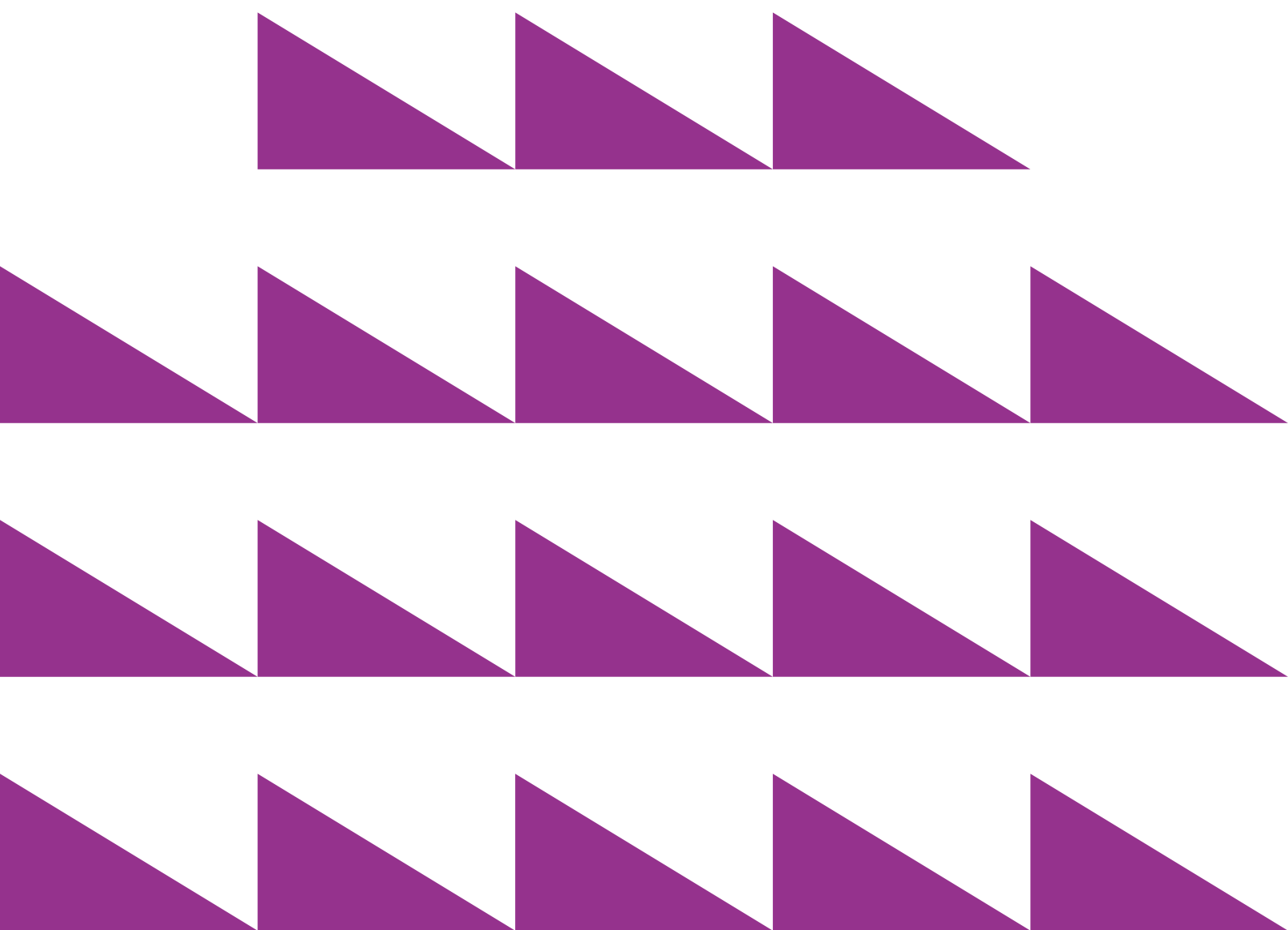


Operation Exmouth

An investigation into the conduct of former Victorian public servant, Carmine Petrone

October 2016



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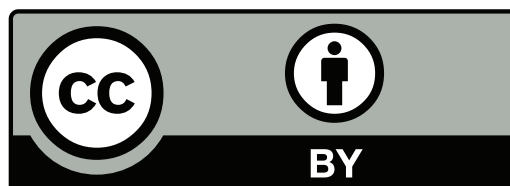
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Letter of transmittal

To

The Honourable President of the Legislative Council

and


The Honourable Speaker of the Legislative Assembly

In accordance with section 162(1) of the *Independent Broad-based Anti-corruption Commission Act 2011* I present IBAC's report on its Operation Exmouth investigation into the conduct of former Victorian public servant Carmine Petrone.

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

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

Yours sincerely



Stephen O'Bryan QC
Commissioner

1 Overview

1 Overview

1.1 Overview

This report concerns an investigation by the Independent Broad-based Anti-corruption Commission (IBAC) into allegations that Carmine Petrone, a senior manager employed by Places Victoria, was involved in serious corrupt conduct.

Operation Exmouth investigated allegations that Mr Petrone dishonestly awarded contracts for work under the Fibre to the Home project to entities with whom he had a relationship and which were effectively under his control.

IBAC's investigation found that Mr Petrone played a critical role in one family (with whom he has a familial relationship) obtaining a large financial advantage through their subcontracting businesses. This advantage was obtained in circumstances where Mr Petrone flouted Places Victoria policies in a range of areas including procurement and declaration of conflicts of interest.

IBAC has also identified that Places Victoria did not provide adequate training and guidance by way of policies and procedures. As a result, opportunities to detect and regularise Mr Petrone's improper management of the Fibre to the Home project were missed. Recommendations have been made to address these issues. Places Victoria has responded to these recommendations, outlining action taken or existing arrangements which it believes are sufficient despite the findings of IBAC's investigation.

Recommendation 1

Places Victoria review its policies and procedures to prevent the identified corruption vulnerabilities and to ensure:

- appropriate due diligence processes in relation to establishing the bonafides of new and existing contractors
- induction and training for new contractors and subcontractors, to ensure they are aware of their obligations including those relating to public sector values, codes of conduct and all relevant policies

- recruitment processes are robust, including appropriate security vetting processes for employees prior to recruitment and during the course of employment (for example, consideration could be given to requiring prospective employees to complete a statutory declaration in relation to prior work history, including whether they have ever been the subject of an investigation for a criminal or disciplinary matter)
- systemic vulnerabilities identified through this investigation are addressed, including:
 - corruption risks associated with the exercise of procurement functions, such as persons 'signing off' numerous invoices just below their delegation threshold to the same contractors (contract splitting)
 - contract management systems that ensure contract terms are enforced, progress through the contract is monitored, and decisions or variations are documented to avoid circumstances such as the use of colluding contractors and subcontractors
 - information security including the use of external platforms for document storage and management, and personal emails to transact official business
- there is a robust conflict of interest framework in place, and that employees and contractors fully understand their obligations regarding declaration and management of conflicts of interest, consistent with public sector standards.

Recommendation 2

Places Victoria report back to IBAC on action taken on Recommendation 1 by 16 August 2016.

Recommendation 3

The Victorian Public Sector Commission consider ways to inform contractors to the public sector of their obligations to comply with public sector values, codes of conduct and integrity standards.

2 Introduction

2 Introduction

2.1 The early stages of the investigation

In May 2014 IBAC received a notification from Places Victoria pursuant to section 57(1) of the *Independent Broad-based Anti-Corruption Commission Act 2011* (IBAC Act). The notification concerned allegations about the suspected corrupt conduct of Carmine Petrone during his tenure as development manager for the Fibre to the Home project.

IBAC also received a notification from the Victorian Auditor-General's Office outlining the same concerns.

In June 2014 IBAC determined to conduct an investigation in accordance with section 60(1) of the IBAC Act. The investigation was called Operation Exmouth.

2.2 The entities involved

2.2.1 Places Victoria

Background

Places Victoria is a portfolio agency of the Department of Environment, Land, Water and Planning.

It was established in 2011 to undertake urban renewal projects on behalf of the Victorian Government. It operates under the *Urban Renewal Authority Victoria Act 2003* and its functions include purchasing (or otherwise acquiring) land for development, and carrying out or coordinating urban renewal projects. The Act states that Places Victoria's functions must be carried out on a commercial basis.

Its predecessor organisations were the Urban Land Authority, the Urban and Regional Land Corporation, and the Victorian Urban Development Authority, which traded as VicUrban. Although the alleged corrupt conduct commenced when the agency was operating as VicUrban, all references in this report are to Places Victoria.

In 2015 Places Victoria reported total income of \$229 million, \$222.5 million of which was derived from land sales and project management fees. The Victorian Government provided the agency with direct grants of \$2 million.

Places Victoria is oversighted by a board, which is responsible for the strategic direction of the agency as well as performance monitoring. The day-to-day management of the agency is the responsibility of its Chief Executive Officer (CEO). The relevant minister is the Minister for Planning.

Fibre to the Home project

The Fibre to the Home project involved the installation of fibre-optic network infrastructure across a number of Places Victoria developments including the Aurora and Aspect residential estates in Epping and Officer. The infrastructure included cabling, exchanges and routing equipment. It also involved a connection from each residential lot on the Aurora and Aspect estates to a retail network.

2.2.2 Carmine Petrone

Carmine Petrone was appointed development manager for Places Victoria's Fibre to the Home project in July 2007. Initially, the project was managed by a contractor oversighted by Mr Petrone. However, in 2009 Places Victoria ended the arrangement with the contractor and established its own 'in-house' Fibre to the Home team. Mr Petrone was appointed to head that team, reporting to the CEO until late 2012, and then reporting to a general manager.

Mr Petrone was initially employed on a five-year contract, which was extended in 2012.

Mr Petrone was made redundant from his position in February 2014.

Prior employment history

Mr Petrone worked as an engineer at Alcatel, a private telecommunications company between 2000 and 2005. He was summarily dismissed from Alcatel on the grounds of serious misconduct. This was not known by Places Victoria at the time of his employment.

2.2.3. Contractors

Company A

A company known for the purposes of this report as Company A is experienced in civil construction works including the installation of conduits and pits for communication and utilities infrastructure. The company was registered in the mid-1990s.

Company A first worked on the Fibre to the Home project as a subcontractor; in 2009 it won the tender to perform 'pit and pipe' works on that project. It was one of the largest contractors on the project and was paid an estimated \$15.6 million between May 2009 and July 2013.

Person 1 was a director of Company A at the time of IBAC's investigation.

Person 2 was appointed general manager of Company A in 2013 after ten years with the company. Before becoming general manager, he managed works undertaken at new estates and oversaw all pit and pipe installations.

JAC Connect Pty Ltd

JAC Connect Pty Ltd was registered in 2010. JAC Connect was involved in the Fibre to the Home project as a subcontractor of Company A and worked on the installation of the fibre network infrastructure. JAC Connect was deregistered in October 2013.

JAC Connect had two directors:

- Shun King Li, who was director from the time of the company's registration to February 2012
- Jamie Li, who was director from February 2012.

Shun King Li is married to Mr Petrone's cousin. Jamie Li is Shun King Li's son.

Iport Group Pty Ltd

Iport Group Pty Ltd was registered in December 2010. Iport was involved in the Fibre to the Home project as a subcontractor of Company A and worked on the installation of the fibre network infrastructure.

Peilin Li was appointed director of Iport in 2014.

Numerous witnesses in this investigation stated that Iport took over JAC Connect's business. There are clear connections between JAC Connect and Iport:

- Peilin Li is the daughter of Shun King Li
- Shun King Li provided capital to Iport
- Jamie Li described himself as general manager of Iport until his resignation in May 2013.

According to information obtained by IBAC in private examinations, Iport is no longer operating as a business.

2 Introduction

2.3. The allegations

Allegations made against Mr Petrone were that he:

- obtained or facilitated the obtaining of financial advantage by deception in the context of his non-disclosure to either Places Victoria or Company A his familial connection with JAC Connect and Iport
- directed Company A to engage JAC Connect (and later Iport) as a subcontractor to provide project management and other services related to the installation of fibre infrastructure for the Fibre to the Home project
- was engaged in an undeclared serious conflict of interest by having effective control over JAC Connect and Iport, in that he undertook direction and authorisation of activities and invoices
- directed JAC Connect, Iport and Company A in relation to invoicing practices
- directed Company A to inflate prices previously quoted in their tender documents submitted to Places Victoria
- split invoices to ensure expenditure fell within his delegation.

Places Victoria also identified concerns with Mr Petrone's serious failures to comply with the agency's policies and procedures including:

- failing to put contracts in place for key suppliers to the Fibre to the Home project
- failing to segregate duties by approving invoices when he had raised purchase orders for that procurement
- using Google Docs to store and create important documents relating to the Fibre to the Home project rather than the Places Victoria information management system
- using a private Gmail account to communicate with contractors and consultants, rather than his Places Victoria email account.

2.4. IBAC's investigation

2.4.1. Information obtained

Entities and individuals involved in this investigation provided a substantial amount of documentation to IBAC, either voluntarily or by way of summons.

IBAC also obtained seven formal statements from witnesses including officers of Places Victoria, and directors and employees of relevant contractors. Numerous interviews were also conducted with other witnesses.

2.4.2. Execution of search warrants

A search warrant was executed on Mr Petrone's home on 27 November 2014. A number of documents were seized, as well as electronic devices.

2.4.3. Private examinations

IBAC summonsed seven witnesses to attend private examinations to assist the investigation.

The examinations were conducted between 2014 and 2015.

2.4.4. Section 464 of the Crimes Act 1958 interview

Mr Petrone was interviewed by IBAC investigators pursuant to section 464 of the *Crimes Act 1958* on 27 November 2014.

3 Allegations against Carmine Petrone

3 Allegations against Carmine Petrone

3.1. Conflict of interest in relation to subcontracting arrangements

Around mid-2009, Company A won a tender to install pits and pipes for the Fibre to the Home project. In May 2010, Company A subcontracted JAC Connect to assist with the work.

Mr Petrone stated that he helped to facilitate the subcontracting arrangement between Company A and JAC Connect by introducing Jamie Li to Person 1, but that was the extent of his involvement.

Evidence from various witnesses refutes this:

- Jamie Li confirmed in a private examination that JAC Connect was established after a discussion between his father and Mr Petrone at a family function.
- Shun King Li gave evidence that Mr Petrone suggested to him that the Fibre to the Home project was a good business to get into, but that JAC Connect could not directly apply for work with Places Victoria as JAC Connect's staff lacked the required experience.
- Person 1 (director of Company A) gave evidence that Mr Petrone suggested to him that Company A use JAC Connect as a subcontractor. The subcontracting arrangement was suggested in the context of additional work requested by Mr Petrone that Company A was struggling to deliver.
- Person 2 (general manager of Company A) confirmed that Mr Petrone had informed Company A that JAC Connect could do the work as a subcontractor, and that they were ready to start work immediately. As a result, Persons 1 and 2 believed JAC Connect was qualified to perform the fibre network installation.

Neither Person 1 or Person 2 was made aware that Mr Petrone had a familial connection with JAC Connect, in that Shun King Li is married to Mr Petrone's cousin.

IBAC obtained evidence that JAC Connect was created solely for the purpose of subcontracting to Company A, and that Places Victoria was its only client. When JAC Connect began working on the Fibre to the Home project, Jamie Li was its only employee until November 2010. Despite not becoming a registered cabler until May 2011, he conducted audits on fibre network installations at Places Victoria sites. Two other contractors told IBAC that Mr Petrone required them to oversee JAC Connect's work to compensate for its employees' lack of expertise and experience.

In his examination, Shun King Li stated that doing work for Places Victoria through a subcontracting arrangement was considered beneficial from a business perspective. He did not perceive the benefit he and his family obtained as inappropriate. He said 'I think in our business, it's pretty common in terms of recommending people' and 'well, as a businessman, we take [opportunities] people give us...I don't see any problem with that'.

Around the middle of 2011, Iport took over the work JAC Connect was doing for Company A. According to Persons 1 and 2 of Company A, Mr Petrone told them that Iport was taking over from JAC Connect.

The investigation established that Company A made payments of \$8,276,009 to JAC Connect/Iport between 22 October 2010 and 1 August 2014:

- \$755,488 to JAC Connect between October 2010 and November 2011
- \$7,520,521 to Iport between August 2011 and August 2014.

IBAC looked for but did not identify any payments made to Mr Petrone or his wife, by Shun King Li, his wife, JAC Connect, Iport or other companies associated with the Li family. However, Mr Petrone had a clear and significant undeclared conflict of interest in arranging for and being involved in JAC Connect and Iport's subcontracted work for Places Victoria. Specifically:

- Mr Petrone used information or knowledge that he acquired through his role as senior development manager for the Fibre to the Home project to benefit the Li family in two ways: first, when he advised them about subcontracting opportunities on that project and second, when he advised them that they were too inexperienced to contract directly with Places Victoria.
- Mr Petrone made a business decision for the benefit of the Li family when he advised Company A to subcontract to JAC Connect.

Places Victoria defines a conflict of interest as including:

- the use of any information or knowledge acquired through an employee's relationship with Places Victoria for personal gain or benefit, or for the benefit of family, friends or associates
- making a business decision for personal gain or benefit, or for the benefit of family or friends.

This policy states that Places Victoria employees have a responsibility to identify and avoid conflicts of interest, and to disclose any existing or potential conflicts of interest. Mr Petrone failed to do this in that he did not disclose his familial connection with a subcontractor on the Fibre to the Home project within Places Victoria or to Company A.

Mr Petrone's conduct in arranging for JAC Connect and Iport to subcontract for Company A was also contrary to the Victorian Public Sector Code of Conduct. The Code describes the behaviours expected of public servants. Specifically:

- he failed to declare and manage a clear conflict of interest
- he inappropriately used his position to provide a private benefit to his family
- he made decisions that were affected by his personal influences and showed favouritism.

3.2. Mr Petrone's management of JAC Connect and Iport

The investigation revealed that Mr Petrone involved himself in the daily management of JAC Connect and Iport to an extraordinary degree, contrary to accepted practice at Places Victoria.

In his interview, Mr Petrone told IBAC that he had no involvement in the management and tasking of JAC Connect employees. He said this was the sole responsibility of Company A, with whom he liaised.

The evidence refutes this. Numerous emails showed Mr Petrone directly instructed JAC Connect staff and required them to submit daily task sheets outlining their duties.

Several witnesses also stated that Mr Petrone was highly influential in the management of JAC Connect and Iport:

- Shun King Li confirmed that Mr Petrone determined who was hired by JAC Connect. Shun King Li referred to Mr Petrone as being Jamie Li's 'boss'.
- Shun King Li relied on Mr Petrone to assist in the management of JAC Connect because of Jamie Li's inexperience.
- Jamie Li said he took no direction from Company A, but received all directions from Mr Petrone.
- Jamie Li also said that Mr Petrone was involved in the hiring and termination of staff and was essentially running JAC Connect and Iport. For example, Mr Petrone arranged for an accountant, with whom he had studied at university, to work at JAC Connect (and later IPort).
- That accountant told IBAC that when Jamie Li left Iport, she dealt directly with Mr Petrone to confirm how Iport should invoice Company A. She said 'when the invoices were done, I had to take the invoices to Carmine to check...he would go through [them] and half the time he would say "cut this" and "cut that"... he'd say "that's too high" or "you need to take that off"'.
- Person 1 stated that he was not aware of the work JAC Connect was doing even though it was Company A's contractor.

In addition, an examination of Mr Petrone's emails did not reveal any evidence that he instructed JAC Connect or Iport via Company A.

During the period in question there were no Places Victoria policies directed at the management of subcontractors; however, the usual practice is for the relevant contractor to manage and task subcontractors. The only matters on which Places Victoria liaises directly with subcontractors are in areas such as on-site occupational health and safety.

3 Allegations against Carmine Petrone

3.3. Failure to follow procurement processes

The investigation established that Mr Petrone failed to comply with Places Victoria policies and procedures around procurement:

- Mr Petrone raised purchase orders after work was done for Places Victoria and invoices had been generated by contractors, consultants and others. This is contrary to good practice and creates unacceptable corruption risks. Raising purchase orders before invoices are received allows those invoices to be checked against purchase orders to confirm the right goods and services have been provided and purchased with the appropriate approvals.
- Mr Petrone directed JAC Connect, Company A and other contractors and subcontractors to limit invoices to \$50,000, the limit of Mr Petrone's financial delegation. One contractor who gave evidence in a private examination stated that Mr Petrone made it clear that 'the maximum we could invoice was, if the purchase orders were issued, up to \$50,000 ex GST'. This contravenes Places Victoria's instrument of financial delegation which expressly states that transactions or approvals must not be split to fall within delegation levels.
- Mr Petrone requested work, approved that work, created purchase orders and approved the payment of invoices. Mr Petrone's ability to control so many elements of the procurement process unsatisfactorily exposed Places Victoria to substantial corruption risks. Mr Petrone approved expenditure that resulted in a financial benefit for a family member. This contravenes Places Victoria's instrument of financial delegation and conflict of interest policy.
- Key contractors involved in the Fibre to the Home project did not enter into formal contracts. Company A commenced work for Places Victoria in 2009 but did not receive a contract from Places Victoria until 2012. Person 1 said he 'asked many times, "Where is the contract?", and they kept telling me that it was "with the lawyers". That was Mr Petrone, who told me that.' It was not clear why contracts were either not entered into or were not entered into in a timely manner, however the commercial and corruption risks this posed to Places Victoria were both real and unacceptable.

Mr Petrone also had an unorthodox involvement in how JAC Connect, Iport and Company A invoiced Places Victoria. He directed these companies to send him all invoices for approval before they were forwarded to Places Victoria for payment. Jamie Li gave evidence that Mr Petrone gave him advice on how to invoice (for example, how to charge for project management services and what could and could not be claimed from Places Victoria) and would always check those invoices. Jamie Li said '[Mr Petrone] always wanted to meet. It was very rarely things put in email, et cetera [sic]. He just said, "No, no, come and meet me. I'll quickly have a look through [the invoices] and then you can just send them off"'.

Mr Petrone also provided JAC Connect, Iport and Company A with information about approved invoices on an excel spreadsheet to allow them to raise the relevant invoices.

This is clearly contrary to accepted procurement practice in any public sector agency, where the person approving the invoices on behalf of the agency must be completely independent of a contractor's invoicing arrangements.

3.4. Inflation of invoices

An allegation was made to Places Victoria prior to the commencement of IBAC's investigation, indicating that some rates they were charged exceeded those outlined in Company A's 2009 tender submission. According to the allegation, Mr Petrone had advised Company A to increase its rates (although the revised charges were estimated by some Company A personnel to be on a par with the industry average).

In private examinations both Persons 1 and 2 denied that they were directed by Mr Petrone to inflate previously quoted prices in their tender submission. They stated that their prices fluctuated in line with costs. This allegation was therefore not able to be substantiated on the available evidence.

4 Adequacy of systems and controls at Places Victoria

4 Adequacy of systems and controls at Places Victoria

In the course of this investigation, IBAC identified a number of Places Victoria organisational or systemic corruption vulnerabilities that contributed to Mr Petrone's conduct going undetected.

4.1. Failure to comply with conflict of interest framework

Mr Petrone failed to attend mandatory induction training when he joined Places Victoria. That training covers procurement and conflicts of interest. He also failed to attend subsequent sessions on governance and compliance, as well as probity.

Mr Petrone had significant conflicts of interest that he failed to declare. This was in breach of the Places Victoria policy. These conflicts of interest included:

- creating business structures and legal entities that delivered and managed the delivery of public sector projects
- devising a business structure that would essentially obscure familial connections to contractors
- not declaring familial connections so that any potential conflicts of interest could be monitored and managed.

4.2. Vulnerabilities in procurement processes

Procurement policies and procedures were systemically circumvented and red flags failed to prompt an effective response within Places Victoria for at least four years. Red flags included:

- purchase orders created after work was performed and invoiced
- manipulation of invoices to less than \$50,000 so they did not exceed Mr Petrone's financial delegation
- invoicing irregularities, including consecutive invoice numbers, identical invoice dates and similar monetary amounts (around \$50,000)
- failure to segregate duties, with Mr Petrone exercising excessive control over multiple stages of the procurement process.

The investigation also identified poor contract management practices. It was not until 2013 that Places Victoria became aware that there were no contracts in place with key suppliers to the Fibre to the Home project, and that there were inadequate controls over the project's expenditure.

4.3. Insufficient control over subcontracting arrangements

The investigation found there was a lack of control around subcontracting arrangements:

- At the direction of Mr Petrone, Company A put in place subcontracting arrangements that exposed Places Victoria to commercial and corruption risks. JAC Connect had no experience in the installation of fibre network infrastructure before working on the Fibre to the Home project. Indeed, it had no other clients and was established solely to work on that project.
- Contractors and subcontractors commenced work with Places Victoria without any induction to relevant policies and procedures, codes of conduct or advice on how to report suspicions of misconduct or corruption. (One contractor told IBAC there was talk among contractors on the Fibre to the Home project that Mr Petrone was related to Jamie Li, in context of the amount of work JAC Connect was getting, despite its lack of experience. However, none of the contractors reported their concerns to Places Victoria.)

4.4. Failure to comply with information management policies

The Places Victoria records management policy states that management and control of its records must comply with the requirements and standards articulated in the *Public Records Act 1973*. The Victorian Public Records Office states that public records should only be stored in a cloud environment capable of complying with all relevant Victorian legislation and policy directives, including those surrounding security and auditing of records.

Numerous witnesses gave evidence that the Fibre to the Home project team used private email account and drives Gmail and Google Docs, rather than official Places Victoria systems. The reasons given for this included the need to share documents with contractors (such as booking sheets for installation works) and the desire for certain Places Victoria employees to communicate privately (for example, an employee of Places Victoria who reported to Mr Petrone said that he privately emailed Mr Petrone about issues such as contractor and employee performance). There was also evidence that Mr Petrone strongly discouraged contractors (including Company A) from communicating via his official Places Victoria email address.

The use of Gmail and Google Docs for official business was inconsistent with standards set by the Public Records Office Victoria pursuant to the Public Records Act as Google's terms of service state:

When you upload, submit, store, send or receive content to or through our Services, you give Google (and those we work with) a worldwide license to use, host, store, reproduce, modify, create derivative works (such as those resulting from translations, adaptations or other changes we make so that your content works better with our Services), communicate, publish, publicly perform, publicly display and distribute such content.

Had internal audits been conducted by or for Places Victoria, they may have detected at least some instances of inappropriate use of private applications for official business.

4.5. Inadequate oversight of Mr Petrone

During his time with Places Victoria, Mr Petrone reported to the CEO or a general manager. In effect, he worked in a highly autonomous manner without any real oversight or supervision. He also worked in a way that was inconsistent with usual public sector processes. Places Victoria appears to have been operating as a 'high-pressure environment that values results', possibly over process. Mr Petrone was rewarded for 'getting things done', receiving corporate and performance bonuses of more than \$88,000 over a five-year period.

The autonomous way in which Mr Petrone worked was reflected in his approach to recruitment. One contractor, who had previously worked with Mr Petrone at another organisation, told IBAC that Mr Petrone approached him to work on the Fibre to the Home project as a contractor and then arranged for him to be employed by Places Victoria. His recruitment interview was conducted by Mr Petrone alone. Places Victoria advised that it is contrary to Places Victoria policy for one person to conduct an interview with a job applicant, but there is no indication that Mr Petrone's failure to comply with the policy was detected.

Mr Petrone tended to manage staff and contractors by way of 'silos' which avoided cooperation and consultation. This provided limited opportunities for his conduct to be internally detected and managed by others. In a private examination, a subordinate of Mr Petrone said 'it turned out, as time went by, that Carmine was very careful about keeping everybody compartmentalised so that nobody actually knew everything about what anyone else was doing'. Such behaviours create well recognised corruption risks, which is why it is important that public sector agencies develop and maintain robust policies and procedures for preventing misconduct and corruption.

4.6. Inadequate recruitment screening

When recruiting Mr Petrone, Places Victoria failed to identify that he had been dismissed from a previous (private sector) employer for serious misconduct. IBAC and the Victorian Ombudsman have previously raised the need for public sector agencies to strengthen their recruitment and employment systems and practices. For example, a more robust process that requires prospective employees to complete a statutory declaration in relation to prior work history – including whether they have ever been subject of an investigation for a criminal or disciplinary matter – would mitigate risks associated with recruitment.

5 Conclusion and recommendations

5 Conclusions and recommendations

5.1. Conclusion

IBAC's investigation found the majority of allegations against Mr Petrone were substantiated.

Mr Petrone was instrumental in the setting up of JAC Connect and its engagement as subcontractors by Company A. In doing so, Mr Petrone played a critical role in the Li family obtaining a large financial advantage (over \$8 million in subcontracts awarded to JAC Connect and Iport).

This advantage was obtained in circumstances where Mr Petrone was fully aware that JAC Connect staff were not qualified or experienced to perform the work involved.

Furthermore, the investigation established:

- Mr Petrone failed to declare his familial connection with JAC Connect and Iport.
- Mr Petrone was directly and inappropriately involved in the management of JAC Connect and Iport, including their invoicing.
- Mr Petrone failed to follow Places Victoria policies in a range of areas including procurement, declaration of conflicts of interest, information management, and recruitment.
- During the period in question, Places Victoria did not provide adequate guidance by way of policies and procedures. As a result, opportunities internally to detect and correct Mr Petrone's management of the Fibre to the Home project were missed.

Mr Petrone's conduct was inconsistent with the standards expected of a public servant as enshrined in the Code of Conduct. He failed to declare or manage his clear conflict of interest, and failed to act impartially as he used his power to provide a benefit to his family.

After due consideration of the available evidence, IBAC considered it was insufficient to substantiate allegations which might amount to criminal behaviour on the part of Mr Petrone.

5.2. Recommendations

Pursuant to section 159(1) of the IBAC Act, IBAC made the recommendations outlined below.

Recommendation 1

Places Victoria review its policies and procedures to prevent the identified corruption vulnerabilities and to ensure:

- appropriate due diligence processes in relation to establishing the bonafides of new and existing contractors
- induction and training for new contractors and subcontractors, to ensure they are aware of their obligations including those relating to public sector values, codes of conduct and all relevant policies
- recruitment processes are robust, including appropriate security vetting processes for employees prior to recruitment and during the course of employment (for example, consideration could be given to requiring prospective employees to complete a statutory declaration in relation to prior work history, including whether they have ever been the subject of an investigation for a criminal or disciplinary matter)
- systemic vulnerabilities identified through this investigation are addressed, including:
 - corruption risks associated with the exercise of procurement functions, such as persons 'signing off' numerous invoices just below their delegation threshold to the same contractors (contract splitting)
 - contract management systems that ensure contract terms are enforced, progress through the contract is monitored, and decisions or variations are documented to avoid circumstances such as the use of colluding contractors and subcontractors
 - information security including the use of external platforms for document storage and management, and personal emails to transact official business
- there is a robust conflict of interest framework in place and that employees and contractors fully understand their obligations regarding declaration and management of conflicts of interest consistent with public sector standards.

Recommendation 2

Places Victoria report back to IBAC on action taken on Recommendation 1 by August 2016.

In July 2016, Places Victoria provided a written response to Recommendation 1. Places Victoria advised it was taking the following action:

- employee and internal contractor attendance at induction training will be enforced
- employees will be required to complete a statutory declaration stating, inter alia, that they have never been, and are not now, the subject of an inquiry or investigation by a public sector department or agency, a regulatory or consumer protection agency, a current or previous employer, or a professional association
- a fraud and corruption audit will be conducted of 2014/15 procurement data
- a new Project Information Management System has been introduced to highlight deficiencies in project delivery and enhance the transparency of projects for senior management.

Places Victoria indicated it considered its current arrangements around information security adequate and does not believe further action is needed to ensure employees only use official systems. It also advised it believes its conflict of interest framework is sufficient. There was no indication that it intends to strengthen the conflict of interest framework for contractors, or training of non-internal contractors to ensure they are aware of their obligations (and the obligations of employees) around public sector values, codes of conduct and relevant policies.

The Places Victoria response to these recommendations is provided at Appendix A.

Places Victoria also provided a response to this report, as part of the natural justice process. This response is provided at Appendix C.

Recommendation 3

The Victorian Public Sector Commission consider ways to inform contractors to the public sector of their obligations to comply with public sector values, codes of conduct and integrity standards.

The Victorian Public Sector Commission has advised, in response to Recommendation 3, that the Victorian public sector code of conduct applies to contractors who perform a public sector function. Further, that since 2014, the obligation for certain contractors to comply with the code has been formalised in their contract. The key points of the VPSC's response are outlined at Appendix B.

Appendix A: Places Victoria response to IBAC recommendation

IBAC comment/requirement	Places Victoria's response
<p><i>That Places Victoria review its policies and procedures to prevent the aforementioned corruption vulnerabilities and to ensure:</i></p>	
<p>1 • <i>appropriate due diligence processes in relation to establishing the bonafides of new and existing contractors</i></p>	<p>See response to number 3 below.</p>
<p>2 • <i>induction and training for new contractors and subcontractors, to ensure they are aware of their obligations including those relating to public sector values, codes of conduct and all relevant policies</i></p>	<p>All employees and internal contractors undertake an induction program. The program includes a presentation by Places Victoria's internal lawyers on:</p> <ul style="list-style-type: none"> • public sector values and codes of conduct • employee and contractor legal obligations • procurement, gifts and hospitality policies • avoiding conflicts of interest, and properly managing those that can't be avoided. <p>This presentation has been a long-standing element of the induction program, and all new starters have been required to attend. The report has, however, highlighted that it was possible for a new starter to avoid attendance. Places Victoria now makes clear to new starters that attendance is mandatory. The requirement to attend is enforced.</p>
<p>3 • <i>recruitment processes are robust, including appropriate security vetting processes for employees prior to recruitment and during the course of employment (for example, consideration could be given to requiring prospective employees to complete a statutory declaration in relation to prior work history, including whether they have ever been the subject of an investigation for a criminal or disciplinary matter)</i></p>	<p>Pre-employment vetting includes reference checks, psychometric assessments, medical disclosure and internet searching.</p> <p>The interview process requires the development of a dedicated interview guide that specifically addresses the key competencies required for each role, together with standard questions to assess cultural fit and self-awareness. A member of Places Victoria's Human Relations team takes the lead in developing these guides and also sits in with the hiring manager on each interview. The HR team have all received advanced training in interview techniques.</p> <p>Further, the recruitment process for each role is typically completed across three interviews, with the final interview being conducted by the CEO, only after all necessary due diligence is undertaken.</p> <p>For some time, all prospective employees have been required to sign a declaration in the following terms, before an offer of employment is made:</p> <ul style="list-style-type: none"> • they have not been declared bankrupt • they have not been an office-bearer in a company that has been insolvent • they haven't been disqualified from acting as a director, or found guilty of an offence in relation to corporate or regulatory matters • they aren't a party to any proceedings anywhere (including in a professional/registration/licensing body) that might cause a material interference with public duties • they have not been found guilty of a criminal offence • they have never been, and are not now subject of any inquiry or investigation by: <ul style="list-style-type: none"> o a department or agency of the Commonwealth or any State or Territory of Australia o a professional association o a regulatory agency o a current or a previous employer o a consumer protection organisation.

IBAC comment/requirement	Places Victoria's reponse
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Since receiving the report, Places Victoria has introduced a requirement that this information be verified by statutory declaration under the Evidence Act.

As for vetting during the course of a staff member's employment, you are referred to the response to point 7 below. It describes the continuing requirement that, as the personal circumstances of a staff member change from those they have declared, they must lodge a fresh declaration about the above matters.

That the systemic vulnerabilities identified through this investigation are addressed, including:

- 4 • *corruption risks associated with the exercise of procurement functions, such as persons signing off numerous invoices just below their delegation threshold to the same contractors (contract splitting)*

The practice of 'splitting' contracts is expressly prohibited by Places Victoria's financial delegations.

The majority of staff in the delivery Divisions are designated 'Managers'. The current delegations for staff at this level are \$25k for raising a purchase order and \$1k for awarding a contract. Managers have no authority to approve payment of related invoices.

The corresponding figures for 'Senior Managers' are \$50k, \$1k and \$1k (for payment of invoices) and, for staff who are designated 'Directors', \$150k, \$25k and \$1k. These limits ensure that commitments and expenditures are strictly controlled.

In addition to the limits on delegated financial authority, internal financial delegations require two signatures for, among other things, letting contracts and approving expenditures.

Random audits against these requirements are conducted by the General Manager, Corporate Services, who is Places Victoria's Chief Finance and Accounting Officer.

As the result of receiving the report, Places Victoria has instructed its internal auditors to carry out a fraud and corruption audit. The audit will be done later this year. The audit will include data analysis covering the procurement data for 2014/15 year.

The recommendations in the report refer to existing contractors. Contractors, whether new or existing, have no authority at all to commit Places Victoria to expenditure or to authorise any payments.

- 5 • *contract management systems that ensure contract terms are enforced, progress through the contract is monitored, and decisions or variations are documented to avoid circumstances, such as the use of colluding contractors and subcontractors*

Contract management processes and related transparency are a key focus for the CEO and all General Managers.

The progressive introduction, commencing today, of Places Victoria's *Project Information Management System* (PIMS) will give delivery staff an important contract management tool, and will highlight deficiencies (both timing and financial) in delivery. PIMS will also provide enhanced project transparency for senior management.

Appendix A: Places Victoria response to IBAC recommendation

IBAC comment/requirement	Places Victoria's response
<p>6 • <i>information security including the use of external platforms for document storage and management, and personal emails to transact official business</i></p>	<p>Places Victoria's internal policies require that all key business-related correspondence, emails and agreements are registered in the organisation's document management system, TRIM.</p> <p>At the compulsory induction session presented by the internal legal team, new employees are informed of Places Victoria's statutory obligations relating to document filing and retention, and what Places Victoria requires of employees dealing with its business records.</p> <p>All employees and contractors are provided a Places Victoria domain email address with no capacity to vary this. All emails to Places Victoria domain addresses are backed up in line with Places Victoria policy on backup and storage of corporate information.</p>
<p>7 <i>There is a robust conflict of interest framework in place and that employees and contractors fully understand their obligations regarding declaration and management of conflicts of interest consistent with public sector standards.</i></p>	<p>Places Victoria has a robust conflict of interest policy and procedures. All staff have ready access to these policies and procedures on the intranet.</p> <p>Avoiding conflicts of interest, and proper management of those that can't be avoided, forms a key component of the legal team's presentation at the new starters' induction program.</p> <p>Staff are then reminded of their obligations regarding conflicts of interest in emails that are sent to all staff by the CEO at least twice each year.</p> <p>For some time, Places Victoria's conflicts of interest policy has required:</p> <ul style="list-style-type: none"> • all new staff to complete a declaration of private interests on commencement of employment • members of the Leadership Team to update their declaration annually • each member of staff to update their declaration whenever their personal circumstances change. Staff are prompted to do this at the start of every financial year. <p>Places Victoria believes that, by requiring all staff to update their declaration whenever their personal circumstances change, it is imposing a higher disclosure standard than it is generally applicable in the public sector in Victoria.</p> <p>Any changes or updates to the policy are presented to all staff at the monthly staff meeting closest to the date of implementation, having first been presented to the Leadership Team for endorsement, and the Board for approval.</p>

Appendix B: Victorian Public Sector Commission response to IBAC recommendations

The Victorian Public Sector Commission (VPSC) advised the following in response to the section 159(1) recommendation made by IBAC:

- The code of conduct (section 61) is based on the public sector values (section 7). Both apply to public officials under the *Public Administration Act 2004*. The code also extends to contractors who are performing a public sector function, ie they:
 - o supervise public sector employees
 - o undertake work that is of a similar nature to the work undertaken by public sector employees at a premise or location generally regarded as a public sector workplace, or
 - o use or have access to public sector resources or information that are not normally accessible or available to the public (clause 1.4).
- Since 2014, at the VPSC's request, the obligation for certain contractors to comply with the code has been formalised in their contract. The Victorian Government Purchasing Board's standard form contracts for the provision of services relating to 1) purchase orders, 2) single purchases and 3) sole entity purchases included relevant clauses.¹ Departments use the standard form contracts as a guide to drafting their own contracts. In addition, the mandatory state purchase contract for staffing services requires master vendors to inform on-hire staff of their obligations under the code.
- The VPSC has published a *Guidance Note for Managers Engaging Contractors* and a *Guidance Note on Integrity in Engaging Contractors*. Both are available on the VPSC website.

¹ <http://www.procurement.vic.gov.au/Buyers/Market-Approach-Templates/Contracts>

Appendix C: Places Victoria response to this report

Places Victoria advised the following as part of the natural justice process:

The new management of Places Victoria identified matters of substantial concern in the administration and oversight of the Fibre to the Home program. Following its internal investigations, Places Victoria alerted the Independent Broad-based Anti-corruption Commission (IBAC), the Victorian Auditor-General's Office and the then Minister for Finance of these concerns in April 2014.

Places Victoria has assisted IBAC throughout Operation Exmouth and acknowledges the findings and recommendations made in this report.

Since Places Victoria identified these matters, the organisation has undertaken significant review and reform of its policies and procedures. Internal and external audits have been conducted, including on key business processes such as Financial Management Compliance, Financial Delegation and Human Resource Management, to ensure that the requirements of these critical operational practices and processes are understood and observed by all staff and contractors.

Places Victoria has made important changes to address the shortcomings it had identified, and to implement IBAC's recommendations. The manner in which Places Victoria's procurement, project management, information security and recruitment is now conducted represents a significant improvement on the practices identified by this investigation.

Places Victoria will now closely review the final report's findings and recommendations and where required will make further enhancements to its policies, practices and procedures in line with the recommendations.

Since 2014 Places Victoria has made significant investment in improving its policies and practices as well as implementing extensive cultural reform across the organisation. This commitment is an ongoing focus, promoting constant improvement to better protect Places Victoria from conduct such as identified in the report.

Appendix D: Natural justice requirements and responses

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

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

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

To the extent that public bodies and persons are identified in the report and are the subject of adverse findings², comment or opinion³, they have been given a reasonable opportunity to respond to same by being shown in draft material parts relating to them. These responses were given due consideration in finalising this report. For his part, Mr Petrone elected to make no response.

In accordance with sections 162(2) and (3) respectively of the IBAC Act, responses that were received – to the extent they are of the kind provided for in the IBAC Act and did not result in changes being made to this report – are set out in Appendix C.

² In relation to public bodies.

³ In relation to persons.

Appendix E: Previous IBAC special reports

Publications date	Report title
September 2013	Annual report 2012/13
November 2013	Special report concerning certain operations in 2013
February 2014	Special report concerning allegations about the conduct of Sir Ken Jones QPM in relation to his dealings with certain confidential Victoria Police information
April 2014	Special report following IBAC's first year of being fully operational
October 2014	Operation Fitzroy: an investigation into the conduct of former employees of the Department of Transport/Public Transport Victoria, Barry John Wells and Hoe Ghee (Albert) Ooi, and others
October 2014	Annual report 2013/14
August 2015	Special report concerning Police Oversight
September 2015	Annual report 2014/15
April 2016	Operation Ord: An investigation into the conduct of officers at the Department of Education and Early Childhood Development
May 2016	Operation Darby: An investigation of Mr Nassir Bare's complaint against Victoria Police
September 2016	Annual report 2015/16

