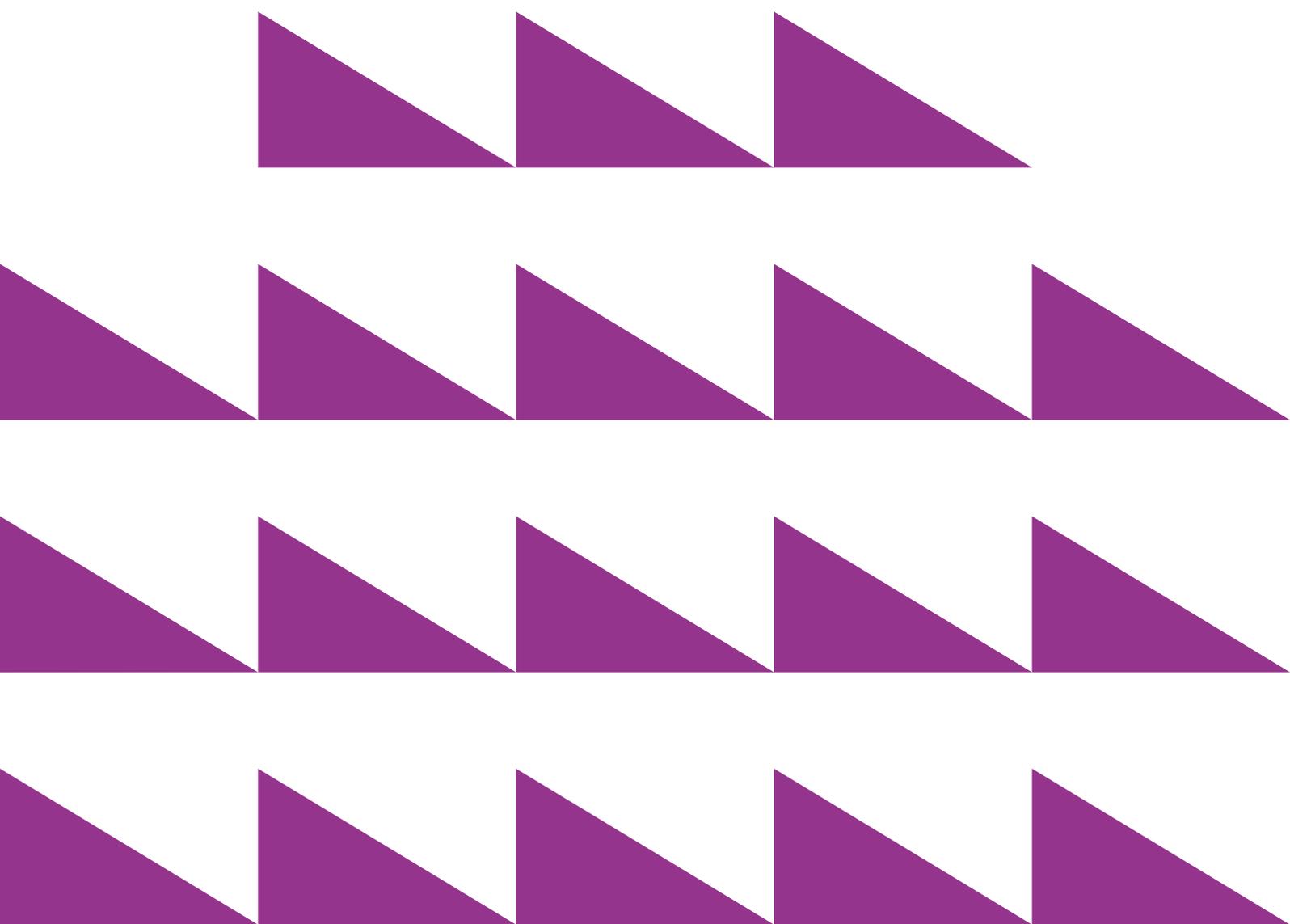


# Operation Lansdowne

An investigation into allegations of serious corruption involving Victorian vocational education and training, and public transport sectors.

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**December 2017**



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December 2017

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## Letter of transmittal

To

**The Honourable President of the Legislative Council**

and

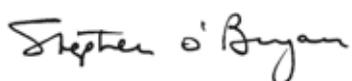
**The Honourable Speaker of the Legislative Assembly**

In accordance with section 162(1) of the *Independent Broad-based Anti-corruption Commission Act 2011*, I present IBAC's report on its Operation Lansdowne investigation into allegations of serious corruption involving Victorian vocational education and training, and public transport sectors.

I presided at the compulsory public examinations that were held in aid of this investigation.

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

Yours sincerely



**Stephen O'Bryan QC**  
Commissioner

## List of abbreviations

ASQA	Australian Standards Quality Authority
CEO	Chief Executive Officer
CPO	Chief Procurement Officer
FOI	Freedom of information
GSERP	Government Sector Executive Remuneration Panel
HESG	Higher Education and Skills Group (part of the Department of Education and Training)
HR	Human resources
IAD	Integrity and Assurance Division
IBAC	Independent Broad-based Anti-corruption Commission
Kangan	Bendigo Kangan Institute of TAFE
Metro Trains	Metro Trains Melbourne
OHS	Occupational health and safety
RPL	Recognition of prior learning
RTO	Registered Training Organisation
South West TAFE	South West Institute of TAFE
SRC	Skills and Recognition Centre
TAFE	Technical and Further Education
TayTell	TayTell Pty Ltd
USI	Unique Student Identifier
VAGO	Victorian Auditor-General's Office
VET	Vocational education and training
V/Line	V/Line Pty Ltd
VPSC	Victorian Public Sector Commissioner
VSC	Victorian Skills Commission
Zinfra	Zinfra/ZNX/Jemena

## Glossary of names

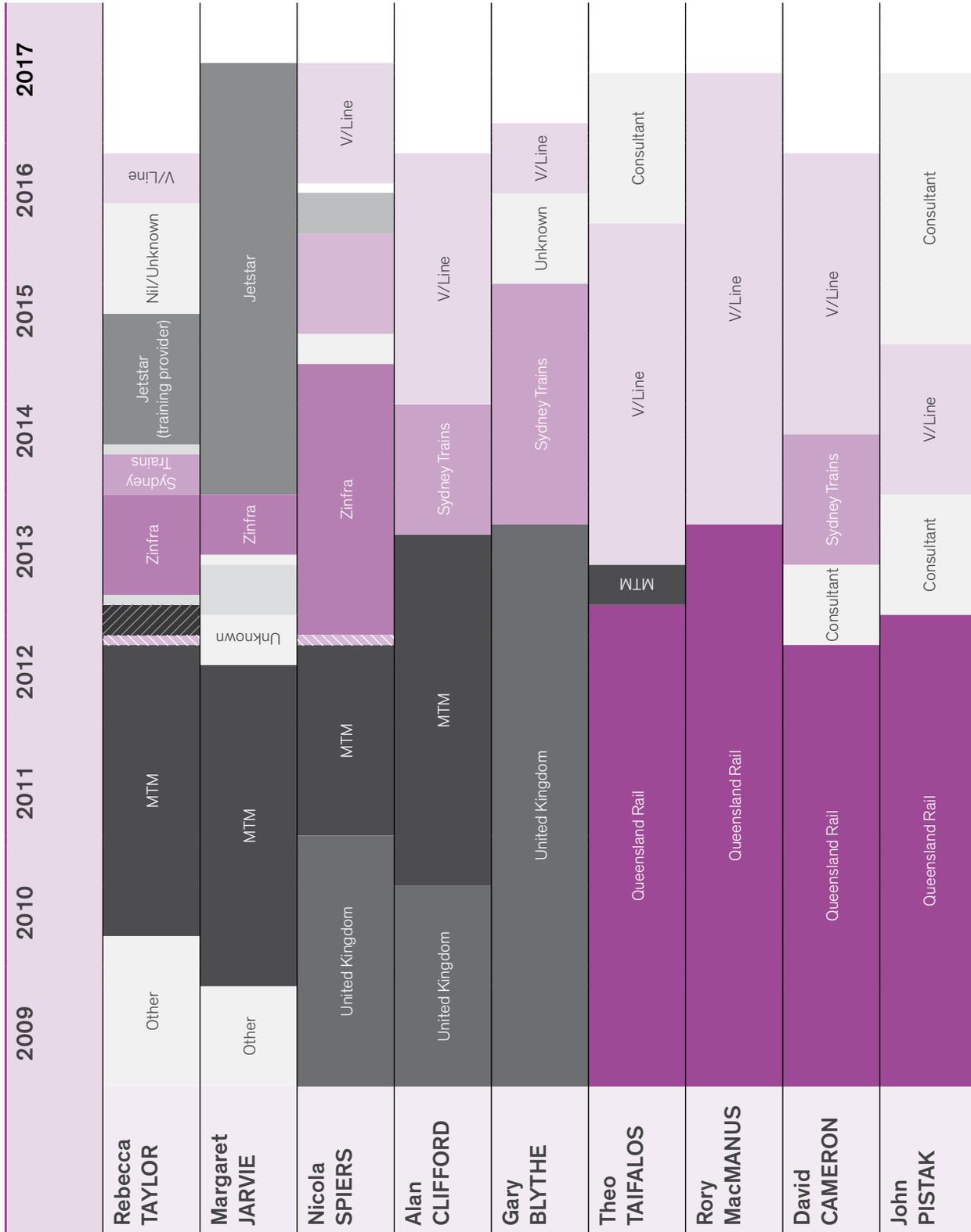
TAFEs	
<b>Carter, Shannyn</b>	Audit and Compliance Officer at South West TAFE
<b>Elovaris, Peter</b>	Former teacher in the Engineering Department, Kangan
<b>Fidge, Mark</b>	Current CEO, South West TAFE
<b>Hayden-Long, Coralee</b>	Former Group Manager, Sales and Business Development, Kangan
<b>Heilbuth, Peter</b>	Former CEO, South West TAFE
<b>Hodgson, Travis</b>	Former Contracts and Compliance Officer, Kangan
<b>Molan, Maurice</b>	Former Executive Manager, Education, South West TAFE
<b>Ponting, Jane</b>	Former Acting Executive Manager, Education, South West TAFE
<b>Sealey, Jason</b>	Recognised Prior Learning assessor and former engineering teacher, South West TAFE
<b>Weavers, Andree</b>	Former Contracts and Compliance Officer, Kangan
<b>Whittaker, Bruce</b>	Chief Operating Officer, Kangan

V/LINE	
<b>Blythe, Gary</b>	Former consultant at V/Line; associate of Rebecca Taylor and Alan Clifford
<b>Brown, Stephen</b>	Chief Procurement Officer, V/Line
<b>Cameron, David</b>	Former Executive General Manager, Asset Management, V/Line
<b>Clifford, Alan</b>	Former General Manager, Rolling Stock Engineering, V/Line; de facto of Nicola Spiers; associate of Rebecca Taylor
<b>Kelman, Jennifer</b>	Former General Manager, People and Capability, V/Line
<b>Liddle, Gary</b>	Former Acting CEO, V/Line
<b>MacManus, Rory</b>	Former General Manager, Asset Management and Performance, V/Line
<b>Pinder, James</b>	CEO, V/Line
<b>Pistak, John</b>	Former Executive General Manager, Infrastructure and Asset Management, V/Line
<b>Seckold, Elaine</b>	General Manager, People Services, V/Line
<b>Taifalos, Theo</b>	Former CEO, V/Line

## REBECCA TAYLOR, FAMILY AND ASSOCIATES

<b>Jarvie, Margaret</b>	Former Manager, Safety Assurance and Organisational Change, Jetstar; former Zinfra employee; associate of Rebecca Taylor
<b>Kellas, Malcolm</b>	Husband of Rebecca Taylor; enrolled by TayTell as a student with South West TAFE in Certificate IV in Engineering as a Zinfra employee; employee of TayTell
<b>Lanyon, Austell</b>	Brother-in-law of Rebecca Taylor; enrolled by TayTell as a student with South West TAFE in Certificate IV in Engineering as a Zinfra employee
<b>Purtell, Wayne</b>	Brother of Rebecca Taylor; enrolled by TayTell as a student with Kangan in Certificate IV in Engineering as a Jetstar employee
<b>Snelleksz, Brett</b>	Son-in-law of Rebecca Taylor; enrolled by TayTell as a student with South West TAFE in Certificate IV in Engineering as a Zinfra employee
<b>Spiers, Nicola</b>	Associate of Rebecca Taylor; owner, Transform Business Consultancy Services; former employee of Zinfra, former V/Line consultant
<b>Taylor, Heather</b>	Daughter of Rebecca Taylor; married to Brett Snelleksz; employee of TayTell; enrolled with South West TAFE in Certificate IV in Engineering and Diploma of Management
<b>Taylor, Rebecca</b>	Owner and director of TayTell; conducted training at Zinfra and Jetstar; former V/Line consultant

# Employment timeline



## 1 Summary of investigation and outcomes

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# 1 Summary of investigation and outcomes

## 1.1 Introduction

In December 2015, the Independent Broad-based Anti-corruption Commission (IBAC) commenced Operation Lansdowne. Initially, the investigation focused on allegations of serious corrupt conduct relating to South West Institute of TAFE (South West TAFE) and a third-party agreement it had entered into with TayTell Pty Ltd (TayTell), the owner and director of which was Rebecca Taylor.

It emerged Ms Taylor had worked from April 2010 to September 2012 at Metro Trains Melbourne (Metro Trains). During this time, she befriended colleagues Alan Clifford, his partner Nicola Spiers, and Margaret Jarvie. These relationships helped facilitate the conduct uncovered during Operation Lansdowne, involving South West TAFE, Bendigo Kangan Institute of TAFE (Kangan), and V/Line.

In relation to South West TAFE, it was alleged that Maurice Molan, then an Executive Manager with responsibilities across the portfolios of business, student support and education, misused his position to award, or interfere in the awarding of, a Certificate IV in Training and Assessment and a Certificate IV in Engineering to Ms Taylor when she was not qualified to receive these certificates. It was alleged he did this to facilitate the third-party agreement for the delivery of training by TayTell on behalf of the TAFE. It was alleged that pursuant to that agreement, TayTell received government funding for purporting to train employees of a private company called Zinfra when, as the IBAC investigation found, signatures or handwriting of Zinfra employees on enrolment forms were forged, and the required training and assessment had not been delivered.

Ms Spiers assisted in this conduct by sourcing 'students' through Zinfra and obtaining their personal information for the purpose of enrolment.

In February 2016, the investigation expanded to include Kangan, as IBAC identified credible information that TayTell may have dishonestly obtained government funding to deliver training on behalf of that institute. This training was purportedly delivered to both Zinfra and Jetstar employees, although the agreement stipulated that training was to be provided to Jetstar employees only.

Ms Jarvie helped facilitate this conduct by sourcing 'students' through Jetstar and obtaining their personal information.

In May 2016, the scope of IBAC's investigation further expanded to examine potential corrupt conduct by Mr Clifford, then General Manager Rolling Stock at V/Line. Mr Clifford engaged Ms Taylor to deliver Lean Six Sigma training at V/Line and then to do other work related to V/Line's next generation regional trains<sup>1</sup>. The investigation also considered whether other contracts had been dishonestly awarded and whether recruitment processes were ignored to benefit a network of people who had previous professional and social connections, including Mr Clifford and his partner Ms Spiers.

As part of Operation Lansdowne, IBAC considered the adequacy of the systems and controls within the two TAFEs and V/Line and how deficiencies in those areas may have hindered opportunities to detect and prevent the conduct identified.

<sup>1</sup> Lean Six Sigma is a combination of business process improvement and problem-solving methodologies.

## Definition of corruption

Except where the context suggests otherwise, references in this report to corruption, or corrupt conduct, mean conduct of a public officer or body that is found to have knowingly or recklessly breached, or contributed to a breach of, the public trust or that adversely affects the honest performance of their functions.

Such breaches are ordinarily through misuse of power or position, or information for private gain, or advantage of oneself, or others.

IBAC's findings are made on the civil standard, namely the balance of probabilities, based on the principles applied in *Briginshaw v Briginshaw* (1938) 60 CLR 336.

Section 162(6)(a) of the IBAC Act provides that IBAC may not include any finding or statement that a specified person is guilty or has committed any criminal offence.

## 1.2 Outcomes of the investigation into government subsidised training delivered by TayTell

IBAC's investigation found that the TayTell training scheme was a scam. The scheme was devised and carried out principally by Ms Taylor, with the assistance of her daughter Heather and associates, to falsely access government funding for the delivery of training in the Certificate IV in Engineering through South West TAFE and Kangan.

Many of those enrolled by TayTell in the Certificate IV in Engineering at South West TAFE and Kangan were deceived by being asked to partially complete enrolment forms, on the pretence they would receive recognition from the TAFEs for Lean Six Sigma training provided in-house primarily by Ms Taylor's associates at Zinfra and Jetstar.

Those Zinfra and Jetstar employees (and others, including several of Ms Taylor's own extended family members) were unaware of their enrolment in a Certificate IV in Engineering and that their personal identity information had been misused.

No engineering training took place. To deceive the TAFEs, Ms Taylor, with the assistance of her husband Malcolm Kellas and daughter Heather Taylor, fabricated student records as 'evidence' of training and assessment to claim government funding.

They referred to the scam as the 'sausage factory', meaning a production line of fabricated student records ('sausages') that yielded significant profits.

Ms Taylor's associates also played important roles in helping her to access Zinfra and Jetstar to provide Lean Six Sigma training. They also helped Ms Taylor access the personal information of certain employees to facilitate their enrolment with South West TAFE and Kangan.

# 1 Summary of investigation and outcomes

## 1.3 Outcomes of the investigation into the awarding of qualifications to Ms Taylor

### 1.3.1 Qualifications awarded by South West TAFE

IBAC found Mr Molan intervened to ensure Ms Taylor was issued a Certificate IV in Engineering based on recognition of prior learning (RPL).

Jason Sealey, an RPL assessor at South West TAFE, gave evidence that he was asked by Mr Molan to assess Ms Taylor's engineering capability. He deemed her not competent and advised Mr Molan of his assessment. As a result, Mr Molan accessed South West TAFE's computer system, entered a 'pass' result for each of the units Ms Taylor was enrolled in for the Certificate IV in Engineering and then authorised the issuing of the Certificate IV in Engineering to Ms Taylor.

Mr Molan had no authorisation to do this as he had no engineering or training and assessment qualifications. He abused his position and misused South West TAFE's student management system to award Ms Taylor the engineering qualification she needed to deliver training under the third-party agreement he had reached with TayTell months earlier.

While it does not appear that Mr Molan received any direct financial gain, his actions appear self-serving. At a time of budget and staff cuts, he had brokered an agreement that delivered much needed funding to South West TAFE (TayTell received 80 per cent of funding associated with the training, and the TAFE received the remaining 20 per cent). It was not in his interests for the agreement to fail if it was revealed the sole trainer, Ms Taylor, did not have the required qualifications to deliver the training.

Mr Molan's employment was terminated by South West TAFE in December 2014.

### 1.3.2 Qualifications awarded by Kangan TAFE

Ms Taylor's engineering qualification was rescinded by South West TAFE in December 2014. By this time, Ms Taylor had entered into an agreement with Kangan to deliver training to Jetstar employees. Further, in July 2015, South West TAFE rescinded her training and assessment qualification following a further assessment by an external, independent assessor.

IBAC found that Kangan desperately sought to salvage its agreement with TayTell by ensuring she was re-awarded the Certificate IV in Engineering.

Travis Hodgson, then a Kangan contracts and compliance officer, asked the engineering department to evaluate Ms Taylor's prior learning so she could be awarded the Certificate IV in Engineering. This was not the usual role of the compliance area.

Peter Elovaris, a teacher in the engineering department, decided Ms Taylor needed to undertake additional training, which she did. She was then awarded a Certificate IV in Engineering.

Important information was withheld from Mr Elovaris. He was not informed that South West TAFE had rescinded Ms Taylor's qualification, nor that Kangan had a contract with Ms Taylor to deliver training to Jetstar employees in the Certificate IV in Engineering. He gave evidence that he should have been made aware of South West TAFE's actions and that, had he known, 'it would have been a no-go zone until they sort[ed] out what [was] going on in the background'.

As with South West TAFE, pressure applied to Kangan RPL assessors contributed to the awarding of qualifications to Ms Taylor, enabling her to deliver training under an agreement that delivered government funding to the TAFE.

## 1.4 Outcomes of the investigation into the management of third-party training agreements by South West TAFE

IBAC found that South West TAFE's management of the third-party training agreement with TayTell was deficient.

Mr Molan had primary responsibility for managing the TayTell contract. He sourced the business, negotiated the terms of the contract, and was responsible for overseeing its delivery and compliance. Mr Molan was not competent in any of these areas, despite being a senior executive and former acting CEO of the TAFE.

Mr Molan was aware that Ms Taylor was not qualified to deliver training, as she did not hold a Certificate IV in Training and Assessment until awarded it by South West TAFE in July 2013 – the same month the contract was signed. She was also not qualified to deliver training for the Certificate IV in Engineering until awarded the qualification following Mr Molan's actions in October 2013.

In the process of negotiating the contract, Ms Taylor proposed that government funding be split 80/20 between TayTell and South West TAFE, despite the more usual split being 70/30. Mr Molan acceded to this request without negotiation, justifying it on the grounds that the TAFE would 'basically have to do nothing but input data'.

He did not seek legal advice on the contract, which was signed in July 2013 but backdated to 1 January 2013 – a number of months before TayTell was registered as a company.

Once the agreement was signed, no compliance activities were conducted to ensure that Ms Taylor was delivering the training in accordance with her contract with South West TAFE, as well as the Victorian Training Guarantee Funding contract between the TAFE and the Department of Education and Training (the Department).

No one from South West TAFE visited or spoke to Zinfra to observe or supervise the training ostensibly being conducted by Ms Taylor. There were no audits or other checks of the enrolments, training or assessments conducted. As Mr Molan said, the role of the TAFE was limited to inputting data provided by TayTell, without any assurance being conducted. South West TAFE wrongly abrogated its responsibility to oversight the training agreement.

Between November 2013 and May 2014, TayTell received \$1,824,134 of Victorian Government subsidies in connection with the purported training of 134 Zinfra employees under the agreement with South West TAFE.

As a result of the third-party training agreement with TayTell, IBAC estimates that South West TAFE obtained \$456,033 of Victorian Government funding.

# 1 Summary of investigation and outcomes

## 1.5 Outcomes of the investigation into the management of third-party training agreements by Kangan

Kangan's oversight of its agreement with TayTell was also deficient.

Despite obvious anomalies and deficiencies in the documentation provided by TayTell, Kangan administration and compliance officers processed the enrolments and student assessments without question.

No one from Kangan visited Jetstar to observe the supposed training and Kangan did not contact students to confirm enrolment details.

Alarm bells were not acted on. Kangan received enquiries and complaints from four 'students' (three Zinfra employees and one former Jetstar employee) who had unexpectedly received statements of attainment from Kangan for studies they had not undertaken and were unaware they were enrolled in. One Zinfra employee made a complaint to Victoria Police, which was notified to Kangan.

Even when Zinfra advised Kangan officers of its concern that personal information of its employees had been used fraudulently, Kangan officers defended Ms Taylor and provided assurances that the training was legitimate. Given Kangan's contract with TayTell was to train Jetstar employees, it should have been a significant concern that Zinfra employees appeared to be somehow involved in the TayTell agreement.

No investigation into the TayTell training was undertaken. It appears that Kangan's objective was to keep the contract with TayTell afloat, resulting in preservation of the funding it had received from the Department.

Internal emails between Kangan employees in the compliance area contained misleading information in what was likely an attempt to present Kangan's involvement with TayTell in a favourable light, despite the concerns that had been raised.

As a result of the third-party training agreement with TayTell, IBAC estimates that Kangan obtained in excess of \$400,000 of Victorian Government funding.

## 1.6 Flawed TAFE systems, controls and culture

For the last decade or so, Victorian TAFEs have operated in a challenging environment as they have been required to compete with each other and with private training providers. Many TAFEs have struggled financially. Third-party agreements, such as that offered by Ms Taylor, are attractive to TAFEs as a source of students and funding.

IBAC found that the two TAFEs did not appear to be fully aware of the risk of fraud associated with such third-party agreements. This was reflected in the failure to properly oversight the TayTell arrangements, the failure to act on red flags and, in the case of Kangan, the failure to respond appropriately when significant concerns were raised.

Operation Lansdowne identified deficiencies in the systems and controls in place within South West TAFE and Kangan in relation to the operation of third-party agreements. Both TAFEs signed funding agreements with the Department that stated they were responsible for ensuring subcontractors had the necessary qualifications, skills and experience. However, these obligations were ignored in relation to the TayTell contracts, as both TAFEs failed to adequately oversight the training delivered on their behalf.

IBAC found the vulnerabilities inherent in the arrangements with TayTell were not adequately managed by either South West TAFE or Kangan:

- There was confusion around the funding agreement the TAFEs had entered with the Department, specifically in relation to the terms for sub-contracting teaching services.
- Elements of the TayTell arrangements should have prompted closer scrutiny and, if such scrutiny had occurred in a timely way, the scam training may have been detected early.
- There were insufficient controls around students providing proof of identity as part of the enrolment process.
- Both TAFEs failed to properly oversight their respective agreements with TayTell and failed to engage with the employers (Zinfra and Jetstar) or students about the enrolments, training or assessments.
- Kangan failed to act on significant concerns raised by Zinfra employees, instead resisting the suggestion that fraudulent activity had occurred.

## 1.7 Outcomes of the investigation into procurement and recruitment by V/Line

IBAC's investigation into the activities of Ms Taylor and others in relation to the purported delivery of training on behalf of South West TAFE and Kangan led to an examination of V/Line's procurement and recruiting practices at a senior level. This included Ms Taylor's recruitment and that of her friend Ms Spiers to V/Line by Alan Clifford. Mr Clifford is Ms Spiers' de facto partner and was formerly the General Manager of Rolling Stock at V/Line.

IBAC found that V/Line's procurement and recruitment processes had been ignored or bypassed on numerous occasions.

Theo Taifalos commenced as CEO of V/Line in May 2013. Under his leadership there was a circumvention of policies and procedures in relation to procurement and recruitment by a group of senior executives. Personal relationships, who people knew, were the foundation of engagement and employment, and conflicts of interest were routinely ignored.

IBAC heard evidence that Mr Taifalos considered V/Line's senior managers to be significantly underpaid compared to colleagues in other states. It also heard evidence of him wanting to move people performing executive roles from consultancies to fixed-term employment. If true, this circumvented public sector recruitment standards.

# 1 Summary of investigation and outcomes

## 1.7.1 John Pistak

Early in his tenure as CEO, Mr Taifalos promoted the engagement of John Pistak as a consultant to the position of Acting General Manager, Infrastructure. Mr Taifalos and Mr Pistak had worked together at Queensland Rail, and had formed a friendship.

Mr Pistak's engagement as a consultant was facilitated through V/Line's procurement rather than recruitment process. This meant the position was not advertised, he was not formally interviewed, and no other candidates were considered for the role. He later became an employee of V/Line following an advertisement and recruitment process.

Mr Pistak's annual remuneration package as a consultant was more than \$400,000. The previous incumbent was paid around \$240,000.

## 1.7.2 David Cameron

Mr Taifalos gave evidence that it was Mr Pistak's initiative, which he supported, to recruit David Cameron to V/Line. Mr Pistak and Mr Cameron had worked together at Queensland Rail. Mr Cameron had also worked at Sydney Trains.

Initially engaged on a 12-month contract, Mr Cameron replaced Mr Pistak as Executive General Manager, Asset Management when the latter left V/Line in 2015. The position was not advertised, he was not formally interviewed and no other candidates were considered for the role.

Mr Cameron subsequently played a key role in the recruitment of Mr Clifford and Ms Spiers.

### 1.7.3 Alan Clifford

Mr Clifford had worked with Mr Cameron at Sydney Trains.

Mr Clifford was recruited to V/Line to replace the incumbent General Manager of Rolling Stock following an informal discussion with Mr Taifalos. He was initially recruited as a consultant, before being appointed less than a month later as a fixed-term employee. The position was not advertised and no other candidates were considered for the role.

Mr Clifford initially received a total remuneration package of \$414,000, which exceeded the salary of the incumbent and those of other general managers at V/Line. By the time he left V/Line in September 2016, he was paid more than the CEO, with a total remuneration package of \$520,000. This salary was approved in spite of the policy of the Government Sector Executive Remuneration Panel (GSERP) stating that no individual executive could be paid more than 80 per cent of the CEO's total remuneration package without the panel's endorsement. Although Mr Clifford was not an executive, his remuneration appears to be, at minimum, at odds with the essence of the GSERP policy.

Mr Clifford was also appointed without demonstrating that he held the mandatory qualifications required for the role and without probity checks being conducted. IBAC heard credible evidence that Mr Taifalos intervened to direct Human Resources (HR) to stop asking Mr Clifford for information to facilitate probity checks.

### 1.7.4 Rebecca Taylor

Soon after commencing work at V/Line, Mr Clifford made enquiries about the possibility of training V/Line employees in Lean Six Sigma. Mr Clifford engaged Ms Taylor to undertake this work, for which she was paid \$6600.

Mr Clifford and Ms Spiers were close friends of Ms Taylor and her husband Malcolm Kellas. This conflict of interest was never disclosed by Mr Clifford, which prevented V/Line from ensuring that procurement of Ms Taylor's services was undertaken with integrity and transparency.

Mr Clifford also arranged for Ms Taylor to work on asset management control at V/Line for up to four months in mid-2016. For this work TayTell was paid about \$130,000 by V/Line. While Mr Cameron approved the purchase order for Ms Taylor's engagement, he admitted in evidence leaving all enquiries about her suitability to Mr Clifford and others. Again, Mr Clifford did not disclose his conflict of interest.

The investigation found evidence that V/Line's process for the procurement of Ms Taylor's services was improperly influenced through Mr Clifford's failure to declare and manage his conflict of interest.

IBAC also identified that \$18,513 was paid by TayTell to Mr Clifford in January 2015. An invoice indicated that the payment was for 'consultancy services' provided by Mr Clifford. Mr Clifford gave evidence that he could not recall the purpose of this payment but guessed it could have been intended for Ms Spiers who had done work for TayTell. IBAC was initially concerned that the payment could have been made in return for Mr Clifford having facilitated work at V/Line for Ms Taylor. However, Ms Spiers' subsequent evidence was that the money was intended as a reward for some of her work in assisting Ms Taylor up to that point in time.

While there is reason to suspect an original intention to use the personal information of V/Line employees undertaking the Lean Sigma Six training in the same way that Zinfra and Jetstar employee details were unwittingly used in purported TAFE accredited training, any such plan did not come to fruition.

# 1 Summary of investigation and outcomes

## 1.7.5 Nicola Spiers

Mr Cameron recruited Ms Spiers (Mr Clifford's partner) to V/Line in July 2016 as a project director. The process disregarded V/Line's recruitment procedures, as the position was not advertised and no other candidates were considered. Mr Cameron effectively controlled the recruitment and excluded HR from the process.

He also failed to disclose the full extent of his connection with Ms Spiers (specifically, their friendship) prior to her appointment.

Rory MacManus (General Manager, Asset Management and Performance) also played a role in Ms Spiers' recruitment and in negotiating her \$200,000 plus salary. Mr MacManus reported to Mr Cameron, with whom he had previously worked at Queensland Rail.

Mr MacManus also had a conflict of interest in relation to Ms Spiers, as he socialised with Ms Spiers, and her son was his personal trainer. He did not declare or manage this conflict.

## 1.7.6 Gary Blythe

Gary Blythe worked for a UK engineering firm, company A, which had previously employed Mr Clifford in the UK. Mr Blythe and Mr Clifford became friends while working at Sydney Trains.

Mr Blythe's services were procured by Mr Clifford to assist with managing a project to upgrade V/Line's classic fleet. Proper procurement processes were not followed.

Company A provided Mr Clifford with a two-year project proposal at a total cost of \$960,000. The project proposal was signed off by Mr Clifford although he did not have the financial delegation to commit V/Line to that expenditure. The proposal effectively became the contract between V/Line and company A.

Mr Clifford failed to disclose and manage his conflict of interest with company A and Mr Blythe.

At Mr Clifford's initiation, the 24-month contract was split into four six-month contracts bringing each purchase order within the \$250,000 financial delegation held by Mr Clifford's manager, Mr Cameron. This contract splitting was a deliberate strategy to avoid proper scrutiny of the procurement by the procurement unit and the V/Line Board.

Evidence was obtained that Mr Clifford inappropriately disclosed confidential V/Line costings to company A for use in its quotation without company A being required to enter into a binding non-disclosure agreement. Had the project undergone a tender process, this would have amounted to providing an unfair advantage to company A. Further, despite being given access to commercially sensitive information, Mr Blythe worked at V/Line without being subject to any probity checks.

## 1.8 V/Line systems, controls and culture

In 2015 and 2016, V/Line was experiencing pressures with increasing numbers of regional rail passengers and ageing infrastructure. In late 2015, for example, issues were identified with accelerated wheel wear on certain V/Line trains, which attracted considerable publicity and criticism.

Operation Lansdowne identified an environment within V/Line where processes around procurement and recruitment were disregarded by senior officers. It appears this was justified on the basis that decisions needed to be made and acted on quickly. In practice, this meant that a network of senior officers was engaged as consultants or recruited as employees on the basis of who they knew through established professional and personal relationships.

Policies that stipulated the need for competitive procurement and recruitment processes were wilfully ignored.

Red flags for corruption risks – such as contract splitting, a lack of documentation to justify procurement (such as business cases), insufficient segregation of duties, and inadequate contract documentation – were not acted upon.

Clear conflicts of interest in procurement and recruitment were not declared or managed, allowing unfettered cronyism to flourish at senior levels of the agency. There was no explicit process for declaring and managing conflicts in relation to recruitment, and recruitment decisions were not subject to auditing or review to identify breaches of policy.

The culture within V/Line placed undue emphasis on who people knew, and disregarded the requirement to declare and manage conflicts of interest. This practice meant that V/Line could not be assured it was recruiting the best available contractors and employees.

## 1.9 Recommendations

Pursuant to section 159(1) of the *Independent Broad-based Anti-corruption Commission Act 2011* (IBAC Act), IBAC makes the following recommendations:

### Recommendation 1

The CEOs of South West Institute of TAFE and Bendigo Kangan Institute of TAFE to provide IBAC with reports by 31 December 2018 on how they have addressed the issues identified in Operation Lansdowne, including how they have strengthened systems and controls for overseeing third-party agreements, ensuring compliance with those agreements and implementing stronger controls around student proof of identity.

### Recommendation 2

The Secretary of the Department of Education and Training to provide IBAC with a report by 31 December 2018 on how the Department will strengthen systems and controls in relation to TAFEs, to minimise the risk of the conduct identified in Operation Lansdowne reoccurring, including by:

- a. ensuring TAFEs understand their obligations under service agreements with the Department
- b. strengthening proof of identity requirements for Victorian students, including by reference to Australia's *National Identity Proofing Guidelines*
- c. raising awareness within TAFEs of corruption and fraud risks, and how those risks can be mitigated
- d. ensuring TAFEs have robust complaint handling systems and understand requirements for appropriately internally escalating and/or externally reporting suspected fraud and corruption.

### Recommendation 3

The Department to review TAFE training delivered via other third-party agreements, to verify the legitimacy of that training in light of the corruption vulnerabilities identified in Operation Lansdowne.

### Recommendation 4

The CEO of V/Line to provide IBAC with a report by 31 December 2018 on how the issues identified in Operation Lansdowne have been addressed, including how it intends to strengthen its systems and controls in relation to procurement, recruitment, and conflict of interest.

### Recommendation 5

The Secretary of the Department of Premier and Cabinet, in conjunction with the Victorian Public Sector Commissioner, to review ways in which probity in public sector recruitment can be strengthened. This review should include consideration of mandating advice provided in the Victorian Public Sector Commission's Integrity in Recruitment Guidance Note, such as the conduct of thorough background checks of applicants, for public sector agencies and positions identified as high risk.

## 2 The investigation

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## 2 The investigation

**TABLE 1: THE INVESTIGATION AT A GLANCE – DECEMBER 2015 TO SEPTEMBER 2017**

<b>December 2015</b>	<p>IBAC commenced its investigation known as Operation Lansdowne under the IBAC Act following a notification from the Victorian Ombudsman. The investigation initially focused on South West TAFE.</p> <p>IBAC requested that Protiviti, a private auditing firm engaged by the Department, provide all information it obtained and generated during its investigation into the third-party agreement between South West TAFE and TayTell.</p>
<b>January 2016</b>	<p>IBAC requested information and documents from South West TAFE. These were provided in January 2016.</p> <p>Protiviti provided the documents in January 2016, in response to a summons.</p>
<b>February 2016</b>	<p>IBAC requested information and evidence from the Department that it had obtained during Protiviti's investigation. After initially advising IBAC that it did not possess these items, the Department provided IBAC with ten boxes of evidence and documentation.</p> <p>The scope of Operation Lansdowne expanded to incorporate allegations involving Kangan.</p>
<b>March 2016</b>	<p>In response to a summons, the Zinfra Group provided information and documents relevant to the investigation.</p> <p>IBAC also sought further information and documents from South West TAFE that had been provided to it by Protiviti. IBAC collected 18 boxes of evidence and documentation from South West TAFE.</p>
<b>April 2016</b>	<p>IBAC investigators executed three search warrants at residences linked to Rebecca Taylor, Maurice Molan, and Nicola Spiers and Alan Clifford.</p> <p>Electronic and hard copy evidence was seized.</p>

<b>May 2016</b>	The scope of Operation Lansdowne expanded to incorporate allegations involving V/Line.
<b>June 2016</b>	In response to a summons, Kangan provided information and documents relating to its agreement with TayTell.
<b>October 2016</b>	First round of private examinations conducted, with three witnesses called. IBAC investigators executed a search warrant at a residence linked to Brett Snelleksz and Heather Taylor. Electronic and hard copy evidence seized.
<b>November 2016</b>	Further information provided by Kangan in response to the June summons. IBAC was provided with eight boxes of information relating to student files.
<b>December 2016</b>	Second round of private examinations conducted, with two witnesses called.
<b>April 2017</b>	Third round of private examinations conducted, with one witness called. IBAC requested further information from Kangan, which was provided in May 2017.
<b>June – July 2017</b>	Public examinations held.
<b>July 2017</b>	Further information relevant to the investigation was identified and provided by Kangan in July 2017.
<b>September 2017</b>	A final round of private examinations conducted, with one witness called.

## 2 The investigation

### 2.1 The early stages of the investigation – South West TAFE

In December 2015, IBAC commenced the investigation known as Operation Lansdowne under section 60(1)(b) of the IBAC Act. This followed the receipt of a notification from the Victorian Ombudsman under section 16E of the *Ombudsman Act 1973*. The notification involved a number of allegations that were assessed as warranting investigation.

#### 2.1.1 The allegations

The notification received by IBAC from the Victorian Ombudsman alleged that:

- Maurice Molan, a former executive manager at South West TAFE, had misused his position as a public officer to fraudulently award, or interfere in the awarding of, a Certificate IV in Engineering to Rebecca Taylor
- the awarding of that qualification facilitated a third-party training agreement between South West TAFE and Ms Taylor's company TayTell so that Ms Taylor could deliver training on behalf of South West TAFE, including the Certificate IV in Engineering
- signatures of a sample of Zinfra students on enrolment forms had been forged and those students had not attended the training.

South West TAFE identified concerns with the awarding of the qualifications to Ms Taylor and its third-party agreement with TayTell. As a result, it notified the Department in October 2014 and January 2015.

The Department engaged Protiviti, a consultancy firm, to examine the matter. Protiviti found that Mr Molan had approved Ms Taylor's application for the Certificate IV in Engineering, despite not being qualified to do so. Protiviti also identified concerns with the training.

Following the completion of the Protiviti investigation, South West TAFE notified Victoria Police in late 2015.

Between November 2013 and May 2014, TayTell received \$1,824,134 of Victorian Government subsidies in connection with the purported training of 134 Zinfra employees under the agreement with South West TAFE. Those enrolled included persons known to Ms Taylor who were enrolled under the guise of being Zinfra employees.

As a result of the third-party training agreement with TayTell, IBAC estimates that South West TAFE obtained \$456,033 of Victorian Government funding.

#### 2.1.2 Requests for information

Following preliminary enquiries, South West TAFE and Protiviti were requested to voluntarily provide information to assist IBAC investigators.

In December 2015, IBAC summonsed Protiviti to provide material relating to its investigation, which included more than 400 documents it had obtained from South West TAFE. This information was provided to IBAC in January 2016. Protiviti also advised it had provided 28 boxes of evidence to the Department at the conclusion of its investigation.

South West TAFE also voluntarily provided more than 100 pieces of information requested by IBAC in January 2016.

In February 2016, IBAC summonsed the Department to provide all information given to it by Protiviti. Although the Department initially stated the materials requested had been returned to South West TAFE, it subsequently identified ten boxes of evidence and documentation. These were provided to IBAC.

In March 2016, South West TAFE was formally summonsed to provide material obtained during the Protiviti investigation, returned by the Department to the TAFE. South West TAFE provided IBAC with the remaining 18 boxes of evidence relating to the Protiviti investigation.

## 2.2 The investigation expands – Kangan

### 2.2.1 Background

In February 2016, following a review of evidence obtained to date, the scope of IBAC's investigation expanded to Kangan.

IBAC identified credible information that TayTell had dishonestly obtained government funding through Kangan.

In its report, Protiviti identified that some Zinfra employees had been enrolled as Jetstar employees in a Certificate IV in Engineering with Kangan, without their knowledge.

Under the agreement with Kangan, TayTell received a total of \$221,471.80 of government funding in connection with the purported training of 70 Jetstar employees (two of whom were members of Ms Taylor's family).

As a result of the third-party training agreement with TayTell, Kangan has advised it obtained more than \$400,000 of Victorian Government funding.<sup>2</sup>

### 2.2.2 Execution of search warrants

In April 2016, IBAC investigators executed three search warrants at the residential premises of Ms Taylor and her husband Malcolm Kellas, Maurice Molan (formerly of South West TAFE), and associates Nicola Spiers and Alan Clifford.

During the execution of the search warrants, investigators seized a large quantity of documentary and digital exhibits.

### 2.2.3 Requests for information

In June 2016, Kangan was formally summonsed to provide material relating to its relationship with TayTell, its students and teaching services.

## 2.3 The investigation expands further – V/Line

### 2.3.1 The allegations

In May 2016, the scope of the investigation was again expanded to incorporate allegations of potential serious corrupt conduct by Alan Clifford, former General Manager, Rolling Stock at V/Line.

It was alleged Mr Clifford may have dishonestly awarded contracts to other parties, including Ms Taylor, to derive a benefit for themselves and others.

## 2.4 Private examinations

IBAC conducted six examinations of witnesses in private between October 2016 and April 2017. These examinations provided investigators with valuable information regarding the connections between various individuals, businesses and companies as well as providing context for, and explanations of, key documents obtained by IBAC.

A further private examination was conducted in September 2017.

Information obtained under summons also gave investigators new avenues of enquiry such as the identities of other individuals able to assist with IBAC's inquiries.

<sup>2</sup> Unsatisfactorily, especially for a public sector agency, Kangan was unable to advise the exact amount of funding it received as a result of the TayTell agreement.

## 2 The investigation

### 2.5 Public examinations

#### 2.5.1 Legal basis for holding public examinations

The IBAC Commissioner determined that it was in the public interest to hold public examinations following a review of material obtained under warrant, evidence from interviews and private examinations, and consideration of the criteria in section 117(1) of the IBAC Act:

- The Commissioner determined that exceptional circumstances existed, including the unchecked movement of a group of individuals throughout parts of the public sector and private sector, across a number of different industries over several years, exploiting weaknesses in the public sector and potentially adversely affecting the honest performance of public officers (or attempting same) for personal suspected illegitimate gain involving significant public funds.

Demonstrating the public importance of issues in this investigation, in September 2015, the Victorian Government announced funding of \$30 million over three years to improve the state vocational education system. This funding is to be directed to more onsite audits, closer scrutiny of high risk providers, greater control and oversight in the use of third-party training providers, and better compliance around contracts for training providers.

- The Commissioner considered there to be a public interest in exposing any misapplication of the limited funding available to Victoria's vocational education and training and public transport sectors. The public examinations would also enable the exploration of systemic corruption and misconduct risks in the TAFE sector and V/Line to generate awareness the risks such conduct poses to good public administration and drive action to minimise those risks.
- Finally, the Commissioner considered that public examinations could be held without causing unreasonable damage to the reputations, safety or wellbeing of persons subject to examination or named in examinations. While it was considered that requiring certain individuals to be publicly examined could cause damage to their reputations, the evidence to be put to them (much of which was documentary) was credible and required examination and explanation.

The scope and purpose of the public examinations is outlined in Appendix A.

### **2.5.2 Overview of the conduct of the public hearings**

Public examinations took place over three weeks commencing in late June 2017, with most parties involved legally represented. IBAC Commissioner Stephen O'Bryan QC presided over the examinations. Ian Hill QC with Carmen Currie of the Victorian Bar acted as Counsel Assisting.

IBAC heard oral evidence from 30 witnesses, one of whom was recalled. More than 250 exhibits were tendered.

### **2.5.3 Benefits derived from the public hearings**

Public examinations are a critical tool for investigating and exposing corrupt conduct. In particular, public examinations assist in informing the community and public sector of the risks corrupt conduct poses to good public administration, and drive action to prevent such conduct from occurring.

Following the announcement of Operation Lansdowne public hearings, more than 20 approaches were made to IBAC by the public providing information they believed relevant to this investigation or making other complaints about the training or public transport sectors.

## **2.6 Submissions and responses received after the public examinations**

After the public examinations, some parties independently provided IBAC with submissions seeking to clarify matters they had been questioned about. These submissions, in conjunction with responses received under section 162 of the IBAC Act, were given due consideration before the findings in this report were reached.

Appendix B provides an overview of natural justice requirements, as well as responses to adverse or possibly adverse material from:

- David Cameron
- Alan Clifford
- Department of Education and Training
- Coralee Hayden-Long
- Peter Heilbuth
- Travis Hodgson
- Rory MacManus
- Maurice Molan
- South West Institute of TAFE
- Theo Taifalos
- V/Line
- Andree Weavers

## 2 The investigation

### 2.7 Surveillance and telephone interception systems

During the investigation, IBAC lawfully deployed a number of surveillance devices under the *Surveillance Devices Act 1999* (Vic.) in various locations.

Similarly, IBAC used lawful telephone intercepts under the *Telecommunications Act (Interception and Access) Act 1979* (Cth.) to progress the investigation, for example, to assist in establishing the extent of the suspected corrupt conduct.

### **3** The entities involved

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## 3 The entities involved

### 3.1 Rebecca Taylor

Rebecca Taylor is the owner and sole director of TayTell Pty Ltd (TayTell).

Ms Taylor's husband is Malcolm Kellas and her daughter is Heather Taylor.

According to her resumé, Ms Taylor holds the following qualifications:

- Bachelor of Business and Graduate Certificate of Business from Victoria University
- Graduate Diploma of Management, Master of Business Administration and Diploma of Project Management from University of Ballarat (now Federation University)
- Lean Six Sigma Black Belt
- Certificate IV in Training and Assessment from South West TAFE.

Ms Taylor has held a number of roles in the public and private sectors.

In 2008, she was appointed Head of Department, Leadership and Management at the University of Ballarat. While at the University of Ballarat, Ms Taylor was required to obtain a Diploma in Vocational Education and Training (VET)/Certificate IV in Training and Assessment. She applied for recognised prior learning (RPL) at the University of Ballarat, but was unsuccessful.

In August 2009, the University of Ballarat received an anonymous complaint alleging that Ms Taylor had hired her daughter and a friend as sessional teachers. The outcome of the complaint is not known. Ms Taylor resigned in March 2010.

In April 2010, Ms Taylor moved to the public transport sector, working as Manager Business Improvement at Metro Trains Melbourne (Metro Trains). In this role, she formed associations with other Metro Trains employees: Alan Clifford, Nicola Spiers and Margaret Jarvie.

Ms Taylor left Metro Trains in August 2012 to pursue opportunities through her own business. This work included contracts to deliver training with South West TAFE, Kangan and V/Line. These activities are explored in chapters 4, 5 and 6.

In May 2016, Ms Taylor commenced with V/Line as a consultant. Ms Taylor obtained this work through Mr Clifford. The consultancy, which involved modelling associated with the next generation regional trains project, concluded in around September 2016.

### 3.2 TayTell Pty Ltd

TayTell Pty Ltd was registered in April 2013.

In July 2013, TayTell entered into a third-party agreement with South West TAFE to deliver a Certificate IV in Engineering (and other courses, namely Business Administration and Diploma of Management) to a cohort of students.

In late 2014, TayTell entered into a third-party agreement with Kangan to deliver the Certificate IV in Engineering as well as a Diploma in Business Management to enrolled students.

In the first half of 2014, Ms Taylor was engaged through TayTell as 'Change Manager – Reform' at Sydney Trains. This engagement was arranged through Mr Clifford.

In 2015, TayTell was contracted by V/Line to deliver Lean Six Sigma training to its employees. Six Sigma is a structured approach to process improvement described further in section 4.6.1.

According to Ms Taylor, TayTell has employed a number of people, including her daughter Heather (as office manager), and her husband Malcolm Kellas.

### 3.3 Zinfra Group

The Zinfra Group (Zinfra) is a large, private sector company that delivers engineering, maintenance and construction services to the utility infrastructure sectors. It employs approximately 1500 people.

ZNX Network Services Victoria is part of Zinfra, and delivers operations, maintenance and program management services.

Ms Taylor, Ms Spiers and Ms Jarvie all worked at Zinfra as either employees or contractors. There was a short period of overlap in their employment at Zinfra between July and October 2013.

### 3.4 South West Institute of TAFE

South West Institute of TAFE is a registered training provider with the Australian Skills Quality Authority (ASQA).

It is a major provider of technical and vocational education in south-west Victoria, with links back to the Warrnambool Mechanics Institute which was established in 1853.

South West TAFE is regionally located with campuses in Warrnambool, Portland and Hamilton. It offers around 200 qualifications delivered on-campus, off-campus, in schools, on site and via online learning.

In 2016, South West TAFE recorded total income of \$31.7 million, of which \$24.52 million was government operating and capital grants.

South West TAFE is overseen by a Board of Directors. The Board is responsible for governing South West TAFE's strategic direction and associated corporate plans. The CEO is responsible for the day-to-day management of the TAFE.

The current CEO is Mark Fidge. His predecessor was Peter Heilbuth, who was CEO from January 2013 to November 2014.

### 3 The entities involved

#### **TAFEs as providers of vocational education and training**

TAFEs are publicly funded bodies that deliver VET. VET is a national system designed to provide students with vocationally-focused competencies and qualifications to help them gain entry to the labour market, progress their careers or assist with higher studies. One objective of VET is to improve outcomes for people from disadvantaged backgrounds.

TAFEs compete with private providers to deliver VET to students. To deliver VET, an organisation must be a registered training organisation (RTO) and comply with the standards outlined in the Australian Quality Training Framework. There are currently around 5000 RTOs in Australia delivering training in units or specific qualifications.

In Victoria, there are 12 TAFE institutes, and a further four 'dual sector universities' which have both university and TAFE divisions.

TAFEs are governed by the *Education and Training Reform Act 2006*. They are public bodies and subject to the *Financial Management Act 1994* and *Public Administration Act 2004*. TAFEs are accountable to the Minister for Training and Skills.

TAFEs which offer courses to interstate or international students (as do South West TAFE and Kangan) are also regulated by ASQA. As at 30 June 2016, ASQA was responsible for 4082 nationally registered RTOs. ASQA regulates the VET sector through a risk-based approach, using a range of data and intelligence to inform its regulatory activities.

### 3.5 Kangan

Bendigo Kangan Institute of TAFE (Kangan) is registered as a training provider with ASQA, trading as Bendigo TAFE and Kangan Institute. It was created in 2014 through the merger of four organisations: Bendigo TAFE, Kangan Institute, VETASSESS and eWorks.

Kangan is a major training provider for the automotive, health and nursing sectors, and has a centre dedicated to Indigenous education. The Institute has nine campuses trading as Bendigo TAFE and five campuses trading as Kangan Institute.

In 2016, Kangan recorded total income of \$140.9 million, of which \$81 million was government operating and capital grants.

Kangan is overseen by a Board of Directors and the CEO is responsible for day-to-day management of the Institute.

Trevor Schwenke was appointed CEO, effective March 2016. Grant Sutherland was CEO from 2013 until Amanda Brook was appointed interim CEO in April 2015.

### 3.6 V/Line

V/Line Pty Ltd provides public transport services to Victoria's regional areas through trains and buses.

V/Line is a statutory corporation, established under the *Rail Corporations Act 1996* and the *Transport Integration Act 2010*.

In 2015/16, V/Line reported total income of \$675.1 million and a workforce of 1654.

V/Line is governed by a Board responsible for monitoring its strategic direction and performance. The Board reports to both the Minister for Public Transport and the Treasurer.

James Pinder commenced as CEO of V/Line in November 2016. His predecessor was Theo Taifalos, who was CEO from May 2013 to January 2016.



## 4 Conduct involving South West Institute of TAFE

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## 4 Conduct involving South West Institute of TAFE

### 4.1 Overview

In 2013, South West TAFE entered into a lucrative third-party training agreement with TayTell. Under the agreement TayTell was to enrol Zinfra employees into Certificate IV courses at South West TAFE. There was talk of 300 students being enrolled; the final number was 134.

The evidence obtained by IBAC strongly points to the TayTell training scheme being a scam, in that no relevant training or assessment occurred. The scheme was devised and carried out principally by Rebecca Taylor. While Nicola Spiers provided valuable assistance in the scheme, the evidence obtained by IBAC was considered insufficient to make positive findings as to the level of her knowledge about its lack of authenticity.

The Zinfra employees TayTell purported to enrol and train were unaware they had been enrolled in a Certificate IV in Engineering or a Certificate III in Business Administration. To effect the false scheme and to create a 'paper trail' to deceive potential auditors into concluding that the training had indeed occurred, Ms Taylor and her family members fabricated student records and supplied them to South West TAFE as purported 'evidence' of training and assessment.

Ms Taylor received assistance in implementing the scheme from Maurice Molan, then an Executive Manager at South West TAFE. Mr Molan maintained this assistance was provided unwittingly. Mr Molan, who encouraged South West TAFE's CEO, Peter Heilbuth to enter into the agreement with TayTell in July 2013, was aware that Ms Taylor did not hold the necessary qualifications to teach or assess engineering. When Ms Taylor's application for a Certificate IV in Engineering by way of RPL was refused, Mr Molan deliberately and without authorisation improperly manipulated the student data system to 'pass' Ms Taylor and award her the qualification.

South West TAFE entered into the contract with TayTell on little more than the word and assurance of Mr Molan who, in turn, relied on no more than the word and assurance of Ms Taylor.

The failure to undertake even a few basic enquiries was a missed opportunity to detect at an early stage that the TayTell proposal was, at best, a high-risk commercial proposition and, at worst, potentially a scam. No one from South West TAFE visited Zinfra to observe or supervise the training and assessment it had outsourced to TayTell, or to audit or check its records.

TayTell received some \$1.8 million in falsely claimed government funds from South West TAFE as a result of the scheme. South West TAFE has not recovered the funds from TayTell. Nor has South West TAFE paid back to the Department the 20 per cent of funds it was paid as a result of the scheme.

## 4.2 South West TAFE and a competitive market

The TAFE sector has undergone considerable reform over the last ten or so years.

Those reforms were designed to increase competition in the sector, giving students greater choice and ultimately strengthening vocational training in Victoria. These changes resulted in an expansion of the VET market and an increase in the number of private providers (more information on the funding model is provided in the box below).

To assist TAFEs with the transition to a more competitive environment, TAFEs were initially given special funding (an additional amount per student). In 2011 and 2012, this ceased and contestable funding was introduced, which required TAFEs to fully compete for funds with private providers. And in 2013, stand-alone government funding to TAFEs was reduced significantly.<sup>3</sup> Consequently, many TAFEs took steps to ensure their ongoing financial viability by cutting costs, including large staff cutbacks, and by building alternative revenue streams, including through third-party training arrangements.

Changes to the TAFE funding model in 2012 had a significant impact on South West TAFE into the 2013 financial year. According to the Victorian Auditor-General's Office (VAGO) 2014 financial audit, government operating grants to South West TAFE decreased by some \$2.3 million from 2012 to 2013. South West TAFE ended the 2013 financial year with an operating deficit of approximately \$4.3 million. Witnesses spoke of staff cutbacks following the loss of large amounts of government funding.

### The new funding model

The new funding model introduced in 2009 centred around the concept of 'student entitlement' – eligible students were to be provided with access to a subsidised enrolment in a VET course of their choice. The government subsidy was claimed by the RTO – whether it be a TAFE or a private RTO – in respect of that student's subsidised enrolment. Once a student had completed a subsidised course, they would generally not be eligible for a subsidised place in any further course of VET study at the same

## 4.3 Third-party training contracts

In 2012 and 2013, South West TAFE was looking for potential business or training opportunities through which it could get revenue from the enrolment and training of students off-campus. Third-party training arrangements were not uncommon among TAFEs, and had been used successfully to deliver vocational training in various industry settings.

According to Peter Heilbuth, who commenced as CEO of South West TAFE in January 2013, between five and ten third-party agreements were underway in 2012 and 2013. The most significant was an arrangement between South West TAFE and Metro Trains. Under this agreement, Metro Trains employees would enrol in and obtain formal engineering and train-driving related qualifications from South West TAFE, generally by way of RPL and off-campus training and assessment. The contract was worth several million dollars to South West TAFE.

It appears that Mr Molan, a member of the South West TAFE executive team, was chiefly responsible for negotiating and managing the Metro Trains and TayTell third-party training agreements on behalf of South West TAFE.

IBAC found no evidence that South West TAFE tasked any of its employees to oversee or manage third-party contracts.

<sup>3</sup> Refer Victorian Auditor-General's Office, *Technical and Further Education Institutes: Results of the 2013 Audits*, August 2014, page vii, indicating a decrease of \$116.3m – or 15 per cent – in government operating and capital grants in 2013.

level. To be eligible for a government subsidy for their enrolment, a student would have to undertake their studies in Victoria, and not have completed a qualification at the equivalent level or higher.

Students who were not eligible for government funding were still able to enrol in a course of study, but as full fee paying enrolments, there would be no government subsidy paid to the TAFE for their participation in the course.

## 4 Conduct involving South West Institute of TAFE

### 4.4 The TayTell agreement

#### 4.4.1 Ms Taylor puts forward a proposal

In February 2013, having left Metro Trains the previous August, Ms Taylor began working at Zinfra as a consultant. Her friend Nicola Spiers was instrumental in getting her the job. At Zinfra, Ms Taylor assisted Ms Spiers in arranging and delivering in-house Lean Six Sigma training.

In early April 2013, Ms Taylor contacted and then met with Mr Molan to put forward a proposal for a third-party training arrangement with South West TAFE.

Ms Taylor appears to have represented to Mr Molan that she had a group of up to 300 potential enrolments. These were employees of Zinfra, whose head office was in Clayton. Mr Molan gave evidence that he was told by Ms Taylor that Zinfra was seeking training for its staff in the Certificate IV in Engineering and Ms Taylor was offering to bring them to South West TAFE under a third-party agreement with her.

Ms Taylor proposed that she would take responsibility for coordinating and delivering the substantive training and assessment of all students, including arranging the enrolments, putting together the course materials, providing the training and assessment on site at the Zinfra workplace, and submitting the completed training and assessment records to South West TAFE.

On 12 April 2013, Mr Molan emailed Ms Taylor a copy of the Metro Trains Agreement to use as a template for their agreement. IBAC obtained a copy of the agreement which included three provisions similar to those included in the TayTell agreement:

- Metro Trains employees would be enrolled as students of South West TAFE in courses of study towards various qualifications
- Metro Trains would be responsible for training and assessment. This would take place off-campus, with South West TAFE retaining responsibility for oversight
- South West TAFE would on-pay to Metro Trains some 70 per cent of the government subsidies received, and would keep the remaining 30 per cent.

#### MS TAYLOR INSISTS ON AN 80/20 SPLIT

As part of the agreement, Ms Taylor proposed an 80/20 split: 80 per cent of the government subsidies received by South West TAFE in relation to enrolments brought by her to the TAFE under the agreement would be paid to her, and 20 per cent would be retained by South West TAFE.

In his email to Ms Taylor, Mr Molan indicated that he had discussed the proposal with Mr Heilbuth, who was supportive, but had queried the 80/20 split.

Subsequent correspondence between Ms Taylor and Ms Molan shows that Ms Taylor was insistent on the 80/20 split. Mr Molan undertook to support her demand in his discussions with Mr Heilbuth and the South West TAFE executive.

#### 4.4.2 The draft agreement with TayTell

On 4 June 2013, Ms Taylor emailed Mr Molan a draft TayTell Master Training Agreement, based in form and substance on the Metro Trains agreement.

Given that TayTell had only been incorporated on 13 April 2013, it is evident that TayTell existed for the primary purpose of being the corporate entity for South West TAFE's third-party agreement with Ms Taylor.

Key terms of the agreement were:

- the date of commencement was to be 1 January 2013
- TayTell would be responsible for everything from enrolment through to assessment, including provision of all course materials, trainers and assessors, training venues and equipment
- South West TAFE would be liable to pay, as a fee to TayTell, an amount equivalent to 80 per cent of government funding received in relation to the enrolments
- South West TAFE would have a supervisory and compliance role in relation to the training.

Notably, the draft agreement made no reference to Zinfra, despite the proposal being centred around the provision of training to Zinfra employees. Rather, the draft agreement referred to the provision of training services to 'employees' of TayTell or contracted services of TayTell, leaving it open to TayTell to involve the enrolment of persons from elsewhere other than Zinfra.

Nor did the agreement specify the number of students to be enrolled. Without such information, it would be impossible for anyone reading the draft agreement to calculate (by reference to the agreement alone) the likely extent of South West TAFE's financial obligation to TayTell in terms of fees.

On the same day (4 June 2013), Mr Molan responded to Ms Taylor's email, stating 'I have read the agreement and don't believe that we need to send it off to the legal people. I will forward it to our CEO shortly and believe it will be signed today/tomorrow'.

Shortly thereafter, Mr Molan provided the draft agreement to Mr Heilbuth, with the following email:

*Morning Peter*

*Please find attached another Training Agreement, this time with TayTell P/L. TayTell is the private company of Rebecca Taylor. Rebecca Taylor is the person who gave us the opportunity to begin discussions with MTM [Metro Trains] back in 2011 and has since left MTM to go out on her own. She is currently working as a consultant with the Zinfra Group and is looking to enrol up to 300 Zinfra Group staff with South West Institute of TAFE.*

*She is also working with other organisations that may require training across a number of areas.*

*There is one major difference between this agreement and the MTM one, and that is the breakdown of dollars. With MTM it is 70/30, whereas with TayTell it is 80/20. I have had a number of discussions with Rebecca about this figure, however it is not negotiable and I actually have no problem with it.*

*Having worked with Rebecca I know that we will basically have to do nothing but input data, as she will take responsibility for every other aspect of the training.*

*Happy to hear your thoughts.*

*Regards  
Maurice*

Mr Molan's email was the first and only real written indication that the TayTell contract was to involve the training of 300 Zinfra staff. This information was sufficient to indicate to Mr Heilbuth and Mark Fidge (at the time Executive Manager of Corporate Services, a role that encompassed the responsibilities of chief financial officer), that the potential revenue could be in the order of several million dollars. Even if South West TAFE only kept 20 per cent of the government subsidies, the TAFE stood to profit significantly from the proposed arrangement, particularly as its role and associated costs were 'to do nothing but input data'.

It was proposed that South West TAFE would essentially 'on-pay' 80 per cent of government funding to a non-RTO charged with carrying out all the relevant training and assessment on its behalf. The prospect of some 300 enrolments ought to have alerted South West TAFE to a potential exposure in the millions of dollars.

Mr Fidge gave evidence that he raised questions that this was a lesser deal for the TAFE than the previous 70/30 split under the Metro agreement, but that Mr Heilbuth ultimately made the decision to approve the 80/20 arrangement.

Mr Heilbuth gave evidence that it looked like a reasonable deal, given that the work involved on the part of the TAFE was to be largely administrative. There is no evidence that anyone on behalf of South West TAFE carried out any modelling, costings or financial cost/benefit analysis in relation to the contract or its proposed splitting of fees.

## 4 Conduct involving South West Institute of TAFE

### REQUIREMENT TO BE A REGISTERED TRAINING ORGANISATION

Clause 5 of South West TAFE's 2013 service agreement with the Department expressly prohibited outsourcing of day-to-day responsibility for training services except to another registered RTO in certain circumstances. This ought to have immediately raised questions as to whether the proposed contract with TayTell infringed on South West TAFE's obligations under its services agreement with the Department. Further, it should have raised questions as to the lawfulness and propriety of a wholesale outsourcing of the core training and assessment functions for which the TAFE, as an RTO, has duties under a variety of regulatory mechanisms.

Mr Heilbuth reviewed the draft contract and was aware that the services agreement (the annual TAFE Performance Agreement with the Department) imposed legal restrictions on the TAFE in relation to third-party contracting.

On 5 June 2013, he responded to Mr Molan (copied to Mr Fidge), in the following terms:

*Maurice, is TayTell an RTO?*

*I don't think they are as I can't find reference to TayTell or Rebecca Taylor on Training.gov.au*

*If this is the case, then I believe our current performance Agreement does NOT require us to seek HESG approval for this contract under clause 5.3 (page 18) of the 2013 Perf Agreement.*

Those matters should have prompted a prudent executive to seek a proper legal review of the proposed contract or, at the very least, to provide advice to the TAFE as to its incompatibility with the services agreement. Instead, Mr Heilbuth formed his own view that the services agreement offered no impediment.

Mr Fidge gave evidence that he reviewed a copy of the draft agreement and recommended that Mr Molan take it to South West TAFE's lawyers to look at. There is no written evidence of Mr Fidge having conveyed that recommendation to either Mr Molan or Mr Heilbuth. Mr Fidge said that despite his recommendation, Mr Molan took the decision to proceed without getting an independent review of the contract because he felt there was no need to.

Mr Heilbuth had no recollection of any discussion about having the contract reviewed by a lawyer.

### 4.4.3 The agreement with TayTell is signed

On 26 July 2013, Mr Heilbuth signed the agreement on behalf of South West TAFE. Mr Molan witnessed Mr Heilbuth's signature. The agreement was countersigned by Ms Taylor, sole director and shareholder of TayTell. Her signature was witnessed by her daughter, Heather Taylor, who signed using her married name 'Heather Snelleksz'.

No substantive changes were made from the draft sent by Ms Taylor. The TayTell agreement stated its commencement date as '1 January 2013'.

#### 4.4.4 Lack of diligence or review

It is apparent that the TayTell agreement was executed by South West TAFE without even the most basic due diligence or legal review:

- Ms Taylor did not put forward a formal business case in support of the proposed third-party arrangement, nor did Mr Molan request one.
- No one conducted a basic company search on TayTell Pty Ltd, which would have revealed immediately that the company had only been incorporated in April 2013 – four months after the commencement of the signed agreement.
- No information was sought from Ms Taylor or TayTell to ascertain or verify any qualifications or capacity to provide the training services referred to in the draft agreement. Mr Heilbuth had met Ms Taylor on just one occasion prior to signing the agreement and otherwise relied entirely on what Mr Molan had told him about Ms Taylor, TayTell and Zinfra.
- No contact or enquiry was made by anyone at South West TAFE with Zinfra to ascertain its knowledge of and involvement with the proposal, notwithstanding that the proposal was said to involve some 300 of its staff and would necessarily involve training and assessment at Zinfra's workplaces and during its working hours. Had such an enquiry been made, South West TAFE may well have learned immediately that, save for Ms Taylor and Ms Spiers, no one at Zinfra had any knowledge of the TayTell proposal.
- A conscious decision was made by Mr Molan and Mr Heilbuth not to obtain legal advice in relation to the proposed agreement, even though questions as to the propriety of the proposal plainly existed. Most likely, both men were fearful that legal advice might warn against entering into the proposed arrangement, thereby losing the chance of an otherwise valuable and low-cost revenue stream.
- There are no formal records of the TayTell proposal being raised for discussion with, nor consideration by, the South West TAFE Board nor any subcommittee, prior to being executed by Mr Heilbuth and Mr Molan. This is despite the multi-million dollar value of the project.

- There is no evidence of any costing or financial analysis of the proposal by South West TAFE prior to signing by Mr Heilbuth. This is despite the contract requiring allocation of staff or resources towards supervision and quality assurance of the arrangement.
- No record was made by anyone at South West TAFE, and no detail was sought from Ms Taylor or TayTell, regarding the content and structure of the courses to be taught, or how, where and by whom they were to be taught.

IBAC's investigation found that, in 2013, South West TAFE lacked adequate policies, processes and controls for the negotiation and management of third-party agreements. The risks associated with a lack of institutional governance processes are explored further in chapter 7.

Even so, a lack of knowledge, process and policy alone does not seem to wholly explain the failure. On the evidence obtained, it appears Mr Molan discouraged any legal review and strongly advocated for the proposal. Mr Heilbuth turned his mind to the question of legality, but inexplicably failed to seek advice. Mr Fidge claimed to have recommended legal review, but said he was overruled. And the Board's chair claimed to have a vague recollection of discussion of the Metro Trains and Zinfra agreements at the time, but could not recall anything further.

The potential value of the contract, at a time when revenue was hard to come by and highly sought after, may have marked the contract as the 'gift horse' into whose mouth no one dared look. Due diligence and legal review might well have exposed it as a deal that really was too good to be true.

## 4 Conduct involving South West Institute of TAFE

### 4.5 Ms Taylor's qualifications to train and assess

Prior to Mr Heilbuth signing the agreement, Mr Molan was aware that Ms Taylor's plan was to enrol, train and assess students in, among other things, the Certificate IV in Engineering. He was also aware that Ms Taylor was to be the trainer and assessor. Mr Molan knew that, at that time, Ms Taylor held neither of the two necessary qualifications to perform those roles: Certificate IV in Training and Assessment and Certificate IV in Engineering.

#### 4.5.1 Doubts expressed about Ms Taylor's competence to train and assess

Ms Taylor submitted an enrolment form to South West TAFE (fee-free, most likely through Mr Molan's intervention) for a Certificate IV in Engineering by way of RPL. Her enrolment in the Certificate IV in Engineering was effective from 23 August 2013, several months after the alleged training and assessment is said to have occurred, according to the dates in the falsified student records.

In September 2013, Jason Sealey, a former engineering teacher at South West TAFE, was engaged to review and assess Ms Taylor's RPL application. He was not satisfied that she could be deemed competent. He was concerned that the supporting material was from an unknown source, possibly self-generated and self-assessed by Ms Taylor, and there was no hard, factual evidence supplied by which he could be satisfied that she had practical industry experience in engineering. Mr Sealey reported his conclusion to Mr Molan in writing.

TayTell had a deadline of 13 September 2013 to submit necessary documentation relating to the supposed Zinfra enrolments so that funding could be claimed from the Department (this included records of hours, training and assessment and the like). The records submitted by TayTell listed Ms Taylor as the trainer and assessor of all the TayTell engineering enrolments. Mr Molan must have known that without evidence of Ms Taylor's qualifications, South West TAFE would be in breach of a number of fundamental regulatory requirements, risking any claim to government subsidies.

On 7 October 2013, Ms Taylor text messaged Mr Molan to ask when payment was expected for the Zinfra enrolments. Mr Molan responded:

*All data should be loaded this week. Participation will then be recorded. Final results can then be entered. This will then trigger payment to us when we do upload on 30/10. I will have all paper work ready to go so that you will receive payment immediately after that. Regards Maurice.*

#### **4.5.2 Mr Molan manipulates data to award Ms Taylor a result of 'passed'**

On 18 October 2013, Mr Molan accessed South West TAFE's electronic student record system and manipulated the data to award Ms Taylor a result of 'passed' against all of the modules she was enrolled in as part of the Certificate IV in Engineering. An application for issue of a Certificate, also dated 18 October 2013, was found in South West TAFE's records, bearing Mr Molan's signature. At 3.38 pm on the same day, Mr Molan sent an iMessage to Ms Taylor with a photograph of a Certificate IV in Engineering issued in her name.

As an executive member, it was not Mr Molan's role to enter student results. He had no qualifications in engineering to assess or deem Ms Taylor competent in the course. Mr Molan knew that her application had been assessed and rejected by Mr Sealey, an appropriately qualified engineering expert.

#### **MR MOLAN'S EVIDENCE**

In evidence, Mr Molan admitted to entering the result into the electronic system. He claimed that he had been authorised by someone else to do so, but could not remember who that was. Mr Molan's belief was either mistaken or falsely stated; South West TAFE's internal investigations found no evidence that Ms Taylor had been assessed or deemed competent by any other person. IBAC considers it more likely that Mr Molan acted independently and without authorisation to improperly enter the result and issue the certificate. This created documentary records to convince an auditor that the TayTell training had involved a properly qualified trainer and assessor.

#### **4.5.3 Fabricated letter of support for RPL in Certificate IV in Training and Assessment**

In December 2012, Ms Taylor had enquired with Mr Molan about obtaining a Certificate IV in Training and Assessment, again by RPL. RPL applications for the same qualification were also lodged for Ms Spiers and Amber Richards (a friend of Ms Taylor). There is no evidence they knew this had occurred at the time. All three RPL applications were assigned by Mr Molan to a senior educator at South West TAFE for review and assessment.

Ms Taylor was asked to provide additional documentary evidence to substantiate her application. She did so, and was ultimately awarded the qualification. Mr Molan was involved in sighting and verifying some of the documentation supplied in support of her application. Among the additional documents was a fabricated letter of reference from VET provider The Centre of Excellence, signed by Ms Taylor's daughter Heather using her married name 'Snelleksz' to give, it seems, the false impression of independence. Quite simply, the letter was false.

The South West TAFE senior educator told IBAC she had concerns about the validity of the documents but it is not clear if she acted on those concerns.

## 4 Conduct involving South West Institute of TAFE

### 4.6 Course design and content

#### 4.6.1 The lure of high nominal hours

Nominal hours (the hours of supervised learning or training deemed necessary to adequately present the educational material associated with the delivery of training) are an important element of the funding regime as they determine the amount of subsidy payable for each course.

The Certificate IV in Engineering had one of the highest 'total nominal hours', at 1360. This attracted some \$14,000 to \$17,000 of funding per student enrolled. The Certificate III in Business Administration also had a relatively high assignment of total nominal hours.

Ms Taylor's daughter Heather Taylor was involved in the design of Certificate IV courses in Engineering and Certificate III in Business Administration to be delivered by TayTell under the proposed agreement with South West TAFE.

Text messages from 6 May 2013 suggest that she and Ms Taylor were aware they stood to gain more funding from these courses than from other VET courses:

*6/5/13, 10:58 am from Heather Taylor: The total nominal hours r 1370 that's 10 hours over maximum*

*6/5/13, 10:58 am from Rebecca Taylor: Hey, not bad!!!! Aren't we clever!!!*

*6/5/13, 10:58 am from Heather Taylor: Yep we have exactly 109 points*

*6/5/13, 11:00 am from Rebecca Taylor: Fuck we are good!!!! Hopefully Maurice is happy with it..*

*6/5/13, 11:04 am from Heather Taylor: We will soon find out \$\$\$ so u can relax a little Think of the shopping in Sydney u can do mmmmm*

*6/5/13, 11:04 am from Rebecca Taylor: Nice shoes I can bring you home!!!*

*6/5/13, 11:04 am from Heather Taylor: He He*

*6/5/13, 11:12 am from Heather Taylor: And the hours for admin is 665 maximum cert 3*

*6/5/13, 11:33 am from Rebecca Taylor: Yippee....!!!*

#### 4.6.2 The Certificate IV in Engineering curriculum

Ms Taylor claimed that the content of the Lean Six Sigma program had been 'mapped' against the requirements of the Certificate IV in Engineering curriculum to arrive at a Certificate IV in Engineering program, into which all TayTell students were enrolled.

The evidence indicates each 'student file' contained the same list of units, mainly subjects with an administrative or customer service focus. Notably absent from the training plan were practical engineering units such as metalwork, fabrication, electronic engineering or the like.

Mr Sealey, who had taught in the South West TAFE engineering department and was familiar with the content of the qualification and subject selection matters, gave evidence that there were some units in the engineering program that would cross over with the content of Lean Six Sigma, but Lean Six Sigma was not an engineering qualification on its own. Mr Sealey reviewed the list of subjects selected by TayTell and concluded the course looked more like a program in office administration or safety. He was not sure that the subjects selected could legitimately satisfy the criteria for a Certificate IV in Engineering and said: 'as a fellow engineer, I probably wouldn't be happy with those units'.

TayTell had 'clustered' all the engineering units in its course selection into four groups, each with a single assessment workbook. Mr Sealey commented that clustering units (that is, merging the content and delivery of multiple units to cut down time) was not commonly used for engineering training. Had South West TAFE been appropriately overseeing and supervising the selection of units and study plans, these unusual elements of TayTell's course construction would have been apparent at an early stage.

### What is Lean Six Sigma training?

Lean Six Sigma is a combination of 'process improvement' methodologies: 'Lean', directed at reduction of inefficiency and waste in business processes; 'Six Sigma', a problem solving method also directed towards systems improvement.

Training in the methodologies is available commercially. There is no recognised qualification (such as a Certificate, Diploma or the like) in 'Lean' or 'Six Sigma' offered or recognised within the Australian VET system.

Instead, commercial operators offer training in the methodologies based on a 'black belt' system. Participants who have completed a short, two-hour introductory session receive a 'yellow belt' certificate. Various other levels of training are offered, up to the advanced 'black belt' level held by trainers.

Ms Spiers and Ms Taylor each claimed to hold a 'black belt' in Lean Six Sigma.

## 4.7 Did the training and assessment occur?

Ms Taylor gave evidence over two days of IBAC public examinations. She maintained that the training and assessment purportedly recorded in the documentation provided by TayTell to South West TAFE (and also to Kangan, discussed in chapter 5), had indeed occurred. The training, she contended, was both:

- in-house Lean Six Sigma workshops that she and Ms Spiers delivered (with occasional assistance from Heather Taylor)
- on-the-job projects carried out by the enrolled employees in the course of their day-to-day work.

Ms Taylor defended the scheme on the basis that the Zinfra enrollee had undertaken Lean Six Sigma workshops that were sufficient to credit them with satisfactory completion of a large number of modules in the engineering qualification.

Plainly, that could not be so.

Various witnesses gave evidence of having only attended a single workshop of some two hours duration. They undertook no assessment, either written or verbal. It is clear that a single, two-hour Lean Six Sigma session, or even a series of multiple sessions, could not be equivalent to the training requirements of a Certificate IV in Engineering.

## 4 Conduct involving South West Institute of TAFE

Ms Taylor also alleged that students undertook on-the-job training in the form of 'projects', which she assessed by observing each 'student' carrying out their work in the workplace. The weight of the evidence heard by IBAC shows this to be false. No evidence of any 'project work' was found in the student records. No one at Zinfra was aware of or saw Ms Taylor assessing people on the job. Lawfully intercepted telephone calls between Ms Taylor and Ms Jarvie revealed Ms Taylor colluding with and encouraging Ms Jarvie to be untruthful to IBAC by telling investigators that she had completed assessment by way of verbal tests and a 'project'. In her public examination, Ms Jarvie conceded that this was indeed untruthful.

Workplace observation assessment sheets found among the student records were fabricated by Ms Taylor with assistance from her daughter Heather and husband Malcolm Kellas. In many cases, they purported to record 'workplace assessment' observations of people on dates before they had commenced their employment at Zinfra, or on public holidays when no one was at work.

### 4.7.1 Case studies: 'students' falsely enrolled

#### AUSTELL LANYON

Ms Taylor's brother-in-law Austell Lanyon was enrolled in the Certificate IV in Engineering at South West TAFE by TayTell without his knowledge or permission.

An enrolment form was lodged by TayTell with South West TAFE in Mr Lanyon's name, filled out in what appears to be Heather Taylor's handwriting. Heather Taylor gave evidence that Mr Lanyon had expressed an interest in studying for a Certificate IV in Engineering and had asked her to fill in an enrolment for him.

In evidence at his public examination, Mr Lanyon disputed that was the case. He said the handwriting and signature on the form were not his, that he had not authorised anyone to fill in a form and enrol him, and that he was unaware he had been enrolled. When shown a series of handwriting-filled student workbooks and assessment sheets bearing his name, he said he had never seen them before and that it was not his handwriting. There is no reason to doubt the truth of Mr Lanyon's evidence.

In her public examination, Ms Taylor claimed to have visited Mr Lanyon at his then workplace, a commercial lavender farm, on a dozen occasions to give him on-the-job engineering training and assessment. Mr Lanyon strongly refuted this. He said Ms Taylor had never visited him at work. His employers, too, told IBAC investigators that they had never seen her there and had never been approached for permission to allow on-site training or assessment.

Even in the face of evidence that plainly demonstrated the alleged 'assessments' recorded in the sheets could not have occurred and did not occur, Ms Taylor doggedly maintained that they had. She suggested that the dates had been misstated as an 'administrative error' and, on occasions, mischievously implied that the documents may have been tampered with by someone at the TAFE. Ms Taylor's plainly false evidence became more preposterous the longer it went on.

## OTHER 'STUDENTS'

Other 'students' were shown workbooks and assessment sheets bearing their names. They too gave evidence they had never seen them before, had not filled them in, and had not undertaken the assessments supposedly contained in them. Three witnesses and Margaret Jarvie (a Zinfra employee for a short period of time) gave credible evidence to that effect in their public examinations.

Zinfra conducted a thorough survey of its employees enrolled by TAFE and reached a similar conclusion.

### 4.7.2 Three witnesses state they received training: Ms Taylor's daughter, son-in-law and husband

Three witnesses stated they had been trained and assessed by Ms Taylor in relation to on-the-job or project work for an engineering qualification: Ms Taylor's daughter Heather, son-in-law Brett Snelleksz and husband Malcolm Kellas.

Unconvincingly, Heather claimed to have been trained and assessed by her mother on a number of occasions while staying at a hotel in Clayton, near Zinfra's offices. This evidence contradicted her earlier account to IBAC, and was considered an untruthful attempt to explain why her assessment sheets recorded her training as having occurred at Clayton, when she had never been a Zinfra employee.

She also claimed to have undertaken two to three hours of one-on-one engineering training most weekday evenings at her mother's home over the course of 2013. Malcolm Kellas, Ms Taylor's husband, said he had not seen that taking place and had not participated, even though he himself was supposedly undertaking the engineering course.

Heather Taylor claimed she assisted in building a deck and pergola at her home – a project that formed part of her training and assessment. IBAC found evidence that the relevant deck and pergola were not constructed until after she supposedly completed and was awarded a Certificate IV in Engineering.

## 4.8 The 'sausage factory'

Ms Taylor and Ms Spiers collected partially completed TAFE enrolment forms from unwitting Zinfra employees at Lean Six Sigma training sessions they conducted between about March and May 2013. The enrolment forms were not submitted to the TAFE 'within days' of being collected from the employees, as Ms Taylor asserted. If they had been, the forms would have been processed by South West TAFE and date-marked accordingly. Instead, all the enrolment forms bore a South West TAFE processing date of 18 October 2013, indicating they were most likely amassed by Ms Taylor for bulk submission to South West TAFE at the same time as all the other supporting documentation, due on 13 September 2013.

From about May or June 2013, Ms Taylor embarked on the task of manufacturing the student records. This involved a substantial volume of material: enrolment and administrative forms, study plans, course design and mapping material, student workbooks and assessment materials, all of which were intended to demonstrate enrolment, participation and competent completion of study modules.

TayTell's registered 'office' was the home of Ms Taylor and Mr Kellas, over the back fence from Heather Taylor's home. Ms Taylor's house served as headquarters for the production of the falsified records. She enlisted the assistance of her daughter Heather and her husband Malcolm Kellas to create and fill in the paper-work, 'sausage-machine' style.

In fact, the three of them frequently referred to the 'sausage machine' and used the term 'sausages' as code for student files when text messaging each other about the task. It should be noted Ms Taylor maintained, quite absurdly, the references to 'sausages' in her text messages related to the catering to be provided at the student graduation. This was plainly untruthful; not only did the context of the messaging leave no sensible alternative meaning, but her husband Malcolm admitted that 'sausages' were the student files, as did Heather.

## 4 Conduct involving South West Institute of TAFE

### 4.8.1 Heather Taylor's role

Heather Taylor, armed as she was with considerable knowledge and experience from a private VET provider, was integrally involved in the design and typing-up of the documents, including 'clustered' student workbooks, assessment forms, assessment observation sheets, timetable matrixes, student study plans and course 'mapping' materials. Mr Kellas gave evidence that these forms, workbooks and the like were printed *en masse* at their home office.

It appears that Heather Taylor, among others, added false information into enrolment forms collected from Zinfra employees to suggest that every TayTell enrollee was eligible for a fully subsidised place, and to give the impression that each student had enrolled and commenced studies in February 2013.

Ms Taylor and her daughter Heather also 'threw in' some additional enrolments for themselves, and for other family members and a friend: Brett Snelleksz (Heather's husband), Malcolm Kellas, Austell Lanyon (Ms Taylor's brother-in-law), and her friend Amber Richards. These enrollees were falsely listed as Zinfra employees.

A text message exchange between Ms Taylor and Heather revealed the motivation for doing so was to claim more money from South West TAFE:

*3/09/2013 7:01 pm (Heather Taylor):  
We hit 1m today as well for sausages*

*3/09/2013 7:03 pm (Rebecca Taylor):  
Whoopi... I have seven more here and I want to do one for amber Richards, one for you and why not through [sic] one in for Boof and Brian??? Might as well and get some \$\$ for it.*

*3/09/2013 7:04 pm (Heather Taylor):  
Woo hoo no problem will do  
If you like*

*3/09/2013 7:04 pm (Rebecca Taylor):  
We could do one for Del as well.. He started engineering at uni but never finished*

*3/09/2013 7:05 pm (Heather Taylor):  
Yes let's do it and get the money... All the certificates come to our house anyway so we distribute them...*

'Boof' was a reference to Heather Taylor's husband, Brett Snelleksz. Austell Lanyon confirmed in his evidence that his nickname was 'Del'.

The evidence suggests that Heather Taylor was integrally involved in the design and execution of the TayTell scheme. Heather Taylor had regular dealings with both South West TAFE and Kangan on behalf of TayTell and, on a number of occasions, presented Lean Six Sigma training sessions. She received a regular salary from TayTell.

Text message exchanges show that Ms Taylor relied on her daughter for advice on how to get their paperwork to meet audit requirements, how to calculate nominal hours, modules completed and other technical information for fee claiming. For example:

*3/7/2013 4:25 pm (Rebecca Taylor):  
Excellent... Just a quick thought how are we showing that we checked off the language and literacy requirements?*

*3/7/2013 4:26 pm (Heather Taylor):  
Mmm can do a quick test as part of enrolment I think I have one from old work*

*3/7/2013 4:38 pm (Rebecca Taylor):  
We will need to do  
show something to satisfy requirements... Crap*

*3/7/2013 4:38 pm (Heather Taylor):  
OK no problem I'll have it sorted by tomorrow*

...

*30/8/2013 6:11 am (Rebecca Taylor):  
Friday the 13th Sept is our deadline for the folders... We must have them done. Can you make up an extra 20 for the additional that Nicky has done the last few days and I will get them from her... Chaching... \$\$\$*

## HEATHER TAYLOR'S EVIDENCE

In her public examination, Heather Taylor admitted that many of the documents bore her handwriting, including quiz answers, assessment check sheets and other material. She said that she filled in answers by copying from a notebook in which Ms Taylor had supposedly recorded students' responses to quizzes and assessments and her observations of them completing work-based tasks.

Ms Taylor, too, asserted that she kept such a notebook, and that Heather and Malcolm Kellas transposed its contents onto each student's work record. No such book was located at her property during IBAC's searches, nor volunteered by Ms Taylor. None of the Zinfra 'students' recalled participating in any assessment towards an engineering qualification, let alone giving answers or information to Ms Taylor that she recorded in a notebook. None recalled Ms Taylor observing them in the workplace and making notes.

The following text message from Ms Taylor to her daughter suggests Heather Taylor very well knew that the training scheme was most likely a scam:

*10/9/2013 5:26 am (Rebecca Taylor):  
Sick again... Can't sleep again...! Been up since one o'clock... Figured it out  
I am scared that something is going to go wrong with the training stuff. That it is too good to be true. That we will be audited and have to pay it all back...!!! I can't help it.. I am stressing out max... Makes me feel sick in the gut..*

And in a message to her husband Brett Snelleksz during an audit of South West TAFE files in early 2014 Heather Taylor wrote:

*18/03/2014 12:52 pm (Heather Taylor):  
This is why I'm a nut case  
Everything seems all fucked up and I seriously feel out of control  
Like things are spiralling out of control and I cannot stop*

...

*18/03/2014 1:05 pm (Brett Snelleksz):  
u've got to be positive in every situation*

*18/03/2014 1:11 pm (Heather Taylor):  
Yep ok how can I be if we have to pay back \$ we don't have it they sue for fraud.*

## 4.8.2 Malcolm Kellas' role

In his public examination, Mr Kellas admitted to participating in the 'sausage factory' production of the student records. He handwrote answers into student workbooks and completed assessment sheets, on occasions ticking 'no' checkboxes and the like to 'make it look authentic'. Mr Kellas claimed to have had instructions from Rebecca Taylor's supposed notebook as to how to fill in each workbook, but in response to IBAC's suggestion that he had simply made up the content of the forms, he conceded that 'could be an interpretation'.

Mr Kellas gave evidence that Ms Taylor oversaw the 'sausage factory'. He and Heather (and possibly Ms Taylor's other daughter) would fill in the forms and workbooks, following which Ms Taylor would sign off on the forms as the assessor. Mr Kellas identified his wife's signature on many of the documents.

Mr Kellas was himself enrolled as a student in the Certificate IV in Engineering and claimed to have completed the training and assessment under the direct tuition of Ms Taylor. He claimed that his assessment had comprised a project involving the restoration of a mechanical trike; however, no records existed to suggest that such a project had been undertaken. Mr Kellas could not recall filling in any workbooks as part of his studies or assessment. When confronted with a workbook bearing his name, which suggested his training had occurred at Burwood (Zinfra's office location), he conceded it was a false document.

## 4 Conduct involving South West Institute of TAFE

### 4.9 Invoicing and accounting

#### 4.9.1 Invoices and spreadsheet

Evidence obtained by IBAC showed that over a period of approximately three months, Ms Taylor provided multiple invoices to Mr Molan for training purportedly provided to Zinfra employees. The two discussed, via email, the amount TayTell should invoice South West TAFE for the training.

Ultimately, South West TAFE paid two TayTell invoices:

- Invoice 55, dated 13 September 2013, for 'Training and Services Supplied as per contract (132,740 hrs) for the period 2/2/2013 – 13/9/2013', for the sum of \$1,401,734.40.

Payment was requisitioned and signed by Mr Molan, and authorised and signed by Mr Heilbuth on 15 November 2013.

On 18 November 2013, TayTell paid Ms Spiers \$243,589.

- Invoice 56, dated 16 December 2013, for 'Training and Services Supplied as per contract (remaining 40,000 hrs) for the period 2/2/2013 – 13/9/2013', for the sum of \$422,400. On 12 March 2014, Mr Heilbuth authorised payment of this invoice. The invoice was paid in three equal instalments from March through to May of 2014, to manage cash flow.

On 14 June 2014, TayTell paid Ms Spiers \$8,580.

Ms Spiers gave evidence that the two payments she received from TayTell were for work she conducted for them, including Lean Six Sigma training and apparently unrelated project work. Ms Spiers admitted she knew that she was paid twice for the same work (ie. by TayTell and Zinfra).

The invoices submitted by TayTell were, prima facie, supported by documents that claimed to evidence the participation of Zinfra employees in the training. The documents, which were provided to Mr Molan, included enrolment forms and training and assessment material. Ms Taylor also emailed a spreadsheet to Mr Molan recording details of the course modules allegedly completed and the relevant student contact hours allotted to those modules. This spreadsheet formed the basis for predicting the funding the TAFE would receive for the Zinfra enrolments, and was used by Ms Taylor in part to calculate the invoices.

Remarkably, every student enrolled by TayTell was purported as eligible for full government funding. For example, all enrolment forms were marked to suggest that none of the students already held a qualification at or above Certificate IV, which would disqualify them from eligibility. This was, in most cases, false.

The reference to 'hours' on the invoices appears to be a reference to student contact hours associated with the modules of the course.

The spreadsheet and invoices caused no alarm; evidence from witnesses employed at various TAFEs indicated this was the basis upon which government subsidies were determined, and the basis upon which fees payable to contracted third-party trainers were commonly calculated. Nonetheless, it meant there was no relationship between the fees earned under the third-party contract and the hours of service provided, making it difficult to assess the work actually done.

#### 4.9.2 Accounting for the TayTell contract

The accounting treatment given to the payments made by South West TAFE to TayTell, particularly in the annual report for the financial year 2013, is of some concern.

The payment of \$1,401,734 to TayTell in the 2013 financial year is considered to have been inappropriately accounted for in the 2013 Annual Report as part of South West TAFE's 'Employee Expenses – Salaries, wages, overtime and allowances'. In written submissions to IBAC, South West TAFE stated that the payment to TayTell was coded as 'contract labour', 'which accurately reflected the purported service under the TayTell Contract'.

That is considered incorrect. The TayTell agreement specified that TayTell would be entitled to a 'fee' equalling 80 per cent of the government subsidies claimed. The contract made no provision for payments for work performed at an hourly or daily rate, or any other labour costs. As Mr Fidge agreed in his evidence, it would not be appropriate to account for such an expense as part of the institute's 'salaries and wages', and doing so (even if not deliberately) could have meant the expense avoided detection for what it really was, a training-related fee to a non-RTO.

South West TAFE stated that the 'underlying code of "Contract Labour" was inadvertently not allocated in the financial statement to "Supplies and services – Contract and other services"'.

A consequence of this accounting treatment was that it was impossible to identify from the annual accounts the significant payment to a third-party for outsourced training services.

#### 4.10 Mr Molan's knowledge and involvement in the scheme

IBAC found no evidence that Mr Molan received any payment from TayTell. Nonetheless, uncertainty remains as to whether Mr Molan was aware that the training and assessment had not in fact occurred, or whether he was unwittingly involved in a scam.

There is much evidence to suggest that Mr Molan actively facilitated the TayTell scheme when he must, at the very least, have been alert to facts that would raise real doubts as to the legitimacy of the TayTell arrangement. For example:

- Mr Molan knew, before the agreement was signed, that Ms Taylor lacked the appropriate qualifications to train and assess in engineering. Mr Molan arranged for Ms Taylor to be awarded both a Certificate IV in Training and Assessment and Certificate IV in Engineering, fee-free, by way of RPL. He must have known as at September 2013 that Ms Taylor had not held the requisite qualifications to carry out the training or assessment. As noted earlier, Mr Molan sought to cover up that situation by improperly awarding Ms Taylor the engineering qualification in October 2013.
- Mr Molan set a deadline of 13 September 2013 for TayTell to file its student records. This was a mere six weeks after the TayTell agreement had been signed; hardly sufficient time for students to complete all, or even some, of the modules for a course of study that would ordinarily involve 12 months full-time study.
- Had Mr Molan looked at the student records that were lodged on 13 September, he would have immediately seen that student enrolment forms and assessments had enrolment and training dates as far back as February 2013, several months before the agreement was signed and at a time when Ms Taylor did not hold the requisite qualifications.

## 4 Conduct involving South West Institute of TAFE

- When Protiviti, on behalf of the Department, audited Metro Trains and Zinfra student files in February and March 2014 (finding a significant number of errors in the sample paperwork), Mr Molan was in immediate contact with Ms Taylor. On 25 February 2014, he left a meeting with auditors and then tipped off Ms Taylor by text message that *'Zinfra files are high on their agenda. There is a problem around dates. Will have more detail tomorrow'*. Mr Molan took extended sick leave shortly after the commencement of these audits, which he said was due to personal issues.
- Mr Molan returned to work for a few days in July 2014. He messaged Ms Taylor: *'Back at work. Auditors are all over me'*. The following day he sent the following cryptic message to Ms Taylor: *'Bec, still in meeting. Not looking good. You might need to go to Plan B. I will call you later'*. Curiously, Mr Molan claimed an inability to recall, in his public examination, what 'Plan B' referred to.

### 4.10.1 Review exposes anomalies

In June 2014, South West TAFE commissioned accounting firm Coffey Hunt to review its third-party training contracts, with particular focus on its high value contracts with Metro Trains and TayTell. Coffey Hunt identified anomalies with the TayTell agreement, and sought to speak with Mr Molan. Mr Molan gave Mr Heilbuth multiple assurances that he would provide a response to Coffey Hunt, but never did.

The Coffey Hunt report raised serious concerns about the lack of evidence to substantiate Ms Taylor's entitlement to the Certificate IV in Engineering she had been awarded. It also raised several high-risk concerns regarding compliance issues with other third-party contracts. A draft report indicating these matters was provided to the South West TAFE executive in July 2014.

In August 2014, Mr Molan tendered his resignation which was to take effect in December 2014.

Mr Heilbuth accepted Mr Molan's resignation and in response – notwithstanding the serious issues of non-compliance raised by Coffey Hunt, and Mr Molan's evasiveness in giving a response to them – 'saluted' Mr Molan and offered some possible 'commission-related or part-time employment arrangement around business development in the future'.

In his public examination, Mr Heilbuth accepted that his response to Mr Molan exhibited a lack of judgment.

In September 2014, shortly after the Coffey Hunt report was finalised, South West TAFE commenced its own internal investigation into the TayTell arrangement, in particular the awarding of qualifications to Ms Taylor. As a result, Mr Molan's unauthorised manipulation of the student records system in October 2013 was detected, and suspicion deepened as to the veracity of the training scheme.

South West TAFE notified the Department's Higher Education and Skills Group (HESG) in October 2014 of their findings and, after a further audit overseen by HESG during 2015, notified the Victorian Ombudsman, VAGO and the Minister for Finance in late 2015.

In his public examination, Mr Fidge noted that South West TAFE no longer enters into third party contracts.

#### 4.10.2 Mr Fidge terminates Mr Molan and rescinds Ms Taylor’s Certificate IV in Engineering

In November 2014, Mr Fidge took over the role of CEO, on an interim basis. In December 2014, he contacted Zinfra to ascertain its knowledge of the training scheme and to advise of South West TAFE’s concerns about it. It became apparent that Zinfra was entirely unaware of the scheme.

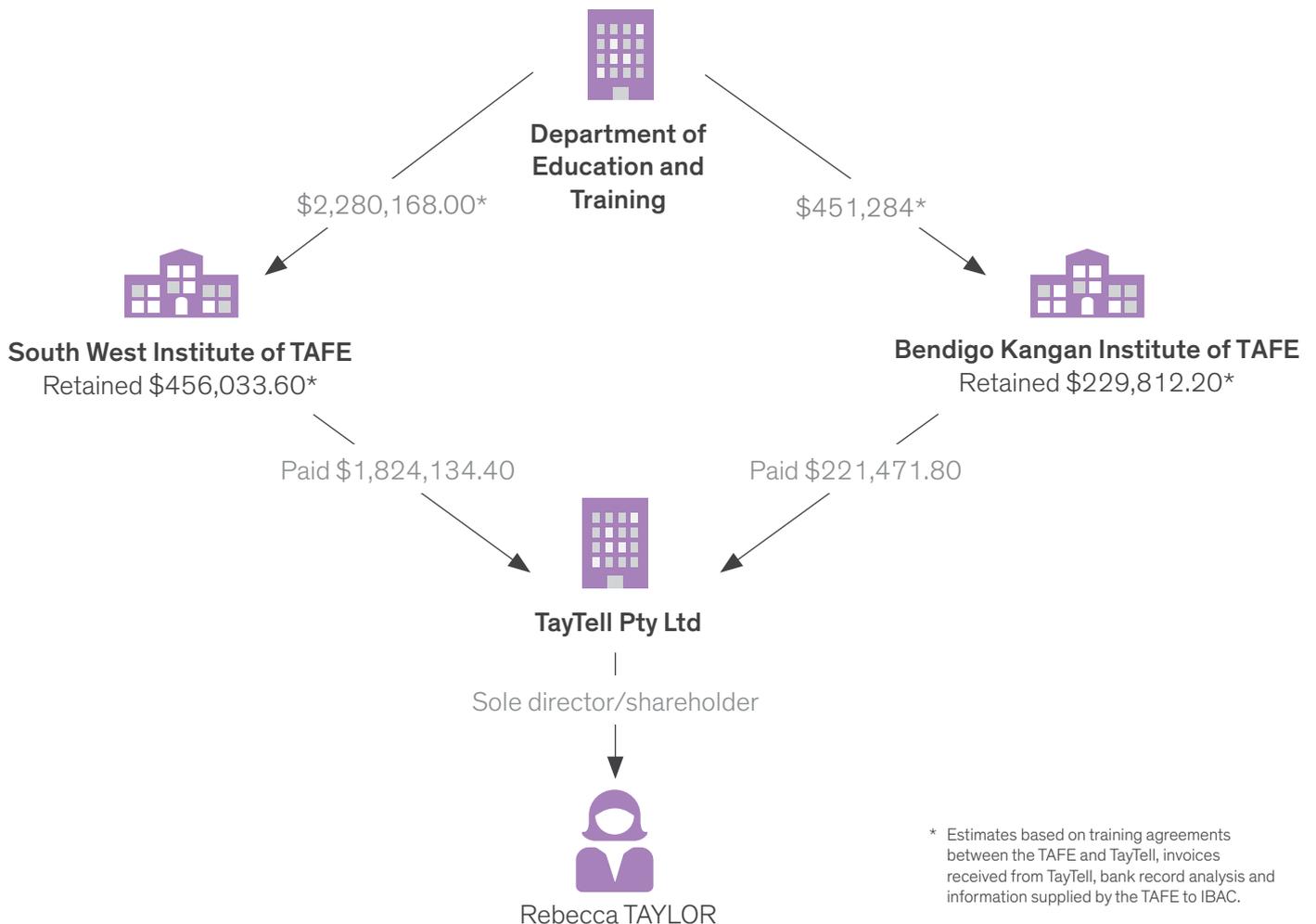
In December 2014, Mr Fidge acted to retrospectively reject Mr Molan’s resignation and to instead terminate his employment for serious misconduct, namely his actions in improperly granting Ms Taylor a Certificate IV in Engineering. Mr Fidge also rescinded Ms Taylor’s qualification. She was notified and asked to surrender her certificate to South West TAFE.

#### 4.11 Funds claimed and kept by South West TAFE

As a result of the third-party training agreement with TayTell, IBAC estimates that South West TAFE obtained \$456,033 of Victorian Government funding.

Mr Fidge gave evidence that, at the date of his public examination, no repayment of any of the funds claimed by South West TAFE for the TayTell enrolments had been made to the Department.

Figure 1: Department of Education and Training funds to TAFEs, then to TayTell



\* Estimates based on training agreements between the TAFE and TayTell, invoices received from TayTell, bank record analysis and information supplied by the TAFE to IBAC.



## **5** Conduct involving Bendigo Kangan Institute of TAFE

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## 5 Conduct involving Bendigo Kangan Institute of TAFE

### 5.1 Overview

In 2014, TayTell entered into another third-party training agreement, this time with Kangan. In similar fashion to its *modus operandi* at South West TAFE, TayTell was to enrol a cohort of Jetstar employees into the Certificate IV in Engineering course at Kangan. TayTell would submit enrolment, training and assessment records to Kangan to process and Kangan would claim government subsidies for the training. TayTell would receive 70 per cent of the funds; Kangan would keep 30 per cent.

Again, the training scheme was a scam and was devised and implemented by Ms Taylor. No engineering training took place. No one from Kangan oversaw or supervised the supposed training. No one from Kangan established or maintained adequate contact with Jetstar with respect to the supposed training of its employees in its workplace. Ms Taylor, again with assistance from her daughter Heather and husband Malcolm Kellas, fabricated training and assessment records for submission to Kangan.

The evidence suggests that certain Kangan officers who were involved in Kangan's management of the TayTell scheme, in breach of Kangan's compliance requirements, allowed enrolments to be processed without proper checks and enquiries, and in submitting claims for funding without adequate oversight or validation of the training.

Four 'students' (three Zinfra employees and one former Jetstar employee) contacted Kangan after receiving statements of attainment for studies they had not undertaken and were unaware they were enrolled in. Zinfra also attempted to convey its concerns to Kangan that its employees had been used in a scam by Ms Taylor. These alarm bells were ignored.

Instead of suspecting a scam and examining its arrangement with TayTell, certain Kangan staff actively defended Ms Taylor to Zinfra and to others within Kangan. Other than seeking reassurances from Ms Taylor, they undertook no investigation into the TayTell training and sought to keep the issues tightly within their cohort in the Business Development Team. Their conduct resulted in the preservation of the stream of revenue claimed, and to be claimed, from government subsidies for the TayTell enrolments.

While each denied knowing the TayTell training arrangement was a scam, it appears at the very least that they sought to keep the TayTell contract afloat by maintaining a wilful blindness to that distinct possibility.

## 5.2 TayTell provides training to Jetstar

In April 2014, Ms Jarvie, a close friend of Ms Taylor's with whom she had worked at Metro Trains and Zinfra,<sup>4</sup> arranged for Ms Taylor, via TayTell, to provide a session of Lean Six Sigma training to executives of Jetstar. At the time, Ms Jarvie was Manager, Safety Assurance and Organisational Change at Jetstar.

In June 2014, Ms Jarvie put forward a proposal for ongoing Lean Six Sigma Training to be provided by Ms Taylor. The proposed training was to involve no cost to Jetstar save for some travel costs, and was put on the basis that if 50 or more were trained 'and they meet the criteria as set out by the government training authority we will receive \$1000 back per person, in addition to the saving generated through rollout of each of the projects'. The proposal made no mention of any TAFE involvement or enrolment of employees into accredited VET courses.

In the meantime, it seems Ms Taylor commenced a series of Lean Six Sigma training sessions for Jetstar ground and engineering staff in about April or May 2014. The training sessions were conducted at various Jetstar ports in Melbourne, Sydney and Brisbane. On occasions, Heather Taylor assisted with the training.

One witness commenced employment at Jetstar as ground operations business contract manager in about September 2014, a few months after the training program had commenced. She expressed some concerns that Ms Taylor was providing training services without a formal contract in place, and acted quickly to get a confidentiality agreement in place as a minimum. In her public examination, the business contract manager said she felt some resistance from Ms Taylor to putting a contract in place and providing evidence of professional indemnity insurance.

## 5.3 TayTell moves from South West TAFE to Kangan

### 5.3.1 Ms Taylor's approach to South West TAFE sets off alarm bells

It seems that at some time in 2014, Ms Taylor conveyed to South West TAFE (via Mr Molan) a plan to bring the institute a large number of new enrolments from TayTell's training arrangement with Jetstar.

Mr Fidge gave evidence that initially the proposal looked 'fantastic', but the executive realised the training was potentially going to be done interstate, meaning it would not be eligible for Victorian Government funding. In addition, Mr Fidge said that alarm bells were starting to ring because the large number of proposed students was, on the face of it, 'too easy'.

### 5.3.2 Ms Taylor approaches Kangan

Having lost the opportunity to repeat her training scheme at South West TAFE, Ms Taylor looked elsewhere for a TAFE willing to engage her as a third-party contractor.

In 2014, Ms Taylor phoned Coralee Hayden-Long at Kangan with a training proposal involving Jetstar staff. The call, Ms Hayden-Long said, came 'out of the blue'.

As Manager, Business Development Solutions at Kangan, Ms Hayden-Long had responsibility for management of third-party training business for Kangan. She gave evidence that she had first met Ms Taylor in about 2010, when Ms Taylor and a training broker met with representatives of Kangan with a training proposal relating to Metro Trains. She said she got the impression that Ms Taylor was the person bringing the Metro proposal to the table, with the assistance of the training broker.

<sup>4</sup> According to her resume, Ms Jarvie was also engaged as a change management consultant with TayTell between July 2012 and August 2013.

## 5 Conduct involving Bendigo Kangan Institute of TAFE

### 5.4 The TayTell/Kangan arrangement

The proposal put by Ms Taylor to Ms Hayden-Long was for a 12-month training program for Jetstar ground staff to undertake the Certificate IV in Engineering. This would involve a one-day workshop per week and on-the-job 'embedded' training. It was made clear from the outset that the training would be based on Lean Six Sigma training programs and that Ms Taylor would be the only trainer. Ms Hayden-Long gave evidence that she was led to believe all the training and enrolments would be eligible for government subsidies. There was no suggestion, she said, that any of the training would take place interstate.

The proposal from Ms Taylor was for the training of Jetstar staff only. She made no mention of including students from Zinfra or elsewhere.

Consistent with departmental requirements, Kangan drew a distinction between 'auspiced' training arrangements (where training services were outsourced after obtaining the approval of the Department under the relevant services agreement) and contract trainer arrangements (where an individual was contracted directly to provide training, without requiring approval).

Kangan opted to engage Ms Taylor as a contract trainer, specifying that she alone would be responsible for the training and assessment. This meant Kangan did not have to make a formal business case for auspicing, nor seek approval from higher up in Kangan and from the Department. Having regard to the nature of the arrangement which involved full subcontracting of all training services, the engagement should have been dealt with as an auspiced arrangement. The decision to treat the arrangement as an individual contract enabled Kangan to avoid closer scrutiny and the need to obtain approval from more senior levels within the TAFE or from the Department.

It was agreed to trial a 'pilot program' of some 60 enrolments to begin with, with a fee split of 70/30 in favour of Ms Taylor. If the pilot was successful, a full program of some 200 to 300 enrolments would follow.

Kangan entered into two agreements with Ms Taylor and/or TayTell which, when combined, would net TayTell 70 per cent of the government fees for the Jetstar enrolments:

- a contractor/consultant agreement engaging Ms Taylor/TayTell as a trainer and assessor, for which Ms Taylor would be paid 40 per cent of the departmental funding via HESG
- a separate business development 'broker' agreement under which Ms Taylor would be paid 30 per cent.

#### **5.4.1 Failure to verify Ms Taylor's qualifications**

It does not appear that Ms Hayden-Long nor any other person at Kangan conducted any meaningful due diligence on Ms Taylor or TayTell, other than to obtain from Ms Taylor copies of her supposed qualifications. Those qualifications included the Certificate IV in Engineering (improperly awarded to Ms Taylor by South West TAFE). This certificate was central to Ms Taylor's eligibility to conduct the Jetstar training for which Kangan had engaged her.

Ms Taylor told Ms Hayden-Long that she had been working with South West TAFE, but did not want to work with them anymore because of their 'admin processes'. Kangan made no checks or enquiries with South West TAFE – in fact, Ms Hayden-Long confirmed Kangan was happy to get work that might otherwise have gone to a competitor. Had basic enquiries been made, Kangan may have been alerted at an early stage to South West TAFE's concerns – that Ms Taylor's qualifications were illegitimate, and TayTell was operating a suspected scam.

Ms Hayden-Long accepted in her evidence that, in hindsight, Kangan had been hoodwinked into this arrangement with TayTell by Ms Taylor and, had they conducted proper due diligence, they would have realised that at an early stage.

#### **5.4.2 Ms Taylor's engineering qualification is rescinded by South West TAFE**

In late December 2014, Ms Hayden-Long learned from Ms Taylor that South West TAFE had rescinded Ms Taylor's Certificate IV in Engineering. This was a major problem for Kangan; without a valid certificate, Ms Taylor was unqualified to train and assess the Jetstar enrollees, meaning Kangan would most likely be in breach of its RTO obligations and not be entitled to receive funding for those enrolments.

Inexplicably, no one from Kangan made any enquiry with South West TAFE as to why the certificate was rescinded. Had they done so, they would have been alerted to South West TAFE's concerns about the veracity of Ms Taylor's qualifications.

Instead, Ms Hayden-Long relied on Ms Taylor's allusion to 'a witch hunt by South West TAFE', and left it with Ms Taylor to obtain further explanation from that TAFE.

In her public examination, Ms Hayden-Long accepted, with hindsight, that she should have made independent enquiries. She agreed it was a rare thing for a TAFE to rescind a qualification, and that decision ought to have been respected by other TAFEs.

## 5 Conduct involving Bendigo Kangan Institute of TAFE

### 5.5 The Jetstar enrolments and 'training'

Using the same methods as she had deployed with Zinfra, Ms Taylor, with assistance from Heather Taylor, ran a series of Lean Six Sigma seminars for Jetstar staff throughout 2014, at various ports around Australia. The training comprised seminars of about two hours duration. The content was Lean Six Sigma and contained no engineering study or assessment.

#### 5.5.1 False information added to enrolment forms and student records

Attendees at those seminars were asked to partially complete a Kangan enrolment form. In some cases, Jetstar employees completed the South West TAFE form, but their details were copied over to the Kangan form without employees' knowledge.

Ms Taylor and Heather Taylor collected the partially completed forms and added false information to give the appearance that all 'enrolments' were eligible for government funding.

The Jetstar business contract manager, who attended one seminar, gave evidence that attendees were told they had to fill in the form to facilitate funding for the Lean Six Sigma course. No mention was made of enrolment in a Certificate IV in Engineering.

Many of the training seminars occurred interstate. No Victorian Government subsidy applies to training and assessment delivered interstate or to students living interstate and Ms Taylor was aware of this.

IBAC's investigations revealed that the Kangan enrolment forms for Jetstar staff attending interstate seminars had been falsified, most likely by Heather Taylor, to list Jetstar's Victorian office address as the home residential address for each interstate employee. Student records were fabricated to give the impression that all training had occurred in Victoria. In that fashion, TayTell falsely enrolled numerous interstate 'students' and claimed funding for ineligible interstate training.

#### 5.5.2 Zinfra employees 'enrolled' without knowledge

Ms Taylor and Heather Taylor also sought to maximise their financial benefit from Kangan by forging a number of new enrolments in the names of several Zinfra employees who had been enrolled by TayTell at South West TAFE.

Heather Taylor gave evidence to IBAC that these Zinfra 'students' were part-way through their courses and TayTell had opted to transfer them to Kangan to complete their studies because TayTell was dissatisfied with the service it was getting from South West TAFE. Heather Taylor admitted to copying the personal details and information from their South West TAFE enrolment forms onto Kangan enrolment forms. She claimed she then sent the enrolment forms to each person with an explanation and request for them to sign and return the form.

This was plainly untruthful; none of the Zinfra enrollees were made aware they were to be enrolled in Kangan, nor were they sent a form to sign. Their signatures on the Kangan forms appear to have been forged, most likely by Heather Taylor. For example, one Zinfra employee whose personal information was misused in this way, was shown a copy of the Kangan enrolment form bearing her name and details. She gave evidence that she had never seen it before, that it bore false information, and that the signature was not hers.

### 5.5.3 Taylor family members also ‘enrolled’

TayTell also enrolled family members, being Wayne Purtell and Wayne’s son Neville. Wayne Purtell, Ms Taylor’s brother, gave evidence at his public examination that he thought he was signing up to do an occupational health and safety (OHS) qualification and had not wanted to go down the path of doing a full engineering qualification.

### 5.5.4 Fabricated email addresses

Notably, the forged enrolment forms for the Zinfra personnel, and the enrolment forms lodged for friends and family, were each marked with a handwritten, fabricated Jetstar email address, giving the appearance that they were all Jetstar staff. The enrolment forms were ‘batched’ together with those of the genuine Jetstar staff and combined into a single spreadsheet for submission to Kangan. Anyone looking at the spreadsheet would have the impression that all the enrolments were Jetstar staff.

Ms Jarvie says Ms Taylor told her that a group of Zinfra ‘students’ was to be included with the Jetstar batch, but did not realise they had been falsely enrolled as Jetstar employees. Nor was Ms Jarvie aware that Ms Taylor had enrolled family members, including her brother, as Jetstar employees.

## 5.6 Kangan’s enrolment process

It transpired that all the TayTell enrolments – riddled as they were with false information and, in some cases, forgery of signatures – were duly processed and enrolled by Kangan, seemingly without question. This gives rise to serious questions about the adequacy and robustness of Kangan’s enrolment processes.

### 5.6.1 Andree Weavers’ role

Ms Weavers was the contracts and compliance coordinator at Kangan, and worked in the same team as Ms Hayden-Long and Mr Hodgson. Together, they appear to have collectively managed the TayTell agreement. While some reporting lines are unclear, it seems that in 2014 Ms Weavers was team leader in respect of compliance.

As a compliance officer, Ms Weavers was familiar with the national and state regulations governing VET contracts and training. A key part of her role was to ensure that third-party contracts adhered to those compliance requirements, including the requirements of ASQA and HESG, the part of the Department that provided government subsidies for VET training.

## 5 Conduct involving Bendigo Kangan Institute of TAFE

### REQUIREMENTS TO SIGHT ID

In 2014, Ms Weavers was a Kangan authorised enrolment officer, with specific responsibilities for processing new student enrolments. The enrolment process required an authorised enrolment officer to sight and check identification documents to verify the identity of the enrollee.

Ms Weavers gave evidence that the usual process for enrolling a student was to meet with them in person to discuss and verify their eligibility for government funding, their residency status and their identification. This included sighting the necessary ID.

Kangan's enrolment forms were adapted to those requirements and included a declaration to be signed by the authorised enrolling officer confirming they had sighted ID documents and declaring that:

*Based on discussion with the student, the above evidence I have sighted, and the information provided to me by the student in this form I believe that this student satisfies the Victorian Training Guarantee eligibility criteria as set out in the 2014-16 VET Funding Contract and is eligible for funding for the qualifications identified.*

According to Ms Weavers, if further information or clarification was required, the first port of call was to contact the student directly.

### A DEPARTURE FROM PROCESS FOR TAYTELL ENROLMENTS

Ms Weavers was an authorised enrolment officer for the TayTell enrolments. She was aware of the TayTell agreement and had met Ms Taylor. She understood that all the enrolments were from Jetstar.

In September 2014, Ms Weavers was provided with a bundle of enrolment forms from TayTell, including a number of the apparently forged Zinfra enrolments.

Contrary to the clear regulatory requirements that she knew and understood and contrary to her long-standing practice, Ms Weavers authorised the enrolments without meeting with any of the proposed students, without having sighted necessary identification, and without having verified basic residency and ID details including addresses and dates of birth.

The declarations she stamped and signed on each enrolment form were false. She did not attempt to contact any of the proposed students to determine or verify their details. Had she done so, as was expected and required of her, she would have found issues with the legitimacy of the personal information on the forms.

About a month after the enrolments were processed, it appears Kangan asked TayTell to provide copies of Medicare cards for each of the enrolled students. At Heather Taylor's request, Ms Jarvie provided copies of Medicare cards from Jetstar employees and Ms Spiers provided copies of cards from those enrolled at Zinfra. The Medicare card numbers were then hand-written onto the Kangan enrolment forms, creating the impression that the ID had been sighted at the time of enrolment and making the forms more likely to withstand an audit.

## MS WEAVERS' EVIDENCE

Ms Weavers gave evidence that she had only recently learned from a conversation in the office that the Zinfra enrolment details had been copied from South West TAFE enrolment forms onto Kangan forms, or that there was speculation that had happened. She claimed not to know, at the time of processing the enrolments, that some of the students were employees of Zinfra, not Jetstar.

Given her experience with Kangan's enrolment and compliance requirements, it seems unlikely that Ms Weavers' departure from proper process was an inadvertent oversight. Her conduct suggests a knowing departure from practice for the TayTell enrolments; why she was motivated to do so is not clear.

During her public examination, Ms Weavers was often vague. For example, when asked what arrangements existed at Kangan in relation to the TayTell enrolments, she claimed she 'did not recall'.

## 5.7 Failure to oversee training

In another major departure from compliance requirements, no one from Kangan conducted any site inspection or supervision to oversee the training and assessment.

### 5.7.1 Missing documents did not prompt a visit

On 5 February 2015, a few months after the enrolments – and when training would be expected to be well underway – Ms Weavers emailed Mr Hodgson a compliance checklist, identifying a long list of documents missing from the TayTell student files that would be required for audit compliance. The missing documents included evidence of unit participation, evidence of trainer qualifications, individual assessment plans, assessments, assessment materials and guides, timetables, student rolls and staff records.

The absence of such critical documentation after five months ought to have prompted immediate action to inspect what was going on, conduct a site visit or contact Jetstar and the supposed students to ascertain the status of the training program. It did not.

Instead, the approach adopted by Kangan was to assume that the training was compliant and to simply ask TayTell to provide documents that would, in effect, patch the holes in Kangan's files.

Ms Weavers gave evidence that oversight and supervision of third-party training was a usual, and necessary, part of Kangan's supervisory and compliance obligations. However, it seems in this instance that Ms Weavers was more concerned that the files pass an audit, because failing an audit could put Kangan in breach of its funding agreement with the Department.

## 5 Conduct involving Bendigo Kangan Institute of TAFE

### 5.7.2 Travis Hodgson – ‘put off’ from visiting

At the time of his examination, Mr Hodgson was the manager of partnership delivery for Kangan. While Mr Hodgson claimed not to be the lead person on the TayTell agreement, he was clearly closely involved from its inception.

Mr Hodgson gave evidence that he made no site visit to Tullamarine to see the supposed TayTell training in action. He said that he raised a potential site visit with Ms Taylor and Ms Jarvie in January 2015, but was ‘put off’.

### 5.8 Alarm bells

Two key events occurred between December 2014 and January 2015 that threatened to unravel the TayTell training scheme: students complained after receiving statements of attainment for study they had not done; and Zinfra raised concerns with Kangan about possible fraudulent activity.

#### 5.8.1 Complaints from students received after receiving statements of attainment

In December 2014, Kangan sent out statements of attainment to the students enrolled by TayTell in Kangan courses. This was Kangan’s usual practice at the close of the academic semester. The statements of attainment listed the units or modules each student had satisfactorily completed, according to Kangan’s records.

Kangan sent the statements directly to the residential addresses of each student and not, as Ms Taylor had intended, to a central TayTell address. This past arrangement had been a key device by which the scam at South West TAFE had remained undetected by the unwitting students enrolled. Text messages between Heather Taylor and Ms Taylor indicate their dismay that students had been alerted to their unwitting enrolment in courses and subjects they had no knowledge of.

#### EVIDENCE OF A ZINFRA MANAGER

Numerous staff at Jetstar and Zinfra received unexpected statements of attainment including the then technical training and wellbeing manager within Zinfra’s HR department.

During her examination, the Zinfra manager was shown a Kangan enrolment form bearing her name and personal details. This form included a ‘Jetstar’ email address in her name. She gave evidence that she had not seen the form before, it did not bear her handwriting or signature, and she had never asked or authorised anyone to enroll her in Kangan.

The Zinfra manager was also shown a series of student workbooks in her name that TayTell had filed with Kangan as evidence of her participation. Again, her evidence was that she had never seen them before and they did not bear her handwriting. She said she had never undertaken any training or assessment towards an engineering qualification. She also gave evidence that Ms Taylor had not conducted a workplace observation.

The Zinfra manager said that she was ‘rattled’ when she received the statement as she feared her personal information had been fraudulently misused. She reported her concerns to legal and HR representatives at Zinfra. Zinfra executives were unaware of any training arrangement with Kangan and undertook an investigation.

The manager also reported her concerns to Kangan and her complaint was referred to Mr Hodgson.

Another former Zinfra employee also received an unexpected statement from Kangan. That employee made a complaint to police that her personal information appeared to have been fraudulently misused. The police complaint was referred to Kangan, again to the team Mr Hodgson was a part of.

## KANGAN'S RESPONSE TO THE POSSIBILITY OF FALSE ENROLMENT

By January 2015, Kangan was on notice that some of the TayTell students were, at best, unaware they had been enrolled or, at worst, had been falsely enrolled.

It was also on notice that TayTell had enrolled a number of Zinfra employees (confusingly, and probably deceptively, concealed in TayTell's records as apparent Jetstar staff), when the TayTell agreement with Kangan had only ever contemplated training at Jetstar.

Remarkably, Kangan's response to every issue and complaint that arose, led it seems by Ms Hayden-Long, Mr Hodgson and Ms Weavers, was to do everything possible to prop up the training arrangement between Kangan and TayTell, and keep it going.

Rather than speak directly to the 'students' who were raising concerns, Kangan asked Ms Taylor to contact the people who were raising concerns. In taking this approach, Kangan ignored an opportunity to identify the scam.

When the fact of the Zinfra enrolments came to light – a matter that suggested TayTell was doing things well outside the terms of the agreement – Ms Hayden-Long and Mr Hodgson sought explanation from Ms Taylor. Ms Taylor told them that the Zinfra students had been enrolled at South West TAFE and were being trained at the Zinfra workplace by Nicola Spiers. She said she had 'transferred' them across to Kangan to complete their certificate, because the relationship between TayTell and South West TAFE had 'broken down'. As to why their enrolment forms bore fake 'Jetstar' email addresses, Heather Taylor glibly claimed that it was her 'administrative error'.

Remarkably, Ms Hayden-Long and Mr Hodgson appear to have accepted this explanation without any further investigation. No inquiry was made of Zinfra as to its veracity. No inquiry was made of South West TAFE nor any of the 15 affected 'students' who had been enrolled.

Any one of these enquiries may have quickly revealed the explanation to be untrue. Kangan defended the legitimacy of the training program to Zinfra, to students and to Kangan executives, based on Ms Taylor's explanations and assurances. This is explored more in section 5.9.

## 5.8.2 Zinfra voices its concerns

Melanie Stacey, the HR manager at Zinfra, gave evidence that South West TAFE had contacted Zinfra in December 2014 with concerns about TayTell's alleged training at Zinfra. As a result, Ms Stacey was involved in initiating an internal Zinfra investigation into the matter, in co-operation with South West TAFE. At around the same time, staff had alerted her to the unexpected receipt of course certificates from Kangan.

Zinfra contacted Kangan and a meeting took place on 6 February 2015, attended by Ms Stacey and Zinfra's legal counsel. Ms Hayden-Long and Mr Hodgson attended on behalf of Kangan.

This was a significant meeting. According to Ms Stacey, it was made clear to Ms Hayden-Long and Mr Hodgson that Zinfra had investigated these matters internally and formed the view that its staff had been fraudulently enrolled at Kangan. Zinfra was seeking information from Kangan and a proposed way forward to deal with the issue.

## 5 Conduct involving Bendigo Kangan Institute of TAFE

### KANGAN'S RESPONSE TO ZINFRA'S CREDIBLE ALLEGATIONS

These were matters that impinged directly upon the quality and authenticity of Kangan training and qualifications, and its institutional reputation. The response from the Kangan representatives was alarming.

Faced with credible allegations that a third-party was potentially engaged in corrupt behavior, Ms Hayden-Long and Mr Hodgson did not express concern, seek further information or undertake to have the matter thoroughly investigated. Instead, Ms Stacey gave evidence that Ms Hayden-Long and Mr Hodgson sought to defend and explain the situation relying solely on what they had been told by Ms Taylor. Indeed, Mr Hodgson levelled criticism at those Zinfra employees who had raised concerns, suggesting they were confused about the situation.

According to Ms Stacey's contemporaneous notes, Kangan's representatives advised Ms Stacey and Zinfra's legal counsel that:

- Kangan was concerned about its reputation, which it did not want muddied
- Ms Taylor had told them she knew there was an investigation at South West TAFE and she believed she was part of the collateral damage
- Kangan was satisfied, in respect of the supposed training provided to Zinfra by TayTell, that the assessment tools were enough to satisfy the Certificate IV ASQA audit
- [in response to a discussion about the fake 'Jetstar' email address on one Zinfra enrolment form] 'it is not uncommon for TAFE to add additional info to the enrolment form'
- [if training did occur and students did not submit their work], 'we can go back and work out a solution; it's common that there is some paperwork missing, the whole system is run on a whole administrative framework, and if you cross all your t's and dot your i's you can pass an audit'
- it is 'not uncommon to pre-fill induction because of the impost felt by someone at work', and that Kangan did not know how much of that was filled in by Zinfra, the student or Ms Taylor
- in 99.9 per cent of cases, they could guarantee that nothing is untoward: 'it goes back to the level of trust that you have in the trainer. . .and she had a very good structure in place using her own materials, own projects'
- [when Zinfra pointed out it was not possible that the enrolment forms were completed in July because Ms Taylor first came to Kangan in August, and started in September] it is 'not unusual that in a workplace environment it does not line up properly'.

Mr Hodgson denied being told in the meeting that Zinfra had concerns that a fraud had occurred. However, in her evidence, Ms Stacey was clear that this was the message given to Kangan, and her contemporaneous notes support this.

Ms Stacey also gave evidence that having raised Zinfra's conclusion that a fraud had occurred, Ms Hayden-Long and Mr Hodgson appeared largely untroubled because, they said, 'hundreds of students' had complained to the TAFE in the past and even gone to the police, but they were satisfied their records confirmed that the enrolments were legitimate. In evidence, Ms Stacey said, '[Zinfra's legal counsel] and I were sitting there not really believing what we were hearing... I think the intention was to pull the wool over our eyes'.

According to Ms Stacey, Zinfra was largely unable to get further information from Kangan, and its efforts to obtain student records on behalf of its employees were dogged by delay and Kangan's lack of response. Kangan rejected a formal freedom of information (FOI) application to obtain the student records for lack of payment of a fee.

Ms Stacey and Zinfra's legal counsel asked for a contact person at Kangan other than Ms Hayden-Long or Mr Hodgson in whom they had no confidence. According to Ms Hayden-Long, Bruce Whittaker (Kangan's protected disclosure coordinator) was briefed on Zinfra's concerns. This was denied by Mr Whittaker.

In March 2015, Zinfra's legal counsel also asked Mr Fidge, now formally appointed as South West TAFE CEO, for assistance to escalate the issue within Kangan. Following email contact from Mr Fidge to Kangan executives, it appears the matter was referred to Ms Hayden-Long, notwithstanding Zinfra's request for the matter to be escalated and dealt with by another person.

On 29 April 2015, Ms Stacey received an email from Ms Hayden-Long indicating that Kangan 'would prepare a response and have something to you shortly'. According to Ms Stacey, no response from Kangan was received.

## 5.9 Bury and mislead: internal Kangan management of the Zinfra issue

These developments ought to have raised serious concerns within Kangan about Ms Taylor's conduct and the legitimacy of the supposed training scheme.

The evidence suggests that rather than suspend the TayTell agreement and/or initiate an internal investigation into the serious concerns raised by Zinfra, the Kangan team managing the TayTell contract worked to downplay and discredit Zinfra's concerns, to conceal the TayTell non-compliances and to prop up and continue the training arrangement between Kangan and TayTell.

For example, on 24 February 2015 (after attending the 6 February meeting with Zinfra), Mr Hodgson deflected a request from the Zinfra technical training and wellbeing manager to provide copies of her supposed assessments:

*Thank you for your inquiry in relation to your assessments for the Six Sigma Cert IV in Engineering Competencies. It is our understanding that the assessments were aligned to ZNX internal improvement projects, visual management and teamwork in the workplace, as set by either your supervisor or Nicky Spiers. As the RTO, Kangan Institute provides the assessment tools, and must retain the assessment checklist stating that observations of staff and projects have occurred. These would've been conducted by Nicola Spiers from ZNX under the supervision of Rebecca Taylor from TayTell.*

## 5 Conduct involving Bendigo Kangan Institute of TAFE

In an email sent to Ms Hayden-Long and Ms Weavers on 9 February 2015 (three days after the Zinfra meeting), Mr Hodgson seemed keen to provide justification for the many valid concerns the Zinfra staff had raised:

*The 15 students completed 550 hours which equates to \$99,000 in HESG revenue.*

*ZNX claim that students may not have completed page 2 of the enrolment but at no time did they say that students did not signed [sic] the enrolment form.*

*By signing the enrolment form they are agreeing that the information on the enrolment form is true and correct and that they are aware of the consequences that may arise from providing false, misleading or incomplete information, including the cancelation if [sic] their enrolment. This may be our saving grace*

...

*If Nicole as a ZNX senior staff member was the person who completed the additional sections of the enrolment then they have acted on behalf of their staff and provide inaccurate/misleading information.*

*[Zinfra's legal counsel] stated that ZNX did not know that the Six Sigma training was aligned to the Cert IV Engineering but as Nicole was entrenched in the activity so this has no weight.*

*ZNX claim enrolment forms were completed in July which is more than a month before we provided Rebecca with the induction paperwork including enrolment forms.*

*ZNX claim that training was occurring before the start dates we have recorded but this is not an issue as long as assessments were within our start and end dates.*

In continuing to support the TayTell-Kangan arrangement, it appears Ms Weavers, Mr Hodgson and Ms Hayden-Long were motivated, at least in part, by the valuable stream of revenue the contract was bringing to Kangan in the form of claimed government subsidies.

### 5.9.1 False and misleading memo to Kangan executive

Mr Hodgson also admitted to preparing a false and misleading memorandum purporting to set out the background facts of the TayTell agreement and the Zinfra enrolments, which he emailed in draft form to Ms Hayden-Long and Ms Weavers on 16 April 2015 (seemingly for their review). In his examination, Mr Hodgson claimed he could not recall the purpose of the memorandum. Given the date was not long after Mr Fidge's email to Kangan executives asking that they escalate the matter (section 5.8.2), it seems most likely the memorandum was intended to brief senior executives or advisors within Kangan.

In the memorandum, Mr Hodgson set out a false and misleading account of the TayTell agreement to give the impression that the supposed Zinfra training and enrolments had been an express part of the initial agreement between TayTell and Kangan, that they were legitimate, that due diligence had been conducted on TayTell and its 'trainers' (including Nicola Spiers), and that Ms Spiers was Kangan's 'contact' at Zinfra.

Those matters were untrue, and Mr Hodgson knew them to be so. Ms Hayden-Long and Ms Weavers (had they read the memorandum) would also have known them to be false and misleading.

Mr Whittaker, now Chief Operating Officer of Kangan, gave evidence at his examination that he had some dealings with Zinfra's FOI application and had a meeting with Ms Hayden-Long in early April 2015. He did not have a recollection of that meeting, but said if he had been made aware of the 'sorts of things that have been talked about' (that is, the serious complaints of possible fraudulent enrolments) he would have escalated the issue to the CEO.

As such, the circumstances suggest that Zinfra's concerns were not conveyed to Mr Whittaker or other executives in a written or verbal briefing. However, the draft memorandum suggests, at least on Mr Hodgson's part, a willingness and intent to mislead others internally in respect of the serious issues raised by Zinfra.

### 5.9.2 Failure to act on Ms Taylor's rescinded qualifications

As mentioned earlier, neither Ms Hayden-Long nor any other person from Kangan made an independent enquiry of South West TAFE to ascertain why Ms Taylor's engineering qualification had been rescinded by South West TAFE.

Instead, Kangan's response was to arrange for Ms Taylor to make an urgent application for award of a Certificate IV in Engineering from Kangan by way of RPL. The evidence shows that Mr Hodgson assisted her in lodging the application and, from time to time, followed up on it with Peter Elovaris, the engineering teacher who had been assigned within Kangan to assess it.

In evidence, Mr Elovaris said it was unusual for Mr Hodgson's business unit to refer Ms Taylor's application to him. He was told Ms Taylor had had a qualification revoked, but nothing more.

Following conversations with Ms Taylor and a review of her documents (which did not include any independent substantiation of the work claimed to have been undertaken), Mr Elovaris concluded Ms Taylor could not be awarded the Certificate IV by RPL and would need to undertake more than 50 per cent of the course units.

According to Mr Elovaris, a further highly unusual intervention followed. On 16 February 2015, Mr Hodgson emailed Mr Elovaris a list of alternative units through which Ms Taylor might be able to obtain RPL for the Certificate IV without having to undertake study or training. Mr Elovaris said there was some pressure and urgency about the requests, giving the impression that Mr Hodgson wanted him to grant the certificate.

Ultimately, Ms Taylor was required to complete several units of engineering study. She jokingly text messaged her husband Mr Kellas about being made to use tools she had never seen before in her life, perhaps revealing her true lack of any engineering experience or skill. For her final subject, technical drawing, she was emailed the class materials and the test, and permitted to do the test at home, unsupervised.

Ms Taylor was awarded the Certificate IV in Engineering by Kangan in December 2015.

Mr Elovaris gave evidence that he did not learn that Ms Taylor's Certificate IV in Engineering had been rescinded by South West TAFE until after the RPL process. Had he been told, he said, it would have been a 'no-go' until the assessors had worked out what was going on.

## 5 Conduct involving Bendigo Kangan Institute of TAFE

### 5.10 Funds claimed and kept by Kangan

It has been difficult to establish with any precision the amount of government subsidies claimed by Kangan in respect of the TayTell enrolments.

Spreadsheets provided by Kangan showing student contact hours claimed through the Skills Victoria Training System suggest that Kangan claimed and/or received \$451,284 in government funding in respect of the enrolments in 2014 and 2015. Mr Whittaker confirmed Kangan has not repaid to the Department any money it received for the TayTell enrolments.

IBAC's investigations have found that Kangan made two payments to TayTell, one in December 2014 and the second in October 2015. Bank records show that TayTell received \$221,471 from Kangan.

Kangan and Ms Taylor disagreed over later invoices. Emails from the time suggest that Ms Hayden-Long and Mr Hodgson handled all matters relating to TayTell invoices. Ms Hayden-Long gave evidence that she and Mr Hodgson decided, unofficially, to pay 50 per cent (not 70 per cent) from the Jetstar enrolments and nothing from the Zinfra enrolments. This reduced rate, she said, was because of the 'grief' factor.

The disputed amounts were ultimately settled by negotiation.

## 6 Conduct involving V/Line

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## 6 Conduct involving V/Line

### 6.1 Overview

Safety is paramount in the proper running of a public sector transport organisation such as V/Line. As such, it is critical that staff adhere to relevant recruitment policies and procedures to ensure the best available personnel are employed.

Theo Taifalos, John Pistak and David Cameron worked together in senior managerial positions at Queensland Rail. Mr Cameron later worked with Mr Clifford and Mr Blythe in senior management at Sydney Trains. Eventually all five worked in senior V/Line management after Mr Taifalos commenced as V/Line's Chief Executive Officer (CEO) in May 2013 (Mr Taifalos resigned in January 2016).

Rebecca Taylor came to know Messrs. Clifford, Cameron and Blythe at Sydney Trains during 2014. Her employment had previously overlapped with Mr Clifford's while working at Metro Trains Melbourne between 2010 and 2013.

IBAC's investigation into TayTell's purported delivery of South West and Kangan TAFE courses led to an examination of allegedly non-compliant recruiting practices of senior V/Line personnel.

IBAC found evidence of a V/Line culture that placed undue emphasis on relationships and who people knew, and disregarded the requirement to declare and manage conflicts of interest. This included Mr Clifford's failure to disclose conflicts of interest when recruiting Ms Taylor and Ms Spiers to V/Line while he was V/Line's general manager of rolling stock engineering. It also included his engagement of Gary Blythe and company A (for whom he worked as a consultant) to a lucrative project without proper checks.

It appears that Mr Clifford was motivated to engage people with whom he had established relationships. For example, Mr Blythe said that Mr Clifford talked about his engagement with V/Line in the context of the 'family' – namely people he knew and trusted.

IBAC's investigation of Mr Clifford's own engagement found numerous irregularities and exposed a dearth of controls within V/Line at the time.

During the investigation, evidence was also uncovered suggesting Ms Taylor, with the necessary help from others at V/Line, may have planned to use V/Line staff identities in the same way that Zinfra and Jetstar staff names were used in purported Certificate IV in Engineering training. However, any such plan never came to fruition.

## 6.2 V/Line policies

### 6.2.1 V/Line's recruiting policies

IBAC heard evidence that, in 2013, it was mandatory for HR to be involved in the recruitment process. This included:

- having a role in advertising positions and shortlisting candidates
- gathering necessary information for probity checking by a specialist third-party firm. The probity process included verifying an applicant's formal qualifications, as well as making criminal history checks based on personal information supplied by an applicant.

The hiring manager's role included:

- defining the role of the position to be filled
- completing a 'request for recruitment' form
- obtaining necessary approvals (especially budgetary approval from a superior and, separately, approval from the CEO)
- selecting the best applicant in consultation with HR.

Jennifer Kelman (formerly general manager of HR at V/line) gave evidence that she expected new senior executives and the CEO to be inducted into such policies upon arrival. She was unaware if this had occurred in Mr Taifalos' case as he was a V/Line Board approved recruitment. However, it is reasonable to expect that Mr Taifalos, as a new CEO, should have taken the time to familiarise himself, at least at a high level, with important internal policies such as these, within a reasonable time of commencing.

### 6.2.2 V/Line's conflict of interest policy

At the time of IBAC's investigation, the V/Line code of conduct required self-disclosure by anyone with a potential or actual conflict of interest in relation to the performance of their duties. This involved completing a prescribed form and providing it to a nominated officer.

Conflicts included a family or personal relationship by the hiring manager with the applicant (as distinct from a prior professional one). Both then and now, any disclosure of such conflict would require the hiring manager to stand aside from participation in the recruitment process. This is consistent with well recognised Victorian public sector standards,

According to Elaine Seckold (current general manager of people services at V/Line) there is now, but was not in 2015, a specific policy for conflict of interest management in respect of V/Line recruitment. The policy now covers pertinent hiring manager declarations, sign-offs by superiors and final checking by general counsel.

## 6 Conduct involving V/Line

### 6.3 Mr Pistak's recruitment

#### 6.3.1 Mr Taifalos supports Mr Pistak's recruitment as consultant

Early in his tenure as CEO, Mr Taifalos promoted the engagement of Mr Pistak to head up V/Line's infrastructure area. Mr Pistak effectively replaced the existing Executive General Manager of Asset Management and was, Mr Taifalos said, brought in quickly due to a lack of confidence in the incumbent. Mr Pistak had previously worked in executive level asset management at Queensland Rail. Due to his intended engagement as a consultant, arrangements with Mr Pistak were facilitated through V/Line's procurement rather than recruitment process.

Evidence from experienced senior V/Line HR personnel (past and present) suggested it was unusual at that time to engage someone as a consultant for an executive manager role. One issue was that the arrangement gave a non-employee access to sensitive V/Line information systems. As well, it meant a lack of prudent insurance coverage in relation to Mr Pistak's consultancy contract.

Mr Pistak's initial annual remuneration package as a consultant Acting General Manager was \$400,000. In comparison, the annual salary of the person he replaced was about \$240,000.

In evidence, Mr Taifalos said that Mr Pistak's agreed remuneration was based on what Mr Pistak had been getting elsewhere. Mr Taifalos confirmed in evidence that he thought the remuneration benchmarks for executive salaries (as advised by a specialist firm) were low in comparison with similar organisations. This supports the HR unit's understanding that Mr Taifalos considered V/Line's senior managers to be significantly underpaid compared with Queensland Rail.

Mr Pistak was later appointed to the position of Executive General Manager, Asset Management, through an advertisement and recruitment process. In evidence, Mr Taifalos confirmed that he wanted to move people in executive roles from consultancies to fixed-term employment. As Executive General Manager, Asset Management, Mr Pistak received a reduced package of \$360,000.

### 6.4 Mr Cameron's recruitment

Mr Taifalos gave evidence that it was Mr Pistak's initiative, which he supported, to recruit Mr Cameron from Sydney Trains into a senior position at V/Line in 2014. Mr Cameron was a former colleague of Mr Pistak from Queensland Rail.

Initially engaged on a 12-month contract, Mr Cameron later replaced Mr Pistak as Executive General Manager of Infrastructure and Asset Management after Mr Pistak left V/Line in 2015. This was a very senior position within V/Line with five general managers reporting to Mr Cameron. He in turn was one of seven direct reports to the CEO.

Mr Cameron, who left V/Line in 2016, appears to have played a key role in the recruitment of both Mr Clifford and his partner Ms Spiers.

### 6.5 Mr Clifford's recruitment

#### 6.5.1 Mr Clifford's name is put forward

In mid-2014, V/Line was facing serious performance problems with some of its fleet. Mr Taifalos gave evidence that he wanted a new General Manager of Rolling Stock as a matter of priority and, after making enquiries, believed Mr Clifford was suitable. Mr Cameron had previously worked with Mr Clifford at Sydney Trains and they had formed a friendship.

It was Mr Cameron who contacted Mr Clifford about the possibility of coming to V/Line as a consultant in Mr Cameron's area of rolling stock contract management.

Mr Taifalos said the role commenced as a consultancy due to uncertainty about how long it would be needed. Initially at least, the role was intended to provide advice on fleet contract management and reliability.

On the evidence, the interview process for this role appears to have consisted of an introduction by Mr Cameron, followed by an informal discussion between Mr Taifalos, Mr Pistak and Mr Clifford over coffee. The only other discussion Mr Clifford had with Mr Taifalos before being offered the job at V/Line was around what he termed 'deliverables' – specifically, V/Line's expectations regarding rolling stock management and cost cutting.

## 6.5.2 Required qualifications

The formal position description created for the general manager role required the successful candidate to have a tertiary degree in mechanical or electrical engineering. This was consistent with evidence that all previous incumbents in the position had held such a degree. Both Ms Seckold and Ms Kelman said in evidence that a postgraduate qualification would have been desirable.

Where an applicant had relevant extensive experience coupled with a certificate or diploma qualification in engineering they could still be considered for the role. Ms Kelman explained this would involve a rigorous analysis of a candidate's experience.

It was clear from the evidence that experience alone would not meet the minimum mandatory requirements for the position.

In evidence, Mr Taifalos said that despite the job specification requiring a tertiary degree in engineering, he was not concerned about Mr Clifford's lack of an engineering degree and was more interested in Mr Clifford's relevant experience. He explained that the position was not advertised internally or externally – notwithstanding it was a general manager position – because there were no suitable internal candidates and the external rolling stock industry is very small with only two large suppliers.

## MR CLIFFORD'S ACTUAL QUALIFICATIONS AND EXPERIENCE

Mr Clifford gave evidence that he had the following qualifications:

- six months of a part-time, basic mechanical engineering course at the Open University
- three certificates in City and Guilds Engineering 1, 2 and 3. Mr Clifford explained that such certificates are provided to assist a naval engineer transition to civilian engineering and claimed they are the equivalent of a Higher National Diploma in the United Kingdom (UK)
- one-week PRINCE2 project management course (PRojects IN Controlled Environments)

It seems unlikely that these qualifications would meet the minimum required standards for Mr Clifford's role at V/Line. At the very least, they would have required careful assessment and enquiry by V/Line's HR unit.

Mr Clifford gave evidence that he had the following work experience:

- served in the UK Royal Navy as a marine engineer between the ages of 16 and about 31
- worked extensively in rail after leaving the Royal Navy
- worked for a small consultant engineering company in the UK (company A)
- employed by Metro Trains between 2010 and 2013 as General Manager of Rolling Stock (through a company A consultancy)
- worked in a like position at Sydney Trains until joining V/Line in the latter half of 2014

## 6 Conduct involving V/Line

### 6.5.3 Concerns around excessive remuneration

Bypassing existing recruiting procedures, Mr Pistak emailed relevant personnel (copying in Mr Taifalos as CEO) seeking a 12-month contract for Mr Clifford with a total remuneration package of \$414,000 and bonus potential of about \$16,000. This amount far exceeded what the incumbent in the role and other general managers at V/Line were receiving. It was also well above the upper end of the pay scale used for general manager roles within V/Line. Furthermore, V/Line's bonuses were not permitted for contractors.

During a second 12-month contract with V/Line, Mr Clifford's renewed contract was at an even higher salary package of about \$520,000 plus a bonus potential of nearly \$17,000. This was well in excess not only of what Mr Clifford's immediate superior Mr Cameron earned, but also Mr Taifalos as CEO.

Remarkably, this package was approved notwithstanding the policy of the GSERP that no individual executive could be paid more than 80 per cent of the CEO's total remuneration package without the panel's endorsement. Although Mr Clifford was not an executive, his remuneration appears to be at minimum, at odds with the essence of the GSERP policy.

As for his starting remuneration, Mr Clifford said that after he told Mr Taifalos his daily consulting rate was \$2200, Mr Pistak asked if he would work for \$1800 per day on a 12-month fixed term contract. This meant Mr Clifford would not be classed as a consultant but as an employee.

Mr Cameron's evidence was that when he was first made aware of Mr Clifford's high salary, he went straight to the CEO to discuss the matter. It is unclear when this occurred and therefore who the CEO was.

### 6.5.4 Attempts to stall or derail probity checks

The letter of offer sent on behalf of V/Line to Mr Clifford in October 2014 was conditional on him successfully completing medical and probity checks. With Mr Clifford having migrated from the UK not many years earlier, those probity checks were likely to be more complex than usual.

Mr Clifford's employment contract was executed – and he commenced work – before the probity checks had begun.

HR requested (by email and personally) that Mr Clifford provide them with the personal information needed to conduct criminal history checks in the UK, and to obtain a copy of his formal qualifications. The requests proved futile. Ms Seckold gave evidence of Mr Clifford telling her that his qualification records were in a box in his garage and that he had not had time to find them. She was told a similar story by the recruitment manager who had been trying to obtain them from Mr Clifford, without success. According to Mr Cameron, Mr Clifford said his qualification certificates were lost in a fire.

In March 2015, Ms Seckold sought to bring the matter to a head by arranging a meeting with Mr Clifford. Mr Clifford electronically forwarded the meeting request to his manager Mr Cameron and to Mr Taifalos.

Mr Clifford also sent an email to Ms Seckold claiming he had been '*under the impression that the probity stuff was sorted*' in that Mr Pistak was aware his qualifications were '*in the too difficult box to get sorted from my end*' and that references he had provided were thought to suffice. IBAC considers this email to be disingenuous because Mr Clifford must have known that successful probity completion was both a condition of his engagement and something responsible organisations would require.

Mr Clifford's email went on to express his displeasure that this issue had arisen again despite his last conversation with Mr Pistak. He wrote that he was prepared to resign rather than be made to produce his qualifications for the senior role he had been performing at V/Line for nearly six months.

When further questioned by Ms Seckold, Mr Clifford is said to have angrily suggested having some form of 'deal' with Mr Taifalos. While Mr Clifford declined at the time to be more forthcoming on the details of the suggested deal, it seems to have meant him being allowed to bypass the need for probity checks, in particular, verification of his formal qualifications.

Ms Seckold said that when she was about to report these events to her manager, Ms Kelman, Mr Taifalos appeared in their work area and yelled: 'What is HR doing and why are you asking for these qualifications?' Ms Kelman's recollection of the episode confirms this account. When Ms Kelman responded that HR was merely following proper compliance process, Mr Taifalos is reported to have replied: 'Well, I'd stand up any day and back Alan [Clifford] in front of any court, any regulator, for his qualifications'. Mr Taifalos is also said to have instructed Ms Kelman that HR was not to pursue the matter further.

Ms Seckold said that she had never before encountered such a scene in her considerable experience as an HR manager.

## MR TAIFALOS' EVIDENCE

Mr Taifalos gave a different recollection of the incident. He said he told Ms Kelman that while he was satisfied with Mr Clifford's level of experience, HR still had to 'keep the process moving' by obtaining details of Mr Clifford's formal qualifications, meaning that probity requirements needed to be followed.

Mr Taifalos also testified that Mr Clifford had told him that HR 'was giving him a hard time' about getting his qualifications, and that they were in the UK and would take some time to get. Mr Taifalos claimed he told Mr Clifford that he nevertheless had to provide them.

As to the manner in which he spoke to Ms Kelman, Mr Taifalos said his intention was 'to calm things down'. He strongly denied yelling or otherwise being aggressive toward her, and also denied he had said anything to the effect that he would back Mr Clifford's credentials for the role before any court or regulator.

As for Mr Clifford's qualifications not being produced and a criminal history check unable to be carried out, Mr Taifalos said that the probity issue never came back to him and he never followed up on it as he relied on HR 'to close that process out'. He agreed in evidence there was no good reason why Mr Clifford should not be required to supply the personal information required for criminal history checks.

Such evidence from Mr Taifalos was plainly contradicted by an email from Ms Kelman to Mr Clifford (which she copied to both Mr Taifalos and Mr Cameron), as well as the handwritten note on the file copy. In her email, Ms Kelman wrote:

*In view of the circumstances of your appointment and your extensive rolling stock experience, I have been advised that there is no requirement for you to provide your qualifications and to complete the probity.*

Such material, coupled with Ms Seckold's recollection of events, corroborates and tends to make more probable Ms Kelman's version of events.

Notwithstanding the fact that Mr Taifalos appears to have received Ms Kelman's email and not replied to it, his testimony in response to this material was that it reflected 'a clear misunderstanding of what his direction to her [Ms Kelman] was'.

## 6 Conduct involving V/Line

### MR CLIFFORD'S EVIDENCE

Mr Clifford conceded that within a few weeks of commencing at V/Line as an Acting General Manager, he was asked by HR to provide necessary probity-related information, but because he was 'a bit panicked' by the requirement for a degree, provided nothing.

When questioned about the email in which he proffered his resignation rather than submit to V/Line's probity process, Mr Clifford was unable to provide any explanation for his assertion in it that the matter 'had already been sorted'. He did say, however, that he had been unable to locate any of the City and Guilds certificates. He also admitted trying to put off having to disclose his lack of the prerequisite formal qualifications for the job.

Mr Clifford claimed that the need to satisfy probity check requirements was not raised with him before he commenced at V/Line, a claim that is difficult to accept based on the terms of the letter of offer he received. Mr Clifford also agreed in evidence that based on his experience working for large organisations, he would have expected to be subjected to such probity checks.

### 6.5.5 V/Line's failure to act on probity concerns

In evidence, Mr Cameron testified that he considered Mr Clifford's behaviour in response to the requested probity checks was unreasonable. However, despite being Mr Clifford's direct superior, Mr Cameron does not appear to have further involved himself in the matter. This failure to act is presumably explained by Mr Taifalos' direct intervention.

Ms Kelman also testified that she raised safety concerns with Mr Taifalos: what would happen, she asked him, if an accident occurred on the rail network and a regulator asked to see Mr Clifford's qualifications, which V/Line could not provide? She said Mr Taifalos replied that he would personally attest to Mr Clifford's qualifications if there was a safety issue.

Ms Kelman said that she subsequently sent an email to Mr Clifford stating there was no requirement for him to provide his qualifications and complete the probity (or words to that effect). She also took the unusual step of adding a handwritten note to the filed copy of her email stating the decision not to pursue any probity checks on Mr Clifford followed from Mr Taifalos' directive.

The upshot of Mr Taifalos' intervention was there was no follow-up to obtain the personal information required to carry out mandatory criminal checks. Nor did anyone follow-up documents that would verify Mr Clifford's formal qualifications. This unsatisfactory situation lasted not only for the balance of Mr Clifford's initial 12-month contract of employment, but throughout his renewed 12-month contract with V/Line.

### 6.5.6 Was there a 'deal'?

Ms Seckold said that she told Mr Cameron about her encounter with Mr Clifford. Mr Cameron responded that he had no knowledge of any deal between Messrs Clifford and Taifalos. Mr Taifalos also denied the suggestion of any prior deal with Mr Clifford that meant he did not have to produce evidence of his formal qualifications.

## 6.6 Mr Clifford breaches procurements protocols in engaging Ms Taylor

IBAC's investigation found evidence that V/Line's tender process for the procurement of Ms Taylor's services was improperly influenced through Mr Clifford's failure to declare and manage his conflict of interest on at least two occasions.

### 6.6.1 Lean Six Sigma training for V/Line

Soon after commencing work at V/Line, Mr Clifford made enquiries about the possibility of training V/Line employees in Lean Six Sigma. Mr Clifford engaged Ms Taylor to undertake this work, for which she was paid \$6600. Mr Clifford did not declare his friendship with Ms Taylor and her husband Malcolm Kellas. This prevented V/Line from ensuring that procurement of Ms Taylor's services was undertaken with integrity and transparency. For example, Ms Taylor was not an approved V/Line provider and it is possible there may have been at least one approved provider able to deliver the training more cheaply.

### 6.6.2 Asset management project

Mr Clifford arranged for Ms Taylor to work at V/Line for approximately four months in mid-2016 while he was seconded to another government department, on a project to plan the introduction of next generation regional trains. While Mr Cameron approved the purchase order for Ms Taylor's engagement, he admitted in evidence leaving all enquiries about her suitability to Mr Clifford and others.

TayTell invoiced and received about \$68,000 for work involving asset management for the next generation regional trains (Mr Clifford's project).

### 6.6.3 Further consultancy work

Ms Taylor submitted further TayTell invoices purportedly for project modelling and contract review work. This brought the invoice total for work between May and September 2016 to just over \$131,000.

Despite having been instrumental in introducing Ms Taylor to consultancy work at V/Line, Mr Clifford claimed he did not know about this work. It appears that once registered on the system as a supplier to V/Line of Lean Six Sigma training, it was quite easy for Ms Taylor to be engaged for other purposes provided her invoices fell within the financial approval limits of a general manager.

### 6.6.4 Failure to follow procurement procedures

Mr Clifford conceded he was aware of V/Line's procurement procedures but had not disclosed the TayTell consultancies around the Lean Six Sigma training and the asset management project to HR.

In addition, Mr Clifford:

- did not prepare projected costings, nor a contract
- took no steps towards satisfying the internal requirement of obtaining competitive quotes for work
- failed to disclose the potential conflict of interest he had through his close friendship with Ms Taylor – a friendship Mr Cameron said he was unaware of at the time
- failed to disclose serious allegations about the propriety of TayTell's purported delivery of TAFE training to Zinfra personnel, which had led to Ms Spiers being sacked from Zinfra for misconduct

Mr Clifford's explanation for not having disclosed the serious allegations about TayTell was that he had simply accepted Ms Taylor's brief explanation to him that it was caused by an administrative mix-up between TAFEs.

## 6 Conduct involving V/Line

### 6.7 Suspicious payment from TayTell to Mr Clifford

In its document searches, IBAC obtained an invoice dated 5 January 2015 to TayTell from Melbourne Rail Services, an entity owned and controlled by Mr Clifford. Under 'Description of Services' on the invoice appears the words 'Consultancy services of A. Clifford', followed by a total amount of \$18,513. That sum was duly paid by TayTell into Mr Clifford's personal bank account.

When first questioned about the payment, Mr Clifford professed a lack of memory and alleged it might have been for work Ms Spiers did for TayTell at a time when she had not yet set up a consultancy company. When pressed about what work Ms Spiers had done for TayTell, Mr Clifford said it related to bids by TayTell for projects in Victoria, with Ms Spiers writing Lean Six Sigma plans to assist. Such an explanation, which Mr Clifford conceded was merely a guess as he claimed to have no recollection in the matter, did not account for the payment being made directly to him under a plainly false invoice.

IBAC was initially concerned about whether such a plainly false invoice was created in return for an earlier favour or favours by Mr Clifford toward Ms Taylor (for example, Mr Clifford facilitating work at V/Line for Ms Taylor).

Nevertheless, there is no evidence contradicting Ms Spiers' subsequent evidence that she initiated the invoice for approximately ten days work she did for TayTell. She said she issued the invoice from Mr Clifford's company to obscure the fact that she was performing work outside her contract with Zinfra, which prohibited secondary employment.

### 6.8 Recruitment of Mr Clifford's partner, Nicola Spiers

Judith Sturman, V/Line's General Manager for Train Operations, was one of three executive general managers with responsibility for timetable planning and design. She reported directly to the CEO and had a substantial background in rail both in Australia and in the UK. Her evidence was that an agreement was reached with Mr Cameron and a third relevant executive general manager that a dedicated project manager role would be created for a new timetable (additional rail services were being introduced in January 2017, and there were complexities in finalising the timetable).

In July 2016, Mr Clifford's partner Ms Spiers was recruited to V/Line as a project director on the 2017 timetable at a total salary of more than \$200,000.

According to Mr Clifford, Ms Spiers was recruited to this role by his direct superior, Mr Cameron. As with Ms Taylor's recruitment, this recruitment bypassed the HR unit.

#### 6.8.1 The recruitment process

Mr Cameron informed Ms Sturman that he had identified Ms Spiers as a good candidate for the role. Mr Cameron's unit recommended that Ms Spiers be directly appointed to the new position via a fixed-term contract for a year, which avoided the need to advertise the position or to go to tender.

An informal meeting was then arranged between Ms Sturman and Ms Spiers. After the meeting, Ms Sturman told Mr Cameron she thought Ms Spiers was worth considering for the role.

### **6.8.2 Failure to follow recruitment protocols**

Ms Sturman confirmed that this occurred without any advertising for the new position or HR unit involvement. She also said that the concept of a 'direct appointment' to a position at V/Line (bypassing normal recruitment processes) was not one she was familiar with. At the time, she considered there was no need for haste in the recruitment as there was enough time to conduct it in the usual process-compliant, competitive way.

Ms Sturman raised her concerns with the interim CEO Gary Liddle to ensure he endorsed the intended unorthodox process for recruiting Ms Spiers. She was later told by Mr Cameron that Mr Liddle had given his approval. Ms Spiers was then engaged through Mr Cameron's unit to work in Ms Sturman's unit, which Ms Sturman considered unusual as she, supported by HR, should have been signing the necessary approval for someone to work under her.

### **6.8.3 Mr Clifford's conflict of interest**

Notwithstanding that his own conflict of interest demanded he not become involved, Mr Clifford's involvement in this recruitment is apparent from a lawful telephone intercept between Mr Clifford and Ms Spiers shortly before her 'interview' with Ms Sturman. In the phone call, Mr Clifford advises Ms Spiers to appear to agree on everything said by Ms Sturman on the understanding that Mr Cameron 'would change things' once she was engaged.

In evidence, Mr Clifford could throw no light on what those changes would be, claiming he was 'just passing on the message'. For his part, Mr Cameron claimed in evidence to have no recollection about any such plan.

### **6.8.4 Mr Cameron's conflict of interest**

Mr Cameron also had a declarable conflict of interest in the matter: he knew Mr Clifford at Sydney Trains and was a friend of Ms Spiers. Mr Cameron maintained in evidence that he had previously declared having such a conflict at an executive team meeting, although it was not possible to confirm this through meeting records. He did email two members of the executive team to formally declare his conflict of interest – the day after Ms Spiers was offered the position and had signed a contract. This declaration clearly took place well after his involvement in Ms Spiers' recruitment.

It also seems that, at the time, Mr Cameron was unaware there was a special form to be completed and given to the conflicts of interest officer.

Ms Sturman gave evidence that Mr Cameron told her he knew Ms Spiers personally, but she was unaware of any steps being taken to manage his conflict of interest.

### **6.8.5 Rory MacManus' conflict of interest**

Mr MacManus (General Manager, Asset Management and Performance) also played a role in Ms Spiers' recruitment, negotiating her \$200,000 plus salary. Mr MacManus reported to Mr Cameron, with whom he had previously worked at Queensland Rail.

Mr MacManus also had a conflict of interest in relation to Ms Spiers as he socialised with Ms Spiers, and her son was his personal trainer. He did not declare or manage this conflict.

## 6 Conduct involving V/Line

### 6.9 Mr Clifford engages Gary Blythe and company A

A further significant engagement under Mr Clifford was that of Gary Blythe and a UK engineering firm (company A). IBAC heard evidence that in engaging Mr Blythe and company A, Mr Clifford bypassed both the HR and procurement units.

Mr Blythe worked for company A, where Mr Clifford had last worked in the UK before migrating to Australia. Mr Blythe gave evidence that his lengthy background in rail included working for Bombardier in the UK as a consultant with company A. More recently, he worked for company A with Sydney Trains. He overlapped with Mr Clifford at both workplaces.

Mr Clifford said he commenced discussions with Mr Blythe in about June 2015 following the preparation of a discussion paper around upgrading V/Line's classic fleet. He said at that stage hardly any projects were being delivered on time and on budget. With such a large project (worth up to \$12 million dollars), and after discussions with his team, Mr Clifford said he considered professional help was needed for its management. He explained that he wanted Mr Blythe for the role as he had worked with him at Sydney Trains and he had done an excellent 'turn around job' on a major project.

Company A's detailed project proposal dated 1 June 2016 spoke of a two-year engagement of one person full time at a total cost of \$960,000. Mr Clifford said this amount was intended to be funded from equivalent savings that company A was required to deliver from the upgrade project budget.

Mr Blythe did not complete that contract, which was terminated by V/Line's current CEO, James Pinder.

#### 6.9.1 Failure to declare possible conflict of interest

Mr Clifford personally handled the negotiations with company A and Mr Blythe. In evidence, Mr Clifford said he told company A he needed approval to appoint a project manager from either the Board or the CEO (he could not remember which). Mr Clifford sent an email to company A mentioning the need for a Board presentation; however, no documentation was found to verify the Board being approached. This was despite Mr Clifford, according to his evidence, having put together a paper for Mr Cameron on why Mr Blythe was necessary for the role, and what was expected of him. Mr Blythe said that he only dealt with Mr Clifford before commencing work at V/Line.

Mr Clifford also testified that apart from his dealings with Mr Cameron, he asked V/Line's chief procurement officer, Stephen Brown, about the best way 'of getting Mr Blythe into the business'. He claimed to have also shown Mr Brown the proposed contract. The only pertinent document located by IBAC was the company A project proposal, which Mr Clifford had signed. Ultimately Mr Clifford conceded this proposal may have constituted the relevant contract. Mr Cameron testified that he did not believe Mr Clifford had the authority to sign a contract to that value with company A on behalf of V/Line.

Mr Clifford agreed to not having informed Mr Brown both of his prior connection with company A and of his having maintained an association with its principal.

Mr Cameron's evidence was that he was unaware at the time of Mr Clifford's past association with Mr Blythe.

## 6.9.2 Contract irregularities

There were many irregularities in company A's proposal, including no business case for the project. Had these irregularities been brought to the attention of Mr Brown's procurement unit they would have been readily spotted and not allowed to continue.

During the public examinations, Mr Brown was taken in some detail through the documentation that had been loaded onto the system for this transaction. He labelled the many identified deficiencies as troubling from an internal compliance viewpoint. He was critical, too, of aspects of the internal written project proposal signed by Mr Clifford, which he described as 'substandard for what you are trying to do'.

Mr Brown advised that the procurement rules at the time required a verbal quote for proposed spends of up to \$500, a written quote for between \$501 and \$25,000, and at least three quotes for between \$25,001 and \$150,000. Anything higher had to go through the procurement unit to be put to market in an appropriate way, depending on the nature of the purchase. While it was theoretically possible for a procurement of more than \$150,000 to be approved directly by an executive general manager, this would require CEO approval and would be an unusual event.

Mr Brown advised that under the rules and procedures at the time, a contract for \$960,000 would have required the following steps:

- complete an internal pro forma to detail scope of work, estimate of costs, some detail around time frames and work to be done
- appoint a sponsoring manager within the procurement unit
- decide how best to take the matter to market to ensure value for money.

This last step would require analysis of whether this was a specialised need that justified an exemption from going to market. There would also be a need for the proposed specialist contractor to be evaluated and vetted in terms of the level of their skills, qualifications and relevant experience.

Mr Brown was quite sure the engagement of Mr Blythe was not raised in advance with either his unit or the legal unit:

- He conducted extensive searches for necessary documentation without success. Mr Brown found that the engagement inappropriately bypassed his unit through the use of a general HR form designed for situations where a suitably qualified person was simply replacing another in an existing role.
- He also found no evidence of the matter ever coming to the attention of the HR unit before the engagement was effected.

## 6 Conduct involving V/Line

### 6.9.3 Contract splitting

In evidence, Mr Clifford agreed that a contract with a total cost of \$960,000 was required to be put out to tender, or at least be the subject of three independent quotations.

Mr Clifford signed off on the contract cost being split into four six-month renewable contracts. The practical effect of this was to bring each individual contract just within Mr Cameron's financial delegation limit of \$250,000.

After being shown lawfully obtained covert surveillance footage of verbal instructions he gave to a subordinate regarding the preparation of the contract, Mr Clifford conceded that splitting the company A contract into four was to avoid scrutiny by the Board and/or the procurement unit.

In evidence, Mr Cameron said he raised his concerns with Mr Liddle, as CEO, when he was presented with a purchase order for \$960,000, thinking it was excessive. He maintained he did not authorise the contract splitting, and was unaware of any plan to do so.

Mr Brown regarded the blatant contract splitting as a 'red flag' – a serious integrity risk. In giving evidence, Mr Brown was blunt: 'contract splitting is absolutely against policy and procedure, and there is no good reason for splitting other than wanting to cover up the full cost from the very unit designed to ensure proper scrutiny and integrity'. He expressed concern that this was allowed by others in the organisation to occur without someone drawing it to his or his unit's attention.

Although Mr Clifford wilfully ignored V/Line's procurement processes, red flags did not alert V/Line to his conduct. The failure to undertake competitive procurement processes was not questioned. And the blatant splitting of Mr Blythe's contract did not raise any alarms, although there should have been a standard system in place for monitoring contracts.

### 6.9.4 Failure to perform probity checks

As with Mr Clifford, Mr Blythe's work at V/Line was performed without any probity checks. This was despite Mr Blythe having free access to what he conceded in evidence was commercially sensitive information.

Mr Brown's investigations found that confidential V/Line costings were provided to company A for use in its quotation without company A being required to enter into a binding non-disclosure agreement. He also explained the fundamental importance of proper probity being conducted before bringing in a third-party to manage a \$12 million project such as the one in question.

## 6.10 A plan for a further scam agreement?

During the investigation, evidence was also uncovered giving rise to the suspicion that Ms Taylor may have planned to use V/Line staff identities for purported Certificate IV in Engineering training with the assistance of others.

Early in his time at V/Line, Mr Clifford made enquiries internally about Ms Taylor delivering Lean Six Sigma training for V/Line staff. In evidence, he explained he was familiar with Ms Taylor's delivery of such training at Metro Trains. Given that Mr Clifford and Ms Spiers were close friends of both Ms Taylor and her husband Malcolm Kellas, he would also have been aware of the training at Zinfra. As noted earlier in this chapter, this potential conflict was never internally disclosed by Mr Clifford.

Mr Clifford also made mention in an internal email of Ms Taylor having 'close ties to the TAFE', by which he meant South West TAFE. When pressed in evidence as to why he raised such ties, he could offer no explanation.

IBAC also sighted an email from a V/Line financial manager to Mr Clifford clarifying arrangements for such training at \$1500 per head, and confirming 'the courses (were) to be done through TAFE to gain TAFE accreditation'.

While Mr Clifford claimed not to know where the author of the email got this impression from, it is reasonable to conclude that he was the source. It is these emails which give rise to a suspicion that a scheme to enrol unsuspecting V/Line staff into a lucrative TAFE course (in the same way that Zinfra and Jetstar employee details were unwittingly used in purported TAFE accredited training) was being planned.

However, any such plan did not come to fruition.



## 7 Systems, controls and culture

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## 7 Systems, controls and culture

### 7.1 Overview

Operation Lansdowne revealed deficiencies in the systems and controls in place within South West TAFE and Kangan. At the heart of these deficiencies, both TAFEs failed to adequately oversight the training delivered in their names. Despite both TAFEs signing an agreement with the Victorian Skills Commission (VSC)<sup>5</sup> that clearly stated they were primarily responsible for ensuring subcontractors had the appropriate qualifications, skills and experience, they effectively abrogated this responsibility.

South West TAFE and Kangan did not appear to be fully aware of the risk of fraud associated with third-party agreements generally, and TayTell in particular. This was reflected in the failure to properly oversight the TayTell arrangements, the failure to act on red flags and, in the case of Kangan, to respond appropriately when significant concerns were raised. Some processes provided insufficient protection against possible fraud.

Generally, it was identified that the TAFEs lacked clear policies and procedures about how to manage third-party agreements including how to ensure they were meeting the required quality standards.

This chapter also considers the oversight arrangements at the departmental level, how that oversight has been strengthened and the scope for further improvement.

Deficiencies were also identified with the systems, controls and culture within V/Line. Senior officers disregarded policies and procedures around procurement and recruitment, to engage and recruit people with whom they had previously worked and with whom they had formed personal friendships.

### 7.2 TAFEs

#### 7.2.1 Confusion regarding the service agreement

South West TAFE and Kangan received funding through their arrangements with TayTell via a service agreement, or funding agreement, with the VSC. That agreement outlined the terms under which the TAFE would receive funding for training eligible students either directly or through a third-party.

In 2013, the service agreement stated that TAFEs could only subcontract training and assessment to another RTO that was subject to its own service agreement. TayTell was not an RTO.

However, other elements of the service agreement were less definitive about whether a TAFE could subcontract with a non-RTO and, if they could, whether VSC needed to consent to that arrangement and if additional VSC oversight would occur.

The 2013 agreement stated 'where an individual or organisation is solely engaged to conduct the role of trainer or assessor and is not an RTO then this would not represent a subcontracting arrangement'. This meant there was a difference in oversight arrangements that applied to an entity that both trains and assesses, and an entity that does one or the other.

Under the 2013 agreement, the VSC had discretion to approve a written request from the RTO to subcontract training and assessment to another RTO not contracted under a 2013 service agreement. However, the agreement was silent on the process if an RTO wished to subcontract with a non-RTO. The 2014-16 funding agreement between RTOs and the Department clearly states that an RTO may subcontract with a non-RTO – but only with the prior written approval of the Department. In fact, South West TAFE sought and received approval of its arrangement with TayTell in June 2014.

<sup>5</sup> VSC was part of the then Department of Education and Early Childhood Development and was a predecessor to the Higher Education and Skills Group.

It is a concern that South West TAFE entered into a subcontracting arrangement with TayTell in 2013, despite doubts about its ability to do so. Senior South West TAFE managers did not seek legal advice or seek the written approval of the VSC to enter into such an arrangement in 2013. If the VSC had been made aware of the arrangement, it may have requested specific action be taken to oversight the arrangement. As outlined in section 7.2.2, South West TAFE did not undertake any critical oversight of the TayTell agreement.

## 7.2.2 Poor internal processes for oversighting

### SOUTH WEST TAFE

Third-party agreements enable TAFEs to engage another organisation to provide training and assess students on its behalf. Under the service agreement with the Department, the TAFE receives a portion of funding under these arrangements in return for administration and oversight. In a competitive environment, these arrangements may appear as the third-party is responsible for the training and assessment and potentially reaches students the TAFE might not have otherwise attracted.

However, third-party agreements do not abrogate the TAFE from responsibility for ensuring the subcontractor has the relevant qualifications, is suitably experienced, and that the training is delivered as agreed. This responsibility is reflected in the service agreement. In return for government funding, South West TAFE should therefore have undertaken quality assurance of the training, and checked student enrolments (for example, to ensure eligibility for funding) and student assessments.

South West TAFE:

- did not visit Zinfra's offices to observe the training that was meant to be occurring
- did not conduct an audit of a sample of student enrolments
- did not conduct an audit of a sample of student assessments
- did not liaise with Zinfra in any way until some time after the issues were identified.

## 7 Systems, controls and culture

Had any of these activities been undertaken, it would have been evident that further investigation was warranted to check the legitimacy of the arrangement.

Jane Ponting was acting in Mr Molan's role as executive manager of education in 2014 at South West TAFE. She gave evidence that the TAFE lacked processes, policies or systems for the negotiation and management of third-party training contracts. In response, Ms Ponting put together a 'fairly standard' kit of materials that could be used for conducting due diligence and assessing the viability and propriety of proposed arrangements.

She also gave evidence to the effect that a relatively small country TAFE such as South West TAFE may be more vulnerable to being targeted by a potential scam because of the perception that they are not as up-to-scratch or knowledgeable around industry or governance. In other words, unscrupulous individuals might well think it easy to 'pull the wool over their eyes'.

### KANGAN

Kangan entered into an arrangement whereby Ms Taylor would train and assess Jetstar employees in a Certificate IV in Engineering. The arrangement comprised two agreements: an independent contractor agreement with Ms Taylor for the training and assessment, and a broker agreement with TayTell to cover the 'acquisition' of students.

Kangan received government funding via the Department for the TayTell arrangement and was obliged to comply with the service agreement. However, it failed to properly oversight the TayTell agreement.

The process of checking enrolments could best be described as rote, with the enrolment officer relying totally on the information provided by TayTell. The enrolment officer:

- signed a declaration that she had sighted students' Medicare cards when, in fact, TayTell had provided copies of the cards more than a month after the enrolment forms were processed
- did not verify students' ages (additional identification requirements exist for students aged under 20)
- signed a declaration that she believed the students were eligible for funding 'based on discussion with the student' when no such discussion had occurred.

Direct enquiries with any of the students who had ostensibly submitted enrolment forms would have revealed the enrolments were false.

As noted in chapter 5, other deficiencies in Kangan's oversight included:

- failure to visit Tullamarine to observe the training that was meant to be occurring
- failure to check students' assessment workbooks.

Kangan's failure to properly oversight the TayTell agreement is all the more concerning in light of the issues raised by Zinfra about possible fraudulent activity. Despite Zinfra raising significant concerns, Kangan did not see cause to review enrolment forms, student assessment books or visit the site of the purported Jetstar training.

## ACTIONS TAKEN TO IMPROVE OVERSIGHT

South West TAFE advised that after issues were identified with the TayTell agreement (and other third-party agreements) it put stronger controls in place, including:

- developing a checklist and other material on how to oversight a third-party agreement
- requiring executive approval and a business case for contracts involving a 'significant amount of money'
- strengthening internal audit processes
- appointing a contracts officer.

There may be scope for further strengthening of controls around third-party agreements, including ensuring a limit is placed on the amount of funding the contractor can claim. The TayTell agreements with South West TAFE and Kangan placed no limits on the number of students TayTell could enrol and train.

South West TAFE has also advised that its new student management system requires evidence to be cited and checked before data is inputted. This should ensure access rights are limited to appropriate officers and prevent situations such as that where Mr Molan was able to improperly input changes to the TAFE's student management system.

## RECOGNISING RED FLAGS

If proper scrutiny of the TayTell arrangement had occurred at South West TAFE and Kangan, the impugned conduct may have been detected. Recognising red flags is critical for all those managing third-party agreements in TAFEs.

**Unusual split of government funding** South West TAFE agreed that TayTell would receive 80 per cent of government funding associated with the training of Zinfra students, and South West TAFE would receive 20 per cent. As discussed in chapter 4, the usual split between third-party providers and South West TAFE was 70/30.

**Backdating of contracts** South West TAFE entered into a contract with TayTell in July 2013; however, commencement was backdated to 1 January 2013. This was problematic as TayTell was not registered as a company until April 2013.

**Irregular timelines** Enrolment forms were falsely dated between February and March 2013, with training ostensibly commencing shortly after. It is illogical that enrolments and training would have commenced months before a formal agreement was in place. In addition, Ms Taylor was not deemed to have completed the Certificate IV in Training and Assessment until July 2013, and in Engineering until October 2013.

**Failure to segregate duties** There was a conflict between Mr Molan's role in bringing in new business and managing that agreement by oversighting the training and assessment, and forwarding invoices to the CEO for approval. A similar conflict existed at Kangan where the manager responsible for business development was also responsible for oversight of third-party arrangements.

**Invoices without requisite detail** In October 2013, TayTell sent South West TAFE an invoice for \$1.4 million. The invoice described the delivery of 132,740 hours for 'training and services supplied as per the contract' over a seven-month period. No further detail was provided. No robust checks were conducted to satisfy the TAFE that the training had been delivered.

**A regional TAFE delivering to Melbourne-based students** Senior South West TAFE officers did not question why TayTell approached their organisation – a relatively small TAFE based in regional south west Victoria – about training to be delivered in Clayton (four hours drive away). The possibility that geographical distance could limit the TAFE's supervision of the training was not considered.

## 7 Systems, controls and culture

### 7.2.3 Insufficient controls around proof of identity

Both TAFEs provided Ms Taylor with multiple copies of blank enrolment forms, which were partially completed by Zinfra employees during their Lean Six Sigma training and then completed by Ms Taylor and her associates before being submitted to the TAFEs. At times, signatures and dates were forged and false information provided (such as previous qualifications) to ensure eligibility for government funding. Photocopies of Medicare cards for some students were provided as proof of identity.

Poor practice in relation to confirming the identity of students at the enrolment stage enabled the personal information of a significant number of people to be used to falsely enrol them as TAFE students, and for South West TAFE and Kangan to then claim funding for training not provided.

Under the current Guidelines for Determining Student Eligibility and Supporting Evidence issued by the Department, a student can be enrolled with a TAFE for a Skills First funded course by producing a Medicare card (Skills First is described further in section 7.3). There is no requirement to provide proof of identity containing a photograph of the student, evidence of their residential address within Victoria, or their signature. It would therefore be difficult to confirm the legitimacy of student enrolments and to assess their eligibility for funding.

### ACTIONS TAKEN TO IMPROVE CONTROLS AROUND PROOF OF IDENTITY

The Department advises that since 2016 it has enforced the use of a Unique Student Identifier (USI) as a precursor for funding under the VET funding contract. However, it is possible to register for a USI using only a Medicare card for identification purposes. Media reports suggest that many Medicare card details have been sold on the 'dark net' since October 2016.

It appears that current processes for confirming the identity of potential students do not sufficiently confirm the link between the identity document and the person claiming the identity. This is a key identity proofing objective of Australia's National Identity Proofing Guidelines, adopted by the Victorian Protective Data Security Standards.

Online enrolment processes could provide additional protection against identity theft. This could be via built-in controls to ensure that the person submitting the form is the person enrolling. Controls include electronic identification verification processes (such as emails) sent to the student to confirm enrolment.

#### 7.2.4 The pressure to compete in a competitive environment

In 2013 and 2014, Victorian TAFEs were operating in a competitive environment. Vocational education and training was no longer the sole domain of government-funded TAFEs; the field had been opened up to private providers, and TAFEs were compelled to compete for students and funding. Government funding had also been reduced, placing strain on many TAFEs' financial sustainability.

Mr Heilbuth gave evidence that South West TAFE was under considerable pressure at this time:

*It was very difficult to manage the organisation. We had significant staff cuts; about a third of our staff had gone leaving significant holes in our organisation; we had to close a beloved campus in the region ... [and] we were struggling with our student management system which didn't work for six to 12 months ... We were also fending off or trying to work through pressure to amalgamate and merge with other TAFEs.*

As noted in chapters 4 and 5, it was in this context that both South West TAFE and Kangan were pursuing business opportunities with other training providers. However, as Mr Heilbuth agreed, TAFEs lacked experience in entrepreneurial ventures. The appeal of the TayTell agreement may have very well obscured the risks associated with outsourcing training, including fraud and damage to South West TAFE's reputation.

The conduct identified in Operation Lansdowne suggests that South West TAFE and Kangan were more focused on securing third-party agreements (including with TayTell) than with actively monitoring the activities and outcomes of the third-party provider, or with identifying and managing the risks associated with the arrangement. In fact, despite TAFEs being required under the VET funding contract to verify that third-party training and assessment was occurring, there was a disincentive for the TAFEs to critically assess the conduct of TayTell, as to do so would potentially jeopardise much needed funding.

### 7.3 The Department's role in overseeing the TAFE sector

In August 2017, following the public examinations, the Department provided written submissions to IBAC containing information it considered relevant to Operation Lansdowne, including the role of HESG (formerly the VSC) within the Department and the regulation of Victorian TAFEs since 2010.

The Department highlighted challenges faced by TAFEs since the market reforms in 2009 including threats to TAFEs' financial sustainability, erosion of public trust in the system due to some training providers delivering poor quality training, and insufficiently robust national regulation. Concerns regarding oversight were also highlighted, including VAGO's finding in 2011 that Skills Victoria (a predecessor to HESG) had failed to provide effective oversight of TAFEs.

The submission detailed how the oversight of TAFEs has changed since 2010, including through:

- more streamlined and stringent reporting requirements for TAFEs
- the development of guidelines to apply to commercial activities of TAFEs to minimise risk
- new legislation around governance, for example through the enacting of the *Education Legislation Amendment (Governance) Act 2012*
- structural changes within the Department to provide enhanced oversight of TAFEs, for example through the establishment of the TAFE and Participation division.

During the period that TayTell was subcontracted by South West TAFE and Kangan, there was a comprehensive framework of Departmental oversight of TAFEs. In what appears to be a reasonably complex regulatory environment, TAFEs (as RTOs) are also subject to oversight by ASQA and the Victorian Registration and Quality Authority.

## 7 Systems, controls and culture

This framework included service agreements between TAFEs and the Department in return for funding under the Skills First program (formerly the Victorian Training Guarantee program). These service agreements outline general obligations on TAFEs including the need to exercise due diligence, comply with policies, procedures and guidelines, and to act ethically and not bring the VET sector into disrepute. The agreements also contain provisions that apply when TAFEs subcontract teaching services, including an obligation on TAFEs to ensure subcontractors have the appropriate qualifications and are capable of providing training services.

Other department oversight included:

- six different types of audits including audits to identify non-compliance with VET funding contracts, audits to ensure TAFEs hold sufficient evidence that enrolled students are eligible for government subsidies, and audits to check that TAFEs have sufficient evidence of student participation in training
- the development of Commercial Guidelines in 2013 which outlined processes for TAFEs engaging in commercial activities to minimise risk
- a requirement for TAFEs to have clear processes for determining student eligibility (pursuant to the Guidelines for Determining Student Eligibility and Supporting Evidence).

Clearly however, these controls did not prevent TayTell receiving government funds for training that was not delivered.

In its submissions to IBAC, the Department highlighted specific changes which are designed to address some of the issues identified in this investigation:

- since 2016, all subcontracting arrangements must be approved by the Department (as opposed to just subcontracting arrangements between RTOs)
- the number of enrolments, via a subcontractor, that attract government subsidies is now capped.

While these changes are welcomed, there is scope for the Department to consider further improvements to minimise the risk of similar conduct reoccurring, including:

- ensuring service agreements are as clear as possible, and that TAFEs understand their obligations under those agreements
- strengthening proof of identify requirements for enrolling students
- raising awareness within TAFEs, on an ongoing basis, of corruption and fraud risks, and how those risks can be minimised
- ensuring TAFEs have strong complaint handling processes in place, and understand their obligation to escalate significant matters, including actual or suspected significant or systemic fraud, corruption or other loss, pursuant to the 2016 Standing Directions for the Minister for Finance
- centrally collecting and analysing complaints and other information from TAFEs to identify trends and patterns that may need to be addressed
- reviewing the effectiveness of current information sharing arrangements with ASQA (for example in relation to trends and patterns in complaints and risk management) to ensure appropriate fraud and corruption risk detection, mitigation and response
- ensuring TAFE employees are aware of their obligations under the code of conduct for Victorian public sector employees.

A key corruption and fraud prevention control is an effective audit strategy. As noted above there is a regime of audits of TAFE activity, however it is not clear how frequently TAFEs are subject to audits or the risk factors that would influence selection of TAFEs for audit or the types of activities audited. Consideration could be given to reviewing the audit regime to ensure it is as effective as possible.

In 2015, a government review found the existing funding arrangements had put TAFEs in a 'perilous financial situation' and made recommendations to strengthen the operation of TAFEs, including that the Victorian Government fund the costs and obligations imposed on TAFEs, and that additional funding be provided for clearly defined services and outcomes. The review also highlighted significant issues around training by private providers, some of whom were unscrupulous.

In response, the Victorian Government pledged to invest \$1.2 billion annually to overhaul Victoria's TAFE and training system from January 2017, through its Skills First program. The Government reiterated its commitment to TAFEs and dual-sector universities as the preferred government-funded training providers, and to target providers exploiting the VET system and undermining quality training.

## 7.4 V/Line

### 7.4.1 Circumvention of controls around engagement of contractors

This report highlights two instances where Mr Clifford blatantly disregarded V/Line's procurement processes. First, he engaged Ms Taylor who was a personal friend, initially to conduct Six Sigma training (for which she was paid \$6600) and then to undertake work around the next generation rolling stock (for which she was ultimately paid around \$130,000). Second, he engaged Mr Blythe with whom he had previously worked in the UK. Mr Blythe was engaged as a consultant over 24 months for \$960,000.

In both situations:

- no competitive procurement processes were undertaken, contrary to V/Line's procurement policy that required three quotes for procurement valued between \$25,000 and \$150,000 and a tender process for procurement more than \$150,000
- there was a lack of documentation to justify the procurement. There were no business cases, no scopes of work and no cost estimates
- there was insufficient separation between the person initiating the engagement (Mr Clifford) and the approval of the purchase orders (Mr Clifford's manager, Mr Cameron)

- no contracts could be located. In the case of Mr Blythe's engagement, the only documentation produced was a short project proposal drafted by company A and signed by Mr Clifford on behalf of V/Line (although he was not authorised to commit the agency to expenditure of \$960,000)
- Mr Blythe's engagement was split into four six-month contracts. The effect of this was to keep the purchase orders and invoice approvals less than \$250,000 and therefore within the financial delegation of Mr Cameron, Mr Clifford's manager
- Mr Clifford failed to declare his conflict of interest in relation to the two engagements, although V/Line's procurement procedure required any employee to assess whether any conflict of interest existed which could be perceived as comprising their impartiality
- no probity checks were conducted on Ms Taylor or Mr Blythe. At the time, such a process was not formally part of V/Line's procurement process.

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### ROLE OF THE PROCUREMENT UNIT

The V/Line procurement unit had an opportunity to raise questions about the engagement of Ms Taylor and Mr Blythe at the point at which it received formal requests to add TayTell and company A as suppliers onto V/Line's procurement system.

In relation to company A, the paperwork provided to the procurement unit:

- did not include a contract
- provided no information about three quotes, although the form indicated that three quotes had been obtained
- stated that although the estimated annual spend was \$400,000, the effective cost was zero due to anticipated savings of \$600,000

The form was processed, without any issues being raised. This was a missed opportunity.

### V/LINE'S ACTIONS IN RESPONSE

As a result of IBAC's investigation, V/Line conducted an audit of the engagement of consultants (as well as recruitment of employees). In early 2017, V/Line advised the audit had identified a number of deficiencies including the need to centrally maintain information about supplier selection and evaluation. It was recommended that independent verification occur to confirm that the appropriate selection process evaluation was undertaken.

The chief procurement officer, Mr Brown gave evidence that V/Line has strengthened its procurement policy and controls. A key change is the establishment of panels of pre-qualified suppliers. Those suppliers have undergone rigorous checks and processes (including probity checks) before appointment. Other changes include training employees who raise purchase orders about their responsibilities and how to scrutinise purchase orders, analysing procurement data to identify conduct such as invoice splitting, and requiring all employees involved in a procurement to complete a conflict of interest form.

V/Line is heavily reliant on substantial procurement of expensive infrastructure, equipment and goods – as well as services that include contractors and consultants. Mr Brown's evidence highlighted that it is critical that V/Line has strong procurement systems and processes.

It is also important that V/Line has strong controls (including risk management and audit strategies) to ensure compliance with policies and procedures, detection of non-compliance or red flags, and that procurement is consistent with the principles of open and fair competition and probity.

## 7.4.2 Circumvention of controls around recruitment

The principle of competitive recruitment within the public sector is well established. Under the *Public Administration Act 2004*, public agency heads are required to put in place processes that ensure employment decisions are merit-based. And pursuant to the VPS code of conduct, public officers are expected to make decisions about employment based on impartiality, rather than favouritism, bias or self-interest. They are also required to use their powers responsibly and not provide a private benefit to themselves, their family, friends or associates.

During and after Mr Taifalos' tenure as CEO, this did not occur. Operation Lansdowne revealed a network of senior officers primarily connected through having worked together at Queensland Rail and/or Sydney Trains. V/Line's recruitment policies were disregarded as Mr Taifalos and senior officers sought to bring people they knew into the organisation without due process:

- The recruitment of Mr Clifford (described in chapter 6) is one example. Contrary to V/Line's recruitment policy, this position was not advertised and no other candidates were considered. Mr Clifford was appointed without providing evidence that he held the qualifications required for the role and without probity checks being conducted. HR was not involved in the recruitment process but did pursue Mr Clifford for information to facilitate probity checks, until Mr Taifalos intervened. By the time Mr Clifford left V/Line in September 2016, he was paid more than the CEO.
- The recruitment of Ms Spiers as project director responsible for the 2017 timetable is another example (also described in chapter 6). This position, which attracted an annual salary of more than \$200,000, was not advertised and no other candidates were considered. Mr Cameron effectively controlled the recruitment (although the position was to report to another executive general manager) and excluded HR from the process. He also failed to disclose the full extent of his friendship with Ms Spiers prior to her appointment. He claimed to have declared his conflict at an executive meeting but no record could be produced to support this.

It is evident that a culture bordering on nepotism and cronyism at senior levels existed within V/Line, undermining its integrity. In addition to the general failure to comply with V/Line recruitment processes, there were insufficient controls to prevent this occurring:

- recruitment decisions were not subject to auditing and review to identify breaches of policy and systemic issues that needed to be addressed.
- there was no explicit process for declaring and managing conflicts of interest in relation to recruitment.

Although senior managers in the public sector are expected to be aware of conflicts of interest and how to manage them, the recruitment policy was silent on conflicts of interest, and the code of conduct policy did not address the need to manage potential conflicts in recruitment. It should be clear that if a significant conflict of interest exists, the relevant employees must excuse themselves from the process.

### V/LINE'S ACTIONS IN RESPONSE

V/Line's 2017 audit identified a number of deficiencies with the recruitment of employees including:

- no formal requirements for panel members to declare conflicts of interest
- a failure to complete probity checks prior to employment offers being made for a sample of employees
- no formal process to understand the risk of consultants being considered employees.

V/Line has advised that these issues will be addressed.

It would also be appropriate for V/Line to consider the Integrity in Recruitment Guidance Note issued by the Victorian Public Sector Commission in 2015. The guidance note highlights the importance of public agencies including recruitment in risk management systems and establishing transparent processes to mitigate recruitment risks.

## 7 Systems, controls and culture

### 7.4.3 Culture and tone from the top

Operation Lansdowne identified a culture in V/Line where processes around procurement and recruitment were frequently disregarded by senior officers. It appears that this conduct was justified on the basis that decisions needed to be made and acted upon quickly. For example, Mr Taifalos gave evidence that he had lost confidence in the incumbent general manager of rolling stock and due to the importance of this position, acted quickly to identify a replacement (Mr Clifford).

As CEO, he had discretion to bypass processes in exceptional circumstances. However, he did not consult with HR and appears to have given no consideration to other possible recruitment approaches or other candidates. Through his actions, he set a bad example to senior officers regarding adherence to policies and procedures.

Ms Kelman, who was V/Line's general manager of HR between 2003 and 2015, gave evidence that parts of the business were frustrated with the formal recruitment process (for example, the writing of business cases to support new recruitment). For a period, business cases for new positions were not required; instead, approval was sought directly from Mr Taifalos. Ms Kelman said 'the pattern of behaviour was that most or some managers would go directly to Theo, get him to sign the form, and then it would come back to HR already signed without any due process'.

Conflicts of interest were routinely ignored in relation to procurement and recruitment. Conflicts were either not declared at all or not declared in a timely way. Nor were conflicts managed appropriately, despite the considerable risk that unmanaged conflicts present.

While there may sometimes be a limited pool for some senior positions, in the public sector, strict adherence to proper recruitment process is always required. This includes but is not limited to, declaration and management of conflicts of interest.

### V/LINE'S REVAMPED POLICIES AND PROCEDURES

Mr Brown said V/Line has revamped its relevant policies and procedures in response to the identified risks:

- Internal procurement policies and practices align and comply with Victorian Government Purchasing Board practices. This has included development of professional standards for all new recruits, as well as existing managers. Different parts of Mr Brown's team now look at supplier pre-qualification and also perform spending analyses, market engagement from full tendering processes to direct negotiation, as well as supplier performance and facilities management.
- For the almost 70 identified positions that raise about 90 per cent of the purchase orders internally, there is now a competency training program in terms of policy, procedure and governance. This provides what Mr Brown termed 'broader awareness' through focus training on where the risks lie, and what to do about them when identified.
- There has been a major program to put panels in place to look at the capability required by the V/Line business from the relevant market supply network. This ensures that when a specialist supplier or expert advisor is needed, appropriate candidates are available and properly vetted in advance.
- There is now not only improved separation between the person bringing in the business and the person approving it, it is mandatory for both such persons to complete a conflict of interest form either identifying any conflict, or confirming there to be none.
- The risk of non-compliant procurements has been lowered by introducing a panel of 'pre-qualified' suitably skilled contractors in certain areas, who have gone through a competitive selection process.

## 8 Conclusions and recommendations

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## 8 Conclusions and recommendations

### 8.1 Conclusions

Operation Lansdowne revealed a group of people contracted to, or employed by, South West TAFE, Kangan and V/Line, whose conduct enabled exploitation of weaknesses in those organisations to misappropriate millions of dollars.

The key person in IBAC's investigation was Rebecca Taylor. It is estimated that Ms Taylor principally caused the misappropriation of more than \$2 million from South West TAFE and Kangan between 2013 and 2015. She also received approximately \$136,000 in payments from V/Line. Ms Taylor operated a scam through which she received government funding under subcontracting arrangements with South West TAFE and Kangan for training that did not take place. Ms Taylor, along with members of her family and friends, facilitated this conduct including the falsifying enrolment forms and assessment workbooks in a process they described at the time as a 'sausage factory'.

Through connections formed at Metro Trains with Alan Clifford, Ms Taylor was also engaged by V/Line without proper procurement or recruitment processes being followed. The investigation identified that between 2013 and 2016 there was a clique of senior V/Line officers who placed undue emphasis on who people knew and personal friendships, wilfully disregarding merit-based procurement and recruitment processes.

The Victorian community would be right to be extremely concerned with the misappropriation of these funds. In recent years, there has been considerable attention on the challenges confronting the VET sector, including concerns around TAFEs' financial sustainability and the vulnerability of the sector to unscrupulous providers. Funding for the sector is limited and should be directed towards ensuring people – including disadvantaged people in regional areas – obtain high quality, skill-based training that properly equips them for work. The community also expects that people who receive qualifications are properly qualified.

Similarly, V/Line is a critical part of Victoria's regional rail network. Victorians expect that the rolling stock and services under the control of V/Line are maintained and delivered to the highest standards by people appropriately skilled and qualified. A failure to do so risks public safety.

In the course of Operation Lansdowne, IBAC identified weaknesses in the systems, controls and cultures of South West TAFE and Kangan which allowed the scam to flourish. The key weakness was a failure by both TAFEs to conduct any meaningful oversight of the training delivered on their behalf. IBAC notes that both South West TAFE and Kangan were operating in a challenging environment for which they were not well equipped. It was in that context that both agencies pursued business opportunities with other training providers as a source of funding. There was a disincentive to critically monitor TayTell, Ms Taylor's company, as to do so would jeopardise funding.

Other deficiencies included:

- confusion around the funding agreement the TAFEs entered into with the Department, specifically in relation to the terms for subcontracting teaching services
- elements of the TayTell arrangements should have prompted closer scrutiny and if such scrutiny had occurred in a timely way, the scam training could have been detected early
- poor controls around student proof of identity as part of the enrolment process
- a general lack of awareness of the risk of fraud associated with third-party agreements

Kangan also failed to act on significant concerns raised by individuals who had been enrolled into training supposedly being delivered by TayTell. Instead, Kangan went on the defensive, resisting any suggestion that fraudulent activity may have occurred.

IBAC is advised the Department has taken steps to strengthen subcontracting arrangements between TAFEs and third-party providers. Additional oversight has been in place since 2015, with accompanying resources. Since August 2016, this has included requiring TAFEs to seek departmental approval of *any* training and assessment subcontracting arrangements entered into by a TAFE. The Department also advised that greater resources will be available to conduct more audits and better scrutinise high risk training providers.

This is welcome, but it is incumbent on the Department and any TAFE seeking to enter into subcontracting arrangements in the future to heed the experience of South West TAFE and Kangan, and ensure appropriate resources are allocated to due diligence and thorough oversight of such arrangements. Ms Ponting's words are apposite: third-party agreements, she said, should be managed 'so that they provide an equivalent experience as if the TAFE were delivering [the training] itself'.

IBAC is also aware of other allegations (some of which are recent) of fraudulent or improper conduct on the part of TAFEs and private RTOs. This indicates more needs to be done by the Department to review and strengthen processes and controls around funding and compliance. IBAC also understands that VAGO intends to conduct an audit of regulation of providers of vocational education and training in 2018/19. It would be pertinent for VAGO to consider the issues highlighted in this report.

In relation to V/Line, Operation Lansdowne identified an environment where clear conflicts of interest were not declared or managed, allowing a culture of cronyism to flourish. Red flags - including blatant contract splitting, a lack of documentation to justify procurement (such as business cases), insufficient segregation of duties, and inadequate contract documentation - were not acted upon. This behaviour is not surprising, given the poor example set by senior leaders. It is not good enough for senior officers to blithely disregard proper process on the basis that action needs to be taken quickly.

Key V/Line officers involved in the investigation, including Ms Spiers and Messers Taifalos, Clifford, Cameron, Pistak and MacManus, are no longer employed by V/Line. Evidence was given by the chief procurement officer acknowledging the deficiencies in V/Line's culture and practices, and advising that processes and controls have since been improved to minimise the risk of such conduct occurring again.

In finalising Operation Lansdowne, and in regard to some of the issues investigated relating to purported TAFE course participation, IBAC will consider whether to compile briefs of evidence for the consideration of the Office of Public Prosecutions.

While acknowledging work of the Department, TAFEs and V/Line to address the issues identified in Operation Lansdowne, IBAC makes the following recommendations pursuant to section 159(1) of the IBAC Act, outlined on the following page.

## 8 Conclusions and recommendations

### 8.2 Recommendations

Pursuant to section 159(1) of the *Independent Broad-based Anti-corruption Commission Act 2011* (IBAC Act), IBAC makes the following recommendations:

#### Recommendation 1

The CEOs of South West Institute of TAFE and Bendigo Kangan Institute of TAFE to provide IBAC with reports by 31 December 2018 on how they have addressed the issues identified in Operation Lansdowne, including how they have strengthened systems and controls for overseeing third-party agreements, ensuring compliance with those agreements and implementing stronger controls around student proof of identity.

#### Recommendation 2

The Secretary of the Department of Education and Training to provide IBAC with a report by 31 December 2018 on how the Department will strengthen systems and controls in relation to TAFEs, to minimise the risk of the conduct identified in Operation Lansdowne reoccurring, including by:

- a. ensuring TAFEs understand their obligations under service agreements with the Department
- b. strengthening proof of identity requirements for Victorian students, including by reference to Australia's *National Identity Proofing Guidelines*
- c. raising awareness within TAFEs of corruption and fraud risks, and how those risks can be mitigated
- d. ensuring TAFEs have robust complaint handling systems and understand requirements for appropriately internally escalating and/or externally reporting suspected fraud and corruption

#### Recommendation 3

The Department to review TAFE training delivered via other third-party agreements, to verify the legitimacy of that training in light of the corruption vulnerabilities identified in Operation Lansdowne.

#### Recommendation 4

The CEO of V/Line to provide IBAC with a report by 31 December 2018 on how the issues identified in Operation Lansdowne have been addressed, including how it intends to strengthen its systems and controls in relation to procurement, recruitment, and conflict of interest.

#### Recommendation 5

The Secretary of the Department of Premier and Cabinet, in conjunction with the Victorian Public Sector Commissioner, review ways in which probity in public sector recruitment can be strengthened. This review should include consideration of mandating advice provided in the Victorian Public Sector Commission's Integrity in Recruitment Guidance Note, such as the conduct of thorough background checks of applicants, for public sector agencies and positions identified as high risk.

## 9 Appendices

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## Appendix A: Scope and purpose of public examinations

1. The circumstances surrounding the awarding of qualifications to Rebecca Taylor, director of TayTell Pty Ltd (TayTell) by South West TAFE and Kangan, including whether current or former officers of South West TAFE or Kangan misused their position to award or interfere in the awarding of qualifications to Rebecca Taylor.
2. The circumstances surrounding the negotiation, execution, implementation and management of TayTell's third-party training agreements with South West TAFE and Kangan.
3. Whether TayTell, its officers or employees:
  - a. adversely affected the honest performance of the functions of any public officers or public bodies
  - b. intended to adversely affect the effective performance or exercise of the functions or powers of any public officers or public bodiesin relation to TayTell's third-party training agreements with South West TAFE and Kangan.
4. The circumstances surrounding payments made to TayTell in connection with its third-party training agreements with South West TAFE and Kangan.
5. The sufficiency of, and compliance with, systems and controls relating to third-party training agreements entered into by South West TAFE and Kangan.
6. The circumstances surrounding the recruitment of certain officers and engagement of certain contractors at V/Line, including in relation to:
  - a. the identification and management of conflicts of interest
  - b. transparency and probity
  - c. the adequacy of, and compliance with, V/Line's recruitment and procurement procedures.
7. The sufficiency of V/Line's systems and processes to ensure appropriate accountability for the expenditure of public money.

## Appendix B: Natural justice requirements and responses

Some parts of this special report were considered to be covered by section 162(4) of the IBAC Act which requires that non-adverse comment or opinion about any person be showed 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<sup>6</sup>, comment or opinion<sup>7</sup>, they have been given a reasonable opportunity to respond to same by being shown in draft<sup>8</sup> material parts relating to them.

In accordance with sections 162(2) and (3) respectively of the IBAC Act, responses – to the extent they are of the kind provided for in the IBAC Act – are set out on the following pages.

### Mr David Cameron's response

#### *Nicola Spiers (section 1.7.5)*

At an Executive meeting called by V/Line's acting CEO to discuss the impending critical timetable rollout, it was decided that V/Line urgently required a project manager to ensure a successful and timely rollout within a very tight timeframe.

Further, a number of options were discussed and explored at that time as V/Line required someone who had an understanding of V/Line and Metro operations. Mr Cameron also says he suggested Ms Spiers and pointed out at that time the relationship between her and Mr Clifford. It was discussed and decided that it should not inhibit V/Line on the basis of two persons in a relationship working for V/Line. He was asked to contact Ms Spiers to determine any interest and did so. He then relayed that information to Ms Sturman and Ms Nelson and later to the Executive Committee in a meeting.

#### *Overview (section 6.1)*

Mr Cameron says that, in the 12 month period he worked at Sydney Trains, Mr Blythe and Ms Taylor were unknown to him.

#### *Mr Cameron's recruitment (section 6.4)*

Mr Cameron says that his role in the recruitment of Mr Clifford was limited to ascertaining for Mr Pistak that Mr Clifford was interested in being engaged by V/Line.

Further, that when he became aware of Mr Clifford's salary some time later, Mr Cameron immediately went to his superior and the head of HR to discuss his surprise and concerns.

#### *Required qualifications (section 6.5.2)*

Mr Cameron does not recall reviewing or being presented with Mr Clifford's resume and, at the time, was not familiar with his qualifications. He took on face value that as Mr Clifford held the same position with Metro and Sydney Trains and he appeared to be well regarded in the industry, that he had the necessary qualifications and experience.

<sup>6</sup> In relation to public bodies.

<sup>7</sup> In relation to persons.

<sup>8</sup> Being tentative findings.

## Appendix B: Natural justice requirements and responses

### *The recruitment process (section 6.8.1)*

Mr Cameron says the Executive Committee, including HR and Legal & Governance, were overseeing this process and the process to engage directly was initiated by the Executive Team and signed-off by the Executive Team, as any resources engaged under delegation required CEO and CFO signatures.

It was also decided that as Ms Sturman would be accountable for the project manager, that she should have the final say in an appointment, supported by the Executive Committee.

Other than carrying out instructions from the Executive Committee and the acting CEO, Mr Cameron says he was not involved in any interview or any recommendations to employ. He did assume that process was followed as it was supported by the Executive Committee.

### Mr Alan Clifford's response

#### ***Rebecca Taylor (section 1.7.4)/Overview (section 6.1)/ A plan for a further scam agreement? (section 6.10)***

In relation to statements in the report regarding a plan to use personal information of V/Line employees in the same way Zinfra and Jetstar employee details were used by Ms Taylor in purported TAFE training, Mr Clifford says the evidence does not support that any such plan existed or that he had any part in, or knowledge of, such a plan if it did exist.

#### ***Recruitment of Mr Clifford's partner, Nicola Spiers (section 6.8)***

Mr Clifford says that the process by which Ms Spiers was recruited was not within his control and he is not responsible for any deficiencies within that process.

## Department of Education and Training's response

### **Confusion regarding the service agreement (section 7.2.1)**

In relation to the 2013 agreement providing different oversight arrangements for entities solely engaged to conduct the role of trainer or assessor, the Department states the rationale of this contract clause was to allow trainers that were sole operators and working at various RTOs the freedom to continue to do this without having to seek subcontracting approvals everywhere. The Department says sole operators are a common feature of the industry.

### **The Department's role in overseeing the TAFE sector (section 7.3)**

In regard to the Department's role in overseeing the TAFE sector, it provides the following responses:

- *To make sure that training providers have both the knowledge and tools to deliver training in accordance with the terms and conditions of the VTG contract, the Department offers a range of support services. This includes regular information sessions, an online enquiry service and a range of user guides for key aspects of the system.*
- *On 19 October 2017, the Executive Director, Integrity and Assurance Division (IAD) presented to TAFE CEOs on the Department's experiences with corruption and the systemic reforms that followed. IAD has offered to meet with individual TAFEs who might wish to seek more detailed advice about integrity reform. This capacity building will form part of the Department's Integrity Strategy 2018-21.*
- *Formal protocols for information sharing exist between ASQA and the Department. An updated protocol was signed by relevant Ministers in July 2016.*

### **Recommendations (section 8.2)**

Ms Gill Callister, Secretary of the Department, responded on behalf of the Department and states she supports the findings in the report.

#### **Recommendation 1**

In relation to Recommendation 1, Ms Callister says that the Department has commenced, and is continuing to work with South West TAFE and Kangan to ensure that matters identified in the course of IBAC's investigation are being appropriately addressed to safeguard against similar matters occurring in the future.

#### **Recommendation 2**

In relation to Recommendation 2, Ms Callister says that the Department has commenced developing a TAFE-specific strategy for engaging with TAFE boards to strengthen governance arrangements, including enhancing systems and controls and developing a culture based on public sector values.

Ms Callister states that, through its Integrity Reform Program, the Department has taken significant steps to strengthen its three lines of defence against integrity risks. This means reinforcing the conduct of leaders and staff, establishing strong, intuitive systems, processes and policies, and implementing robust, independent auditing.

Ms Callister says the Department will be working with TAFE institutes to develop and implement a new bespoke governance framework, representing a significant strengthening of end-to-end systems and controls that will enhance proof of identity requirements, raise awareness of corruption and fraud risks and address the need for TAFEs to have robust complaint handling systems, including requirements for appropriately internally escalating and/or externally reporting suspected fraud and corruption. Ms Callister says this will enable TAFEs to quality assure their approaches against better practice governance arrangements. She states that the Department will also be better positioned to assess and review TAFEs to ensure appropriate systems and controls are in place.

## Appendix B: Natural justice requirements and responses

Ms Callister states that the Department's IAD presented to TAFE CEOs in October 2017 on experiences with corruption and the systemic reforms that followed. She says IAD has offered to meet with individual TAFEs who might wish to seek more detailed advice about integrity reform and that this capacity building will form part of the Department's future Integrity Strategy.

Ms Callister says she will provide a report on DET's progress in relation to these matters by 31 December 2018.

### Recommendation 3

In relation to Recommendation 3, Ms Callister says that the Department has commenced a review of third-party training arrangements across all TAFE institutes and dual sector universities to determine whether the issues identified as part of Operation Lansdowne are also present at other institutes. She says that, as part of this review, the Department has written to all TAFEs and dual-sector universities seeking an attestation of compliance with the VET funding contract and key assurance and control requirement, particularly in relation to the third-party delivery of training.

### Ms Coralee Hayden-Long's response

Ms Hayden-Long says that she and her colleagues had no knowledge of the sophisticated fraudulent activity undertaken by Ms Taylor/TayTell and others until IBAC's hearings. She says that she was not involved in any fraudulent activity, nor were her colleagues. Ms Hayden-Long says that the due diligence undertaken for the contract with Ms Taylor/TayTell was the same due diligence undertaken for all other contracts. She says that Kangan's processes were built for compliance and not built to detect sophisticated fraud, undertaken by multiple people who had extensive knowledge of the system. She adds that she, along with her colleagues have never had any training in fraud detection and all the irregularities in question were all individual events with plausible and logical explanations.

#### *Outcomes of the investigation into the management of third party training agreements by Kangan (section 1.5)*

Ms Hayden-Long states that the Jetstar program was planned for a period of 12 months. She says that visits to Jetstar would have occurred but just had not occurred at the time before Jetstar gave notice to cease the program in February 2015. She adds that meetings were however, conducted with the Jetstar contact Ms Jarvie.

#### *Overview (section 5.1)*

Ms Hayden-Long states that TayTell would not receive 70 per cent of the funds. She says that TayTell would be paid equivalent to 70 per cent of the funds by Kangan, for providing multiple and various services as per the contract/agreements. She adds that TayTell was not receiving 70 per cent of the funds directly from the State.

Ms Hayden-Long states that it would be incorrect to conclude that no-one from Kangan oversaw the training. Ms Jarvie, the Jetstar contact, was communicating with Kangan staff and describing the benefits of the training. When dealing directly with a contact from the organisation, there was no expectation of fraud or a scam. On the contrary there is a degree of comfort when either dealing directly with the contact or viewing the emails written by the contact. She says that there was not one inkling of something fraudulent occurring.

Ms Hayden-Long says that it was not a requirement of the contract for Kangan staff to supervise training conducted by third parties/contract trainers, no different to not having to supervise training conducted by contract sessional trainers or other contract trainers. No training is supervised. It is not built into Kangan's processes or practices to do so.

Ms Hayden-Long states that it is incorrect to state that she, along with her other colleagues acted systematically in breach of Kangan's compliance requirements. It was the practice of Kangan's third party arrangements to have two authorised enrolments officers (AEO). The first, who was a nominated trainer, would undertake the AEO training and then would complete the bulk of the enrolment form with the student and conduct the eligibility checks. The second AEO, who was a Kangan employee, would sign the enrolment form. This practice was approved by Kangan's Academic Registrar. Claims for funding were submitted by the Academic Registrar once all the relevant information had been entered into the Student Management System.

Ms Hayden-Long makes reference to the following statement from the Business Development Agreement relating to AEOs.

#### **4.9 Authorised Enrolment Officer (AEO)**

- a. *The parties agree that, during the Term, TayTell must make available to Kangan, the services of TayTell employees as may be reasonably required to undertake AEO training and to act as AEOs for the purposes of enrolling students in the Units of Competency.*
- b. *For the avoidance of doubt:*
  - I. *Kangan will be responsible for the cost of providing AEO training to TayTell staff (as required); and*
  - II. *TayTell will be responsible for all employee entitlements, including wages. Leave and tax.*

Ms Hayden-Long states that Ms Taylor was Kangan's AEO and the compliance officers at Kangan, Ms Weavers, Mr Hodgson and another colleague were Kangan employees, authorised to sign the enrolment forms once received by the partner's AEO.

Ms Hayden-Long states that regarding the four students who contacted Kangan after receiving a Statement of Attainments (SoA), it is not uncommon for students from workplace delivered programs to either forget that the RTO is actually Kangan or forget that their training called by another name, is underpinned by a qualification, especially when their employer calls the program/training by a different name. She says that in this case, 'white belt training' was supposedly underpinned by the Certificate IV in Engineering. Another example she provides is the Toyota TPS program which is underpinned by the Certificate III in Competitive Systems and Practices. She says that not many staff at Toyota would use the full qualification title to describe the training; staff would know it as the TPS program. A further example she provides with another client is when a Kangan staff member undertakes the pre-training review during an induction session but still when the SoAs are sent out, at least one person from that organisation will phone Kangan to question why they have received a SoA. She adds that when students phone Kangan, they are dealt with swiftly and respectfully, and staff explain the situation in which they would have received a SoA.

## Appendix B: Natural justice requirements and responses

Ms Hayden-Long states that she, along with her colleagues knew nothing of Zinfra at the time. She says that these four students from Group 1 of Jetstar rang in and Kangan's first point of contact would have been their contract trainer, Ms Taylor; to suggest otherwise is illogical. She adds that to suggest that they were immediately expected to suspect a scam would be absurd. Ms Hayden-Long states that the second point of contact was their contact at Jetstar, Ms Jarvie. She says that in an email they were informed that their contact from Jetstar has spoken with one of the students to allay their fears. Two of the other people who phoned in received a comprehensive reply from Mr Hodgson about their qualification, however she says that there was no indication of fraudulent activity and nothing to suspect a scam.

Ms Hayden-Long states that Zinfra did not provide any useful information to herself and Mr Hodgson except for indicating that some training was undertaken and that Kangan enrolment forms were completed by Zinfra staff. She says this alone was comforting in some way because it left them with the knowledge that training had occurred at Zinfra, that Ms Taylor had been involved and staff from Zinfra had enrolled in a Kangan course. She says that just because Zinfra staff provided superb notes of the meeting conducted on 6 February 2015, does not mean that Zinfra in anyway attempted to assist Kangan by providing some insight or further information. She adds that the conversation was closed down very soon into the meeting by Zinfra staff.

Ms Hayden-Long says that both she and Mr Hodgson attended the Zinfra meeting with information provided by Ms Taylor and actively defended her at that stage. She states that Ms Taylor had been Kangan's contract trainer and although uncontactable because she was in hospital, Ms Taylor did provide both of them with her story which was the only thing that they had to go on.

Ms Hayden-Long says that Ms Taylor had deceived them about the Zinfra group actually being Group 1 of Jetstar and they were angry about that, but there was no evidence of fraudulent activity. She adds that any suggestion that they should have suspected a scam or fraud is absurd and unreasonable.

Ms Hayden-Long states that there was full intention to investigate the Zinfra matter further, which is why they showed a willingness to cooperate and suggested that an independent area review the matter once they received the letter from Zinfra.

Ms Hayden-Long states that there is an assumption that she and Mr Hodgson had more information than they did. She says she followed through and informed the relevant executives whenever they needed to. She adds that the Board was provided with a monthly report on all revenue activity for third party arrangements, and that a legal and risk specialist also had a touch point, providing her with significant advice.

Ms Hayden-Long states that compared with other projects, the TayTell project was one of the smallest projects in relation to revenue. She says the bulk of the revenue was for the relevant teaching area, not for her business unit. Because of the nature of these third-party arrangements, Ms Hayden-Long says it was not uncommon for an irrational fear to be spread by those executive who were not in favour of these arrangements. For this reason alone, she says that they found themselves unfortunately, along with their executive director, defending these projects quite often. She says that she, along with her other colleagues had no knowledge of any fraudulent activity, had no indication of a scam occurring and that to suggest that she and Mr Hodgson maintained a wilful blindness to that possibility is completely unreasonable.

#### **The TayTell/Kangan arrangement (section 5.4)**

Ms Hayden-Long states that Kangan opted to engage Ms Taylor as a contract trainer and a broker under a business development agreement because of the time of the year, not as implied in this report to avoid a formal approval process. She says that although a business case was not required for HESG, internal approval was still required and sought as per Kangan's process and practices. She adds that the project was approved by the relevant teaching area and the Executive Director, and her executives was also notified of the new project.

Ms Hayden-Long says the financial aspects were approved by Kangan's finance area and that the financial arrangements were also reported monthly in a Board report. She states that the contracts with Ms Taylor/TayTell were for three months only in 2014 and if they were to continue into 2015, would have gone through HESG via a business case. She adds that normal internal approvals were received at all senior levels of Kangan and that it is wrong to imply that she alone made a decision and that decision was to avoid closer scrutiny and the need to obtain approval.

#### **Failure to verify Ms Taylor's qualifications (section 5.4.1)**

Ms Hayden-Long states that it is inaccurate to suggest that no-one conducted any meaningful due diligence. She says due diligence conducted on TayTell was in line with Kangan's processes and practices and that due diligence did not just mean obtaining copies of qualifications as suggested in the report. She adds that IBAC has all the documentation and if it was scrutinised it would have found the level of due diligence conducted. She says that this includes a probity and financial questionnaire, obtaining copies of business documentation, insurances, as well as the copies of the qualifications. She states that she is not defending Kangan's due diligence process; just that the process was followed.

Ms Hayden-Long says it had not been uncommon with other third-party arrangements where a prospective partner has wanted to engage with Kangan because the administration processes from the previous TAFE have been substandard. She adds that it also was not common practice to make enquiries with the previous organisation and that the due diligence conducted on TayTell was in line with Kangan's processes and practices.

#### **Ms Taylor's engineering qualification is rescinded by South West TAFE (section 5.4.2)**

Ms Hayden-Long states there is a mutual obligation to accept a qualification from another TAFE. She says that it is not a standard practice by any RTO to question the validity of a qualification when presented.

She adds that two important points that do not appear to have been considered are:

- When Ms Taylor's Certificate IV in Engineering was revoked, apparently Mr Hodgson had phoned South West TAFE. She says she was informed of this after the hearing by Ms Weavers and that according to Ms Weavers' recollection, no-one would comment at South West TAFE because there was an investigation occurring.
- The decision to revoke the qualification by South West TAFE was respected by Kangan. No further training was conducted by Ms Taylor after the qualification had been rescinded.

Ms Hayden-Long says that she did not rely on Ms Taylor's allusion to 'a witch hunt by South West TAFE'. She says she respected the relationship that they had with their partner and gave her time to obtain further explanation and that this is very different to the picture painted in the report. She adds this was the first of the irregularities in question so there was not one reason why she would have treated the relationship with suspicion and disrespect. She says they immediately acted to inform Ms Taylor that she would have to undertake an RPL independent to Ms Hayden-Long's unit and prior to commencing any further training.

## Appendix B: Natural justice requirements and responses

### ***Kangan's enrolment process (section 5.6)***

Ms Hayden-Long states that if there was no knowledge of sophisticated fraud occurring by anyone from Kangan, and the administrative and compliance staff were following Kangan processes and practices, then there would have been an expectation that enrolments were duly processed. She adds that Kangan's processes were not built to detect fraud.

### ***Andree Weavers' role (section 5.6.1)***

Ms Hayden-Long says that the first section of this part 'Requirements to sight ID' was relevant to those third-party arrangements whereby Kangan staff conducted the induction/pre-training review sessions.

Ms Hayden-Long makes reference to the second section of this part 'A Departure from process for TayTell Enrolments' and her comments at 5.1. She states there was a different process for those third-party arrangements where the partner's trainers or contract trainers acted as the AEO. In these cases, she says, there were two AEOs; this was an approved process by the Academic Registrar from Kangan and followed by the Compliance Officers. She adds that the partner AEO, in this case Ms Taylor, did undertake AEO training and did undertake the bulk of the activity which included sighting necessary identification, personal details on the enrolment forms etc. She adds that the Kangan employee, in this case Ms Weavers, signs as well.

Ms Hayden-Long says that at the time of processing the enrolment forms, there was no knowledge of Zinfra and that it was only late January/early February 2015 that everyone learnt of the Zinfra group.

### ***Alarm bells (section 5.8)***

Ms Hayden-Long states that Zinfra raised concerns about the completion of enrolment forms and staff not undertaking tasks. She says that at the meeting on 6 April 2015, Zinfra staff confirmed that training has occurred at Zinfra and that staff had completed a Kangan enrolment form. She adds that Zinfra was not forthcoming with any further information and that from contemporaneous notes of Zinfra staff, it is very unclear in sections as to whom the comments belong.

### ***Complaints from students received after receiving statements of attainment (section 5.8.1)***

Ms Hayden-Long states it is inaccurate to suggest that she, along with her colleagues did everything possible to prop up the scheme and keep it going. She says each irregularity was independent from the other, all individual events with plausible and logical explanations. She adds that the report views this through the 'lens of hindsight' and she, along with her colleagues had no knowledge of fraudulent activity.

According to Ms Hayden-Long, in January 2015, they had not been on notice that at worst, students had been fraudulently enrolled. She says this is misleading and until the stage of students receiving the statement of attainments, in January 2015, there had been one irregularity which already had a plan of action. She adds that students phoning in to seek further clarification is not uncommon and is dealt with as swiftly as possible.

Ms Hayden-Long says the first point of call would always have been the partner, in this case Ms Taylor, to check the concern in question. The second point of call would always have been the client/employer to help clarify the potential misunderstanding. She says that she, along with her colleagues had no knowledge of the relationship between Ms Jarvie and Ms Taylor, other than a professional working relationship and would not have suspected anything untoward.

Ms Hayden-Long states the Academic Registrar and an executive director were involved with the matter of the students phoning in. She says that neither of these staff referred this matter onto anyone else within Kangan for further investigation but there is an expectation in the report that she, along with her colleagues should have suspected fraud or a scam at that stage. She adds this is absurd and that as stated in Mr Whittaker's testimony, this would not have been a matter referred or reported to him as the Chief Operating Officer. She further adds that there was an executive already involved who had been working with Mr Hodgson and the Academic Registrar.

Ms Hayden-Long says there was not an opportunity that was ignored. She says this was not viewed as an opportunity especially when no-one had any knowledge of any fraudulent activity. She makes reference to an email from Ms Jarvie at Jetstar who had spoken with the students to allay their fears. She says that not for one minute would any staff member have suspected something untoward when dealing with and receiving emails directly from the client/employer. She adds that to expect that staff, who are not trained in fraud detection and enter into these arrangements to build trusting relationships, would have detected a scam is illogical.

Ms Hayden-Long says inquiries were made with Zinfra, to be told nothing and a person from HESG also told them nothing further about the South West TAFE investigation; they only focussed on the revocation of the qualification and did not mention anything of suspected fraudulent enrolments.

### ***Zinfra voices its concerns (section 5.8.2)***

Ms Hayden-Long states that the report places significant importance on the meeting held on 6 February 2015, mainly because of Ms Stacey's contemporaneous notes. She says she cannot absolutely remember if the word fraudulent was used in that meeting by Zinfra staff on 6 February 2015, but she suspects not, because that would have changed some of the outcomes of that meeting.

She says what may now seem obvious in retrospect was not so at the time. She adds that the small amount of knowledge that both she and Mr Hodgson had before going into the meeting with Zinfra on 6 February 2015 was:

- Group 1 students from Jetstar were in fact a group of students from ZNX, not Jetstar
- they had had no contact with Zinfra prior to finding out that Ms Taylor was delivering training at Zinfra as well as Jetstar
- from their perspective, they were meeting a Kangan client for the first time to explain the little that they knew and that they had Kangan students at Zinfra
- that Ms Spiers had been the Zinfra contact coordinating the training for Ms Taylor
- that Ms Spiers had been sacked and no longer working at Zinfra
- students had completed projects that had already been assessed and they needed to obtain this work for their records
- Ms Taylor's qualification had been revoked at the end of 2014
- someone from the Department had phoned them the day before to inform them of an investigation at South West TAFE and of Ms Taylor's qualification, which they already knew about.

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Ms Hayden-Long states that they entered that meeting attempting to explain that:

- one of their contract trainers had been delivering training at Zinfra
- the fact they did not know, was embarrassing and it could have tainted their good reputation
- they had had a couple of students phone Kangan to question the statement of attainments
- sometimes it was not uncommon for students to be confused about a qualification being aligned to their in-house training
- workplace training did not always consist of classroom delivery; it was quite often project work so it was common that classroom time may have represented a small amount of the delivery
- sometimes it was not uncommon for the coordinator within the company to complete some of the details on the enrolment forms for streamlining and efficiencies
- it was important that they get an opportunity to meet with the students, find out where they were at with their project work
- they knew of an investigation at South West TAFE but were not involved in the investigation
- that their contract trainer's qualification had been revoked as part of that investigation and that they were working on a plan.

Ms Hayden-Long says there were claims made by Zinfra that staff could not remember undertaking the work that was suggested which is why both she and Mr Hodgson made the request to speak with each and every student. She says this request was denied. She adds that Ms Stacey confirmed that training had taken place but did not elaborate, but had said that the staff had completed a Kangan enrolment form. She says that both parties, not just Zinfra, sought information and a proposed way forward to deal with the issue. She says that nothing was forthcoming by Zinfra. She states that the intention to cooperate with Zinfra was sincere and all the options presented to Zinfra staff would have been carried out after Kangan had responded to the initial request for further information. That, she says, was step one and was understood by both parties.

Ms Hayden-Long states that she and Mr Hodgson walked away from the meeting more confused and without any further information. She says they were unable to get further information from Ms Taylor as she was in hospital. They waited for the letter from Zinfra to arrive and the meeting with Ms Taylor that was scheduled for 13 February 2015.

Ms Hayden-Long states that she informed all necessary parties of the Zinfra meeting and the proposed actions, including two of her executives. She says she notified Zinfra of the name of the protected disclosure officer, provided by her executive. She assumed her executives had discussed the reason as she does not believe her executive would have provided her with the name if not correct. She says that contrary to what Mr Whittaker stated at the hearing, she informed him during a phone call that a letter would be arriving addressed to him requesting all the personal information for the students. She says she also gave him a brief update as to why this information was being requested and the South West TAFE investigation. She says that as they know now, that letter from Zinfra dated 12 February 2015 was sent to Mr Whittaker who on forwarded it to an administration person at Kangan. She adds that at no time did Mr Whittaker follow up the status of the request or inform them that the letter had arrived. She says this report states that it was her who did not provide any follow up, which is plainly inaccurate.

Ms Hayden-Long says whilst waiting for the letter from Zinfra to arrive, she also kept Zinfra in the loop about information requested by their staff. An email to like effect also went to Mr Whittaker.

Ms Hayden-Long states that she was furious to learn nearly two months later that the letter had in fact arrived at Kangan and was not actioned. Contrary to what Mr Whittaker stated at the hearing, she says she followed up with a meeting with both Mr Whittaker and her executive, and met with them both to discuss the Zinfra matter. She says that there was a new role of Legal and Risk Specialist commencing at Kangan in early May 2015, and she believes that one of the follow ups from the meeting was to wait until the new person commenced, who could support a response to Zinfra.

Ms Hayden-Long says it was sometime before the new person settled in and she got to speak with him. She states that there was a meeting conducted with him, her executives, Mr Hodgson and herself, however she cannot recall the actions of that meeting. She says she had sent him an email with another request because she was troubled that Kangan had not responded to Zinfra and so much time had passed. She says that no action had been taken and that the comments and advice that she received from the Legal and Risk Specialist by phone was that in his experience, if Zinfra had not written again or followed up, then not to worry, lay quiet. Ms Hayden-Long says she informed her executive and the team of this advice. She adds that not one decision for any further action was made by any member of the executive.

***Bury and mislead: internal Kangan management of the Zinfra issue (section 5.9)***

Ms Hayden-Long states that the developments proved that Ms Taylor had deceived them and they were angry and confused because of this deception. But she says still there was no evidence of fraudulent activity occurring. She says the report suggests that they did not suspend the TayTell agreement after learning about the Zinfra students, however this is inaccurate because the TayTell business development agreement and the contractor engagement pack expired on 31 December 2014. She says that new contracts had not been developed for 2015 and that no further training was undertaken by Ms Taylor, post the revocation of her qualification. She adds that the only reason that a contractor engagement pack was prepared for Ms Taylor in August 2015 was to facilitate the final reconciled payment.

Ms Hayden-Long says there was no attempt to downplay and discredit Zinfra's concerns, but the report implies that Kangan staff knew more than they did. She says that it was just plain fact that no-one at Kangan had any further knowledge and was still attempting to find out. She adds that even after the Zinfra meeting, there was no clear evidence that Ms Taylor had been involved in fraud and there was no indication that the training at both Jetstar and Zinfra had not occurred.

Ms Hayden-Long states that the only new piece of information that they had at this stage was that Group 1 of Jetstar had in fact been Zinfra students instead and that Ms Taylor had not informed them at the time of contracting. She says that they were still of the opinion that students existed, training was happening and that they had an obligation to continue the project so it would not disadvantage the students or the client. She adds that this was the motivation to continue, not the implied valuable stream of revenue.

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### ***False and misleading memo to Kangan executive (section 5.9.1)***

Ms Hayden-Long states that she was the one who asked Mr Hodgson to prepare a briefing document for an upcoming meeting. The document went no further than Ms Weavers and herself. She later briefly discussed the contents of the documents with Mr Hodgson where she informed him that she had dismissed the document, mostly because it had been written from Ms Taylor's perspective, not theirs. She says that most was factually correct and included the parts that they had learned over the previous couple of months.

Ms Hayden-Long says that Zinfra's concerns were discussed in a meeting in April 2015, and that her executive had provided additional information to the CEO at the time.

### ***Failure to act on Ms Taylor's rescinded qualifications (section 5.9.2)***

Ms Hayden-Long says that as mentioned earlier, apparently Mr Hodgson had phoned South West TAFE when Ms Taylor's qualification had been revoked. According to Ms Weavers' recollection, no-one would comment at South West TAFE because there was a current investigation occurring.

She states that the actions proposed and approved by the team, including the executive, was to refer Ms Taylor to the Skills Recognition Centre for an RPL, independent to their unit; and that no further training was to be undertaken by Ms Taylor until her qualification was sorted. She says that a suggestion that Kangan is not competent to conduct RPLs in engineering is concerning.

Ms Hayden-Long says that it is unclear as to whether Mr Elovaris knew that Ms Taylor's qualification had been revoked by South West TAFE or not. She states that Mr Elovaris contradicts himself in his testimony and that she does not believe it was a conscious decision made to withhold that information or to tell him. She says she believes their view at the time was that, if Ms Taylor could obtain her qualification through an RPL or further training in her own right through a very reputable organisation (Kangan), then it was all good, regardless of what is uncovered by South West TAFE. She further says that she was surprised that Mr Elovaris stated that he did not know, and that the only reason that Mr Hodgson emailed Mr Elovaris with a list of preferred units for her RPL was because it matched the list of units delivered at Jetstar. Ms Hayden-Long says that it made sense to have Ms Taylor complete the units that were listed on the training and assessment plan, and that she does not believe that Mr Hodgson pressured Mr Elovaris to expedite the RPL or pressured him to grant the certificate.

### ***Funds claimed and kept by Kangan (section 5.10)***

Ms Hayden-Long states that until the hearing, there was no expectation that Kangan would have to return any money to the Department because it was only at the hearing that she learned, along with others from Kangan that training did not occur at Jetstar or Zinfra.

She says that it is not uncommon for TAFEs and other RTOs to return money to the Department when there has been an anomaly or non-compliance.

Ms Hayden-Long adds that there was not any disagreement over the later invoices and there was not a disputed amount that was ultimately settled by negotiation. She says Ms Taylor had inquired about the reconciliation and a decision was made to pay Ms Taylor only for the balance of Jetstar at a reduced rate and nothing for the Zinfra enrolments.

### ***In conclusion***

Ms Hayden-Long provides the following concluding responses:

- She was not involved in any way in the fraudulent activity undertaken by Ms Taylor and others. She was as much a victim of the fraud as was Kangan. She was manipulated and exploited by Ms Taylor and others, and considers it unfair that she is being criticised on account of their fraudulent conduct.
- She says the very nature of fraud is that it exploits personal and systemic weaknesses using inside knowledge and manipulation. She adds that what may now seem obvious in retrospect was not so at the time, and the surrounding circumstances (extreme workload, stress, necessary reliance on other members of the team in the circumstances) cannot properly be disregarded just because it may expedient to do so.
- She says that at the time of merger, staff and managers of Kangan were overworked and stretched too thinly; Kangan failed to adequately exercise its duty of care during this period to ensure that they were sufficiently staffed and resourced to manage all of their responsibilities and the extra workload caused by the merger.
- She states that the fraud was specifically designed to avoid detection and to provide her (and others) with reassurance that all was in order. She adds that the involvement of more than one individual in this process made it especially pernicious and less likely to be detected. The circumstances at the time (high stress and workload during merger) were deliberately exploited.
- She is aggrieved that she is being named in this report and being held responsible, for not identifying a systemic fraud, perpetrated by more than one individual in all of the particular circumstances. She says she gave more than 19 years of loyal and unblemished service to Kangan and that nothing in her two decades of work and service for the organisation prepared her to anticipate fraud of the breadth of that perpetrated in this instance.

## **Mr Peter Heilbuth's response**

### ***Third-party training contracts (section 4.3)***

In regard to third-party training agreements entered into by South West TAFE, Mr Heilbuth states that when he started at South West TAFE, contracts fell between the executive team, and there was not a formal contract management process in place at the time.

He recognised that this was an issue, and a member of his executive, Mark Fidge, was tasked with developing a more robust contract management approach. However, he says that that was not in place during the negotiation and management of the Metro Trains and TayTell third-party training agreements.

### ***The draft agreement with TayTell (section 4.4.2)***

Mr Heilbuth states that he believed at the time that this contract represented the effective extension of an existing, established contract between South West TAFE and Metro Trains. He says that Rebecca Taylor, who had been with Metro trains, was the key contact and link.

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### ***Lack of diligence or review (section 4.4.4)***

In regard to lack of due diligence or legal review of the TayTell agreement executed by South West TAFE, Mr Heilbuth states his decision not to obtain legal advice was based on an understanding that the proposed agreement was based on an existing template for the Metro Trains third-party agreement, that had served South West TAFE well up to that point. He further adds that while he does not have access to Board records, he recalls that the TayTell proposal was discussed with the Board and the Board Chair.

Mr Heilbuth states that as the Board's chair at the time claimed to have a vague recollection of discussion of the Metro Trains and Zinfra agreements, this suggests that the Board Chair, at least, had been aware of the contract, as indicated by Mr Heilbuth.

Mr Heilbuth further adds that:

- He spoke to his predecessor at the time he took the South West TAFE job, and was told by him about the deal that was under negotiation and that it would be a good deal for South West TAFE.
- He spoke to Mr Molan, who told him that he had been working with Rebecca Taylor in the past and that she was a great worker, with a lot of good connections, and that the deal proposed by her was a good deal.
- South West TAFE had an existing and successful agreement with Metro Trains that, as Mr Heilbuth was informed, at least partly thanks to Ms Taylor. He believed that Ms Taylor had worked for Metro Trains on the Metro Trains contract and believed the TayTell contract was to be a similar arrangement to South West TAFE's existing contract with Metro Trains.

### ***Accounting for the TayTell contract (section 4.9.2)***

In relation to accounting treatment given to the payments made by South West TAFE to TayTell, particularly in the annual report for the financial year 2013, Mr Heilbuth states that to the extent that this might suggest there was an attempt to hide the contract from scrutiny, he denies that was the intention. He says that there was no discussion that he was aware of, to that end.

### ***Mr Molan's knowledge and involvement in the scheme (section 4.10)***

Mr Heilbuth states that he met with Mr Molan to seek a response to the Coffey Hunt audit. He says that Mr Molan undertook to respond to the audit questions in detail, however he went back on sick leave almost immediately and did not return to work before his resignation.

### ***Review exposes anomalies (4.10.1)***

In response to Mr Heilbuth's communications with Mr Molan upon his resignation, Mr Heilbuth accepts that this was, in hindsight, a lack of judgment, yet he says that at this time, Mr Molan was away from work on extended sick leave.

Mr Heilbuth states that there was every indication that Mr Molan was unwell and unfit for work and repeated doctor's certificates confirmed this. He adds that notwithstanding this, Mr Heilbuth sought medical advice from Mr Molan's doctor as to the nature of his illness, however that request was rejected.

He also sought legal advice at the time as to whether he could compel Mr Molan to provide the information he was seeking in response to the Coffey Hunt audit, however he was advised that he could not compel Mr Molan to provide this information.

***The pressure to compete in a competitive environment (section 7.2.4)***

In regard to the pressure to compete in a competitive environment, Mr Heilbuth added to previous evidence provided, stating that:

- the Board Chair and Board members were replaced at this time
- the funding contract that South West TAFE had with the State Government, with HESG, kept changing – often with one day's notice:
  - the Government's contract with South West TAFE was structured so that the Government could drop funding for courses wherever and whenever they saw a spike in demand. He considered that made it very challenging to budget appropriately. Funding for areas like hospitality, cookery, business, arts, IT training were dropped to just over \$1 per hr. This had a huge impact on revenue. On occasions, changes of funding level happened overnight
  - Mr Heilbuth and his executive team were checking cash flow daily and the Board was constantly concerned about the organisation's solvency
- some of the key people involved in student records management left the organisation as a result of the significant staffing cuts
- infrastructure was transferred to South West TAFE (from the Victorian Government) and all infrastructure and maintenance funding was withdrawn
- funding to subsidise the additional costs of running a public entity was withdrawn
- South West TAFE was able to apply for government funding for key projects that would assist it with the above. Mr Heilbuth and his executive team devised and applied for seven projects, but he believes they received funding for three. One of those applied for was to fix South West TAFE's systems, including compliance
- the Department decided that a piece of land South West TAFE had purchased a few years prior was not a centrally paid for piece of infrastructure, but a loan to South West TAFE, and that South West TAFE was told it had to pay this back
- South West TAFE was constantly told it had to operate more like a business but was then hit with a leak from the Department about its business plans
- every time Mr Heilbuth gathered staff together to discuss what needed to be done, someone leaked that information to the local newspapers
- South West TAFE was told that it had to begin talks to merge with The Gordon TAFE, and then told not to pursue this, which led to competing pressures on the organisation.

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### Mr Travis Hodgson's response

#### *Qualifications awarded by Kangan TAFE (section 1.3.2)*

In Mr Hodgson's response, he says that the statement that 'Kangan desperately sought to salvage its agreement with TayTell' is incorrect. He states that the TayTell Business Development agreement had expired on 31 December 2014 and was not renewed in 2015. Accordingly, he says that there was no agreement to salvage.

Mr Hodgson also states it is incorrect that he asked the Kangan Engineering Department to evaluate Ms Taylor's prior learning. He says Ms Taylor was provided with the contact number by either himself or Ms Hayden-Long for the Skills and Recognition Centre (SRC). He says Ms Taylor contacted SRC without his assistance and that at that time, SRC coordinated the RPL process, utilising trainers from the aviation and engineering and business departments.

Mr Hodgson states that if pressure was applied to Kangan RPL assessors, it was not applied by him, and that, at Ms Hayden-Long's request, he exchanged some emails with the assessors regarding the units selected, aligning to the training Ms Taylor had delivered and to see how the RPL was progressing.

Mr Hodgson says that Ms Taylor did not receive the engineering qualification until late in 2015, which was well after Kangan had ceased working with her and TayTell. He adds that the statement that the awarding of qualifications to Ms Taylor by Kangan enabled her to deliver training under an agreement is incorrect because she had ceased training in December 2014 and did not have a Business Development agreement with Kangan in 2015.

#### *Outcomes of the investigation into management of third-party training agreements by Kangan (section 1.5)*

Mr Hodgson states that while it may be true that no one from Kangan visited Jetstar to observe training, Kangan had multiple contacts with Ms Jarvie from Jetstar.

Mr Hodgson understands that Kangan procedures might require a site visit before approval of a training program with a contract trainer, but only in circumstances where that training program required specific facilities in order for that training to be delivered. In relation to the Jetstar training, he says that no specialist facilities were required and that the Aviation and Engineering department approved the training and engaged Taylor as a contract trainer. He adds that that department evidentially decided that Jetstar had the facilities and equipment for Ms Taylor to deliver the training and that, accordingly, if his understanding of Kangan processes is correct, the Aviation and Engineering Department was not required to conduct a site visit before training began.

Mr Hodgson states that if a site visit was not required before training commenced, one would happen at some point during the duration of the training. He says he is not aware of any procedure that dictated when in the cycle this should occur. He says that it was originally envisaged Ms Taylor would conduct training into 2015 so there would still have been time to conduct a visit. However, he says that training was stopped in December 2014 when Ms Taylor's engineering qualification from South West TAFE was cancelled. Mr Hodgson adds that when a site visit was conducted for the purpose of an audit of the training, it would have been the Aviation and Engineering Department that conducted it, as they were the qualification owner and it was their responsibility. He says onsite visits from his department were related to client/project management.

In relation to the complaints from students receiving statements of attainment, Mr Hodgson states he understood that these were responded to and that the students did not continue further with their queries. He says he had understood this was an issue about students not understanding that the internal training they had been receiving on the job was leading to their attainment of a Kangan qualification.

In relation to the student who contacted the police, Mr Hodgson says that upon making inquiries of Kangan's Academic Registrar, he was told police took no further action.

Mr Hodgson further adds that the statement regarding keeping the TayTell agreement afloat is incorrect as there was no agreement with TayTell in place in 2015.

#### **Overview (5.1)**

Mr Hodgson states that he did not, nor is there any evidence to suggest that he, sought to discourage anyone from Kangan from investigating the TayTell training. On the contrary, he says that an email he sent to Ms Hayden-Long on 2 April 2015 provides information for a meeting she was to have with Kangan executives. He adds that he expressed frustration at not being able to get a clear picture of what the issue was with Zinfra and that they did not provide Kangan with any information. He further adds that the email refers to two Zinfra staff to whom he provided all the information Kangan had regarding training in late February 2015, and says that he received no response from Zinfra.

Mr Hodgson states his statement in the email: 'Whatever we need to do to get this put to bed...' was not an attempt to cover things up, but a request for assistance from the executive team. Mr Hodgson's understanding was that the executive team knew everything that he knew. He says that Ms Hayden-Long met regularly with their executive, that he had also had informal discussions with an executive member regarding the project as her office adjoined his and that he is also aware of an email from her to other executives regarding the TayTell project. However, he says that to the best of his knowledge, the executive team provided no guidance on how to resolve the unknowns related to the TayTell project, nor expressed concern with Ms Hayden-Long's and Ms Weavers' approach to clarifying and rectifying matters.

Mr Hodgson adds that in relation to the assertion that he was part of a process of trying to keep the TayTell contract afloat, that there was no agreement in 2015 as it had expired on 31 December 2014.

#### **Kangan's enrolment process (section 5.6)**

Mr Hodgson says he was not involved in the enrolment of the TayTell students.

#### **Failure to oversee training (5.7)**

Mr Hodgson states that his understanding is that Kangan's processes and procedures were followed regarding the TayTell project.

#### **Missing documents did not prompt visit (section 5.7.1)**

In response to the report discussing missing documents, Mr Hodgson states that the email sent to him by Ms Weavers was a quick list that she had put together as a reference for herself; it did not mean that the documents were missing.

Mr Hodgson adds that documents such as trainer qualifications, assessment materials and guides, and mapping documents, were all in place before the project was started. He says that the Aviation and Engineering Department required these documents to assess and approve the delivery model and to engage Ms Taylor as their contract trainer in mid-2014. He adds that they were stored on the central share drive, which was not a drive that Ms Weavers usually used as she did not do the contract work.

## Appendix B: Natural justice requirements and responses

### ***Travis Hodgson – ‘put off’ from visiting (section 5.7.2)***

Mr Hodgson states that Ms Hayden-Long was the Client Manager for the TayTell relationship and that at the time, he was Contracts and Compliance Consultant, Sales and Business Development Department at Kangan. He says his role was to assist teaching departments with their external partnerships, that is, where non-Kangan training providers provided industry-based training towards the attainment of Kangan qualifications.

Until mid-2013 when Mr Hodgson started the role, he says that such partnerships had been managed in a range of ways; Kangan wanted a standardised approach and to ensure teaching departments were compliant with the standardised approach. He says that he worked with the teaching departments and their external training provider partners to ensure there was an appropriate quality plan in place and that it was being adhered to.

In 2014 when the TayTell project was active, Mr Hodgson states that what was becoming Bendigo Kangan Institute as a result of a merger between Kangan and Bendigo TAFE, had around 24 different partnerships, the majority of which were managed by the teaching departments. He says that he was not involved in the negotiations of the TayTell project but had been in an early meeting in which Ms Taylor met Kangan's Aviation and Engineering Department manager to discuss the potential project. He adds that the Aviation and Engineering Department signed off on her delivery model and the assessment tools and engaged Ms Taylor as a contract trainer. He further adds that Ms Hayden-Long drafted the business development agreement to engage TayTell as a broker to Kangan.

Mr Hodgson states that he assisted in collating some of the required documents. He provided Ms Taylor with the required paperwork to enrol students which included enrolment forms, pre-training review documents and a training plan template. He adds that he was on annual leave when the training began and that other members of the team accepted and processed the enrolments. He further adds that he was engaged in the occasional conversation with Ms Taylor in the latter part of 2014, mainly regarding compliance questions from her and the progress of the project, but the maintenance of the relationship with Ms Taylor and TayTell was not his role.

Further to this, Mr Hodgson states that he worked as directed by either Ms Hayden-Long or Ms Weavers.

### ***Alarm bells (section 5.8)***

Mr Hodgson states that the Zinfra managers did not mention any concern they had about fraudulent activity at the meeting he attended on 6 February 2015.

### ***Evidence of a Zinfra manager***

Mr Hodgson states that the complaint by the Zinfra manager was not referred to him directly; it came to the broader team and he responded at Ms Hayden-Long's request.

### ***Kangan's response to the possibility of fraudulent enrolment***

In response to Kangan's response to the possibility of fraudulent enrolment, Mr Hodgson states that in January 2015, he was aware only that some students were confused about receiving a Kangan qualification for training being conducted at their place of work. He says that he made no attempt to 'prop up' the project and reiterates that there was no agreement with Ms Taylor or TayTell in place in 2015 as training had ceased in December 2014.

### ***Zinfra voices its concerns (section 5.8.2)***

Mr Hodgson states that at the meeting on 6 February 2015, the Zinfra managers provided very little information to Ms Hayden-Long and himself. He says that they certainly did not use the term 'fraud'. They may have determined and noted in their notes that the sample documents they had taken to the meeting were potentially fraudulent but at no time did they provide that opinion.

Mr Hodgson says that he did not say much at the meeting on 6 February 2015, but at one stage he attempted to explain how training packages and funding worked. However, he says that that seems to have been taken by Zinfra as trying to confuse them. Mr Hodgson says in no way was it his intention to try to confuse the Zinfra managers. He says that it appears that both parties were 'not on the same page' at the meeting but this was not apparent to him on 6 February 2015.

Mr Hodgson states that if Zinfra managers felt that he had criticised the Zinfra employees, it is a pity that they did not tell him at or around the time of the meeting so that he might have attempted to rectify that perception, as it had never been his intention to create such an impression. He adds that he was attempting to explain that he was aware of other situations in which staff had not realised the workplace training they had received would result in a TAFE qualification.

Mr Hodgson states that in relation to the statement that 'Kangan was satisfied, in respect of the supposed training', it should be made clear that this was in reference to the Aviation and Engineering Department (the engineering qualification owner at Kangan) which had reviewed the delivery model and assessment tools and approved them.

In relation to the dotpoint commencing with '[When Zinfra pointed out...]', Mr Hodgson states that this should reflect that he had stated that a Kangan enrolment could not have occurred in July as Ms Taylor did not have agreement with Kangan nor did she have the Kangan enrolment forms in July 2014.

Mr Hodgson reiterates that he stated in evidence he was not informed by Zinfra of its suspicion of fraud at the meeting on 6 February 2015 and that he also submitted his notes from the meeting at the IBAC hearing. He says that if the term fraud had been used, he has no doubt he would have noted that and taken action.

### ***Bury and mislead: internal Kangan management of the Zinfra issue (section 5.9)***

Mr Hodgson reiterates that there was not a TayTell agreement in place in 2015.

Mr Hodgson states that the email he sent on 9 February 2015 was at the request of Ms Hayden-Long and that he was attempting to comprehend what had gone on with the TayTell agreement and its potential implications both financially and from a compliance perspective. Mr Hodgson says that the report implies that his colleagues and he had more information than they actually did and states that he was trying to ascertain the truth though, admittedly, he now knows that was impossible given the misinformation they had received from Ms Taylor and her associates.

### ***False and misleading memo to Kangan executive (section 5.9.1)***

Mr Hodgson states that, on 5 July 2017, while giving evidence at his public examination, he took at face value that he had written the email of 16 April 2015. He states that, on 5 July 2017, he had no recollection of having written the document and, in hindsight, realises he should have made that clear during his evidence.

Mr Hodgson says he answered truthfully when he agreed during his evidence that the document contained false and misleading information in that, with what he knew on 5 July 2017, Ms Taylor's story had been demonstrated to be untruthful and, therefore, the note which included references to her version of the story in April 2015 must also have contained untruths.

Mr Hodgson says that in April 2015, when he is said to have written the document, he did not have a full version of the facts. He further adds that that was what he and his colleagues were endeavouring to assemble at the time he apparently wrote this document.

Mr Hodgson states that since giving evidence on 5 July 2017, he has been told by Ms Hayden-Long, that it was she who had asked him to commence drafting a briefing document (represented by the Zinfra note). He says she told him he had misunderstood what she had required and had included information that set out Ms Taylor's version of events.

## Appendix B: Natural justice requirements and responses

Mr Hodgson states that at the time it was written, there was no intended recipient who could have been deceived. He adds that his team leader and manager, Ms Weavers and Ms Hayden-Long, the only intended recipients of the email he sent, were aware of the facts regarding the TayTell project. He further adds that the executive to whom Ms Hayden-Long reported, and other Kangan executives, were, to the best of his knowledge, fully briefed on the issues surrounding the TayTell contract.

### ***Failure to act on Ms Taylor's rescinded qualifications (section 5.9.2)***

Mr Hodgson states he did not ask the Aviation and Engineering Department to evaluate Ms Taylor's prior learning. He says that she was provided with the contact number for the Skills and Recognition Centre (SRC), which he understands Ms Taylor contacted personally. He says that the SRC then co-ordinated the RPL process, utilising trainers from both the aviation and engineering and the business department.

Mr Hodgson states that he is not aware of pressure being applied to Kangan RPL assessors by a Kangan employee and that he categorically did not apply any such pressure. He adds that at the request of Ms Hayden-Long, there were some emails between himself and assessors regarding the units selected aligning to the training Ms Taylor had delivered and to see how the RPL was progressing. He further adds that he expected the SRC to conduct the RPL and to recommend any required gap training in an appropriate and compliant way and as he understands, that is what occurred and why it took until late in 2015 for Ms Taylor to achieve the qualification.

### ***Funds claimed and kept by Kangan (section 5.10)***

Mr Hodgson states that he was informed by Ms Hayden-Long that she intended to only pay 50 per cent from the Jetstar enrolments to Ms Taylor/TayTell. He says that he had no involvement in Ms Hayden-Long's decision to change the payment to Ms Taylor or TayTell.

### ***Concluding remarks***

Mr Hodgson says that it is now clear that Kangan has been a victim of a sophisticated and elaborate fraud perpetrated by Ms Taylor and TayTell, and that as an employee of Kangan, he is a victim of that fraud. He adds that in fulfilling his duties as an employee of Kangan, he was manipulated and exploited by Ms Taylor. He further adds that Kangan's processes were not designed to detect fraudulent activity of this nature by a third-party and that he should not be held responsible for not identifying what has now been shown to be a systemic fraud. Mr Hodgson states that nothing in his 15 years of service with Kangan prepared him to anticipate fraud of the breadth of that perpetrated by Ms Taylor and TayTell and that at no time has Kangan provided its employees with training in detecting or dealing with activity of this nature.

## Mr Rory MacManus' response

### ***Nicola Spiers (section 1.7.5) / Rory MacManus' conflict of interest (section 6.8.5)***

Mr MacManus states that his communications with Ms Spiers concerning salary were not a negotiation.

In regard to statements in the report that he did not declare or manage his conflict of interest, Mr MacManus states it was his understanding that it was clear to the Executive that he knew Ms Spiers and that she was Alan Clifford's partner.

## Mr Maurice Molan's response

### ***Qualifications awarded by South West TAFE (section 1.3.1)***

Mr Molan states he had authorisation to enter results for programs that were not being conducted via a teaching department. He further adds that, for third-party agreements, the session was set up to allow him to enter results, and his user name could not have accessed the system unless it was set up to allow this to happen.

Mr Molan refutes the statement that his actions appear self-serving. He states that, if he was acting in a self-serving way, he would never have supported any third-party arrangements. He says he had a strong and well known dislike of public funds in the education system being paid to private individuals and companies and that private RTOs, third-party agreements and demand driven training funding were at odds with what he believed in. Mr Molan adds that third-party agreements resulted in more work and stress for him and that he already had a heavy workload. He says the TayTell deal was not precious to him, but he was doing as directed despite this being against his personal beliefs and best interests.

### ***Outcomes of the investigation into the management of third-party training agreements by South West TAFE (section 1.4)***

In relation to comment that Mr Molan had primary responsibility for managing the TayTell contract, he says that he was not the sole decision maker at South West TAFE, that there was an executive team involved in all decisions, and that Mr Heilbuth and Mr Fidge could veto decisions. Mr Molan says he was the 'junior' member of the team given Mr Heilbuth was CEO with ultimate authority and Mr Fidge had control over the TAFE's finances.

Mr Molan further refutes that he decided not to seek legal advice. He states that Mr Heilbuth as CEO signed the contract with TayTell and did not require Mr Molan's approval to seek legal advice. Mr Molan also says he has no memory of Mr Fidge mentioning the issue of legal advice.

Mr Molan states it is not true that he acceded to the request by TayTell for a financial split of 80/20 with South West TAFE without any negotiation. He says that he had a conversation with Ms Taylor, that she would not accept an alternative arrangement, and that he communicated this to Mr Heilbuth. Mr Molan says the executive team decided the deal should go ahead in full knowledge of the financial arrangement and his discussions with Ms Taylor, and that there was no verbal or written rule or policy regarding the split of funds.

### ***Mr Molan manipulates data to award Ms Taylor a result of 'competent' (section 4.5.2)***

Mr Molan says that he has accepted responsibility for these results going onto the system as they were entered under his system credentials, however he maintains that he has no recollection of actually inputting these results and he does not know how he could have actually done this as his knowledge of the system was so limited he could barely use it.

## Appendix B: Natural justice requirements and responses

### ***Fabricated letter of support for RPL in Certificate IV in Training and Assessment (section 4.5.3)***

Mr Molan confirms that he was involved in sighting some documentation supplied in support of Ms Taylor's application, but says he had nothing to do with the verification process. He says he played no role in verifying any document and no issues about the RPL process for the Certificate IV in Training & Assessment were ever brought to his attention.

### ***Review exposes anomalies (section 4.10.1)***

Mr Molan states it is untrue that he never spoke to Coffey Hunt. He says he attended the Coffey Hunt office in July 2014 where he provided a box of documents pertaining to Ms Taylor's RPL application, but the Coffey Hunt staff were busy and it was agreed that he would return at a later date. He said he later tried to source the documents so he could reschedule with Coffey Hunt, but was told they could not be located. He says that because of this and given he no longer worked for South West TAFE, he saw no reason to return to Coffey Hunt.

### **South West Institute of TAFE's response**

South West TAFE says the report does not expressly detail the positive action it took during 2014 (and subsequently) to investigate TayTell and Ms Taylor and seek to respond appropriately. It states that, by omitting this detail, the report conveys the false and unfair impression that South West TAFE failed to investigate the conduct of TayTell, Ms Taylor and Mr Molan. It further states that, by omitting reference to the evidence of Mr Fidge and Ms Carter as to the steps South West TAFE has already undertaken, but including a recommendation that it report to IBAC, the report conveys the impression South West TAFE has done nothing to prevent a repetition of the conduct that is the subject of the investigation.

South West TAFE says the report makes general statements as to certain failures of systems and controls without being sufficiently precise that these relate to the specific period under investigation.

### ***Lack of diligence or review (section 4.4.4)***

South West TAFE states that it had a range of policies, procedures and guidelines, as well as a contract register, from as early as 2007. These included a Training Services Contract Policy approved 10 June 2011, an Authorisation and Registration of Contractors Procedure approved 11 February 2011 and evidence of a Business Contract Register from 1 November 2011.

South West TAFE accepts that both the content and operationalisation of these may have required improvement.

### **Conclusions (section 8.1)**

South West TAFE notes that a number of the findings and conclusions in the report apply to the specific period under investigation. They say they do not understand IBAC to be suggesting that those issues have continued beyond that period. During 2014 and 2015, South West TAFE says it undertook extensive investigations which revealed the conduct ultimately referred to IBAC. It adds that by the time of the referral to IBAC, South West TAFE had already acted to improve its systems and controls in order to reduce the risk of such issues being repeated.

South West TAFE says while there were certainly opportunities to strengthen systems and controls in relation to the operational management of the TayTell contract, Mr Fidge, Ms Carter and others were involved in an audit and compliance review of TayTell. As a result of this, audits were conducted into student enrolments and student assessments, as well as investigations into the awarding of qualifications to Ms Taylor.

South West TAFE acknowledges that a payment to TayTell of \$1,401,734.00 was allocated in South West TAFE's annual report for 2013 to 'Employee Expenses – Salaries, wages, overtime and allowances' instead of 'Supplies and services – Contract and other services'. This resulted from the payment being entered into South West TAFE's accounts with the underlying code of 'Contract Labour', which was then inadvertently allocated to 'Employee Expenses' rather than 'Supplies and Services'.

South West TAFE says that at its own initiative, it identified that "Contract Labour", including the payment to TayTell, should have been reflected in its financial statement under 'Supplies and Services'. South West TAFE's annual report for 2014 re-allocated this payment for 2013.

It says that the annual reports for each of 2013 and 2014 were independently audited by VAGO which stated in both reports that it held the opinion that the respective financial reports presented the financial position of South West TAFE in a fair manner without material misstatements.

South West TAFE disputes that the allocation of the payment in the annual report for 2013 was in any way intended to avoid identifying the payment of a third party for outsourced training services.

### **Recommendations (section 8.2)**

#### **Recommendation 1**

In relation to Recommendation 1, South West TAFE provide an interim report on this recommendation (Appendix C).

In addition, SW TAFE acknowledges that during the period investigated by IBAC in relation to SW TAFE, there were opportunities to strengthen its systems and controls for oversighting third party agreements, ensuring compliance with those agreements and implementing stronger controls around student proof of identity.

South West TAFE welcomes IBAC's recommendation for South West TAFE to provide a report on how it has addressed issues identified in Operation Lansdowne.

South West TAFE states that since at least 6 November 2014, it identified the need for change and actively commenced the process of delivering it.

South West TAFE adds that as explored during the public hearings and reflected in the report:

- from as early as May 2014, SW TAFE commenced its own internal investigation
- in June 2014, Mr Fidge engaged Coffey Hunt Internal Contract Audit to undertake a review of SW TAFE's third party contracts, including with TayTell
- on 8 September 2014, SW TAFE appointed a new Audit and Compliance Officer, Ms Carter
- in September 2014, SW TAFE identified a range of serious issues, including that Mr Molan had accessed SW TAFE's systems and inappropriately awarded qualifications to Ms Taylor and that it appeared that students had been falsely enrolled and/or improperly certified
- while continuing its own investigations, SW TAFE notified the Department of its concerns in October 2014 and January 2015
- during 2014 and 2015, Mr Fidge worked with the Acting Executive Manager of Education, Ms Ponting to continue to develop SW TAFE's suite of materials to facilitate due diligence and assessment of proposed third party contracts

## Appendix B: Natural justice requirements and responses

- in November 2014, SW TAFE initiated engagement with Zinfra in order to further the investigation and address the circumstances of the Zinfra employees
- in December 2014, Mr Fidge terminated the employment of Mr Molan for serious misconduct and rescinded Ms Taylor's qualifications
- in 2015, as a result of SW TAFE's own investigation and notification, the Department engaged a consultancy firm, to examine the matter. SW TAFE shared the results of its own investigations with the consultants and fully co-operated with the Department and the consultants during 2015
- on 21 October 2015, once SW TAFE had confirmed that the investigations by the Department and the consultants had sufficiently progressed, SW TAFE reported the matter to Victoria Police and the Victorian Ombudsman. In turn, the Victorian Ombudsman referred the matter to IBAC.

South West TAFE states that at no time during these investigations, did it seek to conceal the results from the Department, other authorities or relevant stakeholders such as Zinfra. South West TAFE states it sought to advise them of the progress of its investigations and seek to work co-operatively to address the relevant issues. It adds that in early 2015, it ceased entering into third party training and assessment contracts, in light of the revised Department legal framework and to mitigate the type of risks South West TAFE's investigation into the TayTell contract revealed.

South West TAFE says it continued to actively improve its systems and controls with respect to delivery of training and engagement in contracts more generally, including in co-operation with the Department.

### Mr Theo Taifalos' response

*V/Line systems, controls and culture (section 1.8) / Overview (section 6.1) / Overview (section 7.1) / Circumvention of controls around recruitment (section 7.4.2) / Culture and tone from the top (section 7.4.3)*

Mr Taifalos states that when he commenced as CEO in May 2013, he immediately appreciated the lack of governance and parlous state V/Line was in as an organisation. Accordingly, he says he commissioned an expert report, which was wide ranging (into procurement and contract management) and took six months to complete, being by law firm, Mills Oakley and forensic accountants, Grant Thornton.

Mr Taifalos adds that one of the key procurement changes made by him was the establishment of the position of chief procurement officer (CPO). He says that the CPO reported to the Chief Financial Officer and also had direct access to Mr Taifalos as CEO. He also says Mr Stephen Brown was appointed to the position of CPO.

Furthermore, Mr Taifalos states that upon his commencement as CEO, he appointed new auditors, as the existing ones had been too long in the role, and commissioned a new audit plan for V/Line. He disputes having ever disregarded proper procurement and recruitment processes, and says he took his accountabilities as CEO very seriously. He says he was also focussed heavily on the safety requirements of the organisation throughout his tenure as CEO.

Mr Taifalos also says that consistently during his time as CEO, he promoted a culture of integrity, high ethics and respect for public money. He says this is reflected in documents tendered during his public examination, namely in November 2014, he sent an all staff email making clear his expectations in this regard.

Mr Taifalos also says he caused to be arranged a seminar entitled, 'Professional Standard and Governance Training' to be held on 12 separate occasions in March 2015 for staff.

Mr Taifalos emphasises that the conduct of Mr Blythe, Ms Spiers and Ms Taylor as referred to in the report, relates to a time period subsequent to his tenure as CEO of V/Line.

### ***Culture and tone from the top (section 7.4.3)***

Mr Taifalos says the statement 'for a period, business cases for new positions were not required; instead, approval was sought directly from Mr Taifalos', is inaccurate.

In response to the statement that 'Ms Kelman said "the pattern of behaviour was that most or some managers would go directly to Theo, get him to sign the form, and then it would come back to HR already signed without any due process"', Mr Taifalos states these matters, which were not raised with him in his examination, are factually incorrect. He says that he implemented a process (in conjunction with the executive management team) that business cases were not required for existing positions to be filled by new candidates. He says if there was an existing conductor position to be filled, there was no requirement under the changes made by Mr Taifalos, for a business case to be prepared. He says he did not, at any stage, remove the requirement for a business case in relation to a new position, and that Ms Kelman's evidence in this regard is inaccurate.

Mr Taifalos states in light of the foregoing, there can be no suggestion of his being involved in empowering Mr Clifford to bypass procurement processes, contract splitting, a lack of documentation to justify procurement, insufficient segregation of duties and inadequate contract documentation.

As to the issue of culture at V/Line during Mr Taifalos' tenure, and in respect to paragraph 1.7 to the effect that Mr Taifalos considered V/Line's senior managers to be significantly underpaid compared to colleagues in other states and wanting to move people performing executive roles from consultancies to fixed-term employment, that circumvented usual recruitment process, Mr Taifalos says this statement fails to recognise that V/Line was competing against a number of private sector operators in Victoria for the same talent pool – namely, Metro Trains, Yarra Trams and Transdev. He says V/Line is the only statutory public sector entity competing against these entities for the provision of transport services.

Further, Mr Taifalos states the last sentence is also inaccurate as paragraph 4.9.1.1 of V/Line's Recruitment and Selection Policy directly contemplates contractors on fixed term contracts being offered permanent appointment. He says Ms Kelman had expressly stated to him that it was an acceptable practice to transfer contractors to employment contracts and that it had been done on prior occasion at V/Line. Mr Taifalos says he relied upon, and given her experience and seniority within the organisation he was entitled to, Ms Kelman's representations in this regard.

### ***Mr Taifalos supports Mr Pistak's recruitment as consultant (section 6.3.1)***

Regarding reference in the report to Mr Taifalos engaging in conduct relating to the engagement of Mr Pistak, Mr Cameron and Mr Clifford, he says it would be incorrect to conclude that his conduct was inappropriate.

As for Mr Pistak's engagement, Mr Taifalos says prior to Mr Pistak being engaged as a consultant, Mr Taifalos informed the V/Line Board of his impending engagement as such. Further, he says that when Mr Pistak became a consultant at V/Line, as opposed to an employee, his title was Acting Executive General Manager Asset Management.

Mr Taifalos states that after Mr Pistak was engaged as a contractor, but prior to him being employed by V/Line, he was formally interviewed after the position was advertised Australia-wide. He says an external executive recruitment company undertook candidate analysis as well as consideration of the attributes and characteristics required for the role. He was keen for Mr Pistak to become an employee so there was visibility of the number of people that worked for V/Line and put them into the employment system. This meant they were paid through the payroll system.

## Appendix B: Natural justice requirements and responses

In response to the section of the report which states there was an issue with the retention of a contractor as it gave a 'non-employee access to sensitive V/Line information systems...as well, it meant a lack of prudent insurance coverage in relation to Mr Pistak's consultancy contract', Mr Taifalos says these statements do not recognise evidence of Ms Kelman that Mr Pistak obtained a prudent level of insurance coverage. Additionally, he says that as a contractor, Mr Pistak owed duties at law and in equity not to disclose any of V/Line's confidential information.

Regarding Mr Pistak's remuneration package being more than \$400,000, the increased level of remuneration paid to him was due to the fact that Mr Pistak was taking on an expanded role and increased levels of accountability and responsibility than the incumbent. Mr Pistak's additional responsibilities included all of the rolling stock as opposed to simply the fixed infrastructure. Remuneration of executives, including contractors, was disclosed in the V/Line annual report.

He further adds that executive remunerations were reported to a subcommittee of the Board (HR and Remuneration Committee) every 12 months. Also, the yearly levels of executive remuneration at V/Line were also provided to the Victorian Government as part of the GSERP annual return reporting requirements.

Mr Taifalos states that, at the time Mr Pistak was appointed as Executive General Manager Asset Management, all of the executive remuneration packages were taken to the Board of V/Line for approval (which was ultimately obtained). He says the Board papers seeking approval of the executive general managers' remuneration were prepared by Ms Kelman and contained a statement, to the best of his recollection, to the effect that the proposal was compliant with all GSERP requirements.

### ***Mr Cameron's recruitment (section 6.4)***

Mr Taifalos further confirms his evidence that he had nothing to do with the recruitment of Mr Cameron. He says it was Mr Pistak who undertook the recruitment of Mr Cameron and not Mr Taifalos, that he was not a personal friend of Mr Cameron, and they did not socialise outside of work.

### ***Mr Clifford's name is put forward (section 6.5.1)***

Mr Taifalos states that in relation to the engagement of Mr Clifford, the evidence was clear that the incumbent in the role was not performing, and a new person needed to be sourced to perform the role of, ostensibly, managing the contract with Bombardier. Mr Taifalos says he charged Mr Pistak (given he was the responsible Executive General Manager) with performing that task.

Mr Taifalos adds that when potential candidates for the role of managing the Bombardier contract were being identified, Mr Clifford's name was suggested. He says he undertook extensive due diligence on Mr Clifford by speaking with the head of Metro Trains, the CEO of Public Transport Victoria and various people at Bombardier.

Mr Taifalos states he first met Mr Clifford in late July 2014 and did not know him beforehand. He says Mr Clifford was not a friend of his.

In regard to the report which states, 'on the evidence, the interview process for this role appears to have consisted of an introduction by Mr Cameron, followed by an informal discussion between Mr Taifalos and Mr Clifford over coffee', Mr Taifalos says that is inconsistent with his evidence. For example, his evidence of having had an initial coffee meeting with Mr Clifford and Mr Pistak (given that the role reported directly to him) and then having a subsequent meeting with Mr Clifford.

Mr Taifalos says that the fact that he had informal meetings with Mr Clifford was consistent with V/Line's Recruitment and Selection Procedure, where it stated at paragraph 4.7.1.2:

*For positions that are direct reports to the EGMIGM, the interview panel will include the relevant EGMIGM and an Executive Team member. The preferred candidate/s may also be required to have a 'fireside' chat with the Chief Executive before an offer is made.*

**Required qualifications (section 6.5.2)**

Mr Taifalos also relies on his evidence as to why he thought Mr Clifford was a suitable candidate for the role, where he said 'and internally, there was not a deep candidate pool to fill that role, and externally - it's a very small sector, the railway sector, particularly the rolling stock industry. There are two large suppliers of rolling stock, and Alan had worked for one of those (Bombardier), and there are six large regional passenger operations, and he had worked for two of those previously'.

Mr Taifalos denies he was not concerned about the fact that Mr Clifford did not have qualifications and that the role was not advertised internally or externally. He relies on his evidence that Mr Clifford needed qualifications.

Mr Taifalos states that Mr Clifford in his evidence, confirmed that there was no deal between himself and Mr Taifalos with regard to him not having to produce his qualifications. He says Mr Clifford said in evidence that the only discussion he had with Mr Taifalos regarding the conditions of possible employment were with regard to the deliverables and what he was expecting in terms of the Bombardier contract, management and cost cutting.

Further, Mr Taifalos relies on Ms Kelman's evidence that there were no suitable in-house candidates for the role. He says the fact that the position Mr Clifford filled was not advertised was not inconsistent with past practice at V/Line. Ms Kelman said:

*I would say normally, if it was a 12-month appointment, it would be advertised, but there may have been the occasion where the business felt they needed to bring a subject-matter expert in to be able to support the business because they felt there was a - a need for - for that to occur.*

**V/Line's recruiting policies (section 6.2.1)**

In response to the statement in the report regarding Mr Taifalos familiarising himself with important internal policies, Mr Taifalos states that the Board did not provide any induction material to him and that on his commencement, he asked all his executives for a policy briefing in their respective areas.

## Appendix B: Natural justice requirements and responses

### Conclusion

In summary, Mr Taifalos says:

- When he commenced as CEO of V/Line it was a 'broken' organisation - in particular, with respect to critical matters such as safety, commerciality, people and probity.
- He commissioned, at the commencement of his term as CEO, the forensic review of procurement and contract management through Mills Oakley and Grant Thornton. He also made a number of changes to the executive and management teams and created the position of chief procurement officer.
- At all times during his time as CEO, he was committed to following proper process and ensuring that those in the organisation did not engage in corrupt and inappropriate conduct.
- Any retention of staff/contractors was always done on the premise that they were the best person for the role and that they could deliver value to an organisation that was ultimately subsidised by the Victorian taxpayer. He did not engage the services of 'good friends'.
- As CEO, and the leader of an organisation with 1500 employees and 12 million train and coach customers, he was reliant upon and trusted the advice he received from his executive leadership team.
- The Board of V/Line was apprised and approved of changes made to the executive general managers and their respective remuneration levels.
- His departure from V/Line in February 2016 was completely unrelated to the matters the subject of this investigation by IBAC.

In relation to the view that Mr Taifalos inappropriately intervened to direct Human Resources to stop asking Mr Clifford for information to facilitate probity checks, Mr Taifalos disputes this occurred.

### V/Line's response

Mr James Pinder, as CEO, acknowledges the Operation Lansdowne findings exposed improper actions and behaviour by some former senior V/Line staff who failed to follow recruitment, procurement and conflict of interest processes existing at that time. He states such actions and behaviour are not condoned by V/Line and that it is important to note that no risk to public safety was identified as a consequence.

#### **Alan Clifford (section 1.7.3) / Required qualifications (section 6.5.2)**

In regard to the report discussion concerning the GSERP, V/Line responds that as General Manager – Rolling Stock, Mr Clifford was not an executive and did not directly report to the CEO. Acknowledging the issues with his salary level, this GSERP requirement did not apply.

#### **Recommendations (section 8.2)**

##### **Recommendation 4**

In relation to Recommendation 4, Mr Pinder says he will provide a report to IBAC by 31 December 2018 detailing how issues identified in Operation Lansdowne have been addressed, including how V/Line has strengthened its systems and controls in relation to procurement, recruitment and conflicts of interest.

Mr Pinder also states that V/Line has taken, or commenced, action prior to receipt of the report across the following areas.

### Strengthening the integrity culture at V/Line

Mr Pinder states that steps taken or commenced by V/Line include:

- issuing all employees a revised code of conduct
- holding sessions with the Board and executive leadership team focused on integrity issues
- annual sessions with executive and senior leadership teams focusing on procurement and recruitment
- introducing a professional standards and governance e-learning course
- strengthening mandatory induction training for employees and contractors around public sector values, V/Line policies, integrity and conflicts of interest
- commencing recruitment for a General Manager – Forensics & Integrity, who will have responsibility and oversight for fraud and corruption training and awareness, monitoring compliance, managing declarations of conflicts of interest, and supporting internal and external audits and investigations
- commencing the process to engage an external Whistleblower & Integrity Reporting hotline service for employees, contractors and members of the public.

### Procurement

Mr Pinder states that while V/Line considers its previous procurement policy and procurement operations procedure (procurement documents) were effective in relation to the majority of procurements, they are subject to ongoing review. He also states that, in early 2017, an external review was undertaken to comprehensively align V/Line's procurement documents with the best practice guidelines issued by the VGPB, IBAC and the VPSC. Mr Pinder says ongoing changes to these documents include:

- strengthening the approval process and narrowing the scope for exemptions to standard procedures and requiring all exemption requests to be reported to the Procurement Oversight Committee (POC)
- requiring immediate reporting of any significant risks or incidences of non-compliance to the CEO
- expanding the requirements regarding supplier education, performance management and invoice management to all staff with delegated authority to act on behalf of V/Line in relation to procurements
- creating a single, clear checklist for use in purchasing of goods and services less than \$150,000
- implementing a requirement for all contractors to abide by the Victorian State Government Procurement – Supplier Code of Conduct which was issued on 1 July 2017.

Mr Pinder also states that V/Line will further review the coverage of its third-party probity pre-qualification process and how it can be used to strengthen procurement. He further says that standing offer arrangements with panels of contracts have been implemented for procurement in frequently-used categories of products and services to reduce risk where contractors need to be engaged urgently, and that oversight of procurement is being undertaken by the POC.

## Appendix B: Natural justice requirements and responses

### Recruitment

Mr Pinder states that V/Line considers earlier versions of its probity of personnel procedure and its recruitment and selection procedure (recruitment documents) were effective in relation to the majority of recruitments; however, these documents have been, and will continue to be, reviewed and revised in the same way as the procurement documents.

Mr Pinder also states that:

- the creation of new roles involves role justification, consideration of remuneration bands to ensure parity, and multiple-sign offs from different areas within V/Line
- revisions to the probity of personnel procedure are being developed to take into account 'red flags' in respect of probity issues
- V/Line's audit program will provide assurance on the above improvements and an external audit conducted in early 2017 did not lead auditors to believe systemic issues exist within V/Line regarding controls and processes surrounding recruitment and consultant engagement.

### Conflicts of interest

Mr Pinder states that V/Line's overarching conflicts of interest procedure was updated in April 2017, and is continuing to be reviewed. V/Line has expanded the conflict declaration and management process to include:

- all members of a recruitment panel, whether conflicted or not, are required to complete a conflict of interest declaration and management form, and if necessary, a management plan is prepared
- new suppliers are required to complete a conflict of interest declaration and management form as part of the on-boarding process.

### Ms Andree Weavers' response

Ms Weavers states the following:

1. Students were enrolled according to approved procedures, including some by her.
2. Kangan, at times, varied its enrolment processes with some of its training partners. In this instance the process was varied in consultation with and approval by the Academic Registrar. This variation was recorded in the agreement between TayTell and Kangan. Enrolment was a two-step process. A TayTell trainer was trained and registered as a Kangan Authorised Enrolment Officer (AEO) to check all of the eligibility requirements. Later, an internal Kangan employee (in this case, Ms Weavers) would sign the enrolment form on behalf of the external AEO.
3. In retrospect, Ms Weavers can see that this may not have been the best process, however it was the process approved and recorded in the agreement.
4. Her projects involved the more traditional model of enrolment so she was confused three years later when examined during Operation Lansdowne's public hearings.
5. Her position description and key performance indicators did not include the need to be able to detect fraud. During her entire employment with Kangan, she never received any fraud related training. Fraud had never been raised in annual refresher training for AEOs, nor had she ever been offered fraud awareness training. Furthermore, she has never undertaken fraud training at any other organisation she has worked for.
6. Members of the Kangan Business Development team were each assigned specific projects, and she maintains that her involvement with TayTell was minimal. She states she was not involved in establishing the TayTell project, nor the ongoing administration. Ms Weavers briefly met with Ms Taylor and Heather Taylor on a few occasions while filling in for her colleague, Mr Hodgson in late 2014. She states she undertook this additional role while also continuing to perform her own workload.
7. Included in the documentation was the TayTell/ Kangan contract which prescribed the approved enrolment process and which she followed.

### **Overview (section 5.1)**

In regard to acting systematically in breach of Kangan's compliance requirements in allowing enrolments to be processed without proper checks, Ms Weavers refers to paragraphs 1 – 7 above.

### **Andree Weaver's role (section 5.6.1)**

In regard to her role in collectively managing the TayTell agreement and being team leader in respect of compliance, Ms Weavers refers to paragraph 6 above.

### **Requirements to sight ID (section 5.6.1)**

In regard to requirements to sight identification during enrolment, Ms Weavers refers to paragraphs 1, 2, 4 and 7.

### **Ms Weavers' evidence (section 5.6.1)**

In regard to evidence provided during public hearings that Ms Weavers was unaware that some of the students were employees of Zinfra, not Jetstar, she refers to paragraph 6 above.

Ms Weavers further adds that she had never heard of the names Zinfra or ZNX until late 2015 or early 2016 when her colleagues attended a meeting with that company. She says she has never had any interactions with this company or its employees.

In relation to statements in the report regarding Ms Weavers' departure from proper process and practice, Ms Weavers says she considers this is conjecture in that it contains no facts and does not add anything of value to the report other than to malign her, making it unfair. Ms Weavers repeats there was no departure from the proper process and refers to paragraphs 2, 4 and 7 above.

Ms Weavers says her responses and general demeanour during her examination were influenced by a number of factors, including supporting a seriously ill family member, memory lapse issues, and being surprised and unprepared at critical questioning around some of her conduct. She says she believed she was present to assist IBAC with 'technical' advice, not to defend herself of wrongdoing. Further, she says that questions seemed to be leading her to give particular responses and did not leave opportunity for her to explain or add to her answers.

Ms Weavers says that because her work was intensely governed by intricate, interlocking and constantly changing rules, no answer is true for all time. She says that she has learned her job organically over a number of years and sometimes has had difficulty in explaining them to a 'lay' person, however she was at pains to do her best.

Ms Weavers adds that Kangan processes had changed many times since 2014. She had not seen the documents tabled for her comment for three years. Nor did she remember the context of the documents. Consequently, she says she was led to give answers out of context and that were not a true representation of what had occurred in 2014.

### **Failure to oversee training (section 5.7)**

In regard to the failure of Kangan staff conducting site inspections to oversee training and assessment, Ms Weavers refers to paragraph 6 above.

Ms Weavers further adds that when they were advised of the possible ASQA audit, she did take the lead in respect of preparing all of their projects for the audit. She states the email referred to in this report may lead people outside the unit to suppose that she was team leader in regard to compliance. Ms Weavers says that in general, they worked together collaboratively.

### **Missing documents did not prompt a visit (section 5.7.1)**

Ms Weavers states that Kangan was notified when there was an impending ASQA audit. As part of her normal audit preparation, Ms Weavers checked electronic files for all projects, including TayTell, and prepared a checklist. She says that unfortunately, she searched the wrong folder, which resulted in the TayTell checklist wrongly showing that important documents were missing. She was advised later that day, that all documents were found in another Kangan folder. Ms Weavers claims to having resolved the issue, and she dismissed it from her mind so she had no recollection of it and, when questioned in July 2017, she was unable to explain the checklist at the public examination.

## Appendix B: Natural justice requirements and responses

Ms Weavers says she presumes that this checklist was found among the electronic and hardcopy documents that had been provided to IBAC in early 2016. However a thorough review of the Kangan documents would have revealed the presence of all required documents before her examination.

Ms Weavers further adds that it was her job to oversight compliance and therefore it was of concern to her that Kangan was always compliant. However in this case, this was an ASQA (national training authority) audit whereby it is not funding immediately at risk, but the reputation as a training provider. Thus, she states, the inference that she was only concerned with protecting Kangan's revenue source is incorrect. She says all of the required documentation was in place and the email alert had not been required.

### **Complaints from students received after receiving statements of attainment (section 5.8.1) / Bury and mislead: internal Kangan management of the Zinfra issue (section 5.9)**

Ms Weavers says the following:

- this report does not take account of a total of 45 (25, 15, five) years of conscientious and loyal service to Kangan by the three staff
- there is no plausible reason why she and her colleagues would compromise their integrity and their careers. Simply going to work to maximise profits for Kangan is not a healthy long term goal for any employee. Nor is it an ingredient for job satisfaction. She was a salaried employee receiving no retainers, commissions or bonuses. They were also dupes of a sophisticated fraud.

In addition, Ms Weavers refers to situations from her own experience that she believed were similar to those outlined in the report and that turned out to be innocent. She says that an example is where a group of ten students had forgotten that they were Kangan students even though she had personally met and enrolled each one of them.



**OPERATION LANSDOWNE**  
South West Institute of TAFE  
Response

**3 November 2017**



[www.swtafe.vic.edu.au](http://www.swtafe.vic.edu.au)

## Appendix C: South West Institute of TAFE's interim response to IBAC Recommendation 1

### IBAC Recommendation

#### **Recommendation 1**

The CEOs of South West Institute of TAFE and Bendigo Kangan Institute of TAFE respectively to provide IBAC with reports by 31 December 2018 on how they have addressed the issues identified in Operation Lansdowne, including how they have strengthened systems and controls for overlooking third party agreements, ensuring compliance with those agreements and implementing stronger controls around student proof of identity.

## **Executive Summary**

South West Institute of TAFE (the Institute) is a publicly funded training organisation that is registered as a training provider with the Australian Skills Quality Authority (ASQA). The Institute is located in the south west region of Victoria with training predominately delivered from Warrnambool, Portland, Hamilton and the great south coast.

The Institute is committed to providing quality education and training and its values are closely aligned to the Victorian Public sector values, including responsiveness, respect, integrity, leadership, impartiality, accountability, and human rights.

During 2013 and 2014 the Institute identified several significant discrepancies in its training agreement with Taytell Pty Ltd. The Institute took immediate action to investigate and rectify these concerns and, at all times, maintained an open and transparent reporting process with the Institute Board. During the subsequent engagement of externally appointed auditors and investigators the Institute continued to identify, report and action internal control deficiencies and have included in this report our current position on each issue and the process taken to mitigate associated risks.

Presently, and as demonstrated by our actions over the past 3 years, the Institute continues to review and implement Institute identified rectification strategies. The Institute welcomes the findings from the Independent Broad-based Anti-corruption Commission's (IBAC) Operation Lansdowne draft Special Report and will incorporate these findings and recommendations as part of our existing strategy.

In reference to the falsely claimed funds by Taytell from South West TAFE and the Victorian Government funding received by the Institute, we remain committed to working with the Department in establishing appropriate actions for the repayment of these misappropriated funds.

### **Our culture is our main focus**

The Institute embodies our Institute values with the aim to further develop an open and transparent culture. As the leading educational and training provider in our region our Institute is driven to provide a workplace culture that demonstrates best practice to all stakeholders including students, staff, industry and the community.

Our Institute's senior leadership team recognises the importance of the role we play in creating a positive integrity based culture that encourages open, transparent and ethical behaviour. As the leading education and training provider in our region the development of an ongoing training program for all staff to understand and become aware of fraud identification and reporting is paramount in ensuring the Institute becomes the region's organisation of best practice.

Since identifying control and systems deficiencies in 2014 the Institute has implemented a continuous improvement program that focuses on improving our culture through refining appropriate policies and processes in relation to contract management, improving employees understanding of fraud and corruption, reviewing and implementing systems and controls and providing an encouraging environment where employees can identify concerns in a safe and encouraging environment.

### **Our key achievements**

The Institute has made significant progress in implementing key reforms across the organisation resulting in a more ethical and transparent culture. These reforms include:

- Ongoing professional development for all staff including fraud awareness and reporting training
- Leadership training focussing on conflicts of interest, good governance and contract management
- Improved internal systems and controls

# Appendix C: South West Institute of TAFE's interim response to IBAC Recommendation 1

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## 1 INTRODUCTION

The Independent Broad-based Anti-corruption Commission (IBAC) commenced public examinations into allegations of serious corruption involving the Victorian vocational education and training, and transport sectors on 27 June 2017.

The examinations are part of IBAC's Operation Lansdowne, which is investigating allegations of serious corrupt conduct at South West Institute of TAFE, Bendigo Kangan Institute and V/Line.

Operation Lansdowne relates to the investigation of the following:

- circumstances surrounding the awarding of certain qualifications, including whether current or former officers of South West Institute of TAFE or Bendigo Kangan Institute misused their position to award or interfere in the awarding of qualifications.
- circumstances surrounding the negotiation, execution, implementation and management of third party training agreement.
- circumstances surrounding the recruitment of certain officers and engagement of certain contractors at V/Line.
- sufficiency of V/Line's systems and processes to ensure appropriate accountability for the expenditure of public money.

## 2 BACKGROUND

South West TAFE (the Institute) entered into a third party Agreement with Taytell Pty Ltd (Taytell). The agreement was to provide training services which included the Certificate IV in Engineering. The commencement date of the Agreement was 1 January 2013. The document was signed by both parties on 26 July 2013.

The agreement makes no reference as to who were to be the recipient(s) of the training services to be delivered by Taytell. The sole director and shareholder of Taytell is Rebecca Taylor. Ms Taylor's principal contact within the Institute was Maurice Molan who was at that time employed as the Executive Manager Business Development and later Executive Manager, Education.

HESG paid a total of \$2,240,557.00 (excluding GST) to the Institute for the alleged training based on the data entered by the Institute into the student records system. Under the Institute's Agreement with Taytell, it paid Taytell a total of \$1,824,134.40 (including GST) for training allegedly provided to students representing an 80/20 split of revenue as defined within the Agreement.

## 3 KEY FINDINGS FROM IBAC

Through the Operation Lansdowne hearings, the Independent Broad-based Anti-corruption Commission (IBAC) identified that the Institute needed to improve on the following:

- Processes, policies and/or systems for the negotiation and management of third party contracts, including the quality assurance of the training and delivery.
- Processes and controls around student proof of identification.
- A general lack of awareness of the risk of fraud associated with third party agreements.

Since the Institute identified, investigated and reported the alleged misappropriation of funds in 2014 there has been an ongoing review of existing practices that has resulted in the implementation of strengthened systems and controls across the Institute.

Throughout this review the Institute has also focused on increasing the awareness and understanding of potential fraud related activities and had implemented an educational program that encourages identification and reporting of such risks.

## Appendix C: South West Institute of TAFE's interim response to IBAC Recommendation 1

### 4 CULTURE

In 2012-2013 there were significant changes to the government funding model of the VET Sector severely affecting TAFE Institutes' ability to remain financially viable. The government funding for Registered Training Organisations (RTOs) extended to not just TAFE Institutes but to private RTOs and due to the accessibility of government funding in the VET Sector the number of private RTOs increased dramatically.

During this period the Institute was forced to undergo a major restructure that saw a significant amount of redundancies across the organisation. This major restructure was in response to the new education and training funding environment in which the Institute operated with the aim to remain competitive and financially viable.

Staff morale and culture decreased during this time, with the large number of department and staff redundancies affecting employee morale. The uncertainty regarding long term employment created a culture of poor communication across the organisation resulting in the failure to maintain an open communication culture.

#### **Managing conflicts of Interest**

The Victorian Public Sector Commission identifies that management of conflict of interest is fundamental to ensure high levels of integrity and public trust in the Victorian public sector. Operation Lansdowne raised concerns regarding conflicts of interest within procurement processes. In response to these findings we believe it important to ensure clear processes are in place to identify, manage and monitor conflicts of interest.

The Institute is implementing policies and process that will assist our staff in identifying potential, perceived or actual conflicts of interest and how to appropriately report and manage these conflicts. The institute has incorporated conflict of interest into the induction process to ensure all new staff are fully aware of the Institutes conflicts of interest processes. Further to this we have identified conflicts of interest as a key area of focus when developing our workforce development plan and will ensure continual training is provided to all staff.

In the Victorian Public Sector Commission's 2017 People Matter Survey, 78% of our staff agreed they had received information about our policy on giving and receiving gifts, benefits or hospitality, and 80% agreed they had received information about our policies and procedures to assist employees avoid conflicts of interest.

#### **Protected disclosure awareness**

The Institute has placed a focus on ensuring our staff are aware of their options for reporting suspected fraud and corruption through a targeted internal educational program. Protected Disclosure is now continually promoted within the Institute to ensure staff know what they can do in the event they suspect fraud and corruption. We have seen a significant improvement with our process through our people matter survey with a 25% increase from our 2016 to 2017 results with 68% of our staff indicating awareness to the Institutes processes for supporting the Protected Disclosure Act 2012.

In response to previous Victorian Public Sector Commission's People Matter Surveys and internal practices over the past three years the Institute focused on an education campaign to raise staff awareness in such areas as protected disclosure, conflict of interest and fraud and corruption. This has resulted in significant improvements from previous years.

As a result of our revised continuous improvement educational program for all staff our 2017 People Matter Survey highlighted significant staff awareness and improvements in the following key areas over the past 2 years:

	<b>2017 Results</b>	<b>Movement From 2016 Results</b>
The Code of Conduct for Victorian public sector employees	<b>76%</b>	<b>+27%</b>
The Public Sector values	<b>68%</b>	<b>+29%</b>
Organisation's processes for reporting improper employee conduct	<b>86%</b>	<b>+24%</b>
Organisation's processes in place to support the Protected Disclosure Act (2012)	<b>68%</b>	<b>+25%</b>
My organisations policies and procedures to assist employees avoid conflict of interest	<b>80%</b>	<b>+34%</b>

#### **Staff morale**

The Institute has worked hard since 2014 to address the poor staff morale that resulted from the major restructures that took place throughout 2012-2013. The staffing adjustments that followed was a key factor in staff not speaking up and identifying potential issues with the processes and lack of oversight of the Taytell Training Services Contract with many fearing reprisal and loss of jobs.

We continue to place a focus on our staff to ensure they are provided with stability and avenues to raise their concerns. As a result of focussing on the health and well-being of our staff over the past three years we have seen a steady increase in staff satisfaction and in the 2017 Victorian Public Sector Commission's People Matter Survey our results showing a 7% increase from the 2016 results, with 68% of staff satisfied with their employment at the Institute.

## **5 LEADERSHIP**

Operation Lansdowne identified the following leadership failures:

- lack of Institutional governance processes
- lack of due diligence or review of the training services contract
- inappropriate actions of an Executive Officer

Further to Operation Lansdowne's findings the Institute through its own internal investigations identified the need to improve the induction of Executive officers in accordance with the Victorian Public Sector's Code of Conduct with particular focus on:

- Roles and responsibilities of Executive Officers
- Good governance, ethical leadership and accountabilities

The Institute has placed a focus on workforce capability and leadership training with ongoing professional development identified as a key focus for our senior leadership team. This training is incorporated into our workforce development program for 2018 and will be extended to those staff in roles that have been identified as key succession planning roles across the Institute.

We have provided a number of professional development opportunities to date with particular focus on integrity and believe that this has increased the capabilities and knowledge of our leadership group in creating a strong ethically positive culture across the organisation.

A number of processes have been put in place regarding the due diligence and review processes of all training contracts which is further discussed in section 6.

#### **Strong ethical leadership**

Operation Lansdowne has demonstrated that a strong ethical culture is paramount in reducing fraud and corruption within the public sector. As an educational institution it is recognised that at all times we must demonstrate a strong

## Appendix C: South West Institute of TAFE's interim response to IBAC Recommendation 1

ethical culture that begins at the top through strong ethical leadership and commitment. Our Institute has placed a focus on ensuring our leaders promote an ethical culture that focuses on integrity and respect.

### 6 INSTITUTE CONTROLS

Operation Lansdowne identified a number of inadequate internal control processes to reduce the risk of fraud and corruption with third party agreements, and that the Institute lacked appropriate controls in other functions that assisted in fraudulent activities.

The following inadequate controls were identified:

- Contract Management
- Policies, procedures and processes
- Student Management System access rights
- Student eligibility & proof of identity

#### Contract Management

IBAC's Operation Lansdowne found the following contract management failures:

- inadequate oversight and quality assurance of the training delivered through the Taytell contract
- lack of processes, policies and/or systems for the negotiation and management of third party contracts
- lack of action on red flags evident throughout the contract
- lack of understanding regarding the Department of Education and Training's (Department) VET Funding Service Agreement regarding subcontracting arrangements

As identified in Operation Lansdowne, the Institute implemented a number of controls to strengthen our contract management processes including:

- improved policies, procedures and guidance material for oversight of all training contract arrangements whether third party or delivered through the Institute
- more rigorous approval process for third party contracts with requirement of a business case and executive approval for training contracts involving a significant amount of funds
- stronger internal audit process, which included reviews of contract training delivery and overall contract reviews
- implementation of a revised Contracts Officer role to oversee all training contracts and independently monitor the negotiation, implementation and review of contracts.

The Institute continues to review its current processes in relation to contract management to ensure we have appropriate controls to adequately manage and monitor all training contracts. As stated in the public examinations the Institute does not currently engage in third party training and assessment contracts (however the current processes would enable adequate review and oversight if they were considered in the future).

As part of the contract review process we are looking to adopt a contract review panel which will provide an additional control measure to ensure due diligence has been addressed. This panel will consist of key stakeholders that are relevant to the contract, including those that have compliance responsibilities within the Institute. This panel will be established for the monitoring of contracts that exceed an income threshold of \$50,000.

We see the separation of duties as a crucial control mechanism in reducing the chance for fraud and corruption and have taken this approach with our contract management process. Defining clear roles for the contract officer and contract owner was one approach taken that increases the level of accountability and responsibilities. Clearly establishing these accountabilities and responsibilities allows a level of separation and oversight by the contract officer whose main role is to ensure all contracts are reviewed and meet appropriate quality and compliance requirements and are continually monitored.

### *Board Involvement & Reporting*

The Institute's Board requires appropriate communication and reporting from the Executive Officers on all relevant strategic operations of the Institute. The Institute has adopted an open and transparent approach in accordance with our Financial Delegations Policy to ensure the Board are continually informed of all significant operations that have a material impact on the Institute.

### **Policies, procedures & processes**

Operation Lansdowne identified a clear lack of policies and procedures to adequately manage and oversee training contracts. The Institute has implemented a number of policies and procedures to ensure adequate oversight and monitoring is occurring in relation to all training contracts. As mentioned above, there has been a clear focus on ensuring our current processes are adequate and meet the needs of the Institute.

We have placed a focus on ensuring all our policies, procedures and processes at a minimum align to our regulatory requirements and obligations to ensure full compliance and accountability. Further to this we believe it is crucial to ensure our policies, procedures and processes are up to date, accurate and align to what is actually occurring through the day to day operations of the Institute. In particular, the Institute has placed a focus on the following policies and procedures in 2017:

- Financial Delegations Policy
- Contract Management Policy
- Contract Management Procedure
- Gifts and Entertainment Policy
- Conflict of Interest Policy

The Institute has ensured that the above policies and procedures assist not only in the monitoring and oversight of training contracts but the monitoring and oversight of the Institute's operations holistically to promote a strong ethical culture and maintain integrity. All Institute policies are reviewed and approved at Board level to ensure oversight and adherence to relevant legislative requirements and strategic direction of the Institute.

We continue to review our processes to ensure we are developing relevant, understandable and accurate policies, procedures and processes within our Institute to assist staff in meeting their responsibilities.

### **Student management system**

The student management system was implemented in 2013 and presented a number of implementation and amalgamation issues throughout the 2013 period. This saw a lack of oversight on access rights across the Institute and ultimately led to an Executive Officer entering false results into the system for Rebecca Taylor in the Certificate IV in Engineering Qualification.

The student management system access rights that allow the entering of student participation and results has been reviewed with control managed through the Student Management System Team. Employees who are not required to enter such information into the system are not granted access. Executive Officers do not have access to the system and where such access is required, 'view only' access is granted.

Moving forward, the Institute will implement a Data Analytics Team whose key focus will be to provide relevant and timely information to inform decision making across all aspects of the organisation.

## Appendix C: South West Institute of TAFE's interim response to IBAC Recommendation 1

### **Student eligibility & proof of identity**

It was evident through Operation Lansdowne that the students enrolled under the Taytell contract were not aware of their enrolment in the Certificate IV Engineering Qualification.

It was also evident that:

- Many students were in fact not eligible for government subsidised training in accordance with the eligibility requirements under the VET Funding Contract.
- Many students were not aware that their personal details had been provided to the Institute by Rebecca Taylor through an Institute enrolment form.
- The '2013 Guidelines about Determining Student Eligibility and Supporting Evidence' section 2.1b required RTOs to sight evidence of eligibility (identification), with this to occur by an authorised delegate of the RTO. At that point in time Rebecca Taylor was an authorised delegate in accordance with the Institute's Delegation of Authority Register.

As a result of this Zinfra Group employees were enrolled at the Institute where their personal details were provided without consent and adequate verification was not conducted by Rebecca Taylor as an authorised delegate of the Institute.

As identified previously the Institute no longer enters into third party contracts, reducing the risk of students being enrolled without their knowledge and consent.

The enrolment process is fully completed by the Institute, including the completion of the Pre-Training Review, assessment of eligibility and the citing and retaining of identification. There are a number of guidance documents that are utilised by the customer service and teaching departments when assessing eligibility, citing and retaining student identification in accordance with the Skills First Program – VET Funding Contract.

The customer service department are provided continual training in accordance with the Skills First Program – VET Funding Contract to ensure they are fully aware of the requirements for eligibility and evidence of identification and in order for the Institute to be fully compliant.

The Department enforced the use of a Unique Student Identifier (USI) in 2016 to ensure students were eligible for funding under the VET Funding contract at the point of enrolment. This requirement has been incorporated into the Institute's enrolment processes.

### **Internal audit and review processes**

In 2014 the Institute implemented a more rigorous internal audit process that aligned to our regulatory obligations. As part of this process the monitoring of internal and external audits became centralised to ensure all audits were being adequately captured into the overarching audit plan, with all findings and recommendations being addressed.

An emphasis was placed on the independent auditing of student files against the Department's Service Agreements (VET Funding Contracts) to ensure we were meeting our compliance obligations and identifying areas for improvement. In conducting these audits our approach was to gain a clearer picture of our teaching areas and identify any areas of concern. This approach extended into all third party agreements to ensure the issues identified in Taytell were not systemic.

The internal audit process saw the Audit, Risk and Finance Committee (ARF) initiate additional reporting requirements to assist with achieving an improved compliance status and allow for greater controls to ensure the Institute continued to meet its compliance obligations under the Department's Service Agreements.

The Institute's Internal Auditors continue to develop our annual audit plans based on our current risk register, identifying our high and extreme risks as focus areas. Not only do they review the risk register they also consult with key stakeholders of the Institute to better understand the operations of the organisation and ensure a tailored audit plan is structured to assist the Institute in meeting its strategic objectives along with providing quality training to the region.

## **7 TRAINING AND AWARENESS**

Throughout the investigation it was evident that there was a lack of training and awareness around fraud and fraud Management. It was evident in the People Matter Surveys conducted on an annual basis that staff were not aware of what actions were required if potential fraud and/or corruption was identified.

The Institute has placed a focus on ensuring all employees are provided the appropriate training and awareness regarding risk and fraud management through the following process.

#### **Induction**

The Institute's induction processes have been a key focus in 2017 to ensure all staff are provided with appropriate training and awareness of the Institute's values, culture, systems and processes upon commencement.

The employee inductions have been broken into two categories; the Corporate Induction and the Workplace Induction. The Corporate Induction is designed to provide a high level overview of the Institute's values, culture, strategy, goals and departments and the Workplace Induction is designed to provide greater understanding of specific areas and processes at the Institute to prepare and support staff in their role.

Risk and Fraud Management is a component of the Corporate Induction which looks at all aspects of risk and fraud and provides employees with an understanding of fraud and what processes and tools the Institute has in place should they suspect misconduct or corruption.

#### **Training**

In 2017 mandatory training was implemented and completed by all staff, within the training there was a focus on fraud management and prevention which provided staff with an understanding of current Institute policies and processes regarding fraud and corruption. Our aim with this mandatory training was to ensure all staff were fully aware of what they could do if they suspected misconduct, fraud and/or corruption and provided them with the tools needed to act appropriately.

#### **Workforce Development Plan**

Throughout 2017 significant projects and staff training conducted across the Institute has provided both future direction and information to inform future Workforce Development Plans. The 2018-2019 Workforce Development Plan has been developed to maintain the momentum of the previous Workforce Development Plan and addresses future directions of the Institute. The plan places a focus on organisational capabilities and is aligned to our strategic objectives and values with the aim to build a stronger ethical culture within the Institute.

In order to achieve the objectives set out in the plan, it will be broken down into eight streams which focus on key organisational capability areas that are aligned to the Institute's strategy and values.

Of the eight streams within the plan the streams below place a particular focus on increasing the Institute's integrity, ethical culture and leadership which has been a key finding from Operation Lansdowne and the Institute's internal reviews:

- Leadership Capability
- Systems and Compliance, and;
- Ethical, Behavioural & Cultural Competence

These streams capture the Institute's commitment to improving not only its ethical culture but its systems and processes for the monitoring and oversight of fraud and corruption, risk and contract management.

## **8 CONTINUOUS IMPROVEMENT**

## Appendix C: South West Institute of TAFE's interim response to IBAC Recommendation 1

During 2013 and 2014 the Institute identified several significant discrepancies in its training agreement with Taytell Pty Ltd. The Institute took immediate action to investigate and rectify these concerns and, at all times, maintained an open and transparent reporting process with the Institute's Board. During the subsequent engagement of externally appointed auditors and investigators the Institute continued to identify, report and action internal control deficiencies and have included these in this report as well as highlighting our current position on each issue and the process taken to mitigate associated risks.

In line with the findings and recommendations from Operation Lansdowne and Institute identified findings, the following further actions have been identified:

### **Implementation of an Integrity Framework**

Operation Lansdowne highlighted a number of deficiencies within the Institute's systems and processes, many of these deficiencies relate back to the lack of integrity by some employees within the Institute. We believe it is important to promote a culture of integrity, trust and respect underpinned by the Institute's and public sector values and restore the confidence not only in the Institute but the wider Vocational and Education Sector.

The Integrity Framework will play a central role within the Institute in preventing misconduct and to deter, detect and prevent corruption. The Integrity Framework will support the organisations ethical culture, values and will be embedded in all aspects of the organisations operation. The Integrity Framework will strengthen the Institute's resistance to corruption and promote ethical leadership and behaviour from senior management to embed at every level within the Institute.

### **Implementation of a Speak Up Program**

In December 2015 the Department launched a Speak Up service for employees to report their concerns of improper conduct confidentially and anonymously to an external provider. Since its launch the Speak Up service has received approximately 287 calls, with the Department continuing to strengthen its reporting avenues.

The Institute believes the Speak Up Program would be beneficial in the Higher Education and Skills Sector in encouraging staff to report improper conduct and assist in building a culture where improper conduct will not be tolerated and valid complaints will be addressed.

The Institute has identified that they wish to be a 'Pilot Institute' for the speak up program and sees this program as one that will provide employees with a safe avenue to report improper conduct and strengthen the ethical culture of the Higher Education and Skills Sector.

### **Review of the Fraud & Corruption Control Framework**

The Institute is currently conducting a full review of our Fraud & Corruption Control Framework ahead of implementation between December 2017 - February 2018. This review has included the development of a Fraud & Corruption Control Plan which documents the strategic and operational approach to controlling fraud and corruption within the Institute. It provides an overview of how fraud and corruption risks will be managed and compiles with the Australian/New Zealand Standard *AS/NZ ISO 31000:2009 Risk Management Principles and Guidelines*.

The Institute is committed to preventing and controlling fraud and corruption whether initiated within the organisation or externally.

The Fraud & Corruption Control Plan aims to:

- build a culture within the Institute that seeks to prevent fraud and corruption
- reduce the potential for fraud and corruption within and against the Institute
- explain how the Institute will use risk management practices to prevent and control fraud and corruption
- provide guidance on how any suspected instances of fraud or corruption within the organisation will be dealt with by the Institute.

#### **Review of the Risk Management Framework**

The Institute is currently conducting a full review of our Risk Management Framework ahead of implementation between December 2017-February 2018. The framework's objective is to allow the Institute to meet its strategic objectives, whilst complying with relevant legal and regulatory requirements, through the effective management of risks. The framework's design is underpinned by the principles and key elements of the Australian/New Zealand Standard *AS/NZS ISO 31000:2009 Risk Management – Principles and guidelines*.

The Institute will focus on training and awareness for all staff in relation to risk management to ensure they are fully informed of the Institute's risk management processes and the avenues they can take to report suspected risks to the Institute.

#### **Development and Implementation of a Leadership Charter**

Operation Lansdowne has demonstrated that a strong ethical culture is paramount in reducing fraud and corruption. Our Institute has placed a focus on ensuring our leaders promote an ethical culture that focuses on integrity and respect.

To support this, the Institute will develop a Leadership Charter which will outline the behaviours expected of all leaders at the Institute. All leaders will be required to sign up to and abide by this Leadership Charter to ensure they are acting in accordance with the Institute's mission and values.

#### **Implementation of a Specialised Data Analytics Team**

The Institute will implement a specialised Data Analytics Team in 2018 that will focus on providing relevant and timely information to assist in making informed decisions across all aspects of the Institute.

The Data Analytics Team will provide an added layer to internal audit and compliance through the process of examining data to identify and predict anomalies and trends. A key focus for this team will be on data analytics relating to fraud and corruption to assist the organisation in making informed decisions in relation to control measures.

#### **Review of Contract Management Process**

Since the review of the contract management process over the past 2 years the Institute has revised the Contract Officer role and appointed a new Contracts Officer in April 2017. The Institute has undertaken a full review of the current contract management processes with the aim of increasing the independent oversight of all training contracts and ensuring a clear process is undertaken when negotiating, implementing and monitoring training contracts.

As mentioned in section 6 of this report the Institute will implement a contract review panel which will provide additional due diligence and oversight of contracts that exceed an income threshold of \$50,000.

The revised contract management process will be rolled out in December 2017 with a number of workshops and training provided to key stakeholders to ensure understanding of the processes that must be followed by all Institute employees.

## **9 FINAL COMMENTS**

The Institute is committed to providing quality training to our region and ensuring a safe and ethical working environment for our employees. To ensure we maintain the confidence of the VET Sector we have taken, and will continue to take action to improve our Institute's ethical culture and values.

The Institute is committed to strengthening our integrity and developing and implementing appropriate systems and controls.

**Felicity Melican**  
Board Chair

**Mark Fidge**  
Chief Executive Officer

## Appendix D: 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

