

Investigations into allegations of nepotism in government schools

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The Victorian Ombudsman pays respect to First Nations custodians of Country throughout Victoria. This respect is extended to their Elders past, present and emerging. We acknowledge their sovereignty was never ceded.

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* (Vic), I present to Parliament
Investigations into allegations of nepotism in government schools.



Deborah Glass OBE

Ombudsman

20 May 2020



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Foreword

“... hand on heart I can say I never ever heard the words conflict of interest in my whole career. I just never heard it. It was never mentioned, not once, in any forum that I’m aware of.”

– Australian Principals Federation officer of almost 40 years experience,
in evidence to the investigation

Regular readers of Ombudsman reports may well be wondering why we need another report into nepotism in government schools. But the better question may be: why does the Ombudsman continue to receive so many allegations about nepotism in schools?

The dangers of nepotism have been a theme of Ombudsman reports for many years, and I tabled a report in 2018 about the principal of a regional college which drew attention to the risks of this practice. The Department of Education and Training was also the subject of a major anti-corruption enquiry by IBAC; following this considerable scrutiny by integrity agencies it has built a comprehensive policy framework including detailed advice about conflicts of interest.

Despite this, complaints about nepotism in schools continue unabated. Troublingly, many investigations continue to find that jobs and contracts are given to the family members, associates or related businesses of principals or other senior school staff without their conflicts of interest being declared or managed.

This report looks at three such cases, all received since my last public report on the subject. They are not in the same class of misdeed as the principal who openly flouted the rules by hiring his wife, sons and other associates. These were not corrupt staff deliberately disregarding their obligations as public officers. Mostly, the subjects of these allegations were well-intentioned, busy people trying to solve problems, who got it wrong, such as not realising rules still apply to casual staff. They are anonymised in this report as I am not tabling it to expose them, but to draw attention to the problem and its consequences.

The cost to these individuals was high. Their actions led people to question their integrity. They found themselves facing what were no doubt distressing allegations and investigations. The suitability of their family members for the roles to which they were appointed was questioned. The inevitable effect is that confidence in merit-based decisions at the schools was compromised.

I recognise that the Department’s large, decentralised workplace raises operational challenges for any integrity program. Although the Department has had a conflict of interest policy for some 10 years, which it has continually updated, we found policies and guidance spread across multiple documents in multiple sites. It is not surprising that busy school principals, under enormous pressure of work, do not have a few quiet hours to explore the Department’s website – but it is disappointing that despite the money spent on professional development, training in ethical decision making is still needed.

Building a strong integrity culture – and effective ways of communicating what is right and wrong – requires more than policies on a website. I welcome the efforts by the Department both to develop and communicate its integrity framework, and I hope this report assists its efforts. My message to principals and others is simple: Leadership starts at the top. I would far rather not be using my precious investigative resources to investigate allegations of nepotism. If you can, avoid hiring your partners, children, friends or other associates. In any event, be aware of the rules – and the consequences of getting it wrong.

Deborah Glass
Ombudsman

The purpose of this report

1. This report draws attention to a problem that has become a regular subject of 'public interest disclosures' to the Ombudsman – nepotism in government schools. It highlights the need for school principals and staff to check and follow integrity obligations, and the need for public authorities to look for effective ways to embed integrity in their workplaces.
2. Since 2013, the Ombudsman has dealt with more than 20 cases where school principals or staff allegedly gave jobs and contracts to family members, associates or related businesses. Several investigations found that principals failed to declare and in some cases, manage, their conflicts of interest.
3. The Ombudsman tabled a report about one such case in 2018.¹ In that case, the Ombudsman found the school's Principal:
 - employed his wife as his personal assistant, despite there being no record of her applying for the position
 - employed his son to manage an athletics program, even though there was a more qualified candidate
 - channelled benefits to companies owned by another son.
4. The cost of the Principal's conduct was clear. His family and associates obtained substantial private benefits from public funds. His conduct affected the culture of the school and the careers of numerous teachers and staff.
5. The Department of Education and Training has been building a comprehensive policy framework on conflicts of interest since 2010. It provides detailed advice for principals and schools about declaring and managing conflicts of interest.
6. Despite this, the trend continues. This report discusses three recent investigations into allegations that school principals and staff gave jobs or contracts to family members. In these cases, the principals and staff may have been well-intentioned, but they underestimated the extent of their integrity obligations. Their experiences highlight the need for more work to raise awareness of conflicts of interest in schools.
7. The Ombudsman decided to table this report to draw attention to:
 - the risks for principals, school staff and other public officers who fail to attend to their integrity obligations
 - the Department's work to address the problem, and what other public authorities can learn from its experience.

¹ Victorian Ombudsman, *Investigation of three protected disclosure complaints regarding Bendigo South East College* (2018).

The rules on nepotism in government schools

8. Government schools, like other public authorities, are expected to manage public resources in the public interest. This includes ensuring:
 - employment decisions are based on merit
 - procurement of goods and services achieves 'value for money'.
9. When principals and other school staff employ or contract services from family members and associates, it creates a conflict of interest between these public interests and the private interests of their families.
10. Public officers cannot always avoid conflicts of interest, particularly in small communities or specialist fields where qualified workers are in short supply. Public sector integrity rules therefore focus on the importance of declaring and managing conflicts. IBAC's 2019 report on corruption risks and conflicts of interest noted:

While conflicts should be avoided wherever possible, the existence of a conflict of interest in itself is not necessarily a problem nor inherently corrupt ... [T]he risk of corruption occurs when individuals and their organisations fail to properly and actively identify, declare and manage a conflict in the public interest.²
11. This section describes the rules on nepotism and conflicts of interest in:
 - public sector-wide laws and codes of conduct
 - school-specific policies and advice developed by the Department of Education and Training.

Public sector-wide rules

12. The *Public Administration Act 2004* (Vic) aims, amongst other things, to promote standards of integrity and conduct for people employed in the public sector (section 3). It sets out seven public sector values (section 7), including:
 - integrity, which includes avoiding any real or apparent conflicts of interest
 - impartiality, which includes making decisions on merit and without bias, caprice, favouritism or self-interest.
13. The Victorian Public Sector Commission (VPSC) issues codes of conduct based on these values (section 61). School principals and staff are bound by the *Code of Conduct for Victorian Public Sector Employees* (the Code of Conduct).
14. Section 3.7 of the Code of Conduct provides high-level advice about conflicts of interest. It requires public sector employees to:
 - declare conflicts of interest
 - ensure their personal or financial interests, and the interests of family members, friends or associates, do not influence and could not be perceived to influence their performance in their job.
15. The VPSC updated the Code of Conduct in 2015 to include an additional requirement that public sector employees avoid conflicts of interest 'wherever possible' and 'manage any conflicts of interest that cannot be avoided in accordance with their organisation's policies and procedures'.
16. Failure to comply with the Code can lead to misconduct processes.

² Independent Broad-based Anti-corruption Commission, *Managing corruption risks associated with conflicts of interest in the Victorian public sector* (October 2019) 5.

Departmental rules

17. The Department of Education and Training began supplementing the Code of Conduct with detailed school-specific conflict of interest policies in 2010 (see Figure 1). It has updated and strengthened these policies over time. It has also published additional resources for schools. These include a 2015 'conflict of interest toolkit', which contains practical resources to help employees apply conflict of interest policies to 'real-world situations'.

Conflict of interest

18. The Department's *Conflict of interest* policy restates the Code of Conduct's advice that employees should avoid conflicts of interest that affect their public duties. Where a conflict is identified, it requires employees to take reasonable steps to protect the public interest.

19. The policy stresses the need for employees to speak with managers about conflicts of interest. It explains:

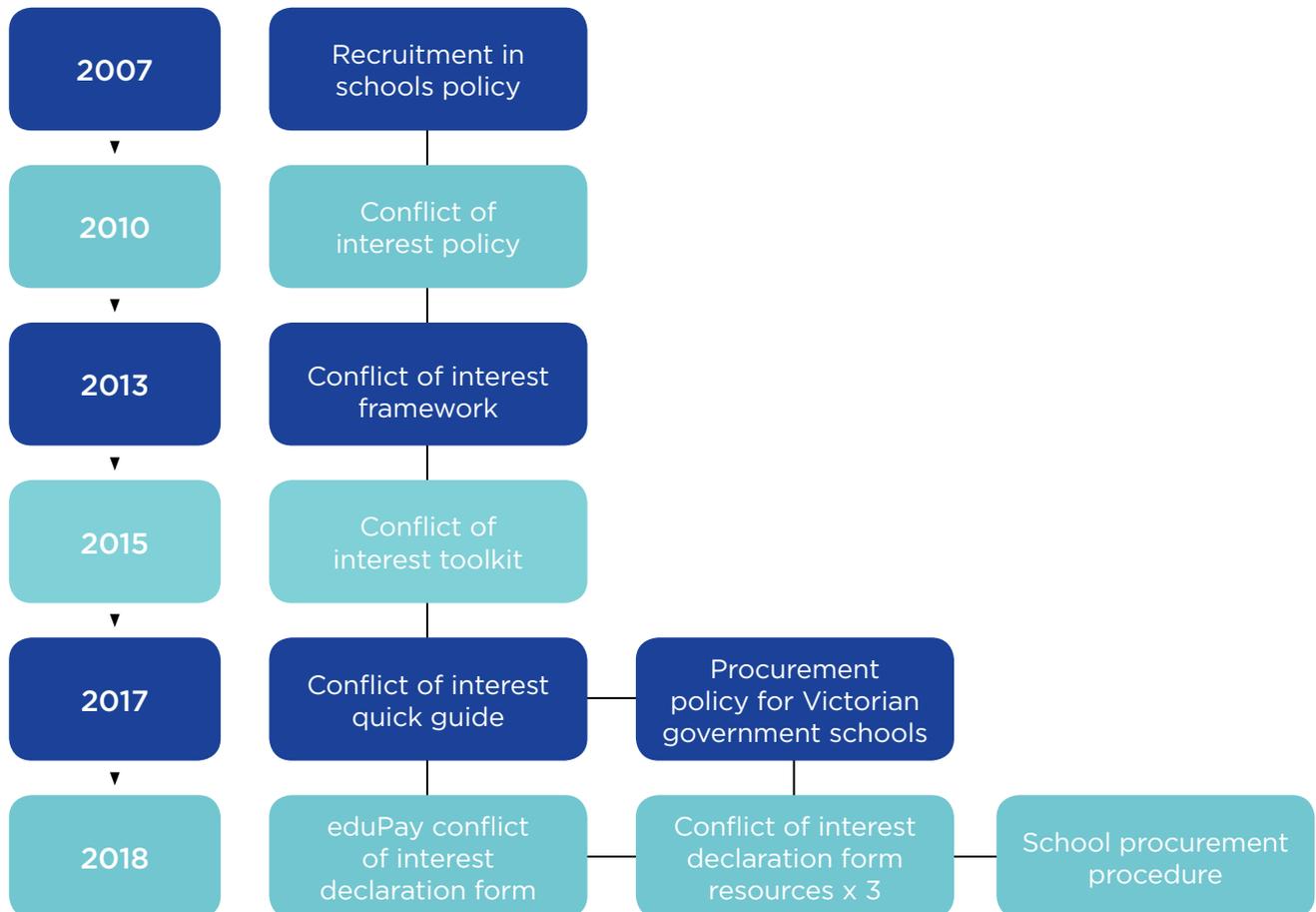
Because COI is inherently subjective and personal, individuals can be prone to underestimating or misrepresenting the extent of the influence a private interest might have. It is therefore critical that managers are involved in assisting employees to assess and address risks associated with COI.

20. The policy advises employees to declare conflicts to their line manager, and advises school principals to declare conflicts to their Regional Director in the Department.

21. The policy did not say how declarations should be made until 2018, when the Department added a declaration form to its eduPay human resources system. The *Conflict of interest* policy now requires employees to record conflicts of interests in this system, along with the steps they have put in place to manage the conflict. This obligation applies to pre-2018 conflicts of interest that are still relevant, as well as any new conflicts.

22. The policy lists recruitment and procurement as areas where risks of conflict of interest are significant. It notes school principals and business managers undertake these functions regularly and need to be 'particularly aware of the risks'.

Figure 1: History of the Department's conflict of interest documents



Employment of family members

23. The Department's *Recruitment in schools* policy sets out specific rules for recruiting teachers and staff in schools. The policy states school principals are responsible for recruitment decisions, and for ensuring all parts of the recruitment process are completed correctly.
24. The policy's basic requirements are:
- Vacancies of six weeks or longer must be advertised.
 - The school principal must create a panel of three or more people to assess applications and recommend the best applicant.
 - The panel must provide a selection report to the principal with its recommendations and reasoning.
 - The principal decides which applicant to employ. If the principal disagrees with the panel's recommendation, the reasons must be recorded.
25. The policy also requires principals and panel members to 'avoid any actual, potential or perceived conflict of interest in the selection process, including the selection decision'. It cites 'the employment of a family member or associate' as an example of a conflict. It states that principals or panel members should:
- remove themselves from the process if there could be a possible perception of favouritism or bias
 - declare any conflict of interest and the steps taken to manage the conflict.
26. The policy does not apply to recruitment of casual employees, or vacancies of less than six weeks. The Department allows schools to decide for themselves how to employ people for those positions.
27. From 2015, the Department provided more detailed advice about recruitment of family members in its conflict of interest toolkit.
28. The toolkit lists additional steps that school principals should follow when a family member applies for a role at their school:
- The principal must notify the Regional Director (or their delegate) of the family member's application once applications have been received, and before the selection process is undertaken.
 - The principal must not sit on the selection panel.
 - The panel must include another principal or staff member nominated by the Regional Director (or delegate). It cannot be comprised only of subordinates of the principal.
 - If the panel selects the principal's family member as the preferred candidate, it must refer its recommendation to the Regional Director (or delegate) for decision instead of the principal.
29. Once a family member is employed, the toolkit states that principals must ensure they do not make decisions affecting their family member's rights or obligations as an employee. In particular, it states principals should not make decisions relating to progression or salary, or those considered to provide a benefit or reward, to a family member employed at their school.
30. Like the *Recruitment in schools* policy, the toolkit does not refer to casual employment in schools.

Procurement involving family members or family businesses

31. The Department sets out detailed rules for procurement of goods and services in schools in its *Procurement policy for Victorian government schools* and *School procurement procedures*.
32. The documents require schools to obtain quotes when purchasing goods and services. The process varies depending on the cost (see Figure 2 below).
33. The *Procurement policy for Victorian government schools* states schools should 'conduct procurement activities without favour for suppliers with whom there is a personal or familial relationship'. If a conflict of interest arises, the policy requires the affected person to take 'all steps' necessary to manage the conflict under the Department's conflict of interest policies.
34. The Department's conflict of interest toolkit discusses a scenario in which a principal engages a family member or friend for maintenance and landscaping work at their school. It warns the 'mutually beneficial nature of the relationship between the principal and the contractor may lead to overcharging, or an overuse of the contractor's services, or a reluctance to address issues with the quality of the contractor's work'.
35. The toolkit advises the principal to:
 - declare their private interest (the nature of the relationship) as early as possible to the school council and record it in the school council's minutes. It is not necessary in this case for the principal to declare their interest to the Regional Director in the Department, since the school council is the decision making body and the school councillors are not subordinates of the principal.
 - avoid participating in council deliberations over the contract
 - ensure periodic reviews of the contract.
36. The toolkit requires the school council to consider whether further steps are necessary to mitigate risks, such as seeking several quotes to ensure value for money, even where this is not required by other purchasing policies.

Figure 2: School procurement quote and tender thresholds

Costs	Procurement requirements
Less than or equal to \$2,500	At least one quote (verbal or written)
\$2,500 - \$25,000	At least one written quote
\$25,000 - \$150,000	At least three written quotes
More than \$150,000	Public tender process

The three case studies

The Ombudsman's investigations

37. The three cases in this report were all referred to the Ombudsman by IBAC between December 2018 and February 2019. IBAC made the referrals pursuant to section 73 of the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic). IBAC had determined the matters to be 'protected disclosure complaints'.
38. Following legislative amendments effective from 1 January 2020, the *Protected Disclosure Act 2012* (Vic) was named the *Public Interest Disclosures Act 2012* (Vic), and a protected disclosure complaint is now known as a 'public interest complaint'.

Jurisdiction

39. The Ombudsman's investigations were conducted under section 15C of the Ombudsman Act, which provides that the Ombudsman must investigate a public interest complaint, subject to some exceptions.
40. The Ombudsman Act allows the Ombudsman to investigate conduct in an authority or a public interest disclosure entity, which includes a member of the teaching service within the meaning of the *Education and Training Reform Act 2006* (Vic). The Ombudsman therefore has jurisdiction over principals and assistant principals, who are employed as members of the teaching service.

How we investigated

41. The Ombudsman notified the Minister for Education and the Secretary of the Department of her intention to investigate the three matters between March and May 2019.

42. The investigations involved:

- analysing relevant Departmental policies
- obtaining documentary evidence from the Department regarding the relevant recruitment, employment and contracting arrangements
- interviewing the school principals and senior staff members who were the subject of the allegations
- interviewing other relevant department and school staff. In two cases, investigators interviewed the relevant Area Executive Director from the Department. In one case, investigators interviewed the school's business manager.

43. All of the interviews were conducted under oath or affirmation.

44. In one case, investigators also spoke on the telephone with two other school staff with some knowledge of the matters under investigation.

45. The investigations were guided by the civil standard of proof, the balance of probabilities, in determining the facts of the investigation taking into consideration the nature and seriousness of the allegations, the quality of the evidence and the gravity of the consequences that may result from any adverse opinion.

Procedural fairness

46. At the end of the three investigations, investigators prepared detailed reports setting out the evidence and their preliminary findings. They included adverse comments about the principals of three schools, two assistant principals at one of the schools, and the business manager at one of the schools. In accordance with section 25A(2) of the Ombudsman Act, the Ombudsman provided those people with a reasonable opportunity to respond to the material in the reports.

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47. The following case studies summarise the three investigation reports. They fairly set out the responses of the people who were the subject of adverse comments, where those people chose to respond.
48. The case studies seek to protect the identities of these people as much as possible by omitting names and other identifying details. This is consistent with the purpose of this report – to highlight the systemic issues rather than individual conduct.
49. In accordance with section 25A(3) of the Ombudsman Act, any other persons who are or may be identifiable from the information in this report are not the subject of any adverse comment or opinion. They are identified in this report as the Ombudsman is satisfied that:
- it is necessary or desirable to do so in the public interest, and
 - identifying those persons will not cause unreasonable damage to those persons' reputation, safety or well-being.



Case study 1: Engagement of Principal's partner for maintenance work

Case study 1 involved an allegation that a Principal engaged their partner for maintenance work at their school, without declaring a conflict of interest or following proper recruitment processes.

Engagement of the Principal's partner

Departmental records showed the school has paid Company A for maintenance work since 2014. Company A is run by the Principal's partner.

At interview, the Principal said their partner started working at the school after the school had some negative experiences with other maintenance services. The Principal said the school grounds were becoming neglected and their partner initially did some maintenance work on a volunteer basis to help the school out. This progressed to paid work.

The Principal said the school did not advertise the role or obtain quotes from other companies. The Principal said:

We tried to get other contractors, I don't remember how. I knew that [a nearby school was] using [another company]. It was really expensive and [they] didn't like what they were doing. That was when I would say to [my partner], would you please, this is for free, can you please just [do some work].

... I wasn't actually the one who actually got [my partner] to come. That would be the Business Manager who would know more about that.

At interview, the school's Business Manager confirmed they suggested the school engage the Principal's partner. The Business Manager said the Principal's partner was doing maintenance work at a nearby school and 'I suggested [the partner] to come across'.

The Business Manager said the school paid the Principal's partner as a creditor and not a contractor. When investigators asked the Business Manager to explain the difference, they said:

We don't have to use [the partner] ... A contractor in my mind is a cleaning contractor who has a contract for three to four years and they work. [The partner] has not signed any contract.

The school has not, however, paid anyone else for maintenance work since 2014.

The school's records show the Principal authorised some of the school's purchase orders and payments to their partner. Investigators reviewed 58 purchase orders for payments to Company A and 21 of those were authorised by the Principal. The Principal acknowledged this at interview and said 'I have to sign all the cheques that come to me and so does the Assistant Principal'.

The Principal did not know how much the school was paying their partner and did not think it was a lot of money:

If I was hiring [my partner] and we were putting [them] on a contract for ten years and [they were] getting paid a lot of money I'd kind of go that's not good ... All I'm trying to do is save the school money, not defraud the system, but it is what it is.

Between November 2014 and November 2019, the school paid \$78,844.57 to Company A. It also reimbursed the Principal's partner a total of \$12,687.56 for maintenance costs such as tip fees, plumbing supplies and key cutting.

Declaration and management of the conflict of interest

At interview, the Principal acknowledged they did not declare a conflict of interest at the time the school engaged their partner.

When investigators asked the Principal if they recalled the Department providing conflict of interest material, they said:

There's so much material on the system ... I would have known it was there ... [F]or so long I had been ticking 'no' and feeling good about it, like this doesn't apply to me ... I kind of thought of it more as like if you're hiring your family as a full-time teacher ... I just didn't put the two together ... I really did not ... I thought I had my bases covered.

The Business Manager said they did not think the school's engagement of Company A created a conflict of interest for the Principal:

I don't think so, because I feel like I've directed [the Principal's partner] to [the] work, [the Principal] doesn't direct [their partner], [the partner] was working at other schools before, I don't feel like it's [the partner's] main income, and [the partner] wasn't any more expensive.

The Principal said they declared the engagement of their partner as a conflict on the department's eduPay system after investigators contacted them about the allegation. The Department provided a copy of the Principal's declaration, which stated the Principal would not sign any future invoices related to payments to their partner.

After the Principal's interview with investigators, the Principal advised investigators that the School Council had reviewed its maintenance contracts. The minutes of the School Council meeting record:

- The Principal left the meeting during the discussion because of the conflict of interest.
- The school had sought three quotes for the work, including a quote from the Principal's partner. One contractor decided not to provide a quote because of the scale of the work. Of the remaining two quotes, the Principal's partner provided the cheapest quote.
- The School Council decided to offer the Principal's partner the contract until the end of 2020.

Findings

On the basis of the evidence obtained by the investigation, the Ombudsman found that the allegation against the Principal was substantiated.

Although the Business Manager said they 'suggested' the school engage the Principal's partner, the Principal had previously arranged for their partner to do the work without payment. This meant that the engagement was effectively instigated by the Principal. The Principal effectively created the opportunity for their partner to be given the paid position, by arranging the initial voluntary work.

Although the Principal believed they were managing the conflict of interest by not directing their partner in their work, the Principal signed off on many payments to the partner. The Principal did not declare a conflict of interest until investigators contacted them about the allegations.

The Business Manager has also failed to satisfy the Department's *Conflict of interest* policy, which warns business managers to be 'particularly aware of the risks' involved in recruitment and procurement.

The investigation revealed a lack of awareness and understanding of the Department's conflict of interest policies and requirements by both the Principal and the Business Manager. The investigation found their failures to comply with their obligations stemmed from a misunderstanding of the requirements rather than deliberate dishonesty or misconduct.

When given an opportunity to comment on a draft of the investigation report, the Principal wrote:

I would just like to say thank you for making a very traumatic event as comfortable for me as you could. Learnt a valuable lesson.

The Ombudsman recommended the Department consider the issues identified in this report and take appropriate action. It also recommended the Department review the School Council's recent engagement of Company A to ensure it is compliant with the Department's policies. The Department accepted these recommendations.



Case study 2: Casual employment of Principal's children

Case study 2 involved allegations that the Principal of a large school employed two of their young adult children in support roles, without declaring a conflict of interest. It also involved some allegations of a historical nature, which are not covered in this report.

Employment of the Principal's oldest child

At interview, the Principal confirmed their oldest child worked at their school in 2018 on a casual basis, when the child was a young adult. The Principal said they were not involved in recruiting or supervising their child.

The Principal explained that the oldest child performed some work at the school on 'an unpaid voluntary basis' in early 2018 and became known to school staff. They said the school became 'short staffed' later that year and, after exhausting the school's list of casual employees, the school was 'desperate' to find staff. The Principal said the school's Business Manager asked the oldest child to perform some paid casual work.

As the position was a casual position, the Department's policy allowed the school to determine how to fill the role. The Principal told investigators the vacancy was declared at school meetings and online 'to provide an equal opportunity and ensure I managed my conflict of interest'.

The school's Business Manager confirmed the Principal's account. They said it was difficult to source quality support staff for the school and they employed and managed the Principal's child, with no involvement from the Principal. They said they continued to offer the Principal's child work because the child was a 'fantastic worker'.

The Business Manager also confirmed they supervised and allocated tasks to the Principal's child, and the Principal was not involved in this.

However, the Principal acknowledged they signed off on their child's timesheets, which they did for all staff when certifying the school's payroll. They said the timesheets were also co-signed by the school's Assistant Principal.

Departmental records show that between December 2017 and January 2019, the Principal's oldest child worked 274.50 hours and was paid \$8,026.11.

Employment of the Principal's youngest child

At interview, the Principal confirmed that their youngest child also worked at the school in 2018 on a casual basis, when this child was also a young adult.

The Principal said the school needed someone to help with a student with disabilities and had exhausted many options to try and source suitably qualified staff. The Principal said their youngest child was studying nursing. They said at interview:

I suggested in the short term that [my child] may be able to train to help until [the school's disability coordinator] could locate other suitably qualified people. [My child] had been volunteering at the school. They had a Working with Children Check, were First Aid trained and had completed first year nursing.

The Principal said they 'took steps to remove myself from this process. I told [the disability coordinator] that she would have to meet [my child] and be satisfied that [they] could meet the requirements'.

The school's disability coordinator confirmed the Principal's account. They said the student needed help with toileting and feeding and the school had exhausted all usual methods to fill the role. They said it was their decision to employ the Principal's child.

Departmental records show that between February and December 2018, the Principal's youngest child worked 96.08 hours and was paid \$3,441.58.

Declaration and management of the conflicts of interest

The Principal acknowledged during their interview that they failed to notify the Regional Director when the school employed the young adult children, or lodge a declaration through the Department's eduPay system. The Principal did not declare the children's employment until 2019, when the Principal lodged an annual declaration of private interests with the Department.

The Principal said they did not believe they had to inform the Regional Director when the children were employed in 2018 because the Department's conflict of interest toolkit talked about selection panels, and selection panels are not involved in casual employment. The Principal repeated this when given a chance to respond to the draft investigation report, stating:

My understanding of the [the Department's] "Conflict of Interest Toolkit Managing COI in Recruitment" was that it related to substantive positions, not ad hoc casual work ... The Toolkit talks about notifying the Regional Director once an application for a position has been received. As my children ... did not apply for any position, it unfortunately did not occur to me to do this.

At the time I had no knowledge of any specific guidance from [the Department] around the employment of casual staff and managing [conflicts of interest]. I understand now that this was not correct and that I should have taken additional steps to properly report and manage my conflicts.

At interview, the Principal referred to the extended hours they worked as a principal, their lack of training about conflicts of interest and the Department's numerous policies about this issue. They said:

I work really hard and I work fast. I probably shift my attention about 100 times a day. I take my responsibilities so seriously. I am absolutely dedicated and absolutely want to do the right thing. I absolutely feel privileged to be in service to the Department. I would never do anything to bring myself or the Department into disrepute.

In response to the draft investigation report, the Principal said:

I did not deliberately mismanage the conflict of interest and unreservedly apologise for not being aware of the second step within eduPay and thus making a mistake.

Findings

On the basis of the evidence obtained in the investigation, the allegations that the Principal employed their young adult children without declaring a conflict of interest were substantiated.

The roles in this case were casual positions so the school was not required to advertise them or undertake a competitive recruitment process. According to school staff who spoke with investigators, there were challenges filling the roles and the school had exhausted available options.

The evidence showed that the Principal suggested the children for the positions. While other school staff made the ultimate decision to appoint the children, allocated them shifts and supervised them, the Principal's suggestions afforded the two children the opportunity to work at the school. Suggestions from a school principal to subordinate staff are problematic given the principal's position of power and influence, particularly in the absence of an impartial, competitive process.

The Principal conceded they failed to notify the Regional Director of their employment or declare a conflict of interest at the time the children were employed, as required by the Department's *Conflict of interest* policy.

The investigation found the Principal's conduct in suggesting the children for casual positions at the school, and failing to declare the conflicts of interest at the time, was inconsistent with section 3.7 of the Code of Conduct. The Code of Conduct required that the Principal:

- avoid conflicts of interest wherever possible
- declare and manage any conflicts of interest that cannot be avoided in accordance with policies and procedures
- ensure the interests of family members ... do not influence or could be perceived to influence the Principal's performance.

However, in making these findings, the Ombudsman acknowledged the Principal took steps to search for other people to fill the roles and removed themselves from the children's direct employment and management. They also declared a conflict of interest in February 2019, before becoming aware of the Ombudsman's investigation.

In response to a draft of the Ombudsman's report, the Principal noted the size of the school and the 'highly demanding' nature of their role. They said they had not tried to hide their children's employment. They also noted they had more than two decades' experience in schools and an 'otherwise unblemished record'. They said:

[M]y intention at all times was to act in [the school's] best interests and support its staff and special needs students.

The Principal also said:

I unreservedly apologise for my mistakes. I hope that the Ombudsman considers my sincere remorse in any future steps.

The Ombudsman recommended the Department consider the issues identified and take appropriate action as it sees fit, which it agreed to do.



Case study 3: Employment of family members of Principal and Assistant Principals

Case study 3 involved the following allegations about a Principal and two Assistant Principals at a school:

- The Principal did not follow proper recruitment practices when employing family members, and did not declare and manage their conflicts of interest.
- Two Assistant Principals at the school did not declare and manage their conflicts of interests regarding the employment of family members.

The allegations against the Principal

At interview, the Principal confirmed that three members of their family are employed at the school – their partner and two of their adult children.

Employment of the Principal's partner

At interview, the Principal told investigators that their partner was already employed at the school when they became the Principal. They said they had been transparent about the relationship and implemented measures to manage any conflicts of interest. The Principal said an Assistant Principal is responsible for matters related to the partner's employment and they are not involved.

Employment of the Principal's first child

The Principal told investigators that one of their adult children works in a casual support role at the school as part of a 'relieving pool' of staff.

The Principal, and two other school staff interviewed for the investigation, all said the school has difficulties finding and retaining qualified teachers and support staff.

The Principal said they were not involved in the recruitment process for the child and this was delegated to an Assistant Principal at the school. The relevant Assistant Principal confirmed this at interview.

The Principal also said their child was subject to the same process as other applicants for support roles. Applicants attend the school for a 'walk through', meet the relevant Assistant Principal and undergo referee checks. The school prepares a relief list of interested and suitable candidates which is provided to the Principal to endorse. The school uses the list to fill temporary or casual vacancies.

Departmental records show the Principal's first child has worked in this role since early 2017 and, on average, works six hours per day, three days per week.

Employment of the Principal's second child

Departmental records show another of the Principal's adult children was also employed in a casual support role at the school. The child held this role for a period of three years before leaving the school. The child began working in the role again in early 2018. As noted earlier, another Assistant Principal at the school is responsible for recruiting people to fill such casual vacancies.

Departmental records show this child moved from a casual support role to a fixed-term teaching role at the school in mid-2018.

The relevant Assistant Principal explained at interview that it is common for students to work at the school on a casual or 'relief' basis before applying for teaching positions at the school.

Departmental records show that, in this case, the school advertised the role in accordance with the Department's *Recruitment in schools* policy. There were two applicants, including the Principal's child.

The Assistant Principal said the Principal delegated the recruitment process when their child was identified as an applicant. The selection panel records show the panel comprised the Assistant Principal and two senior teachers, all of whom were subordinates of the Principal. The panel recommended the Principal's child for appointment to the position

The Principal endorsed the panel's recommendation that their child be appointed to the teaching role.

Declaration and management of the conflicts of interest

There is no record the Principal declared any conflicts of interest regarding the employment of their family members until May 2019.

At interview, the Area Executive Director in the Department's regional office said they reminded the Principal about the relevant policies and procedures in April 2019. They said not all school principals are aware of all the Department's policy changes on conflict of interest.

The Principal told investigators at interview they did not receive any training on conflicts of interest until August 2019, the week before investigators contacted the Principal to arrange an interview about the allegations. They said their previous understanding of the conflict of interest rules regarding family and friends was 'never go on any panel where they were applying'. They said they were unaware the Department's Regional Director needed to endorse the employment of family members, and that was why they did not contact the Department when their children were employed at the school.

The allegations against the two Assistant Principals

The investigation confirmed that two Assistant Principals at the school also have adult children, the partners of adult children or other relatives employed at the school.

At interview, the first Assistant Principal said they were not involved in the recruitment of their children or their children's partners. Departmental documents confirmed this evidence.

The second Assistant Principal also said at interview that they were not involved in the recruitment of their child's partner or the recruitment of another relative who works at the school. Departmental records confirmed this evidence. The second Assistant Principal also said they do not supervise or mentor these employees.

However, the two Assistant Principals did not declare a conflict of interest regarding the employment of their family members, or the partners of their children, until July and August 2019.

The first Assistant Principal informed the investigation they had participated in multiple training sessions and meetings organised by the Department's regional office. They said these covered topics such as curriculum delivery and behaviour management, but not conflicts of interest. They said they were aware of the Department's policies but had not read the documents in their entirety.

The second Assistant Principal said at interview that they had not read or seen the Department's *Conflict of interest* policy or the Code of Conduct.

Findings

In the case of the Principal, the available evidence suggests the Principal was not directly involved in the recruitment of their family members. The Principal's partner worked at the school before the Principal's appointment. The Principal and one of the Assistant Principals gave evidence that the Assistant Principal managed the recruitment of the first of the Principal's adult children.

As noted, the Department's *Recruitment in schools* policy does not set any process for filling casual vacancies in schools. It was open to the school to determine how to fill those vacancies.

Departmental policy did apply, however, when the Principal's second adult child applied for a position as a teacher. The Department's *Conflict of interest* toolkit required the Principal to notify the Regional Director of the child's application, ensure a nominee of the Regional Director was on the selection panel, and ensure the panel referred its recommendation to the Regional Director for decision. The Principal did not do so. The allegation that the Principal did not follow proper recruitment practices when employing family members was therefore partially substantiated.

The allegation that the Principal failed to declare conflicts of interest was also substantiated. The evidence shows the Principal did not declare any conflicts of interest regarding the employment of the family members or associates until May 2019.

By endorsing the employment of family members and failing to declare conflicts of interests, the Principal acted inconsistently with section 3.7 of the 2015 Code of Conduct, which required they:

- avoid conflicts of interest wherever possible
- declare and manage any conflicts of interest that cannot be avoided in accordance with policies and procedures.

The investigation notes the Principal's evidence that they had limited understanding of conflicts of interest and the Department's policies before attending training in August 2019. In response to a draft of the Ombudsman's report, the Principal said they followed the Department's policies when their second child applied for a further teaching position at the school in 2019. The Principal also told investigators they told their first child that they could not remain on the school's 'relief' list for casual work.

In the cases of the Assistant Principals, there is no evidence they were involved in the recruitment or supervision of their family members or their children's partners. However, Departmental records confirm the first Assistant Principal did not lodge a conflict of interest declaration until after the Ombudsman's investigation began. Departmental records confirm the second Assistant Principal also failed to declare a conflict of interest.

The investigation therefore also found that they acted inconsistently with section 3.7 of the Code of Conduct, which required that they declare conflicts of interest in accordance with their organisation's policies and procedures.

The Ombudsman recommended the Department consider the issues identified in the investigation report and take appropriate action as it sees fit. The Department accepted this recommendation.

The role of the Department

50. The three cases in this report occurred in spite of the Department's comprehensive policy framework on conflict of interest and nepotism in schools. All of the Principals were unclear about their obligations to declare a conflict of interest when hiring family members. They failed to make the required declarations at the time, and failed to document their plans to manage their conflicts. They often delegated recruitment and management of family members to subordinates, who may feel pressure to follow principals' suggestions. Other school staff interviewed by investigators had not read the Department's policies in their entirety, or at all.

51. The Department told investigators it has done more to communicate its policies since 2018, when these cases first came to light. This includes:

- communicating about conflict of interest and the Department's new eduPay declaration form through email bulletins and messages from regional leaders
- introducing a conflict of interest e-learning module accessible to all employees through eduPay
- presenting conflict of interest training through the state's 57 Principal Networks (networks of school principals based on location)
- launching a 'Conflict of interest implementation project' under the Department's 2018-21 Integrity Strategy. The project includes a strategic engagement plan to support uptake of the Department's conflict of interest register, focusing particularly on school principals.

52. The evidence in these cases suggests the Department is also facing some systemic issues. To understand these issues, investigators interviewed a retired school principal with almost 40 years' experience, who now works at the Australian Principals Federation. This office then wrote to the Department to bring these issues to its attention.

53. This section looks at the challenges facing the Department and its response to the three investigations.

Systemic challenges

Workforce challenges

54. The Department's workplace raises some operational challenges for any integrity program.

55. First, it has a large workforce spread across the state. According to departmental data, it employed more than 75,000 employees in the teaching service in 2019 at more than 1,500 schools.³ Communicating integrity expectations to such a large and decentralised workforce presents some obvious challenges.

56. Second, the evidence shows that, for these employees, the rules around conflict of interest are still relatively new. The Department did not introduce its *Conflict of interest* policy until 2010. The Australian Principals Federation officer said he worked for the Department for almost 40 years until 2013 and:

hand on heart I can say I never ever heard the words conflict of interest in my whole career. I just never heard it. It was never mentioned, not once, in any forum that I'm aware of.

³ Department of Education and Training, Victoria, *2018-19 Annual Report* (2019) 88; Department of Education and Training, Victoria, *Summary statistics snapshot: Victorian schools* (2019).

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57. Third, investigators also heard that school principals are time-poor and under pressure at work. The Principals in the three cases described feeling overwhelmed by their responsibilities and said they worked long hours. One Principal told investigators they regularly work 12-hour days, as well as weekends. The Principals also discussed the various challenges their schools were experiencing, including recruiting staff who were qualified and willing to work with students with complex needs.

Policy complexity

58. Investigators observed that the complexity of the Department's policy framework may be an obstacle for busy principals and school staff.
59. At the time this report was prepared, the policies and guidance were spread across 9 different documents, some of which had been updated multiple times. The documents are located on different parts of the Department's website, including its 'School policy and advisory guide' page and the 'HRWeb' human resources page. One Principal commented at interview that the Department has 'so much material on the system'.
60. The Australian Principals Federation officer described the Department's online resources as 'fantastic' and 'really clear'. However, he said:

The idea that at some stage [principals will] get a quiet couple of hours and they can sit and start to go through the Department's website and see if there is anything that they don't know about, it doesn't work that way. They're already working 60 hours. They're tired. They only deal with the things that are right there in front of them.

... My view was, that when conflict of interest became an issue for the Department it was put on the website and it was good information on the website, but it wasn't really – principals didn't have a great knowledge of it.

Face-to-face training

61. IBAC's 2019 report on corruption risks associated with conflicts of interest stressed the importance of ongoing training for all staff.⁴
62. The Department advised that, as of February 2020, 1,868 employees had completed its online module on conflict of interest. Although the numbers have been growing, this represents a small fraction of its employees.
63. The Australian Principals' Federation officer told investigators that:
- if we are wanting principals to understand things like this and really deeply understand it, you really need to sit in front of them ... and explain it.
64. He said the Department's conflict of interest workshops at Principal Network meetings were making a 'dramatic difference'. He said that after one recent workshop, eight out of the 20 principals who attended the workshop contacted Federation or Department staff to 'talk more about conflict of interest and how it applies to them'. He said this indicates 'they don't know a lot about it and they need some more help'.
65. The Department advised that, as of January 2020, it had presented this training program to 43 of 57 (75 per cent) of Principal Networks. It originally planned to deliver training to all Networks by March 2020, but training in some regions has been delayed because of the 2019-20 bushfires and the COVID-19 pandemic.

⁴ Independent Broad-based Anti-corruption Commission, above n 2, 52.

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66. The three cases suggest assistant principals and school business managers would also benefit from training. They are regularly involved in recruitment or procurement in schools and are in a position to influence those processes for the better. However, the assistant principals in Case studies 2 and 3 did not do so in these cases. The Business Manager in Case study 1 did not identify that the hiring of the Principal's partner created a conflict of interest.
67. The Department advised investigators that assistant principals attend Principal Network meetings and 'we recognise the need to improve capability amongst that cohort'. It said the Department has also delivered conflict of interest training to five business manager network meetings and to the Business Managers Association.

Confusion about volunteer and casual employment

68. The three cases in this report also involved the employment of family members, at least initially, on a volunteer or casual basis.
69. The Department's *Conflict of interest* policy requires principals to declare any identified conflict of interest to their Regional Director.
70. However, two of the Principals in this report believed, incorrectly, that they were only required to report a conflict of interest to the Department where a family member applied for a position that was subject to a selection panel, or where they made the decision to employ family members. They said this was because the conflict of interest toolkit prescribes steps where a family member applies for a role and there is a selection panel, but is silent on requirements for engaging casuals or volunteers.
71. The Department advised investigators that its training workshops for Principal Networks discuss casual recruitment.
72. The cases in this report suggest there is scope for further guidance about identifying and managing conflicts of interest for casual and volunteer roles. This is particularly important as these investigations show that volunteer and casual roles can be an entry point for paid regular work.

The Department's response

73. The Ombudsman raised the systemic issues arising from the three cases with the Department's Secretary in January 2020. In response, the Secretary said:

The Department acknowledges the issues raised in the reports and agrees that the identification and management of conflicts of interest, particularly in schools, has been a long-standing challenge for the Department. Whilst we are continually working to improve awareness, which includes further work that is underway and planned, we are also open to suggestions on other strategies given the range of resources and supports that are available and the training we have undertaken.

74. The Secretary also outlined further work underway by the Department:
- a new online Policy Advisory Library that gathers the Department's policies and guidance in one central location, making them easier for principals and school staff to find. The Department is aiming to launch the Library in Term 2, 2020, subject to developments with the COVID-19 pandemic
 - resources and training for managers who receive conflict of interest declarations, so they understand what makes a strong conflict of interest management plan
 - updated online integrity training modules, which will be launched in 2020
 - an evidence-based evaluation of the Department's conflict of interest register and its effectiveness in improving employees' understanding of their obligations.

Conclusions

75. The three cases in this report were not cases of corrupt staff deliberately disregarding their obligations as public officers. They were cases of people who were trying to solve problems quickly, but in doing so underestimated their obligations to avoid, declare and manage conflicts of interest.
76. The cost to the individuals was high. Their actions led people to question their integrity. They found themselves facing what were no doubt distressing allegations and investigations. Additionally, the suitability of their family members for the roles to which they were appointed was questioned. Confidence in merit-based recruitment and procurement decisions at the schools was compromised.
77. This report has set out their experiences, not to expose the people involved, but as a reminder to all public officers of the consequences of nepotism and the importance of checking and following integrity obligations.
78. This report also shows that building a strong integrity culture requires more than policies on a website. This is an essential and relatively efficient way of communicating integrity rules. However, these cases show it is no guarantee that employees will read and understand their obligations.
79. The Department of Education and Training has put considerable effort into building a comprehensive policy framework and communicating those policies through training and other initiatives. The Victorian Ombudsman welcomes those initiatives and will continue to monitor their success in tackling nepotism in schools.

Victorian Ombudsman's Parliamentary Reports tabled since April 2014

2020

Investigation of alleged improper conduct by Executive Officers at Ballarat City Council
May 2020

Investigation into three councils' outsourcing of parking fine internal reviews
February 2020

2019

Investigation of matters referred from the Legislative Assembly on 8 August 2018
December 2019

WorkSafe 2: Follow-up investigation into the management of complex workers compensation claims
December 2019

Investigation into improper conduct by a Council employee at the Mildura Cemetery Trust
November 2019

Revisiting councils and complaints
October 2019

OPCAT in Victoria: A thematic investigation of practices related to solitary confinement of children and young people
September 2019

Investigation into Wellington Shire Council's handling of Ninety Mile Beach subdivisions
August 2019

Investigation into State Trustees
June 2019

Investigation of a complaint about Ambulance Victoria
May 2019

Fines Victoria complaints
April 2019

VicRoads complaints
February 2019

2018

Investigation into the imprisonment of a woman found unfit to stand trial

October 2018

Investigation into allegations of improper conduct by officers at Goulburn Murray Water

October 2018

Investigation of three protected disclosure complaints regarding Bendigo South East College

September 2018

Investigation of allegations referred by Parliament's Legal and Social Issues Committee, arising from its inquiry into youth justice centres in Victoria

September 2018

Complaints to the Ombudsman: resolving them early

July 2018

Ombudsman's recommendations – second report

July 2018

Investigation into child sex offender Robert Whitehead's involvement with Puffing Billy and other railway bodies

June 2018

Investigation into the administration of the Fairness Fund for taxi and hire car licence holders

June 2018

Investigation into Maribyrnong City Council's internal review practices for disability parking infringements

April 2018

Investigation into Wodonga City Council's overcharging of a waste management levy

April 2018

Investigation of a matter referred from the Legislative Council on 25 November 2015

March 2018

2017

Investigation into the financial support provided to kinship carers

December 2017

Implementing OPCAT in Victoria: report and inspection of the Dame Phyllis Frost Centre

November 2017

Investigation into the management of maintenance claims against public housing tenants

October 2017

Investigation into the management and protection of disability group home residents by the Department of Health and Human Services and Autism Plus

September 2017

Enquiry into the provision of alcohol and drug rehabilitation services following contact with the criminal justice system

September 2017

Investigation into Victorian government school expulsions

August 2017

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

June 2017

Apologies

April 2017

Investigation into allegations of improper conduct by officers at the Mount Buller and Mount Stirling Resort Management Board

March 2017

Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville

February 2017

Investigation into the Registry of Births, Deaths and Marriages' handling of a complaint

January 2017

Victorian Ombudsman's Parliamentary Reports tabled since April 2014

2016

Investigation into the transparency of local government decision making

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Ombudsman enquiries: Resolving complaints informally

October 2016

Investigation into the management of complex workers compensation claims and WorkSafe oversight

September 2016

Report on recommendations

June 2016

Investigation into Casey City Council's Special Charge Scheme for Market Lane

June 2016

Investigation into the misuse of council resources

June 2016

Investigation into public transport fare evasion enforcement

May 2016

2015

Reporting and investigation of allegations of abuse in the disability sector: Phase 2 – incident reporting

December 2015

Investigation of a protected disclosure complaint regarding allegations of improper conduct by councillors associated with political donations

November 2015

Investigation into the rehabilitation and reintegration of prisoners in Victoria

September 2015

Conflict of interest by an Executive Officer in the Department of Education and Training

September 2015

Reporting and investigation of allegations of abuse in the disability sector: Phase 1 – the effectiveness of statutory oversight

June 2015

Investigation into allegations of improper conduct by officers of VicRoads

June 2015

Investigation into Department of Health oversight of Mentone Gardens, a Supported Residential Service

April 2015

Councils and complaints – A report on current practice and issues

February 2015

Investigation into an incident of alleged excessive force used by authorised officers

February 2015

2014

Investigation following concerns raised by
Community Visitors about a mental health
facility

October 2014

Investigation into allegations of improper
conduct in the Office of Living Victoria

August 2014

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