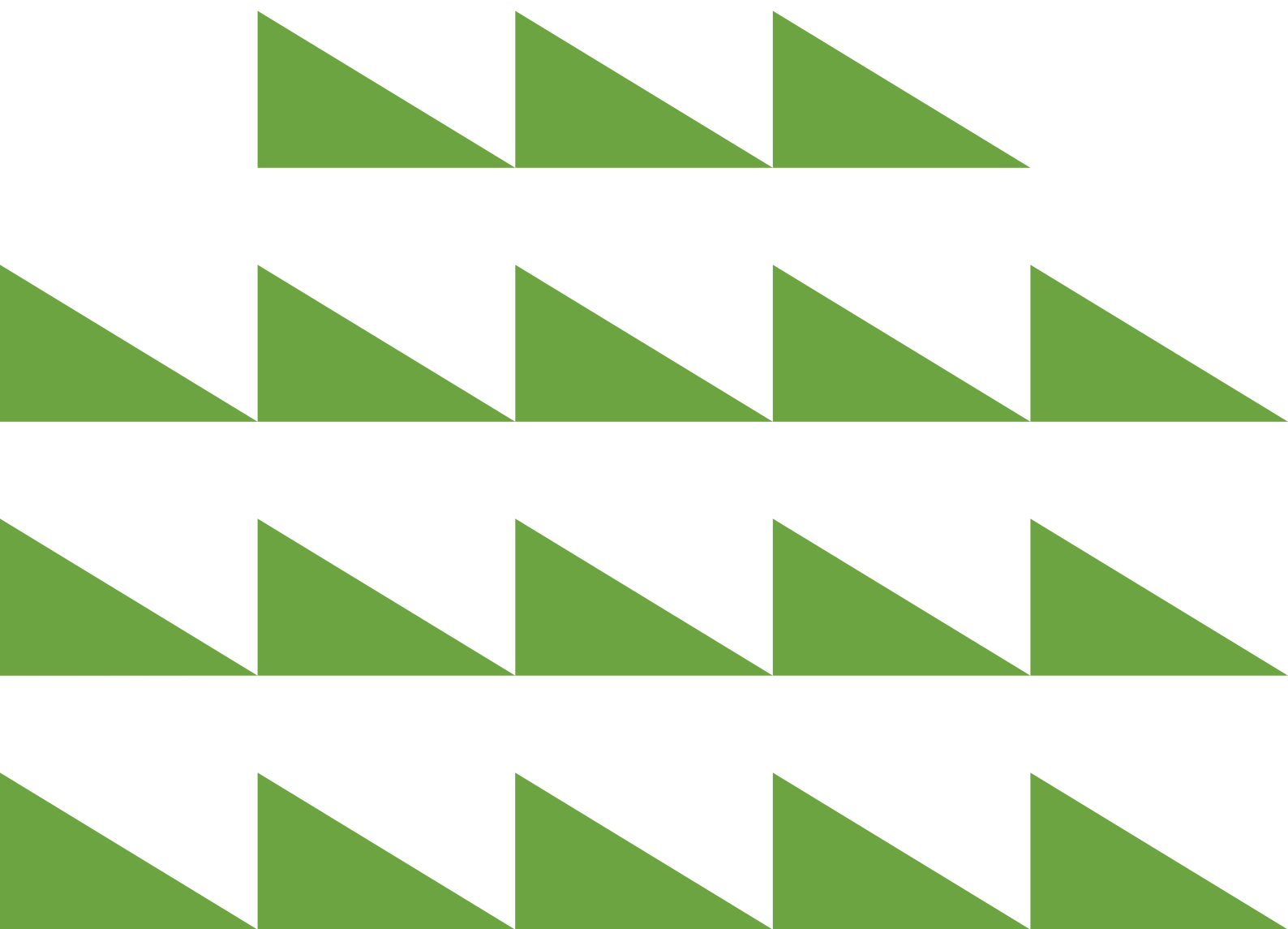


Corruption and misconduct risks associated with employment practices in the Victorian public sector

August 2018



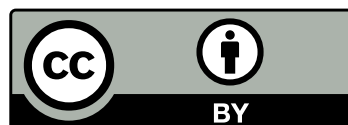
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Definitions

	Explanation
DPFC	Dame Phyllis Frost Centre
DEECD	Department of Education and Early Childhood Development
HR	Human Resources
ICAC	NSW Independent Commission Against Corruption
ICAC/OPI	Independent Commissioner Against Corruption South Australia/ Office for Public Integrity
LGI	Local Government Inspectorate
LSC	Leading senior constable
LTQAP	Learning Technologies Quality Assurance Project
MFESB	Metropolitan Fire and Emergency Services Board
PRSB	Police Registration and Service Board
TAC	Transport Accident Commission
TAFE	Technical and Further Education
VAGO	Victorian Auditor-General's Office
VBC	Victorian Building Commission
VCGLR	Victorian Commission for Gambling and Liquor Regulation
VO	Victorian Ombudsman
VPS	Victorian Public Service
VPSC	Victorian Public Sector Commission
VPS code of conduct	<i>Code of conduct for Victorian public sector employees</i>

1 Overview

The Victorian public sector is large and diverse, with movement of people in and around the sector through a variety of employment arrangements. Over the last decade or so, there has been an increased reliance by public sector agencies on alternative forms of employment, including greater use of contractors and consultants, and engagement of personnel through recruitment agencies.

Employment-related activity in the public sector, particularly recruitment, is routine and constant. The principle of merit-based and competitive recruitment processes is well established. Under the *Public Administration Act 2004*, public agency heads are required to ensure employment decisions are merit-based. Under the *Code of conduct for Victorian public sector employees* (VPS code of conduct), public officers are expected to make decisions about employment based on impartiality, rather than favouritism, bias or self-interest. They are also required to use their powers responsibly, and not to provide a private benefit to themselves, their family, friends, or associates.

For the most part, employment activity is well managed and conducted in accordance with agency or public sector-wide standards. However, if employment practices are corrupted, the potential adverse consequences are significant.

Employment practices in the Victorian public sector are clearly vulnerable to corruption and misconduct risks. These risks have been highlighted by IBAC investigations and research, and by other integrity agencies including the Victorian Ombudsman (VO). Risks include recruitment compromised by nepotism and poor management of conflicts of interest, and by ‘recycling’ of employees with problematic discipline and criminal histories. The unwitting recruitment of a person with a discipline or criminal history that should preclude them from employment, for example, can place agencies at risk of the misuse of public funds, as well as substantially damage agency reputations.

The findings of this report are based on consultations with relevant Victorian public sector agencies, IBAC research, investigations and data holdings and other materials. The report highlights the corruption vulnerabilities associated with employment practices across the Victorian public sector and alerts public sector agencies to opportunities to strengthen their systems and practices to mitigate those vulnerabilities. It is noted that agencies need to tailor corruption prevention and detection strategies to their operating environments, to ensure the strategies they adopt are effective and proportionate.

IBAC has consulted with the Victorian Public Sector Commission (VPSC) on the findings of this research report, and understands that the Commission is examining ways in which the vulnerabilities identified can be addressed.

1.1 Key findings

- **Employment practices in the public sector are vulnerable to corruption at different stages of the employment life cycle**, from recruitment through to an employee leaving the sector. Public sector agencies need to be aware of these risks and consider how they can strengthen their systems and practices to address them.
- **Inadequate pre-employment screening** (such as failing to require applicants to provide information about qualifications, work history, discipline and criminal histories, and conflicts of interest) can place a public sector agency at greater risk of corruption. There have been instances where agencies have pre-employment processes in place, but have not consistently implemented them.
- **Recruitment is vulnerable to compromise by nepotism, favouritism and 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.
- **There may be corruption risks associated with the use of recruitment agencies**, ranging from the circumvention of merit-based selection and probity processes, through to complex schemes like ‘double dipping’ (involving public sector employees or contractors establishing a company and then using a recruitment agency to source contractors through that company).
- **‘Recycling’ of employees with problematic discipline or criminal histories** throughout the public sector is a significant corruption risk.
- **Where complaints are made about public sector employees and action is taken, ongoing oversight and follow-up does not always occur**, which risks misconduct or corrupt conduct continuing.
- **Conflicts of interest can arise when an employee leaves the public sector and takes up a position in the private sector**, directly utilising the knowledge and relationships acquired in the public sector. Certain positions, particularly those involving interaction with the private sector, present a greater risk in relation to such conflicts.

The Victorian public sector

The public sector is a major employer in Victoria. As at 30 June 2017, more than 297,000¹ and 43,000² people are employed in state government and local government respectively.

These figures predominantly comprise full-time and part-time ongoing positions but also include contractors, consultants and other forms of non-permanent, temporary and fixed-term employees who also work across the public sector.

The annual separation rate for various sectors ranges from 3.3 per cent (police and emergency services) to 10.2 per cent (creative industries, finance and transport).³ These separation rates mean that in 2016/17 around 38,000 (new, non-casual) positions were filled across the Victorian state government sector.

More than one in six Victorian public sector employees are engaged on fixed-term contracts. The proportion of fixed-term employment in the Victorian public sector increased from 16.4 per cent to 19.1 per cent in the five-year period from 2012.⁴

1.2 Methodology

This report examines corruption and misconduct risks associated with public sector employment practices during key stages of the employment life cycle, namely recruitment, in the course of employment and after an employee leaves a public sector agency.

This report is based on:

- consultations with more than 20 Victorian public sector agencies, including the VO, the VPSC and the Victorian Auditor-General's Office (VAGO)
- IBAC research, investigations and other data holdings
- open source materials, including research reports, academic literature and other materials.

¹ Victorian Public Sector Commission, *State of the public sector in Victoria 2016-2017*, p 13.

² Victorian Auditor-General's Office, *Local Government and Economic Development*, March 2018, p 21.

³ Victorian Public Sector Commission, *State of the public sector in Victoria 2016-2017*, p 21.

⁴ Victorian Public Sector Commission, *State of the public sector in Victoria 2016-2017*, p 27.

2 Context

2.1 Employment in the public sector in Victoria

According to the VPSC, as at 30 June 2017, the Victorian public sector comprised:

- seven state government departments
- 13 administrative offices
- 23 special bodies (designated as public service employers by specific legislative reference)
- 1805 employing public entities (including government schools, technical and further education (TAFE) and other education institutions, public healthcare organisations, water and land management entities, police and emergency services, and other publicly accountable organisations)
- 1763 boards that employ people and 1641 non-employing public entities (typically boards of management comprising volunteers, including most cemetery trusts, committees that manage crown land and advisory bodies).

There are approximately 297,000 employees in the Victorian public sector, with about one-third (30 per cent) living and working outside metropolitan Melbourne.⁵

In addition, there are 79 Victorian local councils employing more than 43,000 people. Local government provides a wide range of public services and maintains considerable public infrastructure. The 79 councils, comprising 31 metropolitan and 48 rural councils, collectively manage approximately \$91 billion of community assets and infrastructure, and spend around \$8 billion on the provision of services annually.⁶

Employees in the Victorian public sector work on a full-time, part-time, fixed-term, temporary or casual basis under the Public Administration Act. Public sector employees generally fall into one of two categories: non-executive public sector employees (more than 230,000) and executive officers (more than 2000) who are employed under contracts.⁷ There are a smaller number of people employed as cadets, trainees and graduates.⁸

A growing proportion of Victorian public sector employees – more than one in six – are on fixed-term contracts. All employees are bound by the VPS code of conduct, and contractors must abide by the Victorian Government Purchasing Board Suppliers' Code of Conduct.⁹

The Department of Treasury and Finance manages the state purchase contract for staffing services, which includes the master vendor agreement that requires labour hire staff to comply with the VPS code of conduct. These non-ongoing, fixed-term employees may be:

- contractors/consultants (people indirectly engaged through a contracted organisation to deliver services for a public sector agency)
- contractors/consultants working directly for a public sector agency under contracts of employment
- contractors/consultants indirectly engaged through contracts with a recruitment agency to deliver services for a public sector agency
- labour hire staff
- casual hire staff.

⁵ Victorian Public Sector Commission, *State of the public sector in Victoria 2016-2017*, pp 2, 7, 3, 13 and 54.

⁶ Victorian Auditor-General's Office, *Results of 2016-17 Audits: Local Government*, pp 12 and 13.

⁷ Pursuant to Part 3, Division 5 of the Public Administration Act, p 2.

⁸ Victorian Public Sector Commission, *State of the public sector in Victoria 2016-2017*.

⁹ The Code applies to suppliers with active contracts, orders and agreements entered into prior to 1 July 2017 (and contracts, orders and agreements made post 1 July 2017).

In June 2017, the VPSC reported that since 2012 the proportion of the workforce that is employed on a fixed-term basis has increased from 16.4 per cent to 19.1 per cent. The VPSC also reported that the overall level of public sector employment had increased by 10.1 per cent and that 28.4 per cent of this growth was in fixed-term employment. The increase in fixed-term employment has been concentrated in the public health sector. At June 2017, this sector had almost 5568 more fixed-term employees than in June 2012.¹⁰

This increase of public sector employees in fixed-term roles has not been limited to Victoria. In New South Wales, there has been a significant increase in the number of people who are employed by recruitment agencies, which are hired by government agencies to provide labour or services on a short-term basis.¹¹ Between 2011/12 and 2015/16, NSW Government spending on this type of labour increased from \$503 million to \$1.1 billion.¹²

State and local government public sectors are increasingly moving to a wider variety of workplace employment arrangements to increase flexibility and cost effectiveness. This continual evolution and change in public sector workforce composition can deliver important efficiency and effectiveness benefits to the community. However, it is possible that these non-ongoing staff have less awareness of Victorian public sector values and standards compared with career public sector employees.

Recruitment is undertaken continuously within the Victorian public sector. In 2016/17, turnover rates ranged from 3.3 per cent (for the police and emergency services sector) to 10.1 per cent (for creative industries, finance and transport). In the same period, 38,378 (new, non-casual) positions were filled across the Victorian state government sector.¹³ As this report sets out, this high level of activity has the potential to create probity risks.

2.2 IBAC survey findings

Research conducted by IBAC shows public sector employees perceive recruitment and hiring processes as areas of high corruption risk.

In 2016, IBAC conducted research on perceptions of corruption.¹⁴ Employees from state and local government were surveyed. When presented with a list of potentially corrupt behaviours, 25 per cent of state government respondents and 22 per cent of local government respondents said they had observed the practice of hiring family or friends for public sector jobs circumventing the merit-based recruitment process. More than half of both groups of respondents believed the opportunity for this behaviour existed.

IBAC's 2016 findings are similar to our 2013 research findings, where respondents were asked what corruption and misconduct activities they had witnessed in their own agency. The second most commonly witnessed activity was hiring friends or family for public service jobs. Hiring one's own company, or a company belonging to close associates or relatives, to provide public services was the fourth most commonly witnessed activity.¹⁵

In 2014/15, IBAC reviewed integrity frameworks in six Victorian councils.¹⁶ The review included a staff perception survey across the participating councils. Local government employees were asked which typical local government activities presented the highest corruption risk. Three of the top four overall risks were favouritism, conflicts of interest and appointing personnel.

¹⁰ Victorian Public Sector Commission, *State of the public sector in Victoria 2016-2017*, p 27.

¹¹ The NSW Independent Commission Against Corruption has identified that although the NSW Public Service Commission has recommended that contingent labour should be engaged for longer than six months, there have been instances where contingent workers have been at the same agency for 10 years. NSW Independent Commission Against Corruption, *Strengthening employment screening practices in the NSW Public Sector*, February 2018, p 36.

¹² NSW Auditor-General's Report, *Contingent workforce: procurement and management*, 2017, p 2.

¹³ Victorian Public Sector Commission, *State of the public sector in Victoria 2016-2017*, p 21.

¹⁴ IBAC, *Perceptions of corruption: survey of Victorian state government employees and Perceptions of corruption: survey of Victorian local government employees*, September 2017. These reports are available on IBAC's website.

¹⁵ IBAC, *Perceptions of corruption in Victoria*, September 2013, p 14.

¹⁶ IBAC, *A review of integrity frameworks in six Victorian councils*, March 2015. This report is available on IBAC's website.

3 Recruitment risks

3.1 Pre-employment screening

People who work in the public sector have significant responsibilities. They develop public policy, regulate industries, issue licenses, carry out compliance functions, and deliver critical government programs and services which can include interacting with vulnerable people in the community. The character of a prospective employee and their ability to uphold public sector values is therefore very important. As identified by the VO 'employment in the public sector should not be based solely on the skills and experience of individuals but must also take into account the character and past behaviour of prospective employees'.¹⁷

Pre-employment screening is an important step to validate a candidate's qualifications and previous work experience, check for conflicts of interest and, where appropriate, review criminal records and/or disciplinary history. When these checks are either not conducted or not done properly, there is a heightened risk of employing individuals who may undermine an agency's integrity.

IBAC and VO¹⁸ investigations have identified instances where an organisation has pre-employment screening measures in place but they have not been carried out.

As part of a 2010 investigation into the issuing of infringement notices in the public transport system, the VO reviewed the personnel files of many authorised officers. This review found that some background pre-employment checks were erroneously or incompetently carried out; for example, national police checks were not routinely conducted and some police checks were conducted using the wrong birthdate.¹⁹

This issue is not isolated to Victoria. The New South Wales Independent Commission Against Corruption (ICAC)²⁰ has identified issues and risks in pre-employment screening and the Queensland Crime and Corruption Commission (CCC) also regards this issue as a key risk.²¹

Additional screening processes are available to detect potential issues and help prevent misconduct and corruption. These include bankruptcy checks, Australian Securities and Investments Commission checks, credit history checks, drug testing and psychometric screening.

The NSW ICAC recommended that public sector agencies adopt a risk-based approach to pre-employment screening, guided by the characteristics of specific roles (noting, for example, that significant risk can attach to junior roles).²²

Based on an understanding of the risks relevant to their organisations, public sector agencies should introduce job-specific, risk-based controls in recruitment processes.

CASE STUDY – OPERATION EXMOUTH PRE-EMPLOYMENT SCREENING

Commencing in June 2014, IBAC's Operation Exmouth investigated and substantiated allegations that Places Victoria employed a senior manager who dishonestly awarded contracts worth more than \$8 million for work under the Fibre to the Home project, to entities that were effectively under his direction and control.

The manager worked for a private communications company between 2000 and 2005. He was summarily dismissed from that company on the grounds of serious misconduct. This was not known to Places Victoria when they hired him in 2007.

Places Victoria failed to conduct basic pre-employment checks of the manager. They did not check his employment and/or separation status with the private communications company. In addition, there was no requirement for the employee to complete a statutory declaration or waiver allowing information to be released about his prior employment.

¹⁷ Victorian Ombudsman, *Report on issues in public sector employment*, 2013 p 7.

¹⁸ Victorian Ombudsman, *Own motion investigation into child protection – out of home care*, 2010.

¹⁹ Victorian Ombudsman, *Investigation into the issuing of infringement notices to public transport users and related matters*, December 2010.

²⁰ NSW ICAC, *Strengthening employment screening practices in the NSW public sector*, February 2018.

²¹ Qld CCC Prevention in focus, *Risks in recruitment – are you adequately vetting your staff?*, April 2018.

²² NSW Independent Commission Against Corruption, *Strengthening Employment Screening Practices in the NSW Public Sector*, February 2018, p 5.

Some organisations require a selected applicant to complete and sign a statutory declaration concerning their complaint and discipline history. This is a constructive approach, particularly if used in conjunction with waivers providing permission for former employers to provide the person's complaint history to a prospective employer.

However, it is understood that a small number of applicants will not be truthful in statutory declarations. The VO has advised it is not uncommon to discover during an investigation that an applicant has lied on their statutory declaration, stating they have no discipline history when they do. While the requirement to sign a statutory declaration will deter some applicants with a history of misconduct, completed declarations need to be promptly audited, validated and tested.

3.2 Validating credentials and work experience

IBAC's research reveals that sometimes employers are not validating the qualifications and credentials of applicants. There have been numerous cases in both the public and private sectors of individuals falsifying their resumes, claiming qualifications and work experience they do not have. In many cases, the false representations have not been detected until some time after the person has commenced working for the organisation.

Validating the credentials of an applicant is a fundamental and straightforward pre-employment screening step that should always be conducted. A number of IBAC investigations have highlighted instances where this has not occurred.

CASE STUDY – OPERATION LANSDOWNE PROBITY AND QUALIFICATIONS CHECKS

In Operation Lansdowne, IBAC identified that in mid-2014 the then CEO of V/Line wanted to quickly appoint a new General Manager, Rolling Stock. He believed person A was a suitable appointee, and they were appointed without the position being advertised.

The position description required the incumbent to have a tertiary degree in mechanical or electrical engineering, and the letter of offer was conditional on successful completion of probity checks of person A's qualifications and criminal history. Person A did not hold a relevant tertiary degree and he commenced at V/Line before probity checks were conducted.

V/Line's human resources (HR) area pursued the probity checks on a number of occasions with person A, in writing and in person, to no avail. According to the General Manager, People Services, the CEO then directed HR to stop pursuing the matter.

IBAC also identified concerns with person A's conduct, particularly in relation to his disregard of proper processes in the engagement of two former colleagues.

IBAC found that the CEO set a poor example to other senior managers regarding the importance of complying with recruitment policies and procedures.

CASE STUDY – OPERATION NEPEAN FAILURE TO CONDUCT PRE-EMPLOYMENT QUALIFICATIONS SCREENING

Commencing in 2014, IBAC's Operation Nepean investigated corruption allegations against the then facilities manager at Dame Phyllis Frost Centre (DPFC), a Victorian prison.

One allegation was that the facilities manager helped his son (person B) get a job at DPFC. Person B applied for a position that required electrical qualifications, which he did not have. He said he intended to re-sit and complete the 'A' grade electrical examination, but did not do so.

Both the facilities manager and his son failed to keep their business service manager apprised of the situation. As an interim measure, the facilities manager said he would organise a qualified electrician to sign off on his son's electrical work, however this did not happen. A diligent manager would be expected to ensure their staff had the appropriate qualifications to perform their duties. This is especially the case in circumstances where unapproved and possibly unsafe work could pose serious risks to the health of staff, prisoners and visitors to DPFC.

At one stage the facilities manager approached a qualified 'A' grade electrician, advised him that his son had done an electrical apprenticeship but not completed his 'A' grade qualification, and sought a compliance certificate in return for payment of \$50 plus another \$50 for the cost of the certificate. The qualified electrician provided the certificate but did not sight the work.

In due course, an electrical inspection company prepared a report on person B's work and identified a number of defects.

4 Employment-related risks

4.1 Nepotism, favouritism and conflicts of interest by current staff

The principle of merit-based and competitive recruitment processes is well established within the Victorian public sector. Under the Public Administration Act, public agency heads are required to ensure employment decisions are merit based. Under the VPS code of conduct, public officers are expected to make decisions about employment based on impartiality, rather than favouritism, bias or self-interest. They are also required to use their powers responsibly, and not to provide a private benefit to themselves, their family, friends or associates.

However, failure to comply with merit-based processes is not uncommon in the public sector. Both IBAC and the VO have identified numerous instances where proper recruitment processes have been corrupted. The Operation Nepean case study (right) outlines how a manager with a conflict of interest manipulated key components of the selection process to secure employment for his son.

Blatant disregard for a proper recruitment process is difficult to prevent, but all members of selection panels should be required to complete conflict of interest declarations. If conflicts are identified, a process for effectively managing that conflict must be put in place, which could include the person with the conflict of interest being removed from the recruitment process.

Other steps can be taken to ensure the recruitment process is independent and competitive when an employee's family member or friend applies for a position, including having an independent officer (such as an HR officer) participate on the selection panel and undertake referee checks.

CASE STUDY – OPERATION NEPEAN NEPOTISM

In an obvious conflict of interest, the facilities manager at Dame Phyllis Frost Centre exerted his influence in relation to the recruitment of his son, person B, by:

- requesting a person with electrical qualifications be recruited, when funding was sought for additional staff
- suggesting to staff that the facilities department 'might have to get a sparky or a plumber' to advantage his son (who had started but not completed an electrical apprenticeship after failing the 'A' grade electrical examination)
- drafting two questions for his son's interview specifically related to the electrical trade, giving his son an advantage.

The facilities manager knew that the position would report directly to him but did nothing to address the conflict of interest, nor did the business service manager to whom the facilities manager reported at the time.

CASE STUDY – OPERATION LANSDOWNE FAVOURITISM

In Operation Lansdowne, IBAC identified an environment within V/Line between 2013 and 2016 where recruitment processes were disregarded, as the CEO and other senior officers sought to bring people they knew into the organisation without due process.

One example was the recruitment of person A as a general manager. Contrary to V/Line's recruitment policy, the position was not advertised and no other candidates were considered. Person A's recruitment was initiated by a senior V/Line executive. The senior executive and person A had worked together at Sydney Trains and had developed a friendship. Person A was appointed without providing evidence that he held the required qualifications and without probity checks being conducted.

Another example was the recruitment of person A's partner, as a project director. The senior executive effectively controlled the recruitment and excluded HR from the process. He failed to disclose the full extent of his friendship with person A's partner before her appointment.

4.2 Risks associated with promotion

IBAC's research has also identified that internal applicants are not always subject to the same probity rigour as external applicants. This is concerning because once within an organisation, an individual can potentially move to a high-risk position without undergoing adequate screening.

By way of example, person X (who had an undesirable work performance and discipline history) attained a position within an organisation that was considered low risk with little opportunity for corrupt activities. Because that position was considered low risk, minimal pre-recruitment screening checks were conducted. Once in the organisation, person X moved into a role considered high risk, on a temporary secondment basis. Person X was then appointed to that second position on an ongoing basis. Once in this higher risk position, person X proceeded to engage in corrupt activity.

This scenario occurred in local government (and resulted in criminal charges) and could occur in other parts of the public sector.

When hiring internally, a recruitment panel is often able to access more information than it could for an external candidate – in particular, the applicant's performance and discipline history. However, IBAC has found that panels do not always consider this information during the selection process. Internal recruitment presents the strongest challenges in public sector agencies where there is a need for specialised skills, such as police and emergency services, since these agencies will often recruit from within for many positions.

This was highlighted in IBAC's Operation Ross investigation (which resulted in a special report to Parliament in November 2016). IBAC found that Victoria Police promoted an internal applicant (a leading senior constable) who had a significant complaint history, to the rank of sergeant. At the time of his promotion, the officer had more than five times the average number of complaints of other male Victoria Police officers. Victoria Police did not consider easily accessible information about his complaint history when assessing the applicant for the role of sergeant.

IBAC's Operation Ross established that promotion boards in Victoria Police do not review all available complaint information about internal applicants. Instead, they receive a list of substantiated complaints for the previous two years.²³ This creates obvious vulnerabilities for corruption and misconduct.

IBAC is not suggesting that the leading senior constable should not have been promoted – only that it is concerning the recruitment panel did not consider the applicant's full discipline, complaint and performance history when assessing his suitability for a promotion.

IBAC OPERATION ROSS CASE STUDY – A VICTORIA POLICE PROMOTION	
	Complaint and risk history before and after promotion to sergeant
August 2011	The leading senior constable (LSC) is involved in an incident that led to his 14th complaint (allegation: duty failure, outcome: resolved)
September 2011	Ballarat Local Area Commander (inspector level) requested a risk assessment from Professional Standards Command on the LSC
October 2011	The LSC is involved in an incident that led to his 15th complaint (allegation: assault, outcome: no complaint)
September 2012	The LSC is involved in an incident that led to his 16th complaint (allegation: failure to take action, outcome: resolved)
June 2013	The LSC is promoted to sergeant at the station where he was based when all of the above complaints took place
October 2013	The now sergeant is involved in an incident that leads to his 17th complaint (allegations: aggressive behaviour, outcome: resolved)

²³ As part of Operation Ross, IBAC recommended that Victoria Police strengthen its probity processes around promotions (including ensuring all promotion boards are provided with a full complaint and compliment history for shortlisted candidates). Victoria Police has informed IBAC that it is conducting a comprehensive review that will determine processes and work towards implementing changes consistent with this recommendation.

4.3 Risks associated with using recruitment agencies

Corruption risks associated with the use of recruitment agencies have been identified in some IBAC and VO complaints and investigations, although it is not known if the issues are widespread.

One potential risk concerns the recruitment of staff at arm's length from the public sector agency. Public sector agencies often use recruitment agencies to source subject matter or technical experts. Because the shortlisting of candidates is performed by the recruitment agency, public sector agencies may apply a lower level of scrutiny and rigour to the engagement of contractors, compared with staff recruited by the agency directly. For example, during IBAC's consultations to inform this report, a department advised it does not require selection reports or panels for agency staff. This has the potential to increase the risk of misconduct and corrupt conduct.

CASE STUDY – METROPOLITAN FIRE AND EMERGENCY SERVICES BOARD²⁴ RISKS ASSOCIATED WITH USING RECRUITMENT AGENCIES

An investigation commenced by the VO in 2016 established that an officer working for the Metropolitan Fire and Emergency Services Board (MFESB) employed both her sons through two recruitment agencies. Both engagements were undertaken in a similar way.

While there was a genuine need for an employee, the MFESB officer created a fake combination of unique required skills and abilities which the officer supplied to the recruitment agency. The officer also told the agency she had found someone with these particular skills and would ask them to submit their CV. The officer then created a fake CV for her son. The recruitment agency submitted some candidates to the MFESB officer, including her son, for selection.

The MFESB officer then conducted a specious interview with her son, before appointing him to the role.

A defining feature of this conduct was that each son legally changed his name only weeks before applying and attaining the position. This served to hide their relationship with their mother who had a distinctive surname.

In the course of its investigation, VO found that the MFESB officer was previously employed at Parks Victoria, where she employed one of her sons using the same fraudulent process – seemingly undetected.

²⁴ Victorian Ombudsman, *Report into allegations of conflict of interest of an officer at the Metropolitan Fire and Emergency Services Board*, June 2017.

The scenario outlined in the MFESB case study (left) could have been prevented if criminal record checks were conducted. This would have compelled both sons to divulge their previous surname.

A standard pre-employment check should ask candidates if they have changed their name and if so, when. Follow-up checks could then be conducted with the appropriate agency to confirm the name change information provided. Police and other probity checks would need to be conducted on both names.

Employers should ask the recruitment agency how long the selected candidate has 'been on their books'. If the candidate has only been on their books a very short time, this increases risk, so further probity assurances should be considered. These could include a 'change of name' check, validating qualifications and confirming the applicant's work history.

4.3.1 'Double-dipping'

A more complex methodology that has been detected involving recruitment agencies concerns 'double dipping'. For the purposes of this report, 'double-dipping' refers to employees at a public sector agency setting up companies in order to use recruitment agencies to hire relatives or associates back to the public sector agency at an inflated fee. 'Double-dipping' can also be undertaken by contractors within the public sector. In 2012, the VO reported that some CenITex contractors were setting up companies to provide their own contractors (and, on occasion, themselves) to CenITex at inflated costs.²⁵ The VO also found:

- sham quotation processes for contractor engagements
- numerous contractors engaged for lengthy periods, often at \$1400 per day, without the contractor positions ever being advertised
- several contractors submitting the same resume.

IBAC understands CenITex has responded to the issues identified by the VO, including strengthening the controls and monitoring associated with procurement processes and decision making.

²⁵ Victorian Ombudsman, *Investigation into allegations of improper conduct by CenITex officers*, 2012.

POTENTIAL METHODOLOGY

'DOUBLE-DIPPING'

Based on the following methodology identified by the VO involving IT contractors, public sector agencies should be alert to the risks associated with 'double-dipping':

Phase 1: Contractor A is engaged by a public sector agency, via a government-approved recruitment agency for an agreed fee.

Phase 2: While still a contractor at that agency, contractor A establishes a company. The company supplies contractor A's services to the recruitment agency for a fee. This fee is passed on to the public sector agency which is now paying more for contractor A's services.

Phase 3: Contractor A recruits other contractors working for the public sector agency to his company. Contractor A then charges a fee for each contractor to the recruitment company. These fees are passed on to the public sector agency, which is now paying more for each contractor. Contractor A is receiving their contractor wage from the public sector agency plus the fees his company charges for supplying other contractors.

Phase 4: Contractor A begins recruiting other IT professionals from outside the public sector agency for their company. Due to contractor A's position he is able to recommend contractors from his own company to the public sector agency. His company supplies them for a fee to the recruitment agency, which then supplies them to the public sector agency, again passing on contractor A's company fee.²⁶

Recruitment agencies may have less motivation than public sector agencies to address these types of vulnerabilities. However, the Victorian Government's master vendor agreement requires recruitment agencies to comply with the VPS code of conduct through their contracts.

IBAC's investigations have identified instances of public sector employees using recruitment agencies to facilitate payments to a company in which they have a direct interest. In one matter, a person was engaged by a department as a senior contractor to complete major IT works. The contractor was also the director of a company. The contractor then allegedly used his position to influence the awarding of contracts to his company in a manner that did not comply with the requirements for employing IT specialists (ie through the Victorian Government's e-Services Register or the state purchase contract). This contractor also allegedly had his company's personnel placed with a recruitment agency, and then engaged them for direct labour hire projects contrary to public sector recruitment standards. This contractor allegedly manipulated circumstances to employ specific individuals through his company which allowed the contractor to retain commissions before forwarding salary payments to the individuals.

Establishing strong, clear and customised conflict of interest policies and procedures that apply to recruitment agencies and their processes would assist in mitigating this risk. Employees and contractors must clearly understand their obligation to identify, declare and manage conflicts of interest in line with public sector standards, values and codes of conduct.

²⁶ Victorian Ombudsman, *Report on issues in public sector employment*, November 2013, p 14.

4.3.2 Using a recruitment agency to create 'ghost' positions

'Ghost' employee fraud is a well-established corruption risk. 'Ghost' positions are created and then 'filled' by staff who either do not work for the organisation or do not exist. Corrupt employees can benefit either by accessing the ghost employee's wages or by siphoning the wages to a relative or associate. Using a recruitment agency may make this practice easier to facilitate and more difficult to detect.

The 'arm's length' structure created by using a recruitment agency can facilitate this type of corrupt conduct.

CASE STUDY – IBAC INVESTIGATION CREATING 'GHOST' POSITIONS

IBAC investigated allegations senior officers of a public sector agency corruptly misappropriated significant funds from that agency.

One senior officer (person C) allegedly made use of a recruitment agency owned and operated by a member of his extended family (person D) to misappropriate funds.

Over a period of some years, person C and person D developed an allegedly corrupt scheme to establish 'ghost' positions at a number of entities under the control of a public sector agency. These positions were 'filled' by two members of person C's immediate family via the recruitment agency. The two family members received weekly payments over a number of years totalling more than \$100,000. Neither of the family members did any work for the entities concerned. Indeed, for a period of time, one of the individuals continued to receive payments while overseas.

The above case study demonstrates how a departmental officer was able to perpetrate the conduct. Once the structure was in place, it operated undetected for a number of years.

4.4 Managing high-risk individuals

Numerous IBAC and VO investigations have identified that public sector employees under investigation who have histories of misconduct or complaints. While these individuals should not necessarily have been dismissed, it is of concern that these employees continued working, often in high-risk positions, without additional scrutiny or oversight.

IBAC identified cases where follow-up action was not taken after a complaint was made against an individual and dealt with by the agency. This ignores the continued risk presented by those employees, one that could be mitigated by appropriate follow-up and oversight.

CASE STUDY – OPERATION NEPEAN

LACK OF FOLLOW-UP ACTION

IBAC's Operation Nepean investigated and substantiated allegations against the then facilities manager at DPFC, including that he awarded contracts to companies owned or operated by one of his sons, person E. Between 2009 and 2014, these companies received payments totalling approximately \$1.56 million.

DPFC management received a complaint from a business that had, over many years, successfully bid for a number of contracts at the prison. The complaint was that despite competitive quotes, the business was now missing out on most contracts. On review, management noted companies associated with person E were generally the last to submit a quote, and that these quotes were invariably successful. This suggested person E was receiving inside information about competing quotes.

Management instructed the facilities manager that person E was to submit quotes before other prospective providers. The facilities manager outwardly accepted this direction, but companies associated with person E continued to submit quotes last, and were usually successful.

DPFC management did not actively monitor whether the facilities manager had ensured his son's quotes were always submitted first. The only follow-up they conducted was asking the facilities manager if he was abiding by the new instructions; he advised he was. Documentation was not reviewed and audits were not conducted. IBAC found more stringent controls should have been put in place to prevent the conduct (such as channelling all quotes to a senior officer other than the facilities manager).

5 Post-employment risks

5.1 'Recycling' of employees with histories of questionable conduct or performance

IBAC, VO and the Local Government Inspectorate (LGI) have investigated cases where individuals had an undesirable discipline or criminal history that they were able to conceal at the recruitment stage. LGI has advised that the recycling of undesirable employees is a common feature in many of their investigations across local councils.²⁷

The VPSC has identified several key risks to the integrity of public sector recruitment processes. These include:²⁸

- employees accused of serious misconduct are encouraged to resign rather than be dismissed, possibly during an unfinished internal investigation
- the applicant fails to disclose a relevant criminal record or personal association that would prevent them from performing the inherent requirements of the job
- relevant information is not shared between employers, leading to the re-employment of people with questionable work histories.

Despite the VPSC's findings, public sector recruitment guidelines currently place no onus on agencies to mitigate these issues. However, the VPSC has provided advice to public sector managers (via a guidance note)²⁹ on how to undertake recruitment, including when background checks should be conducted.

In October 2015, IBAC and the VO released a joint statement urging public sector agencies to take action to strengthen probity in their recruitment practices.³⁰ Suggested steps to prevent the recycling of problematic employees included:

- prospective public sector employees should be required to complete a statutory declaration about their work history, including whether they have ever been the subject of an investigation for a criminal or disciplinary matter

- candidates should sign a waiver to allow employers to check their discipline history across the public sector
- communication and information sharing between agencies should be improved.

IBAC and the VO noted that 'while concerns may be raised about the application of privacy principles, provided a prospective public sector employee consents to providing information about their employment history and to that information being shared between agencies, there is no breach of privacy legislation'.

IBAC has also been advised by the Victorian Police Registration and Service Board (PRSB) that former members of Victoria Police may apply to the PRSB to be registered. The PRSB conducts a range of assessments relating to the person's good character, reputation and capabilities, including whether the person left Victoria Police in good standing or was under investigation. A person who is found to satisfy the legislated criteria is registered. Registration is valid for two years, and may be renewed. Fresh probity checks are undertaken as part of the renewal process and registration may be suspended or cancelled.

If an employer is seeking to engage a former police officer they can be satisfied that if the person has been registered by the PRSB, they have undergone a substantial vetting and probity process. The PRSB encourages resigning police officers to seek registration to use their registered status to establish they are of good character and reputation with future employers.

As more former police are registered there could be value in public sector agencies inquiring into a person's registration status. There is also value in ensuring that any misconduct disclosed in employment in other agencies is advised to the PRSB so that appropriate action can be taken to review and possibly cancel that registration.

²⁷ LGICI consultation March 2017.

²⁸ Victorian Public Sector Commission, *Integrity in recruitment guidance note*, 2015.

²⁹ Victorian Public Sector Commission, *Integrity in recruitment guidance note*, 2015.

³⁰ Victorian Ombudsman and IBAC Joint Statement October 2015, www.ibac.vic.gov.au/news-and-features/article/victorian-public-sector-must-screen-out-corruption-risks.

CASE STUDY – DAREBIN COUNCIL 'RECYCLING' RISKS

In 2012, a bylaws officer from Darebin City Council was arrested and charged by police with misconduct in public office and several counts of bribery. The officer was responsible for investigating complaints about illegal brothels within Darebin. In 2010, while investigating one such complaint, they solicited a bribe of \$5000 from a brothel owner. Subsequently, the officer gave the brothel owner details of planned police raids, council enforcement activities and information about rival brothels. In total, the officer accepted more than \$8000 in bribes. The officer attributed their actions to financial hardship.

The officer was sentenced to 12 months' jail, wholly suspended. The officer was a former Victoria Police officer with a concerning complaint and discipline history. If Darebin Council had checked the officer's employment history with Victoria Police, it would have raised significant red flags regarding their suitability for the position.

5.2 Pre-emptive resignation

Employees accused of misconduct or corruption often resign before investigations are finished, to avoid disciplinary action and limit the damage to their long-term employment prospects. This allows these employees to leave, relatively speaking, with a clean record. Thorough probity checking arrangements between public sector agencies could prevent this but most Victorian public sector agencies limit their probity process to nominated referee checks.

Pre-emptive resignation is an issue across all public sector agencies, including police. To address this, South Australia's Independent Commissioner Against Corruption (ICAC/OPI) has recommended that consideration be given to storing the details of public officers who have resigned before the conclusion of a misconduct investigation on a central register. This register would also contain the details of officers whose employment was terminated.³¹

Pre-emptive resignation becomes a serious issue when individuals move to another part of the public sector. VO investigations have found public sector employees suspected of improper conduct often avoided disciplinary action by moving to another agency before discipline inquiries were complete.³² This is also a recurring issue in the New South Wales public sector, according to ICAC.³³ ICAC has identified a number of instances of employees pre-emptively resigning after being accused of corruption at one public sector agency, gaining employment at another, and later being accused of similar corrupt conduct.

The United Kingdom has introduced regulations to stop police officers pre-emptively resigning or retiring while under investigation. Under the regulations, officers are not able to resign or retire until investigations conclude that they are not facing dismissal.³⁴ In addition, the UK College of Policing maintains a 'Police Barred List' that contains the details of dismissed police officers (including reasons for dismissal). This list can be searched online by members of the public.³⁵

³¹ Independent Commissioner Against Corruption South Australia/Office for Public Integrity annual report 2014-15, p 50

³² Victorian Ombudsman, *Report on issues in public sector employment*, 2013.

³³ NSW Independent Commission Against Corruption, *Recruitment: the background check risk*, 2010.

³⁴ Home Office, 2015, *Home Office Guidance: Police officer misconduct, unsatisfactory performance and attendance management procedures*, 2.61, p 22

³⁵ Home Office, 2017 Circular 012/2017: New former police officer and barred list regulations, an amended determination on retirement and amended Home Office guidance, <www.college.police.uk/What-we-do/Ethics/integrity-and-transparency/Barred-List/Pages/Barred-List.aspx>

5.3 Post-separation discipline

The Queensland public sector has directives in place to prevent and protect against recycling of problematic employees. In Queensland, public sector employees can be subject to discipline action after they have left an organisation.³⁶ This means that although employees who have engaged in misconduct or corruption and resigned under investigation may avoid being dismissed, they have little prospect of returning to the public sector. Agencies can make a formal post-separation 'discipline declaration' if an employee's conduct warranted dismissal or demotion. Agencies are expected to weigh the seriousness of the allegations and factors such as the costs of proceeding when deciding whether to pursue post-separation disciplinary action.

CEOs of a public sector agency in Queensland are also empowered to compel an employee to disclose details of previous disciplinary action they have been subject to within the Queensland public sector. The CEO has the right to request details of a prospective employee's discipline history from other public sector agencies.

Other jurisdictions are introducing mechanisms to formally share information on public sector employees' misconduct histories. The South Australian Commissioner for Public Sector Employment is committed to introducing a central misconduct register following recommendations in the 2014/15 and 2015/16 annual reports of ICAC/OPI³⁷

In late 2017 the Tasmanian Integrity Commission also recommended amendments to the relevant legislation to allow Tasmanian public sector agencies to make disciplinary findings after an employee has left a particular agency or the state service.³⁸

The introduction of similar approaches in Victoria could significantly reduce the risk of former public sector employees and police officers with concerning complaints and discipline histories re-entering the public sector.

5.4 Lack of information sharing between public sector agencies

A person pre-emptively resigning to avoid discipline coupled with inadequate pre-employment screening within the public sector can allow unsuitable employees to slip through the net and be re-employed. A 2013 report by the VO identified this as a recurrent theme in its investigations.³⁹ This included failure to conduct checks to independently validate a candidate's claimed work experience (particularly direct supervisors) and national criminal record checks.

³⁶ Queensland Public Service Commission, *Commission Chief Executive Guideline 01/17: Discipline*, 2017.

³⁷ Independent Commissioner Against Corruption South Australia/Office for Public Integrity annual report 2014-15, p. 50; and Independent Commissioner Against Corruption South Australia/Office for Public Integrity annual report 2015-16, p. 53.

³⁸ Integrity Commission Tasmania, *An own-motion investigation into the management of misconduct in the Tasmanian public sector*, 2017.

³⁹ Victorian Ombudsman, *Report on issues in public sector employment*, November 2013.

CASE STUDY – VICTORIAN BUILDING COMMISSION⁴⁰ LACK OF CRIMINAL RECORD CHECKS

In 2012, the VO investigated the governance and administration of the then Victorian Building Commission (VBC). The investigation found that the VBC failed to conduct criminal record checks as part of its recruitment process, resulting in hiring staff – including former police – with criminal records.

In one instance, the VBC failed to take appropriate action upon learning a probationary employee was being investigated by his former employer, Victoria Police, for theft and drug offences. When questioned, the employee admitted a history of drug use. The employee's probation was extended by several months. During the extended probation, a complaint was made that the employee had been drinking with a builder whose work he was inspecting and that he also accepted prescription medication from the builder. The employee subsequently resigned under investigation. Several months later the employee was found guilty, in court, of drug offences related to his employment with Victoria Police.

The VO recommended that the former VBC ask all prospective employees to complete a statutory declaration about their work history, including whether they are, or have ever been, the subject of an investigation by a law enforcement agency or an employer for any matter, whether criminal or disciplinary.

The adoption of the approach recommended by the VO in the case study on the left or a similar process (such as prospective employees signing waivers to disclose discipline history) across the Victorian public sector would greatly enhance pre-employment screening and likely discourage some applicants with dubious histories. This process would be even more effective if public sector agencies did not accept the information within the statutory declaration provided at face value, but performed verification checks.

Currently, the VPSC guidelines do not place any onus on public sector agencies to adopt any such formal process. If public sector agencies routinely shared information about employees' discipline histories, it would be more difficult for corrupt employees to infiltrate other agencies.

During consultations, one department raised a recent case with IBAC. A departmental employee who was under investigation for misconduct was able to resign and move to another public sector agency. Even though the allegations of misconduct had been proven, the department did not pass this information on to the other agency. This highlights a potentially critical failure to share information among public sector agencies.

Another agency advised IBAC that it believes inadequate information sharing is a key systemic risk across the public sector because it often leads to recycling of problematic employees. Agencies are understandably cautious about complying with privacy legislation, however the agency consulted believes an overly conservative approach may discourage information sharing. As IBAC has noted previously, if a prospective employee consents to providing information about their employment history and to that information being shared between agencies, there is no breach of privacy legislation.⁴¹

⁴⁰ Victorian Ombudsman, *Own motion investigation into the governance and administration of the Victorian Building Commission*, December 2012.

⁴¹ Victorian Ombudsman and IBAC Joint Statement October 2015, <www.ibac.vic.gov.au/news-and-features/article/victorian-public-sector-must-screen-out-corruption-risks>.

5.5 Post-employment and associated conflicts of interest

It is understood that movement of people between the public and private sectors is often beneficial, as it broadens people's experience, skills and understanding. It is also acknowledged that when moving between positions, organisations and sectors, individuals will naturally leverage the skills and experience they have gained in their previous positions.

However, certain positions present greater risk. For example, commissioners of the Victorian Commission for Gambling and Liquor Regulation (VCGLR), gambling and liquor inspectors and other designated employees are prohibited under the *Victorian Commission for Gambling and Liquor Regulation Act 2011* from working with certain entities, including casino operators and holders of a gaming licence, for two years after ceasing work with VCGLR.

In 2016, IBAC commenced an investigation into allegations of corrupt conduct involving a relationship manager in a public sector agency. The manager worked closely with business intermediaries in Australia and overseas. IBAC found the employee, who was subject to little oversight, deliberately used their position, including access to agency information and business contacts, to improperly further the employee's private business interests and those of their partner. The employee left the public sector during IBAC's investigation, and pursued private business interests.

This case highlights conflict of interest issues that can arise when a public sector employee deliberately seeks to benefit their current or future personal business interests, during their employment in the public sector. This behaviour can represent a conflict of interest under the VPS code of conduct, in particular where an employee's personal or financial interests could be perceived to influence the performance of their role. The VPS code of conduct also states that work resources can only be used for appropriate purposes and as authorised by an employer.

IBAC's 2016 investigation highlighted that other public sector positions, particularly those involving significant interaction with private businesses, can present conflict of interest risks if the incumbent exploits those relationships to further their own interests.

The Australian Public Service Commission has released guidelines around post-separation employment and associated conflict of interest issues.⁴² There may be value in the Victorian public sector considering conflict of interest issues that arise in these circumstances, and how such conflicts should be managed.

⁴² Australian Public Sector Commission, Post-Separation employment, <www.apsc.gov.au/circular-20073-post-separation-employment-policy-guidelines>.

6 Conclusion

This report identifies corruption and misconduct vulnerabilities associated with employment practices across the Victorian public sector, from the point of recruitment through to post employment. There are significant issues, for example, in the way prospective employees are screened, particularly those who have worked for other Victorian public sector agencies. Concerningly, it is not common for public sector agencies to share information about their employees, and there is no central register of Victorian public sector employees and their complaint and discipline histories. As a result, problematic employees can move between agencies with little fear their history will follow them.

To address this issue, consideration should be given to further strengthening the current approach. A framework addressing pre-emptive resignation, post-separation discipline and baseline screening practices would significantly reduce the risk of public sector agencies employing an individual likely to engage in corrupt conduct. IBAC recognises that adopting these processes would place some additional burden on agencies. However, the Victorian community and individual agencies would benefit because the risk of corruption and misconduct would be reduced.

Although most employment-related activity is conducted in accordance with agency policies and public sector standards, the Victorian public sector has the opportunity to review risks associated with its employment practices and to develop measures to minimise those risks. IBAC does not recommend a 'one size fits all' approach, however a framework tailored to an agency's operating environment with minimum standards, complemented by risk-based policies and procedures, will help strengthen integrity in public sector employment practices.

IBAC has consulted on the findings of this research report with the VPSC, and understands that the Commission is examining ways in which the vulnerabilities identified can be addressed.

IBAC will continue to engage with key agencies across the Victorian public sector to help raise awareness of the employment practices risks highlighted in this report, and to assist them to develop appropriate corruption prevention strategies to address those risks.

