

**Report into allegations of conflict of interest of
an officer at the Metropolitan Fire and Emergency
Services Board**

June 2017

**Ordered to be published
Victorian government printer
Session 2014-17
P.P. No. 300**

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 my *Report into allegations of conflict of interest of an officer at the Metropolitan Fire and Emergency Services Board*.



Deborah Glass OBE

Ombudsman

June 2017

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Foreword

Investigator: Was there an interview panel with Mary?

Mr Robinson: Just Mary.

Investigator: How did this interview occur... telephone, in person?

Mr Robinson: In person.

Investigator: Was it at the MFB offices or another location?

Mr Robinson: Another location... her home.

From VO interview with the son of Mrs Mary Powderly-Hughes

Some cases I have investigated over the years seem so unlikely you could not make them up. Except, as in this case, they did.

The facts of the case are that a senior public official at the Metropolitan Fire Brigade hired her son, not declaring the relationship, having falsified his CV and coached him prior to interview, three weeks after he changed his name to conceal the relationship.

After giving him a pay rise and moving him into a permanent role, she then hired her second son, also falsifying his CV and 'interviewing' him at her home after he, too, had changed his name to conceal the relationship. In one form or another the public purse paid out over \$400,000 for the services of her two sons.

My office has seen countless examples of nepotism over the years – all of which undermine public confidence in government ensuring it has the best people to do the job – but rarely do they display such calculated behaviour.

Often the cases are minor, although wrong – a job needed to be done at very short notice and my brother works in that field, he even charged us mate's rates, I saved the government money. Not this time, this was a case of deception where the family nest was feathered, plain and simple.

All three subjects of this investigation have since left the public service: the senior official resigned on the day of her interview with my officers, and the employment of both sons has been terminated.

Although all three subjects are no longer in the public sector, I am tabling this report to expose both the reality and the danger of such behaviour. Even the most stringent policies cannot prevent what occurred in this case. But while the agency in this case cannot be held responsible for the deception perpetrated upon it, its conflict of interest policies were weak, and did not reflect best practice.

Public sector leaders must ensure they create an environment in which conflict of interest policies are embedded in their organisational culture: this case is yet another reminder of why this matters. The revamp of fire services in Victoria is an opportunity to ensure best practice.

The case also serves as a salient reminder of the importance of disclosers acting on suspicion that something is awry in their workplace. More often than not, as the saying goes, where there is smoke, there is fire.

Deborah Glass

Ombudsman

Background

1. On 20 January 2016, Mr Stephen O'Bryan QC, Commissioner of the Independent Broad-based Anti-corruption Commission (IBAC) referred a complaint to my office about the Metropolitan Fire and Emergency Services Board (MFB), pursuant to section 73 of the *Independent Broad-based Anti-corruption Commission Act 2012*.
2. After interviewing the complainant on 26 May 2016 and conducting a review of publicly available information, my office determined that there was sufficient evidence for the matter to be considered an 'assessable disclosure', and referred it back to IBAC on 27 June 2016.
3. On 14 July 2016, the matter was again referred to my office by IBAC, pursuant to section 73 of the Independent Broad-based Anti-corruption Commission Act, for investigation under the *Ombudsman Act 1973*.
4. IBAC had determined that the information provided was a 'protected disclosure complaint' under the *Protected Disclosure Act 2012*.
5. My jurisdiction to investigate protected disclosure complaints is derived from section 13AAA of the Ombudsman Act, which provides that I have the function to investigate protected disclosure complaints about conduct by or in an authority or protected disclosure entity.
6. The MFB was established under the *Metropolitan Fire Brigades Act 1958* with the purpose of providing for fire safety, suppression, prevention and emergency response services. As a public statutory body as defined by section 2 of the Ombudsman Act, the MFB is an authority subject to my jurisdiction.

7. On 17 August 2016 I notified the Chief Executive Officer of the MFB, Mr Jim Higgins and the Hon James Merlino MP, Minister for Emergency Services, of my intention to formally investigate the protected disclosure complaint (the disclosure).

The disclosure

8. The discloser alleged that:
 - the MFB's Chief Information Officer, Mrs Mary Powderly-Hughes failed to declare her relationship to her son, Mr David Hewson, to whom she:
 - gave an employment contract
 - awarded a pay increase while on that contract
 - manipulated a recruitment process to ensure that he was the successful candidate for an ongoing position at the MFB.
9. Shortly after commencing the investigation, the discloser contacted this office and further alleged that:
 - Mrs Powderly-Hughes had employed another son, Mr Barry Robinson, on a contract and did not declare this relationship.
10. Pursuant to section 34 of the Protected Disclosure Act, this allegation was taken to be a 'related disclosure' and considered as part of the investigation.
11. The discloser included two additional allegations regarding Mrs Powderly-Hughes' procurement practices. Specifically, these allegations related to the splitting of project payments to avoid procurement thresholds, and the inappropriate acceptance of gifts.

12. These allegations were examined by the investigation including interviewing a witness and reviewing of documentation and emails. The evidence examined did not support the allegations, and the investigation of these matters was therefore discontinued in accordance with section 17(6B)(b) of the Ombudsman Act. I have however, made one recommendation regarding a broader review of Mrs Powderly-Hughes' procurement practices.

Methodology

13. The investigation included examining:

- MFB employment records for:
 - Mrs Powderly-Hughes
 - Mr Hewson
 - Mr Robinson
- records relating to the recruitment of:
 - Mr Hewson
 - Mr Robinson
- MFB email accounts for:
 - Mrs Powderly-Hughes, from April 2014 to September 2016
 - Mr Hewson, from July 2014 to September 2016
 - Mr Robinson, from August to October 2016
- MFB policies and procedures, including:
 - *Recruitment and Selection (July 2015)*
 - *Recruitment and Selection – Corporate (July 2015)*
 - *Confidentiality / Conflict of Interest / Ethics (March 2015)*

- employment records from Parks Victoria for:
 - Mrs Powderly-Hughes
 - Mr Hewson
- information regarding the identity and background of the subjects of the investigation, namely:
 - searches of the Victorian Birth and Marriage Registers, conducted by the Victorian Registry of Births, Deaths and Marriages
 - a National Name Check for Mr Hewson, conducted by Victoria Police
 - records of custodial sentences for Mr Hewson, from Corrections Victoria.

14. Four people were interviewed as part of the investigation of these allegations:

- Procurement Manager, MFB - voluntary appearance¹
- Mrs Powderly-Hughes, Chief Information Officer, MFB - compulsory appearance²
- Mr Hewson, Manager IT Administration, Finance, Procurement and Projects, MFB - compulsory appearance
- Mr Robinson, Procurement Officer, MFB - compulsory appearance.

¹ *Ombudsman Act 1973* section 2 defines 'voluntary appearance' as the appearance of a person before an Ombudsman officer in the course of or in relation to the performance of the Ombudsman's functions... other than a compulsory appearance.

² *Ombudsman Act 1973* section 2 defines 'compulsory appearance' as the appearance of a person before an Ombudsman officer otherwise than in accordance with a witness summons, in which the person is examined under section 18 of the Evidence (Miscellaneous Provisions) Act 1958

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15. All witnesses were given the opportunity to attend with a support person or legal representative:
 - Mr Hewson attended unaccompanied, but requested legal representation shortly after the interview commenced. He then attended a second interview with a legal representative.
 - Mrs Powderly-Hughes attended with a legal representative.
 16. This report includes adverse comments about Mrs Powderly-Hughes, Mr Hewson, Mr Robinson and the MFB. In accordance with section 25A(2) and section 17(4) respectively of the Ombudsman Act, each person and the MFB has been provided with a reasonable opportunity to respond to the adverse material in this report. Only Mrs Powderly-Hughes and the MFB elected to provide a submission in response to the draft report.
 17. In accordance with section 25A(3) of the Ombudsman Act, any other persons who are identifiable, or may be identifiable from the information in this report, are not the subject of any adverse comment or opinion. They are named or identified in this report as I am satisfied that:
 - it is necessary or desirable to do so in the public interest and
 - identifying those persons will not cause unreasonable damage to the persons' reputation, safety or wellbeing.
 18. The findings reached in relation to the disclosure are set out below and were reported to the principal officer of the MFB pursuant to section 23(2A) of the Ombudsman Act.
 19. In reaching these findings, the standard of proof I have applied is the balance of probabilities. In determining whether that standard has been met, I have applied the High Court decision of *Briginshaw v Briginshaw*.³ Specifically, I have considered the seriousness of the allegations made and the gravity of the consequences that may flow from an adverse finding.
 20. Mrs Powderly-Hughes tendered her resignation from the MFB on the same day as her interview with this office. The MFB served Mr Hewson with a 'show-cause' notice following his interview and his employment was subsequently terminated. Mr Robinson's contract of engagement was terminated the day before his interview. Accordingly, no recommendations have been made in relation to any of these individuals. Had they still been engaged by the MFB at the conclusion of the investigation, however, the Ombudsman would have recommended that the MFB terminate their employment.

³ *Briginshaw v Briginshaw* (1938) 60 CLR 336.

Relevant Legislation and Code of Conduct

Public Administration Act 2004

21. The *Public Administration Act 2004* acknowledges that the key role of the public service is to serve the public interest. It provides the framework for Victorian Public Sector organisations to understand their public administration obligations and meet community expectations in relation to accountability and integrity.
22. Public officials are required to act in a manner that is consistent with the public sector values, in accordance with section 7 of the Public Administration Act. Section 61 of the Public Administration Act requires the Commissioner to issue a code of conduct to promote adherence to these values.

Code of Conduct for Victorian Public Sector Employees

23. Under the *Code of Conduct for Victorian Public Sector Employees* (Code of Conduct) issued in 2007 and updated in 2015, public sector employees:
 - must act honestly in the performance of their duties⁴
 - must not use their power to provide a private benefit to themselves, their family, friends or associates⁵
 - must avoid actual, potential or perceived conflicts of interest, and in the event that they cannot be avoided, conflicts must be declared and appropriately managed.⁶
24. As a public body, MFB corporate and technical employees must comply with the Code of Conduct. Contravening the Code of Conduct can amount to misconduct as defined in section 4 of the Public Administration Act and potential grounds for dismissal.

4 Section 3.1, Code of Conduct for Victorian Public Sector Employees (2007, 2015).

5 Section 3.2, Code of Conduct for Victorian Public Sector Employees (2007, 2015).

6 Section 3.7, Code of Conduct for Victorian Public Sector Employees (2007, 2015).

Investigation

The investigation dealt with the following allegations:

Allegation 1

- Mrs Powderly-Hughes failed to declare her relationship to her son, Mr Hewson, whom she employed on contract, awarded a pay increase, and engineered a recruitment process to ensure that he was the successful candidate for an ongoing position at the MFB.

Allegation 2

- Mrs Powderly-Hughes then backfilled Mr Hewson's position with her second son, Mr Robinson.
25. At interview on 26 May 2016, the discloser raised concerns about the circumstances of Mr Hewson's recruitment to the MFB as a Projects Officer and Mrs Powderly-Hughes' involvement in that process. The discloser stated:

I have my suspicions that Mary Powderly-Hughes has hired her son, or family member, or someone with a very close connection and I think she's manipulated things to make sure he got the job when it became permanent... when he was a contractor he quickly got a rate rise, which is quite rare for most people...

26. The discloser was concerned that the relationship had been concealed and not properly declared.
27. In an effort to identify any relationship between Mrs Powderly-Hughes and Mr Hewson, the investigation conducted a preliminary review of publicly available information for the pair. This included correlating the information provided by the discloser with professional networking and social media sites, as well as name searches.
28. The evidence identified in that review, shown at **Figure 1**, identified that Mr Hewson had used three separate surnames for different purposes, including one that was shared by Mrs Powderly-Hughes.
29. During a telephone call shortly after the investigation had commenced, the discloser alleged that Mrs Powderly-Hughes had since hired a person whom the discloser believed to be another son, Mr Robinson, to backfill Mr Hewson while he temporarily moved to a different role at the MFB.

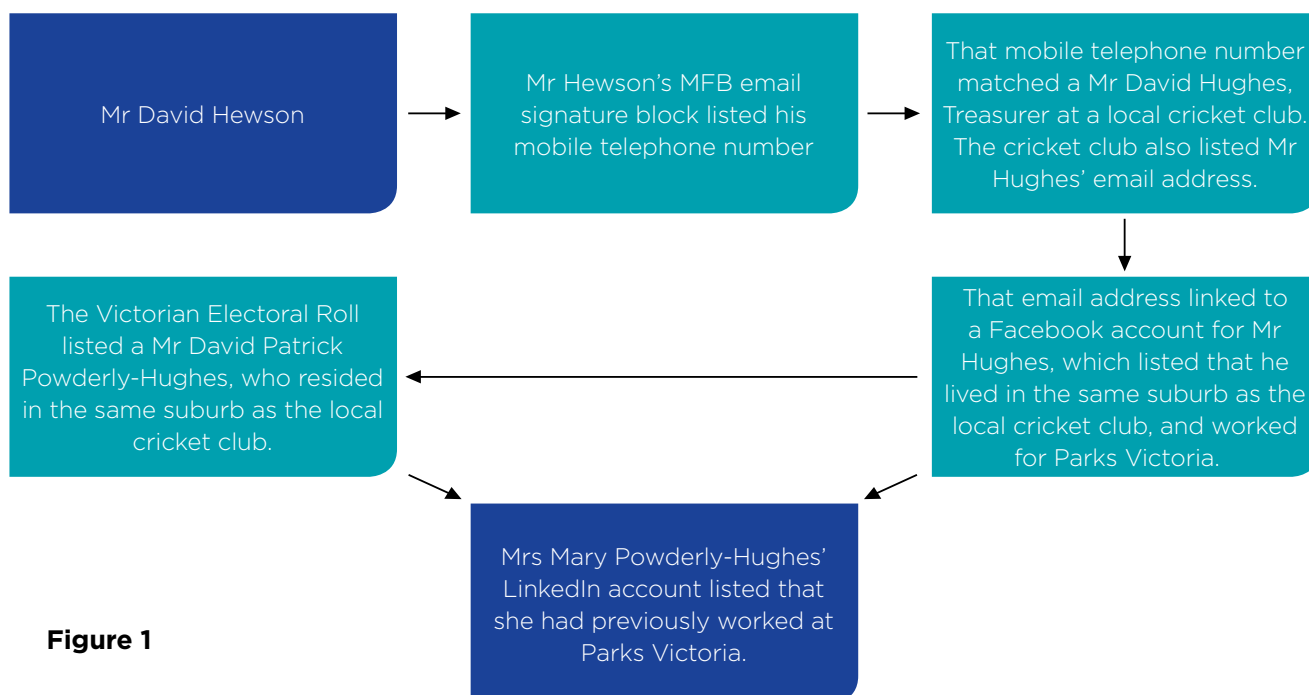


Figure 1

Relationship between the subjects

30. The investigation sought the assistance of the Victorian Registry of Births, Deaths and Marriages (the Registry) to establish the exact relationship between the subjects. That search, conducted on 26 October 2016, returned the evidence set out below.

Name	Date of Birth	Place of Birth	Change of Name	Relationship
Mary Nola Powderly	██████████	East Melbourne	None	██████████
██████████	██████████	██████████	██████████	██████████
David Patrick Powderly-Hughes	██████████	East Melbourne	17 Jun 2014 Change of name from David Patrick Powderly Hughes to David Patrick Hewson	Mother - Mary Nola Powderly Hughes ██████████
Barry Vincent Hughes	██████████	Moonee Ponds	1 Aug 2016 Change of name from Barry Vincent Hughes to Barry Vincent Robinson	Mother - Mary Nola Powderly Hughes ██████████

31. The search confirmed that Mr Hewson and Mr Robinson were Mrs Powderly-Hughes' sons. It also confirmed that Mr Hewson and Mr Robinson had changed their surnames only three weeks and two weeks respectively, prior to commencing their employment with the MFB, removing any reference to 'Powderly' or 'Hughes'. Mr Hewson commenced with the MFB on 9 July 2014, and Mr Robinson began on 16 August 2016.

32. At his first interview on 15 December 2016, Mr Hewson denied having any relationship to Mrs Powderly-Hughes. However, when shown the evidence obtained from the Registry he refused to answer any further questions until he had obtained legal advice. Accompanied by legal counsel at a second interview on 22 December 2016, Mr Hewson provided a written statement to the investigation that confirmed:

My mother is Mary Powderly-Hughes...

In about late June / early July Mary said to me that she had walked into the job from Hell and needed help...

She said that it would be a good idea to change my name, as she already had enough trouble with the union members in her team.

33. Mrs Powderly-Hughes provided a similar version of events at her own interview on 19 December 2016, and admitted that she did not declare her relationship with either of her sons. Commenting on Mr Hewson's name change, she said:

That was my suggestion because I said I'd already had enough problems with the union... I figured if he came in with the name 'Hughes' [the union] would suss something out pretty quickly.

34. When asked why he had changed his name, Mr Robinson initially stated at his interview on 22 December 2016 that it was because he 'didn't want to ride on somebody else's coat-tails', but clarified that it was his mother's idea.

35. Mrs Powderly-Hughes added that this was a deliberate attempt to conceal their relationship, but denied having any other relatives who were also employed by the MFB.

Mr Hewson's contract position

36. At interview Mr Hewson said that he first became aware of a potential position with the MFB during a discussion with Mrs Powderly-Hughes at her home in about June 2014.

37. Mrs Powderly-Hughes explained:

... I knew David was looking for work and I suggested that he might want to apply... I knew he could do it, and I knew absolutely that I could trust him, so that was the main attraction.

38. Based on evidence from her MFB email account around the same time she had spoken with Mr Hewson, Mrs Powderly-Hughes was engaging with recruitment agency, Hudson Global Resources (Hudson), regarding a number of positions within her Information Communication Services unit (ICS) - one of which was to backfill an employee who was on extended leave from an administration and projects role.

39. An email from Mrs Powderly-Hughes on 26 June 2014 to Hudson suggested that she had found someone to fill that vacancy. She claimed during her interview that Mr Hewson had been in contact with Hudson before that time, but her email to Hudson read:

His name's Dave Hewson and it would be 3 months at Burnley. He wants \$500/day which was more than I wanted to pay... I'll get him to send you his CV.

40. Mrs Powderly-Hughes and Mr Hewson both gave evidence to the investigation that Mr Hewson was interviewed for the role and that Officer Z, a former MFB employee, was also present. Despite this, there was no evidence in Mrs Powderly-Hughes' MFB email account to show that Mr Hewson was interviewed for the position. What was found, however, was that Officer Z was not employed by the MFB until five days after Mr Hewson had commenced employment.

41. On 7 July 2014, after being contacted by Mr Hewson about the position, Hudson emailed Mrs Powderly-Hughes to advise that they needed confirmation of a satisfactory reference check for their internal records. Mrs Powderly-Hughes said at interview that she had conducted these checks. However, the investigation did not identify any evidence to support her claim.

42. Having obtained a quote from Hudson, a purchase order for Mr Hewson's contract was created on 8 July 2014. The MFB was charged \$574.85 per day for Mr Hewson's services, equal to a total cost of \$74,730.50 for six months. Mr Hewson's first day was 9 July 2014 - 22 days after he had changed his name.

43. During her interview Mrs Powderly-Hughes said that Hudson's Senior Consultant was not aware of her relationship to Mr Hewson, and that she had not completed any declaration to the MFB regarding her conflict. Mr Hewson said that he, too, did not declare the relationship.

44. When asked whether he considered his mother's involvement in his employment was appropriate, Mr Hewson responded:

From the results, I think [it was], yes...
We've proven that we can do the job. At the end of the day, we're there to run the business as a business.

45. Mr Hewson went on to say that he did not believe Mrs Powderly-Hughes had a conflict of interest when she recruited him, because:

I knew I could do the job and as I stated, Mary wanted someone she could trust to do the job, turn the place around. That's what we did and people didn't like that, unfortunately.

46. Although Mrs Powderly-Hughes said that she did not know whether Mr Hewson's contract would become an ongoing role, when asked why he was hired and whether he was qualified for the position, she stated:

I believe [he was qualified], yes. He'd run his own business, he'd had a lot of business experience, he'd used the SAP system... he'd had projects experience... I was thinking of the future, not just doing the admin and procurements but moving into a projects role further down the track.

Contract extensions and pay rise

47. While Mr Hewson's initial six-month contract ended on 9 January 2015, Mrs Powderly-Hughes stated:

There were a number of extensions, so several contractors have been extended for a variety of reasons and that's usually subject to an exemption signed by the CEO.

48. Emails from Mrs Powderly-Hughes showed that she had sought a number of exemptions for Mr Hewson from the MFB's Chief Executive Officer. She also confirmed that the CEO was not aware that Mr Hewson was her son.

49. Mr Hewson's first contract extension was granted on 18 December 2014, when Mrs Powderly-Hughes wrote to the Senior Consultant at Hudson:

I would like to extend David Hewson for an additional 3 months, please. We have discussed his daily rate and he has suggested the work he does is deserving of a higher rate: we have settled on an additional \$50/day... By April I should be in a position where I can advertise David's position, for which I hope he'll be a candidate.

50. Mr Hewson said that he did not recall discussing the idea of a pay increase with Mrs Powderly-Hughes; but when asked whether he believed her involvement was appropriate, he stated:

No... although the work I was doing... I think the effort I was putting in, I probably did deserve a higher rate compared to what other people were getting...

51. Mrs Powderly-Hughes said that she could vaguely recall the conversation with Mr Hewson and that 'he thought that he deserved a higher rate' which was not unusual for contractors.

52. Mr Hewson did not obtain any further pay increases, but emails from Mrs Powderly-Hughes throughout 2015 and 2016 showed that she endorsed six additional contract extensions for Mr Hewson:

- 6 January 2015 to 5 April 2015, for \$38,279.33
- 5 April 2015 to 5 July 2015, for \$40,161.92
- 7 July 2015 to 17 August 2015, for \$18,825.90
- 16 August 2015 to 16 November 2015, for \$41,416.98
- 17 November 2015 to 17 January 2016, for \$25,725.73
- 18 January 2016 to 18 March 2016, for \$26,920.52.

53. Including his initial contract from 9 July 2014, the total cost to the MFB for Mr Hewson was \$266,060.88 for less than two years of work.

54. In response to the draft report, Mrs Powderly-Hughes stated:

...[the draft report] seems to infer [sic] that I had some choice in relation to the renewals of Mr Hewson's contact [sic]. I did not. It was my intention to advertise the two vacancies I had in my team just as soon as I had had a chance to enact a minor structure change (this change created a new position, that of 'IT Manager'). I was in fact stopped on repeated occasions from advertising these three positions by the United Firefighters Union (a fact that can easily be verified by MFB Management).

Ongoing position for Mr Hewson

55. During 2015 the officer whose role Mr Hewson had been filling vacated that position permanently. Mrs Powderly-Hughes then sought an ongoing employee and authorised the Manager IT Administration, Finance, Procurement and Projects role, as it was known.

56. Mrs Powderly-Hughes confirmed at interview that as Hiring Manager, she was responsible for developing a position description for the role, which was approved and given a classification by the MFB's Human Resources area. The position was first advertised in November 2015, but Mr Hewson said that it was not until Hudson's Senior Consultant contacted him that he submitted his CV in December 2015.

57. In that CV, Mr Hewson used the same professional history he had used when he first obtained his contract position with the MFB, which stated that he had worked at Telstra from 2011 to 2013. However, in reviewing Mr Hewson's MFB email account the investigation identified a different version of his CV that substituted his Telstra experience for a separate company, KAT Express.

58. When these discrepancies in his work history were put to Mr Hewson at interview, he admitted that he had never worked at Telstra, claiming that he did not know why KAT Express did not appear on his CV because 'Mary typed the whole lot'.

59. Despite initially saying that her involvement in preparing her son's application was limited to writing his covering letter, when Mrs Powderly-Hughes was asked about Mr Hewson's employment history, she said:

I probably helped him with his CV, but I don't know why KAT Express wouldn't have been there, I'm not sure... I did suggest he put in Telstra... I don't know why I did that.

60. Evidence obtained as part of the investigation showed that Mrs Powderly-Hughes had herself held a role with Telstra from 2011-2013.

61. Having developed and falsified her son's CV, Mrs Powderly-Hughes explained her involvement in shortlisting the applicants:

I think there were five. I think I did phone interviews, but some of them hadn't had projects experience and it is my recollection that I specified projects experience... We interviewed three.

62. The *Applicant Assessment* form obtained from the MFB confirmed that Mr Hewson was one of those three applicants. His interview took place on 5 February 2016; and Mrs Powderly-Hughes confirmed that she was Chair of the interview panel, which also comprised a Human Resources representative and the MFB's Finance Manager.

63. Mr Hewson said that he did not discuss any interview questions with Mrs Powderly-Hughes beforehand, but that they did have a coffee immediately prior where she coached and encouraged him because he was nervous. A review of the notes taken by the panel during Mr Hewson's interview showed that he had responded to several questions using examples from Telstra, despite never having worked at the company.

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64. Following his interview, Mr Hewson was determined to be the preferred candidate, having scored highest in five of the six key selection criteria.
65. Mrs Powderly-Hughes said that she did not complete any declaration regarding her conflict and had not revealed her relationship to Mr Hewson to anyone at the MFB during the recruitment process.
66. On 8 February 2016, Mrs Powderly-Hughes requested Mr Hewson's references from Hudson's Senior Consultant so that checks could be conducted. Records obtained as part of the investigation showed that Mrs Powderly-Hughes created records of two referee checks she had purportedly conducted for her son – the first with Linfox and the second with Telstra.
67. However, it was pointed out to Mrs Powderly-Hughes at interview that Mr Hewson had never been employed by Telstra. She said that she did not recall conducting the reference checks:
- Investigator: Did [Telstra officer] work at Telstra [when the reference check was conducted]?
- Mrs Powderly-Hughes: At that time? I don't believe so.
- Investigator: At that time, did you actually speak with [Telstra officer] in relation to that reference check?
- Mrs Powderly-Hughes: No.
- Investigator: Can I confirm then, did you actually speak to [Linfox officer] in relation to that reference check?
- Mrs Powderly-Hughes: No.
- ...
- Investigator: Would it be safe to say that you filled out these reference check forms without conducting these telephone calls?
- Mrs Powderly-Hughes: Yes.
68. After fabricating her son's reference checks, Mrs Powderly-Hughes offered Mr Hewson the role with a starting salary of \$84,770.70. Rather than accept this offer, however, Mr Hewson contacted Hudson's Senior Consultant to negotiate the terms of his employment, including:
- increasing in his base salary to \$90,000
 - waiving his probationary period
 - recognising his 20 months of contract work with the MFB as 'prior service' for the purposes of Long Service Leave.
69. Having sought advice from the MFB's Human Resources area, who were not aware of the relationship, Mrs Powderly-Hughes waived Mr Hewson's probationary period and increased his starting salary to \$88,145.72. Mr Hewson accepted the offer and commenced in his new role on 7 March 2016, continuing to report to his mother.

Background checks for Mr Hewson's employment

70. In reviewing Mr Hewson's employment records, it was noted that his Letter of Engagement stipulated that his employment was conditional on the 'MFB being satisfied that the results of a police check are compatible with the inherent requirements of the role'. Despite this, Mr Hewson's employment file did not contain any such police check.
71. Mr Hewson said that he discussed the possibility of being subject to a police check with Mrs Powderly-Hughes prior to obtaining his ongoing position:
- I said 'is there a policy' and she wasn't sure. We thought maybe it was an operational policy for the fire brigade and we would deal with it when it comes about.

-
72. While he was 'not 100 per cent sure', Mr Hewson said that he believed his MFB employment pack included a document stating that the MFB could check his criminal history. Mr Hewson said he signed and returned that form, but did not hear back about the check.
73. Mrs Powderly-Hughes said it was her understanding that the MFB's Human Resources area was responsible for conducting pre-employment police checks.
74. As part of the investigation a National Name Check was obtained from Victoria Police for Mr Hewson and contact was made with Corrections Victoria. These checks identified that Mr Hewson, under his previous name Hughes, had served a brief period of incarceration for traffic-related offences at the same time that his CV stated he was working at Telstra.

Mr Hewson and Mrs Powderly-Hughes' prior employment at Parks Victoria

75. Mr Hewson and Mrs Powderly-Hughes had both listed Parks Victoria as their employer immediately prior to their respective positions at the MFB. Mrs Powderly-Hughes had been Parks Victoria's Chief Information Officer from September 2013 to April 2014, and Mr Hewson had commenced as a Projects Officer in January 2014 before departing in June of the same year.
76. Employment records obtained from Parks Victoria included an email to Mrs Powderly-Hughes from recruitment agency, Randstad, on 10 January 2014. That email included cost estimates in response to a request from Mrs Powderly-Hughes about the cost of employing a contractor.

77. On receipt of those quotes Mrs Powderly-Hughes responded 'I will need to see whether I can get this guy to work for \$500 rather than the \$550 he wants', before again emailing Randstad on 14 January 2014:

His name's David Hughes and he worked for me at Telstra. Position is Project Manager/Sharepoint Site Administrator. Please let me know what he needs to send you.

78. The following day, Mr Hewson – known at the time as David Hughes – submitted his CV to Randstad. Despite initially claiming at interview that he could not recall any discussion with Mrs Powderly-Hughes about this position, Mr Hewson later clarified:

Mary mentioned there was a position at Parks for a Projects Officer and I was just told to contact [officer] at Randstad, which I did.

79. Mrs Powderly-Hughes said that she had sole responsibility for hiring Mr Hewson and was the only person who interviewed him for the role. She also confirmed that nobody at Parks Victoria, nor the representative from Randstad, were aware of her relationship to him.
80. Mr Hewson commenced with Parks Victoria on 20 January 2014. In total he was paid \$74,540 for a six month contract.

Mr Robinson's contract position

81. Mr Robinson told the investigation that he first spoke to his mother about potential work at the MFB during 2015:

I actually asked her in 2015 'is there any work where she was' and she definitively said 'no', and I'm guessing six months later, I'm thinking around January [2016], that I asked again and she said 'no, but there might be something coming up'.

-
82. Mr Robinson said that after their discussion at the beginning of 2016, he contacted four recruitment agencies at Mrs Powderly-Hughes' suggestion. Following a discussion with a representative from recruitment agency, Professional People, Mr Robinson said that he told his mother that he had signed up for their services.
83. Mr Robinson went on to say that approximately two months later, Mrs Powderly-Hughes confirmed that a role would soon become available. Mr Robinson said that the nature of the proposed role was not made clear at this conversation. The role subsequently filled was as a Procurement Officer at the MFB under his mother's management.
84. During the period between March and July 2016, Mr Robinson said that his mother developed his CV, trained him in the computer programs that were integral to the role, and interviewed him for the position.
85. When asked if he was interviewed for the role, Mr Robinson responded:
- Mr Robinson: By Mary, yeah.
- Investigator: Was there an interview panel with Mary?
- Mr Robinson: Just Mary.
- Investigator: How did this interview occur... telephone, in person?
- Mr Robinson: In person.
- Investigator: Was it at the MFB offices or another location?
- Mr Robinson: Another location... her home.
86. Mr Robinson said that they discussed the key requirements for the role, which Mrs Powderly-Hughes elaborated on when she was asked if Mr Robinson was qualified for the position:
- No, not really. He had been all his life a motor mechanic... I showed him the basics of how to use the SAP system and how to use the help-desk system that we use, and other than that it was just managing the software register, managing the contractor spreadsheet... and making sure that the buffer stock was [accounted for].
87. Mr Robinson said that prior to Mrs Powderly-Hughes giving him a 'crash course' in around April, May or June 2016, he had no experience using the MFB's business support system, SAP, or the IT help-desk system, 'Service Now'. When asked about the SAP system, he said:
- It's a finance computer system, really crazy to use... It's a very complex system... There's a million things in that system that I don't know how to use...
88. In response to the draft report, Mrs Powderly-Hughes stated:
- ...[the draft report] seems to infer [sic] that Mr Robinson needed an in-depth knowledge of the entire SAP system 'stack'. He in fact needed to use one transaction.
89. Despite having no experience in using either program, a copy of Mr Robinson's CV was identified in Mrs Powderly-Hughes' MFB emails, which stated:
- [Mr Robinson] is currently working for [company]... in a role that entails Purchase Order creation, goods/services receipting, Profit and Loss reporting in SAP, as well as IT equipment ordering. He uses Service Now as the IT Service Management tool...
90. While his CV also stated that he had commenced an IT Diploma, Mr Robinson clarified that this was not true at that time, and that his mother had 'pretty much organised' his entire CV.

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91. In an email dated 18 July 2016 and sent to three recruitment agencies – Clicks IT, Randstad and Professional People – Mrs Powderly-Hughes outlined the key requirements for the role that she ultimately filled with Mr Robinson. The skills and attributes she described bore a number of similarities to the skills and experience that Mrs Powderly-Hughes admitted she had fabricated in Mr Robinson’s CV. Outlining those requirements in her email, she wrote:
- ...MFB has a requirement for a (8 month) contractor to backfill an admin function in the ICS team.
- SAP use in the context of purchase order creation, goods/services receipting and Profit & Loss is the primary requirement.
- Use of the ServiceNow ITSM software tool would be highly regarded but not mandatory.
- Person needs to be highly Customer-Service-oriented.
- Experience in an IT team desirable but not mandatory.
- Would suggest that rather than advertising, you might just forward me your top candidate by COB next Thursday (21 July).
- In terms of budget, I believe \$50/hr or \$400/day would be our upper limit.
92. When shown a copy of this email alongside his CV, Mr Robinson said the similarities were ‘documented, so I was a sure thing’.
93. On the same day that Mrs Powderly-Hughes emailed the recruitment agencies, 18 July 2016, she also emailed Professional People – the agency that Mr Robinson had joined – separately, enquiring:
- ... I just wanted to see how much it would be to put on an admin person on a project for 6 months if the candidate wanted -\$400/day to him/her?
94. Mrs Powderly-Hughes received replies from each of the three recruitment agencies in response to her request for candidates. While Clicks IT wrote that the candidates they spoke with ‘didn’t bring the right calibre of experience’, Randstad offered two (neither of whom were Mr Robinson) along with their respective CVs on the same day, stating:
- [Candidate 1] has an extensive work history using SAP especially on the financial side – completing requisition orders and profit and loss statements as required....
- [Candidate 2] is an advanced user of SAP and is proficient with SAP applications and Business One models. She has been in many financial focused roles...
95. Having been provided with Mr Robinson’s application by Professional People, Mrs Powderly-Hughes responded on 21 July 2016 to say that he had been interviewed and that reference checks were being conducted. Mrs Powderly-Hughes clarified at interview, however, that she never conducted those checks.
96. On 25 July 2016, Mrs Powderly-Hughes confirmed an offer to Mr Robinson via Professional People. The MFB was charged \$471.40 per day for 159 days of work, at a total cost of \$74,952.60.
97. Despite the candidates proposed by Randstad, Mrs Powderly-Hughes emailed the agency on 26 July 2016, saying that she had identified a person ‘with SAP experience who has worked in an IT environment and has experience with the ServiceNow ITSM tool’.
98. Mr Robinson did not have this experience, but started with the MFB on 16 August 2016, reporting to his brother, who in turn reported to their mother. Mr Robinson had changed his surname only 15 days earlier.

Findings

Allegation 1

99. On the basis of the evidence identified by the investigation, this allegation is substantiated.
100. Mrs Powderly-Hughes concealed her relationship with Mr Hewson and personally engineered his recruitment, contract extensions and pay increase. She failed to meet public sector standards. She acted dishonestly, provided a private benefit to a family member, and failed to avoid, declare or manage a conflict of interest. Mrs Powderly-Hughes breached sections 3.1, 3.2 and 3.7 of the Code of Conduct, and in doing so engaged in misconduct within the meaning of section 4 of the Public Administration Act.
101. Mr Hewson changed his name, concealed his relationship to Mrs Powderly-Hughes and failed to declare that relationship. Mr Hewson breached section 3.7 of the Code of Conduct. His actions also constitute misconduct within the meaning of the Public Administration Act.
102. Despite Mrs Powderly-Hughes' claim, Mr Hewson was not in contact with Hudson until she referred him on; and there is no evidence to support her assertion that she conducted reference checks for his contract position. In light of the fact that Officer Z was not employed by the MFB until after Mr Hewson, it is not possible that he was interviewed as she claimed.
103. Mrs Powderly-Hughes personally obtained exemptions for Mr Hewson's six contract extensions, and intentionally concealed their relationship when she did so. She also increased her son's pay by \$50 per day on the first of those extensions.
104. With respect to Mr Hewson's ongoing role, Mrs Powderly-Hughes created the position description, shortlisted the applicants and led the selection panel during his interview.
105. Both subjects denied discussing the job interview prior to it being conducted, yet Mr Hewson was able to respond to several interview questions with examples from Telstra – a fictional employment history that had been created by Mrs Powderly-Hughes when it was only she who had ever held a position with that company. The investigation is, therefore, satisfied that coaching and collusion occurred between Mr Hewson and Mrs Powderly-Hughes, prior to Mr Hewson's interview.
106. Despite initially telling the investigation that she conducted reference checks, Mrs Powderly-Hughes later admitted that she had never contacted her son's referees, that one of the references was entirely fictional, and the documents she had created were fake. She then offered her son the role, increased his salary and waived his probationary period.
107. Mr Hewson's Letter of Engagement stated that his employment was conditional on the results of a police check. His criminal history may not have precluded him from filling the role, but by failing to do that check, the MFB was unable to fully assess his suitability for the position.
108. The evidence also shows that Mrs Powderly-Hughes improperly appointed Mr Hewson to a role at Parks Victoria. Consistent with her actions at the MFB, the relationship was concealed from a recruitment agency, not formally declared or made known to staff or management.

Allegation 2

109. On the basis of the evidence identified by the investigation, this allegation is substantiated.
110. Mrs Powderly-Hughes concealed her relationship with Mr Robinson and personally engineered his recruitment. She breached sections 3.1, 3.2 and 3.7 of the Code of Conduct. In doing so, her actions constituted misconduct within the meaning of the Public Administration Act.
111. Mr Robinson changed his name to conceal his relationship to Mrs Powderly-Hughes and then failed to declare that relationship. He breached section 3.7 of the Code of Conduct. His actions amount to misconduct within the meaning of the Public Administration Act.
112. The meeting between Mrs Powderly-Hughes and Mr Robinson at her home about his contract position did not constitute an interview that was in any way legitimate, objective, or assessed his competency for that role.
113. By their own admission, Mrs Powderly-Hughes falsified her son's CV to ensure that it matched the requirements for the role, even though he was not qualified. Mr Robinson willingly complied with her dishonesty.
114. Despite having been offered candidates who were more experienced and better qualified for the position, the investigation found no evidence that Mrs Powderly-Hughes ever genuinely considered them for the role. Mrs Powderly-Hughes' consultation with recruitment agencies was clearly disingenuous and simply an attempt to create the impression that a proper process was undertaken when in fact, the outcome was predetermined.

Conflict of interest

115. Even the most robust policy would not have prevented the level of deception shown by each of the subjects. However the MFB's conflict of interest policy is profoundly deficient and fails to acknowledge the potential for conflicts to exist during recruitment.
116. The Victorian Public Sector Commission's June 2016 update of its *Model Conflict of Interest Policy* provides detailed instructions for public sector employees on their requirement to avoid, identify, declare and manage conflicts in the course of their duties. In contrast, the MFB's policy on conflicts of interest only applies to staff who are involved in purchasing or evaluating suppliers, and provides no guidance on conflicts that may exist during recruitment.⁷
117. The Commission also released an *Integrity in Recruitment Guidance Note* in November 2016, which provides a detailed explanation of the risks associated with each stage of the recruitment process and how they can be managed by agencies. The MFB's recruitment procedures, however, do not refer to conflicts of interest or how they should be prevented, identified or managed during a candidate selection process.⁸

⁷ Metropolitan Fire and Emergency Services Board, Confidentiality / Conflict of Interest / Ethics (March 2015).

⁸ Metropolitan Fire and Emergency Services Board, Recruitment and Selection – Corporate (July 2015).

Recommendations

I recommend that the Metropolitan Fire and Emergency Services Board:

- (1) Review its Confidentiality / Conflict of Interest / Ethics policy to ensure that it is consistent with the standards set by the Victorian Public Sector Commission.
- (2) Review its recruitment policies and procedures, particularly in relation to the engagement of temporary staff via recruitment agencies, pre-employment checks, and the identification and management of conflicts of interest.
- (3) Audit Mrs Powderly-Hughes' involvement in procurement processes with a view to identifying any irregularities or impropriety.

In response to the draft report the Chief Executive Officer of the MFB stated:

I note the preliminary findings you have made. I consider the recommendations arising out of these findings to be appropriate and will seek to address these issues as a matter of priority on the finalisation of your report.

The Chief Executive Officer of the MFB also advised of his intention to refer the conduct identified in this report to Victoria Police.

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