

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.

January 2017

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Letter of transmittal

To

The Honourable President of the Legislative Council

and

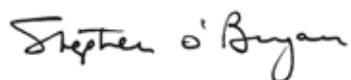
The Honourable Speaker of the Legislative Assembly

In accordance with section 162(1) of the *Independent Broad-based Anti-corruption Commission Act 2011* (IBAC Act) I present IBAC's report on its Operation Dunham investigation arising from the conduct of former senior Victorian public servants including Darrell Fraser.

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

APU	Accredited Purchasing Unit
ASG	ASG Group Limited
BAFO	Best and final offer
DEECD	(Former) Department of Education and Early Childhood Development
DET	Department of Education and Training
DTF	Department of Treasury and Finance
GWSC	Glen Waverley Secondary College
ICT	Information communications and technology
KPMG	Professional services company
LTQAP	Learning Technologies Quality Assurance Project
OGSE	Office for Government School Education
PwC	Professional services company
RFT	Request for tender
SRIMS	Student relationship information management system
SRO	Senior responsible owner
VAGO	Victorian Auditor-General's Office

Glossary of names

DEECD/DET	
ALLMAN, John Former Regional Director, South-East Region	KELLY, James Former Executive Director, Governance and Executive Services
BAKER, Julie-Anne Former Assistant Regional Director for School Improvement, Loddon Mallee Region	LAKE, Ron Former Regional Director, Loddon Mallee Region
BLADON, Mark Former Ultranet project manager	LANE, Graeme Former principal Former Managing Director, School Governance Australia
BOLT, Richard Former Secretary (2011–2014)	MURPHY, Colleen Former departmental employee
BUGDEN, Tony Director of Human Resources	PECK, Dianne Former departmental employee Former assistant principal, Glen Waverley Secondary College Former employee, CSG
CRAIG, Wayne Former Regional Director, Northern Metropolitan Region	PETCH, Judy Former departmental employee Former deputy principal, Glen Waverley Secondary College
CUSHING, Peter (Benjamin) Former departmental employee Former network manager, Glen Waverley Secondary College	PIKE, Bronwyn Former Victorian Minister for Education (2007–2010)
DAVIE, Lynn Departmental employee	ROSEWARNE, Jeffrey Former Deputy Secretary and Acting Secretary (December 2010 – August 2011)
DAWKINS, Peter Former Secretary (2006–2010)	SCHLOSSER, Ron Teacher, Glen Waverley Secondary College
FRASER, Darrell Former Deputy Secretary, Office of Government School Education Former employee, CSG Former principal, Glen Waverley Secondary College	SULLIVAN, Stephen Former departmental employee
GIBBS, Anne Former Ultranet project officer	THOMPSON, Janet Former Chair, Accredited Purchasing Unit
HART, Gail Former General Manager, Corporate Services Chair, Accredited Purchasing Unit	VELO-JOHNSTONE, Sonya Business Manager, Regional Support Group
HEHIR, Grant Former Secretary (2003–2006)	WATTERSTON, Jim Former Deputy Secretary, School Education

PRIVATE SECTOR

ALOISIO, Frank

Consultant (Aloisio Consulting)
Former consultant to DEECD, Oracle and ASG
Co-Founding Director, Cinglevue Pty Ltd
Former CSG employee
Former teacher, Glen Waverley Secondary College

BENNETT, Chris

Senior IT consultant, PriceWaterhouseCoopers

BROWN, Merran

Divisional Manager, Alliance Recruitment

CABAN, Heath

Former National Practice Manager, Business Transformation Consulting, CSG

DALTON, Anne

Lawyer and probity adviser

DAVEY, Kent

Principal solicitor, TechComm Legal

GEBERT, Lexton

Managing Director, Landell Consulting
Legal adviser to the Ultranet Board

KERIN, Julie-Ann

Chief Executive Officer and Managing Director, CSG

MACKENZIE, Denis

Former Managing Director, CSG

MARTIN, Greg

Former Senior Director and National Education Manager, Oracle
Co-Founding Director, Cinglevue Pty Ltd

SOH, Victor

Businessman

TOLEFE, Gregory

CEO, Cinglevue International Pty Ltd
Former General Manager, ASG
Co-Founding Director, Cinglevue Pty Ltd
Former employee, CSG

Position titles correct at time of public examinations

1 Summary of investigation and outcomes

1 Summary of investigation and outcomes

1.1. Introduction

In 2006, the then Premier of Victoria announced a commitment to 'revolutionise learning' through the development and implementation of the Ultranet, an online teaching and learning system for all Victorian government schools. The Ultranet was to be a virtual learning portal through which schools, students and parents could access and deliver curriculum content, student reports and other information.

The Ultranet project was closed down seven years later in 2013. It was described during this investigation as 'a shambles in every sense of the word'. While the exact cost is unknown, IBAC heard evidence that the Ultranet was likely to have cost somewhere between \$127 million and \$240 million.

In August 2014, IBAC commenced an own motion investigation known as Operation Dunham under sub-section 60(1)(c) of the *Independent Broad-based Anti-corruption Act 2011* (IBAC Act).

Operation Dunham investigated allegations the tendering process in relation to the Ultranet – in particular, the awarding of a contract to a private company, CSG Services Pty Ltd (CSG) – may have been compromised due to senior officers within the former Department of Education and Early Childhood Development (DEECD), now the Department of Education and Training (DET or the Department) having a financial interest in that company.

Further allegations related to the 2011 procurement of Alliance Recruitment Pty Ltd (Alliance Recruitment) to conduct an evaluation of the Ultranet project. It was alleged the payment to Alliance Recruitment was a mechanism contrived by Darrell Fraser, Deputy Secretary of the Department's Office for School Education, and senior CSG executives, to corruptly inject funds into CSG to ensure it remained economically viable.

As part of Operation Dunham, IBAC also considered the adequacy of the Department's systems and controls around procurement, financial management, conflict of interest and the accountability of senior leaders. As with IBAC's Operation Ord¹ before it, the investigation examined how a prevailing culture among some of the most senior officers within the Department contributed to the conduct identified, and how this culture hindered opportunities to expose and address this conduct.

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.

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. Nothing in this report is intended to imply that to be the case.

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.

¹ Initiated in 2013, Operation Ord focused on the use of 'banker schools' between 2007 and 2014.

Specifically, IBAC investigated claims senior Department officials corruptly misappropriated funds through the use of banker schools by:

- coordinating false and inflated invoices for goods and services not delivered, or not related to DET activities
- arranging payment of inappropriate expenses such as excessive hospitality, travel and personal items. For more information, visit the IBAC website (ibac.vic.gov.au)

1.2. Outcomes of the investigation into the Ultranet tender process

The investigation found evidence the tender process for the Ultranet was improperly influenced and therefore corrupted, through improper relationships that senior departmental officers had primarily with Oracle Corporation Australia Pty Ltd (Oracle) and then with CSG.

From the outset and while a school principal at Glen Waverley Secondary College (GWSC), Mr Fraser sought to exploit the commercial potential of the technology that would become known as the Ultranet; he did so in a way that was not in keeping with the standards of conduct expected of a public servant. The investigation found no evidence Mr Fraser or any other person informed the Department, or sought advice or permission from the Department, about the establishment of a private company to exploit an idea developed at school, by school staff, on school time. It was also concerning that staff were encouraged by Mr Fraser to enter into private commercial arrangements that involved personal contributions of their own funds and exposed them to tens of thousands of dollars in liabilities.

This investigation found that, from a position of power as a senior executive responsible for the allocation of significant funds, Mr Fraser was instrumental in manipulating procurement processes to ensure the Ultranet contract was awarded to the CSG/Oracle consortium – companies with whom he had a long-standing relationship.

Operation Dunham exposed a range of improper actions and behaviours by senior departmental staff (including Mr Fraser) that effectively corrupted the tender process. These included the receipt of gifts and travel; improper communications during the tender process intended to influence the tender process; and a likely attempt to influence the tender evaluation outcome by ‘stacking’ an assessment team with like-minded colleagues.

As well, IBAC found decisions were made that were contrary to proper procurement process – in particular, the unreasoned and inexplicable decision to give singular preference to CSG, despite serious concerns about its commercial credentials in the relevant area. Of particular concern was the fact that these decisions were made in the face of strong expert advice to do otherwise. So remarkable was this behaviour that one witness in evidence remarked that Mr Fraser’s ‘blatant and visceral’ disregard for his advice meant: ‘I couldn’t arrive at an explanation other than corruption that made all the things hang together.’

CSG Limited is a publicly listed company, which had a number of subsidiaries at the time of the events described in this report. CSG Services Pty Ltd was a subsidiary and was awarded the Ultranet contract. Unless otherwise stated, references to CSG are to CSG Services Pty Ltd.

1 Summary of investigation and outcomes

1.3. Outcomes of the investigation into Alliance Recruitment

After experiencing difficulties with the Ultranet project, Mr Fraser set up the Learning Technologies Quality Assurance Project (LTQAP), which he described as 'the little project'. In fact, Operation Dunham found evidence to suggest the 'little project' was a one million dollar sham. Payments were made to Alliance Recruitment from departmental funds to corruptly inject funds into CSG to ensure it had sufficient cash flow to properly deliver the Ultranet project. The process used to appoint Alliance Recruitment was in clear breach of departmental protocols and was intended to mask CSG's involvement.

This desire to support and maintain CSG's involvement in the project can only be understood through the lens of the likely private gains to be made should the vision for the Ultranet be realised: 'Why stop at Victoria?', Mr Fraser was asked on one occasion, 'You could effectively on-sell Ultranet to the world'.

1.4. Outcomes of an investigation into share trading

During the course of Operation Dunham, IBAC found evidence that some senior departmental officers used confidential information about CSG's appointment as contractor on the Ultranet project – obtained as a result of their positions – to obtain personal advantage through the purchase of CSG shares. Some did not declare their shares to the Department at all or in a timely way, as they were obliged to do as senior departmental officers. Nor were some fully truthful with the Department and its investigators when questioned about their shareholdings.

This conduct was investigated by IBAC on the basis that it may constitute a breach of insider trading laws.

1.5. Flawed systems and culture

The willingness of some senior leaders in the Department to deceive has resulted in the waste of millions of dollars of public money. However, it was the collective failure of the Department's three 'lines of defence'² that ultimately allowed the conduct under investigation to continue unabated.

As with Operation Ord, through Operation Dunham IBAC identified shortcomings in the culture of the Department that allowed the Ultranet process to be corrupted. Those shortcomings include a failure of the lines of defence and a culture that excused or ignored breaches of probity and process. The purpose here is not to repeat the detail of Operation Ord, but to acknowledge that while some things have changed, there is still more to be done.

IBAC has made a number of recommendations directed at addressing the vulnerabilities identified during this investigation. These recommendations are designed to strengthen the culture and systems not just within the Department but across the Victorian public sector to prevent corruption.

² Explained in more detail in section 7.1.1.

1.6. Recommendations

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

Recommendation 1

The Secretary of the Department of Education and Training to provide IBAC with a detailed progress report by 30 September 2017 on the implementation of its reform program to address the issues identified in Operation Dunham, with a final report demonstrating the effectiveness of these reforms provided by 30 March 2018. These reports will be published on IBAC's website.

Recommendation 2

The Secretary's reports are to:

- a. conduct a review of current arrangements governing how schools and other work areas pursue and respond to commercial opportunities, to ensure appropriate controls apply around transparency, accountability, central oversight and risk minimisation
- b. advise on action taken to strengthen internal procurement and governance arrangements for major projects to ensure accountability and transparency, including proper record keeping, maintenance of conflict of interest registers, and proper documentation of complaints regarding probity.

Recommendation 3

The Victorian Public Sector Commission to consider the implementation of a ban on public sector employees receiving any gift, benefit or hospitality from a current or prospective supplier.

Recommendation 4

The Department of Treasury and Finance to consider the issues raised in this report to identify if there are opportunities for further improvements to Gateway reviews³ and high-value, high risk-reviews in relation to probity and governance.

³ For more information on Gateway reviews, go to section 7.1.5

2 The investigation

2 The investigation

2.1. The allegations

In August 2014, IBAC commenced an own motion investigation known as Operation Dunham under sub-section 60(1)(c) of the IBAC Act.

In Operation Dunham, IBAC investigated allegations that current and former staff of the Department had engaged in serious corrupt conduct by dishonestly awarding or manipulating contracts to companies as part of the Ultranet project. It was alleged they did so in order to derive a personal financial benefit.

The investigation sought to determine whether departmental employees, or any other parties, corruptly received financial benefits as a result of the Ultranet project, and the contracts involving two companies: CSG and Alliance Recruitment. IBAC also considered the adequacy of the Department's systems and controls around procurement, financial management, conflict of interest and the accountability of senior leaders.

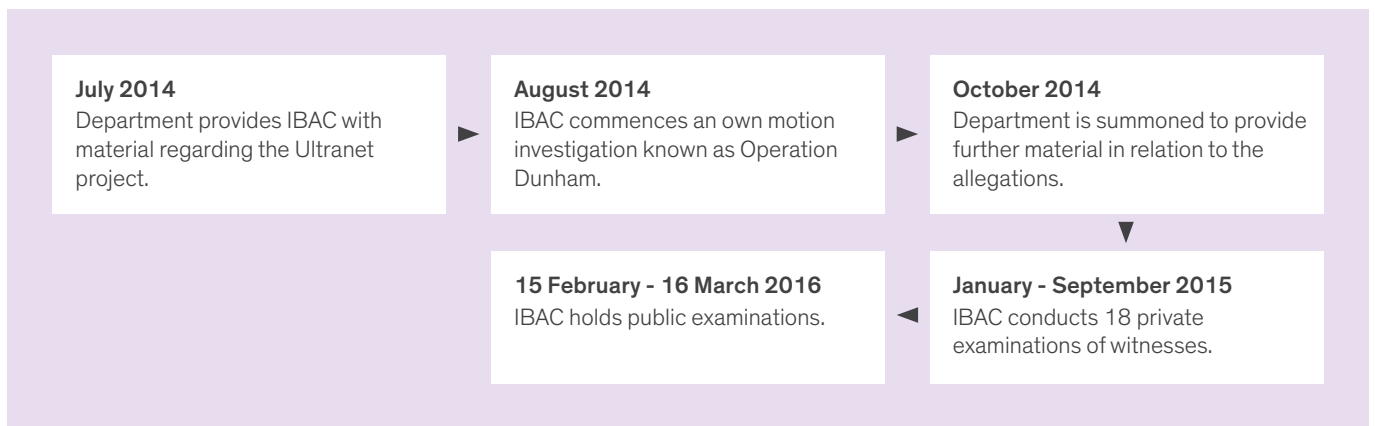
2.1.1 Specific allegations

In June 2009, the Department awarded the initial contract for the Ultranet to CSG. It was alleged that the tendering process for this contract may have been corrupted by the relationship between senior departmental officers and CSG. Findings in relation to this allegation are discussed in chapters 3 and 4.

Further allegations related to the 2011 procurement of Alliance Recruitment to conduct an evaluation of Department IT projects including the Ultranet. It was alleged the payment to Alliance Recruitment was a mechanism contrived by Darrell Fraser and senior CSG executives to corruptly inject funds into CSG to ensure it remained able to pay key staff working on the project. Findings in relation to this allegation are discussed in chapter 5.

During the investigation, IBAC became aware departmental staff who held or may have held confidential information about the Ultranet project may have engaged in insider trading by purchasing shares in CSG, or by sharing such information with associates who then purchased shares in CSG. This became a further area of inquiry and the findings are discussed in chapter 6.

FIGURE 1: TIMELINE - IBAC INVESTIGATION



2.2. Conduct of the investigation

2.2.1. Request for departmental data

In July 2014, the Department voluntarily provided IBAC with material regarding the Ultranet project, which led to the commencement of Operation Dunham. In October 2014, the Department was summoned to provide further material in relation to the allegations. As a result, IBAC investigators reviewed more than 63 archive boxes of departmental records, as well as several terabytes of data including from the Department's Oracle finance system and email servers.

2.2.2. Execution of search warrants

IBAC investigators executed three search warrants on residential premises of individuals linked to the awarding of contracts relating to the Ultranet project.

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

2.2.3. Private examinations

IBAC conducted 18 examinations in private between January and September 2015. These examinations provided investigators with information about the circumstances around the awarding of the Ultranet tender, the Alliance Recruitment contract, and share purchases by departmental staff. The examinations also helped investigators identify further avenues of inquiry.

2.2.4. Public examinations

The Commissioner determined 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.

Public examinations took place between 15 February and 16 March 2016, with most parties involved legally represented. IBAC Commissioner Stephen O'Bryan QC presided over the examinations. Ian Hill QC and Carmen Currie of the Victorian Bar acted as Counsel Assisting.

IBAC heard evidence from 39 witnesses. A total of 273 exhibits were tendered, many of which were made available publicly.

Appendix B outlines the scope and purpose of the public examinations.

2 The investigation

Rationale for public examinations

The IBAC Commissioner may decide to hold public examinations when:

- there are exceptional circumstances
- it is in the public interest
- they can be held without causing unreasonable damage to a person's reputation, safety or wellbeing.

The Commissioner determined that **exceptional circumstances** existed, including that the conduct that was the subject of this investigation was alleged to have occurred unchecked over a significant period of time, and that systemic factors and weaknesses allowed this to occur.

As with Operation Ord, the Commissioner also considered there to be an **acute public interest** in the allocation and honest handling of the scarce funding available to the public education sector. He considered there to be substantial public benefit in exposing any misapplication or waste of those scarce resources. The Commissioner also considered that the examinations were likely to promote further reporting of corrupt conduct in procurement or tender processes in the Victorian public sector.

Finally, and taking into account the seriousness of the matters to be investigated, the Commissioner considered that public examinations could be held **without causing unreasonable damage to the reputations, safety or wellbeing** of persons who might be named. While it was considered possible that certain individuals would suffer damage to their reputation, the Commissioner was satisfied that the evidence that would be put to them (much of which was documentary) was credible and required examination and explanation.

2.2.5. Submissions and responses received after the public examinations

After the public examinations, some interested parties independently sent submissions to IBAC about matters they were questioned on. These, along with responses received under section 162(3) of the IBAC Act, were duly considered before the findings contained in this report were reached.

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

John Allman, page 98

Julie-Anne Baker, page 99

Christopher Bennett, pages 99-100

Wayne Craig, page 101

CSG Limited, pages 102-103

Peter Dawkins, pages 103-105

Julie-Ann Kerin, pages 105-108

Ron Lake, page 109

Denis Mackenzie, pages 109-110

Oracle Corporation, page 111

Bronwyn Pike, page 112

Gregory Tolefe, page 113

2.3. Darrell Fraser

Darrell Fraser is central to many of the allegations examined in Operation Dunham.

Mr Fraser worked at Glen Waverley Secondary College (GWSC) as a classroom teacher, assistant principal and principal from 1977 until 2003 (26 years). He was appointed principal in 1999.

In late 2003, Mr Fraser left GWSC and was appointed Deputy Secretary for the Department, responsible for the administration of the Office for Government School Education (OGSE).

The OGSE was responsible for approximately 70 per cent of the Department's multi-billion dollar budget (\$8.6 billion in 2010/11). It was the source of funding for each government school, from which curriculum and staffing expenses were met. OGSE had a staff of around 30 working in the Department's head office. Mr Fraser's role as Deputy Secretary for OGSE was therefore one of significant responsibility and trust, involving the management and administration of a very large proportion of the state's education budget.

As principal at GWSC, Mr Fraser played a critical role in promoting the project that would evolve into the Ultranet. As Deputy Secretary, Mr Fraser had a central role in relation to the tender process for the Ultranet and the subsequent engagement of Alliance Recruitment as a contractor to the Department.

In July 2011, Mr Fraser resigned from the Department to take up employment with CSG.

An extraordinary promotion

Mr Fraser's appointment to the Deputy Secretary position was, by all accounts, an extraordinary promotion. No witness could recall any other occasion when a school principal, without any other executive level experience, had stepped directly into such a senior departmental position.

IBAC heard evidence that Mr Fraser was identified as a good candidate for Deputy Secretary because he was seen as a person who could bring relevant school-based experience to the position. His appointment was welcomed by many for that reason. However, aside from his experience gained as a teacher and principal of GWSC, Mr Fraser had no other qualification or training in financial management or administration to prepare him for the Deputy Secretary position. Nor had he any experience operating at the executive level in the public sector.

Professor Peter Dawkins, who was Secretary of the Department from July 2006 to December 2010, gave evidence that his predecessor, Grant Hehir, who had appointed Mr Fraser, had wanted someone to lead the OGSE who was going to drive a strong and innovative agenda. Central to Mr Fraser's agenda as Deputy Secretary was the development of his vision to provide all schools with an online system like that of the GWSC Intranet.

3 Origin of the Ultranet

3 Origin of the Ultranet

In November 2006, the then Premier of Victoria announced a \$60.5 million commitment to develop and deploy a statewide online teaching and learning system, to be called the Ultranet. The Ultranet was to be a learning portal through which schools, students and parents could access and deliver curriculum content, records, student reports, school and community information, and more.

Importantly, the Department had been developing the concept of an 'ultranet' for some time prior to the Premier's announcement. GWSC is significant in this history as the Ultranet had its origins in the GWSC Intranet, a system developed on-site by teachers and staff at the school.

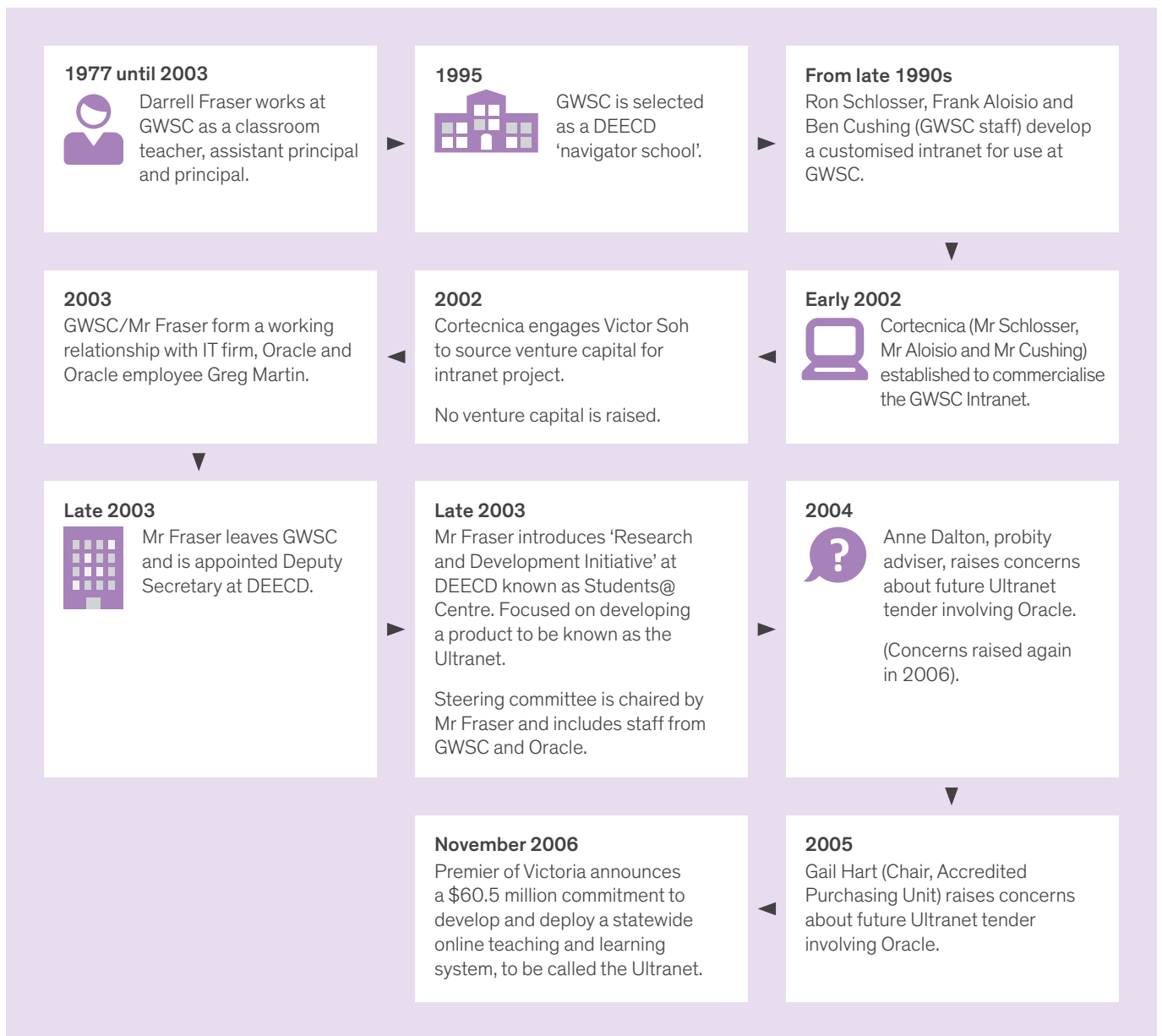
3.1. Glen Waverley Secondary College's Intranet

3.1.1. GWSC as a navigator school

In 1995, during Mr Fraser's term as assistant principal of GWSC, the Department identified and selected a number of schools, including GWSC, to act as 'navigator schools'. Navigator schools were to be leaders in the effective integration of computerised learning technologies and strategies to improve teaching and learning outcomes and school administration.

Because of its status as a navigator school and its role in showcasing technology, GWSC attracted the interest of commercial businesses keen to pitch a product or idea for trial or use at the school. Ron Schlosser, a teacher at GWSC, recalled three companies including Oracle, all made approaches to the school. Such approaches were usually made via Mr Fraser as principal.

FIGURE 2: TIMELINE – ORIGIN OF THE ULTRANET



3 Origin of the Intranet

3.1.2. Development of the GWSC Intranet

Over a number of years from the late 1990s, Mr Schlosser (an English teacher), with assistance later from Frank Aloisio (a maths and physics teacher) and Ben Cushing (the school's network manager) developed a customised intranet for use at GWSC (the Intranet). Mr Schlosser, Mr Aloisio and Mr Cushing worked on and developed the Intranet during working hours.

The Intranet enabled staff and students of the school to share and access administrative and curriculum-related information via a private network on a server at the school. Neither Mr Schlosser nor Mr Aloisio had any formal IT or programming qualifications. They described themselves as 'enthusiastic amateurs' who were encouraged and mentored by Mr Fraser to develop and expand the functions of the Intranet in keeping with the school's role as a navigator school.

The GWSC Intranet generated a great deal of interest. Delegations from schools and education departments around Australia and overseas came to GWSC to observe and learn from the school's use of technologies and, in particular, from its Intranet. The Intranet was also a popular topic at navigator school conferences, where Mr Schlosser and Mr Aloisio made presentations. Other schools and delegations expressed interest in adopting a form of the GWSC Intranet at their own schools. But, as Mr Schlosser explained, GWSC's Intranet was a custom build, and was not in a form that could be copied, transferred or sold to others.

Inspired by the interest and demand from schools and governments, Mr Fraser had the idea of commercially developing GWSC's Intranet with a view to marketing it both nationally and internationally.

3.2. Cortecnica established to commercialise the GWSC Intranet

3.2.1. Mr Fraser encourages the establishment of a company

In early 2002, a private company called Cortecnica Pty Ltd (Cortecnica) was registered. Its directors were Mr Schlosser, Mr Aloisio and Mr Cushing. Significantly, its principal place of business was said to be GWSC.

In essence, Cortecnica was established to commercialise the GWSC Intranet. It was to be the vehicle through which financing could be obtained to develop the Intranet into a saleable and scaleable product.

Although he was not registered as a director or shareholder, Mr Fraser was instrumental in the establishment of Cortecnica and its activities. According to Mr Cushing, it was Mr Fraser's idea to try to commercially develop the Intranet. He said Mr Fraser encouraged the establishment of the company and gave advice to the group. Mr Fraser helped workshop ideas for the business and attended most of the Cortecnica meetings. The meetings were conducted at GWSC. The company name, Cortecnica, was Mr Fraser's idea.

Mr Fraser did not dispute his involvement. His evidence was that Cortecnica was established to commercialise the GWSC Intranet in conjunction with another corporate entity, Impaq.⁴ Mr Fraser stated that Impaq had become interested in the GWSC Intranet and wanted to commercialise it for use in connection with contracts that it had with other, larger schools.

⁴ Impaq had been supplying GWSC with access to a virtual private network that enabled students, staff and parents to access the Intranet. The extent of Impaq's commercial interest and involvement with Cortecnica is unclear and was largely unknown until Mr Fraser's evidence at the public examination.

3.2.2. Mr Fraser urges Cortecnica to generate venture capital

Mr Fraser said it was his idea (together with the owner of Impaq) that Cortecnica needed \$5 million of seed capital. To that end, Mr Fraser urged the directors of Cortecnica to engage a Singapore-based businessman, Victor Soh, to generate venture capital for the business.

Mr Schlosser recalled a meeting with Mr Cushing and Mr Aloisio in which they discussed the proposal to seek venture capital. In this meeting Mr Schlosser was shown a 'mandate' document (most likely dated March 2002), setting out the terms under which Mr Soh would agree to seek venture capital for Cortecnica. One of the terms was to the effect that if Cortecnica refused or was unsatisfied with an offer of funding made by Mr Soh, Cortecnica would be required to pay Mr Soh \$80,000.

No venture capital was forthcoming through Mr Soh, despite Mr Soh and Mr Fraser having travelled together to Malaysia to generate support. It was agreed that the \$80,000 pay-out in the original mandate would be waived and, in return, Mr Soh would receive all the Cortecnica intellectual property.

Mr Schlosser gave evidence that the directors of Cortecnica were aware that any intellectual property in the GWSC Intranet belonged to the school or the Department; Mr Schlosser and Mr Aloisio had built it at school, using school resources and in their capacity as GWSC employees. In mid to late 2002, Mr Aloisio, Mr Cushing and Mr Schlosser therefore developed new 'intellectual property' documentation describing an Intranet-type concept called 'SchoolScape'. This satisfied their agreement to surrender Cortecnica's intellectual property to Mr Soh and the company was wound up.

The Cortecnica venture was a failure. It did not develop any commercial product nor generate any revenue. It is not clear whether Mr Aloisio, Mr Schlosser or Mr Cushing recouped any of the \$2000 that they were each encouraged to provide to the company to fund Mr Soh's 'venture capital raising' travel to south-east Asia. Also unknown are the circumstances in which Mr Fraser came to travel to Malaysia with Mr Soh and how Mr Fraser's travel was funded.

What is known is Mr Fraser misused his position as principal to spruik the GWSC Intranet on behalf of Cortecnica to potential investors overseas. It is also concerning that, as principal, Mr Fraser encouraged staff with no experience in business to enter into private commercial arrangements that involved personal contributions of their own funds and which exposed them personally to tens of thousands of dollars in potential liabilities.

3 Origin of the Ultranet

3.2.3. Cortecnica: a commercial venture, for whose benefit?

Mr Fraser argued the attempt to commercialise the Intranet through Cortecnica was consistent with the Department's encouragement of self-governance under the 1994 'schools of the future' reforms:

There was a policy context... in 1998, the Kennett government put a new policy framework in place... and that legislation in fact encouraged schools who... became self-governing to pursue partnerships and there was a real understanding at the time the amount of resources available to public education in Victoria was inadequate to the task that teachers and principals had to undertake. We were actively encouraged, I would say, to – to go out and form partnerships which would deliver an income stream to the schools and this was what that was about.

Mr Fraser asserted there was an agreement GWSC would share in any income earned by Cortecnica.

This claim is doubtful. No other witness gave evidence to that effect and IBAC found no documentary evidence of such an agreement or arrangement. Nothing in the company structure or arrangements suggested GWSC had any entitlement to Cortecnica's assets or revenue. Cortecnica's shares were wholly owned by the three directors. The obvious conclusion to draw is that any income derived from commercial activity was for personal profit.

Mr Fraser appeared to be acting as a 'shadow director', in that he was not formally listed as a director of Cortecnica but he exerted significant control over the company. Whether there was potential for Mr Fraser to benefit if Cortecnica succeeded as a commercial venture is unknown.

3.2.4. Lack of communication and transparency in commercial dealings

Whether or not the Department actively encouraged schools to develop independent streams of income, it appears the Department knew nothing about Cortecnica or its activities. While those involved were aware the intellectual property in the Intranet may have belonged with the school, none (including Mr Fraser) sought advice or permission from the Department in relation to how Cortecnica was proposing to exploit that intellectual property. This omission posed a real risk given the contractual arrangements were dealing with a school-related matter and could affect the rights of the Department and individual staff members.

Again, the obvious conclusion to draw is that any income derived from commercial activity was to be for personal profit.

3.3. Students@Centre – precursor to the Ultranet

3.3.1. GWSC begins relationship with Oracle

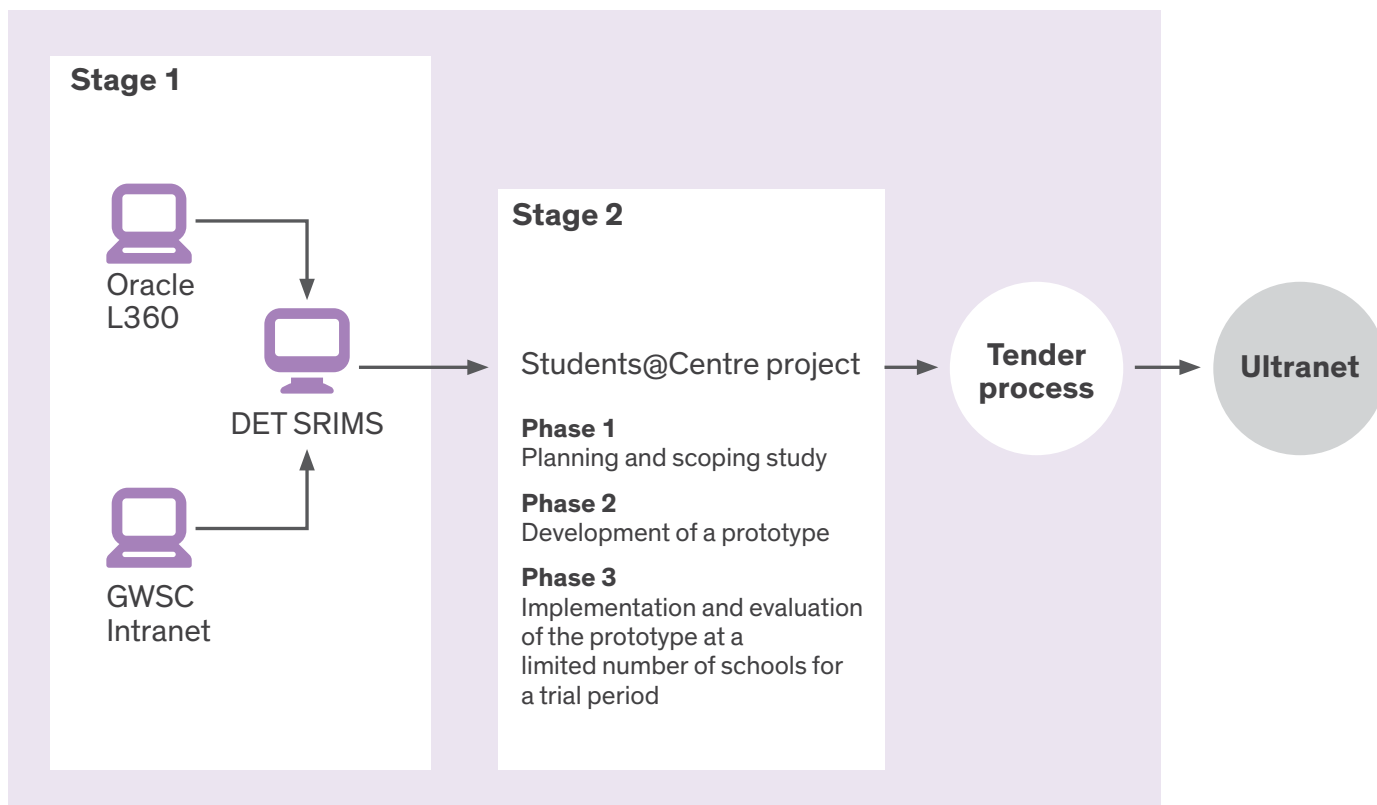
In 2003, GWSC attracted the interest of Oracle, a major multinational software technology corporation. Greg Martin, a senior education consultant at Oracle, visited GWSC and Mr Fraser on six or seven occasions during 2003.

Mr Martin saw opportunities in a relationship with GWSC that would benefit the development of Oracle's L360 product.⁵ Mr Fraser saw an opportunity to develop, with Oracle, a commercial version of the Intranet. Throughout 2003, Mr Martin was able to cultivate a strong relationship with Mr Fraser and other staff at the school through frequent visits and the

provision of valuable software and other professional services, such as a functional review of the Intranet. These services were provided at no cost to GWSC.

All of this occurred in the context of an unusually commercial attitude on the part of Mr Fraser with respect to school affairs. For example, Mr Cushing gave evidence that Mr Fraser encouraged him to develop a business plan for 'Cushing Enterprises'. And Mr Cushing was paid a 'performance bonus' – in part, for developing a commercial plan to profit from making GWSC server space available to other businesses. An agreement drawn up by Mr Fraser between Mr Cushing and GWSC required Mr Cushing to contribute \$500 to the school for 'shares' in respect of 'Advertise On-line', a website - hosted on GWSC servers - which hoped to attract advertising by local businesses.

FIGURE 3: DEVELOPMENT STAGES OF THE ULTRANET



⁵ L360 was software that could be used as a platform for a school-based intranet.

3 Origin of the Ultranet

3.3.2. Oracle's preferential treatment within the Students@Centre project

Shortly after his appointment as Deputy Secretary in 2003, Mr Fraser introduced a 'Research and Development Initiative' known as Students@Centre. According to the project's strategic implementation plan the aim was to design and prototype a new student relationship information management system (SRIMS). However, from the outset Students@Centre was about developing a product to be known as the Ultranet, which would be based on the GWSC Intranet and Oracle's L360. In effect, it was to be a continuation of GWSC's relationship with Oracle.

A steering committee for the Students@Centre project was established within the Department and chaired by Mr Fraser. Staff from GWSC and Oracle were involved from day one including:

- Mr Martin (from Oracle).
- Mr Aloisio, who left GWSC in 2004 and was subsequently contracted by Oracle. Through Aloisio Consulting he was placed on the Students@Centre project.
- Mr Cushing, who left GWSC in 2005 and took on the departmental role of project director for Students@Centre.
- Judy Petch, former deputy principal at GWSC.

Oracle was the only private software company involved in Students@Centre. No other company was invited to participate.

A draft deed between the Department and Oracle was prepared at the beginning of the project and included the following terms:

- The project would be a collaboration between the Department and Oracle.
- Oracle would not be paid for its services. Oracle would bear the costs of phase 1 (planning and scoping study) and phase 2 (development of a prototype solution). The Department would bear the cost of phase 3 (implementation and evaluation of the prototype at a limited number of schools for a trial period).
- Ownership of the intellectual property in the prototype would vest with Oracle.
- The project would be dependent on Oracle's contribution of \$1.5 million in software design and development.
- The Department would issue a request for tender to identify and select a contractor to roll out a system similar to the prototype developed by Oracle.

3.3.3. Probity related concerns identified

Anne Dalton, then a partner of a private law firm and an experienced legal adviser to government, was appointed as probity adviser to the project. In 2004, the law firm advised the Department that because Oracle was not being paid for its services as part of the Students@Centre project, there was technically no 'purchase' in excess of \$100,000 that would require the project to be put to public tender.

However, the law firm identified a number of significant risks with the Students@Centre project – in particular, the fairness and probity of the planned tender (emphasis added):

The fundamental difficulty with the way the public tender is intended to proceed is that Oracle will have already invested a significant amount in the development of the prototype (\$1.5 million) by the time the project goes to public tender and will have developed the specifications that will form the basis for the RFT...

If Oracle has already invested \$1.5 million, gained information, and established close ties with the DET, it is likely to be at a competitive advantage to other bidders and other bidders may be justifiably sceptical of their being successful in a public tender process. Even though DET intends to make public disclosures during the Agreement, it may be difficult to convince the market that anyone other than Oracle will be successful in the public tender...

The law firm suggested putting the whole project out to tender, including the pilot project. They advised that this would be more consistent with probity best practice, 'which is to provide reassurance to those wishing to do business with the public sector that the process and outcome can be trusted and will be treated fairly.' The advice also raised the possibility of litigation if an unsuccessful bidder in the tender process challenged it in court.

Around 2005, Gail Hart, then General Manager of Corporate Services and Chair of the Department's Accredited Purchasing Unit (APU), advised Jeffrey Rosewarne (then a Deputy Secretary) that if the Students@Centre pilot went to a full scale tender, Oracle would have to be precluded due to having an unfair advantage over other tenderers. However, in 2006, the Students@Centre pilot proceeded to a full scale tender with Oracle not precluded.

In 2006, Ms Dalton provided further probity advice following a proposal to expand the 'Students@Centre' pilot. Ms Dalton advised Mr Fraser the risk of a long or large pilot program was 'the provider [Oracle] becomes so entrenched, accepted in [the Department] that the perceived risk of awarding the eventual contract to another party is too great.'

The probity related concerns identified by Ms Dalton and Ms Hart were realised. In 2008, a director at an IT firm raised the issue of bias in a complaint to the then Minister for Education, Bronwyn Pike (Minister Pike):

Minister, the issues with transparency go right back to before the tender was issued and did revolve around the problems with Oracle and the Research and Development project that had been undertaken. Further concerns, within industry, related to the fact that Deputy Secretary Fraser had been involved with the process prior to coming on board in his current position and therefore may have held bias in favour of Oracle.

The director also noted that an Oracle Powerpoint presentation featuring positive 'customer' comments from Mr Fraser was widely available on the internet. The director put forward a view that a company in Oracle's position should be excluded from any subsequent tender, having carried out substantial pre-tender work.

3 Origin of the Ultranet

3.3.4. Oracle takes the 'box seat' in relation to future tenders

Notwithstanding this advice, the Students@Centre project continued as a collaboration with Oracle alone. Colleen Murphy, project director for Students@Centre, gave evidence that there was some concern about that decision within the Department as well as externally among other corporations who would have loved the opportunity to do what Oracle was doing. However, no process was engaged in to identify or invite a tender from any other private sector participant. The decision to proceed was made deliberately and with full knowledge of the risks involved for any future tender.

IBAC heard evidence that Mr Fraser expressed a strongly held view that Oracle was the only company in the market with a product (L360) mature enough to use as the basis of the pilot project. He justified the decision to collaborate exclusively with Oracle on that basis. However, it does not appear any independent market testing or survey was conducted to test or verify this was the case. Ms Murphy recalled Mr Fraser wanted to work with an organisation he trusted and would say, 'when we're working with Oracle' as if it was a fait accompli.

About 12 government schools were selected as test schools for the 'prototype'. Ms Murphy suggested a broad range of schools including rural and special needs schools be chosen to reflect government school demographics. Instead Mr Fraser selected schools which he had some knowledge of, or association with, and which were perceived to be supportive of the project, and which would help to ensure the project could proceed without delays. The selection of test schools to improve the likelihood of favourable results is another indicator that Students@Centre was a 'research and development' project in name only.

The 'prototype' that was tested over 12 months during 2006 was not a newly developed or custom built product but was, in fact, a trial version of Oracle's L360 software product. Mr Martin gave evidence that his team from Oracle saw Students@Centre as a school-based trial of the L360 software. He described the mix of contributions and ideas to the project as 80 per cent Oracle and 20 per cent from Mr Fraser's vision for the GWSC Intranet.

Oracle made a significant investment in Students@Centre, providing several staff to the project and waiving 12 months' worth of licence fees – worth about \$1 million – for the L360 software used in the project. Oracle was not paid any fees for its participation. Linda Whitehead, an Oracle employee who worked on the project said Oracle saw Students@Centre as 'pre-sales activity'. And Mr Martin confirmed in his evidence that such a sizeable investment from Oracle was justified because it would put Oracle in the 'box seat' for the anticipated tender for the statewide development and implementation of the Ultranet. That contract would be worth many tens of millions of dollars.

3.4. Conclusion

Oracle was greatly advantaged by its participation in Students@Centre. Having been given what an Oracle executive regarded as the 'box seat', Oracle was able to identify, develop and strengthen relationships with key people in the Department who were in a position to influence the future tender process, particularly including Mr Fraser. Oracle had an opportunity to test and refine its L360 product in school settings, giving it an inside advantage over other competitors. And it owned the 'prototype' that was to be the basis of the future Ultranet.

The improper behaviours by department employees identified here – the overly close commercial relationships with Oracle, the forming of companies to benefit individuals, and the willingness to breach proper protocols – would continue through the formal Ultranet process. Concerns about the Department's lack of probity in giving Oracle a privileged position are further explored in chapter 7.

The lack of transparency, accountability, oversight and risk mitigation around the commercial ventures is a significant concern. In particular, the way commercial ventures were encouraged by Mr Fraser opened the door for possible personal benefit by some, which would appear to be at odds with his role and duties as a public servant.

4 Ultranet tender process

4 Ultranet tender process

4.1. The first tender for the Ultranet

4.1.1. The Ultranet Board is formed

In December 2006, the month after the Premier's announcement regarding the Ultranet, the Department approved the structure and membership of the Ultranet Board which was to steer the Ultranet project public tender process. The Board comprised:

- Jeffrey Rosewarne, then a Deputy Secretary, as chair
- Mr Fraser as project sponsor
- Chris Bennett, an independent senior IT consultant with PricewaterhouseCoopers (PwC)
- Erle Bourke, General Manager Information Technology Division
- Heather Hill, principal, Murrumbidgee Primary School
- Ron Lake, Regional Director Loddon Mallee
- Dianne Peck, General Manager Student Learning Division
- Colleen Murphy, project director.

Mr Fraser had a strong say in the composition of the Board, and many Board members had pre-existing connections and relationships with Mr Fraser or Mr Rosewarne. Ms Hill and Mr Lake had each been principals of navigator schools. Ms Peck had worked at GWSC. Mr Bennett was a long-time friend and associate of Mr Rosewarne.

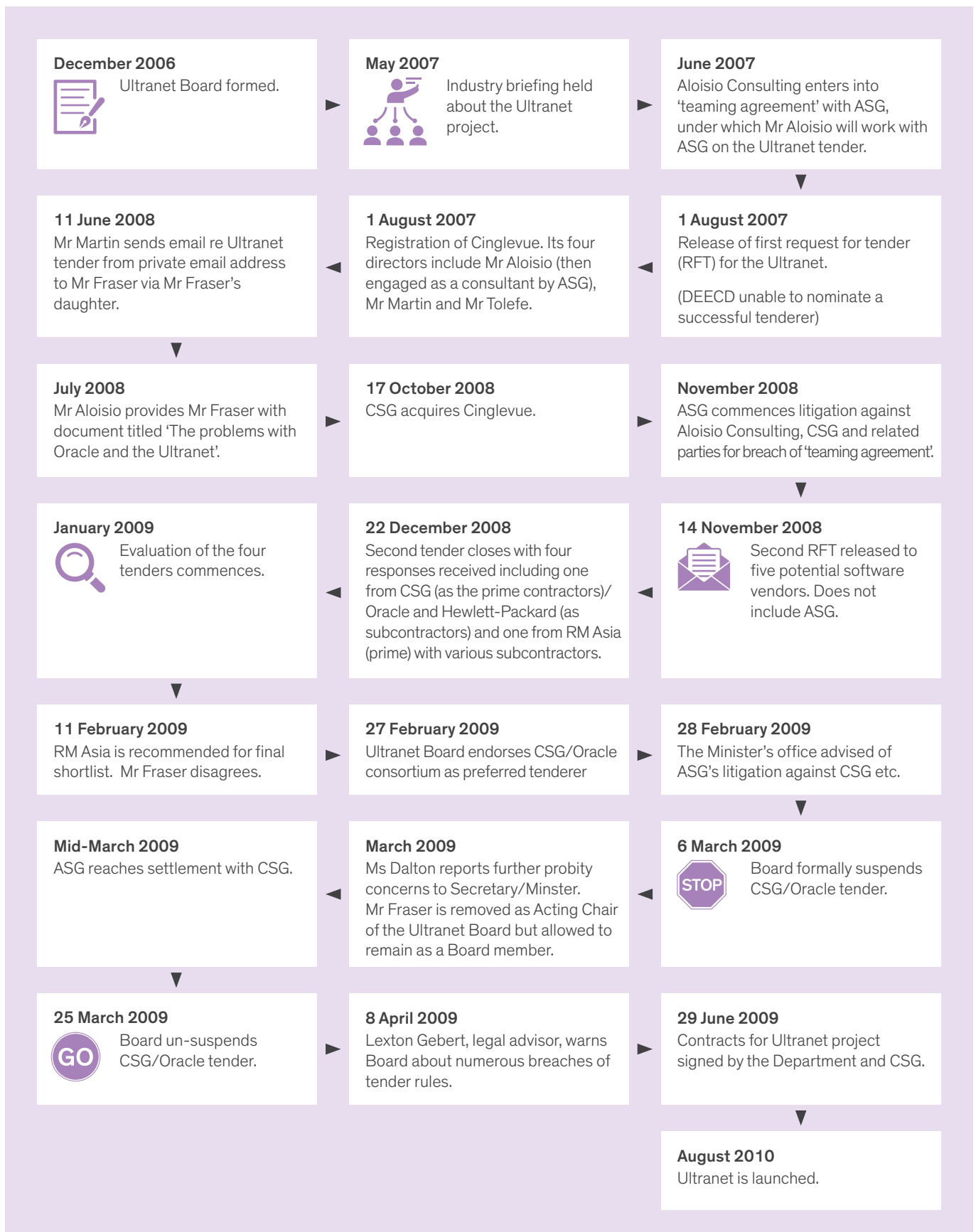
It also appears that Mr Fraser appointed perceived allies to key positions on the Ultranet project, with the likely objective of getting the outcome he wanted. For example, Ms Murphy recalled a time when Mr Fraser made it known to her that he wanted two vacant positions filled by two particular applicants - one was Mr Cushing. While Ms Murphy recalled that Mr Cushing was the best qualified candidate for the role, she was troubled by the perceived attempt to influence the outcome of the selection and interview process. Mr Schlosser was also recruited as part of the first tender evaluation process.

4.1.2. Industry interest in the tender

An industry briefing about the Ultranet project was held in May 2007, in advance of the release of the tender for the project. Hundreds of private sector companies sent attendees, indicating a high level of interest in the project. Mr Aloisio attended on behalf of Oracle. Mr Greg Tolefe attended from ASG Group Limited (ASG), a well-established company with the capacity to provide systems integration services. ASG had already been providing such services to the Department in connection with its human resources IT system.

The tender required implementation and ongoing support of the Ultranet (not just product development). Because Oracle's business was primarily software development, not systems integration or maintenance and support, both Oracle and ASG would look to participate in the tender process as part of a consortium.

FIGURE 4: TIMELINE – ULTRANET TENDER PROCESS



4 Ultranet tender process

ASG 'teams' with Aloisio Consulting to secure access to Mr Fraser and others

In June 2007, Aloisio Consulting Pty Ltd (Aloisio Consulting) entered into a 'teaming agreement' with ASG, under which Mr Aloisio would work with ASG on the Ultranet tender. Mr Tolefe negotiated the agreement on behalf of ASG.

Under the agreement, Aloisio Consulting would receive \$400,000 for securing Oracle as an exclusive consortium partner with ASG for the tender. It would further receive a percentage of the value of the contract if the anticipated ASG/Oracle consortium was successful.

The teaming agreement suggested that Aloisio Consulting had a number of staff who would be provided to ASG, including people who had been employed by the Department in connection with the Ultranet, such as Lynn Davie, who had been involved in the Students@Centre project. This was false. Mr Aloisio admitted in evidence that he was Aloisio Consulting's only consultant. In reality, the purpose of the teaming agreement was to secure access to Mr Aloisio during the preparation of a tender bid. Mr Aloisio was not valuable because of his technical skills (he was, by his own admission, an 'enthusiastic amateur'). But he did have access to Mr Fraser, who was driving the Ultranet project, and access to others connected with the project such as Mr Cushing, Ms Peck and Ms Petch.

The premium that ASG was prepared to pay under the teaming agreement suggests that ASG knew that Mr Aloisio had access to Mr Fraser's ear and valuable information. And the evidence showed that confidential and sensitive information was in fact shared between Mr Aloisio and Mr Fraser in the lead up to and during the first tender.

Oracle did in fact partner with ASG to submit a consortium bid for the Ultranet contract, triggering payment of \$400,000 to Aloisio Consulting. Mr Aloisio's evidence was that the money was ultimately transferred across to Cinglevue Pty Ltd (a company of which Mr Aloisio was a director) and expended by that company on travel and pursuit of business opportunities.

4.1.3. Release of first 'request for tender'

On 1 August 2007 the first request for tender (RFT) for the development and implementation of the system to be known as the Ultranet was released to the market.

On its release, Mr Fraser and other senior Ultranet staff were provided with probity guidelines for the tender, and were reminded that 'the project enters a high-risk phase for probity concerns. It is important that no particular company receives (or is perceived to receive) any additional information about the Ultranet that may benefit their response.' Staff were expressly reminded not to respond to any inquiries made directly to them in respect of the tender.

Cinglevue formed to profit from Ultranet

On the same day as the release of the first RFT, Cinglevue was first registered. Its four directors included Mr Aloisio (then engaged as a consultant by ASG), Mr Martin (who was still at that time an executive at Oracle), and Mr Tolefe (who was still at that time an ASG employee). Each of the directors held a shareholding in Cinglevue through a trust or related company.

Cinglevue was established for the primary purpose of participating in, and profiting from, the Ultranet tender. Its singular asset was Mr Aloisio, and his significant relationships and connections with persons in influential positions in the Department.

4.1.4. Scope and requirements of the first tender

The first RFT was released to the market at large. It set out an extensive and complex list of requirements for the functionality and features envisaged for the Ultranet. The project would require the winning bidder to engage in a significant amount of software product development to meet the technical specifications for the project. The RFT also required implementation and ongoing maintenance and support services. The costs associated with fulfilling the requirements of the RFT were extensive but, given the sizeable value of the contract, commercially justified.

Following the evaluation process, two bids were shortlisted to proceed to the best and final offer (BAFO) stage. One was the ASG/Oracle consortium bid. The other was a bid from RM Asia Pacific Limited (RM Asia Pacific).

4.1.5. Failure of the first tender

Following the BAFO process, the Department was unable to nominate a successful tenderer, apparently because the pricing submitted by the tenderers exceeded the designated government budget of \$60.5 million. The first tender process had been an expensive failure. It put the Ultranet project some 12 months behind schedule.

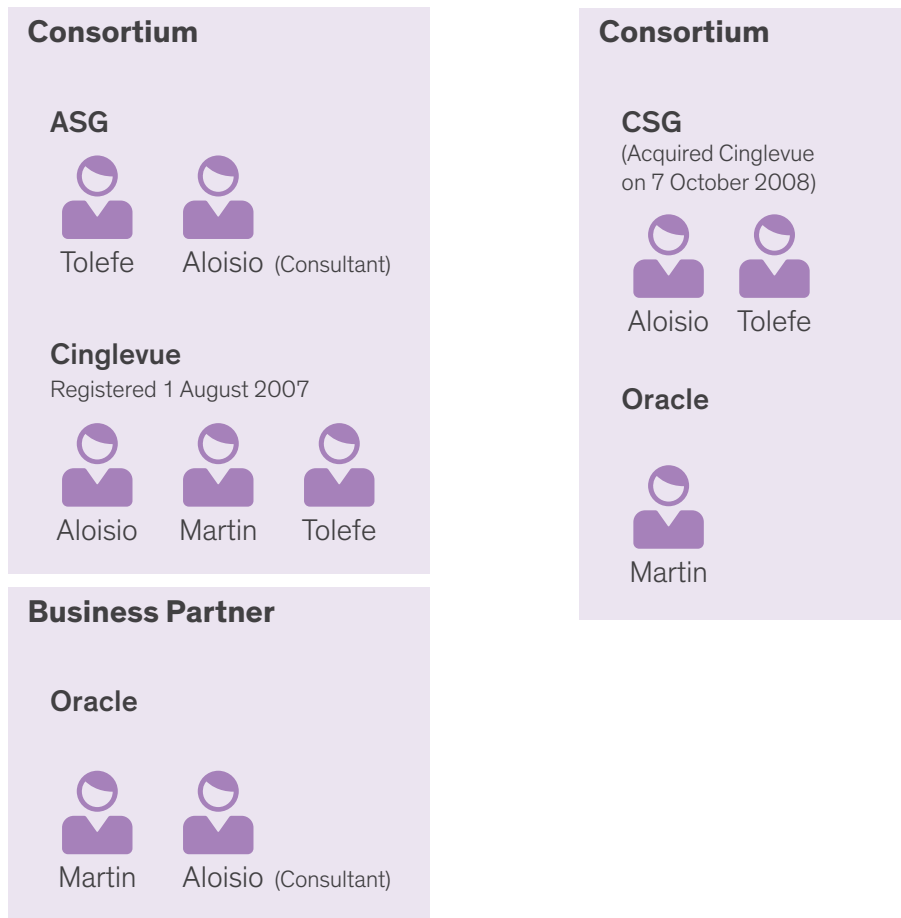
FIGURE 5: THE INVOLVEMENT OF CERTAIN PEOPLE IN THE ULTRANET TENDERS

First tender process

1 August 2007

Second tender process

14 November 2008



4 Ultranet tender process

4.2. The second tender for the Ultranet

4.2.1. A new procurement strategy

In May 2008, the Major Projects Committee of Cabinet asked the Minister for Education to re-scope and redefine the project to make its requirements less complex and more flexible, and to fit within a \$60.5 million budget.

KPMG was engaged to carry out a market sounding for the Department to identify existing suitable software products and services, to assess whether those existing products might meet the Ultranet requirements, and to identify potential vendors. KPMG identified 17 potential vendors and shortlisted five:

- Blackboard International BV
- Desire2Learn Inc.
- Oracle Australia Pty Ltd
- RM Asia Pacific Pty Ltd
- Microsoft.⁶

Plainly, Oracle was not the only company with a product or the capacity to design and implement the Ultranet. Had the Department conducted an independent market review before proceeding with Students@Centre, it would have known this.

A new procurement strategy was adopted for the second tender. Lexton Gebert of Landell Consulting was engaged as an external ICT procurement specialist to advise the Ultranet Board in relation to the second tender. Mr Gebert is a very experienced procurement expert, who has advised government and private sector clients for more than 20 years in relation to many tenders, including complex IT tenders.

As part of the new procurement strategy, only the five shortlisted vendors would be invited to tender. The preferred contract model was to have the successful software vendor as prime contractor, leaving the Department free to engage multiple other contractors or to manage systems integration of the Ultranet software in-house.

4.2.2. Release of second, selective request for tender

On 14 November 2008, the Department released a selective RFT to the five potential software vendors.

Among other things, the rules and conditions of the tender required that tenderers must not communicate with departmental staff involved with the tender, or they would risk having their tender disqualified. The tender document also included a requirement that 'The tenderer will be the single prime contractor for the delivery of the Ultranet Project solution'.

However, it appears that on 9 November 2008, before the second RFT was released to the market, a senior executive of Oracle contacted the Department to ask if it would allow Oracle to tender with a strategic partner as the prime contractor with Oracle as a subcontractor.

Mr Gebert advised the Ultranet Board in an email of 10 November 2008 that it should resist bending the rules to accommodate Oracle's request. In the event that the Board chose to act against his advice, he advised that the Board should give *all* invited tenderers the opportunity to nominate an alternative 'prime' contractor. In a subsequent email discussion, Mr Fraser, Mr Rosewarne and Mr Bennett expressed a desire that Oracle be permitted to allow another company to be the prime contractor for its bid. They suggested the tender rules did not require the invitees to prime, but that the Board simply had a preference for them to prime.

⁶ ASG was not included as an invitee in the selective RFT, even though its bid with Oracle had proceeded to BAFO stage in the first tender process.

By the close of tender on 22 December 2008, four responses were received including one from CSG Services Pty Ltd (as the prime contractor)/ Oracle Australia Pty Ltd and Hewlett-Packard (as subcontractors) and one from RM Asia Pacific Pty Ltd (prime) with various subcontractors. In its tender bid, Oracle proposed CSG as the prime contractor, with Oracle as a subcontractor.⁷ The bid was not rejected for being in breach of the requirement for the invitee to be the prime. No other tender response departed from that requirement. There is no evidence that other tenderers were given the same opportunity by the Board as Oracle to submit a bid with an alternative prime.

Mr Tolefe was identified as the primary contact person for the CSG tender and Mr Aloisio was listed as one of the key CSG staff to deliver the Ultranet project. CSG was identified as being a 'systems integrator' from Darwin, despite having no experience in this area.

CSG Limited acquires Cinglevue

On 17 October 2008, CSG Limited⁸ announced to the market the acquisition of Cinglevue, which it described as 'a leading Oracle business partner in the Australian education market based in Perth and Melbourne'. This acquisition of Cinglevue was a strategic move to secure a partnership with Oracle. Cinglevue had no tangible or physical assets or cash at hand. Its singular 'asset' was Mr Aloisio, and his strong relationships and connections with senior department people.

4.2.3. Tender evaluation and concerns of favouritism

Evaluation of the four tenders commenced in January 2009.

The tender evaluation was to be overseen by a project board comprising Mr Rosewarne (chair), Mr Fraser, Mr Bennett, and Ms Dalton as probity adviser. Three teams were appointed to evaluate different components of each tender:

- The **commercial evaluation team** comprised Mark Bladon (appointed in December 2008 as Ultranet project manager), Mr Gebert and Kent Davey, an experienced legal adviser to the Ultranet Board.
- The **technical evaluation team** was led by Adam Todhunter, with other staff including Erle Bourke, the Department's head of IT.
- The **teaching and learning evaluation team** comprised Dianne Peck (lead), Mr Cushing, Kylie Doye and Ms Davie. Notably, Ms Peck and Mr Cushing had worked closely with Mr Fraser at GWSC and later within the Department. They were hand-picked by Mr Fraser to be on the teaching and learning evaluation team.

Mr Bladon prepared a draft report for the Ultranet Board recommending:

- the responses from RM Asia Pacific and CSG/Oracle both proceed to the final shortlist
- one of the responses to be set aside because it was non-compliant
- another response to not proceed to the final shortlist, because it scored very low on the teaching and learning elements and quite low on the technical element, and it was expensive.

⁷ Unless stated otherwise, references in the report to CSG/Oracle are to their joint bid as described and not to them acting as a single entity.

⁸ CSG Limited was, at the time, the parent company of CSG.

4 Ultranet tender process

The teaching and learning evaluation team found three bids satisfied the functionality criteria but identified CSG as their 'preferred solution'. The CSG bid was scored extremely high by the teaching and learning evaluation team – so high that Mr Bladon, who has significant experience in tender assessment, considered the scores achieved by the CSG bid were extraordinary. Mr Bladon gave evidence that he asked Mr Cushing, a key member of the teaching and learning team, to rescore CSG's bid with a more critical approach and with regard to the degree of customisation and development costs needed to achieve what CSG was proposing. The teaching and learning team met to discuss Mr Bladon's request and refused to re-score the bid.

Mr Bladon was concerned about a degree of favouritism to CSG in the evaluation of its bid. He was also concerned about the background with Oracle and its involvement with GWSC and many of those involved in the teaching and learning evaluation team, which meant that they had some familiarity with the Oracle product. Mr Bladon was concerned the tender had been written essentially to describe the Oracle product and another product that could achieve the same outcome, but in a different way, may be scored lower.

Mr Gebert, too, had significant concerns about the teaching and learning evaluation. He noted in his evidence that the teaching and learning criteria were given a significant amount of the overall weighting – close to 50 per cent – which was unusually high and gave that component a strong influence over the overall outcome. He discussed his concerns with Ms Dalton, who told him she had put arrangements in place to address this concern.

There was a stark difference between the bids on the commercial risk assessment that considered, among other things, the capability of the vendors and their relevant experience.

Three factors led the commercial evaluation team to identify CSG's bid as 'very high risk':

- the small size and relative inexperience of CSG, which had no previous experience as a major systems integrator, and would have to 'resource up' urgently to meet the needs of the contract
- the quantum of software development proposed, which was extraordinarily high, and in the order of some \$12.5 million of customised software development. This degree of customisation was seemingly 'out-of-whack' in the context of a proposal that was supposedly utilising Oracle's established off-the-shelf L360 product. CSG was offering an 'asset', not a product. This caused considerable concern to Mr Gebert, who was worried that what was being offered was 'vapourware', or something that lacked any real substance
- the arms-length nature of the prime contractor's relationship with the key contractor (Oracle). Oracle would have no responsibility or accountability contractually for the delivery of the Ultranet.

In Mr Gebert's opinion, the CSG proposal involved extreme commercial risk and would not work. While the draft evaluation report labelled it 'very high risk' reflecting the collective view of the commercial evaluation team, Mr Gebert's evidence was that he considered the risk to be so extreme that, had he had his own way, the CSG bid would have been set aside completely. However, Mr Gebert ultimately agreed that it was necessary to have an alternative bid in the final shortlist in the event that the RM Asia bid fell over; weaknesses in the CSG bid could be explored further at the next stage.

4.2.4. Mr Fraser's 'explosive' response to the draft evaluation report

Mr Bladon and Mr Gebert presented the draft evaluation report to the Board on 11 February 2009. The draft report recommended shortlisting both CSG and RM Asia Pacific. During discussion, Mr Bladon expressed his view that the Board should be looking to go with RM Asia Pacific, based on the significant commercial risk associated with CSG's bid.

Mr Fraser's response was said to have been explosive. Mr Bladon described Mr Fraser as agitated, bright red in the face, shouting and swearing. In their many years of experience, Mr Bladon and Mr Gebert had never seen a reaction like it. Mr Gebert said:

I think he came into the meeting believing that there was only one possible solution that merited advancing and he couldn't really believe that the discussion was going down the trail of there being a significant competitor to CSG. So he was very aggressive towards I think Mark [Bladon] and myself about the process not having been done properly. It was quite an outburst, probably the first of many that occurred after that incident.

Mr Fraser explained that he was exasperated because they were 'looking at no outcome yet again', but this does not make sense. Progressing to a 'shortlist' of one tenderer, as Mr Fraser seemingly wanted to do, would deprive the Department of a 'next best' option and would make it more likely, not less, that the tender process would fail. Shortlisting two tenderers would also preserve a degree of competition as the tender progressed, which would undoubtedly advantage the Department in negotiations regarding features, services and price.

Mr Gebert gave evidence, confirmed by Ms Dalton and Mr Bladon, that over following Board meetings he was repeatedly treated with antipathy and aggression when putting forward his independent advice, particularly in relation to commercial risks and the procurement process.

Mr Bladon's evidence was that it was very clear from the moment of Mr Fraser's outburst that RM Asia was not going to be an acceptable option. Despite Mr Gebert's advice, discussion at board level turned to options for de-risking the delivery of the CSG/Oracle bid, rather than considering other valid contenders. As a de-risking strategy, the Department chose to take on a systems integrator role, which substantially altered the conditions of the tender. It also meant the Department absorbed other significant risks that were the basis of critical and urgent recommendations made during the Gateway review process (Gateway reviews are discussed in section 7.1.5).

4.2.5. CSG/Oracle given preferred tenderer status against advice

The Board, led by Mr Fraser, did not accept the recommendation to shortlist RM Asia Pacific. Against the outcome of the evaluation and the strong advice of Mr Gebert and Ms Dalton, on Friday 27 February 2009 the Board passed a resolution endorsing the CSG/Oracle consortium as preferred tenderer for the Ultrahigh procurement. The resolution, signed by Mr Fraser, Mr Rosewarne and Mr Bennett, also:

- resolved that the Department would act as its own systems integrator, thereby fundamentally changing the requirements of the tender
- rejected any further consideration of RM Asia Pacific's bid on the basis of its lower scores on teaching and learning criteria and a view that 'the RM Bid is very unlikely to be successful'
- stated that the 'CSG/Oracle offering is the best functional solution for the Department'.

4 Ultranet tender process

4.2.6. ASG litigation and suspension of the tender

The day after CSG was endorsed as preferred tenderer, ASG contacted the office of Minister Pike drawing attention to litigation that was occurring in Western Australia that had ramifications for the Ultranet tender. In the days following, the Department learned that ASG had sued Aloisio Consulting, Mr Aloisio, Mr Tolefe, Cinglevue and CSG, alleging that Aloisio Consulting (and later Cinglevue, which had assumed the place of Aloisio Consulting) had breached its agreement that Mr Aloisio would provide his services exclusively to ASG in connection with Oracle's Ultranet tender bid. Among other things, ASG was seeking an injunction to prevent CSG from using Mr Aloisio's services and ASG's confidential information in connection with the CSG/Oracle tender. Such an outcome would have a direct impact on the viability of the CSG/Oracle bid. ASG was also seeking damages from CSG on account of the alleged matters, thus creating the possibility that if CSG was awarded the Ultranet contract, it would immediately be liable to ASG for millions of dollars in damages.

In detailed communications with the Department on 2 March 2009, ASG's lawyers indicated they intended to subpoena Mr Fraser, Mr Rosewarne and Mr Bennett, among others, in relation to the litigation.

It also became clear that ASG had commenced its proceedings against CSG in November 2008, shortly after the release of the second RFT. There is no question that CSG was aware of the existence of the litigation prior to the submission of its response to the RFT. However, it did not disclose the existence or nature of the litigation to the Department in its tender response. In fact, in misleading fashion, it stated that it had no relevant matters to disclose.

The failure by CSG to disclose the litigation when submitting its bid amounted to a breach of the tender rules, and was a sufficient and proper basis for the Board to disqualify CSG/Oracle's bid from any further consideration. The existence of the litigation also raised additional commercial risks, not previously evident at tender evaluation stage.

It is unclear whether Mr Fraser was aware of the litigation prior to 28 February 2009.

Ms Dalton provided urgent advice to the Board, identifying significant probity risks arising from the litigation. She advised the Department to immediately suspend discussions with CSG in relation to its bid, as the Department was now on notice of the proceedings and could itself commit a breach in respect of ASG's claimed confidential information. She advised that CSG's failure to draw the proceedings to the attention of the Department, notwithstanding multiple opportunities to do so, demonstrated that CSG had been less than frank and that this presented a ground for concern about its integrity.

The Department formally suspended its 'clarification discussions' with CSG/Oracle on 6 March 2009.

4.2.7. Conditional resolution of ASG litigation

Mr Fraser and others on the Board were anxious that the litigation be resolved so that discussions with CSG/Oracle could resume and move forward. Notwithstanding the suspension of CSG's tender, the Department sought clarification as to the status of settlement negotiations. In fact, the Department later became involved in the process as a party to a Deed of Release under which CSG, ASG and other parties provided indemnities to the Department.

There was no evidence that Mr Fraser, or the Board, were prepared to give serious consideration to disqualifying CSG's bid.

4.2.8. Formal resolution of ASG litigation

In mid-March 2009, ASG reached a formal settlement in which it agreed to withdraw its litigation on the basis that it would be paid \$4.2 million by CSG, should CSG be awarded the Ultranet contract.

The Board was made fully aware of the terms of the settlement. Mindful that negotiations with CSG in relation to its BAFO and price had not commenced, it was entirely foreseeable that CSG would factor into its offer a price component that would fund its liability to ASG. In other words, the settlement terms should have alerted the Department to the likelihood that CSG's offer would not necessarily be of best value because it had a \$4.2 million liability.

On 25 March 2009, the Board un-suspended CSG's tender, on the basis that it had settled the litigation, and immediately engaged in 'clarification' discussions with CSG in relation to its offer.

It was a matter of grave concern to Ms Dalton to learn that the ASG litigation had been settled in the sum of \$4.2 million, on the condition that CSG would win the Ultranet contract before the tender process had concluded. Further, from a probity perspective Ms Dalton advised against the Department seeking a deed of release as this could be seen as it becoming involved in the settlement of the proceedings. Notwithstanding her advice, the Board entered into such a deed.

4.3. Failure of the Ultranet

Contracts for the Ultranet project were signed by the Department and CSG on 29 June 2009.

The contract awarded to CSG was valued at \$71 million, in excess of the \$60.5 million budget. Oracle was subcontracted by CSG to provide the software for the Ultranet. CSG was responsible for the delivery, development and maintenance of the Ultranet project.

4.3.1. The Big Day Out – the Ultranet launch (August 2010)

A plan was made to 'launch' the Ultranet as a fully functioning system at the Department's annual professional development day, known as the Big Day Out.

A pupil-free day was declared in every government school in Victoria. School principals were required to travel to Melbourne to attend the Big Day Out conference at the Melbourne Convention and Exhibition Centre, where the launch was held. School teachers were required to be at school, ready to 'log on' to the Ultranet when it went live. International guests were invited to attend the launch. Minister Pike was present. Mr Fraser had a central role in presenting and 'launching' the Ultranet.

At Mr Fraser's request, the APU had approved an exemption for expenditure of up to \$950,000 on the Big Day Out without the need to comply with the usual procurement processes. However, IBAC's investigation revealed that approximately \$1.4 million was spent on the day. IBAC found no evidence of any further approval having been sought or obtained for the additional expenditure.

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The launch was extravagant. Approximately \$22,000 was spent on hiring a large bus, covered in Ultranet branding, which drove the Minister and invited guests onto the stage of the Exhibition Centre. A stage-sized prop in the shape of a laptop computer was constructed for the day. Around \$80,000 was spent on hiring an event manager to direct and stage manage the single-day event. Approximately \$115,000 was paid to one company for graphic design services for the day, including design of special stickering for the bus, and a fee for removing the stickering. Professional dancers and singers were hired and a musical number performed. 'Spot-prizes' of iPads, kindles, laptop netbooks and 'scholarships' each worth \$10,000 were supplied and distributed.

The expenditure on the Big Day Out was in anyone's view excessive.⁹ Of particular concern was that it was funded not from monies allocated to the Ultranet project, but from the OGSE's general budget – funds that are intended for the benefit of schools and education.

The lavish, commercially-styled launch was derailed by the failure of the Ultranet itself on the day, which crashed and was inaccessible and non-functional until very late in the day. As a result, the project lost considerable credibility and support.

4.3.2. Limited functionality and uptake of the Ultranet

The functionality and uptake of the Ultranet by government schools was limited. Secondary schools had concerns the Ultranet was incompatible with widely used existing software. It appears the Ultranet was used mostly in primary schools.

In December 2012, the Victorian Auditor-General's Office (VAGO) published a report on its audit of the Department's Learning Technologies, including the Ultranet. It found:

The Ultranet has been poorly planned and implemented. None of its three business cases had a well thought out needs analysis or gave comprehensive options to deliver the project.

Some six years since its announcement as a government priority, the Ultranet has not delivered any of the main objectives that were expected when the project was funded.

The Ultranet is significantly late and over budget – and with limited functionality – when compared with what was originally announced. The full costs of the project are poorly recorded by the [Department] and a conservative estimate of actual costs by June 2013 is \$180 million, or close to 300 percent above the first announced budget. . . .

Use of the Ultranet is well below expectations, with only 10 per cent of students and 27 per cent of teachers logging into the system. Because of its very low and declining usage, and the ambiguous guidance from [the Department] about whether schools can opt out of the system, the viability of the Ultranet as the government's key learning technology investment is now under serious threat.¹⁰

⁹ During the public examinations, former Minister Pike gave evidence that she had no idea at the time how much was being spent but agreed the amount seemed excessive.

¹⁰ Victorian Auditor-General's Report, *Learning Technologies in Government Schools*, December 2012, p.20.

Richard Bolt, Secretary of the Department from August 2011 to December 2014, cancelled the Ultranet project following the VAGO report. He gave evidence that he, with his senior executives, decided that the cost and capability of the Ultranet and its take-up by schools meant it would not achieve its intended vision. He observed that 'an integrated, multi-function, web-based learning and reporting application was too complex and expensive to be fully developed and maintained for only 1500 schools. I came to understand that applications of such complexity would generally be developed for much larger, possibly international, markets'.

By this time, NEC had taken over CSG's commercial interests in the Ultranet. The Department negotiated an end to the arrangement with NEC in mid-2013. The agreement involved a final payment of \$2.8 million to NEC by the Department to allow dependent schools time to acquire alternative systems or strike agreement with NEC for continued access.

4.3.3. How much did the Ultranet cost?

Lax financial management and poor record keeping made it next to impossible to determine how much public money was actually spent on the Ultranet:

- The Major Projects Committee of Cabinet had originally approved a budget of \$60.5 million for the development and implementation of the Ultranet, based on the 2009 business plan put forward to Cabinet. In its December 2012 report, VAGO found that the 2009 business plan had significantly underestimated the actual budget requirements of the proposal put forward in that plan. The true cost of that business plan should have been about **\$74.6 million**, not \$60.5 million.
- Based on its review of the Department's financial data, VAGO formed the view that actual capital and operating expenditure on the Ultranet was approximately \$162 million by June 2012, and projected it would be **\$180 million** by June 2013. VAGO observed a failure to properly track all costs in relation the Ultranet in the Department's financial records.
- PwC's estimate of expenditure on the Ultranet was approximately **\$152 million** (an estimate that included the \$50 million cost of Ultranet 'coaches', which was an expense tracked separately).
- Deloitte (engaged to review the Ultranet project) indicated a likely figure of about **\$127 million**. Deloitte was unable to say with any certainty what was spent on the Ultranet on account of the poor state of the Department's financial records.
- IBAC heard evidence from Graham Lane, a former school principal and friend of Mr Fraser, to the effect that Mr Fraser had told him over dinner one evening that the true cost of the Ultranet was more like **\$230 million or \$240 million**.

Attempts to properly account for the true nature of expenditure of public monies on the Ultranet was significantly hampered by the haphazard recording of spending and management of funds. IBAC found evidence that OGSE general funds and monies from the Department's emergency funds were expended on Ultranet-related matters.

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4.4. Probity breaches during the tender process

Throughout the Ultranet tender process there was a blatant disregard for probity protocols. Operation Dunham found evidence of improper communications during sensitive stages of the tender process. As well, the investigation heard that Mr Fraser and others openly rejected the strong advice of probity advisers and other experts.

4.4.1. Improper communication between Mr Aloisio and Mr Fraser, and Mr Martin and Mr Fraser

Among documents seized under search warrant from Mr Fraser's premises, IBAC found evidence that Mr Martin and Mr Aloisio communicated covertly with Mr Fraser in the lead up to the release of the second RFT. During this period, Mr Martin remained an executive of Oracle, involved on behalf of Oracle in matters relating to the Ultranet project. Together with Mr Aloisio and Mr Tolefe (who was still with ASG¹¹), he was also a director of Cinglevue.

The purpose of those communications appears to have been twofold:

- to shape the Department's scope and requirements for the tender to favour Oracle
- to exert pressure on Oracle to submit a bid in partnership with Mr Martin's and Mr Aloisio's company, Cinglevue.

The nature of the communications suggests that Mr Fraser, Mr Martin and Mr Aloisio shared a common purpose in those objectives.

Email dated 11 June 2008 from Mr Martin to Mr Fraser

On 11 June 2008, Mr Martin sent an email from a private email address, 'growlerbarman@hotmail.com', to a private email address of Mr Fraser's daughter. The email was titled 'Important Material for you[r] Dad'. Mr Tolefe also came into possession of the email, because he forwarded a copy of it from his Cinglevue email address to Mr Aloisio, also at a Cinglevue email address.

Mr Martin asked Mr Fraser's daughter to pass the documents attached to the email on to Mr Fraser and to ask him [Mr Fraser] to call Mr Martin. The use of private email addresses and communication through Mr Fraser's daughter was a deliberate strategy to conceal improper communications which were intended to corrupt the tender process.

¹¹ Mr Tolefe left ASG's employment in late 2007 but remained a contractor until mid 2008.

Many things are evident from the substance of the communication sent by Mr Martin to Mr Fraser (printed in full in figure 6 to demonstrate the extent of the breach of probity):

- First, it is evident that Mr Fraser was **planning to meet** the Managing Director of Oracle and a senior Oracle executive who was responsible for managing Oracle's bid in advance of the release of the second selective tender. At the time, Mr Fraser was a member of the Ultranet Board and the key driver of the project. Although the tender had not been formally released to the selected tenderers, its revised scope was in development and the intended tenderers had been identified. This was in breach of probity guidelines applying to Mr Fraser.
- Second, it shows that Oracle had been contemplating an offer that involved the supply of systems and management services by its business, Oracle Consulting. Mr Martin's communication was a **bold entreaty to Mr Fraser to pressure** Oracle not to tender alone (which was what the new procurement strategy preferred, in terms of having a software vendor as prime contractor) but rather to partner with Cinglevue to provide managed services.
- Third, Mr Martin **divulged confidential Oracle information** in an attempt to derail any involvement by Oracle Consulting, and with the plain intention to advantage Cinglevue in its attempt to gain involvement in the bid.
- Fourth, the use of 'you (we)', and a number of references to 'getting the outcome you want', suggests there had been **previous communication/discussions** about the particular outcome Mr Fraser wanted from the process. It also suggests some degree of unity between Mr Martin, Mr Fraser and Mr Aloisio with respect to the matters in the communication. The email does not have the tone of an unsolicited communication.

- Fifth, the communication included a **fully-developed proposed scope** for the new tender, drafted by Mr Aloisio and Mr Martin, which was supplied with the intention that Mr Fraser 'pass it on to the consultant'. Here, Mr Martin was clearly intending to influence the actual scope of the tender requirements that were to be finalised by the Department to give an advantage to Oracle and Cinglevue.

The email also demonstrates an extraordinary and wilful breach of Mr Martin's duties to act in his employer's best interests, given that he knew he could be sacked for what he was sending.

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FIGURE 6: EMAIL FROM GREG MARTIN TO DARRELL FRASER SENT VIA MR FRASER'S DAUGHTER

Hi

In terms of strategy moving forward there needs to be a strong element of trust here. I am not worried but you need to know that is the premise on which most of this is written. I could be sacked for this information and commentary.

I have broken the document into two parts. Part one is your meeting with [Ian] White and [Geoff] Moyle...Part two are my suggestions with indicative costs moving forward.

The strategy behind the Moyle/White meeting is simple – Oracle consulting are where the nightmare begins and ends. Ian needs to hear this. Hopefully if you can put the argument forcefully enough then Consulting will not be involved in the next bid. (This is VERY important as it gives us the price flexibility and capability to deliver Ultranet maybe even with managed services!). The reasons are as follows:

- Oracle consulting are too expensive, their day rates of \$3200 with margin of 65% these are legislated by corporate so they can't adjust them even if they wanted.
- Oracle Consulting CAN prime but they wont [sic] step up to the Terms and Conditions required by the Department. This means we get to the end again and are stuffed.
- In the case of the Western Australian Shared Services deal Oracle Consulting primed and just the contract alone took 18 months to negotiate and still the Government never got what they were after. Worse still Oracle took another 12 months to gear up for the implementation. This is because Oracle Consulting DO NOT begin to hire resources until the contract is signed. **You (we) really don't want them in this bid** [emphasis added]. ...

Ian [White] and Geoff [Moyle] are going to be thinking you are going to be trumpeting Oracle. Of course I want you to but not yet. Now is the time to give them some pain. If you make these points then hopefully they will get the message that Oracle Consulting needs to be out or at worst minimized out of the bid.

Suggested model moving forward: Rocco [Mr Aloisio] did most of the work on this bit.

The attached powerpoint really describes how the FUNCTIONAL REQUIREMENTS could be framed with a paragraph to describe the intent of each functional area in connection to the vision of the Ultranet. Importantly, at the centre of the requirements is the Oracle enterprise platform (SPOT) which is THE cornerstone of the Ultranet – without a truly enterprise foundation then the functionality is superfluous...

It is probably best you call me or Frank and we will work you through the logic...and our new recommendations moving forward (Blue CV [Cinglevue] Red Oracle). You will note Cinglevue is representing some best of breed components eg AAL, Google etc.

The second worksheet (reprioritized tender mapping) has the DEECD requirements sorted by (priority) functional area and then prioritized within each area. We believe this is the correct priority model for your new tender bid. Tab 3 is the same but without the who does what bits so you can pass it to the consultant ...

The other point attachment describes the ONLY way for you come out to market and get the outcome you want...I have included some indicative prices on what all of this will costs, once again however it is best I work you through this.

Mr Fraser admitted to receiving 'two or three' emails from Mr Martin's 'growlerbarman' address and gave evidence that he recalled receiving this particular email. He said he recalled Oracle being given the opportunity to present options for the Department to consider in the period after the first tender failed. He said Mr Bennett and Mr Rosewarne intended to treat the presentation as outside of the tender process, seal it, and consider it only if Oracle was successful.

Mr Fraser sought to explain the email by stating that Mr Martin was breaking protocol by trying to get that information to him before the meeting. Mr Fraser said he was not engaging with Mr Martin, he was ignoring him. He said he had warned Mr Martin off before the tender process started.

Mr Fraser's explanation is unconvincing. The content of Mr Martin's communication goes beyond suggestions regarding the functionality of the Ultrahet into the realm of Oracle's commercial arrangements for the tender. Further, if a pre-tender presentation from Oracle had been approved and was expected, there would be no reason for material to be communicated by such surreptitious means. The only reasonable explanation can be that the participants, including Mr Fraser, deliberately contrived a means of communicating outside their official email accounts so their communications would remain undetected. They knew their communications were improper and would not be tolerated if known.

The project had a probity adviser and a probity register. Yet Mr Fraser did not report Mr Martin's contact as a serious transgression of transparency and integrity. He did not report the communications to the Department. Nor did he chastise Mr Martin for misusing his daughter's email address.

Mr Fraser claimed not to recall any other such communications. He also admitted to disposing of many documents in his possession relating to the Ultrahet, meaning there was no documentary evidence. Further, because the emails were deliberately not sent or copied to Mr Fraser's departmental email address, electronic records cannot be retrieved.

July – August 2008: Communications from Mr Aloisio

IBAC found evidence that Mr Aloisio also communicated with, and supplied sensitive and confidential information to Mr Fraser on more than one occasion during the development of the scoping stage for the second RFT.

In July 2008, Mr Aloisio provided Mr Fraser with a document titled 'The problems with Oracle and the Ultrahet'.¹² The document contained commentary critical of Oracle and its implementation and service capabilities, and advocated strongly for functional roles for ASG and Cinglevue in relation to the implementation of an Oracle-based Ultrahet:

Definitely this is the way to go. ASG would host the environment. Cinglevue would provide the Oracle/ Yahoo solution...DEECD could also 'offer' the Ultrahet to Catholics and Privates on a per-student metric. It would look doubly delicious if the telco iPhone package went along with it. Why stop at Victoria? China, Middle East, etc. You could effectively on-sell Ultrahet to the world.

Mr Aloisio proposed certain 'key deliverables' for inclusion in the Ultrahet project scope. His document also critiqued a number of possible 'options' for the Ultrahet. It spoke scathingly of a direct contract with Oracle as sole prime contractor:

NOT AN OPTION...sounds good but will be a disastrous outcome! *For all of the reasons I have articulated this will be a disaster...I guarantee you they will roll in an incompetent Oracle Consulting to do the implementation – despite any assurances they give you, I can guarantee they will not utilise any of the domain experts (ie Cinglevue)...This might seem like the easiest way to do it, but I know it will be a disaster and I would have no part of it.*

¹² The document was found in electronic form on Mr Aloisio's hard drive. A hard copy print-out of the same document, bearing handwritten notes, was found in documents belonging to the Department. Mr Aloisio accepted that he was the author of the document, and that the handwriting on the hard copy looked like Mr Fraser's. To avoid detection of the communication, it appears that Mr Aloisio provided Mr Fraser with a hard-copy of the document, rather than emailing it to him at his departmental email address.

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Mr Aloisio gave evidence that this communication was not inappropriate as it did not occur during a 'closed communication period' (the period after the release of the RFT to the market). Other witnesses including Mr Martin, Mr Fraser and the Managing Director of Oracle drew a similar distinction between contact during 'closed communication periods', which was universally accepted to be improper, and contact at any other time, which seemed to be treated as 'anything goes'.

However, Mr Aloisio's communications were plainly designed to influence the scope and requirements of the upcoming tender to advantage the interested parties, and to influence the outcome. Adopting a literal interpretation of the distinction between closed and open communication periods is considered to be misconceived, and to demonstrate a lack of understanding of probity obligations during the tender process and potential corruption risks.

Among documents seized at Mr Fraser's private residence, IBAC investigators found a hard copy printout of confidential email communications (dated 4 August 2008) between Oracle and ASG in relation to the upcoming second tender. Mr Fraser was not listed as a recipient, nor should he have been due to the confidential commercial content of the email. The most likely explanation for how the email came into Mr Fraser's possession in hard copy at his home is that he was provided it by Mr Aloisio, Mr Martin or Mr Tolefe, who were recipients in the email chain.

4.4.2. Improper communications – 'blatantly going against my advice'

During the suspension of the tender, Mr Fraser was also overtly and blatantly in communication with persons from CSG and/or Oracle. He openly spoke in Board meetings about conversations he had had with senior people from Oracle and/or CSG. Moreover, he communicated with them about matters that had arisen in Board meetings. Mr Gebert gave evidence that he would explain a commercial position at a Board meeting, for example, about a lack of leverage if the Department were to separately contract with Oracle, and the rejoinder from Mr Fraser would be 'well, you know, I have spoken to them. They're good people. They would never do that'.

Ms Dalton said in evidence:

I became aware that Darrell Fraser and Chris Bennett were having telephone conversations with people who were at CSG/Oracle. And I recall being surprised and very concerned that they would be doing that because I had specifically – it was obvious they shouldn't and there was legal advice as well, but I recall specifically telling them not to. And I remember them admitting to me that they had been having conversations and/or contact with the CSG/Oracle people over the weekend or at night and I recall being very angry and concerned...they were blatantly going against my advice.

Mr Fraser explained that these conversations took place after CSG was nominated as preferred tenderer, and negotiations were afoot. However, the fact that Ms Dalton counselled him strongly against those conversations suggests Mr Fraser was indeed communicating with Oracle and/or CSG at a time when it was inappropriate to do so. Ms Dalton's strong advice to Mr Fraser and the Board was dismissed and ignored.

On one occasion, Mr Bennett took a phone call during a Board meeting, telling those present it was the Managing Director of Oracle. If what he said was true, then Mr Bennett was also openly flouting the rules of tender and Ms Dalton's advice. If it was not true, then at the very least it is indicative that Ms Dalton's advice was not treated seriously by Mr Fraser or Mr Bennett. Ms Dalton also gave evidence that, increasingly, the Board would start meetings early and make decisions before she was in attendance.

4.4.3. A complaint about probity concerns is elevated to the Minister

In her long career as a probity adviser to government, Ms Dalton had never before encountered a situation where a client had blatantly acted against her advice. By early March 2009, her concerns had escalated and she resolved to report them.

Ms Dalton first reported her probity concerns to Mr Rosewarne, who advised her to go to the Secretary of the Department, Professor Dawkins. She told Professor Dawkins that, in her view, the Board was not acting in the best interests of the Department. Professor Dawkins was left in no doubt that Mr Fraser's conduct and behaviour, and his preferential treatment of the CSG/Oracle bid, was the central subject of Ms Dalton's concerns.

It was highly unusual that a probity adviser to a Department tender would take the significant step of reporting concerns to the highest level of Department Secretary. This reflected the gravity of Ms Dalton's concerns. She did not take the step lightly and showed courage in speaking out.

Professor Dawkins arranged for Ms Dalton to meet with Minister Pike, to discuss her probity concerns. Shortly afterwards, Minister Pike recommended Professor Dawkins remove Mr Fraser from the chair.¹³ He was however allowed to remain on the Board. It was decided to appoint Tony Bugden, a senior departmental executive and head of Human Resources, as chair of the Board. Minister Pike also recommended the appointment of Tony Lubofsky, who was known to her and in whom, according to her evidence, she had confidence. Mr Lubofsky was a departmental contractor and therefore subordinate to Mr Fraser.

4.4.4. The complaint was not managed confidentially

Notably, Mr Fraser was not removed from the Board, nor asked to resign – measures that would have definitively addressed the problems raised by Ms Dalton.

Evidence obtained in 2014 suggests the Minister's recommendation to appoint Mr Lubofsky, and to remove Mr Fraser from the Board chair, was made *after* discussion with Mr Fraser. At that time and following, Minister Pike and Mr Fraser were friends and in regular contact with each other by phone and email. In a lawfully intercepted telephone call between Minister Pike and Mr Fraser on 20 October 2014, they discussed the action that was taken in response to Ms Dalton's complaint. Minister Pike said to Mr Fraser, 'I put Tony Lubofsky as my kind of delegate on the committee, and then after that, that woman said it was absolutely fine. She was – everybody was happy about it'. Professor Dawkins' evidence was that he knew Mr Lubofsky, and had been impressed by his work for the Department.

Despite the acknowledged seriousness of the probity issues raised by Ms Dalton, her complaint to the Minister was addressed with little formality. No record was made or kept of the details of her complaint. No formal or independent investigation of the matter was arranged. Professor Dawkins did not write to the Ultramet Board to advise that the complaint had been made and received, or to advise of the changes that were to be made to the Board's structure and why. He gave evidence, however, that Ms Dalton's concerns with Mr Fraser's behaviour were communicated to the incoming chair, Mr Bugden.

¹³ Mr Fraser had been appointed chair of the Board following Mr Rosewarne's secondment to the Victorian Bushfire Reconstruction and Recovery Authority.

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It is also likely that Mr Fraser was aware that it was Ms Dalton who had made a complaint. Former Minister Pike accepted in evidence that she may well have spoken directly with Mr Fraser about Ms Dalton's complaint regarding his and the Board's conduct at around the time it was made, and in such a manner that Mr Fraser would have been able to identify who had made the complaint.

There is nothing to suggest, and it is not suggested, that former Minister Pike had any knowledge of, or involvement in, Mr Fraser's conduct. Nor is it suggested she showed improper favouritism towards the CSG/Oracle bid.

4.4.5. Rejection of Mr Gebert's warnings about the breach of tender rules

During the tender process, Mr Gebert became very concerned that the manner in which the tender was being conducted by the Board was in breach of the basic tender rules, and was directed to achieving a biased outcome. As such, it was putting the Department at significant risk of litigation by RM Asia or any other disappointed bidder.

In advance of a Board meeting scheduled for 8 April 2009, Mr Gebert prepared a presentation for the Board titled 'Ultranet Procurement Issues and Way Forward'. Mr Gebert's evidence was that the tender process to that point in time had been 'a shambles, in every sense of the word'. The tender evaluation plan had not been followed, and the tender evaluation outcome recommendations had been ignored. In particular, RM Asia's bid, assessed as worthy of consideration, had been dismissed, and RM Asia had not been given any opportunity to respond to concerns or supposed weaknesses in its submissions.

Mr Gebert noted the Ultranet Board had made decisions regarding shortlisting without anything more than a draft shortlist report, had disbanded the evaluation team prematurely, had failed to apply the 'value for money' rule in relation to its decision making, and failed to use appropriate governance arrangements. There had been 'major departures, major procedural issues, things that would by any neutral observation point to bias towards one supplier over the others', said Mr Gebert in evidence. The potential for legal action from disappointed tenderers, particularly RM Asia, was relatively likely if the Board did not take steps to rectify the tender process.

The matters raised in Mr Gebert's presentation were serious, and had serious consequences for the Department. However, he said he was unable to finish as he was interrupted by 'another kind of explosion'. He said one Board member (other than Mr Fraser) reacted angrily to the presentation, shouting and waving arms, accusing Mr Gebert of calling into question his integrity.

Based on this evidence, changes to the Board's composition had not led to any material difference in how certain Board members behaved. Mr Gebert's evidence was that yet another Board member took to shouting at him at the Board meetings.¹⁴ Mr Gebert interpreted this as a message to 'shut up', because:

...if the Secretary appoints someone who proceeds to shout at me, that's basically telling me to go away. Again, it's quite surreal. The logical thing to do would have been just to end my contract. I don't quite understand why all this maneuvering was taking place.

Mr Gebert is to be credited for continuing to stand up and put his advice forward in the face of entirely inappropriate and personalised bouts of aggression from Mr Fraser and others on the Board. Not surprisingly, Mr Gebert came to question the motivations of those on the Board, going so far as to raise the possibility of corruption:

So the discussions would go along the lines of, well, what's the motivating factor for what's occurring here? It's either something like sheer stupidity, it's either – or incompetence, it's alternatively it – it might just be wilful blindness toward something that they really wanted or the third option was it had something to do with corruption. And I indicated to – to Anne Dalton that, you know, probity was her gig, procurement was mine, I was going to stand up for what I believed was the correct – was the correct approach to the situation from a commercial perspective although I obviously had no evidence of any corruption and it would be a big step to go down that path. The more I thought about it, the more I thought that could be the only thing that really explained the sort of behaviour that – that we experienced... I couldn't arrive at an explanation other than corruption that made all the things hang together.

4.5. Blurring of line between public role and commercial interests

4.5.1. Mr Fraser spruiks the Ultranet

From the time he was principal of GWSC and throughout his tenure as Deputy Secretary, Mr Fraser cultivated mutually beneficial relationships with Oracle and CSG. While the development of such relationships may be considered normal practice in the private sector, a different standard is expected and required of public officers like Mr Fraser. Operation Dunham has identified that allowing public officers to develop close, unchecked relationships with corporate entities – as Mr Fraser was allowed to do over the course of many years – carries a significant risk of corruption and other inappropriate or improper behaviours. In the case of the Ultranet, the resulting waste can be measured in many millions of dollars of public money.

Throughout his tenure as Deputy Secretary, there was clearly a blurring of the lines between Mr Fraser's role and responsibilities as a public officer and his involvement in the promotion of the commercial interests of CSG. IBAC gathered evidence of Mr Fraser travelling to various locations around Australia and overseas to spruik the Ultranet product as a satisfied CSG customer, with a view towards generating further sales for CSG. During these trips, Mr Fraser would be identified as a Deputy Secretary for the Department and arguably this positional authority lent greater credibility to Mr Fraser's endorsement of the CSG product. Often these trips were at least partially funded by CSG or paid for by the Department, but with obvious commercial benefits accruing to CSG. Examples include:

- **March 2011** Mr Fraser travelled to Western Australia and the Northern Territory to meet with representatives from the Western Australian and Northern Territory Departments of Education in company with CSG staff. During this travel Mr Fraser, together with Ms Petch and Stephen Sullivan (former office manager, OGSE), attended dinners in company with CSG staff and travelled around the Northern Territory with Julie-Ann Kerin on a CSG plane.

¹⁴ The Board members in question have disputed they behaved so, however there is no reason to consider Mr Gebert did not give accurate evidence.

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- *March 2011* Mr Fraser travelled to Dubai for the purpose of a job interview and during the course of this trip, met with senior officials there, promoting the Ultranet on behalf of CSG. IBAC heard evidence from a witness to Mr Fraser's conduct on this trip who described Mr Fraser as acting as a 'salesman for CSG' in connection with their interest in the Ultranet, while clearly identifying himself as a Deputy Secretary for the Department.
- *June 2011* Mr Fraser attended a meeting in Sydney to brief the Commonwealth Education Minister's adviser about the Ultranet on behalf of CSG, in accordance with talking points provided by CSG.

During April 2011, Mr Fraser also endorsed the establishment of an 'Ultranet Education Consortium' between the Department and CSG, to facilitate the sale of the Ultranet in other jurisdictions. This arrangement contemplated the payment of royalty fees to the Department if CSG was successful in implementing the Ultranet in other jurisdictions. The arrangement did not eventuate; however, it reflects Mr Fraser's ongoing commitment to supporting CSG's commercial interests.

Further, IBAC identified evidence that throughout 2011, CSG sought to use Mr Fraser and his position to promote the Ultranet to further CSG's interests including preparing correspondence on Mr Fraser's behalf to the New South Wales Education Department.

Of note, in July 2011, CSG executives recognised in internal communications that Mr Fraser's involvement in working with CSG to sell the Ultranet product while still employed by the Department may place him in a 'difficult position'. This appears to be a recognition that these activities involved a potential conflict of interest between Mr Fraser's role as a senior departmental employee¹⁵ and promoting the commercial interests of CSG.

4.5.2. Mr Fraser accepts a job with CSG

On 7 November 2011 Mr Fraser received a formal offer of employment with CSG as the Chief Education Officer, Education Solutions with a commencement date two days later. One of the terms of Mr Fraser's employment contract was that he would receive incentive payments based on any new Ultranet-related business generated through his involvement. The advocacy that Mr Fraser undertook on behalf of CSG while still employed by the Department potentially laid the foundation for future sales of the Ultranet product, resulting in potential incentive payments for Mr Fraser once formally employed by CSG.

Shortly after commencing his employment with CSG, internal CSG communications show that the company also sought to use Mr Fraser to lobby government ministers in relation to the Ultranet, leveraging off the relationships he had established as a senior public officer.

Once employed at CSG, Mr Fraser set about recruiting his long-time departmental colleague Ms Peck as the Chief Learning Specialist for the company. Ms Peck commenced in this role in January 2012. As CSG employees, Mr Fraser and Ms Peck continued to have extensive interaction with the Department in relation to the Ultranet. According to evidence from senior departmental figures, they did not feel that Mr Fraser's role in relation to the Ultranet was improper because it appeared that Mr Fraser had a strong personal commitment to the project.

¹⁵ Whilst his role as Deputy Secretary ceased at the end of June 2011, Mr Fraser remained an employee until the end of October 2011 with responsibility for important Department projects including one relating to the Ultranet.

4.6. Conclusion

Taken singly, many of the actions and behaviours described in this chapter would be of concern.

Taken together, they show a disturbing pattern of improper behaviour.

The evidence supports the allegation that the Ultranet tender project was knowingly influenced in an improper and systematic way to facilitate the award of the Ultranet contract to CSG/Oracle.

The serious probity breaches outlined here and the continual decisions to ignore expert advice to the advantage of CSG/Oracle in concert with other information and behaviour exhibited by Mr Fraser should have raised considerable alarm within the Department and within the Minister's office. The question of poor governance is addressed in chapter 7.

5 Alliance: the million dollar 'little project'

5 Alliance: the million dollar ‘little project’

This chapter considers the allegation of improper diversion of departmental funds at the behest of Mr Fraser to support CSG’s cash flow.

5.1. Keeping the Ultranet afloat

5.1.1. CSG’s need for more money

The Ultranet system had failed in a very public way at the Big Day Out and fixing it would require more money. In evidence, Mr Fraser said ‘the testing that the [Ultranet] project board had been led to believe had been undertaken wasn’t as thorough as it should have been and so we had to come up with a solution and so this was going to require additional funds’.

By late 2010, CSG personnel were ‘making a case’ with Mr Fraser for additional funding. By early 2011, the Ultranet Board was involved in discussions around CSG suffering a cash flow shortfall for necessary work on the project.

The minutes of 12 January 2011 reveal that the Ultranet Board, attended on that occasion by two CSG executives, discussed CSG’s difficulties in obtaining suitably qualified people to work on the Ultranet project and a possible team restructure.

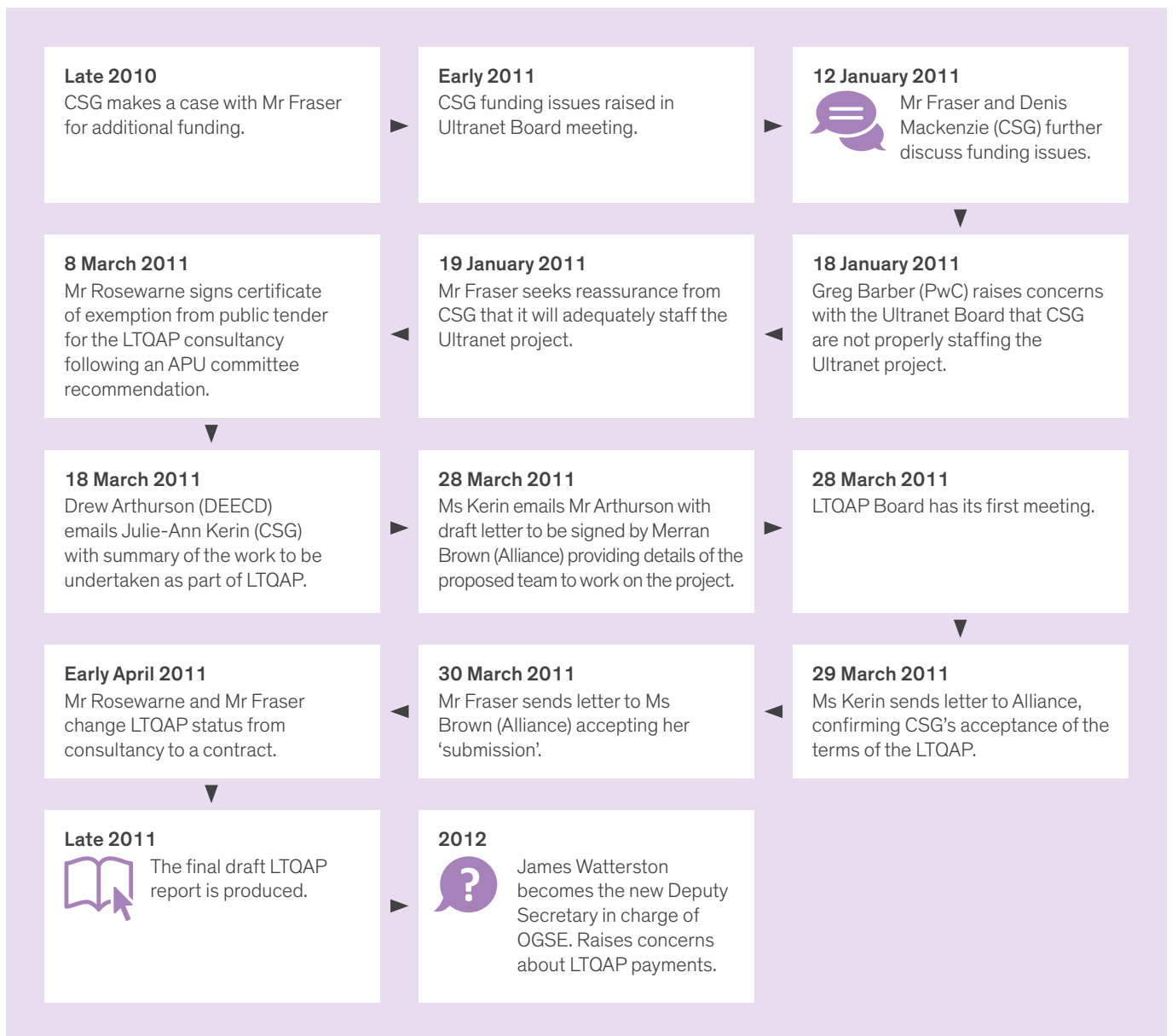
5.1.2. A plan is hatched: the Learning Technologies Quality Assurance Project

On 12 January 2011, Mr Fraser and Denis Mackenzie, CEO of CSG, dined together in Melbourne. The next day, Mr Fraser told Mr Mackenzie in an email that he would ‘endeavour to retrieve the situation’ if he could. Mr Mackenzie replied ‘Please, please try to get for me what I discussed - even a part will help if you cannot get all of it. But I really do need it for our team... please try.’

These emails were a reference to the extra funding needed by CSG for it to keep the Ultranet project on track. In evidence, Mr Mackenzie recalled that at this time CSG needed more cash from the Department to enable it to continue what he referred to as ‘out of scope work’.

Mr Fraser’s evidence about the dinner was that Mr Mackenzie was under pressure to obtain urgent additional funding for CSG. Mr Fraser said that prior to the dinner, Julie-Ann Kerin, the Group General Manager, Technology Solutions at CSG, had identified that about one million dollars extra funding was needed to keep the Ultranet ‘afloat’ to cover key staffing resources, such as developers and others who would need their contracts extended. Mr Fraser believed this was the figure that he and Mr Mackenzie discussed.

FIGURE 7: TIMELINE – ALLIANCE: THE MILLION DOLLAR ‘LITTLE PROJECT’



5 Alliance: the million dollar ‘little project’

On 18 January 2011, the Ultranet project manager (Greg Barber from PwC¹⁶), wrote to Mr Fraser and others at the Department about his suspicion that CSG was taking critical staff off the project to use elsewhere in its business. Board members wanted a formal commitment from CSG that they would continue to provide adequate resources. In an email to Mr Mackenzie on 19 January 2011, Mr Fraser sought an assurance that for at least two more months, five ‘critical’ CSG staff would not be re-allocated to any other CSG project without formal approval from the Department.

According to Mr Fraser, this was the context within which he devised a strategy to use a consultancy firm as the pathway through which an extra million dollars of departmental funds would go to CSG. Mr Fraser said that the recruitment services firm Alliance Recruitment was chosen as the vehicle for this plan as Ms Kerin (who Mr Fraser said was fully aware of his strategy) provided a contact through a friend (Merran Brown) who was the Alliance Recruitment General Manager.

In evidence, Ms Kerin said Mr Fraser explained to her that the Department had rolled out a number of technologies over the past number of years and said it was important to know how they were being adopted. He explained that the aptitude to use technology was a critical component in the success of the Ultranet project. Ms Kerin said she and Mr Fraser discussed at a high level the scope of what a six-month project would look like to survey the use of those technologies in schools. This project was later called the Learning Technologies Quality Assurance Project (LTQAP), a name chosen by Mr Fraser.

5.2. Contracting of Alliance Recruitment raises probity questions

5.2.1 Alliance Recruitment’s role as financial conduit

LTQAP was clearly a contrived device for CSG to obtain a substantial cash injection:

- Ms Brown explained Alliance provided recruitment and payroll services. Alliance did neither quality assurance projects nor work in the information technology field.
- Ms Kerin indicated that no costings on the project were done at that time by CSG. (It is standard business practice for a company to do basic costings before negotiating a project price).
- Ms Kerin also noted that Mr Fraser told her he was able to authorise expenditure of up to \$1 million, provided the company in question was on the Department’s professional services panel. CSG was definitely not on any panel. Alliance was on the panel, although the panel it was attached to appeared to supply recruitment, consultancy, training and outplacement services to local councils.

Ms Kerin was not concerned about the arising conflict of interest, given that CSG would be doing quality assurance in respect of the Ultranet project – the very project it was contracted to deliver. However, CSG’s director of corporate and government affairs Melissa Horne did recognise the risks. In an internal email to Ms Kerin and others (June 2011), Ms Horne circulated a paper designed to ‘mitigate any public perception risk’ with CSG doing the work via Alliance, which ‘could easily be painted’ by the media to look like a conflict of interest.

Ms Brown recalled being told by Ms Kerin that CSG was going to complete some work with the Department, but they needed to supply the work through somebody who was on a government panel. Mr Fraser subsequently advised Ms Brown that Alliance would need its own contract with CSG for delivery of the project. Essentially, Alliance was to be a financial conduit between CSG and the Department, with CSG billing Alliance, Alliance billing the Department, and Alliance then paying CSG.

¹⁶ Mr Barber had taken over this position from Mark Bladon.

For this role, Alliance was to retain \$10,000 per month over six months, a total fee of \$60,000. Ms Kerin's evidence suggested she and Ms Brown agreed on this fee for Alliance's on-billing services, based on Ms Brown's suggested rate. Ms Brown confirmed Alliance had never performed such a 'go between' role before.

5.2.2 Misleading briefing documents are created

At Mr Fraser's behest, a detailed briefing was prepared to the chair of the Department's APU that proposed that the APU committee should recommend the Secretary approve the engagement of Alliance without a competitive tender process.

The briefing included the following claims (emphasis added):

6. *External education technology specialists are required to effectively undertake this work over a six month period (February to July 2011). Such expertise - with **explicit skills and experience in the development and deployment of high quality content and platforms for students and teachers** - does not exist at the majority of recruitment companies.*

7. *After accessing a range of recruitment companies to identify the availability of this expertise, Alliance Recruitment has been identified as the only local company that has **personnel with the necessary experience** base to be assigned to OGSE for the delivery of the work outlined in points four and five.*

8. *Alliance Recruitment is an established recruitment company with a significant presence in Victoria. It identifies and deploys specialists in a range of domains, **including ICT (and education technology as a sub-set).***

These claims were false and misleading. Alliance did not have the relevant expertise to deliver the work; nor was there a process to identify and assess suitable recruitment companies. The document was also deceptive by omission in not revealing that CSG personnel were to deliver the work, which included quality assurance in connection with its own work in relation to the Ultrahet project.

The subsequent first draft of a six-month consultancy between the State of Victoria (in the name of the Department) and Alliance said the contract price was not 'to exceed \$1 million (incl. GST)'. Internal CSG emails from this time show that CSG intended the actual team to work on this project about two days a week. Based on final CSG internal costings, the reality was much closer to one day a week.

Arrangements for implementing the project continued into February and March 2011, with Mr Fraser and some of his staff often meeting CSG staff, including on trips to Western Australia and the Northern Territory.

5 Alliance: the million dollar 'little project'

5.2.3 Exemption from public tender is based on deceptive and misleading information

Following an APU committee recommendation, on 8 March 2011 the acting Secretary Jeffrey Rosewarne signed a certificate of exemption from public tender for the LTOAP consultancy.

A memorandum from the Chair of the APU, Janet Thompson, to Mr Fraser dated 11 March 2011 made it clear the APU relied upon various false representations (of the kind referred to on the previous page) that were contained in the documentation submitted in support of the exemption recommendation and approval requests. In particular, that 'Alliance will be the co-ordinating body from which all personnel for the project would be sourced', that the principal proposed consultant would be Cecily O'Neill, and that a range of named or at least described persons with specialist expertise would be used in the project. Again, there was not even a hint in this documentation of CSG personnel involvement despite the project intended from inception to be undertaken by CSG (pursuant to a separate proposed contract with Alliance).

In evidence, Ms Thompson recalled receiving an unusual telephone call from Mr Rosewarne asking her to see Mr Fraser about a procurement issue. When she met with Mr Fraser, he wanted to know how to undertake procurement and obtain an exemption. For his part, Mr Rosewarne said in evidence that he had a vague recollection of telephoning Ms Thompson in this manner with the intention of assisting Mr Fraser in ensuring the claim was processed favourably. Ms Thompson agreed with counsel assisting that the APU committee's role was more one of 'rubber stamping' the paperwork, rather than exercising any real scrutiny.

Ms Thompson also explained that details around a consultancy were required to be published in the Department's annual report, whereas details of a contract were not. This may explain why, in early April 2011, Mr Rosewarne and Mr Fraser decided to seek a change to the project status from that of consultancy to contract. This required the APU process to be repeated.¹⁷

Mr Rosewarne denied that this change was made to avoid publication of the engagement in the Department's annual report, speculating that on re-reading the documents he formed the view that Alliance's role was more one of contractor than consultant. However, Mr Fraser had no hesitation in conceding that this change was made to avoid reporting in the Department's annual report, with a resulting lessening of transparency and scrutiny over the arrangement.

Based as it was on speculation rather than memory and in light of Mr Fraser's ready concession against self-interest, Mr Rosewarne's evidence cannot therefore be accepted.

5.2.4 Information in contracts masks CSG's involvement

Evidence obtained suggests the final contractual arrangements continued to mask the essentially artificial engagement of Alliance:

- On 18 March 2011, Drew Arthurson, a contractor with the Department, sent this email to Ms Kerin (from CSG) with a two-page summary of the work to be undertaken as part of LTOAP to assist her in drafting the required letter from Alliance.

¹⁷ Approval for the changed status was promptly given out of session on the seemingly contrived basis of Ms O'Neill being no longer available to be lead project manager. The newly-signed lead project manager from Alliance (ie Heath Caban) 'would normally be expected to reside within the Department but are not currently available'. Hence it was suggested that the definition of a consultancy - 'skills that would not normally be expected to reside within the Department' - was no longer met and Alliance should therefore be classified as a contractor. In evidence, Ms Thompson noted this was the first time in her experience that such a change had occurred.

FIGURE 8: EMAIL FROM DREW ARTHURSON TO JULIE-ANN KERIN (FORWARDED TO DARRELL FRASER)

Fwd: Letter required from Alliance Recruitment to formalise assignment with OGSE

From: Drew Arthurson <[REDACTED]>
To: Fraser, Darrell J <[REDACTED]>
Date: Fri, 18 Mar 2011 21:57:53 + 1100
Attachments: Summary of OGSE Learning Technologies Quality Assurance Project.docx (122.42kB)

Darrell - FYI

Cheers

Drew Arthurson

[REDACTED]
[REDACTED]

Begin forwarded message:

From: Drew Arthurson <[REDACTED]>
Sent: 18 March 2011 9:57:19 PM
To: Julie-Ann Kerin <[REDACTED]>
Subject: Letter required from Alliance Recruitment to formalise assignment with OGSE

Hi Julie-Ann

Further to my earlier emails today, I also need you to arrange for a letter to be drafted by Alliance Recruitment (MD or appropriate Exec) and sent to Darrell via email.

The letter needs to cover the following:

- Respond with a summary of the work to be undertaken (you can draw on the attached two-pager)
- Outline Alliance Recruitment's broad skill sets and capacity to undertake this work
- Detail the proposed team to do the work (individual personnel and their expertise)
- State that it will be delivered within budget
- State that it will be delivered on time
- Outline of invoicing plan over the six-month period.

If this could get to Darrell early next week, that way I can finalise the contract and other paperwork and we would be ready for a formal kick-off meeting in the week commencing 28 March.

As per my earlier emails, I also need Alliance Recruitment ABN and the name of their Managing Director (or equivalent).

Thanks Julie-Ann - feel free to contact me on the weekend to discuss.

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- On 28 March 2011, Ms Kerin emailed Mr Arthurson a draft letter to be signed by Ms Brown (from Alliance), saying that she would have it put on Alliance letterhead if it was ‘okay’. The draft she prepared included details of the proposed Alliance team – all but one being existing CSG personnel. This letter was deceptive by omission in not mentioning CSG. It was also deceptive in that there appears never to have been any positive intention by CSG that most of the named and otherwise described personnel would be involved in the project. Ms Kerin said this was all done by her and not Ms Brown because the latter ‘didn’t understand the details of the project’.
- On 29 March 2011, Ms Kerin sent a letter to Alliance, confirming CSG’s acceptance of the terms of the LTQAP at a cost of \$1 million with CSG to invoice Alliance \$156,666 per month and Alliance to invoice the Department \$166,666 per month (each amount inclusive of GST). Again, most of the names and descriptions of so called ‘CSG resources being provided to Alliance’, including principal consultant Ms O’Neill, appear never to have been positively intended to be involved or used by CSG.
- On 28 March 2011, the LTQAP Board met for the first time. The record of that meeting, which included Mr Fraser and Ms Kerin, made no mention of CSG’s delivery of the services in relation to the project.

On 30 March 2011, Mr Fraser sent a letter to Ms Brown at Alliance, accepting her ‘submission’, together with the consultancy contract for execution by both parties. Notwithstanding that Alliance’s legal adviser expressed concerns about the company being engaged to deliver a project that was foreign to its ordinary line of business, as well as its lack of visibility due to performance being by a third party, Alliance’s management nevertheless approved execution of the contract as proffered by the Department.

5.3. CSG’s handling of the LTQAP

5.3.1 A puppet project

Heath Caban from CSG became project manager of the LTQAP. Mr Caban was CSG’s recently engaged national manager for consulting bids, involving marketing CSG products and services. Previously, he had been CSG’s general manager of education, with a primary role of selling the Ultranet to schools not only in Victoria, but nationally and internationally.

Not long after he was briefed internally on the scope of the project, Mr Caban sent an email to Ms Kerin saying ‘I am treating this project as a **real** consulting engagement with a tangible client deliverable’. This suggests that within CSG, the project was understood to be less than ‘real’ – a puppet project.

Notwithstanding Mr Caban’s evidence that CSG’s internal ‘fully margined cost’ of the project was \$250,000, the CSG resources applied to the project can only be described as relatively meagre when compared to the \$1 million cost to the Department over six months. This may well have been a real consulting engagement in the sense that field work was conducted and a report prepared – however, that work was small in scale, conducted by inexperienced personnel and, from Mr Caban’s perspective, intended at least initially to provide a positive spin on the use of the Ultranet in schools.

Internal CSG records show an average of little more than one day per week was spent by the part time personnel involved, most of whom were undergraduate university students engaged to do field work research and, extraordinarily, produce the final report. To conduct their field research, the student contractors visited just ten of Victoria’s 1500 schools.¹⁸

A group of six undergraduates, as well as a graduate student, recorded 1,050 hours at a total cost to CSG of the relatively meagre sum of \$36,000. Mr Caban had no idea what faculty each student was from, or their year level, or whether any had experience in report writing or working on quality assurance projects.

¹⁸ Whilst Ms Peck gave evidence that such a number was not unusual for a departmental evaluation, this was an expensive out-sourced project with more than sufficient funding for visits to many more schools.

It seems likely they had none, and were engaged as a cheap resource to enable CSG to purport to perform its obligations in a transaction that can only be described as a grossly overpriced sham. The only other people involved in the project were a postgraduate student with a background in business (who sourced the other students through an online advertisement) and a CSG employee whose input, like that of Mr Caban, was very much part time.

As for his own experience, Mr Caban admitted having never been involved in writing a quality assurance project report; nor did he know of anyone else at CSG who had. He maintained, however, that he had relevant past experience on the basis that 'he had previously undertaken evidence based assessments and productions of findings and conclusions'. He conceded he had, and was given, no background on the Ultranet project, despite it being a significant focus of the LTOAP. Although he said he visited at least some of the ten Victorian schools, he was unable to recall any in particular.

5.3.2. Misrepresentations around the scope of the LTOAP

In his examination, Mr Caban was taken through the detailed briefing about the scope of the LTOAP that Mr Fraser sent to the APU under Mr Rosewarne's hand in early March 2011. This exercise demonstrated just how prevalent misrepresentations were in the document – not only about Alliance's purported role and the so called lead role of Ms O'Neill, but also about the various types of specialists to be identified and engaged in the project such as 'principal architect', 'user acceptance consultant', 'technical lead', 'software architect' and 'portal/collaboration specialist'.

An elaborate document trail with a similar range of deceptions and misrepresentations was created between the Department and Alliance, and between CSG and Alliance. Contemporaneous emails and the evidence of Mr Fraser show CSG's Ms Kerin heavily involved in the creation of various aspects of such documents, as Mr Fraser clearly was. Ms Kerin also sent an email in April 2011 to Ms Sonya Velo-Johnstone at Mr Fraser's OGSE secretariat in the Department introducing Mr Caban 'who is going to be leading the project with Ms O'Neill', something that Mr Caban said in evidence was news to him when he was copied in on the email at the time. The email was also misleading, as none of the evidence suggested that Ms O'Neill was ever positively intended to be involved in the project.

In mid-April 2011 Ms Velo-Johnstone emailed Mr Caban seeking comment on a draft letter template from Mr Fraser to the schools selected to be visited as part of the project. Reference was made only to Alliance undertaking the project. Indeed, the draft letter said that 'the lead project manager **from Alliance Recruitment** is Heath Caban' (emphasis added). Contemporaneous emails even show Mr Caban suggesting changes to aspects of the letter. Those changes included adding a reference to Alliance doing the work, and that Alliance would be in contact with the school. Those changes were included in the letter that went to schools a few days later, with the promise of a \$5000 grant for participation in the project.

5 Alliance: the million dollar 'little project'

Mr Caban maintained in evidence that schools who were visited by the project team were informed about CSG's involvement. IBAC accepts that team members who visited schools identified themselves as being from CSG. However it is unlikely the schools visited would have understood the purported roles of CSG and Alliance, including who was ostensibly running the project and the level of CSG's conflict of interest regarding the Ultranet.

5.3.3 CSG's final project report lacks credibility

The final draft of CSG's LTOAP report, produced in late 2011, appears on the evidence to have been largely written by the students employed on the project team. According to Mr Caban 'there was a number of re-works between CSG and Department about how the conclusions were worded'. This is not surprising, given that soon after becoming involved in the project Mr Caban wrote that this project was a chance to 'showcase our and the DEECD capability'. This language suggests a level of predetermination about the project's outcome. Indeed, in an email from Mr Caban to Ms Kerin towards the end of the project (in August 2011), Mr Caban wrote 'to be frank, across all our research we found very little evidence of positivity towards the Ultranet. However we tried to talk that evidence up and make the language as neutral as possible'.

When asked by counsel assisting what the Department should have paid for the report, Mr Fraser candidly replied 'I probably wouldn't pay anything for it'.

5.4. Dr Watterston's investigation into the payments to Alliance

Dr James Watterston became a Deputy Secretary in 2012, with responsibility for the OGSE unit.¹⁹

Soon after Dr Watterston commenced, he directed that an internal search be made for any unusual payments within the OGSE in the last 12 months. This brought to his attention the six payments to Alliance Recruitment for the LTQAP, with the person doing the review unable to find records attributing any specific reason for the payments. According to Ms Velo-Johnstone, the first four payments to Alliance came out of the OGSE secretariat budget at the request of Mr Fraser; however, the last two were charged against the Ultranet budget. She said that after Mr Fraser had left and when Mr Allman was acting Deputy Secretary, Mr Allman and Ms Peck asked her to 'journal that money [the last two payments] out of the Ultranet code and into the secretariat code', which she did. She said in evidence that she subsequently formed the view this request was made to hide the money because 'the whole project was a fraud'. It was around this time the Victorian Auditor-General had commenced an audit of the Ultranet project.

Dr Watterston said the total project cost of \$1 million less four dollars 'automatically triggered alarm bells', which is why he initiated a further investigation, briefed the then Department Secretary Richard Bolt, and then interviewed staff including Ms Velo-Johnstone and Mr Cushing. Ms Velo-Johnstone said to him at the time that she had been worried about the contract since its inception as it was not value for money, and that she thought it was for another purpose and somehow connected to CSG, with Alliance not actually doing the work.

¹⁹ Dr Watterston is now the Director-General of Queensland's Department of Education and Training.

According to Dr Watterston, Mr Cushing responded in an emotional state about the tender exemption for the project: 'F###, I told Jeff [Mr Rosewarne] not to sign it', and explained that things were done in this way because CSG had at the time incurred additional expenses with the Ultraneet and also had significant legal expenses related to the project; this was Mr Fraser's way of injecting more funds into the project. Mr Cushing went on to tell Dr Watterston that Mr Fraser had consulted with Mr Rosewarne, and they had agreed this was the best way to stop CSG from walking away from the project. Mr Cushing also said it was wrong and he felt sick about it as it was not appropriate or within procurement rules, being a view he said he had expressed to Mr Rosewarne at the time. He also told Dr Watterston he was powerless to stop the project.

Dr Watterston also called for a copy of the final LTOAP report and other relevant documentation. Upon reading what was consistently described in the evidence as the final draft report (purportedly but not actually drafted by Alliance) Dr Watterston said he was 'aghast' as it was 'amateurish in the extreme' and did not tell 'anyone anything more than a lay person would have known about the issues concerned'.

Dr Watterston recorded this information in a comprehensive file note he made at the time.

5.5. Mr Fraser concedes the real purpose of 'the little project'

To his credit, Mr Fraser gave fairly frank evidence about the true nature of the LTOAP as he saw it at the time. For example, when asked about CSG having little experience in the field of quality assurance, Mr Fraser said 'But remember, I was transferring money to CSG for another purpose. The little project was to give legitimacy to that transfer of the \$1 million'. While reluctant to agree with counsel assisting that the project was in fact a sham, Mr Fraser said 'I would agree in the end when I saw the report you would hardly say it's a \$1 million project and I knew it wasn't. ...meant to be a \$1 million project. ...the money was to provide a justification for that \$1 million going to CSG'. He added that 'the LTOAP was a cover to allow me to have money transferred to CSG so they could pay the wages bill of key resources related to the Ultraneet'.

This account is credible as there was no reason for Mr Fraser to give such evidence against his own self-interest. It was also consistent with contemporaneous emails among those involved. His evidence to this effect was also consistent with the comments he made to Minister Pike in a lawfully intercepted telephone conversation in October 2014 that the million dollars was provided 'sort of on the quiet' and that Mr Rosewarne supported this because CSG was running out of money at a critical point and 'they didn't want to raise the attention of government by saying give more'. In evidence, Mr Rosewarne, who was a very close associate of Mr Fraser, denied knowing of this.

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5.6. Conclusion

IBAC's investigation has found strong evidence to support the allegation that following Mr Mackenzie's initial request for more money, payments to Alliance Recruitment were a mechanism contrived by Mr Fraser, then Deputy Secretary of the Department's Office for School Education and assisted by senior CSG executives, to corruptly inject funds into CSG to ensure the Ultranet project remained viable.

Given Mr Fraser's frank statements, it is inconceivable CSG did not know the purpose behind the LTOAP as he understood it at the time, in particular those closely associated with its genesis such as Ms Kerin, Mr Mackenzie and Mr Caban. Their evidence to the contrary over a transaction that from inception was plainly an improper diversion of public monies is simply not credible.

IBAC intends seeking advice from the Office of Public Prosecutions in relation to the matter.

6 Share Trading in CSG

6 Share Trading in CSG

Operation Dunham exposed evidence of senior departmental staff and their associates purchasing shares in CSG in circumstances that raised significant concerns about the appropriateness of that conduct.

6.1. Background

6.1.1 Timelines

As described in chapter 4, the second selective tender process for the Ultranet project commenced in November 2008. Five potential tenderers were identified and invited to participate. Oracle was one of the five. It submitted an offer in conjunction with CSG, a subsidiary of publicly listed entity CSG Limited.²⁰

As described in chapter 4, the Department suspended consideration of the CSG/Oracle tender offer in March 2009 when it became aware of litigation brought by ASG against CSG and others, in connection with its tender submission.

28 and 29 April – Board endorses lifting suspension, leaving CSG/Oracle as only tenderer

On Tuesday 28 April 2009, Mr Bladon (then project manager for the Ultranet) circulated papers for a meeting of the Ultranet Board scheduled for the following day. Significantly, the Board papers proposed that the suspension of CSG/Oracle's tender submission be lifted, and that negotiations proceed with CSG/Oracle, but not with any other tenderer. That proposal was endorsed at the Ultranet Board meeting on 29 April 2009.

From that point on it was clear, at least to members of the Board, that the only tenderer in contention for the Ultranet project was CSG/Oracle. All that stood between it and certain success on the tender was negotiation on price.

21 and 22 May – the Department and CSG/Oracle meet to negotiate on price

On Thursday 21 May and into Friday 22 May 2009, confidential negotiations between the Department and CSG took place in the form of a 'round table' discussion. This discussion focused, among other things, on CSG's pricing and budget. The negotiations were led by Mr Bennett for the Department, with Mr Bladon, Mr Davey, Ms Peck and Mr Cushing also attending on behalf of the Department.

The following chronology makes plain that from Friday 22 May 2009 through until the announcement to the market on Wednesday 27 May 2009, senior Departmental employees involved on the Ultranet Board and with the Ultranet project were in possession of valuable, price sensitive, confidential information about CSG's success in the tender.

²⁰ CSG Limited is a publicly listed company and therefore shares could only be bought in that company, not in any of its subsidiaries in their own right. Accordingly, references to share purchases are to ones made in CSG Limited.

Friday 22 May – the Board is in possession of price sensitive information

A meeting of the Ultrahet Board took place in Mr Fraser's board room at about midday on Friday 22 May 2009, very shortly after the negotiations finished with CSG. An agenda was circulated to the members of the Board, and external advisers invited to attend the meeting – Mr Bugden, Mr Fraser, Mr Bennett, Mr Lubofsky, Mr Gebert, Ms Dalton, Anne Gibbs (former Ultrahet project officer) and Mr Davey.

The Department's negotiation team tabled a report, recommending the new price and final terms negotiated with CSG be 'formalised and accepted'. The Board resolved to do so. In effect, it had formally decided the Ultrahet contract should be awarded to CSG. No public announcement of its resolution was made on Friday 22 May 2009. The resolution remained confidential, pending endorsement by the Major Projects Committee of Cabinet, scheduled to meet the next Tuesday 26 May 2009.

Undoubtedly, the Board's resolution on Friday 22 May 2009 to accept CSG's offer was price sensitive information which was not generally available. The imminent award to CSG of a large public contract worth tens of millions of dollars, had it been known to the market, could be expected to generate considerable interest in its shares. It was valuable information. It was also confidential, highly sensitive business of the Ultrahet Board.

The weekend of 23 and 24 May 2009 passed without any public announcement about CSG. So did Monday 25 May.

27 May: announcement released to the market

On Tuesday 26 May, the Major Projects Committee of Cabinet effectively endorsed the decision to proceed towards contract with CSG/Oracle. Also on that day, CSG advised the Department it was of the view it was required to advise the ASX of its 'preferred tenderer status', because of the price sensitive nature of the information. It sought and received the Department's agreement to do so. An announcement dated 26 May 2009 was prepared by CSG and sent to the ASX but, because it did not arrive until late in the day, was not released to the market until Wednesday 27 May 2009.

6 Share Trading in CSG

6.2. John Allman

In May 2009, John Allman was a senior executive in the OGSE, directly reporting to Darrell Fraser. For a short period in April 2009, Mr Allman stepped in as acting Deputy Secretary of OGSE while Mr Fraser was on leave, although there is no evidence that he attended any Ultramet Board meetings in that short time. Mr Allman was not a member of the Ultramet Board, nor did he hold any formal role in connection with the Ultramet project. Whilst Mr Allman did have a close working relationship and personal friendship with Mr Fraser and Mr Rosewarne, both of whom were deeply involved in the project, there is no evidence either of them had any relevant knowledge of his share purchases in CSG as detailed below around the time they were made. Nor is there evidence of such knowledge by them in relation to purchases by other persons referred to in this chapter.

On **Monday 25 May 2009**, Mr Allman purchased 12,300 CSG shares for the value of \$9,673.45. He made the purchase through his usual stockbroker, CMC Markets. While Mr Allman owned other shares and traded in them from time to time, he had not previously held CSG shares.

The timing of his purchase of shares is of considerable concern. It occurred the very next business day after the Ultramet Board resolved to proceed to contract with CSG, and before any announcement of that matter had been made public.

IBAC found no evidence of Mr Allman having directly received by email the Board papers or the negotiation team report on 22 May 2009. However, notwithstanding his denial in evidence, the circumstances of his share purchase on the following Monday support two inferences: first, that he came to learn of the Board's decision to accept CSG's offer following the Board meeting and, second, that he most likely came to know that the information would become public very soon, and acted upon that information to his own personal benefit.

Mr Allman benefited financially by acting on that information two days before the public announcement; had he bought the shares immediately following the announcement, the amount he bought would have become more expensive. Market records show high volumes of share purchases in CSG on 27 May, immediately following the announcement, with a resultant increase in the share price. Mr Allman sold his CSG shares in January 2010, for approximately \$24,500, providing him with a profit of approximately \$14,500.

Mr Allman admitted to telling his best friend since childhood, within a day or two of his share purchase, that it would be a good idea to buy CSG shares. The friend gave evidence to IBAC that on the basis of Mr Allman's 'tip', he bought approximately \$10,000 worth of shares in CSG on 27 May 2009. He could not recall when Mr Allman gave him the tip, but thought it was the day he bought the shares or the previous day. Mr Allman told his friend that he himself had bought some CSG shares. It was a significant purchase for Mr Allman's friend, who had only bought shares once before, twenty years ago. Its value, and the urgency with which the friend acted on the tip, may indicate something of the quality and value of the information on which Mr Allman's 'tip' was founded.

Having bought the CSG shares, Mr Allman then failed to declare his shareholding to the Department. As a public servant, he was bound by the Victorian Public Sector Employees Code of Conduct that required public servants to declare and avoid conflicts of interest to help maintain community trust and confidence.

He was not alone. Another senior departmental executive Ron Lake who had purchased CSG shares also failed to declare his shareholdings as part of his annual declaration of private interests. While he eventually submitted a declaration of private interest form, he did not do so in a timely way. Mr Lake's partner Julie-Anne Baker also purchased CSG shares. However, as an Assistant Regional Director, Ms Baker was not required to declare her share purchase on a declaration of private interests. At that time, regional directors and more senior officers were required to complete and sign such annual declarations. Another senior executive, Wayne Craig, also became an owner of CSG shares in 2009.

In November 2010 the Department engaged KPMG to investigate issues around these senior employees' shareholdings in CSG. Mr Allman was interviewed by KPMG about his CSG share purchases. Mr Allman informed KPMG investigators in June 2011 that he had completed a declaration of private interests form for his employer on 21 August 2009, and reported that he did not hold shares at that time. When asked why he provided that seemingly incorrect response, Mr Allman indicated that he had not filled in the form personally and was of the view that the form sought information from departmental staff on major shareholdings, where a shareholder had a major interest in a company. He said he did not believe he was in that category, a response that strains credibility.

When asked about the circumstances that led him to buy the shares, Mr Allman was untruthful. He told KPMG that he had been told about CSG by a person who was part of a group of life-long friends who meet a couple of times a year at the beach. He said the person who told him about CSG was a former stockbroker and insurance broker, and he had been told that CSG was a company 'on the go' with contracts in New South Wales and Western Australia. Mr Allman told KPMG that this conversation occurred at Easter or a long weekend in 2009. Later, in December 2011, Mr Allman confirmed that untrue story to a second investigation into the matter carried out by law firm Lander & Rogers.

In his evidence to IBAC, Mr Allman admitted what he had told KPMG was untrue. He asserted that, in fact, he had overheard Mr Fraser discussing CSG on speakerphone during a car trip in October or November of 2008, the substance of which had led him to mentally register the company. He said he followed up on CSG a few times then thought he would buy some shares prior to any announcement. He said he thought it was 'appropriate' to be untruthful to KPMG so as to 'take responsibility for my actions myself; I didn't want Judy Petch, Stephen Sullivan or Darrell Fraser (who were all in the car at the time) to be mentioned'.

Mr Allman told untruths to KPMG about the circumstances of his CSG share purchases. The effect, and no doubt the intent, of his untruthfulness was to conceal the possibility that he had unlawfully used inside information obtained as a result of his position in the Department, which might expose him to investigation for possible breach of insider trading laws. If his account given in evidence to IBAC was true, his false story to KPMG had the effect of covering up the disclosure of confidential tender-related information by Mr Fraser and others.

Mr Allman had opportunities after KPMG's investigation to 'come clean' about his CSG share purchase, but did not. In December 2011, the Department engaged Lander & Rogers to consider and recommend what, if any, employment sanctions should be considered as a consequence of the various failures to declare conflicts of interest identified by KPMG. Mr Allman confirmed in writing to Lander & Rogers that what he had told KPMG in his interview was 'accurate'. Plainly it was not, and Mr Allman knew it. In November 2014, after an article in *The Age* newspaper referred to Mr Allman's share purchases, the then Department Secretary Richard Bolt asked Mr Allman to explain those purchases. In a legally intercepted phone call the following day, Mr Allman told a friend and department colleague that 'Bolt nearly brought me undone yesterday'. His conversation with the colleague revealed Mr Allman's concern that his account given to KPMG may be under renewed scrutiny. Plainly, Mr Allman did not reveal the truth of his share purchasing to Mr Bolt, but instead chose to stick to his false story.

The account Mr Allman gave to IBAC – that he first heard about CSG from Mr Fraser and others in a conversation in a car in late 2008 – is plausible, but does not seem to fully explain the circumstances of his share purchase so many months later on 25 May 2009. Why would Mr Allman suddenly purchase CSG shares on 25 May 2009, after so many months had passed since the alleged discussion in the car? And why would he advise his close friend, who had not bought a share in twenty years, to buy \$10,000 of CSG shares quickly, even giving him his broker details to get it done?

6 Share Trading in CSG

The circumstances suggest a sense of urgency came from some knowledge of the Ultraset Board's decision at its meeting on 22 May 2009. Notably, Mr Allman's evidence in his public examination does not exclude the likelihood that he did in fact come into possession of the critical information about the Ultraset Board's decision to accept CSG's offer on 22 May 2009. Mr Allman's account supports the likelihood of a leak from the Ultraset Board following the meeting on 22 May 2009.

If true, Mr Allman's account is consistent with other evidence that Mr Fraser spoke regularly of his desire that Oracle and CSG be awarded the contract, and spoke of it as an inevitability. It is consistent with other evidence of Mr Fraser's looseness with confidential information in relation to the tender process. If Mr Allman's account is true, it confirms an alarming likelihood of pre-determination of the second selective tender process before the tender had even been released to the selected invitees.

Summary

Mr Allman's share purchase on 25 May 2009 was prompted by knowledge obtained by virtue of being a senior employee of the Department and with frequent contact with other senior employees involved intimately in the project, including Mr Fraser. He bought the shares knowing that CSG was very likely to be awarded the Ultraset contract, prior to that information being publicly announced. He made a profit of some \$14,000 on the subsequent sale of his CSG shares. He did not disclose his share ownership to the Department nor declare his conflict of interest. He was untruthful to KPMG when asked to explain to the Department the circumstances of his share purchase, to avoid detection of his conduct. He maintained his untruthfulness, despite further opportunities to tell the truth to Lander & Rogers, and to the Department Secretary.

6.3. Ron Lake

Ron Lake commenced his employment with the Department as a student teacher in 1964. From 1989 to 2001 he was the principal of Bendigo Senior Secondary College. That school was a navigator school, and it was in that context that Mr Lake came to know Mr Fraser, then principal of GWSC. In 2005, Mr Lake was appointed Regional Director for the Loddon Mallee Region.

Mr Lake was appointed to the Ultraset Board in 2006 and attended 16 Ultraset Board meetings between December 2006 and early June 2008, in person or by phone. He was not a Board member during the second selective tender process, which took place between mid 2008 and the end of June 2009.

Mr Lake joined the reconstituted Ultraset Board as it commenced the 'implementation' phase of the project. He attended its first meeting on 15 July 2009 and was present by telephone at the second meeting on 29 July 2009. Also present by telephone at the Wednesday 29 July 2009 Board meeting was the CEO of CSG, Denis Mackenzie. Ms Maryann Jamieson, project manager from CSG, attended in person, as did departmental Board members Mr Fraser, Mr Bennett, Mr Bladon, Mr Bugden and Ms Peck.

On **Thursday 30 July 2009**, the day immediately following that Board meeting, Mr Lake purchased 100,000 CSG shares at a cost of \$109,567.96. He made the purchase through the broker, Baillieu Holst, in Bendigo. The shares were purchased for his self-managed superannuation fund through its trustee, of which Mr Lake was the sole director. Mr Lake's partner Julie-Anne Baker bought a further \$10,000 worth of shares in CSG on 31 July 2009 using a cheque from Mr Lake's superannuation fund. Her share purchase is considered in more detail below.

On 31 July 2009, the day after Mr Lake purchased 100,000 shares, CSG made an announcement to the ASX that it had acquired a company called Delexian Pty Ltd, which was named as a 'leading Oracle business partner'. The announcement was price sensitive.

Mr Lake had never owned CSG shares previously, either in his own name or through his superannuation fund. The timing and circumstances of his purchase of a very substantial parcel of 100,000 shares is concerning – just one day after he had been in the company of CSG’s CEO by telephone at a Board meeting, and a day prior to a price sensitive announcement by CSG.

During public examination, Mr Lake said that while he had been present at the meeting on 29 July by phone and took the opportunity to buy shares the following day, he ‘had no memory’ of whether there was discussion at the Board meeting of CSG’s acquisition of Delexian, the subject of CSG’s price sensitive announcement on 31 July 2009.

Mr Lake was interviewed by KPMG in 2011 about his share purchases. He told KPMG that someone from the Ultranet Board had made the comment that the CSG share price was doing well. He told KPMG that his decision to purchase the shares was because he had a thorough knowledge of the business.

Mr Lake attended a further two Ultranet Board meetings on 12 and 19 August 2009 after his share purchase. He gave evidence to IBAC that he was aware prior to those meetings that his CSG shareholding may represent a conflict of interest and that he had an obligation to disclose his shareholding. He said he was ‘close’ to telling Mr Fraser about his share purchase but did not, and he had not told any other Board members about it.

On 2 September 2009 he was required to complete a declaration of private interest form for the Department as part of its annual requirements. Mr Lake disclosed his CSG shareholdings on that form. He also telephoned the Board chair Mr Bugden and informed him of his shareholding. Mr Bugden told Mr Lake not to attend the next meeting.

Accordingly, Mr Lake did not attend the Ultranet Board meeting on 2 September 2009. He did not offer his resignation, but told IBAC that he left it to the Board to decide whether it was appropriate that he stay on the Board or not. He told KPMG in 2011 that he did not see the CSG shares purchased for his superannuation fund to be a conflict. He told KPMG that he understood ethics to be a constant consideration in his role, but that he had not received any training in relation to conflicts of interest. When asked by KPMG about Ms Baker’s share purchases, he did not disclose to KPMG that he and Ms Baker were in a personal relationship or that he had funded the share purchase.

While Mr Lake did not continue to attend Ultranet Board meetings, he did purchase two more parcels of shares in March and June 2010, bringing his shareholding in CSG to more than \$156,000 at the time of purchase.

Summary

Mr Lake was prompted to invest in excess of \$100,000 into CSG shares the day after an Ultranet Board meeting attended by CSG’s CEO. His explanation that he did so because someone said the share price was doing well does not plausibly explain such a large and sudden expenditure on shares. The more likely explanation is that he heard something in that Board meeting about CSG that had not yet been announced publicly but would be announced imminently; ie information that came to his knowledge by virtue of his position as a departmental employee and member of the Ultranet Board, which he sought to profit from personally. Plainly, his CSG shareholding – worth more than \$100,000 – placed him in a position of conflict with his responsibilities on the Ultranet Board, and compromised irretrievably his capacity to fairly and impartially consider CSG’s performance and involvement with the implementation of the Ultranet. It is extraordinary that Mr Lake could not recognise this himself, waiting instead for the Board to decide whether he should resign after disclosure of his interest.

6 Share Trading in CSG

6.4. Julie-Anne Baker

Julie-Anne Baker started as a teacher with the Department in 1972 and was principal of Violet Street Primary School in Bendigo from 1994 to 1999. She was appointed Assistant Regional Director for School Improvement in the Loddon Mallee Region in 2005, the same year as Ron Lake was appointed Regional Manager for Loddon Mallee. Ms Baker and Mr Lake formed a personal relationship in 2008 and at the time of the IBAC examinations, they were in a domestic relationship.

On **31 July 2009**, Ms Baker purchased 9,710 shares in CSG for the value of \$10,500. She bought the shares in person, presenting at Baillieu Holst's offices in Bendigo with a cheque for \$10,500. The cheque was made out from Mr Lake's superannuation fund payable directly to Baillieu Holst and had been provided to her by Mr Lake. Although the funds were from Mr Lake's superannuation fund, the shares were purchased in Ms Baker's own name.

Ms Baker was interviewed three times about her share purchase: first by KPMG in 2011 as part of its investigation; in a private examination conducted by IBAC in January 2015; then in IBAC's public examinations.

In 2011, Ms Baker told KPMG she bought the shares with her own discretionary cash. Plainly this was untrue. She said her decision to buy the shares was motivated only by the fact that she had some discretionary cash and wanted to invest it in shares. She did not disclose her personal relationship with Mr Lake.

In her private examination by IBAC, Ms Baker asserted repeatedly on oath that she had paid for the shares with her own money. She told IBAC that the money was in a bank account into which she had saved \$1000 a fortnight from her salary over a period of months. She also asserted that her reason for purchasing a further tranche of shares was because she had further discretionary funds available.

She told IBAC in private she bought the shares after saying to Mr Lake 'I've got some spare cash. Can you recommend any shares to buy?' – to which he allegedly said, 'buy CSG shares, they're involved in the Ultranet'. When she was confronted with evidence that the shares were paid for with a cheque from Mr Lake's

superannuation fund, Ms Baker said she was 'shocked', but was unable to explain the inconsistency between her account of having bought the shares with her own discretionary cash and the reality that they were, in fact, funded by Mr Lake's superannuation fund cheque.

In her public examination and with time to reflect on the matter, Ms Baker came prepared with documents and material that she claimed would prove that Mr Lake had given her a cheque for \$10,500 in discharge of some personal debts that he owed her for furniture and travel expenses. She gave evidence that on 31 July 2009 Mr Lake gave her a cheque for \$10,500 and said 'This is the money I owe you'. She then asserted that she asked him for a recommendation in relation to shares that she could purchase, that he recommended CSG, and that she then immediately went to the broker in Bendigo to purchase the shares. She had only ever once previously bought shares – in Telstra – in a public offering.

Ms Baker's evidence regarding the circumstances of her share purchase was both implausible and wrong to the extent that the cheque Mr Lake gave her on 31 July 2009 was in fact made out directly to the stockbrokers from Mr Lake's superannuation fund.

Undoubtedly Ms Baker was aware that her untruthfulness to KPMG and to IBAC in her private examination (in which she claimed to have bought the shares with her own cash) was likely to be exposed in her public examination. Rather than accept that she had been untruthful to KPMG and IBAC, Ms Baker seemed determined to hold on to what is considered to be an implausible and not entirely truthful account of her conduct.

Summary

Ms Baker's share purchases were apparently made at Mr Lake's suggestion. She was untruthful to KPMG about the circumstances of her share purchase. She was untruthful again to IBAC in her private examination. On oath at her public examination, she doggedly stuck to an implausible and not entirely truthful account, and attempted to substantiate it through reconstruction of documents. It seems likely this was to avoid admitting being untruthful in her previous explanations.

6.5. Wayne Craig

Wayne Craig started as a teacher with the Department in 1975 and had reached the position of Regional Director for the Northern Region when he left the Department in 2013.

Mr Craig was friends with Ron Lake. He also knew Mr Rosewarne and was a friend of Mr Fraser, having first met Mr Fraser in about 2000. At the relevant time in 2009, Mr Fraser was Mr Craig's direct supervisor and responsible for management of his professional development plan. Mr Craig gave evidence to IBAC that during 2009 he had attended departmental leadership meetings where the Ultranet project was discussed including general reports on its progress, and that one of his performance goals developed with Mr Fraser was that Mr Craig would assist in managing the rollout of the Ultranet in Victorian government schools.

On 30 November 2009, 6000 CSG shares were purchased in the joint names of Mr Craig and his wife through a CommSec trading account. Their shareholding increased to about 11,000 shares the following year, apparently through a share take-up offer by CSG.

Whilst Mr Craig did not disclose the purchase of shares in CSG to the Department at that time, in 2010 he completed a declaration of private interests form indicating that he had shareholdings, but marked 'no' on the form in answer to the question as to whether he believed his shareholdings gave rise to any conflict of interest.

Mr Craig gave evidence that some time after the share purchase in question, he was rung by an agitated Mr Fraser and told that this, along with purchases in CSG by others in the Department, was a matter to be investigated. He also said Mr Fraser asked him why he purchased the shares, and then added that if he had spoken to Mr Fraser first, Mr Fraser would have advised him not to.

Mr Craig wrote to Mr Rosewarne, then Acting Department Secretary, in April 2011 to the effect that the only discussion he had had with his wife about the purchase was a brief one after it was made. Mr Craig was subsequently interviewed by KPMG in 2011 in relation to his purchase of CSG shares and his declaration of those shares. Consistent with what he had told Mr Rosewarne, Mr Craig told KPMG that the shares had been purchased by his wife, that he had had no discussion with her about the CSG share purchase before it was made, that it was highly unlikely she received advice from a third party, that she ascertained which company to invest in the Ultranet by doing her own research, and that he did not become aware of the share purchase until about a week later when he was told about it.

He also told KPMG that he believed he had no conflict of interest arising from his CSG shareholding because he had no engagement with the Ultranet or its development, his role with the Department would not change the outcome of the Ultranet project, and his shareholding was small and jointly held. The KPMG investigators concluded that the CSG shares had been purchased by Mr Craig's wife without his knowledge or consent.

Mr Craig subsequently reiterated to Lander & Rogers his belief that he had no relevant conflict of interest arising from the share transaction. Consistent with what he told both Mr Rosewarne and KPMG, he confirmed that the shares were purchased by his wife without any involvement from him, and that she came to her own conclusions regarding the Ultranet and did so without reference to him.

In early 2012, then Department Secretary Richard Bolt formally advised Mr Craig of his acceptance of Lander & Rogers' findings regarding there being no conflict of interest in the share purchase, although he noted a misunderstanding on Mr Craig's part of the circumstances in which a conflict may arise in that a share purchase by his wife did not alter his obligations to avoid a conflict. Mr Bolt also accepted findings that Mr Craig had no part to play in the decision of his wife to purchase the shares in CSG and that she did so without reference to him.

6 Share Trading in CSG

Under examination before IBAC, Mr Craig revealed he had in fact raised with his wife and discussed the topic of them buying shares in CSG before the purchase was made, including the amount they might spend, being about \$10,000. He gave the reason for this discussion as him having researched CSG and seeing that the shares 'were doing quite well'. While he disagreed with the proposition that he had reached an agreement with his wife to buy the shares, he conceded that she must have thought there was such an agreement. He said he did not think his wife was looking at the share price, and that he was not aware of her doing any internet research on CSG.

Mr Craig also gave evidence that he told Ron Lake about a month before the share purchase he was thinking about buying CSG shares, and that Mr Lake had told him he had done very well out of his own CSG shares. Mr Craig maintained in evidence that his wife then purchased the shares in CSG in the amount they had earlier discussed without telling him in advance of her intention to do so.

Based on his sworn admissions, what Mr Craig told Mr Rosewarne, KPMG, and Lander & Rogers about the background to the share purchase in CSG – ie to the effect that he had no discussion with his wife about, or involvement in, the purchase before it was made – appears to have been untruthful. As with Mr Allman, this no doubt advantaged his position, by avoiding further enquiry into whether the purchase involved any improper disclosure of confidential information.

However, no evidence was found that Mr Craig's initial interest in purchasing CSG shares was based on confidential information obtained in the course of his employment with the Department. Notwithstanding Mr Fraser's apparent view that he should not have become a CSG share owner, the somewhat vague evidence about his intended role in relation to the Ultrahet rollout did not establish with sufficient certainty that he was or would be in a position of actual or perceived conflict of interest.

Summary

Mr Craig acquired a joint interest in 6000 CSG shares with his wife. The idea to buy the shares emanated from him. He appears not to have told the truth on multiple occasions regarding material background about the acquisition of shares, representing that the share purchase was his wife's alone and that he had no involvement in it before it occurred. While it is not possible to determine whether that failure affected in any material way the outcome of previous investigations, these were material facts in the matters being investigated that ought to have been drawn to the attention of Mr Rosewarne and investigators for the Department. Furthermore, such untruths where told knowingly (as appears on Mr Craig's evidence to be the case) would constitute a breach of public sector employee values as reflected in the Victorian Public Sector Employees' Code of Conduct.

6.6. Conclusions

The investigation has found evidence to suggest that at least some senior departmental employees used confidential information obtained as a result of their positions to obtain personal advantage.

The above described share trading activity is concerning for a number of reasons:

- The behaviour suggests that at least some used confidential information to which they were exposed in the course of their work for private gain. In the case of John Allman, shares were bought in the knowledge that CSG was to be awarded the Ultranet contract, prior to that information being publicly announced.
- The holding of a private interest in CSG shares had the potential to compromise the capacity of at least some of them to act fairly and impartially in their duties.
- Mr Allman failed to declare his CSG shares to the Department through the annual declaration of private interests process. Mr Lake failed to do so in a timely way.
- None are considered to have been as fully frank with the Department and its investigators when questioned about their shareholdings as they ought to have been, and some were untruthful.
- Those involved are considered to have displayed at relevant times a lack of insight into, or acknowledgement of, the impact of their various conduct as described above on their capacity to carry out their functions, as public servants, with integrity.

The Australian Securities and Investments Commission has advised that it has previously considered, at the request of the Department, allegations of insider trading by departmental employees but decided not to take action.

7 Department systems, controls and culture

7 Department systems, controls and culture

During Operation Dunham, IBAC identified a number of risk factors that contributed to the corruption of the Ultranet tender process.

Identified risk factors for a corrupted process

- Oracle was embedded early at GWSC and the relationships established there enabled the company to gain a significant advantage by occupying the 'box seat' for later tenders.
- While the culture of 'commerciality' or 'enterprise' at GWSC may have been fostered by the policy of making schools financially self-governing, it led to inappropriate commercial exploits either for the school or for the personal profit of staff.
- Mr Fraser was promoted to the position of Deputy Secretary with no experience in managing or administering a very large and complex sector.
- Department Secretary Professor Dawkins did not take an active role in the Ultranet project, despite it being one of the Department's biggest projects. Professor Dawkins may not have been vigilant enough in holding Mr Fraser accountable.
- Mr Fraser remained on the Ultranet Board after his serious probity breaches were raised with the Minister.
- The investigation revealed a culture/willingness to make key decisions and undertake important actions based on draft documents (eg shortlist reports, legal advice). There was poor financial record keeping, and poor record keeping in respect of key decisions made by the Ultranet Board. There were gaps identified in the record keeping throughout the second Ultranet tender process (eg no conflict of interest register has been located).
- Gateway reviews were ineffective in that the project continued past 'key decision points' despite critical issues being flagged.²¹
- The Ultranet Board showed a flagrant disregard for independent and expert advice on risks and probity.

With these risk factors in mind, IBAC's investigation considered the adequacy of the Department's systems and controls around procurement, financial management, conflict of interest and the accountability of senior leaders. As with Operation Ord before it, the investigation also revealed how a prevailing culture among some of the most senior officers within the Department contributed to the identified conduct and hindered opportunities to expose and address it.

²¹ For more information on Gateway reviews, go to section 7.1.5

7.1. Failure of the three lines of defence

7.1.1. Three lines of defence

Public servants are accountable for ensuring public monies are spent in a way that is efficient, effective, accountable and provides value for money. As with Operation Ord before it, Operation Dunham has identified a lack of accountability for the use of public money within the Department.

In his evidence to IBAC, James Kelly, the Department's former head of risk and audit, spoke of three 'lines of defence' within the Department for ensuring the appropriate use of public resources:

- **The first line of defence** is reliant upon the ability of managers and leaders to follow correct procedures and to act with integrity.
- **The second line of defence** is the various systems and processes that are in place to safeguard and regulate activities performed by individuals in the first line. This includes financial approval processes, procurement processes, and governance committees and frameworks.
- **The third line of defence** is the assurance provided by the Department's audit functions that the systems and processes specified in the second line are working appropriately.

7.1.2. The first line of defence fails

Operation Dunham has revealed the first line of defence within the Department failed due to the lack of integrity exhibited by senior departmental officers, in particular Mr Fraser.

To take one significant example: Mr Fraser's dogged determination to ensure the CSG/Oracle offering was successful at all costs kept it from exclusion during the second tender process despite:

- CSG nominating as the prime contractor with Oracle as a subcontractor, contrary to the tender requirements
- CSG failing to disclose it was the subject of civil litigation in Western Australia
- CSG/Oracle bid representatives being in direct contact with Mr Fraser and Mr Bennett while suspended from the tender process.

7 Department systems, controls and culture

7.1.3. The second line of defence fails

Compounding the failure of the first line, the second line of defence – systems and processes – also failed to detect a number of red flags.

For example, in the Alliance Recruitment exemption from tender application there were four red flags:

- **The value of the contract (\$999,996) which was exempt from a competitive tender process.** The original contract approved by the APU was not to exceed \$1 million. IBAC obtained evidence that if the APU had been aware of the contract value, it would have made further inquiries. However, Mr Fraser sought to allay those concerns by providing false information and seeking the counsel of APU members in what could only be described as an overt ruse to deceive the APU into believing the exemption application was genuine. Dr Watterston, Mr Fraser's successor as Deputy Secretary of OGSE, stated in his evidence the contract amount was immediately suspicious to him when he became aware of it in 2012.²²
- **The change from a consultancy to contractor arrangement.** Chapter 5 describes how the APU initially approved the exemption from tender as a consultancy. Mr Fraser and Mr Rosewarne later resubmitted the exemption from tender as a contractor arrangement, thus removing the requirement for the contract to be reported in the annual report. As discussed in chapter 5, the APU promptly approved the resubmission out of session.

- **The ability of Alliance Recruitment to carry out the work described in the exemption.** Due diligence would have revealed Alliance specialised in payroll and recruitment services, and had never completed quality assurance work or contracted ICT resources to the Department. Further diligence may also have revealed that Alliance had named CSG employees as key resources to undertake the work described, effectively allowing CSG to carry out an 'external' review of their own work as part of the LTQAP.
- **The scope of the work.** The outlined scope of work involved gross overcharging. As the exemption from tender sought to prevent a competitive procurement process, it could be reasonably argued the APU should have sought to satisfy itself that the contract amount represented value for money.

In 2012, Dr Watterston commissioned PwC to conduct a review of OGSE during its time under Mr Fraser's leadership, including the Ultranet project. The review found the Department's second line of defence had utterly failed, noting:

A poor governance framework operated within OGSE during the period reviewed and a culture of strong governance and transparency was not exhibited by OGSE leadership... There was inadequate financial management, discipline, governance, and monitoring relating to divisional and project related expenditure across OGSE in the period reviewed.

This review is discussed further in section 7.3.

²² If a proposed contract exceeded \$1 million, the Department was obliged to advise the Victorian Government Purchasing Board which could subject the contract to scrutiny.

7.1.4. Resistance against the third line of defence

At the time of the Ultranet project, the formulation of the Department's audit plan was not rigorous and was largely the result of Mr Kelly, then head of the Department's audit and risk division, asking other general managers what they wanted him to look at within their respective areas. As Mr Kelly explained, the Department's audit function was its third and final line of defence against corruption and it was therefore critical to ensuring proper process was adhered to.

Mr Kelly gave evidence that he and his team made several attempts in the period 2009–2012 to conduct an audit of the Ultranet project while it was underway. He said his attempts to get the Ultranet onto the Department's audit plan were always pushed back strongly by Mr Rosewarne and Mr Fraser. Mr Fraser in particular argued that it had been through five Gateway reviews (explained in the following section), it was over audited, and that as Deputy Secretary he had the authority to take it off the Department's audit plan, and did so.

With the benefit of hindsight, the reasons Mr Fraser and Mr Rosewarne sought to fend off additional scrutiny can be readily inferred.

7.1.5. Gateway reviews

As a significant and high value procurement, the Ultranet project was subject to independent scrutiny through a process known as Gateway reviews, coordinated by the Department of Treasury and Finance (DTF). Gateway reviews are conducted by an independent review team at critical points of a project's lifecycle. To encourage honest feedback from the project team, the results of Gateway reviews were typically shared only between the project's senior responsible owner (SRO) and the Gateway Unit at DTF for the purpose of collecting aggregated data. The SRO has ultimate responsibility for implementing the recommendations of the review team; whether they do so is not always subject to further scrutiny within their own Department or other areas of government.

In the case of the Ultranet, several Gateway reviews painted an unflattering picture. The reviews flagged numerous urgent and critical issues including the need to:

- develop the project budget in greater detail and account for project expenditure
- identify and mitigate the risks the Department took on by agreeing to become the systems integrator to CSG
- take a more rigorous approach to risk management.

However, the Ultranet's Gateway reviews were ineffective for several reasons and the Ultranet project was able to continue past 'key decision points'.

As the project SRO for the Ultranet, Mr Rosewarne effectively shielded the Ultranet project from further scrutiny and accountability. The confidentiality of the review process was also counterproductive. The results of the review were not shared with the Department's Secretary or the Minister. If Gateway reviews are to be performed, it stands to reason there must be adequate measures in place to ensure SROs are held accountable to the recommendations of the reviews and public monies are therefore expended responsibly.

IBAC understands that in response to issues identified by VAGO and the Victorian Ombudsman, DTF has committed to enhancing accountability around Gateway review findings, including recommending that SROs escalate any critical findings to the relevant secretary or agency head.

7 Department systems, controls and culture

7.2. The failure to address Darrell Fraser's behaviour

7.2.1. Concerns at all levels

Witness testimony and documentary evidence supports the view that during his tenure at the Department, Mr Fraser did not behave in an ethical, transparent or professional manner. In fact, it appears he was unwilling or unable to conform to the behavioural standards expected of any public servant, let alone a senior leader. This claim is evidenced by:

- a serious lack of transparency in his management of the OSGE (both financial management and his failure to appropriately document decision making)
- inappropriately close relationships with corporate entities
- acceptance of gifts and benefits from corporate entities including meals, entertainment and travel
- conflicts of interest
- overly aggressive behaviour
- exorbitant expenditure on his departmental credit card and travel expense claims.

Such behaviour cannot be explained away on the grounds that Mr Fraser's unprecedented promotion from school principal to senior executive left him unprepared for the behavioural expectations that came with the more senior role. These behaviours would not be excused in any public servant, in particular, a school principal.

The failure to address Mr Fraser's behaviour time and time again can only be described as a serious failure on the part of some of the most senior leadership within the Department. Operation Ord also exposed this concerning culture among a group of influential senior executive officers at the Department. This same culture made Mr Fraser's behaviour permissible.

More broadly, it appears Mr Fraser's seniority, charisma, 'larger than life' demeanour, work ethic and passion gave rise to an acceptance of his behaviour – or perhaps even blinded some of his subordinates, peers and superiors to the inappropriateness of that behaviour.

7.2.2. Mr Fraser's inappropriate relationship with Oracle was well known

Drew Arthurson, a former departmental employee who worked directly for Mr Fraser, gave evidence at a private examination that from an ethical and moral standpoint, Mr Fraser was the 'most challenging' boss he had ever worked for. Mr Arthurson related that there was 'quiet chatter' among Mr Fraser's subordinates regarding his engagement with outside organisations, particularly Oracle, with whom Mr Arthurson acknowledged there appeared to be a relationship with Mr Fraser that 'ran deep'.

However, it was not just Mr Fraser's subordinates who were aware of this unsatisfactory relationship with Oracle. IBAC obtained evidence that in May 2008 the office of the then Minister for Education received a complaint from a corporation which competed against the Oracle/ASG consortium in the first Ultranet tender process. The complaint outlined concerns about Mr Fraser's bias towards Oracle. In particular the complaint raised the issue of a quote attributed to Mr Fraser and used in Oracle presentations dating to 2006 in which Mr Fraser stated 'Oracle's L360, or the Ultranet as we call it, will significantly transform teaching and learning in the State of Victoria'. In 2006, when the quote was purportedly first used, the Ultranet was yet to go to tender for the first time. By the time the quote came to the Minister's attention in 2008, the second tender was only a matter of months away from release.

At this stage it should have been apparent at the most senior levels that Mr Fraser's closeness to Oracle presented a great risk to the Department. In her evidence to IBAC, former Minister Pike provided only a vague recollection of the complaint and stated she expected the issue would have been addressed appropriately by senior members of her office and the Department. That expectation went unmet.

7.2.3. Non-compliance with departmental policies related to travel, gifts and benefits, and credit card use

Mr Arthurson also said that Mr Fraser's 'behaviour... didn't follow what I would believe to be standard public servant process'. By way of example, Mr Arthurson related an occasion early in Mr Fraser's tenure as Deputy Secretary where he openly accepted tickets to the Australian Open tennis from an external organisation, behaviour which surprised subordinates.

IBAC heard evidence that Mr Fraser and Ms Petch received personal benefits from Oracle during and after the Students@Centre project. These benefits included hospitality, interstate and overseas accommodation and interstate air travel. When Colleen Murphy expressed her concern to Mr Fraser that staff should not accept dinners and flights from Oracle, she said Mr Fraser told her, in effect, to 'lighten up'. Such was her concern that she made inquiries to locate the Department's gifts policy, which she understood prohibited staff from accepting such offers, and took it to Mr Fraser (who was in a position of considerable seniority) to pursue the issue further. She found herself sidelined from that point on from any decisions involving approval of travel for staff.

A trip to New York is approved, with no identified benefit to the Department

Oracle frequently offered to take departmental staff out to dinner and to fly them to Oracle's Western Australian offices where the L360 product was being developed.

In December 2006, Oracle arranged for Mr Fraser and Ms Petch to travel to New York. Mr Fraser submitted a briefing paper to Professor Dawkins – Secretary at the time – that stated travel was required because fundamental design decisions about the Ultranet product would be made at an Oracle meeting in New York.

No such design-related decision making was scheduled to occur, nor did occur. Rather, the trip appears to have furthered Oracle's interests in developing a US market for its education-related software. The trip offered no benefit to the Department, nor to students and staff of Victorian government schools. Mr Fraser and Ms Petch enjoyed accommodation, dining and entertainment, including a Broadway show, paid for by Oracle or its employees, with business class travel and other expenses paid for by the Department.

The evidence suggests that a connection between the trip and the Ultranet project was overstated in the briefing paper sent to Professor Dawkins for approval (or, worse, fabricated) to justify the significant cost to the Department of Mr Fraser's and Ms Petch's travel expenses.

7 Department systems, controls and culture

During the investigation, IBAC also received evidence of Mr Fraser's non-compliance with departmental credit card and travel expense policies. As early as 2005, the Department's then Secretary Grant Hehir raised concerns with the General Manager Corporate Services Gail Hart about Mr Fraser's expense claims, which Mr Hehir was required to sign off. Subsequently Ms Hart's team identified thousands of dollars of the Department's funds that Mr Fraser had spent on expensive dinners and alcohol. Mr Hehir directed Ms Hart to ask Mr Fraser to pay the money back. From then on, Mr Hehir would regularly send Mr Fraser's expense claims to Ms Hart for checking before signing them off.

Ms Hart identified that Stephen Sullivan, Mr Fraser's office manager, began submitting hospitality expenses, apparently a highly unusual practice for a person at his level. It appeared Mr Fraser was having Mr Sullivan use his (Mr Sullivan's) departmental credit card to purchase meals and alcohol. Mr Fraser then used his position as Mr Sullivan's financial delegate to approve the expenses, thereby avoiding the Secretary's scrutiny.

Later, a pattern emerged whereby both Mr Rosewarne and Mr Fraser began submitting statutory declarations instead of receipts to have their expenses reimbursed. It was clear that Mr Fraser and Mr Rosewarne were comfortable in ignoring the Department's rules. Ms Hart stated that following the departure of Mr Hehir to the Department of Treasury and Finance in 2006, she felt she had no one to whom she could report these behaviours.

7.2.4. Mr Fraser's treatment of those who challenged him

IBAC received evidence that when Mr Fraser's behaviour or views were challenged he would often respond in a manner that could be described as bullying, particularly to those in subordinate positions to him.

Dr Stephen Brown was the Department's former executive director for literacy and numeracy and reported directly to Mr Fraser. Dr Brown gave evidence during the Operation Ord examinations of times when Mr Fraser subjected him to angry, shouting outbursts and isolation. Dr Brown said that on one occasion, Mr Fraser attempted to physically grab him by the throat.

As discussed elsewhere in this report, IBAC also heard evidence from the former Ultranet project manager Mark Bladon and the procurement adviser, Lexton Gebert, of being subjected to angry, loud and personal outbursts of shouting from Mr Fraser when they presented him with views that did not favour the Oracle/CSG consortium. Despite such behaviour often occurring publicly in front of numerous witnesses, Mr Fraser faced little repercussion from those above him. This is likely to have sent Mr Fraser a message that he had free rein to continue his inappropriate and unprofessional behaviour.

Evidence provided during Operation Dunham suggests overt aggression was not the only unprofessional behaviour displayed by Mr Fraser, as he effectively sidelined those with whom he disagreed from decision making roles. Ms Hart provided evidence that after asking Mr Fraser to repay his inappropriate expense claims in 2005, she was effectively shut off and given very little time by him. Ms Murphy described being sidelined after raising questions about travel. Ms Dalton spoke of Ultranet Board meetings starting early, when Mr Fraser was still chair, and decisions made before she arrived.

7.2.5. Escalation of concerns led to little change

When concerns of Mr Fraser's behaviour were escalated to the Department's Secretary and, indeed, the Minister, little change eventuated. While Secretary Grant Hehir appeared to take a proactive role in addressing Mr Fraser's credit card and travel expenses, his departure in 2006 and the increased power vested in Mr Rosewarne (who was granted the authority of Chief Operating Officer) allowed Mr Fraser's conduct to continue almost unchecked.

As outlined elsewhere in this report, in 2009 during the second Ultranet tender process, Mr Fraser brazenly disregarded the advice of the Ultranet probity adviser, Ms Dalton, to cease all contact with Oracle/CSG consortium members while they were suspended from the tender process. Mr Fraser's apparent defiance of the probity advice caused Ms Dalton to inform Professor Dawkins and, subsequently, Minister Pike of at least aspects of Mr Fraser's unsatisfactory conduct. Whether that included his inappropriate contact with the Oracle/CSG consortium during the tender period is not clear on the evidence obtained. Mr Fraser was nevertheless allowed to remain on the Ultranet Board in a position of influence as the project sponsor. This is after the highly unusual step had been taken of the Board's probity officer elevating her serious concerns about his conduct to the Secretary, and him to the Minister.

IBAC also heard evidence that in 2010 Mr Fraser's conduct became of further concern to Professor Dawkins. During 2010, Professor Dawkins was advised by both Dr Brown and the then Chair of the States Services Authority of a 'boozy, blokey culture' that existed within parts of the Department, specifically involving Mr Fraser and other senior officers. Mr Kelly provided evidence that he subsequently commissioned several audits of OGSE due to shared concern between Professor Dawkins and himself about Mr Fraser's credit card expenditure and travel expenses. Following Professor Dawkins' resignation from the Department in late 2010, the appointment of Mr Rosewarne (a key figure in IBAC's Operation Ord) to the role of acting Secretary effectively obstructed the progress of the audits commissioned by Mr Kelly.

7.3. Failure of project governance and oversight

7.3.1. Lack of financial oversight

In late 2012, Dr Watterston commissioned PwC to conduct a review of financial management practices within the OGSE between 2009 and 2012 when Mr Fraser and later Mr Allman were at the helm. Among the projects reviewed by PwC was the Ultranet.

PwC concluded that senior management of the OGSE in that period did not enforce strict financial discipline and were themselves deeply involved in financial activities without applying appropriate financial oversight and independence. Decisions were made without appropriate consultation or documentation. The absence of appropriate project governance (as observed by PwC in relation to the Ultranet Project, among others) allowed senior management of OGSE to undertake financial and contract related activities unchallenged.

7 Department systems, controls and culture

7.3.2. Conflicts of interest ignored

Senior executives within the Department, including Mr Fraser, appeared to wilfully ignore or have little concept of conflict of interest. Examples of this included:

- **Mr Fraser's inappropriately close relationships with representatives of Oracle.** These relationships represented a significant conflict that was only exacerbated with the engagement of Oracle for the 'Students@Centre' pilot and subsequent Ultranet tenders.
- **The purchase of CSG shares by senior officers.** At least some of these purchases not only demonstrated a complete lack of regard for the illegitimate way in which some officers obtained benefit (Mr Allman in particular), but also a lack of understanding of the potential to compromise their capacity to act fairly and impartially in their duties.
- **The lack of a conflict of interest register for the second tender process of the Ultranet project.** It is unknown if a register was kept for the project in line with standard procurement practice; however, the fact that one cannot be located suggests it was not. Significant declarations would have conceivably been required for Mr Fraser and the former GWSC employees who made up the teaching and learning evaluation panel, which may have called into question their suitability to engage in the process.

Such disregard for conflict of interest is part of a larger pattern of behaviour whereby Mr Fraser, Mr Rosewarne and other senior officers frequently breached departmental policies in relation to credit card use, travel expenses and procurement. The experienced Ms Hart stated the culture of the Department was such that breaches of policy were not considered significant by these senior officers. As a result, senior public servants displayed a complete lack of regard for ensuring they were spending public money in appropriate and transparent ways.

This culture is well documented in IBAC's 2016 report on Operation Ord, available on the IBAC website (ibac.vic.gov.au).

7.3.3. Greater oversight and scrutiny from the top was needed

Following the departure of Mr Hehir in 2006, IBAC heard evidence that incoming Secretary Professor Dawkins took a more hands-off approach to administrative matters. Rightly or wrongly, this led to a perception among some employees that Mr Rosewarne and Mr Fraser effectively ran the Department.

It also appears that Professor Dawkins was not independently or actively involved in the Ultranet project, notwithstanding that it was one of the Department's largest projects. He relied almost exclusively upon briefings from Mr Fraser and Mr Rosewarne in respect of its progress. Ms Dalton's complaint to him and then to the Minister about Mr Fraser's conduct should have been a 'red flag' to Professor Dawkins in respect of the project, and in respect of Mr Fraser's capacity to properly manage the OGSE.

Professor Dawkins gave evidence to IBAC that as a result of Ms Dalton's complaint, he formed the view that Mr Fraser 'had been rushing the process and hadn't given due consideration to both tenders and that had to stop and I had to ensure that a proper process was run. And I couldn't in the circumstances rely on him to do that, it was too big a risk just to ask him to change his behaviour'. Having formed that view, Professor Dawkins spoke to Mr Fraser and installed a new chair on the Ultranet Board. But his concerns about Mr Fraser's unreliability in a governance sense did not prompt him to consider an audit of the Ultranet project, nor to install any other sort of oversight more generally in respect of the project or Mr Fraser's management of the OGSE. Had he done so, the financial mismanagement of the Ultranet project may have been identified and arrested earlier.

With the benefit of hindsight, Professor Dawkins was not vigilant in holding Mr Fraser accountable, particularly after he was directly made aware of issues in the tender process and when he left Mr Fraser on the project Board. It was only near the end of Professor Dawkins' tenure as Secretary that he appears to have become sufficiently concerned with Mr Fraser's conduct to take appropriate action.

7.3.4. No effective mechanisms to report the conduct of senior executive officers

Dr Watterston gave evidence of an atmosphere in the Department where people who had concerns, or wanted to do things differently, felt unable to express those views or go against the prevailing desires of Mr Fraser. Mr Kelly agreed that there was a culture in which people felt unable to challenge the views of those more senior to them, in particular Mr Fraser. IBAC made similar observations in its Operation Ord report.

A common theme among staff who witnessed or were aware of possible unethical behaviour on the part of Mr Fraser and other senior officers was a lack of confidence in the available mechanisms to report possible misconduct and corruption. For example:

- Former Ultranet project director Ms Murphy said she was directed by Mr Fraser on several occasions to hire particular people regardless of whether they were the best qualified for the job. Although she considered reporting Mr Fraser, it was Ms Murphy's observation that Mr Fraser and Mr Rosewarne effectively ran the Department, causing her to lament 'I didn't feel there was anywhere I could go in the Department that could help me'.
- Ms Hart stated that following the departure of Secretary Grant Hehir, she didn't have the confidence to report Mr Fraser or Mr Rosewarne's apparent breaches of expenditure policies as Professor Dawkins was approving their expenses without query.

Situations whereby even senior Victorian public servants and executive level officers such as Ms Murphy and Ms Hart felt they had no recourse to report the conduct of superiors demonstrates the importance of an effective protected disclosure (whistleblower) regime and integrity culture within all public sector organisations.

7.4. Conclusions from Operation Ord

Operation Ord exposed the misappropriation of funds by senior departmental officers over an extended period. IBAC made a number of recommendations to address those deficiencies in the Department's systems, controls and culture.

A number of those recommendations are relevant to the issues identified in Operation Dunham, including strengthening mechanisms to encourage employees to report suspected misconduct or corruption, ensuring senior managers are accountable for modelling integrity and public sector values, and ensuring all employees understand and comply with public sector values, the code of conduct and departmental policies around conflict of interest.

In response to Operation Ord, the Department publicly committed to a significant program of reform. This program includes the development of a culture of integrity based on improved accountability and compliance that also aims to address some of the issues highlighted during Operation Dunham.

The Secretary of the Department provided a progress report to IBAC on its reforms in response to Operation Ord and IBAC's specific recommendations in December 2016, and a final report is due by 30 September 2017.

In March 2016, the Victorian Secretaries Board announced it would oversee action to improve corruption prevention and integrity across the Victorian public service including measures to support ethical leadership, improve probity in public procurement, and strengthen policy around management of conflicts of interest, and gifts, benefits and hospitality. This commitment to whole of government coordinated action was prompted, in part, by Operation Dunham.

8 Conclusions and recommendations

8 Conclusions and recommendations

In evidence, former Minister for Education Pike said the Ultranet would have enhanced education in Victoria and she was 'bitterly disappointed' and 'saddened' that the project had been dropped. Her enthusiasm for the project and its potential was no doubt shared by many. However, similar enthusiasm by others, especially Mr Fraser, seems to have fostered a view among some that the ends justified the means, and allowed some departmental officers to downplay the importance of serious breaches of procurement and probity throughout the tender. In a lawfully recorded telephone call, Mr Allman said of Mr Fraser he 'broke every f###ing rule in the book and spent millions of dollars he shouldn't have spent'. But Mr Allman theorised that this did not make Mr Fraser a 'crook' because the large sums of money involved were all 'for the good of ... education'.

IBAC takes a different view. As noted in IBAC's report on Operation Ord, the Victorian community invests considerable trust in the public sector employees who are responsible for running the state's education system, including ensuring limited resources are used in an efficient and accountable manner, so all Victorian children and young people receive quality education outcomes.

Importantly, the behaviours described in this report were engaged in by public servants in senior roles, invested with considerable authority and bound by the public service code of conduct. The anticipated potential of the Ultranet (no matter how exciting that promise) was no excuse for corruption of process.

Operation Dunham identified that allowing public officers to develop close, unchecked relationships with corporate entities – as Mr Fraser was allowed to do over the course of many years – carries a significant risk of corruption of process, or worse. In the case of the Ultranet, the single-minded pursuit of an outcome dependent on the involvement of Oracle and CSG resulted in an appalling waste that can be measured in many millions of dollars of public money.

While acknowledging the work currently being undertaken by the Department and the broader Victorian public service to prevent corruption, IBAC makes the following four recommendations pursuant to section 159(1) of the IBAC Act to address the serious issues identified in Operation Dunham.

The Department has advised that it supports these recommendations, stating specifically that Recommendation 2 complements the Department's current reforms, providing increased focus on its efforts to transform procurement processes and practices and embed a culture underpinned by public sector values.

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

Recommendation 1

The Secretary of the Department of Education and Training to provide IBAC with a detailed progress report by 30 September 2017 on the implementation of its reform program to address the issues identified in Operation Dunham, with a final report demonstrating the effectiveness of these reforms by 30 March 2018. These reports will be published on IBAC's website.

Recommendation 2

The Secretary's reports are to:

- a. conduct a review of current arrangements governing how schools and other work areas pursue and respond to commercial opportunities, to ensure appropriate controls apply around transparency, accountability, central oversight and risk minimisation
- b. advise on action taken to strengthen internal procurement and governance arrangements for major projects to ensure accountability and transparency, including proper record keeping, maintenance of conflict of interest registers, and proper documentation of complaints regarding probity.

Recommendation 3

The Victorian Public Sector Commission to consider the implementation of a ban on public sector employees receiving any gift, benefit or hospitality from a current or prospective supplier.

Recommendation 4

The Department of Treasury and Finance to consider the issues raised in this report to identify if there are opportunities for further improvements to Gateway reviews²³ and high-value, high risk-reviews in relation to probity and governance.

²³ For more information on Gateway reviews, go to section 7.1.5

8 Conclusions and recommendations

IBAC is aware that VAGO has undertaken previous audits on major ICT projects and central agency oversight of 'high value high risk projects', and made numerous recommendations to improve value for money, and governance and probity arrangements. In its 2015 review of ICT projects, VAGO found agencies are generally unable to comprehensively report on major ICT expenditure and project status, and this needs to be addressed as a matter of priority, with the leadership of central agencies. Similarly, in its 2016/17 audit of high value high risk projects, VAGO recommended DTF strengthen reporting obligations of agencies around the status of risks associated with such projects. IBAC supports VAGO's ongoing work in these areas.

As part of the process of concluding Operation Dunham, IBAC intends seeking advice from the Office of Public Prosecutions in the matter.

9 Appendices

Appendix A: Compliance with the Protected Disclosure Act

Following the commencement of Operation Dunham, IBAC received information relevant to the investigation. That information was assessed in accordance with the requirements of section 26 of the *Protected Disclosure Act 2012* (PD Act). IBAC assessed that the disclosure fell within section 9 of the PD Act in that it was information that: ‘shows, or tends to show’ (or which the person believes on reasonable grounds shows, or tends to show), a person, public officer or public body has engaged, is engaging or proposes to engage in improper conduct.

Improper conduct is defined under section 4(1) of the PD Act. It was determined that the disclosure in this operation was a protected disclosure complaint relating to ‘improper conduct’ as prescribed by section 9.

Consequently, the disclosure was determined to be a protected disclosure complaint pursuant to section 26(3)(a) of the PD Act.

Provisions protecting a person who has made a protected disclosure are set out in Part 6 of the PD Act. Confidentiality provisions also apply to all protected disclosure complaints to ensure the identity of the person making the complaint and the content of the disclosure are protected. Subject to the exceptions set out in part 7, sections 52 and 53 of the PD Act specify that it is a criminal offence for:

- a person who received the disclosure, or has any information about the disclosure, to disclose the content or information about the content of the disclosure and
- a person or body to disclose information likely to lead to the identification of a person who has made a disclosure.

The importance of ensuring all protected disclosure information remains confidential is further reflected in the fact that the PD Act also imposes confidentiality obligations on the discloser under section 74.

Section 131 of the IBAC Act requires that when a witness is summonsed to attend an examination (or produce a document or thing) for an investigation relating to a protected disclosure complaint, IBAC must advise the witness that they may be subject to obligations under the PD Act and of the nature of those obligations, prior to the witness being asked any questions, or producing any document or thing.

Consequently, each witness called to give evidence during Operation Dunham, and any legal representative appearing on their behalf, was informed of the fact they would be committing a criminal offence if they disclosed:

- the content or information about the content of the disclosure or
- information likely to lead to the identification of the person who made the assessable disclosure.

Witnesses were informed that they could disclose the content or information about the content of the protected disclosure to their lawyer for the purposes of obtaining legal advice or as part of their representation before IBAC but were not to disclose the information for any other purpose.

Similar provisions apply to Australian legal practitioners representing a witness at an examination involving a protected disclosure complaint. Pursuant to section 130(1)(d) of the IBAC Act, legal practitioners must be informed of confidentiality obligations under the PD Act as well as non-disclosure obligations under the IBAC Act.

Legal representatives appearing for witnesses during an examination in Operation Dunham were informed that they may disclose such information to comply with a legal duty of disclosure or a professional obligation arising from their professional relationship with their client.

Except in limited circumstances prescribed by the PD Act, the obligation to maintain confidentiality of the disclosure and the discloser is an ongoing one.

Appendix B: Scope and purpose of public examinations in Operation Dunham

1. The circumstances in which the Department of Education and Training (**DET**) [formerly the Department of Education and Early Childhood Development (**DEECD**)] and its predecessors (principally DEECD) or its officers or former officers (**DET officers**) awarded the contract for delivery of an online learning portal (known as the **Ultranet project**) to a consortium consisting of CSG Services Pty Ltd (**CSG**) and Oracle Corporation Australia Pty Limited (**Oracle**).
2. The circumstances surrounding tender processes in connection with the Ultranet project undertaken by DET, including in relation to the design and development of the Ultranet.
3. The circumstances surrounding the design and award of procurement projects by DET to businesses or entities in relation to the Ultranet project and other DET information technology projects, including procurement for the purpose of evaluations of these projects, and whether any such procurement projects were exempted from tender (and if so, why), who was involved in the design and award of the procurement projects.
4. The circumstances of payments to external service providers in connection with the Ultranet project including how payment was arranged and accounted, who received the benefit of the payments, and what benefit (if any) DET received for the payments.
5. The existence of any familial relationship or other personal or business connection between, on the one hand, DET officers and, on the other hand, businesses or entities (or their directors, officers, employees, contractors or consultants) that participated in, and/or were awarded work through, tender or procurement processes in connection with the Ultranet project, and the level of knowledge or understanding within DET of any such relationships or connections.
6. Whether any current or former DET officers used their position to influence DET tender or procurement processes to derive a benefit or advantage for themselves or others.
7. Whether any current or former DET officer, received or obtained any direct or indirect payment, gift, travel, employment opportunity or other benefit or advantage (benefits) in connection with their role in tender or procurement processes in relation to the Ultranet project, other than their usual remuneration and entitlements.
8. Whether any current or former DET officers misused confidential information pertaining to the Ultranet project acquired in the course of their employment at DET.
9. Whether any current or former DET officer, or any member of the family or personal or business associate of any current or former DET officer, held or obtained an interest, directly or indirectly, in shares in CSG prior to, at or around the time that the Ultranet project contract was awarded to the CSG/ Oracle consortium.

Appendix B: Scope and purpose of public examinations in Operation Dunham

10. Whether any current or former DET officer encouraged others to purchase shares in CSG prior to, at or around the time that the Ultranet project contract was awarded to the CSG/Oracle consortium.
11. Whether the conduct of any current or former DET officer, including in relation to:
 - a. the tender and/or procurement processes in connection with the Ultranet project
 - b. the arrangement and accounting of payments to external contractors
 - c. personal and financial interests in and connections to businesses and entities engaged in tender or procurement processes or contractual relationships with the DET in relation to the Ultranet project
 - d. the application of DET funds in connection with the Ultranet project generallywas consistent with the level of honesty and integrity that could reasonably be expected of an officer in their position.
12. The systems and controls in place at DET concerning procurement, the engagement of external service providers and the management of tenders for major projects; with particular focus on the existence and adequacy of systems and controls for ensuring the integrity of major tenders, and the detection and monitoring of conflicts of interest that may arise when DET officers engage with external stakeholders.

If the investigation of the above matters identifies serious corrupt conduct on the part of one or more current or former DET officers, the extent to which (if at all) the organisational culture and practices within DET (or groups or divisions within DET) has fostered that conduct or hindered opportunities or attempts to detect and eliminate that conduct

Appendix C: Natural justice requirements and responses

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

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

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

To the extent that public bodies and persons are identified in the report and are the subject of adverse findings¹, comment or opinion², they have been given a reasonable opportunity to respond to same by being shown in draft ³material 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 below.

John Allman

Dr Watterston's investigation into the payment to Alliance (section 5.4)

Regarding Ms Velo-Johnstone's evidence that subsequent to Mr Allman asking her to journal the last two instalments paid to Alliance Recruiting Pty Ltd out of the Ultranet code and into the OGSE Secretariat code she had formed the view the request was to hide the money because the whole project was a fraud, that was not Mr Allman's state of mind at the time and he had never heard of Alliance at that time.

Share trading in CSG by John Allman (section 6.2)

Regarding adverse inferences that are considered in the report to be open against him – ie that he came to learn of the Ultranet Board's decision to accept CSG's offer following the board meeting and that he most likely came to know that the information would become public very soon, and acted on that information to his own personal benefit – Mr Allman did not know prior to the public announcement that CSG had gained the Ultranet contract.

¹ In relation to public bodies

² In relation to persons

³ Being tentative findings.

Appendix C: Natural justice requirements and responses

Julie-Anne Baker

Share trading in CSG by Julie-Anne Baker (sections 6.4 and 6.6)

Regarding criticism in the report of the evidence Ms Baker provided to KPMG and IBAC with respect to the source of the money used to purchase the shares, Ms Baker says that she has been consistent that the funds were discretionary funds. While the detail of the way these funds became available has developed (following careful checking of her records), the essence of her evidence has remained consistent. Further, the events she was recalling were up to seven years prior, and it is not beyond comprehension that the exact circumstances and details of conversations were forgotten.

Ms Baker disputes that her recourse to documents during the public hearing was done to conceal her untruthfulness to KPMG and IBAC. She took the task of preparing for her examination very seriously and made every attempt to obtain material which would assist her in being able to provide full and accurate answers, to the best of her ability.

Christopher Bennett

Request of second, selective request for tender (section 4.2.2)

Regarding Mr Gebert advising the Ultranet Board to resist 'bending the rules' to accommodate a request by Oracle to tender with a strategic partner as the prime contractor and Oracle as a subcontractor, Mr Bennett disputes any such suggestion by the Board. Mr Gebert ultimately supported the recommendation to proceed with CSG/Oracle and Ms Dalton ultimately signed off on the probity of the tender and evaluation process.

Mr Bennett's perspective was to maximise the prospects of the Department obtaining the best package of software and services to meet its requirements, both technical and budgetary. This is reflected in him preferring not to knock any contractor out of the tender process prematurely. It was also against the background of the earlier tender which had failed to find a supplier/contractor able to meet the Department's technical and budgetary requirements.

Improper communication between Mr Aloisio and Mr Fraser, and Mr Martin and Mr Fraser (section 4.4.1)

Regarding testimony by Mr Fraser to the effect that Mr Bennett and Mr Rosewarne intended to treat a presentation by Oracle as being outside the tender process which was to be sealed and considered only if Oracle was successful, Mr Bennett says he had no such intention. He was not aware of any suggestion of any presentation or proposal outside the tender process and would not have agreed to any such arrangement.

Improper communications – ‘blatantly going against my advice’ (section 4.4.2)

Mr Bennett says he had only one telephone call with an Oracle executive to advise him that Oracle/CSG's bid could not proceed during the litigation in the Supreme Court of Western Australia. Mr Bennett says he was joking when he said during a board meeting that he was speaking to the managing director of Oracle on the phone. He treated Ms Dalton's advice seriously and well understood and respected her role as probity adviser.

Regarding evidence that, increasingly, the Board would start meetings early and make decisions before the probity adviser was in attendance, he says all decisions which potentially raised probity considerations were made in her presence or, at the very least, were subject to probity review by her. He says he was not advised that any step taken in the process of evaluating tenders was in breach of probity requirements and that the probity adviser did not qualify her sign off by reference to any limitations on her attendance at relevant meetings or when relevant decisions were taken.

Rejection of Mr Gebert's warnings about the breach of tender rules (section 4.4.5)

Mr Bennett disputes Mr Gebert's evidence criticising the tender process. At its meeting on 20 May 2009, the Board endorsed the recommendation of the Tender Evaluation Team. The papers for that meeting included the final Evaluation Report of the team. That report was presented to the Board by Mark Bladon, who supported the recommendation of the Evaluation Team. It included the input of the Commercial Evaluation Team, which included Mr Bladon and Mr Gebert. The Ultranet Board relied on the Evaluation Report and endorsed its recommendations. Ms Dalton then signed off on the probity of the process.

Mr Bennett disputes Mr Gebert's criticisms that decisions were made regarding shortlisting without anything more than a draft shortlist report and that the evaluation team was disbanded prematurely. He says the shortlist was based upon a significant difference between the evaluation scores of tenders in the first stage of the evaluation, in accordance with the Evaluation Plan. The evaluation team remained in place until its work was done. Further, two new board members were appointed at the request of the Minister – Mr Lubofsky and Mr Bugden, who endorsed the Board's decisions and its ultimate recommendation to proceed with the engagement of CSG/Oracle.

The first line of defence fails (section 7.1.2)

Insofar as CSG/Oracle bid representatives are said to have been in direct contact with Mr Fraser and Mr Bennett while suspended from the tender process, Mr Bennett says this is not correct insofar as it relates to himself.

Appendix C: Natural justice requirements and responses

Wayne Craig

Wayne Craig (section 6.5)

Mr Craig disputes that he was untruthful in the past regarding discussions he had with his wife before the CSG shares were purchased, and says that such findings are not open on the evidence. More particularly, his responses to KPMG and Lander & Rogers reflect a distinction he has always maintained, and which they understood at the time, between his wife's decision to purchase the shares and him discussing with her the possible purchase of same. Therefore it is not open for IBAC to draw conclusions about his truthfulness over matters he was not intending to address with them. Further, his letter to Mr Rosewarne in 2011 when the issue of the share purchase was first raised with him, which KPMG and presumably Lander & Rogers had access to, indicated that he had had a discussion with his wife about the purchase.⁴

The purposes of the KPMG and Lander & Rogers investigations regarding Mr Craig were to ascertain the reasons for any share purchase by him, and any failure by him to appropriately declare them to the department. Therefore any discussion he had with his wife – who made the purchase – was very much peripheral to that first purpose, and immaterial to the second. Had the focus of these investigations been different, Mr Craig's relevant answers to matters raised would in all likelihood have reflected the discussions he had with his wife before the purchase.

Mr Craig says it is unfair to focus in the report on his responses to matters that were not the focus of those earlier investigations. Further, there is nothing in Mr Craig's response to Lander & Rogers to suggest that he was asked about discussions with his wife about CSG prior to her purchase of the shares.⁵ Mr Craig also disputes that he in any way sought to advantage his position in the matter under investigation, not only because he was not untruthful in previous investigations, but also because his prior discussions with his wife about possibly purchasing CSG shares were immaterial to same as he had no conflict of interest at the time and possessed no confidential information. Finally, as he says he was not untruthful as aforesaid, he denies that he breached any public sector employee values.

⁴ It is noted that IBAC interprets the letter in question, being public exhibit 130, as plainly referring to such discussion having occurred after the share purchase was made.

⁵ In response to the assertion of being unfair, IBAC considers that relevant interactions between Mr Craig and his wife before any purchase by her were of material relevance to any investigation by KPMG and Lander & Rogers. Accordingly, he was directly questioned by KPMG about any pre-purchase discussions with his wife.

CSG Limited

This response, on behalf of CSG Limited, addresses matters raised in the report which may be considered adverse to CSG Services Pty Ltd or CSG Solutions Pty Ltd at a time when they were its subsidiaries and which CSG Limited considers may therefore reflect adversely on itself.

Release of second, selective request for tender (section 4.2.2)

Any implied criticism around the experience of CSG Services Pty Ltd and the acquisition of Cinglevue by CSG Services Pty Ltd fails to take into account the experience and businesses of its then parent CSG Limited⁶ and ignores the value of that business by incorrectly regarding its only asset as Mr Aloisio. There were significant business advantages in the acquisition of Cinglevue.

Tender evaluation and concerns of favouritism (section 4.2.3)

Criticisms of CSG Services Pty Ltd ignore the history, experience and business of its then parent CSG Limited, including its recent acquisitions of Cinglevue and other companies. They also ignore the solution presented by the CSG/Oracle consortium having extraordinarily high functionality. Regarding concerns about favouritism to the CSG bid by the Board, CSG did not attempt to influence it nor otherwise play a role in this regard.

Improper communications (section 4.4.2)

Such communications board members had were limited to Oracle personnel.

Mr Fraser spruiks the Ultranet (section 4.5.1)

CSG Services Pty Ltd personnel had no involvement in Mr Fraser's trip in March 2011. The July 2011 internal communication in question cannot be interpreted as recognition of Mr Fraser having any level of conflict of interest arising from his employment with the Department.

CSG's need for more money (section 5.1.1)

The evidence demonstrates there was a formal process for obtaining any additional funding that may have been required for the Ultranet project, which process was adhered to by CSG Solutions Pty Ltd.

Contracting of Alliance Recruitment raises probity questions (section 5.2)

The purpose of the LTOAP was to assess the uptake of ten different technologies in schools, not to assess the Ultranet project itself. Hence there was no conflict of interest. That the LTOAP report was intended to provide a spin on the uptake of the Ultranet cannot be sustained in light of the final report, which was critical of the Ultranet. Additionally, CSG Solutions Pty Ltd considered that if the survey results revealed a poor uptake of the Ultranet, this information would be beneficial and welcomed as a means to improve the Ultranet in order to ensure it ultimately delivered its desired outcome. Ms O'Neill's participation in the project was genuinely contemplated, which the Department was aware of, but as events transpired, she could not ultimately work on the project as she left CSG Solutions Pty Ltd shortly after the project commenced.

⁶ The 2007 and 2008 annual reports for CSG Limited set out details of three companies acquired by CSG Limited which were relevant to its ability to undertake a project such as the Ultranet.

Appendix C: Natural justice requirements and responses

CSG's handling of the LTQAP (section 5.3)

As to the conclusion that the LTQAP final report was of little or no value, there was evidence that points to a contrary conclusion. The conclusion relies on evidence from witnesses who do not have the appropriate experience or expertise to make a reliable judgement about the value of the report.

Mr Fraser concedes the real purpose of 'the little project' (section 5.5)

Regarding the true nature of the LTQAP, it was not one that was universally known. Any such concession from Mr Fraser was just from his perspective.

Conclusion (section 5.6)

CSG Services Pty Ltd had no involvement in or knowledge of the purpose behind the LTQAP as it was understood by Mr Fraser.

Peter Dawkins

A complaint about probity concerns is made to the Minister (section 4.4.3)

Professor Dawkins was troubled by the matters raised by Ms Dalton.

The complaint was not managed confidentially (section 4.4.4)

Mr Bugden was required to report back to Professor Dawkins in relation to the progress of the Board, including in respect of Mr Fraser's conduct while Ms Dalton remained in her position of probity officer.

Department systems, controls and culture (sections 7 and 7.3.3)

To the extent that the report might be taken to suggest that Professor Dawkins did not and should have taken a more active role in the Ultranet project because it was the Department's largest project, he says in response:

- The Ultranet was one of a number of large-scale projects with the Department that commenced before his time as Secretary. He maintained supervision in relation to its continued development, by way of regular briefings including from Mr Fraser and with other board members. The Ultranet was, however, just one component of a much broader, extensive and ambitious reform agenda. There were a number of other substantial, large-scale reform projects that required leadership, innovation and focus.
- He oversaw the development of *Blueprint for Education and Early Childhood Development*, designed to improve performance and promote excellence across Victoria's schools and early childhood services. At the same time he was responsible for overseeing major organisational change involving the integration of responsibility for early childhood development.
- He also led the development of *The Future of Schooling in Australia* and *The Melbourne Declaration*, the latter on behalf of all Ministers for Education in Australia. This formed the basis for a national approach to collaboration in education, including the development of a national curriculum.

- He also played a key leadership role in the development of the National Productivity Agenda (NPA), an investment in human capital in order to improve schooling. Professor Dawkins was for a period of time, Deputy Chair to the Federal Minister for Education, of the COAG working group responsible for developing the NPA. Once the NPA was set, Professor Dawkins played a key leadership role in the negotiation of national partnership agreements between the State and the Commonwealth which led to major investments in schooling in Victoria.
- There were other substantial challenges during Professor Dawkins' time as Secretary including the bushfires at Kinglake and elsewhere in 2009 which destroyed a number of Government schools. The rebuilding and school community support work was significant, important and demanding in terms of resources and time.

Non-compliance with departmental policies related to travel, gifts and benefits, and credit card use (section 7.2.3)

In relation to approval of travel for Deputy Secretaries, in regular meetings with them, their agenda, including international activities and their case for travel, was an important discussion point in which Professor Dawkins interrogated them about how that fitted within their performance plans.

Escalation of concerns led to little change (section 7.2.5)

Operation Dunham has shown that many of the problems identified within the Department were systemic. They commenced well before Professor Dawkins was appointed as Secretary. In relation to a regime he had inherited, he took important steps to address those cultural issues.

In response to being advised that there was a 'boozy, blokey culture' that existed within parts of the Department, Professor Dawkins took action to investigate those concerns. A report titled, 'A Cultural Pulse Check', was commissioned to determine whether there were significant cultural issues within the Department that needed addressing.

Early in 2010 Professor Dawkins approved the commissioning of an audit in relation to credit card and air travel expenditure after concerns came to light in relation to Mr Fraser's use of them. In 2010, he was advised of allegations of improper conduct on the part of a senior departmental employee who it appeared had purchased shares in CSG. He gave permission for a formal further investigation of those matters. In 2010 Professor Dawkins approved the audit be broadened to include other aspects of the OGSE including use of funds by program coordinator schools and regions. That audit revealed, for the first time, serious financial irregularities that would later become the central focus of IBAC's Operation Ord.

In this way, Professor Dawkins, while Secretary was responsible for triggering the first investigation within the Department into the misuse of public funds by program coordinator schools.

Appendix C: Natural justice requirements and responses

Greater oversight and scrutiny from the top was required (section 7.3.3)

Professor Dawkins was committed to and fulfilled a strong leadership role within the Department. This was recognised in his annual performance reviews. With the benefit of hindsight, a greater degree of oversight and scrutiny of the Ultranet project from above was required.

Professor Dawkins relied upon a system of financial controls as Secretary, that he had inherited, including internal audit, Gateway reviews, oversight by the Financial Services Department to the extent of its delegation and the reporting procedures set out in the Victorian Public Sector Employees' Code of Conduct, to protect against the risk of fraud and corruption.

IBAC's hearings have demonstrated that the system he inherited was far from robust and that it lacked effective mechanisms for the reporting of improper conduct. With the benefit of hindsight, more could and should have been done to address those deficiencies.

Julie-Ann Kerin

A plan is hatched: the Learning Technologies Quality Assurance Project (section 5.1.2)

Ms Kerin says she was not aware that Mr Fraser had any strategy to use Alliance as the pathway through which a million dollars of departmental funds would go to CSG. Specifically, in relation to each of the potential elements of Mr Fraser's strategy:

Need for one million dollars to keep the Ultranet afloat

Ms Kerin denies she identified to Mr Fraser that about one million dollars in extra funding was required to keep the Ultranet afloat. The amount was arrived at between Mr Mackenzie and Mr Fraser and subsequently told to her.

Identification of a current panel member

Ms Kerin's evidence that she understood the concept of work needing to be contracted through a departmental panel member is not evidence that she was aware that identification of a current panel member was part of any strategy to use a consultancy firm as a pathway to channel a million dollars to CSG. Further, subcontracting arrangements such as those which were ultimately entered into for the LTQAP were not uncommon.

Arriving at a contract amount of \$999,996

Ms Kerin was not party to the discussions in which the contract figure was arrived at.

Exemption from tender

Ms Kerin was not aware that Mr Fraser sought an exemption from tender from the APU to have the LTQAP awarded to Alliance.

Reclassification of LTQAP as a contract, rather than a consultancy

Ms Kerin maintains that Mr Fraser did not tell her that initially this was put through as a consultancy and then changed to a contract or that if it was a consultancy, that that would go in the annual report, and disputes Mr Fraser's evidence that she was fully aware of any such strategy.

Alliance Recruitment's role as financial conduit (section 5.2.1)

Ms Kerin disputes that the LTQAP was a contrived device to obtain any cash injection for CSG. She relies on her evidence and her response to report sections 5.3.1 and 5.3.3 below in terms of the purpose and results of the LTQAP. It was not intended that Alliance would do the quality assurance work, as this was to be subcontracted by Alliance to CSG. Rather, Alliance was entering into an agreement with the Department; they were assuming the contract risk and they were responsible for the administration of that contract. Whilst she did not personally do costings and did not immediately cause her team to do costings after a conversation with Mr Fraser about the proposed scope of the project, she later saw costings from her consulting team for resources that they believed were the cost of delivering the project. That Mr Fraser was able to authorise expenditure of up to one million dollars provided the company in question was on the Department's professional services panel is something Mr Fraser told her, as distinct from her having independent knowledge in this regard.

Regarding her evidence that she and Ms Brown agreed on the fee for Alliance's on-billing services, based on Ms Brown's suggested rate, Ms Kerin also gave evidence that Alliance was entering into an agreement with the Department, they were assuming the contract risk and they were responsible for the administration of that contract. She also said she did not mean that Alliance was a conduit in respect to moneys that passed between the Department and CSG.

Information in contracts masks CSG's involvement (section 5.2.4)

Ms Kerin disputes that the draft letter to be signed by Ms Brown was deceptive by omission in not mentioning CSG as it did not need to mention CSG because some personnel at DEECD were aware that CSG was to be a subcontractor to Alliance to perform the work for the LTQAP. She also relies on the minutes of the LTQAP meeting on 28 March 2011 identifying her as being from CSG.

Appendix C: Natural justice requirements and responses

Information in contracts masks CSG's involvement (section 5.2.4) / Misrepresentations around the scope of the LTQAP (section 5.3.2)

Ms Kerin disputes (in section 5.3.2) that Ms O'Neill was never positively intended to be involved in the project. She says to the contrary it was her understanding that each of the personnel named would potentially be involved in the LTQAP. She says there is no evidence from any other representative of CSG (the only witnesses capable of giving evidence about CSG's intentions) to the contrary. Further, Mr Caban and another CSG Solutions employee, both listed in the draft letter, did perform work on the LTQAP.

Ms Kerin disputes (in section 5.2.4) that evidence obtained by IBAC suggests the final contractual arrangements continued to mask the essentially artificial engagement of Alliance. She says this section of the report fails to fairly reflect that:

- a. the letter attached to the email dated 28 March 2011 from Ms Kerin to Mr Arthurson was drafted in response to a request from Mr Arthurson (contained in Mr Arthurson's email dated 18 March 2011)
- b. the draft letter attached to Ms Kerin's email to Mr Arthurson dated 28 March 2011 included significant extracts of text that Mr Arthurson had sent to her on 18 March 2011
- c. the personnel named in the draft letter attaching Ms Kerin's email dated 28 March 2011 were all CSG personnel at the time.

Further, she says it is irrelevant that the minutes of the LTQAP Board meeting on 28 March 2011 did not refer to CSG's delivery of services in relation to the project as it was no secret to some DEECD personnel that CSG was delivering the services in relation to the LTQAP.

Where (in section 5.3.2) the report refers to an elaborate document trail with a similar range of deceptions and misrepresentations and Ms Kerin being heavily involved in the creation of various aspects of such documents, which she disputes, she says that the report only identifies one document that she is said to be involved in other than the draft letter attached to the email dated 28 March 2011 from her to Mr Arthurson. This is an email sent in April 2011 from Ms Kerin to Ms Sonya Velo-Johnstone at DEECD where she introduced Mr Caban who was going to be leading the project with Ms O'Neill. As to the basis on which this email is said to have been misleading (being that Ms O'Neill was never intended to be involved in the project), she says it is not correct that Ms O'Neill was never intended to be involved in the project.

Mr Caban's evidence that the statement in the email that he was going to be 'leading the project with Ms O'Neill' was 'news to him' when he was copied in on the email could not be said to found any characterisation of the email as misleading, as it does not suggest that this statement was inaccurate, just that it was not known to Mr Caban at that time.

A puppet project (section 5.3.1) / CSG's final project report lacks credibility (section 5.3.3)

Ms Kerin denies that the LTQAP was intended to provide a positive spin on the use of the Ultranet in schools, that there was any level of predetermination about the outcome of the project, that there was any conflict of interest arising from CSG's work on the project and that it was a grossly overpriced sham and a puppet project. She relies on the purposes of the LTQAP as set out in the contractual documentation as well as her evidence and that of others. She also relies on evidence she and Mr Caban gave to the effect that the purpose of the LTQAP report was to assess how learning and teaching was affected by a range of technologies including in part the Ultranet. It was not to look solely at the Ultranet delivered as per the contract with CSG. Further, to the extent the LTQAP concerned the use of the Ultranet in schools, it was not intended to provide a positive spin, and did not in fact do so. To the contrary, the final report contained critical statements regarding the Ultranet.

She says the report statement about the CSG resources applied to the project being relatively meagre when compared to the \$1 million cost to the Department over six months fails to account for overhead costs. She says the report statement that the project work was small in scale, conducted by inexperienced personnel is inconsistent with the evidence of others. She also says the evidence from others indicates that the part time personnel did not have final responsibility for the final report. Where the report states that to conduct their field research, the student contractors visited just ten of Victoria's 1500 schools, she relies on evidence that this was not unusual in the context, and says that the report had value.

Conclusion (section 5.6)

During the relevant period (in late 2010 and early 2011), Ms Kerin did not have oversight of CSG's financial situation. She otherwise refers to and repeats her above responses regarding adverse findings about the payments to Alliance. She had no reason to think that the LTQAP was anything other than a legitimate project, with a legitimate purpose, which was fulfilled. Further, she says Mr Fraser's evidence provides no basis for the finding that she must have known that the LTQAP had such illegitimate purpose.

Appendix C: Natural justice requirements and responses

Ron Lake

Section 6.3

Mr Lake says there is no evidence that during the board meeting of 29 July 2009, any information was discussed that had not yet been announced publicly but would be announced imminently. Specifically, no evidence that the acquisition of the company Delaxian Pty Ltd was discussed at that meeting. He has no memory of such discussions and believes the report conclusions in that regard are speculative. He disputes that he was untruthful about his knowledge of the imminent acquisition of Delaxian or any other price sensitive information.

He says the explanation he gave to KPMG was an accurate and plausible scenario. His motivation was sparked by a comment made at the 29 July board meeting that the share price was doing well. When he checked that evening, the share price had increased significantly. He also strongly believed that the Ultranet product when implemented would transform teaching and learning not only in Victoria but in other jurisdictions as well. That he held the shares for a number of years supports his confidence in the product and its potential to change education. After it became obvious that the Ultranet was not going to be fully implemented, he sold them at a substantial loss.

He accepts the criticism in the report about his failure to disclose the purchase of the shares in a prompt manner. Part of the reason for his tardiness is that for the two weeks immediately following the purchase, his direct report, Mr Fraser, was overseas.

Denis Mackenzie

Chapter 5

Mr Mackenzie says Mr Fraser's evidence should be accepted both that Mr Mackenzie was not involved in the genesis of the LTQAP transaction and that Mr Fraser had little involvement or contact with him. While Mr Fraser and Mr Mackenzie discussed additional funding for the Ultranet project regarding out of scope work, they did not have any discussions about the LTQAP. The genesis of the transaction on Mr Fraser's evidence started prior to January 2011 with Ms Kerin where she referred to the sum of \$1 million well before any discussions ensued with Mr Mackenzie. Mr Fraser also made it clear that Alliance Recruitment was not discussed at the dinner meetings with Mr Mackenzie. Mr Fraser, as is accepted in the report, gave fairly frank evidence about the true nature of the LTQAP and had no motive not to tell the truth with respect to Mr Mackenzie.

Despite the many documents tendered in the public examinations, none showed a connection between Mr Mackenzie and the LTQAP. The only relied on document was where Mr Mackenzie simply on-forwarded Merran Brown's contact details at Alliance Recruitment to Mr Fraser. As stated below, Mr Mackenzie sent such an email because he was asked to do by Ms Kerin and because she said the Department wanted to procure out of scope services by a panel firm. The time period in which Mr Mackenzie was involved in discussions about resourcing for in and out of scope work and CSG being paid for out of scope work in relation to the Ultranet was brief – namely, between 12-19 January 2011.

Mr Fraser's email to Mr Mackenzie dated 13 January 2011 uses language consistent with Mr Mackenzie's evidence that the two of them discussed on 12 January 2011 CSG being paid for out of scope work. There is no reference at all to a sham project, such as the LTQAP, let alone there being an agreement between the two men regarding the LTQAP. The same email contradicts Ms Kerin's evidence that in early January 2011, Mr Mackenzie and Mr Fraser had reached agreement for CSG to 'conduct a project' for 'a value less than a million dollars'. While there clearly was no agreement, the prospect that Mr Mackenzie would have had the information at hand to calculate the cost for performing out of scope work on the Ultranet project let alone calculate the cost of the yet to be devised LTQAP is fanciful. The meeting minutes and action items for the Ultranet project board meeting on 12 January 2011 reflect, as was the case, that Mr Mackenzie was not involved on a day-to-day basis with respect to matters relating to the Ultranet and, in fact, Graeme Bydder of CSG needed to brief him in the afternoon of 12 January 2011 just hours prior to the dinner meeting that evening with Mr Fraser where Mr Mackenzie asked for payment for out of scope work. The contemporaneous communications also demonstrate that it was Ms Kerin who was responsible for the LTQAP.

CSG was not in financial difficulties in late 2010 and January 2011, which is reflected in its relevant published accounts. No senior officer of CSG gave evidence that they were aware of CSG experiencing cash flow problems. Further, it would be fanciful to suggest that the contract sum of \$939,996 in a business turning over approximately \$388.6 million per annum (or \$32.38 million monthly) was of any material benefit. The monthly cash instalment payments of \$156,666 over six months were not desperately needed given three overdue payments had not been received by CSG by 25 May 2011. Mr Mackenzie's evidence was not that he was asking for money to keep the Ultranet afloat. Rather, his approach to Mr Fraser

was simply to obtain payment for out of scope work or otherwise CSG would cease to perform that out of scope work. It was not a matter of walking away from the Ultranet project. The last two years of the Ultranet contract – July 2011 to June 2013 – were highly profitable for CSG as it would receive \$17.1 million. Accordingly, it is inconceivable that CSG would have walked away from the Ultranet project itself.

Any suggestion that Mr Mackenzie must have known about the genesis of the LTQAP ignores the practical reality that Mr Mackenzie was the CEO of an ASX 200 listed company with more than 1,500 staff and others within CSG, such as Ms Kerin, who had day-to-day responsibility for the Ultranet. It was Ms Kerin's team that negotiated the Alliance contract, delivered the LTQAP transaction, invoiced the said transaction, reviewed the draft LTQAP report and prepared commentary on how to deal with the media if asked about Alliance Recruitment. There is no evidence of Mr Mackenzie's involvement in these activities. The personal circumstances and characteristics of Mr Mackenzie are also inconsistent with and undermine any such suggestion. In particular, he has no criminal record, has not been investigated by any regulatory body such as ASIC, nor has he ever been sued personally.

Appendix C: Natural justice requirements and responses

Oracle Corporation Australia Pty Ltd

Section 3.3.1

Regarding references to Oracle providing services at no cost or not charging the department for Oracle's contribution to the Students@Centre project, the unchallenged evidence of several relevant ex-Oracle witnesses is that this activity was normal pre-sales activity.

Section 3.3.3

As there was technically no purchase in excess of \$100,000, no probity issue was identified, just certain risks.

Section 3.4

Any advantage Oracle is alleged to have obtained by its participation in the Students@Centre project would not have occurred if the internal concerns flagged internally within the Department and described elsewhere in the report had been acted upon; they were not and consequently, Oracle was not made aware of these concerns.

Section 4.2.2

No criticism can be levelled at Oracle for being permitted to submit a tender bid with an alternative price as this decision was the sole responsibility of the Ultramet Board.

Section 4.2.3

CSG was the prime contractor and Oracle was only ever intended to be a subcontractor and at arm's length with no responsibility or accountability contractually for the delivery of the Ultramet. Regarding any alleged favouritism Oracle received as being part of CSG's bid, its response to section 3.4 is repeated.

Section 4.4.1

There is no evidence that Oracle was aware of nor authorised the covert communications Mr Martin sent to Mr Fraser, nor the actions recommended by Mr Martin in these communications. In fact, Mr Martin went to extraordinary lengths so that Oracle was not aware of the emails or their contents. There is no evidence Oracle was aware of Mr Aloisio's communications.

Sections 4.4.2, 4.4.3 and 7.1.2

There is no evidence Oracle was made aware of Ms Dalton's advice, nor that Mr Fraser and Mr Bennett were acting contrary to it, nor that Oracle was aware the contact as described was not permitted.

Sections 4.4.4 and 7.2.2

Mr Fraser in his evidence denied any bias towards Oracle.

Section 7.2.3

As there is no evidence Oracle or the ex-Oracle employees were aware of the Department's gift policy, expenses of Mr Fraser and others that were paid for by Oracle cannot be the subject of criticism of Oracle.

Bronwyn Pike

Probity concerns identified (section 3.3.3)

Regarding the complaint received from an IT firm, Ms Pike says she understood at the time that the firm was an unsuccessful tenderer for the first Ultranet tender and was aggrieved by the outcome. Whilst with hindsight it is clear that the firm was raising genuine problems about the process, its status as an unsuccessful tenderer was, she expects, a factor in the way the Department viewed the complaint and the way she was advised about it. Her memory of the complaint is vague because at the time, she had no basis for knowing that the issue was not being properly managed by the Department.

A complaint about probity concerns is made to the Minister (section 4.4.3)

Ms Pike considered that the Board would be strengthened with a different chair and by adding an independent person. Mr Fraser remaining on the Board was not a matter discussed with her, being a decision of Professor Dawkins.

The complaint was not managed confidentially (section 4.4.4)

While, when Minister, she might have told Mr Fraser of the fact that there had been a complaint and there were to be changes to the Board, Ms Pike did not discuss those matters with him before the meeting with Professor Dawkins and Ms Dalton. She otherwise notes the events in 2014 were several years after she ceased to be a Member of Parliament.

Mr Fraser concedes the real purpose of ‘the little project’ (section 5.5)

As she said in her evidence, Ms Pike had no knowledge of the fact of, or the circumstances of, the payment made by Mr Fraser to CSG. It occurred after her time as Minister. When Mr Fraser mentioned it in their telephone conversation, she did not know what he was referring to.

Escalation of concerns led to little change (7.2.5)

Regarding whether Mr Fraser should have been removed from the Board, whilst Ms Pike can understand why that view may be taken with the benefit of hindsight, as she said in her evidence, it was never suggested to her at the time that Mr Fraser be removed or that such a removal was necessary.

Conclusions and recommendations (section 8)

Ms Pike was very enthusiastic about a project which she understood would have provided a great resource for education in Victoria. She inherited the Ultranet project when she became a Minister. It was government policy and as Minister, it was her role to ensure the implementation of that policy. It was never her view that the project had to be implemented at the cost of proper processes and probity. Her enthusiasm for and commitment to the project never gave tacit approval to any person to do anything outside of those proper processes or to act with anything other than complete integrity.

Appendix C: Natural justice requirements and responses

Gregory Tolefe

ASG 'teams' with Aloisio Consulting to secure access to Mr Fraser and others (section 4.1.2)

As to part of the teaming agreement being false, Mr Tolefe says the reality is that all parties to it, and also Oracle, were aware that those persons referred to in it were not then employed by Aloisio Consulting, but were persons whom the eventual corporate entity (being Cinglevue) would be targeting/engaging. More particularly, Mr Tolefe says:

- ASG also understood from Mr Tolefe at the time that if Cinglevue was not successful in obtaining the services of these persons, alternative persons with equivalent skills would be sourced.
- Whilst some persons listed were not ultimately engaged by Aloisio Consulting or Cinglevue, others listed were engaged by Aloisio Consulting/Cinglevue and provided services, as contractors.
- Following Cinglevue's incorporation, these persons became contractors of Cinglevue/ASG.
- Various of these persons remained contractors of Cinglevue, along with others.

There is nothing in the teaming agreement to suggest that Mr Aloisio was to provide technical skills. To the contrary, Mr Aloisio provided domain expertise, along with his knowledge and years of experience in the education sector. Mr Aloisio's domain expertise meant that he was extremely well-placed to determine and inform the design of an education technology solution. He therefore offered more than just his connection with Mr Fraser.

Oracle required a technology partner that had demonstrable expertise in the education domain. Given ASG had no domain expertise, the primary purpose of the teaming agreement was to secure such expertise, which was provided not only by Mr Aloisio, but also by key other persons identified in the assessment, who had already made a verbal commitment to Aloisio Consulting. In securing the services of these persons, ASG filled a gap in its skillset and gained credibility with Oracle as prime contractor. ASG's lack of domain expertise was further demonstrated when, following the withdrawal of the first Ultranet request for tender and the ending of the teaming agreement, ASG offered to enter into a new agreement with Cinglevue for the purposes of teaming with Oracle to respond to the second tender.

Regarding reference to ASG having paid a 'premium' for its teaming agreement with Aloisio Consulting, if it is true that a premium was paid, something Mr Tolefe disputes, then that premium was paid for the domain expertise referred to above, and not merely because Mr Aloisio was provided but others were not.

Mr Tolefe was never a shareholder in, or director of, Aloisio Consulting. In early August 2007, he became a shareholder and director in the newly incorporated Cinglevue. Aloisio Consulting's rights and obligations under the agreement were assigned to Cinglevue in August 2007. At all relevant times, ASG was aware of his interest in Cinglevue.

Email dated 11 June 2008 from Mr Martin to Mr Fraser (section 4.4.1)

While he did come into possession of the email sent from Greg Martin to Mr Fraser's daughter's private email address, Mr Tolefe was not a party to that correspondence, had no prior knowledge of it and only came into possession of a copy of that email when it was forwarded to him by Mr Martin.

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

