vic.gov.au/sites/default/files/2018-09/20180920-State-Purchase-Contracts_0.pdf >

5 Conclusions and recommendations

5.1 Conclusions

As a result of Operation Betka, IBAC found there were significant failings in how the Project Manager identified, declared and managed the conflict of interest produced by his concurrent roles at the Department of Education and Training and as the director of Company A, a company that provided IT contractors to the Department.

While the available evidence was not sufficient to support criminal charges, IBAC found the poor disclosure and mismanagement of the Project Manager's conflict of interest enabled him to use his position to influence the engagement of the Department's IT staff to the benefit of his company and to the disadvantage of competing IT contractor suppliers.

One departmental manager claimed Company A had a strong network to find good staff and therefore, it made sense to use them.

In fact, Company A had an unfair advantage because of the Project Manager's position in the Department and its ability to exploit weaknesses within the Department, the Recruitment Agency and the Staffing Services SPC to favour Company A's candidates.

In two previous reports – Operation Ord (2016) and Operation Dunham (2017) – IBAC highlighted significant corruption risks, leadership and integrity culture issues within the Department. Among other things, Operation Ord noted a failure of controls and general lack of rigour around procurement. It also highlighted a culture of non-compliance with important policies and procedures, including those relating to procurement and recruitment. Operation Dunham identified the risks of allowing public officers to develop close and unchecked relationships with suppliers.

Operation Betka has further exposed weaknesses in the Department's processes around the procurement of contractors and the management of conflicts of interest.

IBAC found those responsible for supervising the Project Manager failed to document, report and monitor his conflict of interest. They also displayed a concerning lack of awareness of departmental procurement procedures and policies.

These managers abrogated their responsibility to take meaningful action to effectively address conflicts of interest and complaints related to the Project Manager. This meant the Project Manager was able to improperly influence Departmental decisions over several years for his personal benefit. These striking failures in supervision undermined the integrity of the Department's processes.

While acknowledging the work being undertaken by the Department to prevent corruption and to raise awareness of conflict of interest risks and management, IBAC has made two recommendations to the Department to address the issues identified in Operation Betka. These recommendations are in addition to those previously made to the Department, including those made as part of Operation Ord and Operation Dunham.

The recommendations demonstrate the need for ongoing work by the Department to strengthen controls around the engagement and oversight of contractors.

It is unlikely the vulnerabilities highlighted in this report are unique to the Information Technology Division of the Department of Education and Training.

As the lead agency responsible for whole-of-government coordination of the Staffing Services SPC, DTF has provided strong guidance to all departments and master vendors. It would be prudent for other public sector agencies to review their own systems, processes and controls around the engagement of contractors.

IBAC has also written to the VPSC to consider whether its *Guidance for managers engaging contractors and consultants* should be updated and strengthened in light of the issues identified in this report.

5.2 Recommendations

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

Recommendation 1

The Department of Education and Training to address the corruption vulnerabilities identified in Operation Betka in relation to procurement including:

- strengthening controls regarding the engagement and oversight of contractors
- strengthening controls to ensure compliance with the eServices Register and the Staffing Services SPC
- reviewing contracting arrangements to verify that relevant suppliers are approved under the Staffing Services SPC
- undertaking reasonable checks and analysis to identify any actual, potential or perceived conflicts of interest between contractors engaged by the Department and other departmental staff or contractors.

Recommendation 2

The Department of Education and Training to advise IBAC how it will ensure that employees and contractors comply with the Department's conflict of interest framework, including ensuring:

- supervisors understand their obligation to actively and effectively manage the conflicts of interests of the employees and contractors they manage
- employees and contractors understand their obligations to identify, declare and manage conflicts of interest, including avoiding conflicts of interest where possible
- declarations of conflicts of interest and any associated management plans are recorded, communicated to relevant supervisors, and reviewed as appropriate
- if the Department engages companies or other suppliers in which departmental employees or contractors have an interest, a robust risk management approach is adopted to address conflicts of interest and other inherent risks.

It is requested that the Department report to IBAC on the implementation of the above recommendations by 30 November 2020.

IBAC notes that the Department has already commenced work to address the vulnerabilities identified in Operation Betka, including in relation to procurement processes and conflicts of interest.

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) 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,[9] comment or opinion,[10] they have been given a reasonable opportunity to respond to same by being shown draft[11] material parts relating to them.

[9] In relation to public bodies.

[10] In relation to persons.

[11] Being tentative findings.

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
April 2017	Operation Nepean: An investigation into the conduct of former employee of Dame Phyllis Frost Centre, Jeff Finlow
September 2017	Operation Tone: Special report concerning drug use and associated corrupt conduct involving Ambulance Victoria paramedics
December 2017	Operation Lansdowne: An investigation into allegations of serious corruption involving Victorian vocational education and training, and public transport sectors
September 2019	Special report on corruption risks associated with procurement in local government: Operations Dorset, Royston and others

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