

# **VICTORIAN** **ombudsman**

**Conflict of interest in the Victorian public sector –  
ongoing concerns**  
**March 2014**

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# Letter to the Legislative Council and the Legislative Assembly

To

**The Honourable the President of the Legislative Council**

and

**The Honourable the Speaker of the Legislative Assembly**

Pursuant to sections 25 and 25AA of the *Ombudsman Act 1973*, I present to Parliament a report into *Conflict of interest in the Victorian public sector – ongoing concerns*.



G E Brouwer

**OMBUDSMAN**

11 March 2014

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## Executive summary

1. Conflict of interest is a key challenge facing the Victorian public sector. Despite multiple reports and investigations by my office into this issue, it continues to be a significant theme in many complaints to my office. It is worrying that it occurs all too frequently in the Victorian public sector. Also, it can jeopardise the proper expenditure of significant public funds.

***Conflict of interest is a key challenge facing the Victorian public sector. It is worrying that it occurs all too frequently.***

### Prevalence of conflict of interest in procurement and recruitment

2. I have observed a growing trend in complaints about conflicts of interest in procurement and recruitment; two significant risk areas for all Victorian public sector agencies.

***Conflict of interest, badly managed, undermines the integrity of public administration and government.***

3. During investigations conducted by my office in recent years, I have identified numerous instances where public sector employees have failed to identify, declare, manage and avoid conflicts of interest during procurement and recruitment processes. In several of these cases, conflicts of interest were disclosed to supervisors yet public sector agencies failed to take adequate action in response. Lax management facilitates unethical and corrupt conduct.

***I have identified numerous instances where public sector employees have failed to identify, declare, manage and avoid conflicts of interest.***

4. Such failures by public sector agencies and their employees can undermine the probity of those processes, raise questions or doubt about value for money and appointments based on merit, and increase the opportunity for undue influence and improper conduct. Case studies in this report include instances where:
  - a council officer was involved in the recruitment and ongoing supervision of her husband
  - a statutory body employee engaged his own company and approved payments to the company totalling several hundreds of thousands of dollars
  - a council officer was involved in the contracting of her spouse and recruitment of her cousin.

### **Importance of policies, education and training**

5. Policies, education and training play a crucial role in addressing conflict of interest. There have been some gradual improvements in Victorian public sector agencies' conflict of interest policies and procedures and in the awareness of conflict of interest across the sector. However, the number of cases investigated (and currently being investigated) by my office indicate that there are sizeable gaps which need to be addressed.

### ***Policies, education and training play a crucial role in addressing conflict of interest.***

6. In particular, I have identified inadequacies in agencies' conflict of interest policies and procedures, the absence of policies entirely, and a lack of ongoing training and education provided to staff on conflict of interest.
7. In this report I have highlighted a range of key good practice principles for dealing with conflicts of interest. Agencies should consider whether their own policies and procedures reflect these.

### **The need for an ethical culture and strong leadership**

8. Strong leadership and the development of an ethical culture are also important to ensure conflict of interest policies are enforced and employees know what is required of them. In several investigations I have identified instances where cultural factors within organisations have negatively influenced the management of conflicts of interest.

### ***Strong leadership and the development of an ethical culture are also important.***

9. While the identification and management of conflicts of interest are the responsibility of individual agencies and their employees, I consider that a central agency, such as the State Services Authority should take responsibility for leading, promoting and reinforcing a sector wide approach and strategy for addressing conflict of interest.

## **Recommendations**

10. I have made two recommendations in this report, that the State Services Authority:

### **Recommendation 1**

Review its guidance materials on conflict of interest to ensure the issues highlighted in this report are addressed.

## **Recommendation 2**

Consider further ways in which it could support greater awareness and action on the part of public sector agencies in relation to conflict of interest, with an emphasis on:

- the role of line managers in dealing with conflict of interest; and
- the existence of conflict of interest in procurement and recruitment activities

### ***State Services Authority response***

Recommendations agreed.

## Background

11. Conflict of interest has featured consistently in my office's annual reports as a key challenge facing the Victorian public sector<sup>1</sup>. It has also been the focus of a number of my parliamentary reports<sup>2</sup> relating to investigations undertaken by my office. Despite these reports and the resultant changes, I continue to identify conflict of interest as a significant theme in many complaints to my office. It is worrying that it continues to occur all too frequently in the Victorian public sector.
12. Conflict of interest has long been a significant area of concern within the public sector. Badly managed, it undermines the integrity of public administration and government. A conflict of interest is defined as a situation where a conflict arises between public duty and private interest. The term refers to circumstances where a public officer could be influenced, or could reasonably be perceived to be influenced by a private interest when performing an official function.
13. Given the significance and prevalence of this issue, in 2006-07 I conducted a broad based review of conflict of interest in the Victorian public sector. My findings are detailed in my 2008 reports to Parliament, *Conflict of interest in the public sector* and *Conflict of interest in local government*. These reports not only raised awareness and understanding of conflict of interest in both the public sector and local government, but also led to changes to the *Local Government Act 1989*<sup>3</sup>.
14. It is evident from the complaints to my office that there remains a lack of understanding and awareness in the Victorian public sector on how to effectively and appropriately deal with conflicts of interest. I have also observed that there is a growing trend in complaints about conflicts of interest in the context of procurement<sup>4</sup> and recruitment undertaken by Victorian public sector agencies. Procurement and recruitment are two significant areas of risk for all Victorian public sector agencies. On this basis, I decided that renewed attention on conflict of interest was warranted, with a particular focus on its existence in procurement and recruitment activities.
15. In addition to the case studies contained in this report, I am investigating a number of other matters relating to conflicts of interest in procurement and recruitment which I will be reporting on in due course.

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1 For the purposes of this report, the terms 'Victorian public sector' and 'Victorian public sector agencies' refer to all bodies within my jurisdiction, including local councils.

2 Such as: *Investigation into the alleged improper conduct of councillors at Brimbank City Council*, May 2009; *A report of investigations into the City of Port Phillip*, August 2009; *Investigation into allegations of improper conduct by CenITex officers*, October 2012; *Conflict of interest, poor governance and bullying at the City of Glen Eira Council*, March 2012; *Investigation into allegations of improper conduct by a Magistrates' Court registrar*, May 2013; *Report on issues in public sector employment*, November 2013.

3 Effective 2 December 2008 and in line with my recommendations, amendments were made to the *Local Government Act 1989* including setting up a councillors' conduct panel designed as an alternative to court prosecutions to deal with misconduct relating to conflict of interest.

4 The purchase of goods and services and management of contracts under which goods and services have been purchased.



## Identification and declaration of conflicts of interest

16. Conflicts of interest can arise from a wide range of issues. Employees of public sector agencies are individuals with private interests, ranging from personal relationships and private business interests, to hobbies and memberships of sporting or community groups.
17. The identification and declaration of conflicts of interest are largely the responsibility of individual employees, as generally only the individual is aware of a private interest that is the source of a potential conflict. It is important that employees understand and are aware of the potential for their private interests to conflict with their official duties, so that they are able to identify and avoid a conflict of interest before it occurs.
18. Agencies should address conflict of interest through a preventative approach. Upon identifying a potential conflict of interest, employees should disclose it to their supervisor and discuss the circumstances in order to reach agreement about how the conflict will be managed to avoid its occurring. While potential conflicts of interest do not require formal declaration, this disclosure and discussion ensures accountability and transparency. Early identification allows measures to manage and avoid conflicts of interest to be put in place, which can also address perceptions of undue influence, partiality and improper conduct.
19. When potential conflicts of interest are not readily identified, disclosed and managed appropriately, actual conflicts of interest can occur. Not all conflicts of interest are avoidable or foreseeable. However, when they occur, they should be formally declared. Upon receipt of a declaration of a conflict of interest, public sector agencies should determine:
  - whether the conflict or the possibility of a perceived conflict of interest exists; and
  - if it does exist, how it will be managed<sup>5</sup>.
20. Public sector agencies should have comprehensive policies and procedures in place specifying the declaration process and requirements and action to be taken following a declaration.
21. It is important that declarations are made in writing and retained by public sector agencies in a central register to ensure they are accessible for future reference if necessary. Poor record-keeping is an issue I consistently identify within Victorian public sector agencies, and conflict of interest is no exception. Failure to keep adequate, centrally held and accessible records in regard to conflict of interest declarations diminishes accountability and the ability to respond to allegations of impropriety, should they arise.

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<sup>5</sup> The management of conflicts of interest is discussed in the following section of this report.

22. Public officers with certain delegated powers, such as the authority to award a contract, a financial delegation or the power to employ a person (or officers involved in such activities<sup>6</sup>), should be subject to additional conflict of interest disclosure and declaration requirements, as these are significant areas of risk for conflicts of interest. While many public sector agencies have some additional requirements in place, I continue to identify instances where public officers involved in procurement<sup>7</sup> or recruitment have failed to identify, declare, avoid and manage clear conflicts of interest.
23. This section provides a representative sample of such cases, and highlights the consequences of failures to identify, disclose and manage conflicts of interest. These cases are divided into conflicts arising from private business interests and personal relationships, as these are two of the most common types of conflict of interest cases investigated by my office.

## Private business interests

24. Private business interests represent one of the most obvious types of conflict of interest, particularly in the context of procurement. The vulnerability of this area of public sector activity to conflict of interest was highlighted in my 2008 report *Conflict of interest in the public sector*<sup>8</sup>, yet my office continues to regularly see cases where these conflict of interest issues are not handled appropriately.
25. The following case study illustrates the clear conflicts of interest private business interests can create, which in this case were not identified, declared or avoided by the public officer.

### Case study 1 – Statutory body employee’s engagement of his own company

During my 2013 investigation in relation to the conduct of a senior employee of a statutory body, I found that the employee:

- had been a director and shareholder of a private company for over 10 years;
- had engaged the company on behalf of the statutory body to provide services over a six year period;
- had personally approved payments to the company totalling several hundreds of thousands of dollars;
- had failed to declare his association to his supervisors who were unaware of his involvement in the company until my investigation; and
- conducted research on behalf of the statutory body to evaluate the effectiveness of work completed by the company, in which he had a financial interest.

6 For example, one officer may have the delegation to award a contract however other officers may also be involved in the tender process.

7 Including activities such as obtaining and evaluating quotes, sitting on tender evaluation panels, awarding contracts and contract management.

8 Victorian Ombudsman, *Conflict of interest in the public sector*, March 2008, page 22.

The employee failed to declare any conflicts of interest, despite his actions constituting a clear and significant conflict of interest. At a minimum, the employee's direct interest in the company clearly had the capacity to influence his engagement of the company on behalf of the statutory body, subsequent approval of payments and the conclusions of his research into the effectiveness of the company's work. The employee should not have had any involvement in matters relating to his company.

As a result of my investigation, the statutory body advised that it would undertake an internal inquiry in relation to the employee's conduct.

## Personal relationships

26. There is a common misconception that conflicts of interest only arise from pecuniary (or financial) interests. Non-pecuniary interests, such as personal relationships, remain a common source of conflicts of interest for public officers, particularly those involved in procurement or recruitment activities.
27. Allegations regarding nepotism<sup>9</sup> and favouritism in procurement and recruitment arise frequently in conflict of interest complaints received by my office. This issue was discussed in my recent *Report on issues in public sector employment*<sup>10</sup>.
28. Personal relationships with applicants during recruitment processes or with tenderers during procurement processes must be promptly disclosed in order to manage and avoid conflicts of interest. Failure to do so can undermine the probity of recruitment and procurement processes, raise questions or doubt about value for money and appointments based on merit, and increase the opportunity for undue influence and improper conduct.
29. There are various types of personal relationships that can create conflicts of interest. These include relationships with immediate and extended family members, friends and former colleagues, or those of a partner. Some types of personal relationships create clear and easily identifiable conflicts of interest; others can be less obvious.
30. It is important that public officers are aware of the range of different types of personal relationships that can create conflicts of interest, to ensure all potential conflicts of interest are identified (not just the obvious ones – for example, a conflict arising from an officer's relationship with their spouse). The following case studies are examples of conflicts of interest arising from personal relationships which public officers failed to identify, disclose and manage.

<sup>9</sup> 'Nepotism' refers to favouritism shown to relatives or friends by those with power or influence.

<sup>10</sup> Victorian Ombudsman, *Report on issues in public sector employment*, November 2013.

### **Case study 2 – Council officer awarded contract to company in which a friend was employed**

During a 2012 investigation, I identified that a senior council officer had been involved in the council's tender process for the lease, maintenance and servicing of hand-held parking infringement issuing devices. The officer was required to complete a probity and confidentiality declaration (which explicitly mentioned conflict of interest) as a member of the tender evaluation panel<sup>11</sup>. He failed to declare his friendship with the client manager at one of the companies that made a tender submission. The council awarded the contract to the company and the client manager personally received a commission of about \$8,000 for winning the contract.

It was a clear conflict of interest for the officer to be involved in the tender process given his friendship with the client manager, who received a direct financial benefit for winning the contract. The council officer said he had not hidden his friendship from the council (although he had not formally raised it) and he had reviewed all tender submissions on their merit. However, a reasonable observer could perceive him to have been influenced by his friendship when performing his official duties. It is not sufficient for public officers to simply assert that they have not or will not allow themselves to be influenced by a personal relationship.

The officer's failure to declare the friendship is particularly concerning given the explicit wording on the declaration form he completed as a panel member, and demonstrates a fundamental lack of understanding of conflict of interest. The officer resigned from his position at the council during my investigation.

### **Case study 3 – Council officer hired former work colleague**

In 2013 I investigated an allegation regarding conflict of interest during recruitment activities undertaken by a local council and found that:

- A council officer had been directly responsible for hiring a former work colleague<sup>12</sup>.
- The officer failed to declare the relationship in the council's declaration register and was unaware she was required to do so.
- Due to the nature of the appointment<sup>13</sup>, there was no requirement for the position to be advertised or a full recruitment process to be undertaken.
- As a result, a panel was not convened to interview the applicant, but rather the officer completed a telephone interview with him.
- The officer was solely responsible for hiring the applicant, and no other applicants were considered for the role.

While the officer appeared to have been open about her pre-existing relationship with the applicant with some colleagues at the council, her failure to declare the relationship in the council's declaration register was a breach of council policy.

<sup>11</sup> The declaration form required panel members to confirm they did not have (at that time or previously) a relationship of any nature with any potential bidders (or employees of potential bidders).

<sup>12</sup> The officer also attended the same church group as the former work colleague's wife.

<sup>13</sup> The position was initially only for a period of six months.

It hindered the council's ability to implement strategies to appropriately manage the conflict, such as removing the officer from the process entirely, or involving one or more other council officers in the decision-making process. The lack of declaration also increased the perception of conflict of interest or bias, which may have prompted the complaint to my office.

As a result of my investigation and recommendations, the council has made improvements to its recruitment training and policies and to its oversight of recruitment activities.

## Gifts and hospitality

31. Victorian public sector employees are subject to a number of regulations in regard to the acceptance of gifts and hospitality. The code of conduct for Victorian public sector employees states:

Public sector employees do not – for themselves or others – seek or accept gifts or benefits that could be reasonably perceived as influencing them.

Public sector employees comply with any policies of their public sector employer in relation to accepting, declaring and/or recording the receipt of gifts or benefits<sup>14</sup>.

32. Many agencies have provisions governing employees' acceptance of gifts and hospitality in their conflict of interest policies or gifts and hospitality policies and some also include such provisions in their procurement policies.
33. It is not uncommon for public officers involved in procurement to be offered gifts or hospitality by individuals or companies interested in winning current or future contracts, or who want to sell goods or services to a public sector agency. Decisions of public sector employees must not be influenced, or seen to be influenced, by the acceptance of gifts, hospitality or favours.
34. The acceptance of gifts or hospitality from current or prospective contractors to a public sector agency can create potential, perceived and actual conflicts of interest. This is particularly so when the acceptance of a gift or hospitality occurs during, or shortly prior to, a tender or quotation process.
35. The following case study demonstrates how the acceptance of a favour from a contractor can influence, or be seen to influence, the performance of a public officer's official duties. It also highlights the increased risk of conflicts of interest in rural towns and how these can be managed.

<sup>14</sup> Section 4.2 of the code.

#### **Case study 4 – Prison employee’s engagement of a friend’s company**

In late 2012 I investigated allegations regarding the conduct of a facility manager at a prison who had a friendship with a director of a company<sup>15</sup> he had engaged to perform maintenance and construction work at the prison. The manager had failed to declare a conflict of interest arising from the friendship. However he said that ‘everybody’ was aware of the friendship due to the small population size of the town in which they lived and worked.

While conflicts of interest can arise more frequently and be more difficult to avoid in rural towns due to small population sizes, they still need to be declared and managed appropriately. In this case, the manager’s engagement of the company was inappropriate on the basis of the clear conflict of interest arising from his friendship with the director of the company. If the conflict of interest could not have been avoided, measures should have been put in place to manage it<sup>16</sup>.

The manager also accepted an offer from the director of the company to asphalt the driveway at his home free of charge<sup>17</sup>, however did not inform anyone at the prison of the arrangement. This too raised conflict of interest issues on the basis that it could have, or could be reasonably perceived to have influenced him to favour the company in relation to future works at the prison. As a result of my investigation, the department took disciplinary action against the manager.

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15 He had also known the director since childhood.

16 For example, another officer could have had involvement in or overseen the manager’s dealings with the company.

17 The director estimated that he would usually charge about \$400 (for the cost of the asphalt and labour) to asphalt a driveway similar to that of the manager.

## Management of conflicts of interest

36. Disclosure or declaration of a conflict of interest does not in itself resolve the conflict. What it does do is allow public sector agencies and their employees to determine the measures needed to avoid or manage the conflict.
37. All conflicts of interest must be managed appropriately from the outset. Public officers have an obligation to avoid a conflict of interest before it occurs. As discussed in the first section of this report, when a potential conflict of interest is identified, public officers should disclose it to their supervisor and reach agreement about how the conflict will be managed to avoid its occurring. Management of potential conflicts of interest involves implementing measures to avoid an actual conflict of interest, or minimise the risk of an actual conflict occurring.
38. Not all conflicts of interest can be readily identified or avoided. Actual conflicts of interest can arise when potential conflicts of interest are unavoidable or have been identified but not managed appropriately. When such a conflict is identified and declared, public sector agencies need to determine how best to manage the conflict. This will usually include consideration of whether:
  - the public officer with the conflict should continue their current duties;
  - the public officer's duties should be reorganised to remove the conflict of interest; or
  - additional measures or processes should be put in place to ensure impartiality in the performance of the public officer's duties.
39. Decision-making around such considerations (including justification for decisions) and any measures put in place to manage conflicts of interest should be documented to ensure clarity and understanding of how the conflict will be managed. The effectiveness of such measures should be monitored by management to allow for review or adjustments if necessary. They should remain in place until the conflict of interest is no longer present<sup>18</sup>.
40. The management of conflicts of interest is both the responsibility of the organisation and the individual employee. It is the responsibility of senior management and the executive of an organisation to foster the organisation's culture and expectations in regard to conflict of interest, and to ensure that supervisors and managers understand how to respond when conflict of interest issues arise.

<sup>18</sup> For example, a conflict of interest may be present during a tender process and the duration of the contract. However, once the contract term expires, the conflict may cease to exist. In other cases, a conflict of interest may be present so long as the public officer remains employed in their role at the organisation. In these cases, the measures to manage the conflict should remain in place for the duration of the officer's employment.

41. In some conflict of interest cases investigated by my office, private interests giving rise to conflicts of interest were disclosed by public officers to their supervisors (or supervisors had at least some knowledge of the interest). However, too often, public sector agencies failed to take adequate action in response to knowledge or disclosure of both potential and actual conflicts of interest, and failed to implement adequate measures to manage them.
42. Managers need to have sufficient understanding of conflict of interest principles to enable them to manage conflicts properly. It has been evident in a number of cases investigated by my office that this understanding is lacking. The failure to appropriately manage conflicts of interest can undermine public confidence in an organisation and at worst, lead to improper conduct.
43. Managing conflicts of interest that arise during procurement or recruitment processes and activities is particularly important to ensure fairness, impartiality, value for money and appointments made on merit. Appropriate management of conflicts of interest also reduces perceptions of bias and favouritism, and the opportunity for improper conduct or fraudulent activity to occur.
44. This section provides examples of failures by public sector agencies to appropriately manage clear conflicts of interest, despite these conflicts being disclosed to management. The case studies demonstrate a lack of leadership and understanding of conflict of interest across organisations, which in many cases extends to senior management.

## **Private business interests**

45. Private business interests are one of the clearest types of conflict of interest and commonly arise in the context of procurement within public sector agencies. All public officers with private business interests that have the potential to conflict with their official duties should disclose them at the commencement of their employment, or as the business interest arises, to allow for prompt implementation of measures to avoid and manage the potential conflict. Discussions around avoidance and management of such potential conflicts of interest should also occur if the circumstances involving the potential conflict change materially, when an officer's line manager changes or when a new prospective conflict of interest is identified.
46. The following case study demonstrates how a potential conflict of interest can become an actual conflict when not managed appropriately, despite management having knowledge of the conflict.



### **Case study 5 – Employee of emergency services organisation procured goods through a company she co-owned**

In late 2013 I investigated and substantiated an allegation that an employee of an emergency services organisation had - at the direction of her supervisor - procured electrical goods<sup>19</sup> through a private company in which the employee had a direct financial interest (she co-owned the company with her husband). The supervisor gave this direction as it allowed the organisation to purchase the goods for the cheapest available price and within the required timeframe. The employee also processed the invoice for payment to the company. The employee's company did not make any profit from the transaction as it charged the organisation cost price for the goods.

Both the employee and her supervisor said that they did not consider the employee's involvement in procuring goods through her company constituted a conflict of interest because the company did not obtain any financial gain. I disagree with this view and consider that a conflict of interest can exist irrespective of whether any advantage is obtained.

It was a clear conflict of interest for the employee to procure goods through the company co-owned by her and her husband. Both the employee and her supervisor failed to identify this conflict of interest and failed to implement measures to manage it. If the purchase through the company was considered necessary, another employee should have procured the goods and processed the payment to the company. This did not occur.

The supervisor's decision to allow the employee to be involved in procurement from her own company demonstrated a fundamental lack of understanding of conflict of interest and is particularly concerning given his seniority within the organisation.

In light of the issues identified in my investigation, I recommended that the organisation counsel the employee and her supervisor regarding their actions and provide training to staff on its conflict of interest policy.

## **Personal relationships – family**

47. Similarly to private business interests, conflicts of interest arising from familial relationships represent one of the most obvious types of conflict of interest. Public officers should not be involved in any activities or processes where a relative is likely to be affected (whether adversely or positively). The following case studies are examples of investigations where I have found public officers to have had direct involvement in the recruitment of relatives. Despite the clear conflicts of interests arising from such relationships, and management having knowledge of the relationships, the public sector agencies failed to manage the conflicts. Case study six also highlights the importance of record-keeping in the management of conflicts of interest.

<sup>19</sup> On behalf of the organisation.

### **Case study 6 – Council officer’s engagement of her spouse and recruitment of her cousin**

In 2013 I investigated and substantiated an allegation that an employee of a local council’s fleet department had been involved in the engagement of her spouse as a contractor to perform auto-electrical work for the council.

The employee’s spouse had been the sole supplier of auto-electrical services to the council between 2005 and 2012. While the employee was not responsible for the initial authorisation of her spouse’s engagement, she had recommended him to her supervisors. The employee disclosed her relationship at this time. The employee was subsequently involved in processing and approving invoices from her spouse and allocating work to him in some circumstances.

Some years after the initial engagement, the council implemented controls to manage the conflict of interest arising from the employee’s relationship with her spouse. However, the controls were not clearly understood by all parties involved<sup>20</sup>, and as a result, the conflict continued to exist unmanaged.

The employee had a clear conflict of interest; she had a direct interest in the amount of work allocated to her spouse given that they co-owned a house and were in a relationship at the time. Despite the early disclosure of the relationship to the employee’s supervisors, the council failed to appropriately manage the conflict, even when controls were implemented. The council should have removed the employee from involvement in any activities involving her spouse, or implemented and enforced clear controls to manage the conflict.

I also identified during my investigation that the employee was directly involved in the recruitment of her cousin for a role at the council, despite her disclosure of the relationship to her supervisor. Upon becoming aware that her cousin was an applicant, the employee should have removed herself (or been removed) from the recruitment process entirely.

As a result of the issues identified in my investigation, I recommended that the council formally counsel the employee and ensure that controls to manage conflicts of interest are recorded. The council accepted my recommendations.

### **Case study 7 – Council officer’s involvement in the recruitment and supervision of her husband**

In 2013 I investigated conflict of interest allegations arising from a council officer’s relationship with her husband.

The officer’s husband had applied for a role at the council and declared his relationship with his wife (an existing council officer) in his written application. The council partly managed this conflict of interest by removing the officer from the selection panel for the role but it failed to implement further controls to ensure the officer had no involvement in the process whatsoever, as the council officer:

- remained the contact person for the role;

<sup>20</sup> Senior officers believed the controls prohibited the employee from any involvement in the procurement of services from her spouse. However, her direct supervisors believed she was able to allocate work to her spouse in some circumstances.

- prepared case studies that were used by the council in her husband's interview; and
- discussed parts of the recruitment process with her husband.

The officer's husband was the successful applicant and upon his appointment in 2009 he reported direct to his wife. He has continued to do so since. This created an ongoing conflict of interest.

It was inappropriate for the officer to have been given direct responsibility of the management and supervision of all aspects of her husband's employment<sup>21</sup> without adequate controls. The relationship between the officer and her husband created a clear conflict of interest which led to perceptions of bias, favouritism and improper conduct. Implementation of sufficient controls by the council to manage the conflict of interest would have minimised such perceptions, and the risks of improper conduct arising from poorly managed conflicts of interest.

As a result of the issues identified in my investigation, I made recommendations to the council to ensure that the conflict (and any similar conflicts) are managed appropriately. The council accepted all of my recommendations.

## Personal relationships – friendships

48. Conflicts of interest arising from personal relationships that are not familial in nature can be less obvious. It is important that public sector agencies' conflict of interest policies and procedures address all forms of personal relationships that can give rise to conflicts of interest, to ensure that even the less straightforward conflicts of interest are identified and managed. The following case study is an example of a conflict of interest arising from a non-familial personal relationship, which was not identified or managed appropriately by the public sector agency.

### **Case study 8 – Conflict of interest arising from a university employee's engagement of a catering company**

In late 2013, I investigated a university's engagement of a catering company between 2009 and 2013. During this period, the university paid the company over \$1.8 million for catering services. The company was also the university's most used catering supplier; it received almost 40 per cent of the university's total expenditure on catering services<sup>22</sup>.

During my investigation, I identified that:

- An employee of the university's events unit had a personal association<sup>23</sup> with the (now former) owner<sup>24</sup> of the catering company.
- The employee and other staff in the university's events unit had awarded a large portion of the catering work to the company.

21 This included responsibility for signing off on her husband's timesheets, undertaking performance reviews and approving expenditure for his attendance at two interstate training courses (which she also attended).

22 The remaining 60% of expenditure was divided between three other catering suppliers.

23 The employee's partner had a close friendship with the (now former) owner.

24 The company changed ownership about two years ago. The university started using the company's services in 2009, under the former owner.

- In some of these cases, no other companies were considered for the work, which was in breach of the university's purchasing policies.
- The employee had informally advised her supervisors of the personal association however she and her supervisors considered it did not constitute a conflict of interest.

I concluded that the employee's personal association had created a conflict of interest, which despite being informally disclosed, remained unmanaged. The employee's association had the capacity to influence the performance of her official duties at the university in selecting and engaging catering suppliers. The relationship, combined with the significant amount of work awarded to the company, could lead a reasonable observer to perceive that the company received preferential treatment as a result of the relationship. The employee and her supervisors should have identified the potential conflict, and implemented appropriate measures to manage the conflict and oversee the employee's dealings with the company (if unavoidable). The employee resigned from her role at the university during my investigation.

## Policies, education and training

49. Policies, education and training play a crucial role in addressing conflict of interest. They provide public sector agencies and their employees with the tools to understand, respond to and manage conflicts of interest.
50. There have been some gradual improvements<sup>25</sup> in Victorian public sector agencies' conflict of interest policies and procedures, and in the awareness of conflict of interest across the sector. However, as illustrated in this report, the number of cases investigated (and currently being investigated) by my office indicate that there are sizeable gaps which need to be addressed by the public sector in Victoria.

### Policies

51. There is a range of guidelines, codes of conduct and legislation governing conflict of interest in the Victorian public sector<sup>26</sup>. However it is important that public sector agencies also have robust internal conflict of interest policies and procedures specific to their organisation, to convey conflict of interest expectations and requirements to employees. At a minimum, conflict of interest policies and procedures should:
- outline their scope and to whom they apply;
  - explain and define conflict of interest<sup>27</sup>;
  - describe the different types of private interests that give rise to conflicts of interest;
  - outline the process for disclosure and declaration of conflicts of interest<sup>28</sup>;
  - define the responsibilities of individual employees, managers, the executive and the organisation as a whole; and
  - detail record-keeping requirements in relation to disclosures and declarations of conflicts of interest and decision-making regarding the management of conflicts (including documentation of any measures to be implemented).
52. Agencies should ensure their conflict of interest policies and procedures are easily accessible to all staff and are reviewed regularly. Any additional requirements that apply to staff involved in procurement or recruitment<sup>29</sup> should be detailed or referenced in agencies' conflict of interest policies, as well as any other policies applicable to those activities, such as procurement or recruitment policies.

25 Such improvements include those resulting from recommendations I have made to agencies at the completion of my investigations. This includes investigations finalised in either parliamentary reports or private reports to individual agencies.

26 Such as the Code of Conduct for Victorian public sector employees; provisions in the *Local Government Act 1989*; provisions in the *Public Administration Act 2004*; the *Conflict of interest policy framework for the Victorian public sector*, published by the State Services Authority (2009); and *'Conflict of Interest: A Guide for Council Staff'*, published by Local Government Victoria (2011).

27 The use of practical examples or scenarios specific to the operations of a public sector agency are useful to assist employees' understanding.

28 Including the circumstances in which they must be disclosed or declared, how they should be disclosed or declared, to whom and what action should be taken following a disclosure or declaration.

29 Or other significant areas of risk for conflict of interest identified within agencies.

53. In several conflict of interest cases investigated by my office (including many of the case studies discussed in this report), I have identified inadequacies in agencies' conflict of interest policies and procedures, or the absence of policies entirely. Inadequate conflict of interest policies contribute to the risk that conflicts of interest will not be declared and managed appropriately by public sector agencies and their employees. The following case studies highlight how this risk can eventuate.

#### **Lack of conflict of interest policies**

During my investigation of a statutory body employee's engagement of his own company (case study 1), I identified that the statutory body did not have a conflict of interest policy or procedure in place<sup>30</sup>. Subsequently, during my investigation the statutory body:

- introduced a conflict of interest policy;
- posted a conflict of interest procedure on its intranet; and
- introduced a conflict of interest committee to oversee compliance with the policy and implementation of the procedure.

#### **Belated introduction of conflict of interest policies**

During my investigation regarding an emergency services organisation employee's procurement of goods through a company she co-owned (case study 5), I established that the organisation had only introduced a conflict of interest policy in August 2013. As such, there was no conflict of interest policy in place when the officer procured the goods through her company in June 2013.

#### **Inadequate policies**

In my investigation of a council officer's involvement in the recruitment and supervision of her husband (case study 7), I identified inadequacies in the council's conflict of interest policy that required revision. Specifically, I identified that the policy did not detail any record-keeping requirements regarding conflict of interest declarations and any subsequent action to be taken; and did not acknowledge the issue of a perceived conflict of interest. The council accepted my recommendation to review and amend its policy to address these issues.

## **Education and training**

54. Comprehensive conflict of interest policies and procedures are important and provide the framework for addressing and managing conflict of interests within an agency. However, the existence of policies and procedures is not sufficient in itself. The provision of ongoing education and training to employees on conflict of interest policies, procedures and practices is equally important.

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<sup>30</sup> The employee's employment contract did however require that he ensure any external appointment, employment or other commitments did not create any actual or perceived conflict of interest. The statutory body also advised that conflict of interest principles and expectations were reflected in its code of conduct.

55. In my earlier 2008 reports I highlighted that there needed to be better training for public officers to increase their awareness of conflict of interest, particularly in regard to common types of conflict and the strategies available to deal with them. Six years on, it is evident that there is still much room for improvement.
56. Agencies should provide conflict of interest training and education to new employees as part of their induction program, as well as ongoing training and education to staff and management. This promotes ongoing awareness and vigilance in identifying, disclosing, declaring and managing conflict of interest.
57. Strong leadership and the development of an ethical culture are also important to ensure conflict of interest policies are enforced and employees know what is required of them. An organisation's culture has the ability to either positively or detrimentally influence its operations, reputation and conduct of its employees.
58. In my 2008 report *Conflict of interest in local government* I noted that one of the main factors contributing to conflict of interest problems within local councils was poor organisational culture<sup>31</sup>. Since this report, I have continued to identify instances where cultural factors within organisations have negatively influenced the management of conflicts of interest. The executive and management within an organisation must lead by example and demonstrate the agency's commitment to its conflict of interest policies, procedures and practices. Conflict of interest policies must be enforced and must be seen to be enforced.
59. In many conflict of interest cases investigated by my office, agencies have appropriate policies and procedures in place. However employees are either unaware of the requirements contained within them, do not understand them or they are not enforced by management. Good conflict of interest policies and procedures are of limited use without adequate training and education, and a strong ethical organisational culture.
60. The following case studies highlight:
  - the particular importance of training and education for new public officers formerly employed in the private sector, who may lack awareness and understanding of public sector values; and
  - the increased risks that conflicts will not be managed appropriately when there is a lack of training and education provided to staff.

#### **Recruitment from the private sector**

In my investigation of a council officer's hiring of a former work colleague (case study 3), the officer told my investigators that she was new to local government and so relied on advice from the council's human resources unit about the council's recruitment processes. Despite the officer receiving mandatory induction training on conflict of interest, she remained unaware of the requirement to declare a pre-existing relationship with an applicant in the council's declaration register at the outset of the recruitment process.

<sup>31</sup> Victorian Ombudsman, *Conflict of interest in local government*, March 2008, page 16.

As a result of the issues identified in my investigation, I recommended that the council ensure that officers with a delegated power to recruit undertake mandatory training in recruitment practices and conflict of interest procedures. The council accepted my recommendation.

#### **Late introduction of conflict of interest training**

During my investigation of a university employee's engagement of a catering company she had a personal association with (case study 8), I identified that formal training on the university's conflict of interest policy had only been introduced in 2012. My investigation established that the university had engaged the company in question to provide catering services between 2009 and 2013, meaning that for the majority of this period, staff did not receive conflict of interest training.



## Conclusions

61. Conflict of interest is a critical issue for the public sector which requires constant vigilance and attention by public sector agencies and their employees. As highlighted by this report, particular attention should be given to conflict of interest in identified risk areas, such as procurement and recruitment.
62. Agencies should take note of the following key good practice principles highlighted in this report and review their own policies and procedures accordingly to make any necessary amendments:
  - Conflict of interest policies and procedures should reflect a preventative approach that promotes the early identification and avoidance of conflicts of interest before they occur.
  - Conflict of interest policies and procedures should outline in detail the declaration and management process for conflicts of interest.
  - Conflict of interest declarations should be made in writing and held centrally in a register.
  - Areas of risk for conflict of interest (such as procurement and recruitment) should be identified by agencies and addressed in the relevant policies and procedures.
  - Additional disclosure or declaration requirements applicable to employees in such risk areas should be clearly outlined in the relevant policies and communicated to employees.
  - Conflict of interest policies and/or gifts and hospitality policies should specifically address the acceptance of gifts preceding or during procurement activities.
  - Decisions and actions taken in regard to the management of conflicts of interest should be documented.
  - Conflict of interest policies and procedures should be easily accessible to all staff and reviewed regularly.
  - Conflict of interest education and training should be provided to all employees upon commencement of employment (during induction). Refresher training should subsequently be provided on at least an annual basis.
  - Senior management should oversight<sup>32</sup> conflict of interest policies to promote an ethical culture and commitment to such policies.
63. While the identification and management of conflicts of interest are the responsibility of individual agencies and their employees, I consider that a central agency should take responsibility for leading, promoting and reinforcing a sector wide approach and strategy for addressing conflict of interest.

<sup>32</sup> This may include oversight of enforcement, compliance, education and training, and evaluation of conflict of interest policies.

64. Ongoing conflict of interest training and education to public sector employees and managers is important and provide the foundation for prompt and effective management of conflicts of interest.
65. At present, the State Services Authority provides some guidance to public sector agencies on conflict of interest in the form of a policy framework and other materials on its website. However, it would be beneficial for a central agency (such as the State Services Authority<sup>33</sup>) to consider further ways in which it can assist and equip public sector agencies to better deal with conflict of interest. In particular, I consider there is scope for a central agency to provide greater assistance, guidance and resources to public sector agencies in relation to conflict of interest education and training.

## Recommendations

I recommend that the State Services Authority<sup>34</sup>:

### Recommendation 1

Review its guidance materials on conflict of interest to ensure the issues highlighted in this report are addressed.

### Recommendation 2

Consider further ways in which it could support greater awareness and action on the part of public sector agencies in relation to conflict of interest, with an emphasis on:

- the role of line managers in dealing with conflict of interest; and
- the existence of conflict of interest in procurement and recruitment activities.

### ***State Services Authority response***

Recommendations agreed.

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<sup>33</sup> Or the soon to be established Victorian Public Sector Commission.

<sup>34</sup> Or the Victorian Public Sector Commission upon its establishment.



# Ombudsman's Reports 2004-14

## 2014

*Ombudsman Act 1973* Ombudsman's recommendations – Third report on their implementation  
February 2014

*Ombudsman Act 1973* Investigation into a complaint about the conduct of Authorised Officers on V/Line  
February 2014

## 2013

*Ombudsman Act 1973* Investigation into children transferred from the youth justice system to the adult prison system  
December 2013

*Ombudsman Act 1973* Review of the governance of public sector boards in Victoria  
December 2013

*Ombudsman Act 1973* Report on issues in public sector employment  
November 2013

*Ombudsman Act 1973* A section 25(2) report concerning the constitutional validity of aspects of Victoria's new integrity legislation  
October 2013

*Ombudsman Act 1973* Own motion investigation into unenforced warrants  
August 2013

*Whistleblowers Protection Act 2001* Investigation into allegations of improper conduct by a Magistrates' Court registrar  
May 2013

## 2012

Own motion investigation into the governance and administration of the Victorian Building Commission  
December 2012

A section 25(2) report to Parliament on the proposed integrity system and its impact on the functions of the Ombudsman  
December 2012

*Whistleblowers Protection Act 2001* Investigation into allegations concerning rail safety in the Melbourne Underground Rail Loop  
October 2012

*Whistleblowers Protection Act 2001* Investigation into allegations of improper conduct by CenITex officers  
October 2012

*Whistleblowers Protection Act 2001*

Investigation into allegations of improper conduct involving Victoria Police  
October 2012

*Whistleblowers Protection Act 2001* Investigation into allegations against Mr Geoff Shaw MP  
October 2012

Investigation into the temporary closure of Alfred Health adult lung transplant program  
October 2012

Investigation into an alleged corrupt association  
October 2012

*Whistleblowers Protection Act 2001* Investigation into allegations of detrimental action involving Victoria Police  
June 2012

Own motion investigation into Greyhound Racing Victoria  
June 2012

The death of Mr Carl Williams at HM Barwon Prison – investigation into Corrections Victoria  
April 2012

*Whistleblowers Protection Act 2001* Conflict of interest, poor governance and bullying at the City of Glen Eira Council  
March 2012

Investigation into the storage and management of ward records by the Department of Human Services  
March 2012

## 2011

Investigation into the Foodbowl Modernisation Project and related matters  
November 2011

Investigation into ICT-enabled projects  
November 2011

Investigation into how universities deal with international students  
October 2011

Investigation regarding the Department of Human Services Child Protection program (Loddon Mallee Region)  
October 2011

Investigation into the Office of Police Integrity's handling of a complaint  
October 2011

SafeStreets Documents – Investigations into Victoria Police's Handling of Freedom of Information request  
September 2011

Investigation into prisoner access to health care  
August 2011

Investigation into an allegation about Victoria Police crime statistics  
June 2011

Corrupt conduct by public officers in procurement  
June 2011

Investigation into record keeping failures by WorkSafe agents  
May 2011

*Whistleblowers Protection Act 2001*  
Investigation into the improper release of autopsy information by a Victorian Institute of Forensic Medicine employee  
May 2011

Ombudsman investigation – Assault of a Disability Services client by Department of Human Services staff  
March 2011

The Brotherhood – Risks associated with secretive organisations  
March 2011

Ombudsman investigation into the probity of The Hotel Windsor redevelopment  
February 2011

*Whistleblowers Protection Act 2001*  
Investigation into the failure of agencies to manage registered sex offenders  
February 2011

*Whistleblowers Protection Act 2001*  
Investigation into allegations of improper conduct by a councillor at the Hume City Council  
February 2011

## 2010

Investigation into the issuing of infringement notices to public transport users and related matters  
December 2010

Ombudsman's recommendations second report on their implementation  
October 2010

*Whistleblowers Protection Act 2001*  
Investigation into conditions at the Melbourne Youth Justice Precinct  
October 2010

*Whistleblowers Protection Act 2001*  
Investigation into an allegation of improper conduct within RMIT's School of Engineering (TAFE) – Aerospace  
July 2010

Ombudsman investigation into the probity of the Kew Residential Services and St Kilda Triangle developments  
June 2010

Own motion investigation into Child Protection – out of home care  
May 2010

Report of an investigation into Local Government Victoria's response to the Inspectors of Municipal Administration's report on the City of Ballarat  
April 2010

*Whistleblowers Protection Act 2001*  
Investigation into the disclosure of information by a councillor of the City of Casey  
March 2010

Ombudsman's recommendations – Report on their implementation  
February 2010

## 2009

Investigation into the handling of drug exhibits at the Victoria Police Forensic Services Centre  
December 2009

Own motion investigation into the Department of Human Services – Child Protection Program  
November 2009

Own motion investigation into the tendering and contracting of information and technology services within Victoria Police  
November 2009

Brookland Greens Estate – Investigation into methane gas leaks  
October 2009

A report of investigations into the City of Port Phillip  
August 2009

An investigation into the Transport Accident Commission's and the Victorian WorkCover Authority's administrative processes for medical practitioner billing  
July 2009

*Whistleblowers Protection Act 2001* Conflict of interest and abuse of power by a building inspector at Brimbank City Council  
June 2009

*Whistleblowers Protection Act 2001*  
Investigation into the alleged improper conduct of councillors at Brimbank City Council  
May 2009

Investigation into corporate governance at Moorabool Shire Council  
April 2009

Crime statistics and police numbers  
March 2009

## **2008**

*Whistleblowers Protection Act 2001* Report of an investigation into issues at Bayside Health  
October 2008

Probity controls in public hospitals for the procurement of non-clinical goods and services  
August 2008

Investigation into contraband entering a prison and related issues  
June 2008

Conflict of interest in local government  
March 2008

Conflict of interest in the public sector  
March 2008

## **2007**

Investigation into VicRoads' driver licensing arrangements  
December 2007

Investigation into the disclosure of electronic communications addressed to the Member for Evelyn and related matters  
November 2007

Investigation into the use of excessive force at the Melbourne Custody Centre  
November 2007

Investigation into the Office of Housing's tender process for the cleaning and gardening maintenance contract – CNG 2007  
October 2007

Investigation into a disclosure about WorkSafe's and Victoria Police's handling of a bullying and harassment complaint  
April 2007

Own motion investigation into the policies and procedures of the planning department at the City of Greater Geelong  
February 2007

## **2006**

Conditions for persons in custody  
July 2006

Review of the *Freedom of Information Act 1982*  
June 2006

Investigation into parking infringement notices issued by Melbourne City Council  
April 2006

Improving responses to allegations involving sexual assault  
March 2006

## **2005**

Investigation into the handling, storage and transfer of prisoner property in Victorian prisons  
December 2005

*Whistleblowers Protection Act 2001* Ombudsman's guidelines  
October 2005

Own motion investigation into VicRoads registration practices  
June 2005

Complaint handling guide for the Victorian Public Sector 2005  
May 2005

Review of the *Freedom of Information Act 1982* Discussion paper  
May 2005

Review of complaint handling in Victorian universities  
May 2005

Investigation into the conduct of council officers in the administration of the Shire of Melton  
March 2005

Discussion paper on improving responses to sexual abuse allegations  
February 2005

## **2004**

Essendon Rental Housing Co-operative (ERHC)  
December 2004

Complaint about the Medical Practitioners Board of Victoria  
December 2004

Ceja task force drug related corruption – second interim report of Ombudsman Victoria  
June 2004