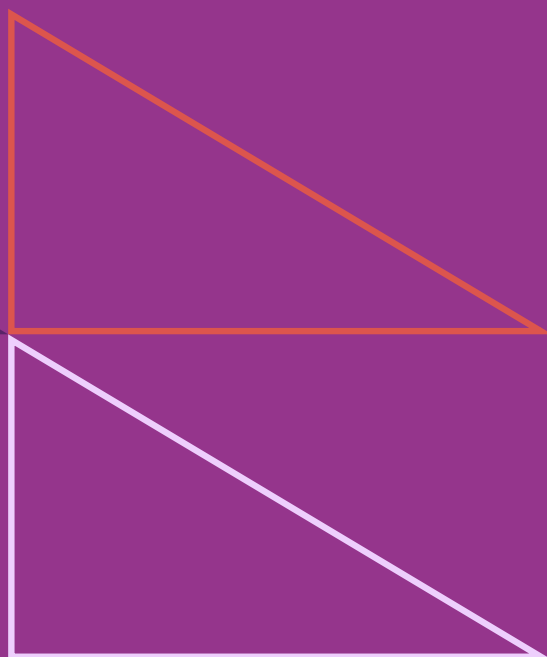




INVESTIGATION



Operation Turton

September 2024

Special report

Acknowledgement

IBAC acknowledges the Traditional Custodians of the lands on which we work and pays respect to Elders past, present and emerging. We recognise and celebrate the diversity of Aboriginal peoples and their ongoing cultures and connections to the lands and waters of Victoria.

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(Independent Broad-based Anti-corruption Commission)



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Letter of Transmittal

To
The Honourable President of the Legislative Council

and
The Honourable Speaker of the Legislative Assembly

Special report on Operation Turton

In accordance with section 162(1) of the *Independent Broad-based Anti-corruption Commission Act 2011*, I present IBAC's special report on Operation Turton.

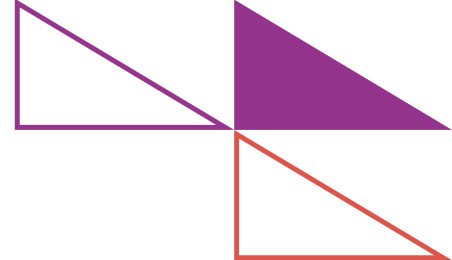
IBAC's findings and recommendations are contained in this report.

Yours sincerely



Victoria Elliott
Commissioner
Independent Broad-based Anti-corruption Commission

Commissioner foreword



This special report sets out the findings of IBAC's Operation Turton, a stand-alone investigation which explored repeated instances where employees inappropriately accessed and misused sensitive information at the Metropolitan Fire Brigade (MFB).

Operation Turton started as an investigation into whether an MFB Network Administrator accessed the email accounts of MFB executives without authorisation. The investigation concluded in 2021 and substantiated and expanded upon the original allegation.

IBAC identified five separate incidents where MFB information was accessed or disclosed without authorisation, with three incidents involving public servants from MFB's Information and Communications Services business area.

In incidents that IBAC identified, individuals involved were motivated to misuse MFB information to further the interests of the Victorian branch of the United Firefighters Union (UFU) or its Secretary, Peter Marshall.

In addition to accessing other employees' email accounts, IBAC found individuals shared sensitive MFB information directly with the UFU without permission. IBAC's investigation also found that Mr Marshall sought assistance from employees to inappropriately gather sensitive information on internal investigations related to him, executive contracts and another confidential organisational matter.

Operation Turton revealed how a combination of misconduct risks created an environment where information misuse was not unusual at MFB. At the centre was a poor workplace culture where employees did not trust management and did not believe them to be acting in the best interests of the organisation or its employees. This mistrust divided management and employees, particularly when employees were also members of the UFU.

Adding to these challenges, IBAC identified MFB was operating with significant information security vulnerabilities and under a restrictive agreement with the UFU that impaired MFB's ability to address issues. While union representation is a fundamental right of employees, IBAC found the UFU's influence over the day-to-day operation and decision making of MFB presented challenges and often hindered the effective administration of the organisation.

In July 2020, employees from MFB and the Country Fire Authority were merged into a new agency, Fire Rescue Victoria (FRV). Although the creation of a new agency was an opportunity for a fresh start, since FRV adopted MFB's policies, procedures and workforce, FRV may have inherited the misconduct risks identified in Operation Turton. The individuals whose conduct is scrutinised in this report are employed by FRV.

I would like to acknowledge the dedication of the former Commissioner and IBAC officers, previous and current, who worked on this investigation. Their insights and analysis of underlying issues were of great assistance to me in my finalisation of this report. After reviewing the evidentiary material and the responses from affected people and organisations to a draft version of this report, I have decided to make the findings and recommendations presented in this report.

I must also address the considerable time between the conclusion of IBAC's investigation in 2021 and the publication of this report. Section 162(3) of the *Independent Broad-based Anti-corruption Commission Act 2011* requires that, if IBAC intends to include in a special report a comment or an opinion which is adverse to any person, IBAC must first provide the person a reasonable opportunity to respond to the adverse material. Section 162(2) makes similar provision for proposed adverse findings about a public body. The time required for the completion of the section 162(2) and (3) process depends on a number of factors and will often vary from case to case. We recognise the importance of this process to people and organisations who may be the subject of an adverse comment or opinion in a special report. We also acknowledge the impact that delays in the finalisation of an investigation may have on the people involved.

Operation Turton highlights how information misuse can enable misconduct and can be used to advance personal and industrial interests. As a result of the investigation, IBAC is making four recommendations to FRV to strengthen its information security infrastructure; improve policies and procedures for employees to share information with their unions in line with enterprise bargaining agreements, the *Privacy and Data Protection Act 2014* (Vic) and the Victorian public sector Code of Conduct; and build a speak-up culture.

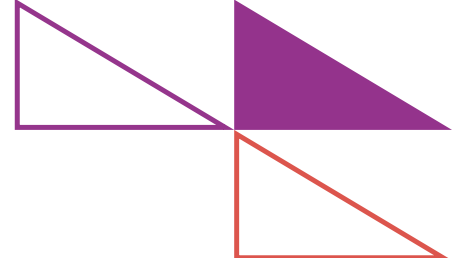
Since the investigation concluded, IBAC is aware that FRV has taken measures to mitigate some of the corruption risks that Operation Turton identified. In line with our recommendations, IBAC hopes that FRV will continue to engage with its workforce to enhance its information and communication technology systems and processes, addressing the structural and cultural issues this report has highlighted.

More broadly, I urge every public sector employee, particularly leaders, to champion and cultivate a healthy workplace culture; it is the most powerful antidote to prevent and deter corruption and misconduct.



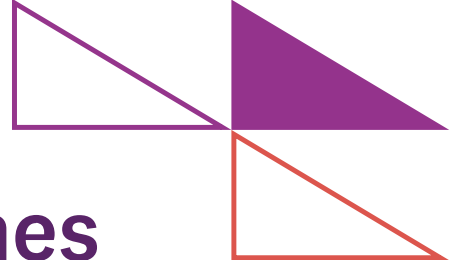
Victoria Elliott
Commissioner
Independent Broad-based Anti-corruption Commission

Glossary



Term	Explanation
CFA	Country Fire Authority
CEO	Chief Executive Officer
CIO	Chief Information Officer
CO	Chief Officer
DJCS	Department of Justice and Community Safety
EBA	Enterprise Bargaining Agreement
ELT	Executive Leadership Team (MFB)
FRV	Fire Rescue Victoria
IBAC	Independent Broad-based Anti-corruption Commission
IBAC Act	<i>Independent Broad-based Anti-corruption Commission Act 2011 (Vic)</i>
ICS	Information and Communication Services – the business area within MFB responsible for ICT
ICT	Information and communication technology
MFB	Metropolitan Fire and Emergency Services Board, or the Metropolitan Fire Brigade
OVIC	Office of the Victorian Information Commissioner
UFU or the Union	United Firefighters Union – Victorian Branch
VPDSF	Victorian Protective Data Security Framework

1 Summary of investigation and outcomes



1.1 Introduction

The fire services are an essential part of Victoria's emergency response and management sector and, with its firefighters, perform a crucial role in keeping the community safe. To do this, these agencies must operate efficiently, effectively, and free from undue influence.

Over the past two decades, issues within Victorian fire services have been documented in several reports, inquiries, and investigations.¹ These issues have included instances of misconduct as well as more systemic cultural and workplace issues identified across the former Metropolitan Fire Brigade (MFB), the Country Fire Authority (CFA), their boards of management and the respective workforces.

In June 2018, MFB notified the Independent Broad-based Anti-corruption Commission (IBAC) of allegations that an MFB Network Administrator, Stephan Trakas, had accessed the email accounts of MFB executives without authority. IBAC conducted preliminary inquiries² and in January 2019, determined to progress this matter to an investigation, Operation Turton, under section 60(1)(b) of the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic) (IBAC Act).

IBAC concluded Operation Turton in June 2021.

Operation Turton investigated allegations of unauthorised access and disclosure of information by some employees of the then MFB.³ IBAC found deficiencies in information and data security practices and processes and instances of individual employees who were motivated by personal and industrial interests.

IBAC identified five separate incidents where MFB information was accessed or disclosed without authorisation, with three incidents involving MFB employees from the Information and Communications Services business area (ICS). The impact of the conduct varied but included breaches of privacy, risks to the integrity of investigations and impeding the efficient operation of MFB.

It appears these incidents were largely driven by a desire to further the interests of the Victorian Branch of the United Firefighters Union (UFU) or its Secretary, Peter Marshall. It was clear these incidents were facilitated by a workplace culture where employees did not trust management and did not believe them to be acting in the best interests of the organisation or its employees.

In relation to these specific incidents, IBAC heard evidence that some employees were sharing MFB information directly with the Union without authority or the awareness of MFB management. One factor in the unauthorised disclosures to the Union was some employees' belief that eventually the Union would be able to access this information through legitimate means.

Employees have the right to be unionised and have access to union representation, and unions have rights to lawfully enter workplaces and to organise and represent employees.⁴ However, IBAC found that a particular clause in the industrial agreement between MFB and the UFU, often referred to as 'consult and agree', gave the UFU a significant level of influence over the operations of MFB. The clause impaired MFB's governance and ability to operate effectively and efficiently, giving rise to a misconduct and corruption vulnerability within the organisation. The clause is discussed further in section 5.2.1.

1 Eg, O'Byrne, D 2015, *Report of the Victorian Fire Services Review: Drawing a line, building stronger services*, Parliament of Australia, Melbourne; Metropolitan Fire and Emergency Services Board 2016, *A review of the MFB employee support program*, MFB, Melbourne; Victorian Ombudsman 2017, *Report into allegations of conflict of interest of an officer at the Metropolitan Fire and Emergency Services Board*, VO, Melbourne; Legislative Council Environment and Planning Committee 2017, *Inquiry into fire season preparedness – Minority Report – Liberal and National Members of the Environment and Planning Committee Bushfire Preparedness – June 2017*, Parliament of Victoria, East Melbourne; McKenzie, N and Tomazin, F and Baker, R 2018, 'The report the firefighters' union didn't want you to see', *The Age*; 2009 Victorian Bushfires Royal Commission 2010, *Final report summary*, Parliament of Victoria, East Melbourne; Jones, AM, David, HH 2011, *Report of inquiry into the effect of arrangements made by the Country Fire Authority on its volunteers*, VFBV, Burwood East. The first four of these reports are discussed in section 2.1.

2 Under section 59A of the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic), IBAC conducts preliminary inquiries to assist in determining whether to dismiss, refer or investigate allegations. During preliminary inquiries IBAC can request further information from public bodies, issue witness summonses requiring a person to produce documents or other things to IBAC and issue confidentiality notices.

3 The Metropolitan Fire and Emergency Services Board was established under the *Metropolitan Fire Brigades Act 1958* (Vic) with the purpose of providing for fire safety, suppression, prevention and emergency response services.

4 State Government of Victoria 2019, 'Union participation in the workplace', web page, Melbourne, viewed 17 August 2021, www.vic.gov.au/public-sector-industrial-relations-policies-2015/governments-industrial-relations-principles; State Government of Victoria 2019, 'Industrial relations landscape', web page, Melbourne, viewed 17 August 2021, www.vic.gov.au/public-sector-industrial-relations-policies-2015/industrial-relations-landscape.

The incidents of unauthorised information disclosure and the broader industrial environment suggest a culture where MFB could not operate effectively and independently of the Union.

Operation Turton highlights how a problematic culture within MFB, information security vulnerabilities and an industrial environment that impaired MFB's ability to address these issues contributed to an environment where information misuse appeared commonplace.

1.2 Outcomes

The naming of individuals, entities and public bodies in this report

Individuals, entities and public bodies are named in this report, with some being the subject of adverse comments and opinions expressed by IBAC or by other individuals or entities.

IBAC itself expresses no adverse comment or opinion about the following individuals:

- the former MFB Board President
- the former MFB Chief Executive Officer (CEO) who served from 2014 to 2017
- the former MFB Chief Officer (CO) and CEO who served from 2018 to 2019
- the former Minister for Emergency Services, the Honourable Lisa Neville.

For more information on the naming of individuals, entities and public bodies in this report and IBAC's natural justice obligations under s 162 of the IBAC Act, see Appendix A.

IBAC's findings and the standard of proof

IBAC can publish a special report on any matter relating to the performance of its duties and functions at any time. This includes a special report about an investigation into suspected 'corrupt conduct'. Corrupt conduct is defined in section 4 of the IBAC Act. It includes conduct of a public officer or public body that involves a knowing or reckless breach of public trust, or that involves misuse of information gained in the performance of public functions (whether or not for the benefit of a particular person). The definition requires that the conduct would also constitute a relevant criminal offence.

However, IBAC is not a court. It is prohibited from including in its reports any finding or opinion that a person is guilty of or has committed a criminal or disciplinary offence, or that a person should be prosecuted for any such offence. Unlike a court, IBAC is also not bound by the rules of evidence. IBAC's findings are based on the material gathered during an investigation and reflect the material available to IBAC at that point in time.

In a special report, IBAC can make findings of fact and can express comments or opinions about a person's conduct. In doing this, IBAC applies the civil standard of proof (proof on the balance of probabilities), rather than the criminal standard of proof (proof beyond reasonable doubt). IBAC also has regard to what is commonly referred to as the Briginshaw principle. Under this principle, in determining whether a matter has been proved on the balance of probabilities, IBAC has regard to the seriousness of the proposed finding, the inherent likelihood or unlikelihood of the fact in question, and the gravity of the consequences that may flow from the proposed finding.

Operation Turton found deficiencies in MFB's culture and vulnerabilities in its information and communication technology (ICT) systems, contributing to significant corruption risks. A culture of mistrust between management and employees, and barriers for management to address issues, were repeatedly reported to IBAC throughout the investigation.

More specifically, IBAC substantiated the allegation that Mr Trakas accessed and facilitated other MFB employees' access to MFB email accounts – including those of the Executive – without the necessary authorisation in April and May 2018. IBAC found:

- In August 2018, Mr Trakas allowed another employee, Vasiliki Pylotis, to send an email from Mr Trakas's account to avoid the email being linked to Ms Pylotis or her account.
- In May 2019, Peter Marshall disclosed an MFB document to the Emergency Services Minister without authority. Mr Marshall had received this document as a result of an unknown MFB employee disclosing it without authority.
- In April 2019, Mr Marshall requested that multiple MFB employees (including Ms Pylotis) access information without authorisation relating to an investigation into Mr Marshall.
- Ms Pylotis did so by accessing the MFB ICS system and reported back to Mr Marshall she had been unable to find anything.
- In May 2019, a member of the MFB Executive, Kirstie Schroder, disclosed information to Mr Marshall without authorisation that MFB executive contracts were being renewed and asked him to ask the Emergency Services Minister to intervene in this process.

In April 2020, IBAC disclosed information to MFB, under section 41 of the IBAC Act, to alert it to ongoing ICT system vulnerabilities identified during the investigation.

IBAC heard evidence from several MFB witnesses that the consult and agree requirements provided the UFU the power to veto any decision, change or improvement the MFB management and Board wished to implement, regardless of whether these would have a significant effect on employees.

1.3 Recommendations

Over the years IBAC has routinely highlighted corruption risks associated with unauthorised information access and disclosure.⁵

Operation Turton highlights how misuse of information can enable further misconduct and can be used to advance personal and industrial interests. The investigation emphasises the importance of a positive information security culture, where governance, information security, personnel security, information communications technology security and physical security are appropriately designed to protect against information misuse.⁶

On 1 July 2020, MFB employees and approximately 1400 career firefighters from the CFA were merged into a new agency, Fire Rescue Victoria (FRV). In addition to its employees, MFB's systems, policies and procedures were transitioned into FRV, creating a risk that the deficiencies identified by IBAC through Operation Turton would continue.

While FRV provided an opportunity for a fresh start, it employs the same workforce as MFB, albeit with an altered executive and oversight structure. Therefore, the risks identified in Operation Turton continue. Accordingly, IBAC is making recommendations (detailed in section 6.2) to FRV to address long-standing and systemic corruption risks to improve workplace culture and information security. It is hoped the management of FRV will continue to work with its workforce to strengthen its ICT systems and processes and to address the structural and cultural issues identified in Operation Turton.

5 Independent Broad-based Anti-corruption Commission 2020, *Unauthorised access and disclosure of information held by the Victorian Public Sector*, IBAC, Melbourne.

6 In accordance with sections 86 and 87 of the *Privacy and Data Protection Act 2014* (Vic), the Victorian Protective Data Security Standards establish 12 high-level mandatory requirements to protect public sector information across these five security areas. See Office of the Victorian Information Commissioner 2019, 'Victorian Protective Data Security Standards V2.0', web page, Melbourne, viewed 23 July 2024, ovic.vic.gov.au/data-protection/standards.

IBAC also encourages the Office of the Victorian Information Commissioner (OVIC) to consider conducting an audit of FRV, at least two years following the completion of the independent review referred to in IBAC's Recommendation 2(b) detailed below, or three years following the publication of this special report, whichever occurs first. This could include an assessment of the effectiveness of, and employee compliance with, FRV's ICT policy and procedures, as well as an assessment of FRV's ongoing risk management framework in identifying and addressing corruption risks associated with information access.

To address risks identified in Operation Turton, IBAC had drafted a recommendation for the consideration of Industrial Relations Victoria (IRV) to develop a standard position on consultation clauses for inclusion in enterprise bargaining agreements. Following the drafting of this recommendation, the Victorian Government has since updated the Public Sector Industrial Relations Policies (PSIRP) to include a consultation model clause, which fulfils the intention of this recommendation. The draft recommendation to IRV has since been removed from the report.

Section 159 recommendations

IBAC makes the following recommendations (pursuant to section 159(1) of the IBAC Act):

Recommendation 1

Fire Rescue Victoria develops clear policies and procedures regarding the matters that may be the subject of consultation with employees and their representatives at the Consultation Committee, and in what circumstances Fire Rescue Victoria information may be disclosed to employees and their representatives to inform that consultation.

Recommendation 2

Fire Rescue Victoria addresses the information and communication technology security vulnerabilities and risks identified in Operation Turton by:

- (a) actioning the consolidated findings of the audit and reviews conducted in this area since 2018

- (b) engaging an appropriately qualified independent person to review information security infrastructure, policy and procedures to identify any remaining deficiencies against the Victorian Protective Data Security Standards and Framework or any other issues

- (c) consulting with the Office of the Victorian Information Commissioner on the adequacy of its information security in line with the *Privacy and Data Protection Act 2014* (Vic), including how it is addressing any shortfalls identified in the review recommended above. To support and inform this consultation, FRV must provide the Office of the Victorian Information Commissioner with the full final report of the independent person referred to in Recommendation 2(b).

Recommendation 3

Fire Rescue Victoria reviews and strengthens its policies and procedures for employees on how to appropriately share information with their unions in line with the enterprise bargaining agreements, the *Privacy and Data Protection Act 2014* (Vic) and the Victorian public sector Code of Conduct.

Alongside these policies being appropriately enforced, they should also clearly state that non-compliance could lead to disciplinary action being taken, termination of employment or constitute a criminal offence.

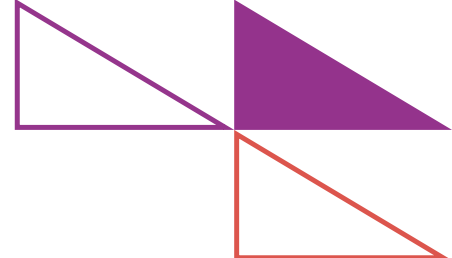
Recommendation 4

Fire Rescue Victoria conducts a review of its internal complaint processes, including an anonymous survey of employees on these processes and employees' willingness to report improper conduct, and implements any recommendations arising from that review to ensure:

- (a) Fire Rescue Victoria employees understand the importance of reporting suspected corrupt or improper conduct and how they can report such matters
- (b) Fire Rescue Victoria employees understand how they will be supported and protected if they make a report.

IBAC requests that Fire Rescue Victoria provide a progress report on the action taken in response to Recommendations 1 to 4 in six months and a full report on its outcomes within 12 months.

2 Background



2.1 Previous public inquiries into MFB

In 2015, the Report of the Victorian Fire Services Review (Fire Services Review) highlighted a number of cultural issues within the fire services with the key finding calling for better inter-operability between MFB and CFA.⁷ It found a culture of the agencies ‘getting the job done’ had contributed to operational requirements being fulfilled, but it also heard descriptions of a bullying culture in both the CFA and MFB, at all levels of the organisation. The review noted that many of those who experienced bullying did not report it and those who did report bullying were often badly managed, with instances of management not taking any responsibility.

The Fire Services Review made recommendations that paved the way for some changes that have occurred via the formation of FRV.

MFB agreed to act on the findings of the Fire Services Review and reviewed the MFB employee support program in 2016.⁸ That review noted the cultural issues were entwined with occupational health and safety, and that in 2016, MFB was performing ‘at a level that is 93 [per cent] worse than all relevant industry [occupational health and safety] benchmarks, and further deteriorating...’ with nine per cent of its operational workforce at any time being on workers’ compensation benefits or long-term sick leave, or injured. It also noted that people in senior roles across MFB were becoming burnt-out by the workload and unmanageable organisational expectations, leading to risks to their psychological safety.⁹

The 2016 MFB review also found that operational employees were protected from the consequences of poor conduct, which contributed to psychological health and safety risks.¹⁰

In 2017, following a referral of a complaint received by IBAC, the Victorian Ombudsman reported on its investigation of a former MFB Chief Information Officer (CIO) who hired both her sons as employees of MFB, did not declare the relationships, falsified their curricula vitae, and changed their names to conceal the family connection. As a result of the investigation, the CIO resigned, and the employment of both sons was terminated. The Victorian Ombudsman also made three recommendations to MFB regarding its confidentiality, conflict of interest, ethics and recruitment policies and procedures, and for an audit to be conducted into the CIO’s involvement in procurement processes.¹¹ In his response to a draft version of the *Operation Turton* special report, Mr Marshall referred to his evidence given to IBAC that he had received information about the MFB CIO’s conduct through his delegates and reported it to MFB, to refer on to IBAC for investigation. IBAC received this mandatory notification about the conduct in January 2017.

2.2 Notification to IBAC

In June 2018, IBAC received a notification from MFB in accordance with section 57(1) of the IBAC Act. The notification alleged there had been unauthorised access of internal email accounts by a Network Administrator of MFB, Mr Stephan Trakas.

The allegations were a result of MFB engaging external auditors to undertake a forensic investigation of the MFB email system, following concerns of the MFB Executive that the system was insufficiently secure. The external auditors identified Mr Trakas’s user account granting and removing access for itself to various MFB email accounts, including those of members of the Executive, during April and May 2018.

The auditors also identified that Mr Trakas’s account had facilitated access to email accounts for other MFB employees, with no obvious legitimate business reason. This raised concerns that the material from these accounts may have been altered or disclosed without authorisation.

7 O’Byrne, D 2015, *Report of the Victorian Fire Services Review: Drawing a line, building stronger services*, Parliament of Australia, Melbourne.

8 Metropolitan Fire and Emergency Services Board 2016, *A review of the MFB employee support program*, MFB, Melbourne.

9 Metropolitan Fire and Emergency Services Board 2016, *A review of the MFB employee support program*, MFB, Melbourne, p 33, 39. This comparison includes Victoria Police.

10 Metropolitan Fire and Emergency Services Board 2016, *A review of the MFB employee support program*, MFB, Melbourne, p 4.

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

2.3 Summary of how the investigation was conducted

In July 2018, IBAC commenced a preliminary inquiry, Operation Turton, into the allegations. The MFB provided further material to IBAC regarding the alleged unauthorised accesses by Mr Trakas. Analysis of accesses by Mr Trakas's account against the MFB's ICT helpdesk records determined that while some of these accesses had a clear or possible explanation, there were a number of accesses that had no explanation recorded.

2.3.1 Expanding the scope

Following the preliminary inquiry, in January 2019, IBAC determined Operation Turton as an investigation under section 60(1)(b) of the IBAC Act, permitting IBAC to use its full range of investigative powers.

In June 2019, IBAC expanded the scope of Operation Turton to include further allegations of unauthorised access and disclosure of information. These allegations related to instances of unauthorised access and disclosure of MFB information between March and May 2019, involving the UFU Victorian Branch Secretary, Peter Marshall. These allegations also involved MFB employees Ms Vasiliki Pyliotis, a Senior Business Analyst in Information and Communication Services, and Ms Kirstie Schroder, then Acting Executive Director Strategic Services.

2.3.2 Information obtained

Entities and individuals involved in Operation Turton provided a substantial amount of documentation and data to IBAC, either voluntarily or by way of summons. IBAC also obtained formal statements and conducted interviews with a number of witnesses associated with the MFB.

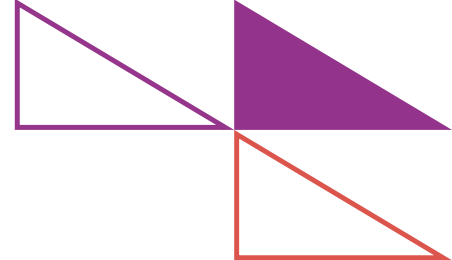
In order to adequately assess the allegations and the associated corruption vulnerabilities, in August 2019 IBAC summonsed the MFB to produce its policies and procedures in relation to information security and information management, as well as any recent audits or reviews conducted in relation to information security or information management.

2.3.3 Other investigative powers used

Throughout 2019, 2020 and 2021, IBAC conducted private examinations of Mr Trakas, Ms Pyliotis, Ms Schroder, Mr Marshall and other relevant witnesses.

IBAC also used lawful telephone intercepts under the *Telecommunications Act (Interception and Access) Act 1979* (Cth) to progress the investigation; for example, to assist in establishing the extent of the suspected corrupt conduct.

3 The people and entities involved



3.1 The Metropolitan Fire Brigade

The Metropolitan Fire and Emergency Services Board, better known as the Metropolitan Fire Brigade or MFB, was responsible for delivering fire and emergency management services to the Melbourne metropolitan area. It had approximately 2200 employees in operational and support roles, who worked with local and state government on planning, command, control and coordination of incidents under the State Emergency Management arrangements.

As a statutory body, it was established under the *Metropolitan Fire Brigades Act 1958 (Vic)* and also operated under other legislation, including the *Metropolitan Fire Brigades (General) Regulations 2005 (Vic)*. MFB had a board of management (the MFB Board or the Board) which was responsible for the strategic direction of the organisation, as well as establishing and monitoring the management of the organisation.

3.2 Fire Rescue Victoria

On 1 July 2020, MFB and approximately 1400 career firefighters from the CFA were merged into a new agency, Fire Rescue Victoria (FRV), under the *Firefighters' Presumptive Rights Compensation and Fire Services Legislation Amendment (Reform) Act 2019 (Vic)*. While FRV entirely replaced MFB, the CFA became a volunteer-based organisation.

When announcing the reforms in 2019, the Victorian Government stated the creation of FRV represented a modernisation of the fire services' governance and organisational structures.¹²

All MFB employees and systems became part of FRV. However, the positions of the CEO, Chief Officer and the MFB Board were dissolved and replaced by the Fire Rescue Commissioner, with a Strategic Advisory Committee established to advise the Commissioner.¹³

The FRV operates across all of Victoria and under amended legislation, the *Fire Rescue Victoria Act 1958 (Vic)* (formerly known as the *Metropolitan Fire Brigades Act 1958 (Vic)*).

The people are listed in alphabetical order.

3.3 Peter Marshall

Peter Marshall is a current FRV employee on secondment to the Victorian Branch of the UFU. He has served as Branch Secretary since 1995.

3.4 Vasiliki Pyliotis

Vasiliki Pyliotis was a Senior Business Analyst within ICS during Operation Turton and is currently employed by FRV as a Project Manager. Ms Pyliotis is a long-term employee of MFB/FRV with over 18 years' service. Ms Pyliotis is also a UFU representative, providing a point of contact and advice on union-related matters for MFB/FRV employees.

3.5 Kirstie Schroder

At the time of the original allegations in 2018, Kirstie Schroder was Acting Executive Director of Strategic Services within MFB. In this role, she shared responsibility for the MFB's information management alongside the Executive Director of Corporate Services. She is also a long-term employee, having more than 30 years' service with MFB. Since 1 July 2020, when FRV became operational, Ms Schroder has been employed as Deputy Secretary, Corporate, Regulation and Strategic Services. This role leads all corporate, strategic and non-operational work for FRV.

During the period under investigation, Ms Schroder also acted as a key liaison between the MFB Executive Leadership Team and the UFU (in particular Peter Marshall). Ms Schroder gave evidence to IBAC that she was tasked with being an intermediary to improve MFB's relationship with its workforce and the UFU; to build trust across those aspects of the organisation and the union.

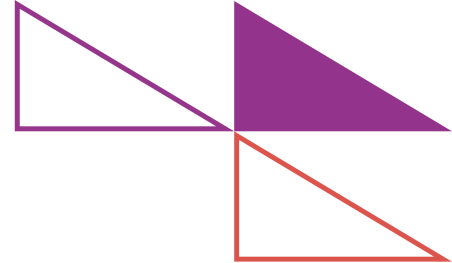
3.6 Stephan Trakas

Stephan Trakas has worked at MFB/FRV for over 30 years and was employed as a Network Administrator during the events of Operation Turton. His role included administration of ICT domains, exchanges, mailboxes, storage and networks. Mr Trakas was part of the Network Administration Team, one of several teams that form ICS within MFB/FRV, with the ICS having responsibility for ICT. Mr Trakas is currently employed at FRV as a Network Analyst.

¹² Premier of Victoria 2019, 'A modern fire service for all Victorians', web page, Melbourne, viewed 23 July 2024, www.premier.vic.gov.au/modern-fire-service-all-victorians.

¹³ Firefighters' Presumptive Rights Compensation and Fire Services Legislation Amendment (Reform) Bill 2019 (Vic), Explanatory Memorandum, s 2.

4 What IBAC's investigation found



The unauthorised access and disclosure of information has previously been identified by IBAC as a significant corruption risk. In 2020, IBAC published a research report, *Unauthorised access and disclosure of information held by the Victorian public sector*.

IBAC found that the unauthorised information release motivated by individual beliefs was an increasing area of risk for the public sector, noting that significant political or social issues can create powerful motivators for employees to disclose information without authority. It also noted these disclosures are difficult to investigate, particularly if the information was known to a large number of employees.¹⁴

Operation Turton identified five separate instances where MFB information was accessed or disclosed by MFB employees without authorisation. This investigation highlights the importance of public sector employees maintaining the confidentiality of information they have access to in the course of their duties and how, if misused, information can be used for personal or political interests contrary to the public interest. Operation Turton also highlights how strong systems and controls for this information is important to prevent its unauthorised access and use.

The specific instances of unauthorised access or disclosure of information are discussed below.

4.1 Unauthorised access of MFB email accounts by Mr Trakas's user account (April–May 2018)

IBAC found Mr Trakas accessed other MFB employees' email accounts without authorisation, contrary to MFB policy and procedures. Due to limitations in the ability of MFB ICS systems to log and audit accesses, IBAC was unable to establish that Mr Trakas's conduct was corrupt, as defined by the IBAC Act.¹⁵

Mr Trakas was recorded as granting and removing access for himself to various MFB email accounts, including those of MFB's Executive Leadership Team (ELT) throughout April and May 2018. It was also identified that Mr Trakas's account facilitated access to other MFB email accounts for other MFB employees outside of established authorisation processes.

IBAC reviewed the external audit report commissioned by MFB into these allegations. IBAC identified 19 access events involving Mr Trakas's user account that had no explanation. These included instances of his account providing and removing third-party access to the CIO's and CEO's mailboxes without any request or authorisation, and of his account having access to MFB employee mailboxes for extended amounts of time. According to MFB policies and procedures, access to a person's mailbox requires authorisation from either a Director and the CIO, or the owner of the mailbox.

The MFB ICT Security manual states, 'responsibility lies with ICS to monitor and control access to information and system assets'. In June 2018, this responsibility was reiterated to ICS employees in a memo from the CIO which confirmed that 'ICS has responsibility for ensuring information and data within our systems is managed to achieve compliance with regulatory controls and industry standards, and to ensure our information assets are secure at all times'.

Under examination, Mr Trakas was asked why he had not logged any requests via MFB's help desk seeking access to other employees' mailboxes. Mr Trakas's initial evidence was that this was because such requests would likely have been made verbally, or over the phone. When told that the policy for mailbox access required authorisation from the CIO, Mr Trakas conceded that 'there are some cases where we circumnavigate ... the policy' because it was 'not workable'. He further estimated that employees 'circumnavigate' the policy around mailbox access about 'five per cent of the time'.

¹⁴ Independent Broad-based Anti-corruption Commission 2020, *Unauthorised access and disclosure of information held by the Victorian Public Sector*, IBAC, Melbourne.

¹⁵ *Independent Broad-based Anti-corruption Commission Act 2011* (Vic), s 4.

Mr Trakas gave additional evidence around why this policy was not followed: 'If I can trust their position I do – we do ask them to get permission but ... sometimes the permission might not even get recorded, it could be just a verbal thing, you ring up that person and they said, "Yeah, do it".' Mr Trakas also talked about feeling pressure from 'mad, angry personal assistant[s]'.

Mr Trakas's admission that he did not always follow MFB's policy and procedure as it relates to accessing MFB email accounts is consistent with other witnesses' evidence regarding a poor cultural practice at MFB of some ICS employees not following policy or procedure. This is discussed in more detail in section 5 of this report.

4.2 Unauthorised access and use of Mr Trakas's account by Ms Pyliotis (August 2018)

IBAC found, in August 2018, Mr Trakas allowed Ms Pyliotis to use his computer and user profile to forward an email that she did not want to come from her mailbox. IBAC was not able to determine Ms Pyliotis's motivation for doing this.

When questioned by IBAC, Mr Trakas could not recall any further detail about the email and claimed he had not read the email but was able to describe this incident as having occurred. Mr Trakas said, once sent, he deleted the email from his inbox and sent items.

Ms Pyliotis told IBAC she did not recall this incident. However, when asked if she could explain why she would want to send an email out of MFB but for it not to come from her email account, she said the only reason she could think of would be that this email related to her role as union delegate. She also explained she often used her personal non-MFB email account to send information on 'MFB matters that are union related' to avoid scrutiny or detection by MFB.

IBAC was unable to locate the email on MFB systems. Based on evidence given by Mr Trakas and others to IBAC about the lack of access logs, audit functions and poor data retention standards within ICS systems historically, it is possible that the email was never captured in the archiving system once Mr Trakas deleted the item after sending. IBAC also found that at the time of this incident, the audit log function for the archiving system had been switched off, further reducing the chances of such an email being logged via the audit function.

Mr Trakas and Ms Pyliotis both admitted to IBAC they had met before their private examinations and speculated about the reason for them being summonsed. Mr Trakas told IBAC that this incident of Ms Pyliotis using his email was 'the only thing I could think of and I mentioned to her that's the only thing that it could be'. Mr Trakas further explained that Ms Pyliotis believed the examination to be in relation to the 'Union' and added that they both thought '... someone's out to get the Union [secretary], Peter Marshall'.

Ms Pyliotis told IBAC that, during their discussions, she told Mr Trakas she thought it was about 'exchanging emails', 'an email trail to do with the president of the board' and that she asked Mr Trakas whether he had ever accessed the emails of a former MFB Board President. This explanation is understood to be a reference to the unauthorised access incident in April 2019, detailed in section 4.4.

4.3 Unauthorised disclosure of MFB document to the Emergency Services Minister (March 2019)

Between 6 and 14 March 2019, Mr Marshall 'asked around all the [UFU] delegates' and 'ended up getting a copy' of an internal MFB PowerPoint presentation (the document) relating to a business intelligence software program. He subsequently provided it to the then Minister for Emergency Services, the Honourable Lisa Neville MP.

The then CO and CEO of MFB (2018–19) told IBAC that they were looking to purchase the software to assist analysis of MFB resourcing to improve its responsiveness to fires, which they anticipated would be needed in the transition to FRV. Mr Marshall told IBAC that he believed the CEO was seeking the software to reduce firefighter and fire truck numbers, which he believed would have been in breach of the enterprise agreement and jeopardised the safety of his members and the public.

IBAC found that Mr Marshall received the document from ‘the Union office’ after making enquiries with ‘all the delegates’ and that Mr Marshall then provided it to the Minister in advance of her meeting with the MFB CEO. IBAC found this was a clear example of unauthorised disclosure of MFB information both to the UFU and to the Minister. Mr Marshall and the UFU rejected both of those conclusions. Mr Marshall’s evidence to IBAC was that his motivation for disclosing the document to the Minister was to stop the purchase of this software by MFB because he was concerned about its impact on firefighter and public safety. In his response to a draft version of the *Operation Turton* special report, he explained that this was because his role is to look out for the interests of UFU members, and that the safety and wellbeing of workers is a top priority. Any proposal to cut the number of workers, which he believed the software purchase was, would affect employment stability and worker safety. IBAC notes the evidence of MFB CEO and CO, that the document described a business intelligence software, which would analyse ‘things like utilisation and resource deployment’ to improve responsiveness to fires. MFB did not proceed with purchasing the software.

On 6 March 2019, the document was first shared with the MFB CEO and the broader MFB ELT by an MFB employee. The CEO recalled sharing the presentation with four MFB Deputy Chief Officers, and that it ‘had only been seen by two other colleagues within MFB neither of who had shared the presentation any further’.

According to the CEO’s evidence, they attended a meeting with the Minister and then MFB Board President on 14 March 2019. During this meeting, the Minister presented the CEO with a printed copy of the document, and asked why the software was being considered. The CEO told IBAC how, following their explanation to the Minister regarding the software, she said, ‘You can’t have it’. The CEO’s evidence was that they believed Mr Marshall had influenced the Minister before her meeting with the CEO with the intention of stopping MFB purchasing the software.

During her examination before IBAC, the Minister could not recall receiving a copy of the document described to her as ‘business software’ and a ‘process evolution PowerPoint’. As such, IBAC did not question the Minister in relation to the above meeting in which the document was discussed.

In response to a draft version of the *Operation Turton* special report, the Minister located a copy of the document, which she accepts that she (or her office) received from Mr Marshall. The Minister’s response noted that when looking at the MFB PowerPoint presentation in March 2019, the Minister considered it to be a pitch for MFB to retain a third party’s software services to assist MFB to close stations and reallocate resources. Minister Neville’s response stated she did not consider the document confidential or that the PowerPoint had the appearance of a confidential or leaked document. The Minister recalled discussing the document in the meeting with the MFB CEO and Board President on 14 March 2019. The Minister told IBAC that it was appropriate to discuss the document with them because MFB required her approval to procure the software described in the document. The Minister also noted to IBAC that she did not agree to the procurement of the software because in her view it was contrary to Government policy and the fire services structural reform that was going to Parliament.

During Mr Marshall's examination before IBAC he could not recall who provided him the document, only that it 'would have been one of my members'. IBAC observed Mr Marshall frequently passed on information he believed to be of interest to others (including the Minister), usually to further the Union's interests. In his response to a draft version of the *Operation Turton* special report, Mr Marshall submitted that IBAC had 'mischaracterise[d] and downplay[ed] the substantive matter to which the Minister was alerted', by referring to it as a purchase of software rather than a concern by Mr Marshall for the safety of his members and the public.

IBAC does not agree that it has mischaracterised or downplayed the reasons for Mr Marshall disclosing information to the Minister before her meeting with the MFB CEO. IBAC accepts that Mr Marshall held concerns for the safety of UFU workers and the public, however this does not alter IBAC's finding that the disclosure of the information from MFB to the UFU was not authorised.

Separately the Minister stated that Mr Marshall 'constantly' sent through information from 'sources' within MFB and CFA. The Minister gave evidence to IBAC that her practice was to pass on that information to the Department of Justice and Community Safety (DJCS) to identify how and from whom Mr Marshall had received that information.

In December 2020, following the Minister's evidence, IBAC issued a summons for documents to DJCS requesting information including any documents or correspondence relating to any notifications made to DJCS by the Minister or her office regarding information leaks from within the CFA, MFB and FRV. DJCS provided a written response confirming that it could not locate any relevant documents or correspondence.

In response to a draft version of the *Operation Turton* special report, DJCS advised that its standard processes include that any notification made by a Minister or their staff to the Secretary or a Deputy Secretary would be referred to the relevant Deputy Secretary for appropriate action as a priority. Where these matters concern integrity issues, these will be referred to DJCS's internal investigation area and, where appropriate, notified to IBAC. DJCS stated that it takes issues raised by Ministers or their offices very seriously. It also advised IBAC that, in response to receiving a draft version of the *Operation Turton* special report, it had developed a new policy summarising how complaints from Ministers are managed.

Although IBAC could not corroborate the Minister's practice of notifying DJCS, IBAC accepts the Minister's evidence that this was her practice. IBAC encourages all Ministers and departments to ensure that any information or complaints about unauthorised disclosures (or other improper conduct) are appropriately recorded and actioned. All staff should be clear about expectations, and processes should be suitably robust given the sensitive matters involved.

Under examination, Mr Marshall's view regarding accessing and sharing information was that there was a 'wide clause' in the 2016 enterprise bargaining agreement for MFB operational employees (Operational EBA) that allowed him to 'inspect documents, go into premises, all that' and 'allows the union official and the shop steward or delegate to access information'. Mr Marshall said that 'information' would sometimes be 'supplied' to him by UFU members but could not recall any names.

A lawfully intercepted telephone call on 22 March 2019 recorded Mr Marshall telling Ms Schroder about discussions he had that day with a former ministerial advisor regarding the MFB CEO circulating a document 'to close the stations and take appliances offline', believed to be a reference to the same document outlined earlier. Following speculation between Ms Schroder and Mr Marshall about how the information had been passed on to this advisor, Ms Schroder updated Mr Marshall on how it was being discussed at MFB, agreeing that there was a 'witch hunt trying to find out who leaked it'. Ms Schroder went on to add that she had 'no idea how you got the document'. Mr Marshall agreed that she did not.

When questioned about this phone conversation by IBAC, Ms Schroder could not recall which document she was referring to, but was not surprised that Mr Marshall could acquire a copy of the document in question, adding that the MFB Board and MFB ELT information used to 'leak' all the time, and that the potential for leaking is 'huge'.

4.4 Request for unauthorised access to MFB information (April 2019)

In March 2019, Mr Marshall began receiving information from multiple sources that led him to suspect that WorkSafe had been in contact with MFB for the purposes of investigating bullying allegations made by a former MFB CEO against Mr Marshall. The issue of whether WorkSafe did or did not investigate Mr Marshall for breaches of the *Occupational Health and Safety Act 2004 (Vic)* or the outcome of such an investigation was not relevant to IBAC's investigation.

However, IBAC found, via lawfully intercepted telephone calls, that Mr Marshall contacted Ms Schroder on 23 April 2019 asking for further information on this matter. Together, they settled upon a course of action that saw Mr Marshall immediately call Ms Pylotis and ask her to discreetly conduct checks in ICS systems to see what information she could locate relating to the investigation. Lawfully intercepted telephone conversations between Ms Pylotis and Mr Marshall showed that she called him the next day, saying that she and an unnamed male colleague had checked incoming emails to the MFB ICS service desk to ascertain whether there were any requests to give the Board President 'any type of access' but were unable to find any relevant information.

On 29 March 2019 Mr Marshall was given a tip-off about an investigation from an associate, outside of MFB:

I've just been given a tip, there's apparently another report coming through the fire brigade attacking you ... the way it was put to me some bullying report. I don't know ... what's true or not, but just so you're ... aware there's a report ... allegedly coming through.

Mr Marshall responded, speculating about whether it related to WorkSafe. The person who provided this information told Mr Marshall, 'It's a bullying report ... which is going to be an attack on you directly', adding that 'it's coming through the system, I don't know any more than that'.

On the same day, immediately following this discussion, Mr Marshall began calling his contacts to find out more information on this investigation into him. This included senior leaders of MFB, including Ms Schroder. Ms Schroder told Mr Marshall:

There is no doubt there is something going on ... I don't actually know what it is so I can't say anything about what it is but there are people running around very secretly at the moment ... They're certainly not talking in front of me, that's for sure.

Mr Marshall asked her whether any other members of the MFB ELT had said anything about it, and they then discussed which members may be able to find out further information for him. Ms Schroder observed, 'I don't think anyone knows ... I think [the Board President's] the one leading some of this stuff'.

The next day, one of Mr Marshall's contacts, an MFB Commander, reported to Mr Marshall that, while the Board President was trying to progress action against Mr Marshall in relation to allegations of bullying, the incident at the centre of the allegation occurred more than two years ago, and therefore the prosecution could not proceed. At the end of the discussion Mr Marshall sought confirmation with the MFB Commander that 'it's not going anywhere', and the Commander responded, 'Well, that's the information I've been able to get'.

On 5 April 2019, Mr Marshall and Ms Schroder discussed the matter again. Mr Marshall told her, 'They're out of time to prosecute mate', and Ms Schroder responded, 'Yeah but what else would it be? ... they've hired someone, I don't know who, but someone's been hired to review something and it's, you know, super super secret'.

Ms Schroder then stated that the MFB CEO had recently been briefed on the matter, adding she would be able to get the information because 'they can't keep anything to themselves'. Mr Marshall then asked her whether she thought it was about him. Ms Schroder responded, 'It's gotta have something to do with you or the Union, the way that ... they're making sure that I don't know about it. Like, (the Board President) was very specific in saying to the lawyers, "you can't talk to Kirstie about this"'

On 23 April 2019, Ms Schroder and Mr Marshall again discussed the possible investigation into Mr Marshall by WorkSafe and/or MFB. They were aware that new people were working at Eastern Hill (MFB's head office) and had been provided access to certain files but did not know the focus of their work. Ms Schroder suggested ICS employees were a potential source of information, and Ms Schroder and Mr Marshall agreed Ms Pyliotis could be asked if she knew what the people at Eastern Hill were working on and what files they were accessing. Mr Marshall said he would ring her immediately.

Mr Marshall then called Ms Pyliotis and explained how 'apparently there's been all these people wanting to access files and everything at ICS, uh, urgently ... people from outside and I'm wondering who it is and what it's about'. When Ms Pyliotis asked him 'what kind of files' they wanted access to, he responded, 'I don't know whether it's, uh, WorkSafe or WorkCover or ... who it is ... I know it's all secret squirrel stuff that (the Board President's) involved in'. Ms Pyliotis then asked him what information he had. He responded, '[All] I know is that they keep talking about a prosecution and ... apparently someone's actually accessing all the files ... to [look] for some evidence over a prosecution, now, I don't know ... if it's against me or the Union. But ... I'd dearly love to know what it's about'. Mr Marshall cautioned her to be 'very discreet about it of course', to which she responded, 'I know who to ask and who not to ask'.

Ms Pyliotis asked him if the information could be obtained via a Freedom of Information request, and he responded, 'No, they don't even know I know as much as what I'm telling you ... I'm trying to work out what they're up to'. Ms Pyliotis agreed to 'go in tomorrow ... and suss out some people'. Ms Pyliotis indicated she would need assistance to find out further information, to which he responded, by way of explaining the reason for her enquiries, 'You can say "what's all these people wanting all this access about?"' Ms Pyliotis queried whether the request for access to information had 'come through legitimately', explaining that she would be able to 'look online and see who's logged it ... and I can tell you who ... requested it and what they've requested'. Mr Marshall responded, 'They're actually asking ICS to search all that, give them access to all these files and stuff'. Ms Pyliotis responded, 'What I'm trying to say is, if they're doing it legitimately, I can find out without asking anybody'. He confirmed 'they' were doing it 'legitimately'.

Ms Pyliotis concluded by asking Mr Marshall, 'You haven't asked me to find this out, have you?' He laughed and responded, 'No, I don't work that way'. She then told him she would 'look tomorrow' and report back to him.

On 24 April 2019, Ms Pyliotis called Mr Marshall, saying that she and an unidentified male colleague had not had 'much luck', explaining that they had a look at 'all incoming mail from [the Board President's] MFB email ... and there was no requests ... there was no requests from the CEO, to give (them) any type of access'. She further explained that the person who assisted her was unable to 'look at anything because they get audited'. As Ms Pyliotis said this, she laughed. Mr Marshall asked Ms Pyliotis who in ICS would have provided the access to the investigators. Ms Pyliotis explained, 'The person that will do that is so up - up [the CEO's] arse that ... (they're) one of them ... you wouldn't even ask (them)'. Ms Pyliotis complained about ICS employees supporting 'management' and not 'us'. Later in the call, she told Mr Marshall, 'If I can find anything else out I will, but it doesn't look likely ... because they've put so many restrictions on what we can and can't do and look at', adding that 'people are scared for their jobs' and the colleague who had assisted her was 'worried'. Mr Marshall thanked her, and before the call concluded, Ms Pyliotis added the colleague who had assisted her 'also looked at the CEO's ... and he didn't see ... anything for the CEO either'.

When questioned by IBAC, Ms Pyliotis struggled to recall this incident.¹⁶ She said that some time after September 2018, Mr Marshall asked her to check for emails from a former MFB Board President in relation to an IBAC investigation. Following this request, Ms Pyliotis said she asked Mr Trakas if 'the system's being tracked and whether ... you can have a look', with Mr Trakas telling her it was tracked. Ms Pyliotis said, 'I made the phone call [to Mr Marshall] to say that everything is tracked and we can't have a look because everything was tracked'. While Ms Pyliotis may have been confused when giving this recollection - given that she incorrectly recalled the date, the MFB Board President at the time and the investigating agency - IBAC found that the similarities in the intercepted telephone conversations and Ms Pyliotis's recollection of increased auditing of systems suggested this was the same incident.

¹⁶ During the examinations of Mr Trakas and Ms Pyliotis, IBAC did not play lawfully intercepted telephone conversations.

When questioned by IBAC, Mr Trakas was unable to recall this request from Ms Pylotis.

Ms Pylotis's evidence about Mr Marshall's request was that 'everyone knows everything. And we pass on information'. She agreed that she would sometimes ask MFB employees to send her information that she did not have direct access to in her role. She stated, as a UFU representative, she had never received any guidance on what information could be legitimately shared with the Union, explaining that her understanding was that 'if it affects a member, then I believe I can go to the Union'.

Ms Schroder was examined about her knowledge of the bullying claim against Mr Marshall, and the extent to which Mr Marshall sought information about the matter via his MFB contacts. Initially, Ms Schroder repeatedly denied ever discussing the bullying investigation with Mr Marshall or Mr Marshall ever seeking information from her in relation to the matter.

Ms Schroder was later played the lawfully intercepted telephone calls between her and Mr Marshall on 5 April 2019 and 23 April 2019 (details of which are highlighted earlier). In response to these calls, Ms Schroder said her dealings with Mr Marshall were 'a fine balancing act with maintaining that ... trust without giving too much information'. Ms Schroder said Mr Marshall already had information about the WorkSafe investigation and she was 'trying to not ... extend that offering of information but still maintaining that you're not hiding things that he already has knowledge of'. She also said that information discussed in the call on 23 April 2019 was 'information that was floating around the organisation'.

In IBAC's view, Ms Schroder did 'extend' Mr Marshall's knowledge of the WorkSafe investigation by revealing that a review into the matter had been conducted, that a particular MFB executive had been briefed on that review, and that another executive had sought legal advice about the issue.

In her response to a draft version of the *Operation Turton* special report, Ms Schroder submitted that she did not provide any confidential information to Mr Marshall in relation to the WorkSafe investigation. IBAC disagrees. The information she disclosed was not in the public domain or common knowledge and it is clear from Ms Schroder's own evidence that when she discussed the WorkSafe investigation with Mr Marshall and the steps that MFB were taking in response, she was aware that her employer was treating the matter (including any action they were taking as an organisation in response) as confidential.

Ms Schroder said she purposefully directed Mr Marshall to seek further information from Ms Pylotis because she believed 'Vicky didn't know anything about it', concluding that 'on one level, [Mr Marshall] feels confident that he's got information but he really hasn't got information'. IBAC does not accept this explanation. Ms Schroder actively facilitated Mr Marshall's search for more information about the investigation into Mr Marshall's conduct by suggesting to Mr Marshall that he contact ICS employees for more information during their telephone call on 23 April 2019. Whether this tip bore fruit is beside the point. The action was contrary to the MFB Board's clear desire to keep the matter confidential and inappropriate given the subject of the investigation was Mr Marshall himself.

IBAC accepts that some of Ms Schroder's interactions with Mr Marshall would have been in the interests of MFB and consistent with her role as a key liaison between the MFB Board and the UFU; a role she was informally assigned to improve the relationship between the Board, its workforce and the UFU. IBAC also recognises that the environment in which Ms Schroder was operating, which required extensive consultation and knowledge sharing with the UFU, presented real and nuanced challenges in terms of managing the disclosure of information to the UFU. IBAC also acknowledges that there was a lack of clear organisational guidance for Ms Schroder and others concerning the limits of information to be provided to the UFU.

However, as a senior MFB employee, whose role at the time included shared responsibility for information management, Ms Schroder had an obligation to act with integrity and in the interests of MFB at all times when dealing with Mr Marshall. Her dealings with Mr Marshall were, at times, at odds with this obligation.

In relation to their conversations about this matter, the former Commissioner of IBAC summarised Mr Marshall's position by asking him the following:

You see nothing inappropriate in Ms Schroder passing that information on to you and nothing inappropriate had you gone to your shop steward and asked her to provide you with what knowledge she had about an internal investigation going on within the MFB that might have involved you?

Mr Marshall responded by saying, 'No, not at all'.

In regard to him seeking information from Ms Pyliotis, Mr Marshall said it was 'not inappropriate. It's in accordance with the enterprise agreement', arguing he was entitled to ask any UFU representative for information in relation to an internal issue, even if MFB regarded the information as confidential. When asked whether the union representative should provide the information to Mr Marshall – even if MFB characterises it as confidential – Mr Marshall responded it had to be determined on a 'case-by-case basis'. Mr Marshall's view was that since the information potentially related to a WorkSafe investigation relating to him as an employee of MFB, that the clause contained in the Operational EBA allowed him to seek this information.

Mr Marshall's attention was drawn to clause 35.6.1 of MFB's Operational EBA, which reads:

Subject to reasonable notice an officer or employee of the UFU may for the purposes of representing employees covered by this agreement for any purpose relating to the application of this agreement or entitlements that arise under this agreement ...:

- 1. at any time during working hours enter the MFB's prescribed premises, registered office or workplace where the MFB's employees are engaged ('Workplace' for this clause here includes any place where employees are performing work or are attending pursuant to a direction of the MFB or are attending in their capacity as employees of the MFB)*
- 2. at any time during working hours, inspect or view any work, material, machinery, appliance, document (including time and wages records), qualification of employees on the premises mentioned above; and*
- 3. interview, on the premises referred to above, an employee who is a member, or is eligible to be a member, of the UFU.*

Mr Marshall was asked whether the clause entitled him to 'get information' from Ms Pyliotis in her role as a union representative, without needing to engage non-unionised MFB employees. Mr Marshall appeared to agree, saying he had '420 delegates' and does it 'on a daily basis'.

IBAC does not accept Mr Marshall's justification of his request to Ms Pyliotis to find out information on his behalf as being allowed under the MFB Operational EBA. While the clause in question provides UFU a right of entry (after reasonable notice) to MFB premises and access to documents 'for the purposes of representing its members', IBAC does not accept this access to information was for the purpose of representing UFU members. There is also no evidence that indicates Mr Marshall gave notice, with directions instead given to Ms Pyliotis to discreetly conduct her enquiries. IBAC could not find any evidence of any formal process being followed or documentation kept in relation to this request by Ms Pyliotis.

IBAC does not accept that Mr Marshall's conduct in reviewing incoming emails of the MFB CEO was within the scope of this clause.

4.5 Unauthorised disclosure of MFB information (May 2019)

Telephone calls lawfully intercepted by IBAC revealed that on 29 May 2019, Ms Schroder told Mr Marshall that MFB was extending the contracts of MFB Executive Directors and suggested to him that ‘it wouldn’t hurt’ if the Minister told MFB that ‘no new contracts should be signed up’. Mr Marshall agreed and then passed this information to the Minister for Emergency Services, the Hon Lisa Neville MP.

Ms Schroder and Mr Marshall then spoke again, with Ms Schroder telling him she believed ‘they’ve said something to [the MFB CO CEO (2018–19)] about appointing people’. Mr Marshall confirmed he had spoken to the Minister, and asked Ms Schroder to provide him with a ‘rundown of what the positions are and who they are’ so he could send this information onto the Minister. Ms Schroder added that the MFB CEO had been lying because she’d gained information from ‘payroll’ that one Executive Director’s ‘substantive contract doesn’t expire until 2020, and yet they’re doing a new contract for him’, to which Mr Marshall responded, ‘Oh, well, I need that information ... So I need all that tomorrow’.

The MFB privacy policy, which contains a definition of personal information, includes ‘job applications’, ‘salary’ and ‘performance assessments’. It also lists as a ‘reference’ the *Privacy and Data Protection Act 2014* (Vic), which defines personal information as ‘information ... recorded in any form and whether true or not, about an individual whose identity is apparent, or can reasonably be ascertained, from the information’.¹⁷ The privacy policy also states that ‘use within MFB of all personal information will be restricted to individuals who require access in the performance of their duties’. It was part of Ms Schroder’s role to promote compliance with such policies throughout the organisation.

During Ms Schroder’s examination she was asked about how she navigated ‘what is and isn’t appropriate for the Union to be told’. She said she was ‘more than comfortable to say there’s information that I’m not at liberty to share with you’, adding she would not share anything of a ‘personal sensitive nature or a commercially in confidence nature or a legal privilege nature’.

Ms Schroder acknowledged to IBAC that she did not support the executive contracts in question being extended and that she wanted the Minister to be ‘aware’ of the situation. IBAC asked Ms Schroder whether she had conveyed the information to Mr Marshall with the intention or expectation that action would be taken by Mr Marshall to stop the contracts from being extended. Ms Schroder firmly denied that this was her purpose or expectation. Ms Schroder told IBAC that she did not expect Mr Marshall to do anything with the information other than bring it to the Minister’s attention.

In her evidence to IBAC, and in response to a draft version of the *Operation Turton* special report, Ms Schroder claimed that disclosure of this information to Mr Marshall was appropriate and consistent with her duties to MFB. In support of this proposition, Ms Schroder referred to:

- a direction that prohibited MFB from extending executive contracts while the organisation was transitioning to FRV
- having the ‘absolute approval of Board presidents, Board members and CEOs’ and staff from DJCS and Emergency Management Victoria to disclose the information
- being specifically asked by the Board President to provide ‘reassurance’ to Mr Marshall that MFB were trying to rectify the issues that related to the extension of certain individuals (she later clarified that the Board President was not, however, apprised of the precise content of her conversations with Mr Marshall). The Board President could not recall having made such a request to Ms Schroder but later in their examination agreed that Ms Schroder’s ‘relationship with Peter was used for the benefit of the organisation on occasion’.

Ms Schroder also told IBAC that the Minister was next in the chain of command and it was therefore appropriate for the Minister to be notified of the situation.

¹⁷ *Privacy and Data Protection Act 2014* (Vic), s 4.

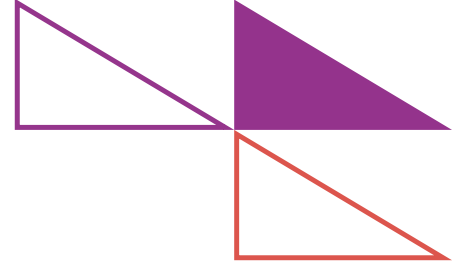
IBAC does not agree with Ms Schroder's characterisation of the provision of this information to Mr Marshall as appropriate and in keeping with her duties and role at MFB. If Ms Schroder wanted the Minister to be aware of the situation she could have sought to inform the Minister directly. Mr Marshall was not a representative of the Minister or the Minister's office, but the Victorian Secretary of the UFU. Given the information concerned the details of individuals' employment with MFB ('personal information' under the MFB Policy which Ms Schroder was partly responsible for overseeing), divulging those details, without the permission of those individuals, to Mr Marshall was an unnecessary breach of their privacy. Ms Schroder could also have raised her concerns internally within MFB or with an appropriate person at DJCS particularly if she believed the organisation was contravening a departmental direction. Further, even if IBAC accepts that the Board President did request Ms Schroder reassure Mr Marshall that MFB were trying to address issues relating to executive contracts, Ms Schroder could have sought to provide such reassurance in general terms, without specifying the individuals concerned.

When asked generally about this incident, Mr Marshall said he recalled finding out that MFB intended to extend executive contracts and subsequently passing this information on to the Government because 'effectively [the MFB Executive Directors whose contracts were being extended] were trying to rort the system'. Mr Marshall stated the contract extensions would 'subvert' the process of the 'new FRV', was 'against government policy' and was being done to secure higher payouts once the contracts of the Executive Directors were terminated.

In their response to a draft version of the *Operation Turton* special report, Mr Marshall and the UFU said that, in passing this information on to the Minister, Mr Marshall was simply alerting the government to matters that he believed would be of concern to them. They said that Mr Marshall was already aware at the time of speaking to Ms Schroder that MFB was in the process of extending some executive contracts, and that there was no evidence that Mr Marshall believed that Ms Schroder's disclosure of information to him was unauthorised. IBAC does not accept this assertion.

Under examination, the Minister agreed Mr Marshall had provided her with information about executive contract extensions. The Minister's explanation was that she did not regard the information as confidential, since the summary from Mr Marshall would be from information 'available in their annual report and other documents'. The Minister could not recall whether Mr Marshall ultimately provided her with further information, following their phone conversation of 29 May 2019. IBAC accepts the Minister's evidence.

5 Systems, controls and culture



Operation Turton highlights how deficiencies in MFB's information security, organisational culture and systems led to repeated instances of unauthorised access and disclosure of information. These issues are discussed below.

As many of the MFB systems and employees transitioned to the FRV, IBAC believes these vulnerabilities require attention by FRV to ensure they are appropriately mitigated.

5.1 Organisational culture issues

IBAC and other integrity agencies have previously highlighted how a problematic organisational culture can both drive and enable corruption, and how it is the responsibility of public sector leaders to create a culture of integrity. Organisational culture has been described as the 'collective values, beliefs, customs and behaviours of the majority of people who work for a particular organisation' and is an important component of an organisation's productivity.¹⁸

Throughout Operation Turton, many witnesses gave evidence to significant cultural issues within MFB. Some of these have been well documented over the past two decades across other reports, inquiries and investigations. Some key themes emerged in relation to organisational culture issues, namely a mutual distrust between employees and management, and barriers for management to effectively address issues.

The 2015 *Report of the Victorian Fire Services Review* outlined a number of cultural issues within the fire services and with the key finding calling for better inter-operability between MFB and CFA.¹⁹ This review also made recommendations which paved the way for some of the changes to the sector which resulted in the creation of FRV.

The Fire Services Review found that a culture within the agencies of 'getting the job done' had resulted in operational requirements being fulfilled, but it also heard descriptions of a bullying culture in both the CFA and MFB, at all levels of the organisation. The review heard that many of those who experience bullying prefer to suffer in silence than make a claim.²⁰

IBAC notes the review did not receive sufficient information to make findings on the prevalence of a bullying culture. The review also heard of some evidence of poor behaviour between paid and volunteer firefighters, however the relationship between the groups was largely positive. Where strained relationships existed between paid MFB firefighters and CFA volunteers, the review noted this has a demoralising effect on those offended or secluded.²¹ Furthermore, industrial disputes between the fire services and their workforces under the previous government were also considered in the review as having had an impact on firefighter morale.²²

MFB agreed to act on the findings of the Fire Services Review and reviewed the MFB employee support program in 2016.²³ It noted that people in senior roles across MFB were becoming burnt out by the workload and organisational expectations of their roles were unmanageable, leading to psychological health and safety risks.²⁴ The review also found that operational employees were protected from the consequences of poor conduct, which contributed to psychological health and safety risks. Two operational interviewees stated, 'You basically learn in induction that you can never be sacked, no matter what happens' and 'No matter what you do, you always know that the Union will back you up'. These findings and statements suggest a culture that enables misconduct.

Ms Schroder told IBAC that there was high turnover of MFB executives and the resulting lack of consistency in leadership positions at MFB led to leadership being neglected. Likewise, she noted the high turnover made it difficult for the ELT to efficiently implement initiatives, reinforce policy and set a strong culture for the organisation. This aligned with evidence given by other senior executives and board members of MFB as part of Operation Turton.

¹⁸ Victorian Public Sector Commission 2017, *Leading Public Organisations Series*, web page, Melbourne, viewed 23 July 2024, vpsc.vic.gov.au/resources/leading-public-organisations-series.

¹⁹ O'Byrne, D 2015, *Report of the Victorian Fire Services Review: Drawing a line, building stronger services*, Parliament of Australia, Melbourne.

²⁰ O'Byrne, D 2015, *Report of the Victorian Fire Services Review: Drawing a line, building stronger services*, Parliament of Australia, Melbourne, p 30.

²¹ O'Byrne, D 2015, *Report of the Victorian Fire Services Review: Drawing a line, building stronger services*, Parliament of Australia, Melbourne, p 28.

²² O'Byrne, D 2015, *Report of the Victorian Fire Services Review: Drawing a line, building stronger services*, Parliament of Australia, Melbourne, p 33, 34.

²³ Metropolitan Fire and Emergency Services Board 2016, *A review of the MFB employee support program*, MFB, Melbourne.

²⁴ Metropolitan Fire and Emergency Services Board 2016, *A review of the MFB employee support program*, MFB, Melbourne, p 33, 39.

The former MFB CO CEO (2018–19) outlined a history of gaps in strong leadership contributing to a problematic and dysfunctional culture, including bullying and threatening behaviour towards those not supportive of the Union, as well as a general lack of scrutiny of MFB's systems and processes and how these could be modernised. They referred to MFB employees as suffering from 'Stockholm Syndrome', further explaining that employees 'want to do the right thing but ... it's easier to take the path of least resistance' in relation to the 'industrial delinquency' which had 'no consequence'. The former MFB CEO (2014–17) told IBAC the organisation was:

an impossibly toxic work environment ... precipitated by the ... attitude and the approach of the UFU fundamentally. The ... culture problems are extreme in that organisation ... I've worked in some tough industrial environments over the course of my career in Emergency Services and elsewhere, nothing – nothing compares to the MFB.

IBAC heard similar evidence from other witnesses who had held positions within the organisation or on the Board. They said management had long held concerns around unauthorised disclosures of MFB information and were trying to implement cultural and information security reforms, but these were often blocked by employees or the Union. There were occasions where employees would escalate matters to the Union rather than implementing reforms, including when management wanted to assess the capabilities and skills of ICS employees to determine if new positions were needed.

In their response to a draft version of the *Operation Turton* special report, Mr Marshall and the UFU rejected the view that the UFU was to blame for the bullying and other cultural issues within MFB. They said that the cultural issues arose in the context of strained relationships between volunteer and paid firefighters and 'ideological attacks' by the former government on the UFU. Mr Marshall also noted in his evidence to IBAC the culture within ICS was particularly difficult due to the distrust between ICS employees and management, and this was, in part, driven by the matters examined by the Victorian Ombudsman in its 2017 report.

IBAC heard how the MFB Board was aware of cultural issues within the organisation but had been unsuccessful in effecting positive cultural change. The former Board President (2015–2018) gave evidence to IBAC that, in 2017 they

found it very difficult in MFB to be able to implement any progress or change ... especially with regard to things like ... gender diversity and inclusion [and] the way in which ... selection processes are run. [I]t was very difficult to get any change ... and that was because the industrial environment was ... quite fraught and had been for some years.

The establishment of FRV is an opportunity for senior leadership to address and remedy these entrenched cultural issues. However, the long-term success of this will depend on cultural change being supported and embraced by employees.

5.1.1 Management vs employees

The 2015 Fire Services Review described the relationship between MFB and CFA leadership teams and firefighters as 'trench warfare'. It noted that the structure of the fire services was one reason for this, with chief officers reporting to CEOs contributing to a division between corporate and operational members and creating uncertainty.²⁵

The Fire Services Review also noted MFB had an irreparable 'serious and fundamental disconnect between the senior management and the operational firefighters'. Firefighters told the Fire Services Review that they felt management did not support them and that firefighters needed to know that their difficult decisions made in operational environments would later be supported by management.²⁶

The distrust of MFB management by employees was a key enabler for the improper conduct exposed by *Operation Turton*. This distrust was strongly entwined with employees' strong allegiance to the Union. When asked by Mr Marshall or those aligned with him to access or disclose information without authorisation, employees were willing to, justifying their actions on the grounds they were helping the Union, which was representing their interests, and they believed the Union would eventually get the information through other means. This distrust of management was also reflected in the evidence given by Mr Trakas and Ms Schroder.

²⁵ O'Byrne, D 2015, *Report of the Victorian Fire Services Review: Drawing a line, building stronger services*, Parliament of Australia, Melbourne.

²⁶ O'Byrne, D 2015, *Report of the Victorian Fire Services Review: Drawing a line, building stronger services*, Parliament of Australia, Melbourne, p 32.

Mr Trakas told IBAC MFB employees, particularly within the corporate areas, had lost trust and confidence in MFB management, and equally, management did not trust the employees. He said employees put a lot of trust in each other, as a result of having built rapport over long tenures and a perception that previous concerns raised with management had not been actioned appropriately. Ms Schroder told IBAC the lack of trust in MFB management by employees and the Union caused difficulties. Ms Schroder referenced a ‘palpable’ ‘lack of trust’ between the organisation and the workforce, stating that a perception exists ‘that the employer does not value the employee and does everything it can to undermine the employee’. Perhaps of most concern, Ms Schroder told IBAC, ‘There was always a view that the MFB were seeking to do harm to their employees [and] terminate them’. She noted that this led to the tendency ‘at MFB for people to go to the Union for very ... minor matters’.

Other witnesses recounted stories of senior employees being ‘barked at’, in an apparent reference to those employees being considered ‘dogs’ by MFB employees, by virtue of their leadership position within MFB.

The former MFB CO CEO’s (2018–19) view was that the divide between employees and management at MFB was caused by the UFU, stating ‘the Union did a really good job at creating ... you know, “it’s all management, you know, it’s all their fault”’ observing that it ‘creates a legitimacy around their existence’. It was their belief that though this tactic was not ‘particularly skilful’ or ‘sophisticated’, ‘[Mr] Marshall ... needs to have ... a cause, needs to have an enemy’.

The former MFB CEO (2014–17) told IBAC the strong union culture and industrial matters made it difficult for MFB to manage employee behaviour. They said union members took direction from the UFU rather than MFB, and that, during union campaigns, there was inappropriate behaviour, including instances of MFB management and Board members being verbally abused by employees during the industrial negotiations. Similarly, another witness observed that no one wanted to ‘take on’ the UFU or its members due to a fear of ‘retribution’. They stated that during their time at MFB, ‘if people did go against UFU they would find they would be subject to targeting’, noting that this could include ‘a barrage of grievances against you for any change you were trying to implement’. One former board member gave evidence to IBAC that they formed a view that statements from the MFB ELT in the media and to employees were at times ‘antagonistic’ and ‘not in the best interests of the organisation and the MFB’. The board member further added that firefighters were expressing concerns about the way they were being portrayed in media reporting, and the board member ‘felt that some of the comments by MFB management ... were provocative’.

In their response to a draft version of the *Operation Turton* special report, Mr Marshall and the UFU said that employees were fearful of retribution from management, rather than the UFU. They said that employees were reluctant to raise issues about MFB’s operations (for example, in relation to the use of contractors) due to fears of repercussions from management in relation to their employment, and that Mr Marshall had previously alerted management to this problem.

Within the ICS area specifically, multiple different employees referenced the negative effect that the Victorian Ombudsman’s 2017 finding of nepotism by a former MFB CIO²⁷ had had on morale and culture, with some appearing to use it to justify their distrust in management. One ICS employee speculated that the deficiencies in ICS’s workplace culture may explain why management felt the continued need to ‘lock our systems up’.

²⁷ Victorian Ombudsman 2017, *Report into allegations of conflict of interest of an officer at the Metropolitan Fire and Emergency Services Board*, VO, Melbourne.

5.1.2 Barriers for management to address issues

IBAC heard evidence there had been attempts by the MFB ELT to change the culture and address poor behaviour when it occurred but that these efforts had been unsuccessful or at best, change was progressing much slower than they expected.

The entrenched nature of the cultural issues, the high turnover of the ELT members and the influence of the Union were described as ongoing challenges for management when trying to implement reforms. IBAC also obtained evidence that some employees ‘did whatever [the] UFU wanted them to do and were repaid with protection where they were involved in misconduct and open disrespect and undermining of [management]’.

IBAC acknowledges that FRV was established to deliver a more modern and effective fire service and it is hoped the new organisation will develop a new, healthier workplace culture with greater levels of trust between employees and management. IBAC encourages FRV to be alert to the cultural issues highlighted in this report and take steps to actively address them.

Operation Turton particularly highlights that MFB was struggling to address issues with its information security and within the ICS business area. One witness explained this was because there were so many major issues requiring fixing, and the MFB workforce often lacked the technical skills to address these.

5.2 Restrictive industrial relations requirements

Many of the previous inquiries and reviews of MFB suggest industrial relations matters were a key driver and reflection of MFB cultural issues. This included negotiations for the current and previous agreements, as well as the content of the current agreements and how this affected the day-to-day operations of MFB. These enterprise agreements have been carried over to FRV.

Negotiations between MFB and its employees have long been a matter of contention. In 2008, a Parliamentary report on the processes for selecting new personal protective clothing for Victorian firefighters identified a poor relationship between CFA and MFB management, employees and the UFU. The report stated:

The period 2000–2007 represents a sorry history of lack of clearly defined purpose in the first place, lack of a sense of haste, lack of communication, lack of cooperation between all parties, a policy of obstruction by the United Firefighters Union (UFU) until it achieved what it wanted, lack of intervention on the part of the firefighting bodies at Board level, ongoing industrial action, and endemic intransigency between the parties when, as was ultimately demonstrated, mutual concessions might well have saved years of haggling.²⁸

In February 2019, the 2016 enterprise bargaining agreement for MFB operational employees (Operational EBA)²⁹ was approved, with the previous agreement having passed its nominal expiry date in September 2013. This agreement covers firefighters, station officers and communication controllers. The protracted negotiations over the new agreement were a matter of significant media attention. It led to the resignation of the then Minister for Emergency Services, Jane Garrett, in 2016 and significant turnover within the MFB executive team and the Board.³⁰ IBAC considers that the longstanding issues associated with the enterprise agreement contributed to the corruption vulnerabilities identified in Operation Turton.

²⁸ Lewis, AM, Gordon, J 2008, *Report on the processes to select new personal protective clothing for Victorian firefighters*, Parliament of Victoria, East Melbourne, p 4.

²⁹ Metropolitan Fire and Emergency Services Board & United Firefighters Union of Australia, Operational Staff Agreement 2016. On 26 August 2020, the Fair Work Commission ordered that FRV would be bound by the terms and conditions of the existing MFB and CFA enterprise agreements and varied the agreements to accommodate for the creation of FRV. Accordingly, the most recent MFB industrial agreement was renamed the Fire Rescue Victoria Operational Employees Interim Enterprise Agreement 2020. See [2020] FWC 3428.

³⁰ Premier of Victoria 2016, ‘Statement From the Premier’, web page, viewed 23 July 2024, www.premier.vic.gov.au/statement-premier-22; Premier of Victoria 2016, ‘Statement On The CFA Board From the Emergency Services Minister’, web page, viewed 23 July 2024, www.premier.vic.gov.au/statement-cfa-board-emergency-services-minister.

5.2.1 Consult and agree

The 2016 Operational EBA contains a clause requiring MFB to consult with the UFU and employees, via the Consultation Committee, and reach consensus on matters relevant to the ‘employment relationship of employees’.³¹ The Consultation Committee includes representatives from both MFB and the UFU. A similar clause exists in the MFB Corporate EBA, which covered MFB’s non-operational employees, including those within ICS.³² Both of these agreements now apply to FRV.

This consult and agree clause has existed across the agreements that applied to MFB for many years. Since its inclusion, there have been numerous changes to MFB’s Executive Leadership Team and its Board, as well as changes to the Ministers overseeing the fire services and industrial relations.

All EBAs made under the *Fair Work Act 2009* (Cth) are required to include a consultation term that requires the employer to consult with employees about a major workplace change that is likely to have a significant effect on the employees, or a change to their regular roster or ordinary hours of work. The consultation term must also allow for employees to be represented for the purposes of that consultation.³³ Accordingly, the Victorian Government’s general position on when consultation is required is ‘where departments and agencies are proposing to introduce a major change to production, program, organisation, structure or technology in relation to its enterprise that is likely to have a significant effect on the employees, including changes to ordinary hours of work and changes to regular rosters’.³⁴ This position also reflects the model consultation clause, as set out in the *Fair Work Regulations 2009* (Cth) which is to be adopted if the parties to an EBA cannot reach agreement on a consultation clause.³⁵

While IBAC understands the legislative requirement for an enterprise agreement to include a consultation term, the additional ‘agree’ requirement is not required by law, nor is it common to enterprise bargaining agreements. IBAC found that this supplementary requirement impaired MFB’s governance and ability to operate effectively and efficiently, giving rise to a misconduct and corruption vulnerability within the organisation. This is evident from the influence the Union exerted over the decision making of MFB, an independent statutory authority of government. IBAC heard from witnesses that this clause inhibited MFB’s ability to address cultural, operational and ICT issues. The MFB Board and ELT were unable to proceed with decisions that they believed were in the best interests of the organisation due to the ability of the Union to veto proposed actions under the agree requirement.

Additionally, the consult and agree clause as it currently operates – combined with the significant influence of the UFU within MFB – led employees to share information directly with the union without the permissions required under the EBA. Some employees said this happened because it was considered the UFU would in time gain access to this information through the consult and agree process.

As the agree requirement applies to FRV, these vulnerabilities continue.

Numerous witnesses told IBAC that this clause effectively prevented MFB enacting any changes to any policy, procedure, system, strategic planning, station locations, technology, or purchases of equipment without UFU endorsement. Ms Schroder observed that at ‘a business level, pretty much everything has to go through the consultative committee’. She noted an advantage of this approach was that it often results in greater transparency in decision making, which placates employees’ concerns that things are being hidden from them.

³¹ Metropolitan Fire and Emergency Services Board & United Firefighters Union Operational Staff Agreement 2016, Clause 16, www.fwc.gov.au/documents/sites/mfesb-ufua-agreement/application/ag2018-1278-eba.pdf, accessed 18 February 2021.

³² Metropolitan Fire and Emergency Services Board Corporate & Technical Employees Agreement 2017, Clauses 11-12, www.fwc.gov.au/documents/documents/agreements/fwa/ae425980.pdf, accessed 18 February 2021.

³³ *Fair Work Act 2009* (Cth), s 205.

³⁴ State Government of Victoria 2019, Government’s industrial relations principles, ‘Consultation and dispute resolution’, web page, Melbourne, viewed 18 August 2021, www.vic.gov.au/public-sector-industrial-relations-policies-2015/governments-industrial-relations-principles#consultation-and-dispute-resolution.

³⁵ The model consultation clause can also be adopted voluntarily by parties to an EBA. See Fair Work Commission 2024, ‘Consultation term’, web page, Melbourne, viewed 8 April 2024, www.fwc.gov.au/consultation-term.

Of most concern was Ms Schroder's concession that Mr Marshall and the UFU had effectively been running MFB since the late 1990s, despite the efforts of different MFB ELTs to change this. She stated the consult and agree clause was an outcome of the poor relationship between the Union and MFB leadership over many years. She noted the FRV Commissioner had a charter to 'regain control of the organisation and run the organisation on behalf of Victoria'.

The former MFB CO CEO's (2018–19) evidence was that the agree requirement effectively handed control of MFB to the UFU. They said:

the [MFB] Board meetings were almost like it was groundhog day, it was like, well, the industrial instrument is such ... unless the Union agree you can't and then, look, why would they agree? You know, it's not in their interest to agree ... you've handed them complete control. Why would they give that up?

The former MFB CEO (2014–17) told IBAC that the agree requirement was the major concern with the Operational EBA, stating that 'any decision made by the organisation had to be agreed with the UFU or it couldn't proceed, simple as that'. In their view:

... any organisation that ... has statutory responsibilities and a fundamental requirement to provide services to the community and to satisfy legislative requirements ... that is not able to do that because of restrictions contained in an Enterprise Agreement is in a fundamentally flawed position.

Other former MFB ELT members echoed these views, with one characterising the agree requirement as 'allowing the UFU to veto any matter pertaining to the employment relationship', noting that 'there were hundreds of items that could not be progressed because they were vetoed by the UFU'. Providing an example, one witness told IBAC that the agree clause was part of the reason why MFB's ICT systems were 'so far behind interstate and overseas fire agencies' due to challenges in seeking agreement to develop these systems.

The former MFB Board President (2015–2018) explained how the broad-ranging requirement for consultation affected Board decision-making processes, noting that 'Board members are used to being able to make a decision about a Board policy and approve the policy. And then know it's approved, and we've discharged our duty'. They contrasted this with MFB, where 'Board approval was only the first step ... It then had to go through this consultation process'. The Board President told IBAC they found this process frustrating because the Board had to keep revisiting a decision, saying a decision 'would come back to us if there was anything in it that the UFU didn't agree with. And so, you were constantly having to revisit what should have been a fairly simple ... Board approval'.

In their response to a draft version of the *Operation Turton* special report, Mr Marshall and the UFU contested the proposed findings about the consult and agree clause. They said that the report contained no specific evidence of any link between the clause and unauthorised disclosures of information or corruption vulnerabilities. They also said that the clause had developed over many years to protect the work conditions of firefighters, enabling numerous management proposals to be exposed as unsafe and thereafter rectified. According to Mr Marshall and the UFU, IBAC's findings about the clause wrongly assumed that the MFB executive was the sole arbiter of what was in the best interests of the organisation, when in fact firefighters and the UFU had a legitimate interest in operational decisions and a practical understanding of risks which may not be immediately evident to management.

5.3 Information security vulnerabilities

Public sector agencies have important information security obligations under Part 4 of the *Privacy and Data Protection Act 2014* (Vic), including ensuring the confidentiality and integrity of public sector information. Information must be protected from its point of creation through to its disposal or destruction. A key way public sector agencies do this is by operating secure ICT systems that store or process information, as well as by having appropriate governance, personnel security and physical security measures in place. These measures protect this information from unauthorised access, disclosure or use.³⁶

³⁶ Office of the Victorian Information Commissioner 2021, 'What is data protection', web page, Melbourne, viewed 29 August 2021, ovic.vic.gov.au/data-protection/what-is-data-protection.

IBAC has previously reported on how unauthorised access and disclosure of information can be corrupt conduct in and of itself, and that it is often a key enabler of further misconduct or corruption. Additionally, IBAC has repeatedly noted the importance of agencies having adequate information security controls and systems in place to mitigate the risk of this type of improper conduct.³⁷

5.3.1 System vulnerabilities

In Operation Turton, IBAC obtained a number of MFB's internal audit, audit plans and reviews of its ICT systems from the past several years. Given the repeated vulnerabilities identified by these documents, and the difficulties faced in rectifying these, FRV may face similar challenges to its information security. IBAC is reporting on these vulnerabilities to ensure FRV rectifies any outstanding vulnerabilities but to also inform other public sector agencies of similar challenges they may face.

At the time of IBAC's investigation, the most recent of these was a three-year internal audit plan conducted in July 2019 by an external consultant. This audit plan identified that ICS did not have the required capability to deliver the functional needs of MFB in its ICT environment. This gave rise to an 'extreme material risk' to the ICS capability to deliver MFB's goals and objectives. It also listed 14 internal audit projects for MFB to conduct, including one on data leakage protection. Since this audit plan, a range of reforms were progressively implemented to address MFB's strategic and material risks.

In 2019, an external audit assessed MFB's ICT environment against the Australian Signals Directorate Information Security Manual³⁸ and its controls. It found that of the 123 mandatory controls, 37 per cent were not compliant, with the greatest concern being email security, followed by access control, network management and secure administration. It also found employees were able to copy files to USB mass storage devices without any restrictions, which increases the risk of unauthorised disclosures.

An internal audit, from early 2018, assessed MFB as 'weak' in terms of its readiness to meet its obligations under the Victorian Protective Data Security Framework (VPDSF) by August 2018 (as required by the VPDSF).³⁹ It noted MFB's '...key activities and supporting artefacts require improvement. Management have informed us of challenges in gaining Executive and broader stakeholder support for VPDSF-related activities due to competing priorities, and ongoing changes within the organisation'. It also found key risk assessment activities or tasks required to meet data security requirements had not been undertaken within expected timelines.

In 2018, MFB hired external consultants to conduct internal and external penetration tests of its ICT systems to identify security weaknesses. It found vulnerabilities and weaknesses that allowed direct, unauthorised access to multiple systems and applications. It also found the local administrator account shared the same password across 200 systems and other administrator account passwords were easy to guess and had full access and control to the MFB domain. Password requirements for the MFB systems also did not meet industry standards. While MFB reported it had actioned the recommendations coming out of this testing and rectified these vulnerabilities, this testing highlighted how an employee, especially one within ICS, would be able to gain wide-ranging unauthorised access to sensitive MFB/FRV information and data.

Mr Trakas told IBAC of several vulnerabilities that still existed within the ICT environment in early 2020. These included administrators often giving some personal or executive assistants access to executives' email accounts without the approval of the account owner. He stated this was due to a high level of trust in the assistants, and often a resistance from those assistants and management to go through proper processes. While there are policies in place, Mr Trakas explained they have never been fully complied with by employees or management.

³⁷ Independent Broad-based Anti-corruption Commission 2019, *Unauthorised access and disclosure of information held by Victoria Police*, IBAC, Melbourne, p 28.

³⁸ This is the standard governing the security of Australian Government ICT systems and complements the Australian Government Protective Security Policy Framework (PSPF). The VPDSF closely reflects the controls outlined in the PSPF.

³⁹ The VPDSF is the overall scheme for managing protective data security risks in Victoria's public sector. It contains the Victorian Protective Data Security Standards that public sector bodies must follow.

Mr Trakas explained that these vulnerabilities are heightened by a lack of leadership and a lack of appreciation for security, stating that if ‘they’re high enough ... you just give them what they want ... their names are actually flagged in red ... it’s like a priority, you’ve got to take care of them ... or else ... We’ve actually had personal assistants ringing [the CIO] and then [the CIO] is ringing us saying, “Do the job”’.

Mr Trakas highlighted other ICS system vulnerabilities, including the ability of some ICS employees to view all emails sent or received via MFB email accounts, with no auditing function to track these accesses or modifications. He explained he had reported these vulnerabilities as part of internal audits, but when asked if he had ever formally reported these concerns to MFB management or to external bodies, he said he had not because ICS was ‘too busy ... propping the ... whole place up’.

As noted earlier in this report, IBAC notified MFB of these vulnerabilities in April 2020, under section 41 of the IBAC Act, to enable action to be taken to address the issues. IBAC understands that FRV subsequently addressed these specific vulnerabilities. The former MFB Board President (2015–2018) told IBAC that during their time on the MFB Board, the Board was aware that vulnerabilities in ICT security could be being exploited to leak information. The Board President said they had been briefed on these issues when they commenced with the Board in June 2017. They said that although Board members often used their private email accounts rather than MFB accounts for convenience, at times it also served to protect the confidentiality of information. The Board President also gave evidence that MFB struggled to retain high-calibre ICT professionals, as they often became frustrated working in an environment where they could not achieve the change needed, in part because of the consult and agree clause in the Operational EBA.

The vulnerabilities in MFB’s systems were well known throughout the organisation, with many witnesses telling IBAC that communications made using MFB’s systems were not private or confidential. These vulnerabilities, coupled with a problematic culture, facilitated the improper conduct identified in Operation Turton.

Several witnesses noted throughout Operation Turton that MFB ICT systems were outdated and not compliant with industry best practice. However, some also noted that MFB was implementing the changes from the various audits conducted over recent years and was making progress in addressing some vulnerabilities.

In May 2024, FRV provided IBAC with an update on its progress in addressing the ICT security vulnerabilities identified in Operation Turton and the aforementioned ICT audits. FRV highlighted that over recent years it has applied significant resources to bolster its IT security, including implementation of a suite of user-level IT security measures. Furthermore, FRV has engaged an external service provider to review FRV procedures and policies and ensure alignment with industry practices and the requirements of OVIC’s VPDSF. IBAC recognises FRV has made progress in acquitting recommendations made in this report, notably regarding the external review of ICT infrastructure, policy and procedures identified in recommendation 2(b). FRV’s continued efforts to implement these changes and strengthen its ICT systems are important to both prevent corrupt conduct and to detect it when it occurs in the future.

5.3.2 Lack of policy and training for information sharing

As outlined in section 4.4, the Operational EBA states that the UFU must be provided entry (after reasonable notice) to MFB premises and access to documents for the purposes of representing its members.

The access Mr Marshall and the Union had to MFB information appears partly due to how the right to entry and the right to access documents is outlined in the Operational EBA and how it operates. Mr Marshall's evidence was that this clause is very broad and entitles him to seek out information on the basis that he is representing employees. He also said the clause enables him to seek out information that relates to him, as he is covered by the agreement as an MFB employee. When questioned on the processes that had to be followed to request information from MFB, Mr Marshall said there were none, and 'you just do it as you wish'. Mr Marshall also said that if he wanted information in relation to an issue that MFB would regard as confidential, that he was entitled to ask the Union representative for this, otherwise [MFB] 'would simply say everything's confidential'.

To the extent Mr Marshall (in his role as UFU Secretary) has a broad right to access documents held by MFB, in the incidents identified in Operation Turton, IBAC found no evidence that notice was given to MFB management. Instead, the information was provided to the UFU directly by MFB employees – sometimes in their roles as union representatives – without any formal processes being followed or documentation kept.

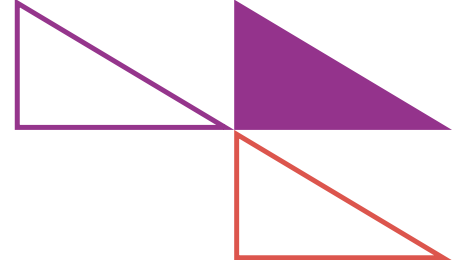
As previously stated, this ability for the UFU to access premises and documents under the Operational EBA, coupled with the broad consult and agree clause outlined in section 5.2.1, meant some employees felt comfortable sharing MFB information with the UFU, as there was a view the Union would get this information, in time, through other established processes.

Ms Pylotis's evidence about Mr Marshall's request that she access information about an investigation into him was that 'everyone knows everything. And we pass on information'. She agreed that sometimes, when she was unable to access information herself, she would ask colleagues to send her information. She stated, as a UFU representative, she had never received any guidance on what information could be shared with the Union, explaining that her understanding was that 'if it affects a member, then I believe I can go to the Union'.

The lack of policy and training provided to UFU representatives on how, when and what kind of information they could share with the Union contributed to the unauthorised access to and disclosure of information. This was a significant vulnerability, particularly in light of the problematic organisational culture.

Policy and training should be provided to protect FRV information and ensure UFU representatives are clear as to the process and scope of their rights and obligations to properly carry out their important roles as public sector employees and union representatives.

6 Conclusion and recommendations



6.1 Conclusion

The fire services are an essential part of Victoria's emergency response and management sector and, with its firefighters, perform a crucial role in keeping the community safe. To do this, these agencies must operate efficiently, effectively and free from undue influence. As with any public sector organisation, it is also important for the fire services to manage information and data in a way consistent with the *Privacy and Data Protection Act 2014 (Vic)* to deliver the best outcomes for service delivery and public safety.⁴⁰

Operation Turton found unauthorised access and disclosure of information was occurring within MFB – often to further the interests of the Union – and the instances outlined in this report were always against MFB policies.

Over many years, IBAC has reported on how unauthorised access and disclosure of information can be corrupt conduct in and of itself and how it is also often a key enabler of further misconduct or corruption. Additionally, IBAC has routinely reinforced the importance of agencies having adequate corruption prevention and detection controls in place to mitigate the risk of this type of improper conduct.⁴¹ Creating a positive security culture around information within agencies is imperative to ensuring employees take personal accountability for maintaining confidentiality.⁴²

In response to the allegations that led to Operation Turton and following IBAC sharing information with MFB about the ICT system vulnerabilities, MFB had begun to take action to remedy some of the deficiencies that led to the improper conduct occurring. While MFB no longer exists, its employees and systems have transitioned across to FRV. It is important that FRV continues its efforts to strengthen its ICT systems and processes to manage these vulnerabilities.

As public sector employees, MFB employees named in this report had a duty to uphold the Code of Conduct and, among other things, demonstrate integrity, accountability and leadership. They also had obligations to keep MFB information secure and maintain confidentiality.

Operation Turton exposed vulnerabilities in MFB's culture, showing a clear divide between management and employees, with this particularly the case when employees were also members of the Union. IBAC also found barriers for reporting improper conduct and for management to address issues. One of these barriers was the restrictive industrial relations requirements of the current Operational EBA, which mandates not only consultation but also agreement by the Union with any changes management wishes to make. While union representation is a fundamental right of employees in our society, IBAC repeatedly heard throughout its investigation that the influence the UFU had over the day-to-day operation and decision making of MFB was unprecedented and hindered its proper functioning.

IBAC's recommendations for reform in this regard are not intended to limit the adequate representation of public sector employees by their unions. Instead, these recommendations, if implemented, will enable FRV and other public sector bodies to operate effectively and efficiently, while better enabling change and modernising.

IBAC has also made recommendations for FRV to action the findings of several audits and reviews of its ICT security and systems that have been conducted over the past four years and engage the relevant experts to ensure this is implemented correctly. Additionally, work is required by FRV to develop clear policies and procedures for its employees for appropriate access, use and disclosure of information, including when and what information can be provided to the Union.

⁴⁰Office of the Victorian Information Commissioner 2020, 'Guiding Principles Version 1.0', PDF, Melbourne, viewed 12 July 2024, ovic.vic.gov.au/wp-content/uploads/2020/02/Guiding-Principles-V1.0.pdf.

⁴¹Independent Broad-based Anti-corruption Commission 2019, *Unauthorised access and disclosure of information held by Victoria Police*, IBAC, Melbourne, p 28.

⁴²A positive security culture with clear personal accountability and a mature understanding of managing risk, responsibility and reputation allows an organisation to function effectively and support the delivery of government services. This is one of the six guiding principles of the Victorian Protective Data Security Framework and its standards (the VPDSF and VPDSS). See Office of the Victorian Information Commissioner 2020, *Victorian Protective Data Security Framework and Standards*, 'Guiding Principles', web page, Melbourne, viewed 23 July 2024, ovic.vic.gov.au/data-protection/guiding-principles.

Finally, IBAC's recommendations for FRV to review and improve its complaint processes, and for OVIC to consider undertaking an audit of FRV, will hopefully ensure these changes are meaningful and long-lasting.

It is important that other public sector agencies are alert to the corruption risks that arise from significant and longstanding cultural issues within the workforce. The lack of trust displayed between the workforce and management, as well as the information security vulnerabilities, contributed to an environment in ICS where improper conduct was able to exist. Due to the high level of access some employees had to MFB systems, it also made it easier for them to avoid detection.

In line with its prevention and education functions, IBAC is publishing this special report to inform the community and public sector of how a poor workplace environment can lead to the corruption vulnerabilities identified in this investigation. The reviews and inquiries into the fire services over the past decade have highlighted an environment desperately in need of change. As outlined in this report, this includes one reviewer comparing the fire services workplace culture to trench warfare,⁴³ while another found that MFB had an 'excessively high tolerance margin for poor behaviour and inconsistent management, or a lack of appropriate management, of behavioural issues'.⁴⁴

6.2 Recommendations

IBAC makes the following recommendations (pursuant to section 159(1) of the IBAC Act):

- 1) Fire Rescue Victoria develops clear policies and procedures regarding the matters that may be the subject of consultation with employees and their representatives at the Consultation Committee, and in what circumstances Fire Rescue Victoria information may be disclosed to employees and their representatives to inform that consultation.
- 2) Fire Rescue Victoria addresses the information and communication technology security vulnerabilities and risks identified in Operation Turton by:
 - (a) actioning the consolidated findings of the audit and reviews conducted in this area since 2018
 - (b) engaging an appropriately qualified independent person to review information security infrastructure, policy and procedures, to identify any remaining deficiencies against the Victorian Protective Data Security Standards and Framework or any other issues
 - (c) consulting with the Office of the Victorian Information Commissioner on the adequacy of its information security in line with the *Privacy and Data Protection Act 2014* (Vic), including how it is addressing any shortfalls identified in the review recommended above; to support and inform this consultation, FRV must provide the Office of the Victorian Information Commissioner with the full final report of the independent person referred to in Recommendation 2(b).

⁴³ O'Byrne, D 2015, *Report of the Victorian Fire Services Review: Drawing a line, building stronger services*, Parliament of Australia, Melbourne, p 4, 6.

⁴⁴ Metropolitan Fire and Emergency Services Board 2016, *A review of the MFB employee support program*, MFB, Melbourne, p 4.

3) Fire Rescue Victoria reviews and strengthens its policies and procedures for employees on how to appropriately share information with their unions in line with the enterprise bargaining agreements, the *Privacy and Data Protection Act 2014* (Vic) and the Victorian public sector Code of Conduct.

Alongside these policies being appropriately enforced, they should also clearly state that non-compliance could lead to disciplinary action being taken, termination of employment or constitute a criminal offence.

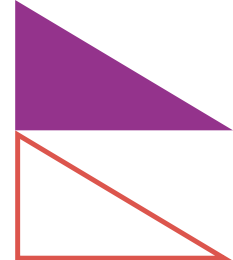
4) Fire Rescue Victoria conducts a review of its internal complaint processes, including an anonymous survey of employees on these processes and employees' willingness to report improper conduct, and implements any recommendations arising from that review to ensure:

(a) Fire Rescue Victoria employees understand the importance of reporting suspected corrupt or improper conduct and how they can report such matters

(b) Fire Rescue Victoria employees understand how they will be supported and protected if they make a report.

IBAC requests that Fire Rescue Victoria provides a progress report on the action taken in response to Recommendations 1 to 4 in six months and a full report on its outcomes within 12 months.

Appendix A: Natural justice requirements and responses



IBAC's obligations to persons and public bodies identifiable by the publication of a special report are set out in ss 162(2) to 162(4) of the IBAC Act. There are also constraints under s 162(7) of the IBAC Act on when IBAC may identify a person in a special report who is not the subject of an adverse comment or opinion.

Where IBAC intends to include in a special report an adverse comment or opinion about a person or an adverse finding about a public body, ss 162(2) and 162(3) of the IBAC Act require IBAC to provide those persons/public bodies with a reasonable opportunity to respond to the relevant comments, opinions or findings and the evidentiary material on which they are based. In Operation Turton, IBAC did this by providing witnesses with extracts from a draft version of this report.

IBAC has a further obligation under ss 162(2) and 162(3) of the IBAC Act to fairly set out in this report each element of any response it receives.

IBAC also has an obligation under s 162(4) to notify persons who IBAC intends to identify in a special report who are not the subject of an adverse comment or opinion and provide such persons with the material in relation to which IBAC intends to identify them. In Operation Turton, IBAC also invited those persons to respond to the material.

IBAC received several responses to a draft version of this report (from adversely and non-adversely mentioned witnesses). Material changes have been made to the body of this report as a result of those responses. Elements of responses not incorporated in the body of the report, or not fully incorporated, are reflected in this Appendix. Elements of responses which IBAC considered extraneous to this report and its evidentiary basis are not reflected in this report.

Responses are set out in alphabetical order.

Fire Services Victoria

In response to a draft of this report, FRV explained there have been wholesale changes to the structure, scope and culture of its workforce as a result of the transition from MFB. In respect of changes to culture, it noted its organisational philosophy is now one focused on continued reflection, improvement and growth.

FRV also noted that several of these changes overlap with the recommendations made by IBAC and set out in this report.

Peter Marshall and the United Firefighters Union

Circumstances under which Mr Marshall and the UFU provided their responses to this report

Mr Marshall and the UFU requested that IBAC attach the whole of their response to this report. IBAC has instead adopted the approach outlined earlier consistent with its obligations under s 162(3) of the IBAC Act.

Mr Marshall and the UFU stated that they provided their response to a draft of this report "under protest and objection". In summary, Mr Marshall and the UFU were concerned that the draft report they were asked to respond to (which was approved for release for natural justice by the former Commissioner of IBAC) would be adopted without question by the current Commissioner.

Mr Marshall and the UFU submitted to IBAC that should this occur, any publication of the report under s 162(1) of the IBAC Act would be unlawful because the Commissioner would have failed to bring an independent mind to the content of the report, the evidence on which it is based, and the decision to exercise the power to publish it.

Mr Marshall and the UFU also took issue with IBAC's response to their request for confirmation that the current Commissioner had independently formed an intention to publish the adverse comments and opinions contained in the draft report provided to them. They claimed that IBAC had not confirmed whether and how the Commissioner had done so, nor explained how the adverse comments and opinions the Commissioner intended to publish may differ from those of the former Commissioner (set out in the draft report they received), nor provided them with the evidence on which the Commissioner's comments and opinions were based. They said that IBAC's failure to address those matters was "of critical importance" because the Commissioner had not been involved in the examination of witnesses or the preparation of the draft report, and the draft report appeared to reflect the "subjective assessments" of the former Commissioner. Mr Marshall and the UFU submitted that IBAC's inadequate response left them in an "extremely prejudicial position" in responding to the draft report, and that IBAC had failed to discharge its duties under s 162 in relation to the publication of the report.

IBAC agrees that for an exercise of the power under s 162(1) of the IBAC Act to be lawful, the Commissioner of IBAC must bring an independent mind to the assessment of the content of the relevant special report, the evidence on which it is based, and the decision to exercise the discretion to transmit that report to Parliament. This has occurred with respect to this report.

While the version of the report provided to Mr Marshall and the UFU (and the other witnesses involved in Operation Turton) was a version that was approved by the former Commissioner, the current Commissioner did not defer to the former Commissioner's judgment but independently formed a view as to whether to include any comments, opinions or findings in the report, interrogating the evidentiary basis for any such comments, opinions and findings and giving due consideration to the responses received by affected persons. As a result of the Commissioner's independent evaluation and judgment of those matters, which led to material changes to the version of the report provided to Mr Marshall and the UFU, this report has been published.

Use of investigative methods

In their response to the draft report, Mr Marshall and the UFU took issue with particular investigative techniques used by IBAC during Operation Turton including physical surveillance of Mr Marshall and the use of telephone intercepts. Mr Marshall and the UFU considered these methods '*exemplifie(d) IBAC's relentless pursuit of Mr Marshall and the Union, which continued over a two-year period and found no corrupt conduct.*'

IBAC considers that the use of such investigative methods used in Operation Turton, including telephone intercepts, was lawful and justified.

Concerns about IBAC's approach to collecting and using evidence and affording procedural fairness

In their response to the draft report, Mr Marshall and the UFU raised several issues concerning IBAC's approach to collecting and using evidence and affording opportunities to Mr Marshall and the UFU to respond to and test evidence and proposed findings that were adverse to them.

In summary, Mr Marshall and the UFU submitted that the opportunities afforded to them were inadequate, and that this hindered their ability to meaningfully respond to the adverse comments and opinions in the draft report and the adverse material upon which they were based. They also submitted that IBAC had been biased against Mr Marshall and the UFU, waging a "campaign" against the UFU while unquestioningly accepting the evidence of MFB executives.

Mr Marshall and the UFU's specific concerns and claims are set out in more detail below.

IBAC's collection and use of the evidence

1. Mr Marshall and the UFU said that IBAC accepted the evidence of MFB executives at face value and without hearing from employees or the UFU (for example, in relation to the impact of governance and culture failures on MFB's operations). They also said that IBAC did not interrogate the conduct of MFB executives. Mr Marshall and the UFU considered some of the conduct of the MFB executives (for example, the proposed purchase of software discussed in Part 4.3, the extension of executive contracts discussed in Part 4.5, and the conduct of the MFB CIO investigated by the Victorian Ombudsman in 2017) to be far

more serious and concerning from a corruption perspective than the unauthorised disclosures of information being investigated by IBAC in Operation Turton. Mr Marshall and the UFU submitted that IBAC should have scrutinised this conduct as a matter of “true public concern” and that IBAC’s failure to do so revealed a bias against Mr Marshall and the UFU and an unreasonable focus on disclosures of information at the expense of more important issues (for example, in the case of the proposed purchase of software, “whether MFB management had withheld crucial operational information from their own Minister” or “misspent public funds” in obtaining the presentation).

2. Mr Marshall and the UFU criticised IBAC’s reliance on reports by third parties. They said that IBAC seemed to have uncritically accepted what was said in some of those reports, and cherry-picked findings from them to fit IBAC’s narrative while ignoring other findings and the broader context. Mr Marshall and the UFU also said that IBAC presented witness evidence (for example, the criticisms of the UFU set out in Part 5.1) without sufficient context for readers to understand the true meaning of that evidence.
3. Mr Marshall and the UFU said that IBAC made findings without sufficient evidence to support them. For example, they said that IBAC’s conclusion that the incidents considered in the report were largely driven by a desire to further the interests of Mr Marshall and the UFU, and facilitated by the workplace culture of MFB, was a “complete distortion” of the evidence presented.
4. Mr Marshall and the UFU said that IBAC mischaracterised Mr Marshall’s evidence from his private examination.
5. Mr Marshall and the UFU said that IBAC made findings about matters it did not understand and was not qualified to evaluate (such as the consult and agree clause and the cultural issues at MFB discussed in Part 5 of the report, which Mr Marshall and the UFU described as “a misconceived and biased psycho-social hypothesis”).

Procedural fairness

1. Mr Marshall and the UFU said that IBAC did not come to Operation Turton with an open mind. They submitted that the draft report was biased in favour of MFB management and “determined to demonise Mr Marshall and the UFU”.
2. Mr Marshall and the UFU said that matters in the draft report which were relevant to Mr Marshall and the UFU were not put to Mr Marshall in his private examination before IBAC (such as the impact of the UFU and the consult and agree clause on the functioning and culture of MFB, discussed in Parts 5.1 and 5.2). They also said that at least some of the evidentiary material collected by IBAC was not put to Mr Marshall in his private examination. Mr Marshall and the UFU submitted that fairness (and the rule in *Browne v Dunn*) required IBAC to recall Mr Marshall to give further evidence on these matters (which would have enabled the provision of contradictory evidence).
3. Mr Marshall and the UFU noted that they were not able to cross-examine witnesses who gave evidence to IBAC that was adverse to Mr Marshall and the UFU (especially the evidence of MFB executives, including the evidence of the then CEO of MFB in relation to the purchase of the software discussed in Part 4.3 of the report). Mr Marshall and the UFU submitted that not being able to cross-examine these witnesses meant the credibility of these witnesses could not be challenged or their evidence tested or contradicted.
4. Mr Marshall and the UFU noted that they were not given access to the transcripts of telephone intercepts or other witnesses’ private examinations (for example, the transcript of the evidence of the then CEO of MFB in relation to the software discussed in Part 4.3, and the transcripts of telephone intercepts in relation to the extension of executive contracts discussed in Part 4.4). Mr Marshall and the UFU submitted this meant they could not confirm the accuracy of IBAC’s presentation of that evidence or the broader context in which it was given, nor meaningfully challenge the veracity or credibility of that evidence.

5. Mr Marshall and the UFU noted that IBAC redacted two of the five incidents of unauthorised disclosure of information considered in the draft report provided to Mr Marshall and the UFU. Mr Marshall and the UFU submitted that the redaction of these incidents meant they could not be sure that all adverse comments and opinions and adverse material had been provided to them for their response and they could not challenge the veracity or credibility of that evidence.
6. Mr Marshall and the UFU noted that IBAC had not disclosed to them the identity of all witnesses whose adverse evidence against Mr Marshall and the UFU is included in the report (for example, witnesses who expressed criticisms of the UFU, set out in Part 5.1). Mr Marshall and the UFU submitted that because this evidence was not attributable to individuals, they could not challenge the veracity or credibility of that evidence, or meaningfully respond to it.
7. Mr Marshall and the UFU said that IBAC relied on witness evidence that was generalised and unsupported by specific examples (for example, the criticisms of the UFU set out in Part 5.1). They said that they could not meaningfully respond to such evidence.

IBAC considers that it has provided Mr Marshall and the UFU with a reasonable opportunity to respond to the adverse comments and opinions in this report and the adverse material upon which they are based in accordance with s 162(3) of the IBAC Act and the High Court of Australia’s decision in *AB v IBAC* [2024] HCA 10.

IBAC can discharge its obligations in several ways including through a combination of putting matters to a witness in an examination and providing that witness with relevant extracts from a draft report.

IBAC refers to Part 1.2 of this report which explains how IBAC findings differ from criminal findings of guilt. IBAC is an investigative, inquisitorial body that operates in a different way to an adversarial court of law. The rights of an accused person on trial are not synonymous with the rights afforded to persons of interest in an IBAC investigation. IBAC examinations are not, for example, subject to the rules of evidence that apply to most court proceedings including the rule in *Browne v Dunn*. There is no express right under the IBAC Act to cross examine a witness. The examinations conducted in Operation Turton were private examinations. While IBAC has obligations of procedural fairness to individuals and bodies affected by the exercise of its powers, the content of that duty is determined by our specific statutory framework.

IBAC considers that it has been fair, balanced and accurate in its appraisal of the evidence and responses to this report, including giving due consideration to Mr Marshall and the UFU’s response. IBAC takes into account all information provided to it to bring an objective and fair mind to its investigation and report.

Obligations of MFB executives to keep the Minister informed

In relation to Part 4.3 of the report, Mr Marshall and the UFU submitted that it was appropriate for Mr Marshall to bring the potential purchase of the software to the attention of Minister Neville because the Minister was entitled to be informed about matters within her portfolio that would have significant consequences for the delivery of an important public service. Mr Marshall and the UFU also submitted that the potential purchase of the software was a ‘matter of significance’ as referenced in a guide produced by the Victorian Public Sector Commission titled “Informing and advising ministers in the Victorian Public Sector” (the Guide).

IBAC notes that the Guide is directed at departmental Secretaries and senior public service executives. MFB is a public sector body established by an act of Parliament, and any MFB obligation to inform Minister Neville at the time the events in Operation Turton took place would originate in first instance from the *Metropolitan Fire Brigades Act 1958*. The “Code of Conduct for Directors of Victorian Public Entities (vpssc.vic.gov.au)” (2016 version) and *Public Administration Act 2004* also placed obligations on MFB directors and executives. Accordingly, IBAC has not formed a view as to whether the purchase of the software met the threshold to be considered a “matter of significance” as per the explanation in the Guide.

Further, IBAC notes that the obligation to inform Minister Neville of matters of significance does not rest with Mr Marshall or the UFU, rather it sits with the MFB Board. The accountability to the Minister is an obligation imposed on MFB executives, not an obligation that applies to the UFU or Mr Marshall, and it does not empower the UFU or Mr Marshall to share information they perceive should have been shared. In IBAC’s view it was not appropriate for Mr Marshall or the UFU to share information with a Minister on the basis that the MFB CEO may have an obligation to share that information.

Mr Marshall and the UFU submitted that the evidence indicated that Minister Neville seemed “keenly interested” in the information about the software, and that MFB executives proposed to mislead the Minister about the software and their intentions for fire truck numbers, which further justified Mr Marshall’s actions. IBAC did not hear or obtain any evidence in Operation Turton that it was the intention of the MFB CEO or the MFB Board to conceal the purchase of the software from Minister Neville or the UFU in the event that the purchase went ahead.

The consult and agree clause

In their response, Mr Marshall and the UFU stated that IBAC’s report placed undue and ill-informed emphasis on the consult and agree clause. They submitted:

1. IBAC’s analysis of the operation of the clause in the enterprise bargaining agreement was beyond the scope of Operation Turton.
2. IBAC’s criticisms of the clause were not supported by evidence. IBAC failed to properly explain the link between the clause and the unauthorised disclosures of information described in the report. IBAC also failed to clearly articulate any link between the clause and corruption vulnerabilities, or to provide specific examples of how the clause had led to corruption.
3. IBAC was not in a position to make findings on industrial matters including the operation of such a clause. IBAC lacked expertise in industrial relations, relevant case law and the history of the clause. For example, IBAC wrongly stated that consultation was generally only required for changes that were likely to have a significant effect on employees, when in fact consultation could play an important role in a wider range of circumstances. IBAC also had narrow focus on unauthorised disclosures of information, which meant that it was unable to assess how the clause operated in the broader firefighting context. By contrast, specialist bodies such as the Fair Work Commission had approved the clause, acknowledging its industrial value in relation to “disputes that have a genuine connection with occupational health and safety”. The Victorian Government had also approved the clause under its industrial policy.
4. IBAC’s treatment of the clause in the report revealed a bias against Mr Marshall and the UFU. IBAC’s sole source of information was the evidence of the MFB executives, which IBAC uncritically accepted without hearing from employees or the UFU. IBAC falsely assumed that the MFB executives were best placed to assess the operation of the clause and whether it promoted the best interests of the organisation, its employees and the public. The report was written on the basis that the UFU had no constructive role to play in the running of the organisation.
5. IBAC’s failure to examine Mr Marshall on the operation of the clause undermined the credibility and integrity of IBAC’s commentary on this topic.

Mr Marshall and the UFU also said that the consult and agree clause had enabled many management proposals to be exposed as unsafe and thereafter rectified. They said that, in the absence of such a clause, decisions made by management alone could prioritise cost and political considerations over firefighter safety. The clause enabled employees with actual firefighting experience to flag risks which may not be immediately evident to management. Mr Marshall and the UFU provided three examples of the beneficial operation of the clause: improvements to the safety and performance of personal protective clothing procured by the fire services in the early 2000s; the identification of serious safety problems with two Bronto ladder platforms purchased by MFB in 2010; and the identification of malfunctioning portable radios used by MFB in 2020.

Part of IBAC's role in investigating corrupt conduct is to understand what led to the conduct and how the conduct may be prevented in the future. This often requires analysis of the wider operating framework of the organisation or department in question (including its systems, policies, procedures, prevailing attitudes or culture and in some cases, industrial arrangements). This analysis occurred in Operation Turton and the basis for that analysis is clearly referenced in the report.

Peter Marshall and the UFU's general comments about the report

As a result of the concerns identified in their response, Mr Marshall and the UFU submitted that the report was not suitable or appropriate to be published. They said that the findings, conclusions and recommendations in the report were unsound. They said that the report was not reliable or credible, but unsubstantiated and one-sided. Mr Marshall and the UFU also submitted that the range of issues identified in their response underscored the need for the Commissioner to bring an independent mind to the content of the report, the evidence on which it is based, and the decision to exercise the power to publish it.

Mr Marshall and the UFU submitted that the only way to remedy these issues would be for IBAC to reopen the investigation, disclose the underlying evidence to them, and allow them to give further evidence and cross-examine other witnesses.

Mr Marshall and the UFU separately submitted that the incidents at the centre of the report were trivial and, given the passage of time since their occurrence, there was no utility in publishing the report. IBAC does not accept this view.

The Honourable Lisa Neville MP

In her response to the draft report, Minister Neville raised that the incidents outlined in sections 4.1 and 4.2 of IBAC's report were unrelated to her and not within her time as Minister for Emergency Services. Ms Neville was the Minister for Emergency Services from 1 December 2018 to August 2021 (spending six months of that period on sick leave).

Minister Neville's response to the draft report requested that the heading of section 4.3 "Unauthorised disclosure of MFB document to the Emergency Services Minister (March 2019)" be changed because it implies that there has been a *direct* unauthorised disclosure from someone at MFB to the Minister, which is not borne out by the evidence. IBAC did not accept this request.

The Minister's response also stated that at the time of the Geelong meeting, the Minister thought that procuring the software described in the PowerPoint – which she considered was a tool to reallocate MFB resources – was contrary to the fire services structural reform that was going to Parliament, and contrary to Government policy not to close stations or expand MFB into CFA areas. The Minister believed it was appropriate to discuss the PowerPoint document with the CEO and Chair of MFB, as she believed any decision to procure the services described in the PowerPoint would require Ministerial approval.

The Minister's response to the draft report noted that IBAC accepted the Minister's evidence that she did not consider the information provided to her by Mr Marshall about executive contract extensions as confidential and that she could not recall whether Mr Marshall ultimately provided her further information. Minister Neville requested IBAC remove references to her in section 4.5.

Kirstie Schroder

In her response to the draft report, Ms Schroder stated:

‘The essence of the adverse comments or opinions is that Ms Schroder’s relationship and interactions with Peter Marshall were at times inconsistent with her role and obligations to the MFB. However, ‘the interactions discussed in the Draft Report must be interpreted in the context of Ms Schroder’s role in addressing the historical difficulties faced by the MFB in dealing with the UFU, and with Mr Marshall in particular.’

In the period June 2016 to July 2018, Ms Schroder was Director of the Office of the CEO. In this role, Ms Schroder was tasked with trying to build a relationship with the workforce, the union and the Executive Leadership Team at MFB. Counsel examining Ms Schroder referred to the period of 2015 and 2016 as the height of the EBA dispute. Ms Schroder agreed with counsel’s characterisation that she was brought into the role at that time because of her constructive relationship with the union and the workforce.’

In July 2018, Ms Schroder was appointed Acting Executive Director Strategic Services which has responsibility for legal, freedom of information, procurement, business assurance and strategic planning. This was her role during the period of the events discussed in the draft report. In this role, Ms Schroder continued to act as a liaison or ‘go between’ on behalf of the MFB in its dealings with Mr Marshall, and would speak to him regularly.

During the relevant period, and for around 10 years prior, Ms Schroder and Mr Marshall would speak at least three times a week but during some periods as often as several times a day.

...Ms Schroder’s evidence was that she was able to achieve positive outcomes for MFB through her dealings with him [Peter Marshall] because of their long-term relationship of trust and transparency.

Ms Schroder’s response to IBAC’s draft report also stated that ‘Ms Schroder gave evidence that the MFB Executive Leadership Team was kept apprised at a general level of her discussions and that she was authorised and encouraged to engage with Mr Marshall in a transparent fashion to achieve outcomes that the organisations were trying to accomplish.’

Ms Schroder’s response to a draft of section 4.4, *Request for unauthorised access to MFB information* (April 2019), disputed that she initially did not tell IBAC of a discussion she held with Mr Marshall or how he could obtain further information about the bullying investigation. She further stated that the draft report ‘unfairly and inaccurately implies that Ms Schroder only made concessions following the IBAC playing the intercepted tape recordings’.

Ms Schroder’s response alleged:

- she had initially accepted there had been a discussion with Mr Marshall
- she had denied providing Mr Marshall ‘with any confidential information’
- IBAC did not produce any document during the examinations of Ms Schroder which contradicted her evidence
- her testimony was ‘explicitly accepted’ by IBAC’s Counsel.

IBAC did not accept Ms Schroder’s response on this point as her assertions are not supported by the examination transcripts.

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