

ombudsman VICTORIAN

Report on issues in public sector employment
November 2013

Ombudsman Act 1973

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Letter to the Legislative Council and the Legislative Assembly

To

The Honourable the President of the Legislative Council

and

The Honourable the Speaker of the Legislative Assembly

Pursuant to sections 25 and 25AA of the *Ombudsman Act 1973*, I present to Parliament a *Report on issues in public sector employment*.



G E Brouwer

OMBUDSMAN

26 November 2013

Contents	Page
Executive summary	3
Background	6
The workforce	6
Public sector values	6
Inadequate pre-employment screening	7
Recommendation 1	9
Recommendation 2	11
Nepotism, favouritism and conflict of interest	12
Recycling of personnel	15
Recommendation 3	16
Good practice principles	18
Advertising	18
Conflicts of interest	18
Background checks/screening	19
Privacy	19
Record keeping	20
Recommendation 4	20
Attachment 1	21

Executive summary

1. During the last two financial years I commenced over 60 investigations concerning allegations of misconduct on the part of public officers.
2. At the heart of these complaints and investigations were the conduct and performance of individual public officers. Repeatedly my investigations concluded that officers had engaged in misconduct, misused their position to obtain a personal benefit or discharged their responsibilities in a negligent manner thereby placing the public at risk.
3. In many investigations it became apparent, from the public officer's background, employment history and the manner in which they were engaged, that the officer concerned should never have been employed in a government agency.
4. In my view there are two central considerations that must be at the forefront of all recruitment processes in the public sector. Firstly, all recruitment decisions should be based on merit at all stages of the process. Secondly, the public interest should be given precedence in the selection and ongoing employment of public officers. I am concerned that too often these two considerations are not being afforded the priority they deserve.
5. Three key themes recur in many of my investigations:
 - inadequate pre-employment screening
 - appointments compromised by nepotism, favouritism and conflicts of interest
 - 'recycling' of officers with histories of questionable conduct or performance.

Inadequate pre-employment screening

6. I identified instances where individuals with criminal convictions were employed in the public sector, some of whom subsequently engaged in improper conduct in their roles. This was possible because recruitment processes were conducted without sufficient rigour.
7. My office identified instances where National Police Checks and Working With Children Checks were not performed despite there being either a legislative or policy requirement. In other instances agencies had not taken sufficient steps to vet the suitability of officers for the roles to which they were appointed.
8. Case studies in this report identify an officer with serious criminal convictions who had access to firearms in their public role. Another officer, despite being the subject of an intervention order for violent behaviour, had the authority to arrest and restrain members of the public. This officer was charged with and convicted of assaulting a member of the public in the performance of his role. Another with a County Court conviction for theft was allowed to make purchases on behalf of her

agency. Subsequently, she improperly accepted thousands of dollars worth of gifts and other inducements from a supplier, unnecessarily spending tens of thousands of dollars of public funds as a result.

9. The failure to adequately screen employees is due in part to an inaccurate and overly simplistic understanding of the provisions of the *Information Privacy Act 2000*. I have noted for example, a reluctance to contact previous employers to validate a candidate's background, even where those employers are other public sector agencies. Likewise I have also identified a reluctance by some public sector managers to provide full and frank references due to these misunderstandings.
10. When consulted, the Victorian Privacy Commissioner agreed that there is often a misunderstanding of privacy laws and stated:

The Information Privacy Act does not prevent a public sector agency using or disclosing personal information about its former employees. Rather, the Information Privacy Act contains provisions that permit such disclosures in certain circumstances.

11. A tendency to use privacy laws as a shield to hide behind is an issue I have identified in investigations such as my 2011 investigation report on agency failures to manage sex offenders¹. In my view this tendency reflects a defensiveness on the part of some agencies who use privacy legislation to justify failures instead of having the public interest as their priority. This reflects poorly on the agencies concerned and has the effect of undermining privacy legislation.

Nepotism and conflicts of interest

12. My investigations identified continuing issues with conflict of interest and favouritism in recruitment and the engagement of contract or casual labour. Again case studies in this report detail instances where public officers directly or indirectly assisted family members or friends to obtain employment within their agency. In particular, I substantiated a number of such allegations in relation to schools and tertiary education institutions.
13. In some instances I concluded that the failure to appropriately manage a conflict of interest was not simply due to a lack of knowledge, rather it reflected an intention to deceive. For example, my recent investigation of CenITex² identified serious misconduct, where contractors engaged in practices that cost the State substantial sums of money and damaged CenITex's reputation.

Recycling

14. The lack of rigour evident in some recruitment activities led to the 'recycling' of officers who had been suspected of engaging in improper conduct at one public sector agency subsequently being engaged by another agency.

¹ Victorian Ombudsman, *Whistleblowers Protection Act 2001 - Investigation into the failure of agencies to manage registered sex offenders*, February 2011.

² Victorian Ombudsman, *Whistleblowers Protection Act 2001 - Investigation into allegations of improper conduct by CenITex officers*, October 2012.

15. In some instances such ‘recycling’ came about due to misunderstandings, either intentional or unintentional, regarding the requirements of the Information Privacy Act. In other cases officers avoided disciplinary action by moving before an investigation into their conduct was completed and therefore avoiding an adverse disciplinary finding at their original agency.

Recommendations

I have made four recommendations in this report:

Recommendation 1

Victoria Police review Parks Victoria’s requirements regarding the use, storage and availability of firearms.

Recommendation 2

The State Services Authority develop guidelines to assist agencies assess which roles should be subject to National Police Checks for applicants.

Recommendation 3

The State Services Authority develop guidelines and endorse a standard disclosure statement for use by public agencies in recruitment. This statement should require potential public officers to disclose:

- If they have been the subject of a criminal conviction in the last 10 years together with details of the offence.
- If they have been dismissed from a public body in the last 10 years as the result of a misconduct investigation.
- If they were the subject of a misconduct or other disciplinary investigation when they left their last employer.
- The status of any such investigation.

This statement should be made as a Statutory Declaration.

Recommendation 4

The State Services Authority develop guidelines covering probity, accountability and good governance for use by public agencies in recruitment and the engagement of contractors and casual labour.

Response

Each recommendation has been accepted by the agency concerned.

Background

The workforce

16. The public sector workforce in Victoria is significant with over 200,000 full time employees across more than 1,800 hundred separate employers³. This includes staff in government departments and statutory bodies; government schools and TAFEs; public hospitals; the police and emergency services. My jurisdiction extends even further as it includes staff in local government and other institutions such as universities.

Public sector values

17. In Victoria, public sector employees are bound by the Code of conduct for *Victorian Public Sector employees* (the code of conduct). The code of conduct 'prescribes behaviour expected of public sector employees' and is also designed to 'promote adherence to the public sector values prescribed in the *Public Administration Act 2004*'. There are seven public sector values outlined in section 7 of the Public Administration Act:
- Responsiveness
 - Integrity
 - Impartiality
 - Accountability
 - Respect
 - Leadership
 - Human rights.
18. While not all the agencies under my jurisdiction (such as local government) are subject to these specific values or the Public Administration Act there are parallel values across public organisations. For instance the *Local Government Act 1989* requires that council officers act impartially as well as acting with integrity and avoiding conflicts of interest⁴. The values set out in the Public Administration Act are ones that should be shared by all public officers and agencies whether or not the act applies directly to them.
19. Much of the work of my office is concerned with instances where public sector agencies or individuals have failed to adequately uphold or demonstrate these values in performing their public role. My reports to parliament have identified issues concerning conflict of interest, procurement, improper and corrupt conduct, failure to perform statutory obligations and mistreatment of people in closed environments. All such issues can be seen as failures against one or more of these central public sector values.

³ State Services Authority, *State of the Public Sector in Victoria 2011-2012*, pages 9-10.

⁴ Section 98(1) of the *Local Government Act 1989*.

Inadequate pre-employment screening

20. The reputation and performance of the public sector is dependent on the quality of the people it employs. Employment in the public sector should not be based solely on the skills and experience of individuals but must also take into account the character and past behaviour of prospective employees.
21. This necessity is borne of two main considerations. The first of these is the public expectation that tax payer money is spent in an appropriate fashion. This expectation is no different for wages than it is for any other form of public spending.
22. The second consideration is the role the public service fulfils in our society. In our political system the public sector acts as a link between the State and its citizens, implementing the many and varied government programs and services available throughout the community. In this way public sector employees are the representatives of the State in its interactions with the community.
23. Many of the people who rely on government services are among the most disadvantaged and vulnerable in our community. In areas such as health; child protection; public housing; emergency services; and disability services, the safety and wellbeing of members of the community rely on public officers fulfilling the State's duty of care. It is therefore the State's responsibility to ensure that its employees are suitable for the role.
24. Agencies can ensure the quality and good character of prospective employees by a diligent approach to performing reference and background checks before employing a person. In this regard an Australian Standard has been developed to aid public and private employers alike in properly screening potential employees⁵. As previous behaviour is used in recruitment as an indicator of suitability for a position the rigour of such checks is important.
25. Despite this I have identified instances through my investigations where public officers whose conduct has been brought into question have had backgrounds which should have precluded their employment if adequate checks had been made. This has included individuals with criminal records as in the following case studies:

Case study 1

In 2011 I tabled a report in Parliament⁶ following an investigation I conducted under my own motion powers following a referral from the West Australian Corruption and Crime Commission. My investigation identified officers at a number of public agencies who had been purchasing printer toner cartridges at inflated prices in exchange for gifts and prepaid Visa cards. In many instances the cartridges purchased were not used while in other instances maintenance contracts with photocopying machines included toner cartridges as part of service contracts.

⁵ Australian Standard AS 4811-2006 Employment screening.

⁶ Victorian Ombudsman, *Corrupt conduct by officers in procurement*, June 2011.

In one example identified in my report, an Arts Victoria officer spent approximately \$80,000 of public money in this manner and received Visa cards and Coles Myer vouchers worth over \$8,000. Following the tabling of the report in June 2011 it came to the attention of my office that the Arts Victoria officer involved had a previous County Court conviction for obtaining property by deception for which she had received a 10 month suspended prison sentence. In this previous instance the officer had been found to have organised over \$50,000 of her employer's money to be transferred into her partner's bank account.

Arts Victoria was unaware of this previous conviction and had not undertaken any criminal records check or sought a background disclosure from the officer.

Case study 2

In 2012 my office undertook an investigation concerning conflict of interest allegations against a Parks Victoria officer. The officer had been a long-term employee of Parks Victoria and had held a number of different positions including that of Ranger. In his role as Ranger the officer had access to firearms.

A criminal record check revealed that the officer had numerous criminal convictions including for rape and firearm offences. My investigation identified that at no time during the officer's employment had Parks Victoria performed a criminal records check or required that the officer disclose any past convictions. Nor does Parks Victoria perform any such checks for any of its employees who have access to firearms.

I have since made enquiries with Victoria Police who have advised that state government agencies such as Parks Victoria have organisational firearm licences – referred to as a Body Corporate Licence. In such a circumstance a 'responsible person' as defined in the *Firearms Act 1996* has the responsibility of ensuring that no one considered a prohibited person under the same Act would have access to firearms. In my view Parks Victoria's lack of adequate process could place its licence at risk.

In my report to Parks Victoria I recommended that it conduct National Police Checks for all its officers who would have access to firearms. Parks Victoria accepted this recommendation in May 2012.

26. Parks Victoria has since agreed that 'had we conducted a criminal history check at the time of employment we would neither have allowed the employee access to firearms nor appointed him as an authorised officer'. Parks Victoria also advised that it will be adopting the Australian Standard for Employee Screening 4811 – 2006. This standard prescribes:
- An identification check (similar to financial institutions)
 - Verification of residential address history for a minimum of 5 years prior to appointment
 - National criminal record check.

27. Parks Victoria Chief Executive also stated:

We intend to also require a conflict of interest check with regards to any associations of the applicant of which Parks Victoria should be aware. As part of this process, all existing Authorised Officers and any new applicants for these positions, will be screened. I anticipate this process will be completed by the end of January 2014.

28. As a result of my enquiries, I make the following recommendation:

Recommendation 1

Victoria Police review Parks Victoria's requirements regarding the use, storage and availability of firearms.

Victoria Police's response

Victoria Police supports this recommendation and has agreed to conduct an audit of Parks Victoria's requirements under the *Firearms Act 1996*.

Parks Victoria's response

While we welcome the review by Victoria Police, our view is that in this regard the organisation has good procedures in place.

29. These cases are examples of roles where rigorous pre-employment screening should be undertaken prior to an appointment being made. Without such processes being routinely undertaken the risk to public funds and community safety is apparent. I consider that all public sector agencies should routinely review which positions should require a criminal records check prior to appointment.
30. Undertaking comprehensive pre-employment checks is particularly critical in relation to staff who care for vulnerable children. In my 2010 report into out of home care⁷ I identified that 149 of 3,859 placements were not fully compliant with criminal record check policies. This placed vulnerable children at risk and meant that, at the time, the Department of Human Services was not fulfilling its statutory obligations in the care of these children.
31. The following case study demonstrates a similar failure to ensure that people working with vulnerable children were properly screened.

⁷ Victorian Ombudsman, *Own motion investigation into Child Protection - out of home care*, May 2010.

Case study 3

In my 2010 investigation into conditions in the Melbourne Youth Justice Precinct⁸ I identified significant failures in ensuring that staff at the centre had undertaken the necessary Working with Children Checks. These checks are a legislative requirement, introduced in 2006, for any person working with children in Victoria. As the majority of detainees at the centre were under 18 all staff required such checks.

My investigation identified at the time that 39 per cent of staff who had been employed at the centre between 2006 and 2010 did not have Working with Children Checks. This was particularly concerning as many of the allegations that led to my investigation concerned staff assaulting detainees and inciting detainees to assault each other. The department has since addressed this issue.

32. In other instances my investigations found that an agency had adequate policies regarding pre-employment screening however insufficient action was taken to ensure compliance with those policies. The following case study is an example of a failure in this regard. As a result significant statutory powers, including the ability to restrain and arrest members of the public, were used by officers whose suitability was questionable.

Case study 4

In December 2010 I tabled a report in Parliament regarding an investigation I had conducted into the issuing of infringement notices on public transport⁹. As part of this investigation my officers reviewed the personnel files of several Authorised Officers who had been involved in allegations of assault or use of excessive force against members of the public.

My investigation identified that several of the background checks on the Authorised Officers had been either incorrectly or inadequately carried out. These included instances where: National Police Checks had not been conducted; National Police Checks had been conducted using the wrong birth date; further checks were not conducted when an officer applied for re-authorisation; and officers were given authorisation despite a history of offences which should have brought their suitability into question.

In one instance an officer had an intervention order against him for violent behaviour. Despite this order the Department of Transport had re-authorised the officer. Subsequently the officer was involved in an incident where four officers were alleged to have assaulted a young person in the toilet of a metropolitan train station. Following an investigation by the department the officers had their employment terminated and two were charged by police with assault, including the officer subject to the restraining order who was subsequently convicted of assault.

33. It is clear that the public sector would benefit from a set of concise guidelines setting out public sector roles that necessitate a police check. For this reason I make the following recommendation:

8 Victorian Ombudsman, *Whistleblowers Protection Act 2001 - Investigation into conditions at the Melbourne Youth Justice Precinct*, October 2010.

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

Recommendation 2

The State Services Authority (SSA) develop guidelines to assist agencies assess which roles should be subject to National Police Checks for applicants.

SSA response

Support. The SSA agrees that police checks can play an important role in assuring appropriate standards of conduct – particularly in sensitive service delivery areas.

Nepotism, favouritism and conflict of interest

34. Many of my investigations identified that selection processes were compromised by nepotism and conflicts of interest. Too often issues of a lack of transparency; conflicts of interest; unmerited selection; nepotism and favouritism were identified by my office in the recruitment by agencies of staff and the engagement of contractors.
35. The issue of nepotism is one that I have previously identified in several agencies across various sectors. However it appears that the tertiary and education sector is particularly vulnerable in this regard. In two recent investigations at universities I identified issues where officers appointed family members to positions within the university without appropriate recruitment processes. This included an instance where a staff member appointed her daughter to a paid position at a university under their direct supervision.
36. The following case study, this time at a specialist college, provides a further example.

Case study 5

In late 2012 I received allegations regarding employment practices at a regional specialist college. The allegations concerned the college's principal inappropriately employing several members of his family to work at the school. I investigated the matter under the *Whistleblowers Protection Act 2001* and the following issues were established:

- The principal had employed his spouse and three children at the college for periods varying from several months to over three years.
- The principal's spouse and one of their children were employed in breach of Department of Education and Early Childhood Development recruitment policies.
- The principal's involvement in the appointment of all four members of his immediate family represented a clear conflict of interest which was not declared or managed in any meaningful manner and was also a breach of the conflict of interest provisions in the *Code of Conduct for Victorian Public Sector Employees*.

My investigation also identified that there was a poor understanding of conflict of interest at the school.

37. As the case study below shows nepotism can also arise when contractors and consultants are engaged to provide services to public sector agencies.

Case study 6

In 2012 I received allegations concerning the recruitment of several officers at VicRoads as well as the awarding of contracts to external providers. It was alleged that several staff appointments at VicRoads and the awarding of significant contracts had been based on personal relationships between those engaged and senior VicRoads officers. My office investigated the allegations and established the following:

- Two VicRoads officers had assisted former colleagues or friends in applying for positions at VicRoads, including assisting with applications and preparation for interviews.
- A VicRoads officer engaging the consulting company of a person they had known for 10 years for contracts in excess of \$500,000. These contracts were awarded without an open tender process and without evaluation of whether they represented value for money.
- The same officer engaged another contractor for several contracts valued at over \$2 million over two years. Again there was no open tender process for these contracts and in one instance no exemption from the need for an open tender for a single contract valued at over \$600,000. In this instance the VicRoads officer had a previous professional relationship with the Director of the contract company.
- The same officer had aided a previous work colleague with an application for a position at VicRoads. The colleague was successful in their application. Soon after, while the two people were living together the VicRoads officer promoted the former colleague to a more senior role.

In all, four officers were recruited to VicRoads where officers involved in the recruitment had actual or perceived conflicts of interest. Over \$2.5 million dollars worth of contracts were also entered into by one officer without open tender processes and without addressing conflict of interest issues.

My investigation identified that VicRoads' officers were able to engage contractors for large sums of money without the need to follow a rigorous or open process. I was also concerned at a culture of nepotism amongst some senior officers at VicRoads.

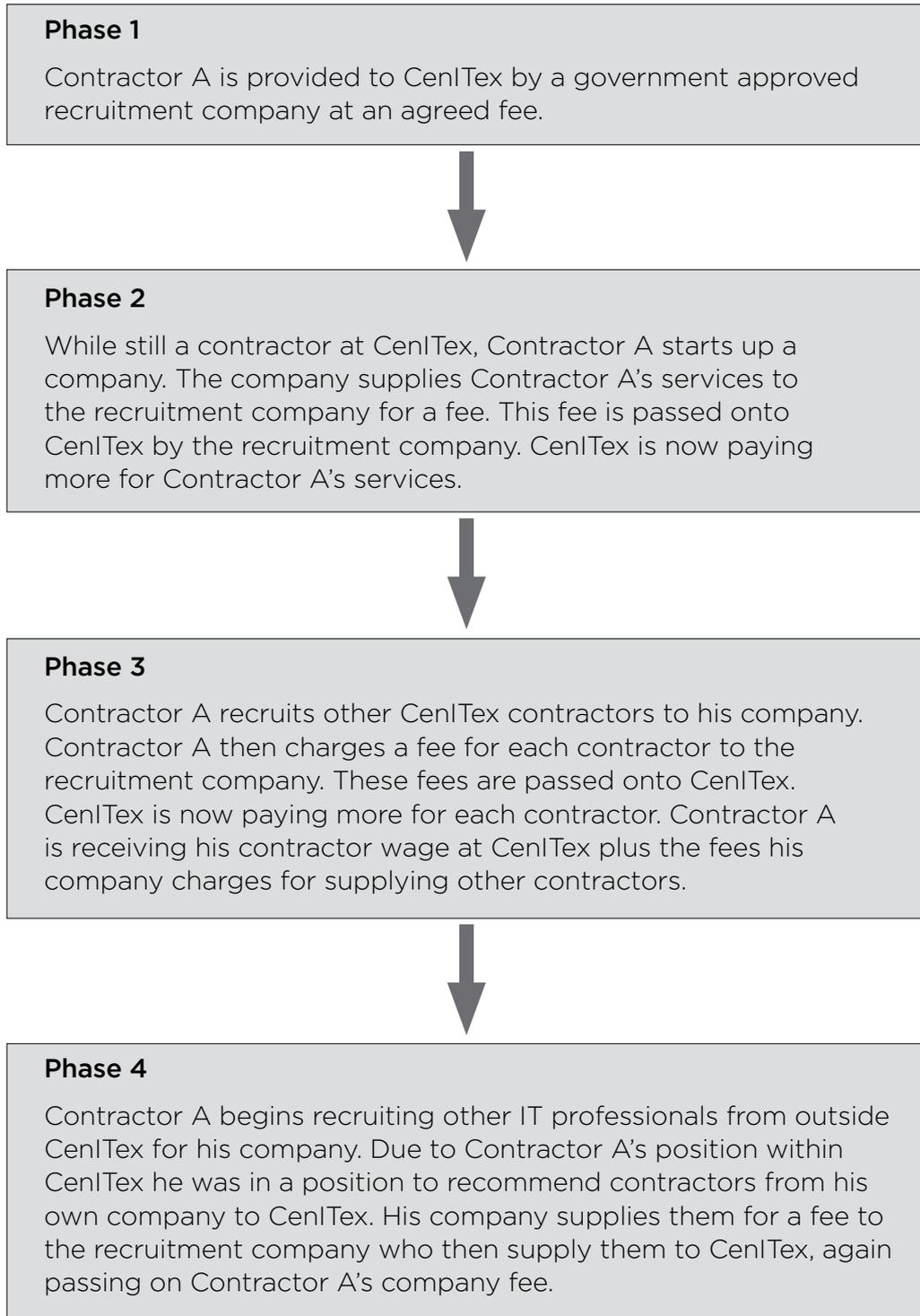
38. Conflict of interest and nepotism was particularly prevalent in a report I tabled in Parliament concerning my investigation into CenITex¹⁰. In what represented a low point in this type of behaviour my investigation identified:

- A culture of poor employment practices, favouritism and improper conduct during the engagement of contractors.
- Sham quotation processes for contractor engagements set up to make pre-determined appointments appear proper.
- Numerous contractors engaged for lengthy periods often at \$1,400 per day without the contractor positions ever being advertised.
- Several contractors being engaged who had submitted the same resumé.

39. Contractors at CenITex also set up companies to provide further contractors for CenITex at inflated costs. The following diagram illustrates how this was done:

¹⁰ Victorian Ombudsman, *Whistleblowers Protection Act 2001 - Investigation into allegations of improper conduct by CenITex officers*, October 2012.

Diagram 1



40. Such examples cause significant reputational harm to the organisations at which they occur. Further harm is caused to the reputation of the wider public sector as an institution that is open and transparent in how it selects its officers and spends public money.

Recycling of personnel

41. I have encountered several instances where public officers subject to investigation, either by my office or by their own agency, have resigned during the investigative process. There is nothing that can be done to prevent this occurring. Nor can a resignation necessarily be considered an admission of guilt or evidence of misconduct. However such resignations can be problematic for the wider public sector if the subject seeks employment elsewhere in the public sector.
42. An officer's resignation typically results in an agency ceasing its investigation without a finding. This is of concern if the allegations against the officer are serious and if proved would likely make them unsuitable for future public sector employment. The following case study is an example.

Case study 7

In 2012 I received allegations under the *Whistleblowers Protection Act 2001* that an officer at Consumer Affairs Victoria (CAV) had been engaging in improper conduct by providing information to a car trader enabling the trader to continue trading while classified as a 'prohibited employee'¹¹. Enquiries with CAV identified that it was also conducting a misconduct investigation into the officer concerning the same allegations and behaviour it considered could constitute offences under the *Motor Car Traders Act 1986*.

During its investigation CAV advised my office that the officer concerned had resigned and CAV intended to suspend its misconduct investigation 'in accordance with normal practice'. The officer involved had refused to co-operate with CAV's misconduct investigation following his resignation.

Using my coercive powers my office was able to complete the investigation. I concluded that the officer had acted improperly in assisting the prohibited person as alleged.

43. The inability of CAV to compel cooperation was an obvious hindrance to its investigation however I do not consider it is justification to indefinitely suspend a misconduct investigation. Other evidence could and should have been obtained and findings made on that basis particularly when my investigation identified a number of systemic issues in the workplace that warranted attention. If a former employee refuses to cooperate with an investigation or respond to an opportunity for natural justice then adverse findings may be justified without the officer being interviewed.
44. This issue was also identified in my report into the Victorian Building Commission in 2012¹². In that investigation my office identified that a number of the Building Commission's officers were former Victoria Police members who had been subject to misconduct investigations before resigning from the force. Victoria Police did not pursue these matters following the resignations.

¹¹ As defined under section 35A of the *Motor Car Traders Act 1986*. This status prevents a person being permitted to trade motor vehicles or work in the industry. In this instance it was because the car trader had been found guilty of a serious offence.

¹² Victorian Ombudsman, *Own motion investigation into the governance and administration of the Victorian Building Commission*, December 2012.

45. In my investigation employees left one agency under a cloud and were employed at another government agency almost immediately without adequate checks on their background.
46. Matters can become more challenging if an officer resigns during or as a result of an investigation by my office or a similar integrity body. This difficulty is reflected in the following case study.

Case study 8

In 2011 I tabled a report in Parliament regarding an officer at the Victorian Institute of Forensic Medicine¹³ (the Institute) who had been releasing confidential information to various third parties. This included the autopsy results and photographs of deceased people as well as detailed and derogatory descriptions of how the person died.

The officer involved resigned during my investigation and as the Institute was unaware of the matter prior to my office's involvement there was no disciplinary action taken. As a result I recommended that the Institute refer the conduct of the officer to the police for investigation as I believed his conduct may have constituted misconduct in public office. The Institute agreed to this recommendation however no charges were laid against the officer by police.

47. My office has since learnt that the officer who had been responsible for releasing the material was subsequently engaged by another public body. In such a circumstance there is little that can be done to prevent an officer, whose behaviour would clearly be of concern for any agency, gaining employment within the public sector. The investigations I conduct are confidential meaning that an agency such as the Institute is limited in what they could reveal in a reference check. If, as in this matter, I do not name the officer involved in my report to Parliament there is no public record of what inappropriate conduct the officer was involved in. As no charges were laid a National Police Check would not aid potential employers.
48. On this basis and in light of the issues presented by such resignations I make the following recommendation:

Recommendation 3

The State Services Authority develop guidelines and endorse a standard disclosure statement for use by public agencies in recruitment. This statement should require potential public officers to disclose:

- If they have been the subject of a criminal conviction in the last 10 years together with details of the offence.
- If they have been dismissed from a public body in the last 10 years as the result of a misconduct investigation.
- If they were the subject of a misconduct or other disciplinary investigation when they left their last employer.

¹³ Victorian Ombudsman, *Investigation into the improper release of autopsy information by a Victorian institute of Forensic Medicine employee*, May 2011.

- The status of any such investigation.

This statement should be made as a Statutory Declaration. An example of such a disclosure statement can be found in Attachment 1.

SSA response

The SSA notes the concerns leading to the recommendation and the general desirability of Victorian public sector employers being aware of information relevant to assessing applicants' suitability for appointment. The SSA agrees to give consideration to how such a recommendation could be implemented.

Good practice principles

49. In this report I have sought to emphasise the importance of agencies having processes in place to ensure that it recruits people of appropriate background and character. I have highlighted instances identified in my investigations where this has not occurred and the risk that this poses to not only the agency itself but to the reputation of the broader public service. The following principles of good practice should be used by public sector agencies when recruiting and investigating staff:

Advertising

50. The default position for public sector agencies should be that positions are publicly advertised. The case studies in this report indicate a preference by some agencies to avoid advertising positions leading to instances of favouritism and in some cases clear misconduct. Advertising positions is the first step in helping to ensure that recruitment in public agencies is open and transparent. There is a role for the use of contractors, internal promotions and exemptions from advertisement in the public sector. However these should be used judiciously. When a decision is taken not to advertise a position the justification should be documented and be able to stand up to scrutiny.
51. The manner in which a position is advertised is also important in this process. Agencies should consider making applicants aware in advertisements that candidates be subject to background checks including a National Police Check. The effect of this is twofold: it can act as a deterrent for those with questionable backgrounds applying and it will also set candidates' expectations prior to the background checks occurring.

Conflicts of interest

52. Any staff involved in recruitment processes should be made aware of the requirement that they declare any conflicts. In instances of actual or perceived conflicts of interest then consideration should be given to removing the officer from the recruitment panel/committee. The practice of helping friends or former colleagues is one that should be discouraged as it creates an immediate conflict for the officer involved, particularly if the officer is involved in selection or the ongoing management of the successful candidate.
53. Conflicts of interest are a risk when engaging contractors and casual staff. The need for conflicts to be declared and managed is no different in such circumstances. As my investigation into CenITex identified, there can be a greater risk with contractors and other temporary officers. There are often fewer controls around the procurement of contractor services and costs can be high and can escalate quickly. Additionally, my investigations have identified that the procurement of contractors is susceptible to manipulation and a lack of openness and transparency.

This risk is exacerbated if a culture of favouritism and poor conduct is prevalent. Too often my office has identified examples where engaging and re-engaging contractors is seen as an easy solution, where questionable exemptions are sought and the process departs from normal procurement processes and guidelines.

Background checks/screening

54. Thorough background checking is essential for any public agency when assessing candidates. Therefore agencies should not hesitate to submit candidates to a rigorous screening process. This should include reference checks that are documented. If the candidate has not listed their most recent supervisor as a referee then an agency should reserve the right to make its own reference checks. Another option is to ask that candidates provide a signed copy of their previous performance review, particularly if they are from the public sector.
55. Likewise when assessing a candidate's qualifications and education, agencies should request that original copies of qualifications and academic transcripts are provided. There may also be in some instances justification in contacting an academic institution direct to establish when the candidate was enrolled and confirm their qualifications. Investigations by the New South Wales Independent Commission Against Corruption (ICAC) have identified instances where senior local government officers have falsified their qualifications.
56. National Police Checks and/or candidate statutory declarations are important tools for public sector engagements. I believe that there is a reasonable public expectation that public officers are not only suitably qualified and experienced but are of good character and have suitable backgrounds.
57. In positions that require police checks, working with children checks and similar; agencies must ensure these are completed and able to be located when required for verification. Agencies should also be mindful that while police checks will reveal any convictions prior to the officer commencing officers can subsequently have convictions that an agency may not be aware of. Consideration should be given to having officers sign annual declarations regarding reporting any change in their circumstances.

Privacy

58. There appears to be a considerable misunderstanding regarding the application of privacy constraints to the provision of employment histories of individuals who move or seek to move between public sector agencies.
59. I am concerned that there is a marked tendency for privacy requirements to be mistaken and misused as a barrier preventing the appropriate exchange of information between public sector agencies in such circumstances. The Information Privacy Act does not require this end and I consider that the public interest in ensuring the right people are engaged is paramount.

60. Any uncertainty regarding privacy considerations can be resolved by ensuring candidates understand and consent to the agencies pre-employment screening procedures. It would be appropriate that agencies consider rejecting applications where this consent is not provided.
61. In response to this issue, the Privacy Commissioner stated:
- ... where an agency is considering an individual's suitability for a role, and seeks to enquire about any incident/allegations of misconduct, *the onus is largely on the prospective employer* to conduct sufficient checks in accordance with the IPPs [Information Privacy Principles]. This means where the prospective employer *does not* receive consent to go outside the listed referees (and feels it is necessary to do so), it should seriously consider whether it has enough information to appropriately and justifiably employ an individual.

Record keeping

62. Comprehensive records should be kept of all recruitment processes, from the justification for the engagement and subsequent advertisement of positions through to the decision to select a particular candidate. Legible notes of interviews, reference checks and decisions on successful candidates should be kept by an agency. Likewise copies of identification documents; qualifications; academic transcripts; and relevant employment checks should be kept on file. Any exemptions relating to the advertising of positions or the engagement of contractors should be recorded including the reasons for the exemption and that an authorised officer has approved it.
63. I make the following recommendation:

Recommendation 4

The State Services Authority develop guidelines covering probity, accountability and good governance for use by public agencies in recruitment and the engagement of contractors and casual labour.

SSA response

Support in principle.

Attachment 1

Statutory Declaration

I, _____
[full name]

of _____
[address]

do solemnly and sincerely declare that I have fully disclosed in writing to [agency], all details of:

- any charges laid against me by police concerning any offence committed in Australia or in another country in the past 10 years
- any offence of which I have been convicted, committed in Australia or in another country in the past 10 years
- any formal disciplinary action taken against me by any current or former employer, pursuant to an industrial award agreement, contract of employment or relevant employment agreement
- any conduct investigations I have been subject of by any integrity body or similar in Australia or in another country

and that a copy of my responses to the above issues which I provided to [agency] as part of the recruitment process to a position in the [agency] is attached hereto.

I acknowledge that this declaration is true and correct, and I make it with the understanding and belief that a person who makes a false declaration is liable to the penalties of perjury.

Declared at _____

this ____ day of _____ 20____

.....
Signature of person making this declaration
[to be signed in front of an authorised witness]

Before me,

.....
Signature of Authorised Witness

The authorised witness must print or stamp his or her name, address, and title under section 107A of the Evidence Act 1958 [Vic.] (eg. Justice of the Peace, Pharmacist, Police Officer, Court Registrar, Bank Manager, Medical Practitioner, Dentist)

Ombudsman's Reports 2004-13

2013

Ombudsman Act 1973 A section 25(2) report concerning the constitutional validity of aspects of Victoria's new integrity legislation
October 2013

Ombudsman Act 1973 Own motion investigation into unenforced warrants
August 2013

Whistleblowers Protection Act 2001
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May 2013

2012

Own motion investigation into the governance and administration of the Victorian Building Commission
December 2012

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December 2012

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October 2012

Whistleblowers Protection Act 2001
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October 2012

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June 2012

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April 2012

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March 2012

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Investigation into the Foodbowl Modernisation Project and related matters
November 2011

Investigation into ICT-enabled projects
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Investigation into how universities deal with international students
October 2011

Investigation regarding the Department of Human Services Child Protection program (Loddon Mallee Region)
October 2011

Investigation into the Office of Police Integrity's handling of a complaint
October 2011

SafeStreets Documents – Investigations into Victoria Police's Handling of Freedom of Information request
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Investigation into prisoner access to health care
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June 2011

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February 2011

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February 2011

Whistleblowers Protection Act 2001
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Ombudsman's recommendations second report on their implementation
October 2010

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July 2010

Ombudsman investigation into the probity of the Kew Residential Services and St Kilda Triangle developments
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Own motion investigation into Child Protection – out of home care
May 2010

Report of an investigation into Local Government Victoria's response to the Inspectors of Municipal Administration's report on the City of Ballarat
April 2010

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March 2010

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November 2009

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November 2009

Brookland Greens Estate – Investigation into methane gas leaks
October 2009

A report of investigations into the City of Port Phillip
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June 2009

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June 2008

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March 2008

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March 2008

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Investigation into VicRoads' driver licensing arrangements
December 2007

Investigation into the disclosure of electronic communications addressed to the Member for Evelyn and related matters
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Investigation into the use of excessive force at the Melbourne Custody Centre
November 2007

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April 2006

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