

## Operation Daintree

**Operation Daintree was an investigation by the Independent Broad-based Anti-corruption Commission (IBAC) highlighting how improper influence compromised the procurement process for a \$1.2m contract awarded to a union-established training group, and compromised the management of the contract.**

### Background

On 30 May 2019, IBAC received a complaint from an anonymous source alleging that the procurement process and awarding of a contract by the then Department of Health and Human Services (DHHS) to the Health Education Federation (HEF) for the provision of training to health workers in November 2018 constituted serious corrupt conduct.

It was alleged that:

- Although the contract value was more than \$1 million, a competitive procurement process had not been followed.
- The project was awarded to a single provider, HEF, which:
  - was newly formed and had no relevant experience
  - at the time of engagement was not a registered training organisation
  - was not financially established and thereby posed a risk of non-delivery
  - did not have sound governance arrangements
  - had directors who held executive positions at the Health Workers Union (HWU).
- HEF was not on the approved training register and would have been unlikely to qualify for inclusion.
- A partial upfront payment was approved prior to delivery of any training despite the finance division of DHHS advising against this.

IBAC initially referred the matter to the Victorian Ombudsman (VO) for investigation because the allegations fell below IBAC's threshold for investigation.

In November 2019, the VO notified IBAC that an investigation had identified evidence of pressure exerted on DHHS staff to award the contract to HEF, which raised reasonable suspicion of corrupt conduct by a number of ministers and ministerial staff. IBAC then commenced the Operation Daintree investigation.

### Investigation & summary of events

IBAC's investigation included 13 private examinations, 15 voluntary interviews, 19 summonses to produce documents and analysis of 25 terabytes of electronic data. It also relied on the evidence collected by the VO. Public examinations were not conducted because the statutory thresholds for a public examination were not met.

The investigation focused on the interactions between:

- the Secretary of the HWU, Ms Diana Asmar
- the Premier's Private Office (PPO)
- the offices of the two Ministers for Health before and after the 2018 Victorian state election
- senior executives and officers of DHHS who were responsible for selecting HEF to provide the training services and managing the contract.

The events investigated by IBAC commenced in February 2018, when Ms Asmar began to lobby an advisor in the PPO with a proposal for HEF to be contracted to develop and deliver the occupational violence and aggression training for healthcare workers.

Ms Asmar then lobbied the Minister for Health's office from May 2018, where an advisor to the minister helped the HWU shape an unsolicited proposal that HEF be contracted to deliver training to healthcare workers.

The advisor then submitted that proposal to DHHS for consideration in June 2018. The interactions between the advisor and DHHS staff led the public servants to believe that the government wanted to appoint HEF as the training provider.

Relevant staff in DHHS had significant concerns about the proposal, including the capacity of HEF to deliver the program, and considered that there should be a competitive procurement process. However, the active intervention of the Minister for Health's advisor led them to believe that the Minister wanted HEF to be given the contract to deliver the training.

After the Minister's Chief of Staff said that the Minister would be unhappy about being asked to either approve a direct grant to HEF or a competitive procurement process, a Deputy Secretary of DHHS decided that the Minister did not need to provide instructions on their preferred procurement process.

The 2018 State election was due to be held on 24 November. The 'caretaker period' for that election was to commence at 6pm on 30 October 2018. By convention, governments and their departments are required not to take action that may bind a successor government, such as entering into major contracts, during the caretaker period preceding an election.

The DHHS Deputy Secretary authorised a non-competitive process in which only the HEF would be asked to provide a detailed tender to deliver the training services. HEF submitted a tender proposal, which was assessed by DHHS, resulting in the Deputy Secretary executing a contract for \$1.2 million with HEF on 30 October 2018, just prior to the commencement of the caretaker period.

During September and October 2018, the advisor to the Minister for Health worked with the PPO to draft a 2018 election commitment to train a further 1,000 health workers in partnership with the HWU. The commitment was drafted while the evaluation of the initial training proposal was being undertaken and on the assumption that HEF would be awarded the contract.

After the contract was signed, serious concerns were raised by DHHS about the standard of training provided by HEF under the contract. However, intervention in 2019 and early 2020 by an advisor in the new Minister for Health's office, at the request of an advisor in the PPO, dissuaded DHHS from taking steps to terminate the contract.



## Key Findings

IBAC's Operation Daintree found evidence of misconduct and improper influence.

Misconduct that favours political, personal or organisational interests of people and entities in an office holder's network corrodes standards of public governance, decision-making in the public interest, and trust in government.

While the evidence in Operation Daintree fell short of 'corrupt conduct' as defined in the IBAC Act, it revealed breaches of the duties and obligations of ministers, ministerial advisors, and senior public servants. Such misconduct leaves the public sector vulnerable to significant risks of corrupt conduct occurring.

### Key findings:

- while the need to train hospital security and patient transport staff was identified, DHHS did not conduct a competitive process before awarding the contract to HEF.
- the decision by DHHS to contract HEF without a competitive procurement process was driven by a belief by senior staff in the department that it was the Minister's and Government's preference, and due to pressure from the Ministerial advisor and Secretary of the union. The reasons for deciding only to seek a proposal from HEF were weak and ignored the concerns raised by the relevant teams in DHHS.
- the HWU was given privileged access and favourable treatment in its access to ministerial offices.
- the proposal from HEF raised a conflict between the government's interest in procuring the most suitable supplier for the training and the governing party's interest in assisting an affiliated union. This conflict of interest was not properly managed or declared
- ministerial advisors had an improper influence over the contract procurement and management processes.
- HEF failed to deliver satisfactory course materials and training to health workers, and only 83 of the planned 575 health workers were trained.
- advisors in the PPO and the new Minister for Health's office (after the 2018 election) interfered in the management of the HEF contract to hamper consideration of its termination and ensure it continued.
- DHHS paid \$335,000 in contractual payments to HEF before training activities were suspended due to the COVID-19 pandemic in March 2020.
- conduct by senior public servants fell short of the required Victorian public sector standards.



## Recommendations

As a result of Operation Daintree, IBAC has made 17 recommendations, including recommendations to ensure ministerial advisors do not act inappropriately in their dealings with unsolicited proposals and the public service.

### Key recommendations include:

- amendments to the *Ministerial Code of Conduct* to ensure: there is consistent understanding of the practical application of the Westminster conventions on ministerial responsibility; understanding of any guidance that might be issued by the proposed Parliamentary Ethics Committee; and that all ministers complete mandatory induction and regular training in this code of conduct.
  - the guidance and training will ensure that ministers and their staff have a clearer understanding of how they are responsible and accountable for matters within their portfolios and the actions of ministerial staff.
- new legislation to formalise the employment arrangements for ministerial staff to strengthen transparency. This includes clarifying the employment responsibilities of a minister to whom staff are assigned, and a clear prohibition on ministerial advisors directing public sector employees.
- that the Parliamentary Integrity Commissioner, which is being established as part of IBAC's Operation Watts parliamentary reforms, should be able to investigate possible breaches of the *Ministerial Staff Code of Conduct* and make recommendations for sanctions where an advisor has breached this code of conduct.
- new legislation to establish the ministerial staff complaints regime, including a requirement for ministerial staff to cooperate with an investigation.

- amendments to the *Parliamentary Committees Act 2003* to allow committees to compel advisors to give evidence in limited circumstances. This could include when a minister claims to be unaware of an advisor's actions.
- that the Victorian Public Sector Commission and the Victorian Secretaries' Board revise the current guidance to ministerial staff and public servants on their respective roles, and review their current programs, to ensure a greater commitment in the Victorian public service to preventing and responding effectively to improper political interference.

In addition to the main recommendations detailed above, IBAC's special report also recommends that:

- the Secretary of the Department of Premier and Cabinet or the Victorian Public Service Commission include in their annual report information about the number of ministerial and other staff employed in each ministerial office
- the government ensure people who make legitimate or reasonable allegations of misconduct about a ministerial staff member are protected from detrimental action
- the Department of Health reviews, and where necessary, strengthens its procurement policies, systems, and practices to address the corruption vulnerabilities identified by IBAC in the report.

IBAC has asked the Victorian Government to provide to parliament a progress report on the action taken in response to the recommendations in this report by 31 October 2023, with a further report on those actions by 30 June 2024.

For a detailed list of the recommendations and to read the special report visit the IBAC website at [www.ibac.vic.gov.au](http://www.ibac.vic.gov.au)

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- investigating serious corruption and police misconduct
- informing the public sector, police and the community about the risks and impacts of corruption and police misconduct, and ways in which it can be prevented.

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