

Please Quote: VRPC008063
(File No: PC032521)

Mr Stephen O'Bryan
Commissioner
Independent Broad-based Anti-corruption Commission
L1 North Tower
459 Collins Street
MELBOURNE VIC 3000



Dear Mr O'Bryan

OPERATION HELENA – RESULT OF INVESTIGATION

I refer to your letter of 26 May 2017 in relation to an investigation conducted by the Independent Broad Based Anti-Corruption Commission (IBAC) into allegations that VicRoads' employees obtained unlawful benefits from contractors.

I appreciate you providing details on the outcome of Operation Helena, through which IBAC substantiated that [REDACTED] and two other former employees obtained unlawful benefits and hospitality from suppliers and conducted procurement activities contrary to VicRoads policy. I note your advice that IBAC determined not to pursue criminal charges, in part due to a culture in VicRoads of employees accepting hospitality from suppliers, and that IBAC did not find evidence that invoice splitting occurred for the purpose of defrauding VicRoads.

In reference to your comments regarding VicRoads' culture of accepting gifts, benefits and hospitality, the employees you investigated were operating outside of VicRoads' standards, values and corporate expectations that guide the behaviour of VicRoads staff. While it may have been an allowable practice to accept certain gifts, benefits and hospitality from suppliers, it has never been a part of VicRoads cultural norms to use the policy of the day to obtain unconscionable or unlawful benefits from suppliers. Since my appointment as Chief Executive, I have set clear expectations in this regard by requiring VicRoads' employees to refuse all offers of gifts, benefits and hospitality.

I note your acknowledgement that VicRoads has taken action to reduce the likelihood of circumstances such as these occurring in the future and I have considered your recommendations made pursuant to Section 159(1) of the IBAC Act 2011 to identify opportunities for further measures to reduce corruption related risk.

I accept all of your recommendations resulting from Operation Helena and provide the following advice on VicRoads actions and their current status:

Recommendation 1:

That VicRoads review its policies, procedures and practices in the following areas to ensure that vulnerabilities identified in Operation Helena are addressed:

Recommendation 1(a):

Gifts, benefits and hospitality, including reviewing the revised policy to ensure it contains sufficient controls

VicRoads' Gifts, Benefits and Hospitality Policy has recently been reviewed to ensure that it is in line with community expectations and compliant with the Victorian Public Sector Commission Gifts, benefits and Hospitality Policy Framework, dated October 2016 (VPSC Policy Framework).

The VPSC Policy Framework sets minimum accountabilities for public officials offered gifts, benefits and/or hospitality that allow acceptance in certain circumstances. VicRoads has taken a stronger position in its July 2017 update to its policy by requiring all employees to decline all offers of gifts, benefits or hospitality, except in limited circumstances such as catering provided as part of a meeting or conference, token items such as pens and notebooks provided at conferences and gifts received from foreign delegations.

The revised VicRoads policy requires all non-token offers to be declared and recorded in a register to be reviewed by VicRoads' Risk and Audit Governance Committee at least annually. The recording of all non-token offers will provide VicRoads with information necessary to periodically publish the Gifts, Benefits and Hospitality Register on its website, as required by the VPSC.

In addition to setting out the obligations of VicRoads employees, the revised policy provides clear guidance on:

- The ethical risks that emerge when gifts and benefits are offered to public sector employees;
- What to do when offered a gift, benefit or hospitality;
- How to declare an offer of a gift, benefit or hospitality; and
- The circumstances under which a gift, benefit or hospitality can be accepted.

Mandatory reporting of all offers is expected to assist in identifying the source of repeated offers, providing VicRoads with the opportunity to engage with these suppliers to reinforce VicRoads' policy and to communicate why it is not appropriate to make such offers to public sector employees.

Consideration is currently being given to mechanisms that could be utilised to further reinforce and gain widespread acceptance of the need for all employees to declare offers, including those not accepted.

Recommendation 1(b):

Conflict of Interest, including clarifying that a conflict of interest includes a personal relationship with suppliers with whom employees also have a professional relationship.

VicRoads maintains a Conflict of Interest Policy to provide guidance to employees, agency employees and contractors working for VicRoads on avoiding, declaring and managing an actual, potential or perceived Conflict of Interest.

The policy assists employees by setting out key definitions, guidelines, obligations and procedures for declaring conflicts of interest and private interests, both pecuniary and non-pecuniary. The policy sets out the prescribed group of employees that must complete a "Declaration of Private Interests" form annually and obligates employees to declare any actual, potential and perceived conflict of interest at the time of appointment or as soon as they are aware of any such conflict of interest.

Although the policy contains guidelines that would assist employees in understanding that a conflict of interest could include a personal relationship with a supplier with whom they have a professional relationship, further more specific guidance on supplier relationships are being considered.

Measures implemented by VicRoads to identify potential relationship issues between employees and suppliers are set out in the response to Recommendation 1(c).

Recommendation 1(c):

Procurement, including controls to prevent and detect non-compliance with policy

In order to identify procurement anomalies and to progressively improve the integrity of VicRoads' procurement practices, VicRoads has developed a Procurement Assurance Program to predominantly focus on potential relationship issues and on higher volume/low-medium value transactions across the organisation.

The Procurement Assurance Program is conducted by VicRoads' Procurement Services Department as part of its policy and oversight role. Its objectives are to:

- Identify likely patterns for breaches of procurement processes
- Identify areas of procurement that require further education, improved systems, changes to the procurement process or other enhancements as required
- Identify very serious breaches of procurement processes or fraud to be escalated for further investigation
- Identify opportunities to administer practical improvements to procurement practices such as the introduction of aggregated purchasing or optimising spend
- Provide level of assurance to stakeholders that VicRoads is conducting procurement in an ethical and transparent manner and is adhering to its Key Procurement Principals.

A Procurement Assurance Framework has been developed as part of VicRoads' Procurement Assurance Program to set out the scope and conduct of pattern matching activities across a high number of low to medium value transactions to identify potential areas of concern. Whilst this Framework may not identify all single instances of poor behaviour, it is designed to highlight patterns of inappropriate and non-compliant behaviour that can be stopped through early intervention before it becomes well established.

The Procurement Assurance Framework is progressively being implemented and VicRoads is building its capability in undertaking procurement assurance activities. The priority areas identified include increased engagement across VicRoads' business units to reduce the incidence of purchase order splitting and packaging to avoid procurement rules, use of corporate credit card, the integrity of suppliers and supplier relationships and capturing learnings from investigations into the procurement practices of other government entities. A comprehensive business intelligence tool is also being developed to facilitate review of procurement and purchasing transactions.

A key element of VicRoads' Procurement Assurance Program is communication across VicRoads' business units to discuss potential issues, educate staff of correct processes, improve the efficiency of procurement practice and highlight the implications of ongoing practices that seek to avoid compliance with established procurement policies.

The Procurement Assurance Framework has been reviewed by VicRoads' internal auditors in order to identify any areas of concern and opportunities for improvement. These findings have been reviewed and VicRoads' Procurement Services Department is progressively implementing these changes to enhance the Framework.

IBAC red flags of corruption, common issues emerging from IBAC investigations, other key issues identified in IBAC investigations and IBAC Perceptions of Corruption Report have been reviewed in detail and a strategy to address concerns raised and to evaluate areas of risk and opportunity has been developed and is being progressively implemented.

Recommendation 2:

That VicRoads review its audit and risk management programs to provide assurance in areas of identified risk, including procurement.

VicRoads has recognised the need to evolve and improve the level of risk maturity, capabilities and the effectiveness of its risk management activities. Accordingly, management has recently launched a risk management refresh project to uplift its risk management program in order to be more contemporary, fit for purpose and integrate strategic planning, performance management and risk management and compliance frameworks across the entire organisation. The *International Standard ISO 31000: 2009- Risk Management – Principles and Guidelines* is currently under review and the outcomes of the revised Standard will be reflected throughout the refresh project.

As noted in the response to Recommendation 1(c) VicRoads undertakes, in addition to its internal audit program, a Procurement Assurance Program focussing on higher volume/low-medium value procurements to identify trends that indicate the potential practices to avoid established procurement rules and potentially inappropriate relationships with/between suppliers.

Recommendation 3:

That VicRoads review its training to ensure employee's understanding of relevant policies and procedures. Further, that training specifically addresses corruption risks and ethical dilemmas (including acceptance of hospitality) and be tailored for employees in identified high risk positions (such as employees with responsibility for procurement).

VicRoads has developed a Procurement Capability Development Plan that outlines a strategy to enhance and strengthen procurement capability across the organisation. Areas of focus include State wide multi-functional and more targeted specialist training on procurement and purchasing, introduction of enhanced onboarding process for new starters, mandatory online e-learning modules on procurement and contract management and development of a capability self-assessment tool to better identify areas of opportunity and risk. In addition, VicRoads is progressively implementing enhancements to its procurement systems and tools to provide greater guidance and controls.

VicRoads has developed an Integrity Framework that seeks to encapsulate a comprehensive integrity system that is able to effectively meet the integrity challenges across the business. It is driven through 3 fundamental areas of development being:

- Strengthening culture - to embed high standards in the hearts and minds of VicRoads employees;
- Capability development - to ensure employees, managers and senior leaders understand their responsibilities and accountabilities to VicRoads integrity standards, and have the resources to make the best decisions; and
- Risk management - to ensure integrity risks are appropriately identified, assessed and mitigated.

The capability development component of the Integrity Framework incorporates an ongoing integrity training and awareness program that is tailored to different audiences as well as targeted induction training to ensure that new starters are equipped to understand their professional obligations to ensure integrity in their business practices.

A component of the integrity training and awareness program will ensure that all employees, agency staff and contractors are aware of the ethical risks and their responsibilities when gifts, benefits and hospitality are offered to public sector employees.

Recommendation 4:

That VicRoads communicate with its suppliers as to why it is not appropriate to offer public sector employees gifts, benefits and hospitality

VicRoads is in the process of writing to its suppliers to inform them that VicRoads has introduced a Supplier Code of Conduct to support its commitment to ethical, sustainable and socially responsible procurement.

Although the Supplier Code of Conduct specifically refers to the expectation that suppliers not offer VicRoads' employees gifts, benefits or hospitality, VicRoads will take the opportunity in the letter to specifically request that suppliers not offer its employees gifts, benefits or hospitality and advise that all employees are required to decline such offers.

VicRoads will seek confirming advice from its suppliers that they have received the Supplier Code of Conduct and will abide by its principles and expectations. As a further reinforcement of the Supplier Code of Conduct and policies such as those relating to the offering and acceptance of gifts, benefits and hospitality, VicRoads will be including a Schedule with tenders for all formal contracts that all suppliers must acknowledge and return with their tender submissions.

Follow Up:

As a number the initiatives referred to in my response are currently in planning or are being implemented, I propose to provide you with a further update on progress by no later than 30 June 2018.

If you have any queries regarding this response or the actions/initiatives being undertaken by VicRoads, please contact Mr Mark Dale, Chief Financial Officer, who would be pleased to assist. Mr Dale can be reached on telephone 9854 2183.

Yours sincerely



**JOHN MERRITT,
CHIEF EXECUTIVE**

27/10/2017