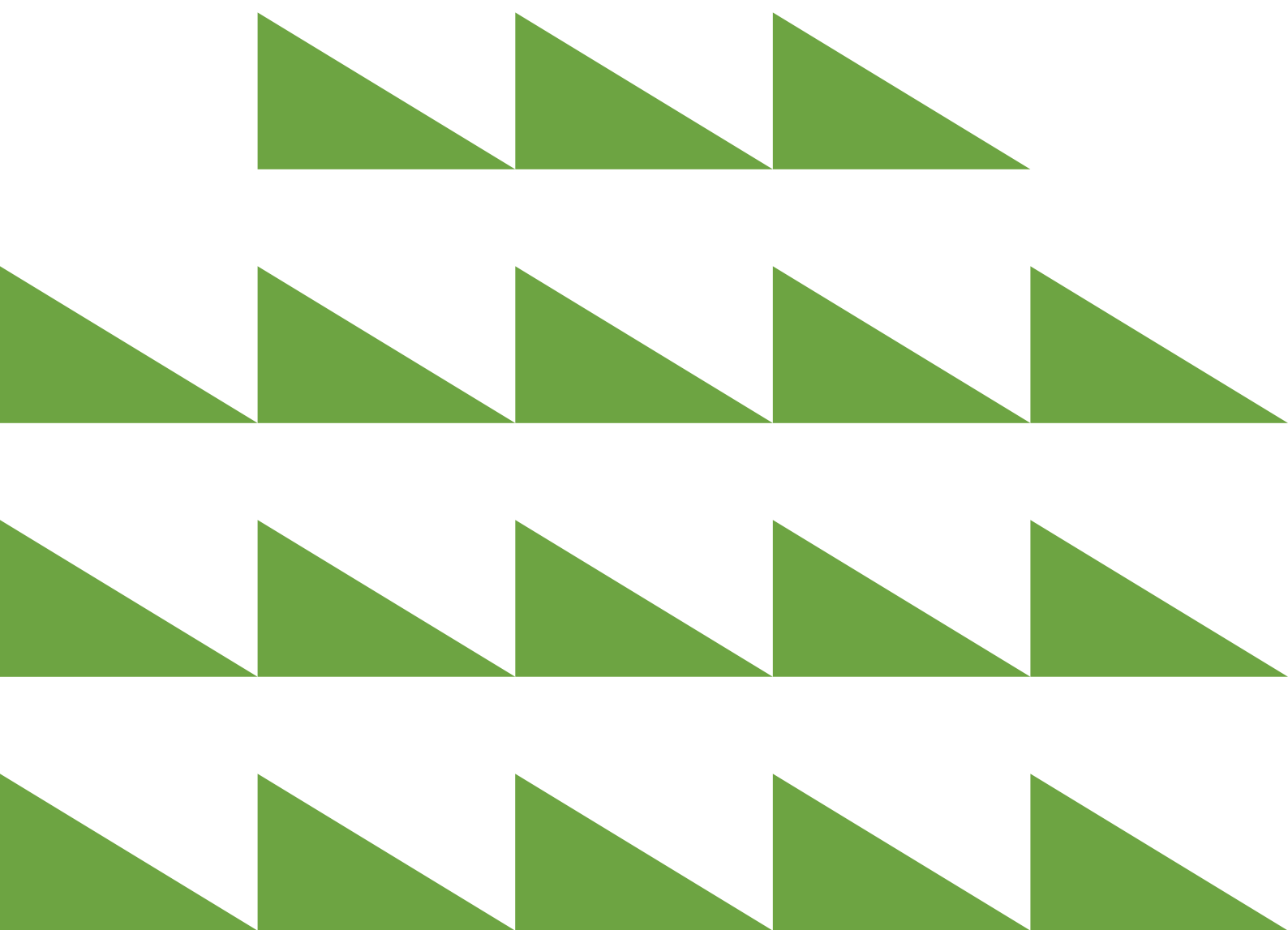


Managing corruption risks associated with conflicts of interest in the Victorian public sector

October 2019



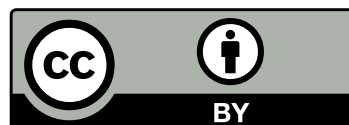
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Definitions

Acronym/Term	Explanation
CEO	Chief Executive Officer
IBAC	Independent Broad-based Anti-corruption Commission
LG Act	<i>Local Government Act 1989</i>
LGI	Local Government Inspectorate
LGPro	Local Government Professionals
LGV	Local Government Victoria
MAV	Municipal Association of Victoria
NSW ICAC	New South Wales Independent Commission Against Corruption
OMCG	Outlaw motorcycle gang
PA Act	<i>Public Administration Act 2004</i>
Public officer	As defined under section 6 of the IBAC Act, a public officer includes a person to whom the PA Act applies, a member of Council staff employed under the Local Government Act or a Councillor within the meaning of the Local Government Act.
PTV	Public Transport Victoria
QLD CCC	Queensland Crime and Corruption Commission
State government agencies	Organisations that comprise the Victorian state public sector, including the public service and public entities
VAGO	Victorian Auditor-General's Office
VLGA	Victorian Local Governance Association
VO	Victorian Ombudsman
VPS	Victorian Public Service
Victorian Public Sector	All public bodies, including state government agencies and local councils
VPSC	Victorian Public Sector Commission
WA CCC	Western Australia Corruption and Crime Commission

1 Overview

Most public sector officers will experience a conflict of interest at some point in their careers. While conflicts should be avoided wherever possible, the existence of a conflict of interest in itself is not necessarily a problem nor inherently corrupt. However, the risk of corruption occurs when individuals and their organisations fail to properly and actively identify, declare and manage a conflict in the public interest. This report outlines opportunities to strengthen the identification, disclosure and management of conflicts of interest across the public sector. Some good practice is also highlighted.

This report explores how certain organisational functions and activities in the public sector are at heightened risk of conflicts of interest, and how conflicts of interest can facilitate corrupt conduct if they are not properly identified, managed and declared.

Since becoming fully operational in 2013, the Independent Broad-based Anti-corruption Commission (IBAC) has identified conflicts of interest as a recurring corruption risk. Failing to declare or manage conflicts of interest, either deliberately or because of a lack of understanding of obligations, leaves public sector agencies vulnerable to corrupt conduct. It also contributes to the wasting of resources, loss of staff morale and reputational damage when decisions are not made in the public interest. Mismanaged conflicts of interest are corrosive, potentially adversely impacting the decisions or actions connected with the conflict. They also undermine the integrity of the organisation and public trust in the broader public sector.

Risks associated with poorly identified and managed conflicts of interest can be mitigated through strong ethical culture and leadership. This includes leaders clearly communicating how employees are expected to handle conflicts of interest, as well as ensuring robust systems and controls are in place, such as clear and accessible policies and procedures, and regular training. These are the critical foundations for public officers to enable them to identify, declare and manage a conflict.

IBAC acknowledges the ongoing work of other agencies including the Local Government Inspectorate, Local Government Victoria, Victorian Auditor-General's Office, Victorian Ombudsman and Victorian Public Sector Commission, to highlight concerns and to support agencies in the Victorian public sector to more effectively deal with conflicts of interest.

1.1 Key findings

- **Procurement, recruitment, regulation, governance, custodial management, information management and internal investigations are functions and activities that are particularly vulnerable to conflicts of interest.** IBAC's investigations also highlight that other activities and circumstances, such as secondary employment and personal associations, can also give rise to conflicts.
- **Conflicts of interest are sometimes not properly managed.** This may be a result of a poor understanding of what constitutes a conflict and the implications and risks conflicts present for public officers' decision making, or due to a wilful disregard in order to derive a personal benefit. In some instances, these situations can exist simultaneously.

- **Poor managerial oversight enables conflicts of interest to go undeclared or mismanaged.** In some cases, managers have been aware of an employee's personal interest that could create a conflict but have not taken appropriate action, such as ensuring declaration and management strategies were put in place. In addition, in some cases management has failed to rotate staff in high risk areas to avoid or disrupt the development of potentially risky connections, particularly between public officers and the community or industry that is the subject of regulation.
- **A culture of expediency and 'getting the job done' over proper process can lead to conflicts of interest being ignored.** Conflicts can be overlooked as a result of a public officer's perceived dedication to a task or project, which may suggest a commitment inconsistent with misconduct or corrupt conduct. The 'public good' was sometimes touted as the motivation for bypassing proper processes; in reality, the public officers were motivated by private interests and personal profit.
- **Some public bodies may be susceptible to a heightened risk of hiring friends and family.** This may arise as a result of location (for example, regionally-based agencies can experience limited recruitment pools), a possible scarcity of skills and experience, a desire to complete a project as quickly as possible, or a deliberate decision to provide a benefit to friends and family. Decisions regarding recruitment can be poorly declared, recorded and managed, undermining public trust.
- **The conflict of interest guidance and resources available to public bodies in state and local government are clear, adequate and generally comprehensive.** However, the guidance provided to councils is more than five years old and would benefit from review to ensure its currency. Further, there is a lack of guidance available to public bodies about identifying and managing declarable associations. Agencies also need to regularly reinforce messages and provide ongoing training on conflicts of interest to all staff.

1.2 Methodology

This report highlights how key functions and activities of the Victorian public sector are at heightened risk of conflicts of interest and associated corruption vulnerabilities. The report covers state government (including the Victorian Public Service (VPS), employees and board directors of public entities, and Victoria Police) and local government employees and councillors.

The report draws on IBAC's investigations, reviews of other agencies' investigations and research, and open source materials including reports and research from other integrity agencies.

THE VICTORIAN PUBLIC SECTOR

Victoria's state government is comprised of 3,509 bodies¹ made up of the VPS and public entities. Victoria's local government encompasses 79 councils, with 31 metropolitan and 48 regional and rural councils.² As at 30 June 2018, more than 311,000³ and 43,000⁴ people are employed in state government and local government respectively.

At 30 June 2018, the Victorian public sector managed \$323.1 billion in assets and spent \$20 billion on goods and services.⁵ Collectively, Victorian councils manage approximately \$84 billion in public assets and spend around \$7 billion on the provision of services annually.⁶

For the purpose of this report, the Victorian public sector includes all public bodies, including state government agencies and councils (including council staff and councillors). State government agencies means organisations that comprise the Victorian state public sector (including both the public service and public entities).

¹ This figure is the combined number of employing and non-employing public entities, drawn from: VPSC 2019, *The State of the public sector in Victoria 2017-2018*, Melbourne, p.9 and VPSC 2019, *Statistical Compendium to the State of the Public Sector in Victoria 2017-2018 Report*, Melbourne, p.37.

² VAGO 2018, *Local Government and Economic Development*, pp.14-15.

³ VPSC 2019, *The State of the Public Sector in Victoria 2017-2018*, p.9.

⁴ VAGO 2018, *Local Government and Economic Development*, p.21.

⁵ VAGO 2018, *Auditor-General's Report on the Annual Financial Report of the State of Victoria: 2017-18*, p.13.

⁶ VAGO 2018, *Local Government and Economic Development*, p.21.

2 What is a conflict of interest?

A conflict of interest occurs when a public officer's private interests conflict with their public duties and their responsibility to act in the public interest. Conflicts of interest can take various forms – direct, indirect, financial and non-financial – and can arise as a result of private interests, personal or business associations, conflicting duties, and the provision and/or receipt of gifts, benefits or hospitality.

A conflict is not corrupt merely because it exists. Conflicts of interest become problematic when they are concealed, are only partially revealed or are mismanaged. Whether deliberate or due to ignorance, undeclared or poorly handled conflicts of interest undermine the community's confidence that public sector agencies are making impartial decisions, and are appropriately and efficiently spending public money. A conflict of interest creates the risk that a public officer cannot separate their decision-making from the influence of their private interest.

Generally, conflicts of interest are described as being actual, potential or perceived:

- An **actual** conflict of interest occurs when a public officer's duties conflict with their private interests.
- A **potential** conflict arises when a public officer's duties *could* conflict with their private interests. Potential conflicts can be anticipated when a public officer considers their private interests and associations and the possible influence on their duties.
- **Perceived** conflicts stem from the reasonable view of the public or a third party that a public officer's private interests could improperly influence their decisions or actions, or the actions or decisions of their organisation. The perception is that a public officer may not be objective in their dealings as a result of the conflict.

Recognising and declaring conflicts of interest – whether they are actual, potential or perceived – provides the opportunity to mitigate risks that may arise from the conflict. Each of these forms of conflict must be addressed.

Impartiality is central to the role of public officers when carrying out their public duties. The community relies on public officers to perform their roles in an accountable and unbiased manner, having regard to the public interest rather than their own.

Public officers should consider and discuss their private interests with their managers. Good intentions to act in the public interest are not enough to maintain objectivity and accountability. Therefore, regardless of the nature of the conflict, it must be identified, declared and managed. Each conflict must be considered on a case-by-case basis to determine the best management strategy. In some cases, the appropriate strategy will be for the public officer to be removed from the situation.

All conflicts of interest pose a risk to the integrity of an organisation when not managed in the public interest. If not identified, declared and managed, perceived or potential conflicts can be just as damaging as actual conflicts. Perceptions may taint future decisions and actions of a public officer, or may distort how the public officer or their organisation is viewed by a third party or the broader community. Reputational damage for the public body and services is a genuine risk if conflicts of interest are inadequately handled. Effective management of conflicts protects both the individual public officer and the organisation.

2 What is a conflict of interest?

CONFLICT OF INTEREST TERMINOLOGY

Conflicts of interest may be described in different ways, including:

- **declarable association:** declarable associations can arise from a public officer's personal associations which may compromise, or be considered to compromise, their duties, functions or integrity. The association can be with a person, group or organisation
- **direct conflict of interest:** a form of conflict that arises from a public officer's own personal, family, professional or business interests
- **indirect conflict of interest:** a form of conflict that arises from the personal, family, professional or business interests of individuals or groups with whom the public officer is associated.

The consequence of a conflict of interest may result in:

- **favouritism**
- **nepotism:** a form of favouritism based on familial relationships where a public officer uses their position to provide a benefit to a family member
- **cronyism:** a form of favouritism based on friendship or association where a public officer uses their position to provide a benefit to or seek a benefit from a friend or associate
- **preferential treatment, partiality**
- **advantage, benefits**
- **bias, prejudice, and discrimination:** a conflict of interest may result from a public officer misusing their position or influence to disadvantage an otherwise deserving or suitably qualified associate as a result of personal enmity, ill-will or similar.

IBAC research has identified that conflicts of interest are perceived as a common and significant corruption risk in the Victorian public sector. In 2017, IBAC's *Perceptions of corruption* reports,⁷ which surveyed state and local government employees, identified conflicts of interest as an area of high corruption risk. The results are outlined in Table 1 below.

TABLE 1: 2017 PERCEPTIONS OF CORRUPTION – CONFLICT OF INTEREST

	State government respondents	Local government respondents	Victoria Police respondents
Proportion of respondents who had observed conflicts of interest in their organisation	21%	20%	32%
Proportion of respondents who had suspected conflicts of interest in their organisation	34%	37%	58%
Proportion of respondents who identified conflicts of interest as having the greatest opportunity to occur in their organisation	62%	67%	86%

⁷ IBAC 2017, *Perceptions of corruption – Survey of Victorian State Government Employees*, p.8 and IBAC 2017, *Perceptions of corruption – Survey of Victorian Local Government Employees*, p.8. and IBAC 2017, *Perceptions of corruption – Survey of Victoria Police employees*, p.7.

2.1 Regulatory and policy frameworks

State and local government have different approaches to defining and managing conflicts of interest.

The legislative framework in state government is principles-based. The legislated public sector values and binding codes of conduct provide the foundation upon which each state government agency can tailor their own approach. The legislation that currently applies to councillors and some council staff is more prescriptive, as it outlines the process for declaring and managing conflicts of interest.

2.1.1 State government

Legislative requirements

The *Public Administration Act 2004* (PA Act) enshrines the public sector values, including the value of integrity that requires public officers to avoid conflicts of interest.⁸ Public sector values are reinforced by the binding codes of conduct issued by the Victorian Public Sector Commission (VPSC) for public sector employees, public sector employees of special bodies, and directors of Victorian public entities. Breaches of a code of conduct may constitute misconduct.⁹

The codes of conduct describe conflicts of interest as a conflict between the public duty and private interests of a public officer, and as being actual, potential or perceived, and of a personal or financial nature. The codes require public officers to avoid and declare any conflicts, and manage any that cannot be avoided in accordance with their organisation's policies and procedures.

In addition, the Standard Executive Employment Contract requires executives to avoid, declare and manage actual, potential or perceived conflicts.¹⁰ Executives are also prohibited from engaging in other paid employment or conducting any business profession or trade without their employer's consent.¹¹ Failure by an executive to fulfil their duties, including in relation to conflicts of interest, may result in contract termination.¹² The standard contract is mandatory for VPS executives, and is a model for executive contracts for public entities.

⁸ PA Act s 7(1)(b)(iv).

⁹ PA Act s 61(6).

¹⁰ Standard Executive Employment Contract cl 3(e), <www.vpsc.vic.gov.au/resources/victorian-public-service-executive-resource-suite>.

¹¹ Standard Executive Employment Contract cl 3(f).

¹² Standard Executive Employment Contract cl 14.2(b).

Gifts, benefits and hospitality can also give rise to conflicts of interest through the perception that the offer may influence the public officer and their decision-making. The codes of conduct, and the minimum accountabilities that are issued by the VPSC and binding under the *Standing Directions of the Minister for Finance 2018*, prohibit solicitation of gifts or benefits, and require all offers of gifts and benefits that could be perceived as influencing a public officer or undermining the integrity of their organisation to be refused. Similarly, the minimum accountabilities direct that all offers of gifts, benefits or hospitality that give rise to an actual, potential or perceived conflict of interest must be refused. Public officers are also required to comply with their employers' policies regarding gifts, benefits and hospitality.

Disclosure and management

The VPSC issues model policies and additional tools to support public sector agencies to manage conflict of interest risks. These materials are discussed in section 4. Public sector body heads are encouraged to tailor the model conflict of interest policy to their particular organisational functions and risks.

The VPSC's guidance explains that state government employees are required to avoid conflicts whenever possible. However, when unavoidable, conflicts must be identified, declared and managed in the public interest. Conflict of interest declarations must be completed by:

- any employee who identifies a conflict between their private interests and public duties
- all employees involved in projects (such as procurement) considered to be high risk
- all employees on a recruitment panel
- all employees or contractors who have been assessed (for example, by a manager) as needing to make a declaration on the basis of actual, potential, or perceived conflict of interest risk.

2 What is a conflict of interest?

Certain public officers are also required to complete a declaration and management of private interests form, which is a record of the private interests held by the public officer or their family. Private interests include other significant sources of income, offices held in other organisations, shareholdings, trusts or real estate. The declaration must be made upon appointment to one of the positions specified below, annually after appointment, and within five working days of a change in the officer's circumstances:

- all executives
- employees holding a financial delegation of \$20,000 or more
- individuals (eg employees, contractors or consultants) assessed as being at risk of actual, potential or perceived conflicts of interest
- appointees to non-departmental entities
- employees engaged in a consensual personal relationship where there is a direct hierarchical working relationship in place.¹³

Although the declaration process is important, the Victorian Auditor-General's Office (VAGO) has warned of a risk that the 'annual declaration of private interest process [is] reduced to a compliance activity, as opposed to an active and ongoing process of controlling for conflicts of interest in an organisation.'¹⁴

Where a conflict of interest is unavoidable, the VPSC recommends conflicts of interest be mitigated through one of the following management strategies: restrict, recruit, remove, relinquish or resign.

MANAGING AND MITIGATING CONFLICTS OF INTEREST

The VPSC recommends the following strategies to manage a conflict of interest and resolve the conflict in favour of the public interest:

- the employee's involvement in the matter is **restricted**
- an independent third party is **recruited** to oversee some or all of the process associated with the matter
- the employee **removes** themselves or is **removed** from the matter
- the employee **relinquishes** the private interest that creates the conflict
- the employee may **resign** if the private interest cannot be relinquished or if the conflict cannot be managed via one of the other mitigation strategies.¹⁵

Importantly, conflicts must also be **recorded** once they are declared to transparently document the issue and its management. Records of declarations should be maintained in a central **register**.

In relation to board directors of public entities, the PA Act¹⁶ and applicable code require them to follow their board's policy on managing conflict of interest. The code also states board meetings must commence with directors disclosing any interests regarding the meeting agenda items, and confirming that their entries in the register of interests are complete and correct. A register should be a record of all interests declared in board directors' declaration of private interest forms and any additional interests that have been disclosed by board directors and recorded in meeting minutes.¹⁷

¹³ VPSC 2018, *Declaration and Management of Private Interests Form*.

¹⁴ VAGO 2018, *Fraud and Corruption Control*, p.47.

¹⁵ VPSC 2018, *Model Conflict of Interest Policy*, pp.3-4.

¹⁶ PA Act s 81.

¹⁷ VPSC 2016, *Model conflict of interest policy for boards of Victorian public entities*, p.8.

Further, if the board determines a director has a material conflict of interest or duty in a matter to be discussed, the director must leave the room while the matter is being considered and must not be involved in the decision-making process for that matter. Both the legislation and the code are silent on what constitutes a material conflict of interest; the legislation requires individual boards to determine what that would be.

Public officers are also required to declare and manage gifts, benefits and hospitality. The minimum accountabilities require all non-token offers (those valued at or more than \$50) to be declared on the public organisation's register and accepted only with the approval of the public officer's manager or organisational delegate.¹⁸

2.1.2 Local government

Legislative requirements

The conflict of interest provisions for local government are more prescriptive than in state government. The *Local Government Act 1989* (LG Act) requires council staff to act with integrity, including avoiding conflicts of interest.¹⁹ This legislation sets out the responsibilities of councillors, council staff and members of council committees in relation to declaring and managing interests. Under the LG Act, interests are defined in terms of direct interests and six types of indirect interests:

- close association
- indirect financial interest
- conflicting duty
- applicable gift
- party to the matter
- residential amenity.²⁰

Interests as defined in the Local Government Act

Direct interests	A direct interest exists if there is a reasonable likelihood that a person's benefits, obligations, opportunities or circumstances will be directly altered if the matter is decided in a particular way.
Indirect interest – close association	An indirect interest by close association exists when a family member, relative or member of a person's household has a direct interest in a matter.
Indirect interest – indirect financial interest	An indirect financial interest exists if the person is likely to gain or lose in a way that can be measured in money, resulting from the interests of another person, company or body.
Indirect interest – conflicting duty	An indirect interest exists when a person has a particular type of duty to another person or organisation that may conflict with their duties towards the council. This includes being: <ul style="list-style-type: none"> • a manager or member of a board or committee that has a direct interest in a matter • a partner, consultant, contractor, agent or employee of a person or company that has a direct interest in the matter • a trustee for a person who has a direct interest in a matter.
Indirect interest – applicable gift	An indirect interest from an applicable gift exists when one or more gifts with a total value of at least \$500 is received in the past five years from someone with a direct interest in the matter. Hospitality offered in the course of officer duties is excluded.
Indirect interest – party to the matter	An indirect interest exists when a person is a party in the matter, either by initiating or becoming a party to civil proceedings that relate to the matter.
Indirect interest – residential amenity	An indirect interest exists if there is a reasonable likelihood the residential amenity of the person will be altered by a council decision.

¹⁸ VPSC 2018, *Minimum accountabilities*, <www.vpsc.vic.gov.au/html-resources/minimum-accountabilities>.

¹⁹ LG Act s 95(1)(b).

²⁰ LG Act s 77A.

2 What is a conflict of interest?

The legislation details the circumstances in which these interests can arise and outlines how these interests must be managed. The legislation also provides for a number of exemptions to the conflict of interest requirements, namely:

- where the interest is too remote to be reasonably capable of influencing the actions or decisions of the relevant person
- where the interest is held in common with a large class of persons
- where the relevant person does not know or would not reasonably be expected to know the circumstances in which the conflict occurs.²¹

The LG Act also lists situations where a councillor is considered to not have a conflict of interest, including exemptions regarding council functions and decisions such as the election of the Mayor, adoption of the councillor code of conduct, or appointments to special committees.²² In certain circumstances, the Minister for Local Government may also exempt council staff and councillors from the legislative requirements to declare and manage a conflict of interest.²³

Councils are also required under the LG Act to develop separate codes of conduct for councillors²⁴ and council staff.²⁵ Councils have the discretion to determine the content of their codes. IBAC research suggests codes of conduct are sometimes the main source of information for council staff regarding the organisation's expectations and procedures in relation to conflicts of interest, rather than a dedicated conflict of interest policy.²⁶ However, it is not always clear in these codes how employees should declare conflicts of interest or how conflicts should be managed, for example, by being removed from a decision-making process.²⁷

Disclosure and management

Councillors or members of a special committee are required to disclose a conflict of interest immediately before the relevant matter is considered, by either advising the council or special committee at the relevant meeting or advising the CEO in writing before the meeting, and outlining the type of interest that has given rise to the conflict. Once disclosed, the person must leave the room and any area where the meeting can be seen or heard while the matter (or matters) are being considered or a vote is being taken.²⁸

Any conflict declared by a councillor or member of a special committee must be recorded in the minutes of the meeting, including the type of conflict and, if disclosed, the nature of the interest.²⁹ Written disclosures made to the CEO must be kept for three years after the date the councillor or special committee member ceases to hold that position, and destroyed after this time.³⁰

Councillors, members of special committees and nominated officers must also declare their interests to their council's CEO in the form of primary and ordinary returns.³¹

²¹ LG Act s 77A.

²² LG Act s 79C.

²³ LG Act s 80. In relation to councillors, ministerial exemptions are possible where council business would be impeded by the number of councillors affected by the legislative provisions, or where a majority of councillors have provided written declarations of conflicts of interest. The Minister must have regard to the extent of the conflicts of interest of the councillors and the public interest. Ministerial exemptions are possible for council staff where the Minister is satisfied there are extraordinary circumstances and it is in the public interest to allow the exemption.

²⁴ LG Act s 76C.

²⁵ LG Act s 95AA.

²⁶ IBAC 2019, *Local government integrity frameworks review*.

²⁷ *ibid.*

²⁸ LG Act s 79.

²⁹ LG Act s 79(8).

³⁰ LG Act s 79(5).

³¹ LG Act s 81.

PRIMARY AND ORDINARY RETURNS

- A **primary return** is a record of the financial and non-financial interests of a councillor or a member of a special committee (or their family) that may give rise to a conflict. Primary returns must be submitted by councillors within 30 days of being elected or within seven days of making the oath of office, while special committee members must submit their return within 30 days of becoming a member. Nominated officers (senior council officers and any other council staff as nominated by the council CEO) must also submit a primary return within 30 days of assuming their position.
- An **ordinary return** is a record of the financial and non-financial interests of a councillor, a member of a special committee or a nominated officer, or their family, which may give rise to a conflict. Ordinary returns must be submitted twice a year.³²

The last three returns submitted by officers are included in the register of interests maintained by the CEO. This register can be inspected following written application to the CEO. Once a person ceases to be a councillor, member of a special committee or nominated officer, the CEO must remove all their primary and ordinary returns from the register.³³ Returns must be retained for as long as a person remains a councillor, committee member or a nominated officer, and then for three years in accordance with Public Record Office requirements.³⁴

The LG Act requires council staff, including contracted staff, to disclose in writing a conflict of interest in relation to delegated functions or powers, and when providing advice or reports to council.³⁵ A council employee with a conflict in relation to a matter in which they have a delegated power, duty or function must not exercise the relevant power, duty or function and must disclose the type and nature of the interest in writing. The CEO must also advise the council of this conflict by the next council meeting. Individual councils have adopted their own processes with regard to the majority of council staff, as the LG Act does not specify a required process.

Under the LG Act, council staff (and relevant contractors) with a conflict regarding a matter about which they are providing advice or reporting to council must disclose the type of interest when providing the advice or report, before it is considered, and disclose the nature of the interest if requested by the council. The disclosure must be recorded in the minutes of the meeting.

As it currently stands, the LG Act codifies what a conflict of interest is. One effect may be that councillors, and to a lesser extent council staff, will consider conflicts of interest within this relatively narrow framework, rather than the broader framework that applies to state government agencies. As highlighted on the following page, legislative amendments to the conflict of interest provisions have been considered.

The Local Government Inspectorate (LGI) is responsible for investigating and prosecuting offences under the LG Act, including breaches of the conflict of interest provisions. In 2018–19, the LGI's prosecutions included:

- charging a current councillor in relation to interest return non-disclosures
- charging a former councillor for misuse of position.³⁶

³² LG Act ss 81(6) and 81(7).

³³ LG Act s 81(16).

³⁴ LGV 2016, *Returns of Interest: Information for Councils & Regional Libraries*, p.3.

³⁵ LG Act ss 80B and 80C.

³⁶ LGI 2019, *Annual Report 2018/19*, p.8.

2 What is a conflict of interest?

LOCAL GOVERNMENT BILL 2018

In 2018, the Local Government Bill 2018 was introduced to the Victorian Parliament. This followed a comprehensive review of the Local Government Act by Local Government Victoria (LGV). The review considered the complex and highly prescriptive nature of the current conflict of interest provisions and recommended a simplified, principles-based legislative approach.

The 2018 Bill proposed to simplify the requirements for councillors, committee members and council staff to disclose and manage conflicts of interest. The 2018 Bill removed the six categories of indirect interests in favour of classifying conflicts as either general or material in nature:

- A **general** conflict of interest would exist if an impartial, fair-minded person would consider that a person's private interests could result in that person acting in a manner that is contrary to their public duty.
- A **material** conflict of interest would exist if an affected person would gain a benefit or suffer a loss depending on the outcome of the matter. The benefit or loss could be direct or indirect, pecuniary or non-pecuniary.

The 2018 Bill also proposed to mandate the inclusion of a gift policy and conflict of interest procedures in councils' codes of conduct for council staff, and proposed the replacement of prescribed declaration procedures with high-level principles.

The 2018 Bill passed the Legislative Assembly with amendments on 21 June 2018, but did not pass the Legislative Council before Parliament was prorogued prior to the November 2018 State Election. IBAC understands a Local Government Bill 2019 will be introduced into Parliament in late 2019.

3 Key functions and activities at risk

State and local government agencies perform a diverse array of functions, delivering goods and services to the community across Victoria. The delivery of these goods and services can involve significant decisions by public officers.

When not declared or managed, conflicts of interest present a significant reputational risk for public bodies and can cause the validity of decisions around the expenditure of public money to be undermined. Conflicts of interest, if not managed, can also lead to the misuse of public funds when decisions are not made in the public interest. As a result, community and business confidence, and trust in the agency and the broader public sector, can be shaken.

Importantly, when interests that may present a conflict are declared, managers must ensure they manage the matter in a fair and reasonable manner, and in a way that is proportionate to the potential risks associated with the interest. Open communication is key to effective management of a conflict of interest.

This section explores the following functions and activities that present a heightened risk of conflicts of interest as identified through IBAC's investigations and research:

- procurement
- employment (particularly recruitment and secondary employment)
- governance
- regulatory functions
- custodial management
- information management
- internal investigations.

It is acknowledged there are other circumstances where conflicts of interest may arise that are not covered in this report.

3.1 Procurement

The procurement of goods, services and works involves planning, developing specifications, preparing quotation and tender documents, selecting suppliers, and contract management and evaluation. Factors that expose procurement to significant corruption vulnerabilities include the sometimes limited oversight of employees' decision-making or interaction with suppliers, failure to comply with policies and processes (including competitive processes for selection of suppliers), inadequate training, and limited controls to prevent and detect corruption (particularly for lower value procurement). The non-declaration or mismanagement of conflicts of interest can amplify these vulnerabilities.

Undeclared and poorly managed conflicts of interest can undermine the integrity of the procurement process and outcomes by raising questions as to whether the public interest was best served, and whether public funds were appropriately expended. If there are perceptions an agency favours a particular supplier due to conflicts of interest, other companies may be discouraged from bidding for work with that agency, or the broader public sector.³⁷

³⁷ In 2016, IBAC reported that 34 per cent of supplier respondents to a survey said they were discouraged from seeking a government contract because of concerns about corruption in public sector procurement. (IBAC 2016, *Perceptions of corruption – Survey of Victorian Government suppliers*, p.5.)

3 Key functions and activities at risk

IBAC's investigations into allegations of corrupt conduct involving procurement have highlighted some recurring features in relation to conflicts of interest, including:

- Some workplace cultures valued expedient processes and 'getting the job done' over integrity. The 'public good' was sometimes touted as the motivation for bypassing proper processes; in reality, the public officers were motivated by private interests and personal profit.
- The people subject to investigation were often senior and/or experienced employees who should have been aware of the need for transparency regarding conflict of interest in procurement.
- The agencies had reasonable conflict of interest policies and processes in place, however they were treated as a 'tick and flick' exercise or deliberately disregarded; there was poor oversight or management or the controls were ineffective.
- Suppliers' names were sometimes changed in an attempt to disguise relationships with public officers involved in the procurement.

3.1.1 Preferential treatment and financial interests

Conflicts of interest can arise from a public officer's personal relationships and associations. In IBAC's investigations, preferential treatment in favour of these associates, through favouritism and nepotism, has emerged as a key conflict of interest risk in procurement.

A number of IBAC investigations have revealed public officers manipulating and influencing procurement processes for their financial gain, and/or to benefit their associates. IBAC's investigations have also revealed networks of connections between public officers, and between public officers and private companies.

CASE STUDY 1 – OPERATION EXMOUTH

AWARDING CONTRACTS TO FAMILY-OWNED BUSINESSES

In Operation Exmouth, which commenced in 2014,³⁸ IBAC investigated allegations a senior employee of the then Places Victoria awarded contracts to entities with whom he had a familial relationship and which were effectively under his control. IBAC found the senior employee used information and knowledge acquired through his role to help relatives establish businesses, and then facilitated subcontracting arrangements between these businesses and a company which had won a Places Victoria tender. This company was unaware of the familial connection between the senior employee and the subcontractor he had recommended. The senior employee resigned prior to IBAC's investigation.

While IBAC did not find evidence the senior employee received a direct financial benefit, he was instrumental in obtaining financial benefits for his family and should have been aware he had a clear conflict of interest.

IBAC found the senior employee failed to declare and manage his conflict and failed to comply with Places Victoria's conflict of interest policy, which required employees to identify and avoid conflicts, and disclose any existing or potential conflicts. Realistically, these were conflicts which could never have been appropriately managed. However, IBAC's investigation also revealed the senior employee failed to attend mandatory training around procurement and conflicts of interest.

In response to IBAC's investigation, Places Victoria advised it had robust conflict of interest policy and procedures, which were readily available to staff on the organisation's intranet. Places Victoria reminded staff of their obligations regarding conflicts of interest at least twice a year. The organisation also required all staff to complete a declaration of private interests on commencement of employment, to be updated as circumstances changed. Places Victoria made clear to new starters that attendance at induction training was mandatory and the requirement to attend was enforced.

³⁸ IBAC 2016, *Operation Exmouth: An investigation into the conduct of former Victorian public servant, Carmine Petrone*.

CASE STUDY 2 – OPERATION FITZROY

PUBLIC OFFICERS ALLOCATING CONTRACTS TO THEIR OWN COMPANIES

In Operation Fitzroy,³⁹ IBAC investigated suspected serious corrupt conduct involving the awarding of infrastructure projects within Public Transport Victoria (PTV) between 2006 and 2013. IBAC found Person A (a PTV employee) and Person B (a contractor who was previously a PTV employee) corrupted procurement to the value of at least \$25 million.

IBAC found Person A and Person B established companies to which they allocated contracts, or granted contracts to entities with which they were associated. These included entities previously established and used for other purposes by the stepson of Person B, and which employed Person B's son. Person A and Person B made concerted efforts to obscure the conflicts resulting from this relationship, such as disguising the name of Person B's son in documentation.

The relationship was discovered by PTV's finance team when Person B was still employed at PTV. Initially both Person A and Person B denied the connection; Person A then sent an email to his supervisor claiming he was not aware of the connection but that the services delivered by Person B's son were appropriately procured. The supervisor did not take the matter any further after receiving this email and discussing the matter with Person A. The supervisor failed to:

- challenge Person A's knowledge of the deceptive name used
- speak with either Person B or his son
- commence any disciplinary action
- monitor the ongoing engagement of the entity, which continued to be engaged by PTV for around another six months.

IBAC's investigation identified that Person A and Person B deliberately disregarded PTV's conflict of interest policies, as well as policies and procedures governing procurement.

IBAC found Person A would falsely declare that conflicts of interest did not exist in relation to tendering parties, when they clearly did exist. Similarly, when employed at PTV Person B failed to declare substantial interests in companies that had applied for tenders, even though he was responsible for reviewing and making recommendations about those tender submissions.

There was also a lack of training on fraud and corruption. Regardless, it seems unlikely training would have prevented or checked the improper conduct uncovered in Operation Fitzroy. Wilful disregard of requirements, including with regard to conflict of interest, cannot be addressed by policy and training alone. However, regular training can help to establish and reinforce a culture of integrity.

IBAC also uncovered an organisational culture of non-compliance, with a focus on expediency rather than robust compliance with proper process. For example, employees were required to complete Contract Approval Recommendation Reports for procurement, which contained a section that asked the employee to note whether any conflicts had arisen and how they were dealt with. While these documents were subject to approval, in reality the approval was provided without consideration of the supporting materials. At other times, approval was provided retrospectively.

PTV's response to the issues identified in Operation Fitzroy included procurement and cultural reforms such as:

- requiring existing and new staff to provide a conflict of interest declaration
- implementing regular 'refresher' training, including conflict of interest awareness
- clarifying reporting processes for conflicts
- developing an analysis tool of fraud and corruption indicators, including conflicts identified through the supplier background checking process.

³⁹ IBAC 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.*

It is appropriate that public officers build relationships with suppliers. Indeed, good procurement processes and outcomes rely on positive relationships between public officers and suppliers. However, to mitigate the risk of inappropriate relationships developing and preferential treatment being provided to certain

suppliers (or at least the perception of preferential treatment), there should be clear policies, procedures and awareness-raising around how public officers engage with suppliers. Guidance could cover matters such as how to manage confidential information and gifts, benefits and hospitality.

CASE STUDY 3 – OPERATION HELENA

CONCEALING REGULAR HOSPITALITY FROM SUPPLIERS

In Operation Helena, which commenced in 2016, IBAC identified a pattern over 10 years of current and former VicRoads employees enjoying meals and alcohol (up to \$1000 in value) paid for by suppliers. One particular manager involved was suspended in 2015 prior to IBAC's involvement for undisclosed conflicts of interest.

IBAC found the manager failed to understand that accepting hospitality (such as regular lunches with suppliers) created a conflict of interest and the perception that this hospitality influenced the manager's decision to award work to these suppliers. Despite this, the manager seemed to be aware that receiving gifts, benefits and hospitality was inappropriate. For example, when emailing his colleagues about the lunches, the manager's emails used coded language, presumably to conceal the practice from management.

In 2010, VicRoads' gifts, benefits and hospitality policy clearly outlined the requirement for staff to declare any benefits over the value of \$150. The hospitality provided by the supplier exceeded this amount, however IBAC found no evidence to suggest the manager declared the hospitality. IBAC's investigation revealed a culture within the relevant business unit of obtaining hospitality from suppliers. When VicRoads made significant changes to its policy in 2014 to clearly outline that offers were not to be accepted, IBAC found the manager stopped accepting these benefits.

VicRoads' response to the investigation included further strengthening its gifts, benefits and hospitality policy, introducing the Supplier Code of Conduct, and developing an integrity framework that incorporates an ongoing integrity training and awareness program. This program includes ensuring all VicRoads personnel are aware of the ethical risks and their responsibilities when gifts, benefits and hospitality are offered.

3 Key functions and activities at risk

In 2018, the Western Australia Corruption and Crime Commission (WA CCC) allegedly uncovered a culture of public officers receiving hospitality from suppliers, which facilitated corrupt activity at the North Metropolitan Health Service for up to a decade. The WA CCC alleged public officers offered or requested expensive gifts, benefits and hospitality (including interstate and overseas travel and home renovations) from suppliers. In return, the suppliers were allegedly awarded work and maintained a competitive advantage against their competitors. It is alleged some suppliers recovered the costs of these gifts, benefits and hospitality through fraudulent invoicing. The WA CCC allegedly found a lack of understanding regarding the identification and management of conflicts of interest and a disregard for procurement practices, observing 'corruption hides in poor processes and lazy oversight'.⁴⁰ The WA CCC also observed:

*'The insidious nature of the conflict of interest that develops from allowing public officers to privately benefit is that a direct connection between a particular lunch date and a particular procurement decision is difficult to prove. The conflict of interest, once established in relation to a particular contractor, colours all decisions then made by that public officer.'*⁴¹

VICTORIAN STATE GOVERNMENT SUPPLIER CODE OF CONDUCT

IBAC's 2016 research on suppliers' perceptions of corruption in public sector procurement highlighted actions public sector agencies could take to strengthen the integrity of public procurement, including that suppliers understand it is not necessary (and can be inappropriate) to offer public officers gifts, benefits and hospitality.

In July 2017, the Victorian Government Purchasing Board introduced the *Supplier Code of Conduct* (the Code) which requires state government suppliers to commit to minimum ethical standards, including in relation to conflicts of interest and gifts, benefits and hospitality. The Code requires suppliers:

- to declare any situation that raises an actual, potential or perceived conflict of interest to or in connection with its dealings with the State
- to avoid financial, business or other relationships which may compromise the performance of their duties under their business arrangements with the State
- not to offer state government employees gifts, or benefits, either directly or indirectly, and to limit offers of hospitality to offers of basic courtesy
- not to take any action in order to entice or obtain any unfair or improper advantage.

The Code notes the responsibility of public officers to conduct themselves with the highest standards of integrity, impartiality and accountability, and to perform their public duties without favouritism and free from personal gain.⁴²

⁴⁰ WA CCC 2018, *Report into bribery and corruption in maintenance and service contracts within North Metropolitan Health Service*, p.15.

⁴¹ WA CCC 2018, *Report into bribery and corruption in maintenance and service contracts within North Metropolitan Health Service*, p.5.

⁴² Victorian Government Purchasing Board 2017, *Supplier Code of Conduct*, <www.procurement.vic.gov.au/Suppliers/Supplier-Code-of-Conduct>.

IBAC has also identified conflicts that can arise when contractors working in the public sector use their private companies to manipulate recruitment and procurement processes for financial gain. In its *Guidance for Integrity in Engaging Contractors*, the VPSC identified the risk of engaging contractors with outside employment, noting:

*'... an employee who fails to tell their employer that they have a private business in a related industry may attempt to subcontract for government work through the contractor. They may also disguise ownership of their company while bidding for government contracts directly.'*⁴³

For example, IBAC investigated allegations a contracted senior project manager within a government department had an undeclared conflict of interest. It was alleged the project manager had improperly used their position to provide preferential access to business opportunities for a company they owned. IBAC found the initial allegation was unsubstantiated because the project manager had verbally declared their conflict of interest to the department. However, IBAC found this conflict was not managed appropriately or in accordance with the department's policies. The project manager's company provided contractors in the division where the project manager was employed, via a recruitment company, in a way that masked the connection between the project manager's company and the department.

In local government, the sometimes closer proximity of council staff to both their community and local suppliers can create heightened risks of conflicts of interest developing. In particular, lower value projects that can involve direct negotiations between the council and suppliers, and have lower levels of scrutiny, can be at greater risk of exploitation for personal gain.

In IBAC Operation Dorset and Operation Royston, two council employees flouted their organisation's conflict of interest and procurement policies, to the benefit of themselves and their associates. IBAC's investigations revealed common issues that enabled this to occur, including poor management and oversight of these employees.⁴⁴

⁴³ VPSC 2015, *Guidance for Integrity in Engaging Contractors*, <www.vpsc.vic.gov.au/html-resources/guidance-for-integrity-in-engaging-contractors>.

⁴⁴ Operations Royston and Dorset are the subject of a special report on corruption risks associated with procurement in local government, including the failure to properly identify, declare and manage conflicts of interest.

CASE STUDY 4 – OPERATION DORSET

AWARDING CONTRACTS TO FRIENDS AND ASSOCIATES

Operation Dorset, which commenced in 2015, investigated allegations concerning the conduct of a project manager in the capital works department of Darebin City Council. IBAC found the project manager subverted council's procurement processes over many years by awarding contracts to the companies of friends and associates. IBAC found the project manager used his discretion to allocate a significant amount of work to a particular company, in circumstances where the manager was receiving cash, gifts and other benefits from the company. The benefits included material and labour to improve a private residence, alcohol and Grand Prix tickets, and employment of one of the project manager's siblings for a period of time as 'a favour' to the project manager.

IBAC found the project manager deliberately failed to declare or manage their conflict with suppliers, which included former council employees. These suppliers were part of a panel for minor civil works managed by the project manager, which resulted in more work for these suppliers.

In private examinations, the project manager demonstrated some understanding of what constitutes a conflict of interest and when declarations would be required, but did not appear to understand the formal process for making declarations. The project manager wrongly asserted the council's conflict of interest policy only required written declarations during a procurement process, rather than more generally as conflicts arise in the course of duties. In addition, the project manager did not appear to understand why a declaration should be made *before* a procurement process commences, believing that declarations should only be required after the tender period has closed.

The project manager failed to appreciate that conflicts can result in a procurement process being unfairly influenced from the earliest stages.

The project manager conceded a potential conflict of interest existed in relation to the company of another of his siblings, which was contracted to council and in which the project manager had a financial interest. However, he had never considered it as a conflict. While this sibling regularly signed conflict of interest declaration forms as part of the council's tender process, the project manager did not; he did not consider a conflict existed, as his sibling performed work for a different area of the council. The conflicts of interest were not identified by successive supervisors of the project manager. It is unacceptable his supervisors did not recognise the conflicts and take action to manage them.

The employees' and suppliers' apparent poor understanding of conflicts of interest existed despite relatively clear policies issued by the council. The council's code of conduct sets out clear principles and responsibilities for employees for when they must declare conflicts in relation to any aspect of their duties. The code also prompts staff to ask themselves a few key questions to identify a conflict, such as: *are you hiring, managing, reviewing or appraising a relative or friend, or are your personal relationships influencing business decisions?*

However, the guidance could provide more specific information regarding the actual process for declaring and managing a conflict, and could highlight the potential consequences to employees for non-compliance with the policy, including disciplinary action.

CASE STUDY 5 – OPERATION ROYSTON

AWARDING CONTRACTS TO A SPOUSE AND ASSOCIATES

In 2016, IBAC commenced Operation Royston, which investigated allegations a sports and recreation manager at City of Ballarat Council was subverting procurement processes and failing to fully declare and manage his conflicts of interest when engaging suppliers, one of whom was his spouse. IBAC found the manager intentionally disguised his relationship with his spouse and failed to disclose associations with other suppliers, all of whom the manager engaged to undertake work for the council, and for which the manager received a financial benefit via secret commissions.

Operation Royston revealed the failure to declare conflicts was potentially more widespread. For example, the then procurement coordinator indicated that while he was responsible for dealing with conflicts of interest he had only been formally advised of a conflict of interest on ‘about six occasions’ in his three and a half years in that role.⁴⁵ This was despite a policy requirement that at least one quote is to be obtained from a local supplier for procurement between \$15,001 and \$99,999, which increases the risk of potential conflicts of interest.

IBAC found that while the council had a conflict of interest policy in place at the time of the conduct, the policy lacked a clear and thorough process to declare or manage identified conflicts.

BEST PRACTICE FOR CONFLICTS OF INTEREST IN PROCUREMENT IN LOCAL GOVERNMENT

In 2013, LGV issued *Best Practice Procurement Guidelines* (the Guidelines) for councils. These outline five best-practice principles that should apply to all procurement, namely value for money, open and fair competition, accountability, risk management, and probity and transparency.⁴⁶

The Guidelines recognise the identification and management of conflicts of interest as fundamental to probity in procurement. The main legislative requirements regarding conflicts of interest are outlined. In particular, the Guidelines discuss the requirement for council staff who provide advice or services to the council or a special committee to disclose any conflicts of interest. In relation to procurement, this includes tender evaluation reports. The Guidelines note that while it is not a legislative requirement, it is good practice for all members of a procurement evaluation panel to be aware of members’ interests. Further, it is recommended that proposed members of evaluation panels complete declarations attesting that they do not have any conflicts of interest prior to commencing the procurement process.

The Guidelines provide a snapshot of conflict of interest considerations for local government procurement. Councils may benefit from more detailed and more specific examples of best-practice management of conflicts of interest in procurement. This, and the guidance provided to state government organisations, is explored in section 4.

The Municipal Association of Victoria (MAV) has developed an e-learning module, *Doing business with local government*, to assist councils to provide clear guidance to current and prospective suppliers. The module includes information on ethical standards and probity in procurement, for both suppliers and council employees. The module states ‘all parties involved [in procurement] must declare perceived, potential or actual conflicts of interest’, and ‘anything that may be constructed as an attempt to gain preferential treatment is strictly prohibited’.⁴⁷

⁴⁵ In response to IBAC’s natural justice process, one of the senior executives subsequently indicated he had recently been advised by the procurement coordinator that ‘he does not and never kept a register of conflict of interest declarations’.

⁴⁶ LGV 2013, *Best Practice Procurement Guidelines 2013*, p.13.

⁴⁷ MAV, *Doing business with local government*, <www.mav.asn.au/events/e-learning-portal/doing-business-with-local-government>.

3 Key functions and activities at risk

3.1.2 Gifts, benefits and hospitality

Gifts, benefits and hospitality can give rise to other conflict of interest risks in procurement, which can create a perception a public officer, and consequently their decision-making, has been influenced. Under the minimum accountabilities issued by the VPSC and which are binding under the *Standing Directions of the Minister for Finance 2018*, state government employees are required to refuse all offers of gifts, benefits and hospitality that give rise to an actual, potential or perceived conflict of interest.⁴⁸ Offers from suppliers, whether current or potential suppliers, will nearly always create a conflict of interest.

In 2016 IBAC surveyed suppliers who had contracted goods or services to the Victorian public sector (both state and local government) on their perceptions of corruption in public sector procurement:

- 52 per cent of respondents believed it was typical or very typical for gifts or benefits to be offered to public sector procurement officers
- 44 per cent of respondents believed it was typical or very typical for gifts or benefits to be accepted by public sector procurement officers
- when asked about the reasons for offering gifts or benefits to public procurement officers, 55 per cent of respondents considered it was to influence procurement decisions.⁴⁹

The inappropriate provision of or request for gifts, benefits and hospitality has been a regular feature of IBAC's investigations. For example, IBAC identified that a senior officer of a department accepted invitations to attend expensive events over a number of years from a supplier engaged by the department. This supplier benefited from further contracts with the department. The senior officer had a clear conflict of interest in accepting gifts, benefits and hospitality from a supplier to whom he was able to award contracts. During IBAC's investigation, the department confirmed there was no evidence of any declared gift, benefit or hospitality from the supplier on the department's register.

In another investigation, IBAC found a supplier to a department frequently offered to take departmental staff out to dinner and fly them to their interstate offices. Further, the supplier arranged for two senior departmental employees to travel overseas, ostensibly to participate in decisions relevant to the supplier's work for the department. IBAC found no such decision-making was scheduled to occur, nor did occur. The employees enjoyed accommodation, dining and entertainment paid for by the company or its employees. The trip appeared to further the company's business interests, with no benefit to the department nor to the Victorian community. The acceptance of these gifts and benefits created a clear conflict of interest, undermining the impartiality of the department's decisions concerning this supplier.

As former Australian Competition and Consumer Commission head Graeme Samuel stated: 'Gifts and hospitality are not given for reasons of altruism... It's about creating that sense of obligation or a relationship so that officials start to think 'maybe I shouldn't be as tough on this lot''.⁵⁰

IBAC notes some agencies respond to the risks associated with gifts, benefits and hospitality by adopting a zero tolerance approach across the organisation and prohibiting the acceptance of any non-token gifts, benefits or hospitality.⁵¹

Ultimately, the best way to avoid a conflict of interest is to not accept a gift, benefit or hospitality.

3.1.3 Good practice

Public sector agencies can strengthen how conflicts of interest, including those involving gifts, benefits and hospitality, are identified, declared and managed in procurement by:

- developing and communicating clear policies and procedures on how employees can identify, declare and manage conflict of interest in the procurement process

⁴⁸ VPSC 2018, *Minimum accountabilities*, <www.vpsc.vic.gov.au/html-resources/minimum-accountabilities>.

⁴⁹ IBAC 2016, *Perceptions of corruption: Survey of Victorian Government suppliers*, p.10.

⁵⁰ The *Sydney Morning Herald*, 22 January 2019, 'Watchdogs wined, dined and given corporate gifts without scrutiny', viewed 7 February 2019, <www.smh.com.au/national/watchdogs-wined-dined-and-given-corporate-gifts-without-scrutiny-20190122-p50sy8.html>.

⁵¹ IBAC 2019, *Local government integrity frameworks review*.

- discussing conflicts of interest and reviewing conflict of interest declaration forms in discussions during key stages in the procurement process, to promote active management of any identified conflicts
- expressly prohibiting the acceptance of gifts, benefits and hospitality from current or prospective suppliers (excluding token offers)
- implementing an electronic system for declaring and centrally recording conflicts of interest, which facilitates data analysis to identify potential conflicts with other parties (eg suppliers)
- training officers involved in procurement to understand, identify, declare and manage conflicts of interest
- explicitly requiring all tender evaluation panel members to consider and, if necessary declare, conflicts at multiple points in a procurement process (eg before tenders are opened and after the evaluation process, but before a recommendation for the successful tender is made)⁵²
- requiring contract managers to consider and declare conflicts of interest where they have not been involved in the tender process⁵³
- making it a contractual requirement for suppliers to declare a conflict of interest⁵⁴
- regularly reviewing procurement and conflict of interest in the agency's internal and external audit programs
- for state government agencies, clearly communicating the Supplier Code of Conduct via interactions and contracts. In the absence of an equivalent supplier code of conduct for local government, councils should also consider adopting a similar code, where relevant.

3.2 Employment

3.2.1 Recruitment

Merit-based recruitment is critical to ensure the public sector has the best possible workforce to deliver goods and services to the community. Recruitment can involve establishing a business case, developing the position description, shortlisting and interviewing suitable candidates, and selecting the preferred applicant. All stages of recruitment are vulnerable to conflicts of interest that, if not properly declared or managed, can result in unsuitable appointments and undermine the confidence of the public and public officers in employment decisions.

The principle of merit-based and competitive recruitment is well established. In local government, the LG Act requires councils to establish employment processes that ensure employment decisions are based on merit.⁵⁵ In state government, public agency heads are required by the public sector employment principles under the PA Act⁵⁶ to ensure employment decisions are merit based.⁵⁷ Under the *Code of Conduct for Victorian Public Sector Employees*, public officers are expected to make impartial decisions about employment, free from favouritism, bias or self-interest.⁵⁸ They are also required to use their powers responsibly, and not to provide a private benefit to themselves, their family, friends or associates.⁵⁹

In August 2018, IBAC published a report *Corruption and misconduct risks associated with employment practices in the Victorian public sector*.⁶⁰ IBAC identified that recruitment is vulnerable to compromise by nepotism, favouritism and other conflicts of interest. Selection processes can be corrupted in the earliest stages of recruitment (such as during the development of position descriptions) and by the failure of panel members to declare or manage conflicts of interest.

⁵² IBAC 2019, *Local government integrity frameworks review*.

⁵³ *ibid.*

⁵⁴ Victorian Government Purchasing Board, *Supplier Code of Conduct*.

⁵⁵ LG Act s 94C.

⁵⁶ PA Act s 8.

⁵⁷ The VPSC has issued standards concerning the application of the public sector employment principles, and a guide on integrity in recruitment.

⁵⁸ *Code of Conduct for Victorian Public Sector Employees* s 4.

⁵⁹ *Code of Conduct for Victorian Public Sector Employees* s 3.

⁶⁰ IBAC 2018, *Corruption and misconduct risks associated with employment practices in the Victorian public sector*.

3 Key functions and activities at risk

In 2016, IBAC surveyed employees from state and local government on perceptions of corruption.⁶¹ Approximately one-fifth of respondents said they had observed the practice of hiring family or friends for public sector jobs.⁶² More than half of both groups of respondents believed the opportunity for this behaviour existed within their organisation.

IBAC's investigations have highlighted that recruitment in public sector agencies is vulnerable to conflicts of interest that result from preferential treatment, in the form of favouritism, nepotism or cronyism.

A culture of hiring friends and associates has been uncovered in a number of IBAC's investigations, as highlighted in case studies 6 and 7.

CASE STUDY 6 – OPERATION NEPEAN

UNDERMINING RECRUITMENT THROUGH NEPOTISM

In Operation Nepean, which commenced in 2014,⁶³ IBAC investigated corruption allegations against the then facilities manager at the Dame Phyllis Frost Centre (DPFC), a women's prison. IBAC found that the former facilities manager misused his position to recruit one of his sons, who had not completed an electrical apprenticeship after failing the 'A' grade electrical examination, by:

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

The facilities manager knew the position would report directly to him but did nothing to address the conflict of interest; nor did his supervisor, who was aware of the relationship but did not take action to manage the conflict as the recruitment panel's preferred candidate had already received executive approval. Similarly, a member of the recruitment panel advised IBAC no action was taken when they

raised the issue of a perceived conflict of interest for the facilities manager's son to apply for a role that would directly report to his father.

The facilities manager should have been removed from any involvement with the recruitment process, including developing interview questions. Although he was not on the recruitment panel, the facilities manager was able to influence the panel's decision-making. Further, he should have declared and documented the conflict when his son was recruited, and agreed upon an appropriate strategy to manage the conflict with his supervisor. Further, his supervisor should have actively managed what was a clear conflict.

Poor management and oversight contributed to the inappropriate conduct. IBAC also found a practice of family members working together in prisons may have clouded senior managers' judgment in responding to the conflicts of interest. Regardless, senior managers in the public sector are expected to be able to identify, understand and manage the risks associated with conflicts of interest.

In response to IBAC's investigation, a number of improvements were implemented at the DPFC, including communications from the regional Executive Director to staff regarding their responsibility to address conflicts of interest.

⁶¹ IBAC's *Perceptions of corruption Survey of Victorian State Government Employees* and *Survey of Victorian Local Government Employees* are available on the IBAC website.

⁶² 25 per cent of state government respondents (IBAC 2017, *Perceptions of corruption - Survey of Victorian State Government Employees*, p.7) and 22 per cent of local government respondents (IBAC 2017, *Perceptions of corruption - Survey of Victorian Local Government Employees*, p.8) had observed this practice.

⁶³ IBAC 2017, *Operation Nepean: An investigation into the conduct of former employee of Dame Phyllis Frost Centre, Jeff Finlow*.

There may be a heightened risk of conflicts of interest when the applicant pool is limited, for example because of a scarcity of skills (perceived or otherwise), regional locations, or a sense of urgency that an organisation needs to act quickly to secure a particular candidate or fill a vacancy.

A 2018 investigation by the Victorian Ombudsman regarding Bendigo South East College found the principal 'ran the college as a personal fiefdom, employing and promoting family members, providing substantial benefits to his son's business partner and companies owned by his son, and using public funds as he saw fit without consultation or approval from the college council.'⁶⁴ The principal blatantly disregarded his obligations around conflicts of interest:

- He engaged and promoted his wife and son several times. In public statements the principal noted 'multiple family groups in schools is typical of schools ... it's how they operate, they are family businesses.'⁶⁵ Further, the principal stated if there are 'people who are dedicated and committed, whose motivation is not 'personal interest' ... then on the 'balance of probability', there is no nepotism'.⁶⁶
- He engaged his son's business partner, the business development manager of a local bus company, as bus coordinator despite the conflict and without putting in place measures to prevent the bus coordinator from using this role to seek a private benefit. The bus coordinator received private benefits with the principal's approval, including when he leased a minibus to the college. The principal claimed this arrangement 'saved the College significant money', which was the reason he gave for making the agreement.⁶⁷

Conflicts of interest cannot be justified by purported altruism and conservation of public money. Instead, if not properly addressed, they taint the decisions and actions of public officers.

In Operation Lansdowne, IBAC found non-meritorious procurement and recruitment decisions were sometimes justified on the erroneous basis that decisions needed to be made quickly.

⁶⁴ Victorian Ombudsman 2018, *Investigation of three protected disclosure complaints regarding Bendigo South East College*, p.5.

⁶⁵ The *Bendigo Advertiser* 13 September 2018, 'Former Bendigo South East College Principal Ernie Fleming rejected a number of findings in the Victorian Ombudsman's report, likens schools to family businesses', <www.bendigoadvertiser.com.au/story/5644280/schools-like-family-businesses-ex-principal-ernie-fleming>.

⁶⁶ Victorian Ombudsman 2018, *Investigation of three protected disclosure complaints regarding Bendigo South East College*, p.44.

⁶⁷ Victorian Ombudsman 2018, *Investigation of three protected disclosure complaints regarding Bendigo South East College*, p.72.

CASE STUDY 7 – OPERATION LANSDOWNE

RECRUITING FRIENDS TO ‘GET THE JOB DONE’

In Operation Lansdowne, which commenced in 2015, IBAC identified a number of senior V/Line officers who placed undue emphasis on who people knew and personal friendship, rather than merit-based recruitment and procurement processes. Operation Lansdowne identified a culture of expediency and an environment within V/Line where conflicts of interest were not appropriately declared or managed.

For example, a former V/Line senior executive put forward the name of a former colleague and friend, Person A, to the then CEO of V/Line for a priority role. Person A was subsequently recruited without a formal interview process, and appointed without providing evidence he held the required qualifications and without probity checks being conducted.

The lack of process revealed in various recruitment and procurement processes was justified on the basis there was a scarcity of suitable candidates and decisions needed to be made and acted upon quickly.

The senior executive also facilitated the recruitment of Person A's partner, without undertaking a competitive selection process. The senior executive effectively controlled the recruitment and excluded human resources from the process. He failed to disclose the full extent of his friendship with Person A's partner before her appointment. The senior executive maintained he had previously declared his conflict at an executive team meeting; however, IBAC was not able to confirm this. Further, the senior executive only formally declared his conflict via email to the executive team *after* Person A's partner was offered the job. In public examinations, the senior executive said he was unaware a special conflict of interest declaration form existed, to be given to the conflicts of interest officer; the senior executive also said he was unaware of the existence of the conflicts of interest officer.

The recruitment of Person A's partner created other conflicts of interest. This included the involvement of another senior executive in negotiating Person A's partner's salary, despite a conflict existing as he socialised with her and her son was his personal trainer.

This executive failed to recognise a conflict existed.

Senior managers in the public sector are expected to be aware of their obligations to uphold the principle of merit-based recruitment, and to actively identify, declare and manage conflicts of interest. IBAC found insufficient systems and controls in V/Line contributed to the lack of awareness amongst senior executives, including:

- an organisational code of conduct policy that did not address the need to manage potential conflicts in recruitment
- an absence of information in the recruitment policy regarding conflicts of interest
- no audits or reviews of recruitment decisions to identify policy breaches or systemic issues.

V/Line took steps to strengthen the integrity culture of the organisation, including appointing a dedicated executive responsible for integrity, including managing declarations of conflicts.

In response to IBAC's investigation and concerns identified regarding probity in public sector recruitment, the VPSC issued a mandatory pre-employment screening requirement for all new VPS executive roles, applicable from 30 October 2018.⁶⁸ VPSC guidance to support this screening policy also recommends pre-employment screening conducted by public sector employers includes the declaration of personal associations to individuals known or suspected to be involved in unlawful activity (declarable associations), and the declaration of private interests.

⁶⁸ VPSC 2018, VPS Executive Pre-Employment Screening, <www.vpsc.vic.gov.au/resources/vps-executive-pre-employment-screening>.

3.2.2 Secondary employment

A public officer's public duties do not prohibit them from having outside interests, including working outside of their public sector position. However, secondary employment can present risks of conflicts of interest. As with other conflicts of interest, secondary employment needs to be managed in the best interests of the public sector and the community.

The PA Act requires Victorian public service employees to seek approval to engage in any other paid employment.⁶⁹ The *Code of Conduct for Victorian Public Sector Employees* directs other public sector employees to comply with their organisation's policy on other employment, and only allows it where the activity does not conflict with an individual's public role.⁷⁰

In local government, secondary employment forms part of the indirect interests detailed in the LG Act.⁷¹ Research undertaken by IBAC also indicates some councils use their codes of conduct to address secondary employment, to varying degrees. For example, some councils only require management approval where a conflict may exist, while other councils mandate approval for any secondary employment, regardless of whether or not a conflict has been identified.⁷²

The conflicts of interest risks associated with secondary employment can relate to the individual's access to resources or their capacity to perform their duties. A conflict may arise where a public officer deliberately fails to declare or manage the conflict and misuses the knowledge, information or assets available to them as a result of their public role to the benefit of their secondary employment. Alternatively, the conflict may stem from the public officer engaging in secondary employment while they should be performing their public duties.

⁶⁹ PA Act s 32.

⁷⁰ *Code of Conduct for Victorian Public Sector Employees* and the *Code of Conduct for Victorian Public Sector Employees of Special Bodies* s 3.8.

⁷¹ LG Act s 78B. An indirect interest because of conflicting duties includes if a person is an employee of an organisation that has a direct interest in a matter.

⁷² IBAC 2019, *Local government integrity frameworks review*.

CASE STUDY 8 – OPERATION CARSON EXPLOITING PUBLIC ROLE TO FURTHER PRIVATE BUSINESS INTERESTS

In Operation Carson, which commenced in 2016, IBAC investigated allegations an employee of a public sector agency was engaged in corrupt conduct by improperly using their position to provide business opportunities to their partner. It was also alleged they had an undeclared financial interest in their partner's private business. The employee resigned while under investigation.

IBAC substantiated the allegations the employee provided preferential treatment to their partner. IBAC also established that the employee and their partner were engaged in a private business that had not been declared to the agency. The employee sought to exploit the knowledge and networks they had developed through their public sector employment, to further their business interests. The employee failed to declare their conflicts of interest and did not act in the public interest.

IBAC identified a number of corruption vulnerabilities that helped the employee to conceal their conduct. In particular, the employee operated with minimal oversight allowing them to exploit their position. For example, the employee often met with stakeholders alone, and failed to maintain adequate records of these meetings.

When issues with the employee's performance and conduct were identified, managers failed to hold the employee accountable. For example, IBAC identified that the employee's supervisors were aware the employee's relationship with their partner could give rise to conflicts of interest, yet failed to ensure the employee identified and declared this conflict in accordance with the agency's policy.

The agency's response to IBAC's investigation included the introduction of a mandated training program for all staff to embed awareness of the agency's integrity policies. The training also particularly focused on equipping middle managers to identify and respond appropriately to integrity issues.

3 Key functions and activities at risk

3.2.3 Good practice

Public sector agencies can strengthen their approach to identifying, declaring and managing conflicts of interest in recruitment by:

- adopting and communicating clear policies and procedures for employees to identify and declare conflicts of interest in recruitment processes
- explicitly requiring recruitment panel members to withdraw from a panel where there is an actual or perceived conflict⁷³
- prohibiting employees from participating in a recruitment process if a friend, relative or associate is an applicant⁷⁴
- using a dedicated conflict of interest declaration form for recruitment processes⁷⁵
- requiring recruitment panels to include independent members from other business units, such as from human resources, or from outside the agency⁷⁶
- requiring potential candidates (as well as panel members) to declare conflicts of interest during the application process
- requiring candidates to declare private interests during the recruitment process
- checking for current and prior conflicts of preferred candidates during the reference checks
- re-screening employees for conflicts of interest and private interests upon promotion, particularly to more senior or high-risk roles.

Strategies agencies can adopt to mitigate risks around conflicts of interest associated with secondary employment include:

- adopting and communicating clear policies and procedures for employees to declare and seek approval for secondary employment
- ensuring employees understand the conflict of interest risks regarding secondary employment
- considering conflicts of interest and how they will be managed in the context of secondary employment
- requiring declarations and management approval of secondary employment from all personnel (including contractors), and updates to these declarations annually or as the situation changes
- centrally retaining applications for secondary employment (including whether approved or rejected) with staff records for future reference and audit purposes⁷⁷
- requiring preferred candidates with existing secondary employment to seek approval if they intend to continue the secondary employment; offers of employment should be made pending approval of the secondary employment⁷⁸
- reviewing approved secondary employment, particularly upon an employee's promotion to more senior or high-risk roles, to identify any new conflicts of interest and determine whether new management strategies are required or whether the secondary employment is still permissible⁷⁹
- using data analytics to proactively identify potential undeclared secondary employment amongst an organisation's employees⁸⁰
- explicitly stating that the code of conduct and the conflict of interest policies apply to contractors who perform a public sector role
- prohibiting employees from simultaneously working for the agency as both a public officer and under contract arrangements (eg as a supplier).⁸¹

⁷³ *ibid.*

⁷⁴ *ibid.*

⁷⁵ *ibid.*

⁷⁶ *ibid.*

⁷⁷ QLD CCC 2018, *Managing corruption risks associated with secondary employment*, p.20.

⁷⁸ QLD CCC 2018, *Managing corruption risks associated with secondary employment*, p.22.

⁷⁹ *ibid.*

⁸⁰ QLD CCC 2018, *Managing corruption risks associated with secondary employment*, p.11.

⁸¹ IBAC 2019, *Local government integrity frameworks review*.

3.3 Governance

Good governance is integral to building and maintaining public trust in the public sector. It should be underpinned by decision-making that is transparent, accountable and consistent with the law. Proper conflict of interest processes are essential to provide the agency and community with confidence regarding decisions being made.

In this section, conflict of interest risks are considered in relation to the roles of local government councillors and board directors of state government entities.⁸²

3.3.1 Decision-making by councillors

Councillors have a legislated role to participate in the decision-making of the council, represent the local community in that decision-making, and contribute to the strategic direction of the council.⁸³ These responsibilities naturally generate significant interactions within the community. In addition, councillors are likely to have existing connections and interests in their municipality. Therefore, councillors are at increased risk of conflicts of interest. Councillors are required to actively manage conflicts: they must disclose a conflict before a relevant matter is considered and must not participate or be present while the matter is being considered or voted on.⁸⁴

Decisions made by councillors without properly declaring or managing conflicts of interest can undermine the trust and confidence of the community in their council.

GOOD GOVERNANCE GUIDE FOR LOCAL GOVERNMENT

The *Good Governance Guide* is a publication jointly issued by LGV, the Victorian Local Governance Association (VLGA), MAV and Local Government Professionals (LGPro). The Guide describes councillors' responsibilities as including:

- strategic planning for the whole municipality and a sustainable future
- determining the financial strategy and allocating resources via the council budget
- representing ratepayers and residents
- advocating on a broad range of issues
- liaising and coordinating with other levels of government, non-government, community groups and the private sector
- overseeing the management of community assets
- facilitating community participation
- managing the relationship with, and employment of, the chief executive officer.⁸⁵

⁸² As elected officials, state government Members of Parliament (MPs) also experience conflict of interest risks. Like local councillors, state government MPs have codified responsibilities regarding conflict of interest: the *Members of Parliament (Standards) Act 1978* includes a code of conduct (s 7) that requires MPs to prioritise their public duty, avoid conflicts of interest, and declare pecuniary and other material interests. As with local councillors, MPs are required to submit records of their interests to be maintained on a publicly available register (ss 17-29).

⁸³ LG Act s 65.

⁸⁴ LG Act s 79.

⁸⁵ MAV, VLGA, LGV and LGPro 2012, *Good Governance Guide: Helping Local Governments Govern Better*, p.22.

CASE STUDY 9 – OPERATION CHARNLEY FAILING TO DECLARE A CONFLICT CREATES A PERCEPTION OF CORRUPTION

In Operation Charnley in 2016, IBAC investigated allegations a councillor was accepting bribes in the form of gifts in exchange for awarding community grants to a local businessman. Although the allegation was not substantiated, IBAC identified that the councillor failed to declare the conflict of interest arising from his financial loan to the director of a company that supplied services to the council, and which had strong affiliations with an organisation that received council grants. The councillor also did not declare the receipt of a motor vehicle provided in lieu of financial repayment of the loan.

Operation Charnley highlighted the councillor did not understand what constitutes a conflict of interest, and how and why a conflict needs to be managed. The councillor's failure to declare the loan and repayment with the motor vehicle created a perceived conflict of interest in relation to community grants awarded. This conflict existed even though the councillor had no involvement with the grants process. Under the LG Act,⁸⁶ money owed constitutes an indirect financial interest that must be declared. In Operation Charnley, the councillor should have declared this information via the requisite primary and ordinary returns.

In response to IBAC's investigation, the council took steps to strengthen its approach to conflicts of interest, including conducting training regarding the legislative conflict of interest provisions. The council also introduced a declaration form to be completed and signed at weekly meetings by each councillor. The council's meeting minutes, which are available online, provide a record of the matters discussed and conflicts disclosed.

CASE STUDY 10 – PRIMARY AND ORDINARY RETURNS UNDECLARED INTERESTS

Failure to declare interests via the primary and ordinary returns can have serious consequences. In July 2018, Councillor Intaj Khan of Wyndham City Council was convicted on eight charges related to interest return disclosures. The LGI charged the councillor with:

- three counts of failing to disclose companies in which he held office during the return period
- three counts of failing to disclose companies in which he held a financial interest
- two counts of failing to submit ordinary returns.

Cr Khan pleaded guilty and was fined a total of \$26,000.⁸⁷

The relationship between councillors and individuals and businesses with commercial interests within the municipality can give rise to conflicts. This can be a particular issue in town planning and development.

Following a 2011 LGI investigation, former Ararat Rural City councillor and Mayor Andrea Marian was convicted on three counts of breaching the conflict of interest provisions in the LG Act. Ms Marian was fined a total of \$10,000 plus prosecution costs.⁸⁸ The LGI found Ms Marian was acting as a planning consultant on behalf of a client who had a planning application before the council. While she declared the conflict, Ms Marian failed to remove herself from the room while the council considered the matter.⁸⁹

IBAC is aware of the risks that may arise from associations between developers and councillors or council staff. For example, conflicts of interest can arise from undeclared gifts or political donations.

⁸⁶ LG Act s 78A.

⁸⁷ LGI 2018, *Wyndham councillor Intaj Khan convicted and fined \$23,000*. To note, the figure was amended from \$23,000 to \$26,000 in the revised court extract and reflects the correct total for all charges.

⁸⁸ LGI, *Prosecutions archive*, <www.vic.gov.au/lgi/complaints/prosecutions-archive.html>.

⁸⁹ *The Courier* 19 December 2011, 'Retiring Ararat mayor convicted', Melbourne, <www.thecourier.com.au/story/61149/retiring-ararat-mayor-convicted>.

CONFLICT OF INTEREST RISKS BETWEEN PROPERTY DEVELOPERS AND COUNCILLORS

Integrity agencies in other Australian jurisdictions have reported on the risks of conflicts and corruption arising from the relationships between councillors and property developers:

- In 2017 the Queensland Crime and Corruption Commission (QLD CCC) reported on Operation Belcarra, an investigation into the conduct of councillors and candidates in four councils following the 2016 Queensland local government elections. The investigation included examination of the adverse effects of donations on the perceived integrity of council operations. The Operation Belcarra report notes: '[t]he close connections between councillors and certain businesses or individuals that donations can help to foster will inevitably lead to some concerns in the community about impropriety in council decision-making'.⁹⁰

The QLD CCC made recommendations to address the conflict of interest issues uncovered by Operation Belcarra, including recommendations to amend legislation to clarify councillors' obligations in declaring conflicts, and prohibiting councillor candidates' accepting gifts from property developers. In 2018 the Queensland Government passed legislation to give effect to these recommendations, and extended the prohibition on political donations from property developers to include state and local government.⁹¹ A similar ban was introduced in New South Wales (NSW) in 2009.⁹²

- In 2018 in Operation Windage, the QLD CCC investigated corrupt conduct at Ipswich City Council, and identified inappropriate relationships between the council and parts of the private sector, including property developers. The personal relationships formed between public officers of Ipswich City Council and property developers were allegedly corrupt, and involved gifts and benefits provided to council employees, and cash payments and political donations made to councillors.⁹³

As the QLD CCC identified, the consequences of these inappropriate relationships and resulting conflicts can be severe, including 'the loss of provision of services, inadequate services as well as unfair tendering processes to obtain public sector contracts and a lack of confidence in local government'.⁹⁴

- In 2018, the NSW Independent Commission Against Corruption (NSW ICAC) reported that one of the key areas for complaints over the previous five years regarding partiality or personal interests related to development applications. An example was close associations between a property owner or developer and the decision-maker, or where the decision-maker themselves has an interest.⁹⁵

⁹⁰ QLD CCC 2017, *Operation Belcarra: A blueprint for integrity and addressing corruption risk in local government*, Queensland Government, p.78

⁹¹ *Local Government Electoral (Implementing Stage 1 of Belcarra) and Other Legislation Amendment Act 2018* (Qld).

⁹² *Election Funding and Disclosures Amendment (Property Developers Prohibition) Act 2009* (NSW).

⁹³ QLD CCC 2018, *Culture and corruption risks in local government: Lessons from an investigation into Ipswich City Council (Operation Windage)*.

⁹⁴ QLD CCC 2018, *Culture and corruption risks in local government: Lessons from an investigation into Ipswich City Council (Operation Windage)*, p.31.

⁹⁵ NSW ICAC 2018, *Corruption and integrity in the NSW public sector: an assessment of current trends and events*, p.33.

3 Key functions and activities at risk

3.3.2 Public sector boards

Public entities form part of the Victorian public sector and exercise public functions. Public entities are often controlled by a board that is accountable to a Minister and is responsible for setting the strategic direction of the entity and ensuring its effective management. The board is responsible for making, communicating and assessing decisions consistent with the functions and strategic direction of the entity and the relevant legislative framework.

Public sector boards can be susceptible to compromised governance if conflict of interest practices are deficient. IBAC research has identified that some public boards can be especially vulnerable to conflict of interest risks due to their location and membership, and insufficient guidance and oversight by portfolio departments.⁹⁶

Like councils, regional and rural boards can be embedded within their local communities, which can increase the likelihood of conflicts of interest arising. Further, individuals sometimes sit on boards because of their industry or sector expertise; however, pre-existing industry relationships can give rise to conflicts of interest with matters which are subject to board decisions.

IBAC has also identified that some board members can have a limited understanding of how to identify, declare and manage conflicts. This can be a particular risk for volunteer board members and can be amplified by some boards' limited understanding that the board is a public entity, with corresponding duties to the Victorian Government and community, or exacerbated by insufficient guidance and oversight from the portfolio department. As a result, volunteer board members can, sometimes inadvertently, engage in poor governance practices. This may facilitate corrupt conduct as a result of them making decisions on matters where they have a relevant conflict, or inappropriate oversight of the entity for which they are responsible.

CASE STUDY 11 – 2017 IBAC INVESTIGATION

A CONFLICT OF DUTY

In 2017 IBAC investigated allegations a member of a small public entity board misappropriated funds. IBAC identified a number of vulnerabilities and poor governance practices, including an internal conflict of duty⁹⁷ in which the board member had also undertaken some of the secretary's duties to conceal their fraudulent practices. In addition, there was a failure to comply with governance standards, such as a failure to manage conflicts of interest and missing records. IBAC's investigation revealed many of the board members did not understand that their organisation was part of the public sector, instead believing they were a local community group. This lack of understanding resulted in poor governance controls, which ultimately enabled the mismanagement of the conflicts of interest, as well as the misappropriation of funds.

IBAC also found that some of the board's decisions about the facility they managed could have resulted in indirect financial benefits to the board members. In a 2014 report on committees of management, VAGO identified that some public entity boards appointed on an ongoing basis are comprised of people who are the primary users of the land the entity manages on behalf of the community. VAGO stated it can be difficult for the portfolio department to be assured these entities are managing the reserves for the broader public good, rather than making decisions to their benefit.⁹⁸

⁹⁶ IBAC 2018, *Corruption risks associated with public regulatory authorities*.

⁹⁷ The VPSC describes conflicts of duty as arising when a person is required to fulfill two or more public sector roles that may be in conflict with each other. Such conflicts can be actual, potential or perceived (VPSC 2018, *Conflict of interest and duty for directors of public entities: Practice guide*, p.5).

⁹⁸ VAGO 2014, *Oversight and Accountability of Committees of Management*, p.10.

Portfolio departments and the VPSC issue guidance for public entity boards regarding good governance.⁹⁹ However, sometimes conflict of interest issues are only identified when a decision has already been influenced. This can happen if there is minimal oversight of the organisation's conflict of interest policies and procedures or there is a lack of capacity or understanding to give effect to the available guidance. Ensuring proper controls regarding conflicts of interest are understood and followed is fundamental to safeguarding public sector boards from poor governance practices.

It is standard practice for boards to require members to declare any conflicts of interest at the start of a meeting. IBAC is aware that at least one public entity has strengthened this control by implementing a system to actively manage conflicts of interest in relation to its board. Specifically, directors are unable to access board papers if they have a known conflict of interest which has been declared and listed on the conflicts of interest register. This is a preventative measure designed to overcome the possible declaration of conflicts by directors *after* they have accessed and read the relevant material, which may make the declaration and management process redundant. This is a positive initiative, demonstrating proactive management of conflicts. However, it is important board members maintain individual responsibility for understanding and properly managing actual, potential and perceived conflicts of interest.

3.3.3 Good practice

Practices to support responsible management of conflict of interest risks associated with governance functions include:

- providing training to local government councillors on their legislative obligations and how to identify, declare and manage a conflict of interest
- providing training and support to new members of public sector boards regarding their governance obligations and how to identify and manage integrity issues, including conflict of interest
- conducting probity checks, including national criminal checks, on appointments and reappointments to public sector boards, including small and volunteer boards¹⁰⁰
- ensuring meetings provide clear and regular opportunities for conflicts of interest to be declared
- including expectations around integrity and ethical behaviour in position descriptions for public board appointments
- limiting board members' access to board papers when relevant conflicts of interest have been declared.

⁹⁹ The Governance Institute of Australia also provides guidance to members on conflicts of interest via its *Good Governance Guide*. Guidance issued in 2019 includes information for public sector boards on conflicts of interest and related party transactions (Governance Institute of Australia 2019, *Good Governance Guide: Public sector entities – conflicts of interest and related party transactions*).

¹⁰⁰ The *Appointment and Remuneration Guidelines* issued by the Department of Premier and Cabinet identify probity checks that are mandatory, unless there is an exemption, and encourage additional probity checks. Even when not mandatory, probity checks should be conducted as best practice.

3.4 Regulatory functions

Public sector agencies that exercise regulatory functions (either as a primary function or as part of a broad range of responsibilities) can experience a heightened risk of conflicts of interest. The significant interaction that occurs between the regulator, industry and the community can cause relationships and associations to develop that may create conflicts of interest. In July 2018, IBAC published *Corruption risks associated with public regulatory authorities*, which highlighted the mismanagement of actual, potential and perceived conflicts of interest is a corruption risk for regulatory authorities.¹⁰¹ Areas of risk for regulators regarding conflicts include:

- the high levels of discretion of some employees
- some regulators' reliance on regulatory activities for revenue to supplement government funding
- employees' attendance at industry events where staff can learn more about and educate industry but also where staff may be offered gifts and benefits
- the sourcing of board directors from within the industry subject to regulation, as a result of their industry or sector knowledge
- offices based in regional locations where smaller communities may increase the potential for forming personal relationships with industry members.

The movement of employees between regulator and regulated entities can also create conflict of interest risks. Legislative controls are sometimes used to minimise this risk. For example, the *Victorian Commission for Gambling and Liquor Regulation Act 2011* prohibits 'restricted persons' (commissioners, gambling and liquor inspectors, authorised persons) from being employees of bookmakers, licensed gambling venues or commercial raffle organisers, and from being subsequently employed by one of these organisations for two years after their term ends.¹⁰²

IBAC has identified conflicts of interest in regulatory functions such as inspections and licensing.

CASE STUDY 12 – OPERATION BOW CONFLICT OF INTEREST ASSOCIATED WITH AN INSPECTION ACTIVITY

In Operation Bow in 2017, IBAC investigated allegations a public officer with inspection functions investigated an incident involving a close associate, without disclosing the conflict of interest. The subsequent inspection resulted in a favourable outcome for their associate. While IBAC substantiated the allegation that an actual conflict of interest existed, the allegations regarding favouritism and corrupt conduct were not substantiated.

IBAC's investigation revealed inadequate communication between the inspector and their manager regarding the inspector's associations and how these could impact their duties. This suggested a limited understanding of the expectations in the agency as to how conflicts of interest should be identified, declared and managed: specifically, employees should disclose their conflicts as soon as they become aware of the conflict, and not undertake their official duties or make decisions about matters relevant to the conflict, until it is agreed with their manager how the matter will be handled.

In response to IBAC's investigation, the agency updated operational procedures regarding conflicts of interest and responding to service requests and incidents, to provide clear guidance to employees about how conflicts are to be managed.

¹⁰¹IBAC 2018, *Corruption risks associated with public regulatory authorities*.

¹⁰²*Victorian Commission for Gambling and Liquor Regulation Act 2011* ss 31(1), (2) and (3).

CASE STUDY 13 – OPERATION WAKEFIELD

CONFLICT OF INTEREST ASSOCIATED WITH LICENSING ACTIVITY

In 2013 IBAC commenced Operation Wakefield, which examined bribery allegations involving employees of a licensing team within a public sector agency that regulated a service industry, including assessing applications to work in the industry.

IBAC found inappropriate relationships between some employees of the licensing team and members of the regulated service industry. More specifically, an employee failed to declare or manage a conflict relating to their spouse, who ran a business within that industry. IBAC found the agency's training and policies did not adequately address the specific conflicts of interest risks faced by the licensing team, such as private associations or interests in the industry subject to their regulation.

IBAC's investigation identified that the public sector agency needed to review and strengthen its corruption prevention systems, including ensuring there are robust policies and systems in place for managing conflicts of interest, declarable associations and declarations of private interests. In response, the agency reviewed its policies and advised IBAC the updated policies would be provided to its audit and risk management committee.

In both case studies 12 and 13, the potential existed for these conflicts to significantly impact on the perceived independence of the officers and their decisions to undermine the Victorian community's confidence and trust in their respective agencies.

3.4.1 Good practice

Practices that agencies with regulatory functions can adopt to address the identified conflict of interest risks include:

- providing clear guidance regarding the types of events it may not be suitable for government employees to attend
- delivering regular training and communication to staff about identifying and managing the conflict of interest risks in their work
- requiring employees to periodically acknowledge and commit to relevant integrity policies
- recording conflicts of interest in the organisation's risk register to ensure the risk is subject to appropriate controls and oversight
- central oversight of the organisation's gifts, benefits and hospitality register.

3.5 Custodial management

Conflicts of interest that arise from associations, including declarable associations, can present significant risks to the performance of some public sector functions, including custodial management. For the purpose of this report, custodial management refers to the management of adults sentenced or remanded in Victoria’s corrections sector. This includes publicly and privately operated prisons.

Declarable associations are a type of conflict of interest that can arise from a public officer’s personal associations and which may compromise the public officer’s duties, functions or integrity. The conflict of interest risks of declarable associations can be actual, potential or perceived. The association can be with a person, group or organisation. Examples include associations with:

- a person facing charges in relation to an indictable offence
- a person or organisation suspected of or known to be engaged in unlawful activity
- a person who has a criminal history, if the nature or recent occurrence of the offence could create the perception the association is incompatible with the public officer’s role.

Corrections and Victoria Police officers are more vulnerable to the risks associated with declarable associations as a result of the nature of their work. However, other public sector employees should also be aware of and understand the risks associated with declarable associations and the potential impact on their duties, functions and integrity.

It is important that agencies manage declarations in a fair and reasonable manner, without prejudice. The potential risks of the association, whatever its nature, should be considered and managed without discrimination.

In 2018, IBAC investigated allegations that a newly employed officer working at a corrections facility had deliberately failed to disclose their declarable associations, which included relationships with current and former prisoners. These declarable associations were uncovered when the officer used the corrections systems without authorisation to search for several individuals. Had the corrections facility applied more robust probity checks of prospective employees, the officer’s declarable associations may have been detected at the recruitment stage. Information held within the facility’s systems was not cross-referenced with information provided by prospective employees. This left the corrections facility vulnerable to corruption, misconduct and misuse of resources. IBAC understands the pre-employment checks have since been expanded.

CASE STUDY 14 – OPERATION ETRICK CONFLICTS OF INTEREST ARISING FROM CORRECTIONS OFFICERS’ UNDECLARED ASSOCIATIONS

In Operation Ettrick, which commenced in 2015, IBAC identified at least two corrections officers within a unit at Port Phillip Prison who maintained associations with former prisoners. One officer attempted to use their position to influence the transfer of a current prisoner as a favour to a former prisoner with whom the officer had inappropriately maintained contact. These associations were deliberately maintained in contravention of prison policy.

IBAC identified a poor understanding of conflict of interest and declarable associations across the officers’ unit that may have limited the capacity of their colleagues to identify and report the inappropriate behaviour. The existence of these undeclared associations served to undermine the integrity of the facility and created other potential corruption vulnerabilities, including blackmail.

IBAC research published in November 2017, *Corruption risks associated with the corrections sector*, found the identification of conflicts of interest, including declarable associations, can be more challenging in the corrections sector due to the increased pressure on vetting processes associated with high levels of recruitment.¹⁰³

IBAC also found prison and community corrections officers based in regional areas face additional challenges, particularly in relation to conflicts of interest and attracting suitable employees because of smaller populations in those areas. These and other corruption vulnerabilities in custodial environments may be compounded by low levels of staff turnover in some units and infrequent refresher training on integrity issues, such as conflicts of interest and professional boundaries.

In December 2018 the Queensland CCC released its report *Taskforce Flaxton: An examination of corruption risks and corruption in Queensland prisons*. Taskforce Flaxton found inappropriate relationships between corrections staff and prisoners are a key corruption risk and made recommendations for the Queensland Corrective Services to reduce this risk through:

- developing a staff rotation policy
- implementing an agency-wide electronic system to record conflicts of interest and management action
- developing and implementing a declarable association policy.¹⁰⁴

3.5.1 Good practice

Public sector agencies can strengthen their approach to declarable associations by:

- providing clear guidance on identifying, declaring and managing declarable associations to prospective and existing employees
- providing a dedicated form for employees to make a declarable association
- requiring prospective employees to disclose declarable associations before they are employed
- centrally oversighting declarable associations, including analysis of trends and patterns, via a centralised system for recording and managing these associations
- requiring employees to disclose any declarable associations as part of an annual process (for example, performance reviews).

Custodial facilities can adopt the following practices:

- cross-referencing potential employees' information with information held in relation to prisoners (such as prisoners' approved phone call lists or contact lists)
- delivering regular 'refresher' integrity training to all employees on conflicts of interest, professional boundaries, and other issues
- rotating employees to disrupt the likelihood of personal relationships forming between corrections officers and prisoners.

¹⁰³IBAC 2017, *Corruption risks associated with the corrections sector*.

¹⁰⁴QLD CCC 2018, *Taskforce Flaxton: An examination of corruption risks and corruption in Queensland prisons*, pp.34-36.

3.6 Information management

Many public officers have access to significant data and information, often confidential and sensitive in nature. The consequences of that information being released without authorisation or misused can be considerable and can be used to facilitate corrupt conduct. The conflict of interest risks associated with information management include the disclosure of information for financial or other benefit to the public officer or associates, and the access

to information for an officer’s personal interest rather than for a legitimate business purpose.

Unauthorised access and disclosure of information has consistently emerged in IBAC investigations and reviews. In 2017, IBAC’s Perceptions of corruption reports¹⁰⁵ identified the misuse of information and material as a high corruption risk.

TABLE 2: 2017 PERCEPTIONS OF CORRUPTION – MISUSE OF INFORMATION OR MATERIAL

	State government respondents	Local government respondents	Victoria Police respondents
Proportion of respondents who had observed misuse of information or material in their organisation	14%	15%	20%
Proportion of respondents who had suspected misuse of information or material in their organisation	24%	27%	49%
Proportion of respondents who identified misuse of information or material as having the opportunity to occur in their organisation	56%	61%	87%

Information held by public bodies can be highly valuable to organised crime groups. As previously reported by IBAC,¹⁰⁶ public sector employees are at risk of being cultivated by members of organised crime groups in order to gain access to sensitive information, decision-making processes, or commodities held by public bodies in both state and local government. Robust measures to identify, declare and manage conflicts of interest and declarable associations are some of the key ways in which organisations can protect themselves and their staff from being targeted by organised crime groups.

**CASE STUDY 15 – OPERATION TOUCAN
CONFLICTS OF INTEREST ARISING FROM AN
EMPLOYEE’S UNDECLARED ASSOCIATIONS**

In 2013, IBAC investigated allegations a public sector employee was releasing confidential information to members of an outlaw motorcycle gang (OMCG). IBAC found the employee had links to persons of interest to law enforcement and had failed to disclose these declarable associations. IBAC also found the employee had accessed confidential records, including those of two known OMCG members and records pertaining to the employee and their partner. This access was unauthorised or otherwise inappropriate.

The declarable associations, undeclared and unmanaged, exposed the agency to potential corrupt or criminal activities and risked the agency’s information security.

The employee was the subject of disciplinary action on the basis of the information uncovered by IBAC, and was dismissed.

¹⁰⁵IBAC 2017, *Perceptions of corruption – Survey of Victorian State Government Employees*, p.8; IBAC 2017, *Perceptions of corruption – Survey of Victorian Local Government Employees*, p.8. and IBAC 2017, *Perceptions of corruption – Survey of Victoria Police employees*, p.8.

¹⁰⁶IBAC 2015, *Organised crime group cultivation of public sector employees*.

CASE STUDY 16 – OPERATION BARRON

CONFLICT OF INTEREST ASSOCIATED WITH UNAUTHORISED DISCLOSURE OF INFORMATION

IBAC commenced an investigation, in 2016 into allegations a VicRoads team leader engaged in corrupt conduct by accessing, altering and disclosing sensitive vehicle registration and licensing information without authorisation. It was alleged the team leader was disclosing the information to OMCGs via his father.

IBAC substantiated the allegations, finding the team leader had misused his position and access to VicRoads' systems on a significant number of occasions by accessing, altering and sometimes disclosing information without authorisation to benefit associates, including those with connections to organised crime. IBAC found no evidence the team leader acted for financial gain; however, some of his checks benefited friends by saving them time and money by not following proper processes. In addition, some of the unauthorised checks benefited the team leader's father as he was perceived to be conducting favours for his associates. This conduct was clearly a conflict between his public duties and private interests.

In March 2018 the team leader pleaded guilty to four charges of misconduct in public office. He was convicted and sentenced to a two-year community corrections order, and resigned from VicRoads.

IBAC identified a number of corruption vulnerabilities through the investigation. These included a limited regard for information security and compliance with policy in the team to which the team leader belonged, and a poor understanding of how customers' personal information could be used to aid criminal activity. This culture may have contributed to the failure to detect the corrupt conduct.

Information can be misused for personal gain, which is clearly at odds with a public officer's obligation to act in the public interest. For example, as a result of an investigation conducted by the LGI in 2015, a former councillor of Murrindindi Shire was charged and found guilty of misuse of position. The former councillor was found to have attempted to gain a personal advantage (to lower rates) in relation to a proposed council rating strategy by making improper use of information obtained while a councillor.¹⁰⁷

3.6.1 Good practice

In addition to developing and communicating clear policies and procedures regarding conflict of interest and declarable associations, agencies can consider:

- requiring employees who handle personal or sensitive information to arrange for work to be reassigned to a colleague, should they identify an association with a person who is the subject of the information
- auditing individual employees' information access to identify inappropriate use (such as accessing their own personal records)
- providing training on the associated risks (including information misuse and conflicts of interest) and legislative requirements when handling sensitive information and data.

Councils should also consider adopting the Victorian Protective Data Security Framework, which provides direction on data security for public sector bodies,¹⁰⁸ to ensure transparent and secure information management.

¹⁰⁷LGI 2019, *Four charges of misuse of position upheld for former councillor*, <<https://www.vic.gov.au/lgi/publications-and-resources/media-releases/four-charges-of-misuse-of-position-upheld-for-former-councillor.html>>.

¹⁰⁸The Framework is the overall scheme for managing protective data security risks in Victoria's public sector. It applies to public entities that are managed by local councils, such as Committees of Management for Crown Land Reserves. See Office of the Victorian Information Commissioner, *Does the Victorian Protective Data Security Framework apply to your organisation?*, <<https://ovic.vic.gov.au/wp-content/uploads/2018/07/Does-the-VPDSF-apply-to-your-organisation-V1.0.pdf>>.

3.7 Internal investigations

Effective management of conflicts of interest is a fundamental tenet of a fair investigation. Investigations must be conducted impartially and objectively to provide the complainant, subject employees and others with confidence the matter has been taken seriously and investigated fairly.

The relevant principal officers of public sector agencies are legislatively required to notify IBAC of any suspected corrupt conduct that is occurring or has occurred.¹⁰⁹ IBAC determines whether to investigate, dismiss or refer the matter to an agency (including the agency where the notification originated) for investigation. IBAC may also refer complaints received from a person to agencies to investigate.¹¹⁰

Public sector agencies may also conduct investigations of alleged misconduct involving their employees. IBAC has published a guide to assist organisations to conduct internal investigations into misconduct.¹¹¹

Failure to identify, declare and manage a conflict of interest can risk mismanagement of internal investigations and undermine confidence in the integrity of the investigations. As with other functions and activities undertaken by public sector agencies, conflicts of interest should be avoided wherever possible in internal investigations, and otherwise identified, declared and managed. Generally a person should not be appointed to investigate a matter if they have a conflict of interest, as it is difficult to sufficiently manage a conflict and safeguard the impartiality of an investigation. It is rare that an actual conflict of interest in an internal investigation is manageable; an investigator with an actual conflict of interest should not be involved with the investigation. Perceived conflicts may be more readily manageable through consideration of the factors that give rise to the perception, such as prior and current associations and structural and organisational arrangements. Proactive and transparent management and communication, including with the complainant, may address and manage the perceptions of a conflict.

CASE STUDY 17 – OPERATION ROYSTON CONFLICTS OF INTEREST IN INTERNAL INVESTIGATIONS

In 2016, IBAC's Operation Royston¹¹² investigated allegations that a manager at City of Ballarat Council was subverting procurement processes, and failing to fully declare and manage his conflicts of interest when engaging suppliers, one of whom was his spouse.

IBAC found poor management of conflicts of interest in relation to how this issue was originally handled by the council. When concerns were first raised regarding the manager's conduct, an internal investigation was initiated by the council. The senior executives who undertook this initial investigation had conflicts of interest. In particular, one executive was the manager's direct supervisor. As such, any adverse findings identified in the internal investigation would reflect badly on him.

As part of the internal investigation, the manager was provided with copies of suspicious invoices in advance of a meeting to discuss the concerns. This provided him the opportunity to construct a response ahead of time. At that meeting the manager was able to present fabricated evidence of works completed in relation to each invoice.

The senior executives considered further investigation was required in relation to the manager's conflict of interest arising from hiring his spouse. This conflict of interest issue was referred to the council's human resources area.

Despite identifying the manager's conflict, the senior executives failed to recognise or effectively identify and manage their own conflicts arising from their relationship with the manager.

¹⁰⁹Independent Broad-based Anti-corruption Commission Act 2011 s 57.

¹¹⁰IBAC assesses complaints received to determine whether protections (such as keeping the identity of the complainant confidential or protections from reprisals) are warranted under the legislation. Complaints with protected status can only be investigated by a small number of organisations, including IBAC.

¹¹¹IBAC 2016, *Investigation guide: Conducting internal investigations into misconduct*.

¹¹²More information about Operation Royston can be found at section 3.1.

IBAC independently oversees Victoria Police's complaints and discipline system. All complaints received by Victoria Police about police conduct must be notified to IBAC, which determines whether to investigate, dismiss or refer the matter back to Victoria Police to investigate. When required to investigate a complaint, Victoria Police conducts a triage process to determine whether the matter is suitable for investigation by Professional Standards Command (PSC) or at the local level (region, department or other command).

Victoria Police has procedures in place to mitigate risks around conflicts of interest in complaint investigations, including requiring the investigator to complete a formal conflict of interest form at the start of the investigation, and requiring the investigator to be senior in rank to the subject officer.

However, IBAC's reviews and audits of how Victoria Police handles complaints have identified ongoing concerns with the management of conflicts of interest and the need for Victoria Police to improve impartiality in complaint investigations, particularly in regional areas.¹¹³

CASE STUDY 18 – VICTORIA POLICE¹¹⁴

ALLOCATING THE POLICE OVERSIGHT TO A FRIEND OF THE SUBJECT OF THE COMPLAINT

In 2015, Victoria Police created an oversight file after a failure to follow guidelines around the handcuffing of a prisoner led to that prisoner's escape from police custody.¹¹⁵ The oversight file was allocated to the region where the incident took place.

The appointed overseer completed a conflict of interest form as required, and attached it to the file. The form was poorly completed and did not include basic information such as listing the officers involved in the incident. Further, the overseeing officer identified they had a social relationship with one of the officers involved that included playing on the same sports team. Despite this, the overseer indicated on the form that they did not believe this would give rise to any perceptions of a conflict of interest, thereby implying they could impartially oversee the incident.

The overseer failed to submit the conflict of interest form to a supervisor and as such the conflict was neither addressed nor managed.

¹¹³For more information see IBAC 2016, *Audit of Victoria Police complaints handling systems at regional level*; IBAC 2018, *Audit of Victoria Police's oversight of serious incidents*; and IBAC 2018, *Audit of complaints investigated by Professional Standards Command*.

¹¹⁴This case study featured in IBAC 2018, *Audit of Victoria Police's oversight of serious incidents*, p.25.

¹¹⁵Victoria Police appoints officers to oversee serious incidents including escapes from custody. The purpose of the oversight is to identify whether the incident was preventable or whether policies and procedures could be improved to prevent such incidents.

3 Key functions and activities at risk

In 2018, the Parliamentary IBAC Committee concluded the *Inquiry into external oversight of police corruption and misconduct in Victoria*. The Committee recommended legislation be amended to prohibit the investigation of a complaint by an officer from the same police station or associated geographical region, to ensure public confidence in the impartiality of how police investigate complaints against police.¹¹⁶ Improving the management of conflicts of interest in complaint investigations is the subject of ongoing discussion between IBAC and Victoria Police, with IBAC supporting clearer guidance being provided to divisional superintendents to assist them to appropriately allocate complaint files for investigation.

3.7.1 Good practice

Practices to ensure internal investigations are not influenced by a conflict of interest include:

- identifying and declaring a conflict of interest before commencing an internal investigation
- prohibiting employees who have an actual conflict of interest from conducting an internal investigation
- proactively managing perceived or potential conflicts, including through early and regular communication, including with the complainant
- ensuring conflict of interest declaration forms, including the associated management decisions, are included in the investigation file for transparency
- maintaining a conflict of interest register to allow supervisors to record declared conflicts and their management
- incorporating advice about identifying, declaring and managing conflicts of interest in organisational guidance about conducting internal investigations.

¹¹⁶IBAC Committee 2018, *Inquiry into the external oversight of police corruption and misconduct in Victoria*, p.xlviii.

4 Guidance and prevention

Public sector agencies need to have clear policies and procedures to explain what actual, potential and perceived conflicts of interest are, and the process for identifying, declaring and managing conflicts. Consideration of conflicts of interest needs to be business-as-usual for public sector employees, and needs to be supported by well-defined processes.

However, policies and processes are not always sufficient to eliminate the risks and consequences associated with some conflicts of interest. Deliberate disregard, or lack of awareness or poor understanding of policies and processes can render them ineffectual. Therefore, public sector agencies need to clearly communicate and regularly reinforce employees' obligations in relation to conflicts of interest. This includes providing regular training to help employees identify conflicts of interest. Real-life examples tailored to different groups of employees aids understanding of what conflicts of interest are, and how they should be declared and managed. Agencies should also highlight the potential consequences of disregarding policies and procedures for the community and the individuals, such as termination of employment and/or criminal prosecution.

This report highlights the guidance provided by the VPSC and LGV on conflicts of interest. IBAC has identified ways this guidance could be strengthened, as well as strategies that public sector agencies (both in state and local government) could adopt to better identify, declare and manage conflicts of interest and associated risks:

- VPSC and LGV consider developing best practice guidance for state and local government agencies regarding declarable associations.
- LGV considers reviewing its conflict of interest guides for councillors, council employees and members of council committees (published in 2011 and 2012) at the conclusion of the Local Government Act Review, to ensure the advice reflects best practice, and addresses known and emerging issues in relation to identification and management of conflicts of interest in local government.
- Public sector agencies consider the issues raised in this report and ensure there are appropriate systems and controls in place to address any vulnerabilities within their organisations.

4.1 Current resources

4.1.1 State government

The VPSC issues comprehensive guidance and tools for the public sector (exclusive of local government) on managing conflicts of interest and gifts, benefits and hospitality. This guidance includes model policies and template declarations, implementation advice and checklists for identifying conflict of interest risks. Many of the functions identified in this report as being at heightened risk of conflicts are covered in the VPSC's materials.

The Victorian Ombudsman conducts regular training for state and local government employees on dealing with conflicts of interest, including good practice approaches to recording and managing conflicts. The training focuses on whether an interest is or is not a conflict. Key messages from the training include:

- conflicts of interest are normal, not inherently bad, and are ultimately everyone's individual responsibility
- the importance of officers discussing interests and the potential risks or impacts with their managers
- the need for a receptive and ethical workplace culture that encourages and supports discussion of conflicts
- the value in linking conflict of interest conversations between officers and their managers with regular workplace activities (eg upon commencing employment, when starting a new project, around performance review periods).

In addition, public entities can access guidance provided by their portfolio department. This guidance is likely to be more specific to the entity's particular functions and operating environment. In response to an IBAC investigation, the Department of Health and Human Services advised guidance is provided to health portfolio entities around declarable associations. Specifically:

'Entities should consider making it compulsory for employees to identify, declare and manage associations they may have when they are recruited,

*periodically through their employment and introduce clear consequences for staff failing to declare an association. Entities may consider introducing mandatory declarable associations as an addition to their existing conflict of interest policy or as an amendment to the VPSC's model conflict of interest policy and associated templates.'*¹¹⁷

This is good practice.

State government agencies therefore have access to considerable information about conflict of interest policies and procedures. This may pose its own challenges as some agencies, particularly smaller organisations, may have difficulty tailoring the guidance to their operations. Departments can play an important role in guiding and supporting their entities, and ensuring these entities have appropriate measures in place to address conflicts of interest and associated risks.

However, there is little specific guidance regarding declarable associations for state government agencies. Given the risks associated with undeclared associations, there may be merit in VPSC considering the development of best practice guidance in relation to identifying and managing declarable associations.

Some agencies already provide guidance on declarable associations. For example, Victoria Police requires its employees to assess their personal associations and to identify if any of these associations could be or could be perceived to be a declarable association because it:

- is incompatible with the role of the employee and Victoria Police in upholding the law
- may give rise to a reasonable perception the employee is not upholding their obligations as a Victoria Police employee
- may reflect adversely on the employee's standing and reputation in the eyes of the community as a Victoria Police employee.

Victoria Police requires new employees to complete a Declarable Associations Instruction Acknowledgement Form to acknowledge their obligations regarding declarable associations. When an employee believes

¹¹⁷Department of Health and Human Services 2017, *Compliance reporting in health portfolio entities (Revised)*, State Government of Victoria, <www2.health.vic.gov.au/about/news-and-events/hospitalcirculars/circ0717>.

they have a declarable association, they must disclose it via an Association Assessment Report and their supervisor must conduct a risk assessment and develop a plan to help the employee to appropriately manage the situation.¹¹⁸ Local Professional Standards Committees report quarterly on the number of annual declarations and the number of declarations with a management plan, and undertake analysis to determine any trends or risks with regards to the associations declared.¹¹⁹

4.1.2 Local government

The declaration and management of conflicts of interest in local government, in relation to councillors and some council staff, is prescribed by the Local Government Act. Management of conflicts of interest is otherwise subject to the discretion of each council.

Local government councillors and council staff can access guidance and information about conflicts of interest from a range of organisations, as outlined below.

GUIDANCE AVAILABLE TO COUNCILS

Local Government Victoria

LGV has produced guides for council staff and councillors to aid their understanding of the legislative requirements in relation to their responsibilities for conflicts of interest.¹²⁰ LGV also provides a conflict of interest declaration template, which includes details of the nature of the conflict and the management decision.¹²¹

Local Government Inspectorate

LGI publishes reports on certain completed investigations, which can include information on conflicts of interest risks and breaches. These reports inform the sector's understanding of these issues.

Municipal Association of Victoria

MAV's website includes information on the legislative provisions relating to conflicts of interest. MAV staff are available to assist councillors on specific issues.

Victorian Local Governance Association

VLGA offers masterclasses and training for councillors and councils in governance and integrity, which includes discussion of the legislative requirements regarding conflicts of interest and bias.

Local Government Professionals

LGPro delivers *Good decision making* workshops for council employees on governance in local government, including conflicts of interest.

MAV, VLGA, LGV and LGPro have also produced a *Good Governance Guide* for councillors and council employees on decision-making in local government and areas where good governance has particular impact.

¹¹⁸Victoria Police, Victoria Police Manual – Conflict of interest, p.15

¹¹⁹Victoria Police, Victoria Police Manual – Conflict of interest, p.19 and Victoria Police, Victoria Police Form 1310 Declarable Associations – LPSC Report

¹²⁰LGV has produced three guidelines:

- Conflict of Interest – A guide for Council staff, October 2011
- Conflict of Interest – A Guide for Councillors, October 2012
- Conflict of Interest – A guide for members of Council Committees, October 2012

¹²¹Available on LGV's website at <www.localgovernment.vic.gov.au/grants/collaborating-councils/council-resources-and-templates>.

4 Guidance and prevention

LGV's guides are key sources of information for council employees and councillors for recognising and managing conflicts of interest. IBAC understands LGV intended to review this guidance in light of the proposed reform of the LG Act (see section 2.1.2). IBAC considers the guidance would still benefit from review following the Local Government Act Review being undertaken by LGV, to ensure the guidance reflects best practice and addresses known and emerging issues around the identification and management of conflicts of interest in local government.

As there is also a lack of information in relation to declarable associations for councils, LGV could also consider developing relevant guidance. IBAC considers 'model' or 'template' provisions for identifying, managing and declaring conflicts of interest and declarable associations would be of benefit, either as stand-alone policies or as part of councils' codes of conduct.

LGV has indicated it will update its guidelines and consider new guidance about declarable associations following the completion of the Local Government Act Review.

4.2 Good practice

Public sector agencies need to establish systems and controls around conflicts of interest that are appropriate for their operating environment. These systems and controls provide the foundation for ethical leadership and a culture of integrity.

4.2.1 Clear policies and guidance

Clear policies and guidance should highlight how to identify, declare and manage conflicts of interest, as well as the importance of compliance. These policies should include accessible and easy-to-follow declaration and management forms and registers, which are not onerous to complete. Tailored procedures should also be developed for business functions and activities identified as at heightened risk of conflict of interest (eg procurement, recruitment, regulatory functions). For transparency of decision-making, conflict of interest forms should also be completed even where there is no conflict identified.

¹²²IBAC 2019, *Local government integrity frameworks review*.

¹²³ibid.

¹²⁴ibid.

¹²⁵NSW ICAC 2018, *Direct Negotiations: guidelines for managing risks*, p. 17.

¹²⁶VPSC 2018, *Minimum accountabilities*, <www.vpsc.vic.gov.au/html-resources/minimum-accountabilities>.

These policies and procedures should be presented and communicated in a variety of ways to facilitate understanding of conflicts of interest in different work environments.

The potential consequences of a breach of the policies and processes should also be clearly communicated.

Good conflict of interest practices observed by IBAC in reviews of integrity frameworks in samples of councils and state government agencies include:

- the application of the policy to volunteers and contractors, in addition to all agency staff¹²²
- the inclusion of a checklist to assist employees to understand and identify potential conflicts of interest in their work¹²³
- the inclusion of specific examples of conflicts, for example, being made a beneficiary in a client's will or dealing with friends on regulatory, inspection or recruitment matters¹²⁴
- a strategic approach to communicating with staff at key times throughout the year about integrity issues, including conflict of interest and gifts, benefits and hospitality (eg reminding staff to amend their signature block at Christmas time to advise external parties 'thanks is enough' and gifts should not be offered).

Policies could also consider encouraging employees to first focus on their personal interests, before considering whether a conflict exists.¹²⁵ This may address confusion about what constitutes a conflict of interest, and deal with possible underreporting, as it can be easier to understand personal interests.

Registers of declarations should be subject to central oversight, as highlighted on the following page. It is also good practice for conflict of interest processes to be referenced in organisational policies for activities that are particularly vulnerable to poor management of conflicts, such as procurement and recruitment.

With regard to gifts, benefits and hospitality, state government agencies are mandated to implement the minimum accountabilities issued by the VPSC, which are binding under the *Standing Directions of the Minister for Finance 2016*. In particular, state government agencies are required to establish and communicate the gifts, benefits and hospitality policy, including publishing the policy and register online.¹²⁶

CASE STUDY 19 – DEPARTMENT OF EDUCATION AND TRAINING’S NEW CONFLICT OF INTEREST REGISTER

In response to IBAC investigations, the Department of Education and Training (DET) has reviewed and reformed its conflict of interest processes. DET has developed a central, electronic register with an online declaration form located in its payroll system. All Department VPS staff and school leaders are currently mandated to use the form whenever a conflict arises. Teaching staff have begun using the form and it is planned that all staff will be required to use the form in the future.

The declaration and the agreed management strategies must be approved by the employee’s manager. Submitted declarations are sent to the employee’s manager for approval through an automated workflow (as used for leave requests). Declarations are retained in the system, providing a clear record of the issue and the agreed management plan. The system provides periodic reminders to the employee to prompt review of their declaration.

DET worked with the Department of Premier and Cabinet to consider a behavioural insights approach in developing the new form. For example, employees are required to attest to the veracity of their declaration in the initial stage of the process, rather than at the end. Research indicates requiring employees to confirm their declaration at the beginning of attestation-type forms discourages dishonesty.¹²⁷

The centralised and electronic register enables DET to monitor, report on and audit conflict of interest data. The form has been designed to enable targeted data extraction and analysis. Other data analytics strategies are discussed below.

CASE STUDY 20 – CITY OF BALLARAT COUNCIL’S INNOVATIVE APPLICATIONS

The City of Ballarat Council has developed new applications to simplify and streamline the process of declaring and managing conflicts of interest and gifts, benefits and hospitality. The new processes, to be rolled out in 2019, will require employees and councillors to use an application to declare and describe conflicts that may arise in the course of their work. The declaration will be instantly transmitted to the relevant approver to determine appropriate management of the conflict.

Another application will be used to declare and seek approval of offers of gifts, benefits and hospitality. These declarations are transmitted to senior management for approval, with the level of management approval required varying according to the value of the offer. For example, a declared offer below \$50 will be sent to an employee’s supervisor for approval, while an offer of a higher value would require the approval of a senior executive or the CEO, depending on the amount.

Declarations will be captured in a central, electronic register, which will generate data to improve reporting to the Council’s leadership team and audit and risk committee. The data collected will also be used to help identify any trends and issues. For example, the data may identify suppliers who repeatedly make offers of gift, benefits or hospitality.

The applications will be available via a range of mediums – mobile phone, kiosk and computer – to ensure all employees and councillors are able to access the technology. The Council hopes this innovative approach will assist it to identify potential misconduct and corruption, in addition to improving compliance and reducing the administration often associated with less-centralised systems.

¹²⁷Shu, LL, Mazar, N, Gino, F, Ariely, D and Bazerman, MH 2012, ‘Signing at the beginning makes ethics salient and decreases dishonest self-reports in comparison to signing at the end’, *Proceedings of the National Academy of Sciences of the United States of America*, Vol.109, No.38, pp. 15197 - 15200.

FIGURE 1: CITY OF BALLARAT COUNCIL'S CONFLICTS OF INTEREST APPLICATIONS

Disclosure of Officer Conflict of Interest

Your personal information is being collected by City of Ballarat for the purpose of compliance with the Code of Conduct. Your information will be stored in Council's Customer Database and used to identify you when communicating with Council and for the delivery of services and information. For further information on how your personal information is handled, refer to Council's Privacy Policy at www.ballarat.vic.gov.au

For definitions on Conflict of Interest in Local Government please refer to this www.localgovernment.vic.gov.au/_data/assets/pdf_file/0021/47442/Conflict-of-Interest-Guide-for-Staff-Oct-2011.pdf

Hi [Name] when you submit this form, the owner will be able to see your name and email address.

*** Required**

1. Name of Officer with Conflict *

2. Direct Manager *

3. Directorate *
Directorate of Officer with Conflict

- Business Services
- Community Development
- Development & Planning
- Infrastructure & Environment
- Innovation & Organisational Improvement

4. Description of type of conflict *

- Direct - A direct interest exists if there is a reasonable likelihood that a person's benefits, obligations, opportunities of circumstances will be directly altered if the matter is decided in a particular way.
- Indirect - An Indirect Interest is interest by close association, indirect financial interests, conflicting duties, receipt of an applicable gift, consequence of becoming an interested party or impact on residential amenities.
- 'Perceived' Conflict of Interest - A perceived conflict of interest is a reasonable perception that the interest will have an impact on an officers actions?

5. Kind of Indirect interest *

- close association
- indirect financial interest
- conflicting duty
- receipt of applicable gift
- impact on residential amenity

6. Detail nature of conflict of interest *

7. How the conflict will be managed? *

8. Declaration *

"By checking this box you agree that the information disclosed in this form is correct"

4.2.2 Mature risk management practices

Mature risk management practices should recognise the significant risk undeclared or poorly managed conflicts of interest present for a public body. Regular reports on declarations and conflict of interest risks should be provided to senior management and relevant governance committees to ensure adequate oversight and compliance.

The VPSC recommends an agency's audit and risk management committee should receive a report at least annually on the administration and quality control of the conflict declaration process.¹²⁸ IBAC is also aware at least one public body includes data on the number of conflict of interest declarations in a weekly report to the organisation's executive. Regular, high-level oversight of conflict of interest declarations is important.

IBAC notes some public bodies are using data analytics as a control measure to combat conflict of interest risks. Data analytics involves the examination of large amounts of data from various sources to identify outliers, correlations and patterns. It is increasingly being used as a fraud and corruption prevention strategy.

CASE STUDY 21 – USING DATA ANALYTICS TO ADDRESS CONFLICT OF INTEREST RISKS

IBAC is aware some public sector agencies use data analytics to detect and monitor employee conflicts of interest and declarable associations. For example, one public sector agency has a 'forensics lab' that performs tests including:

- comparing event invitations received and accepted by employees via email against the agency's gift register, to test compliance with gifts, benefits and hospitality policy
- comparing employees' contact lists (on agency-provided phones) against a list of individuals involved in organised crime, to identify potential declarable associations
- comparing supplier data against employee data to identify matching bank account information (this test is conducted every three years).¹²⁹

Another public sector agency monitors its conflict of interest register and electronic attestation system to track and report on employees' pecuniary and non-pecuniary interests in relation to potential suppliers of goods and services. The organisation's audit committee receives reports every three months for discussion.

In addition to providing transparent means of recording conflicts and their management, declaration forms and registers offer public sector agencies opportunities to identify and address conflict of interest vulnerabilities across the organisation.

¹²⁸VPSC 2018, *Conflict of Interest Declaration and Management Form*, <www.vpsc.vic.gov.au/resources/conflict-of-interest-guidance-for-organisations/>, p.1

¹²⁹IBAC 2019, *State government integrity frameworks review*.

4 Guidance and prevention

4.2.3 Training and regular communication

Training and regular communication on the identification and management of conflicts of interest is required. Employees should receive induction and refresher training on the agency's policies, processes and expectations regarding conflicts of interest. Induction training is an opportunity to emphasise to new employees the importance of integrity in all parts of the agency's operations, including in relation to management of conflicts of interest. Refresher training and regular communication provide the opportunity to clarify how to identify and manage conflicts, and demonstrate the organisation's commitment to integrity and ethical leadership. Additional training tailored to supervisors and senior managers is beneficial to ensure they understand their responsibilities to proactively monitor conflicts and take appropriate action to manage situations. Proactive management may include verifying declarations for accuracy and to ensure all information is required to make a thorough assessment of the risks and impact of the conflict of interest.¹³⁰

Recent research undertaken by IBAC identified one large public sector agency's regular face-to-face training sessions on gifts, benefits and hospitality correlated with an increase in gifts, benefits and hospitality declarations from employees. The agency considered these sessions promote better understanding of its policy and expectations around gifts, benefits and hospitality. These sessions are an effective way to discuss possible scenarios involving offers of gifts and benefits, and how to respond. Case Study 22 highlights other good practice regarding communication with suppliers.

It is important public sector agencies regularly review their systems and controls around the identification, declaration and management of conflicts of interest. This can help to identify ways systems and controls can be strengthened to create an organisational culture of transparency and accountability, where conflicts of interest are appropriately declared and managed, rather than disguised or ignored.

CASE STUDY 22 – COMMUNICATION WITH SUPPLIERS

The Victorian Building Authority (VBA) is responsible for the Victorian Statewide Cladding Audit, investigating the use of non-compliant building materials. The VBA engages a number of suppliers – surveyors and fire engineers – to undertake the inspections. These suppliers belong to a closely connected industry, with skills that are in relatively short supply. Many of the suppliers may have some form of professional connection with many of the buildings to be inspected.

In recognition of the conflict of interest risks that may arise from these pre-existing connections, the VBA undertook a proactive and preventative approach to improve the suppliers' understanding of conflicts of interest. In particular, VBA noted the importance of declaring and managing conflicts to ensure community confidence in the inspection process.

The VBA recognised a need to enhance understanding more broadly about conflicts of interest in the context of public sector functions. The VBA arranged for the Victorian Ombudsman to deliver tailored training to the suppliers (approximately 25 people) using practical case studies provided by the VBA. The supplier companies welcomed this partnership approach.

The VBA also arranged for the Victorian Ombudsman to deliver tailored training to the Audit team, which reflected both the Audit content and the team members' roles as public sector employees. This parallel approach built a common understanding of the issues, which supports effective collaboration, while addressing the risks particular to the different roles of suppliers and public sector employees.

The VBA is considering what arrangements should be established in the future to build on this initiative.

¹³⁰NSW ICAC 2019, *Managing conflicts of interest in the NSW public sector*, p.14.

5 Conclusion

If public officers do not properly identify, declare or manage conflicts of interest in the public interest, whether the conflict be actual, potential or perceived, the community's trust in public sector decisions and actions can be undermined, and agencies can be exposed to significant corruption and reputational damage. Poorly managed conflicts of interest also adversely impact the community when decisions are not made in the public interest.

Sometimes, public officers wilfully disregard their agency's requirements around handling conflicts of interest in pursuit of personal benefit for themselves or their associates. At other times, conflicts are inappropriately declared and managed because of an inadequate understanding of what constitutes a conflict and the risks of undeclared conflicts.

This report highlights that conflicts of interest can be a particular corruption risk in public sector procurement, employment, governance, regulatory functions, custodial and information management, and internal investigations.

Clear policies and procedures and regular training are essential to ensure public officers understand what is expected of them in relation to declaring and managing conflicts of interest, and what the potential consequences are should they fail to appropriately manage a conflict. It is also critical agencies have effective controls in place to detect or mitigate conflicts. A culture that actively demonstrates a commitment to integrity and impartiality will also support a mature and open approach to recognising and managing conflicts.

Conflicts of interest are an inevitable part of life, including in the public sector. While they should be avoided wherever possible, conflicts of interest do not need to cause fear. But they must be managed in a way that protects the public interest. Agencies must encourage transparency and accountability and ensure employees are practically supported to declare and manage conflicts. Proactive and effective management of conflicts of interest protects the integrity of both the individual public officer and the organisation, and safeguards public interest and community trust.

