

VICTORIAN **ombudsman**

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

December 2012

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Letter to the Legislative Council and the Legislative Assembly

To

The Honourable the President of the Legislative Council

and

The Honourable the Speaker of the Legislative Assembly

Pursuant to sections 25 and 25AA of the *Ombudsman Act 1973*, I present to Parliament my report of an investigation into the governance and administration of the Victorian Building Commission.



G E Brouwer
OMBUDSMAN

10 December 2012

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Executive summary

1. In March 2012 my office received information from several sources in relation to concerns regarding the Victorian Building Commission (the Commission), the statutory authority that oversees the building control system in Victoria. These concerns related to the governance and administration of the Commission and in particular, the manner in which it expends monies generated from its regulation of the building industry and included that the Commission:
 - incurred significant expenditure for investigative services provided by external investigators engaged as contractors
 - was several million dollars over budget on an information technology project
 - employed former police officers as investigators with little or no building experience.
2. As a result I decided to conduct an own motion investigation into the Commission. During this investigation, I identified a number of additional matters relating to the core functions of the Commission and the Building Practitioners Board, including its registration system for building practitioners, which I also investigated.

The registration process

3. My investigation identified concerns with the vulnerability, integrity and administration of the registration system for building practitioners. This system is overseen by the Building Practitioners Board (the Practitioners Board) with administrative support from the Commission.
4. The registration process creates risk and opportunities for maladministration and misconduct to occur, including:
 - applicants who fail core stages of the competency assessment were allowed to advance to the final assessment stage, and were often granted registration as a licensed builder
 - poor administration of the competency assessment process with applicants sitting the wrong type of test or not sitting a test at all
 - a lack of evidence of the assessment process such as the absence of results of individual tests recorded on practitioner files
 - the former Registrar of the Practitioners Board failed to declare a number of business interests in the building industry that he and his wife had
 - the former Registrar of the Practitioners Board assessed and approved applications, including for persons known to him, without oversight from the Practitioners Board or any other third party

- the Practitioners Board failed to scrutinise many applications before it. In the majority of cases the Practitioners Board relied solely on the recommendations provided to it by Assessors and the Registrar, which in effect made them the default decision makers. The Practitioners Board therefore added little value to the registration process.
5. I am of the view that, as a result of these concerns, the Practitioners Board could not have confidence that only competent, suitably qualified and experienced practitioners were registered to undertake building works in Victoria. This represents a substantial risk to public safety.

Governance and administration

6. Prior to the appointment of the new Commissioner in February 2012, significant public funds were spent by Senior Executives of the Commission on questionable entertainment, hospitality and sponsoring industry bodies' events and awards. Examples of this expenditure included:
- over \$200,000 on meals and entertainment over a three-year period
 - over \$100,000 spent in 18 months on entertaining at sporting events such as the AFL and Australian Open Tennis
 - a policy that allowed staff to spend up to \$500 on meals and hospitality before management approval was required
 - over \$300,000 incurred by the former Commissioner and another Director over a three-year period on overseas travel connected to the former Commissioner's involvement with the Green Building Council of Australia and the World Green Building Council
 - nearly \$950,000 expended in less than four years on sponsoring various events and awards run by bodies such as the Master Builders Association of Victoria and Housing Industry Association of Victoria.
7. I do not see any justification for the Commission to spend significant public funds on meals and entertainment for external stakeholders or its staff. In my view there is an inherent conflict in the Commission providing this entertainment when its core function is the regulation of the people it is entertaining.
8. This investigation identified excessive expenditure by the Commission to implement its information technology program 'e-toolbox', from an initial contract amount of \$698,000 to over \$4.65 million. My investigation identified that the project was plagued with poor planning, insufficient resources and the Commission's decision to engage an employee of the vendor, at around \$24,000 per month to manage the project and represent its interests.

Recruitment

9. There were a number of recruitment practices involving both contractors and internal staff that were in breach of the Commission's policies and Government procurement guidelines. For example:
 - the appointment of a contractor to a number of executive positions within the Commission over a three-year period without a competitive tender process. This included a 12-month engagement when he performed duties including Acting Deputy Commissioner for which he was paid nearly \$350,000
 - the engaging of external investigation contractors without competitive tender process, and for six years, without formal contracts at a cost to the Commission of \$3.15 million
 - re-engaging a former internal investigator as a contractor three days after he left the Commission. The former employee earned nearly triple his previous annual salary in his first 12 months as a contractor.
10. Examples of cronyism were also identified within the Commission's Audit and Investigation Unit, resulting in the unit being staffed almost exclusively with former Victoria Police officers. Examples include:
 - a former manager knowingly employing a former police officer with a questionable background including criminal records
 - a manager and director failing to take appropriate action upon learning that a probationary employee was under investigation by his former employer, Victoria Police, for theft and drug possession offences
 - a failure by the Commission to conduct criminal records checks as part of their recruitment processes which would have identified matters of concern in the backgrounds of a number of employees
 - a manager editing the key selection criteria of an applicant to assist him and subsequently forwarding it on to HR before the applicant was formally interviewed for the position
 - a practice within the Audit and Investigation Unit where some applicants for positions were 'informally' interviewed over coffee by Commission staff before the proper recruitment process.
11. My investigation also identified that a sum of \$124,978 was paid to the former Building Commissioner Mr Tony Arnel following his resignation on 30 January 2012 which was significantly over and above that provided for in his contract.
12. In February 2012 the state government appointed Mr Michael Kefford as the new Building and Plumbing Industry Commissioner. A number of the staff who oversighted the practices and issues highlighted in my investigation have now left the Commission. However, there are still a number of aspects of the governance and administration of the

Commission and the processes for which it is responsible that continue to require attention to ensure that the same issues do not arise again. The current Commissioner has taken steps to address many of these issues.

Recommendations

13. I made a number of recommendations to the Commission, the Practitioners Board and Department of Planning and Community Development, including that the Practitioners Board:

- set a threshold score for each stage of the assessment process which must be achieved before an applicant can progress to the next stage; and require applicants who fail any stage of the assessment to reapply

And that the Commission:

- review its practice of providing meals and entertainment to external stakeholders, particularly those who are members or representatives of the industry practitioners it regulates
- require new employees to undergo a criminal records check to be completed by way of finger printing as part of the pre-employment process
- require employees to complete and sign a statutory declaration in relation to their prior work history, including whether they are, or have ever been, the subject of an investigation by a law-enforcement agency or current/former employer for any matter whether criminal or disciplinary.

14. In response to my draft report Mr Kefford stated:

I would like to assure you that I take the issues you have highlighted within your draft report very seriously and in some cases have already initiated actions within my control to address these and others where I have had prior opportunity to observe inappropriate practices.

15. On 29 November 2012, the Minister for Planning the Hon Matthew Guy MLC announced the Government's proposal to reform regulation of the building industry by absorbing the functions of the Building Commission, the Plumbing Industry Commission and the Architects Registration Board into a new body: the Victorian Building Authority. The establishment of a new structure and new body provides an opportunity to consider the conduct and processes described in this report, and the recommendations I have made, so as to establish a system that addresses the defects identified during this investigation.

Background

Introduction

16. In March 2012 my office received information from several sources in relation to concerns about the Victorian Building Commission (the Commission). These concerns included that the Commission:
 - paid contractors significant amounts for investigative services
 - contracted external investigators who were former Commission staff
 - made significant payments to external investigators based upon invoices which lacked detail about the amounts charged
 - employed former police officers as investigators with little or no building experience
 - poorly managed an information technology project which was several million dollars over budget
 - operated at a significant deficit.
17. As a result of these concerns, I decided to conduct an own motion investigation into the governance and administration of the Commission.
18. On 20 March 2012 I wrote to the Minister for Planning, Mr Matthew Guy and the Building Commissioner, Mr Michael Kefford advising them of my decision to conduct the investigation.
19. During the investigation additional issues were identified. These included significant expenditure by Commission staff on hospitality and entertainment and concerns about the administration and integrity of the registration system for building practitioners.

The Building Commission

20. The Commission was established under the *Building Act 1993* as a statutory authority to oversee the building control system in Victoria. The Commission commenced operations in 1994.
21. The role of the Commission includes:
 - monitoring and enforcing compliance with the provisions of the Building Act and the Building Regulations relating to building and building practitioners
 - contributing to the development of national building standards
 - monitoring developments relevant to the regulation of building standards in Victoria.
22. The Building Act also sets out the following objectives:
 - protect the safety and health of people who use buildings and places of public entertainment

- enhance the amenity of buildings
 - promote plumbing practices which protect the safety and health of people and the integrity of water supply and waste water systems
 - facilitate the construction of environmentally and energy efficient buildings.
23. To fund the building control system, the Commission derives its revenue from a levy on building permits and from fees it charges to register building practitioners.
24. In the 2011-12 financial year, building permit activity in Victoria was valued at \$23.2 billion, a 4.5 per cent decline on the value of building permit activity for 2010-11.¹
25. Similarly, the Commission's total revenue decreased 5.7% from \$30 million in 2010-11 to \$28.3 million in 2011-12.

Structure of the Commission

26. The Commission and Plumbing Industry Commission were originally separate entities, overseen by separate Commissioners. Whilst some separation between the Commissions remains, in 2005 a decision was taken by the then state government to appoint Mr Arnel as both the Building Commissioner and Plumbing Industry Commissioner. Both Commissions have developed a shared model in respect of corporate services since that time.
27. The current Building Commissioner and Plumbing Industry Commissioner, Mr Michael Kefford, commenced in the role on 13 February 2012. Mr Kefford was appointed for a one-year term following the resignation of his predecessor, Mr Arnel.²
28. The Commission and Plumbing Industry Commission have approximately 200 staff, provide support to five statutory boards and share a number of resources including finance, marketing, corporate services, human resources and information management.

Statutory boards

29. There are five statutory bodies under the Building Act:
- Building Practitioners Board** (Practitioners Board) – is responsible for the management of the registration of building practitioners (except architects) and monitors their conduct. The Practitioners Board is also responsible for the issuing of certificates of consent to owner builders and for advising the Minister for Planning on qualifications for registration.
- Building Appeals Board** – hears appeals and disputes if any doubt, difference or dissatisfaction arises in relation to building control matters, including decisions made by the Practitioners Board.

¹ *Building Commission Annual Report 2011-12*, page 37.

² Mr Arnel was the Building Commissioner from August 2000 – February 2012.

Building Advisory Council – advises the Minister for Planning on the administration of the Building Act and Building Regulations 2006.

Building Regulations Advisory Committee – provides advice to the Minister for Planning on draft building regulations and accredits building products, construction methods and components or systems connected with building work.

Plumbing Industry Advisory Council – a senior industry advisory group established under the Building Act, to provide advice to the Minister for Planning and the Plumbing Industry Commission on matters related to legislation and the plumbing industry.

30. These statutory bodies are considered independent of the Commission. Members of the Practitioners Board and Building Appeals Board are appointed by the Governor in Council on the Minister's recommendation. The Practitioners Board has 12 members who represent various categories of building practitioners.
31. The investigation focused primarily on matters relating to the Commission however this report also addresses matters that relate to the Plumbing Industry Commission and the Practitioners Board.

Investigation methodology

32. In investigating this matter, my officers:
 - reviewed internal records of current and former Commission staff
 - summonsed bank records
 - examined Commission policy and procedures and internal documents
 - interviewed 26 witnesses including current and former Commission staff.
33. Twenty four witnesses attended my office for interview voluntarily and two witnesses were summonsed to attend. All witnesses were offered the opportunity to be legally represented or to be accompanied by a support person. No witness chose to be accompanied by legal representation or a support person.
34. Individuals subject to adverse comments in this report were provided the relevant sections of a draft of this report to respond to, and given an opportunity to be heard in this matter, prior to the finalisation of this report.

Registration of building practitioners

Key issues

The investigation identified that the registration process for building practitioners was poorly administered and contained a number of gaps and integrity risks. As a result the Practitioners Board could not assure itself that only practitioners with appropriate qualifications and experience obtain registration in the building industry. In particular, an applicant's performance in the assessment process is not routinely recorded on file nor made available to board members when deciding to approve or reject an application. In addition:

- Applicants who fail stages of the competency assessment process are still allowed to progress and obtain registration.
- The decision whether an applicant for registration as a Domestic Builder should be registered largely rests with a subjective assessment made by contracted assessors following a face-to-face interview with the applicant. The interviews are neither audio-recorded nor sufficiently documented.
- An industry exists where applications and supporting documentation are completed by third parties for a fee and then provided to applicants to submit for registration.
- Until recently, the Registrar liaised with applicants and assessed and approved their applications without oversight from the Practitioners Board.

The Application process

35. The following building practitioners are required to be registered with the Practitioners Board:
- building surveyors
 - building inspectors
 - engineers
 - quantity surveyors
 - draftspersons
 - erectors of temporary structures
 - builders (commercial, domestic and demolisher).
36. In 2011-12 the Practitioners Board received 2,368 applications for registration as a building practitioner, and issued 1,076 new registrations. There are currently 25,318³ registered building practitioners in Victoria across all four practitioner categories.

³ *Building Commission 2011-12 Annual Report, page 27.*

37. The Practitioners Board has different requirements and prerequisites for different building registrations. My investigation focused on the registration of domestic builders because this category of registration represents nearly 60 per cent (14,837⁴) of all building practitioners currently registered in Victoria.
38. Domestic builders can be registered in the following three different categories:
1. Domestic builder – Unlimited category (DB-U) allows builders ‘... [to] personally carry out or manage or arrange for sub-contractors to carry out, all components of domestic building work’.⁵
 2. Domestic builder – Limited category (DB-L) allows builders to carry out, manage or arrange to carry out works which are outlined in their Certificate of Registration.
 3. Domestic builder – Manager category (DB-M) allows builders to manage or arrange for domestic builders in the limited or unlimited categories to conduct works outlined in their Certificate of Registration.
39. Registration with the Practitioners Board is not required if a domestic builder is performing work with a value of \$5,000 or less.⁶
40. DB-U registrations account for 11,592 or just over 78 per cent of all Domestic Builders registered in the state of Victoria, followed by DB-L (2,035 or 13.7 per cent) and DB-M registrations (1,210 or 8.1 per cent).
41. In 2011-12 the Practitioners Board considered 882⁷ applications across these three Domestic Builder categories. DB-U and DB-L’s registrations accounted for 738 (or 83.7 per cent) of the applications considered, with DB-M registrations accounting for the remaining 144 (16.3 per cent).

Applications for registration

42. Applicants are required to submit an application form to the Practitioners Board including proof of:
- professional development and training
 - relevant insurance⁸
 - personal details
 - qualifications such as any degree, diploma, certificate, accreditations, training or examination.
43. The Commission’s website provides the following guidance as to the documents an applicant can provide to demonstrate their knowledge and experience to the Practitioners Board:

4 *Building Commission 2011-12 Annual Report*, page 89.

5 Building Commission, *Domestic Builder – overview booklet*, January 2009, page 1.

6 Building Commission, *Registration Policy Manual*, section 3.5, page 14.

7 Building Practitioners Board meeting minutes July 2011 – June 2012.

8 The required insurance differs depending on the registration type.

- technical references [demonstrating an applicant's experience]
 - site plans and working drawings
 - business and financial planning
 - major domestic building contracts
 - quality assurance documents
 - site photographs.⁹
44. The Commission's website also states that 'as the above documents relate to your experience, it is expected that you have personally prepared them or that you have had significant involvement in their preparation'.
45. My officers asked the Manager of Boards why this level of supporting documentation needed to be provided with an application. In an email dated 23 July 2012 he stated:
- The purpose of requesting a business plan and other documents with a registration application is to allow the Board (via written report from a Board member and/or contracted assessor or a staff member) to make a judgement, using suitable follow up questions, about the ability of the applicant to operate as a registered practitioner. The Building Act requires the Board in each case to make a decision about the level of practical experience demonstrated.
- ... It is expected that an applicant would have compiled the documents personally and they would reflect the applicant's experience, knowledge and ability. At the least, the applicant should have been closely involved even if a third party assisted with writing the document ... The Board uses the submitted documents as a basis for further questioning and assessment of the applicants' skills, abilities and experience.
46. During the investigation, my officers reviewed 27 registration files. A number of applications contained proforma documents where the only difference between the applications was the name of the applicant and their company name.
47. These documents often included around 100 pages of information supporting the application, including details of previous building experience. The similar appearance and almost uniform content of these documents raised doubts as to whether they were personally prepared by the applicants.
48. However, as the Practitioners Board does not require applicants to declare that they have received external assistance in preparing their application/supporting documents, my investigation was unable to determine the full extent of this practice.
49. The Acting Registrar, Practitioners Board said at interview regarding the use of proforma documents in an application for registration:
- ... this is no joke [applicants] can put in paperwork like this [proforma documents] but it's all rubbish because they've actually downloaded things from the web or they've got someone else to actually formulate their application ... with their business plan and their safe work method statement and their induction plan ... [it is] when you actually get to the face-to-face interview that you actually know whether a person actually

⁹ Educational material *Applying for Registration* available on the Commission's website.

knows what's in their file and a lot of the time they'll have things in their plan that reflects that it is someone else's information.

50. Section 221V of the Building Act makes it an offence for a person to provide false information to the Commission in an application for a licence or registration.
51. The application form for building practitioners also states that it is an offence to provide false or misleading information in an application for registration to the Practitioners Board. Despite this, my investigation identified that the Practitioners Board has never rejected an application or refused to grant a registration on the basis of false or misleading documentation being submitted by an applicant.
52. This was confirmed by the Manager, Boards who said:
- ... I cannot recall a case of a person being refused registration on the grounds of providing a false business plan but the circumstances are unlikely to arise ... if the person has been able to demonstrate acceptable levels of skill and experience, good computer-based scores ... and obvious hands-on knowledge and experience. The Board's power to register in the first instance is a discretionary power.
53. The following case study relates to an applicant who has been identified as overstating his building experience and submitted supporting documentation with his application containing fictitious building works.

Case study 1: Mr Syed Shah's application

In 2010, Mr Syed Shah, Director, Universal Technical Institute (UTI) submitted an application to the Practitioners Board for registration as a Domestic Builder – Unlimited.

Among the 80 plus pages of information submitted with his application were documents relating to the construction of two properties purportedly built by Mr Shah.

Searches conducted by my officers confirmed that the properties listed in these documents did not exist.

At interview, Mr Shah said that the purpose of submitting these documents was to demonstrate that he had the ability to complete the required paperwork, rather than purporting to have conducted the works himself. He said:

... I was told that ... they [the Practitioners Board] needed a template, it doesn't have to be a contract ... it is [to show] ... how to fill it [the documents] out ... this is an example ...

Mr Shah further said:

... this is a template ... it's not a project we're running ... it could be Indian street ... [it] could be XY street, they're not real things ... it's not fact, they're just hypothetical things ...

... it's not the ... project you've done, it is to demonstrate your ability to produce documents which will help while you are running a project ...

Mr Shah acknowledged at interview that he had 'overstated' his work experience in his resume, submitted with his application. For example, in his resume Mr Shah describes himself as:

[A] Construction manager with a 25-year record of success overseeing all phases of multimillion-dollar construction, infrastructure, superfund and environmental projects for government and private-sector clients.

However at interview Mr Shah described his building experience as being limited to building the frame for his own house in 2002 and helping with the construction on 'a couple of other projects'. He also said:

[My] Resume was just made up ... With [a] resume you just add whatever you want you know ... maybe some things are overstated.

In his application to the Practitioners Board, Mr Shah said he had achieved the qualification of Certificate IV in Occupational Health and Safety from his own company, UTI. He stated that he had no other formal qualifications in building.

Mr Shah's application was approved by Mr Peter Brilliant, former Registrar of the Practitioners Board and he was subsequently registered as a Domestic Builder – Limited in September 2010. Mr Brilliant's note on Mr Shah's file recommended that, pending the submission of his insurance documentation, Mr Shah could be approved for a Domestic Builder – Unlimited registration.

54. In responding to the draft report, Mr Shah stated:

I said at interview that I may have exaggerated **some** of the content in my resume but I did not **fabricate** anything at all in my application ... I said that I **may have** overstated some content in the resume [Mr Shah's emphasis].

...

When answering the question [regarding building experience] I was comparing my local experience with my overseas experience. There is a big difference in my experience overseas and in Victoria. In comparison my Victorian experience is limited as compared to my overseas experience but still more than enough to run any construction project in Victoria.

55. On the issue of proforma documents Mr Brilliant said:

Application documents presented are templates and 'mocked up'. This is not unusual and occurs in many thousands of applications, particularly for domestic builders. Mocked up documents are prepared and discussed at the assessment. This is the way it has been done for years and is well known to the BPB [Building Practitioners Board] and everybody involved in the registration process and the industry. Over the years I have given lectures and spoken to thousands of applicants and they are instructed to do this. Industry bodies, such as the HIA [Housing Industry Association of Victoria] and the MBAV [Master Builders Association Victoria]. RTO's [registered training organisations] and other organisations all take the same approach. All of these bodies regularly meet with the BPB on matters relating to the preparation of applications and the development of template type documents. To assert otherwise is false.

56. This does not address the inherent quality concerns that this practice raises in the registration process.

57. In response to my draft report the Chairman of the Building Practitioners Board stated:

I would certainly agree that the practice [of presenting false information] is reprehensible, and it cannot be a true reflection of experience ... the Board does not encourage or condone any form of assistance with documentation

...

... this is not a practice the Board endorses. In a free market, they [third party assistance] are probably inevitable unless use of such 'consultants' is to be made an offence. This is quite different from your point about false statements being made, which I agree is a serious matter and on which I intend the Board will act with alacrity.

58. The Practitioners Board also requires that applicants submit two character references with their applications which are 'no more than six months old'.
59. By comparison, the New South Wales Office of Fair Trading requires that applicants for registration as building practitioners submit references in the form of a statutory declaration which carries a criminal penalty if false or misleading information is provided. The Practitioners Board does not require references to be submitted in this form and, as such, applications may be embellished and include misleading statements.
60. On the issue of practitioner reference checks, the Chairman of the Practitioners Board stated:
- My understanding is that at present, the policy is that 100% of building surveyor references are checked, and that a sample check is done for domestic builders, and in all cases where an applicant applies for registration where he/she in the application form identifies they have had a past criminal record a police check is also required.
61. In the 27 registration files reviewed, my officers only found one (3.4 per cent) example of the Practitioners Board seeking to verify an applicant's reference.

The Assessment process

62. Applications are assessed by a Registrations Officer to determine if the applicant meets the required prerequisites concerning qualifications, experience and training. If the application satisfies these prerequisites, applicants in all three domestic builder categories are required to undertake a three-stage assessment. Other registration categories, including commercial builders are not required to sit an assessment.
63. The domestic builder assessment process¹⁰ comprises:
1. a computer-based closed book test involving 50 multiple choice questions
 2. a written test where applicants are required to identify faults on two building plans
 3. a face-to-face interview with a Competency Assessor.

¹⁰ Refers to all Domestic Builder - Unlimited and Domestic Builder - Manager registrations, and some Domestic Builder - Limited registration types.

Computer-based test

64. A multiple choice computer-based test was introduced for domestic builders in March 2010. At interview, the Acting Registrar discussed the rationale for introducing this test:
- ... we identified that our [registration] process may not have been as robust as it could have been ... we wanted to lift the benchmark a little bit and what the Board decided to do was implement a computer-based test as the first component of the application ...
65. The computer-based test questions are hosted on a system maintained by an external provider.¹¹ It is a one hour test conducted at the offices of the Commission or, in the case of regional applicants, at a regional location.
66. An Assessment Coordinator oversees the testing process and reviews practitioner results.
67. Although the computer-based test was introduced to test the competency of applicants and make the registration process more robust, the test is not a 'hurdle requirement'. There is no pass or fail mark and all applicants are allowed to proceed to the next assessment stage, regardless of their score.
68. At interview the Manager, Boards, confirmed this. He said:
- ... currently, however bad someone scores on the [computer-based] test, they will pass through to the [next] assessment stage ... and they will be assigned to a domestic builder assessor [who will conduct the face-to-face interview].
69. At interview, the Acting Registrar explained why passing the computer test was not a mandatory requirement for building practitioners. She said:
- ... say for example if someone didn't go well they might have been nervous, there's all sorts of factors ... it's [the computer test and the written test] just to give us an idea of the strengths and weakness that a person has. ... so when the assessor sits down with you [at the face-to-face interview] they can concentrate on those areas.
70. Applicants' results for the computer-based test for the period, October 2011–July 2012 were:
- for DB-U there were 489 tests, of which 19 achieved a score less than 50 per cent (4 per cent of the applicants)
 - for DB-M there were 110 tests, of which 11 achieved a score less than 50 per cent (10 per cent of applicants).
71. At interview, the Chairman of the Building Practitioners Board said that the Practitioners Board had introduced a requirement that Domestic Builder applicants must achieve 60 per cent on the computer-based test before they can progress to the next stage of assessment. He later clarified that this new requirement would apply to applications received after 1 November 2012. In response to my draft report he Chairman also stated:

¹¹ Building Commission, *Domestic Builder Competency Assessment Manual*, August 2010, page 14.

'Pass and fail' concepts are being progressively introduced and the Board has recently been concerned to fix the required levels. It is important to appreciate that the prescribed qualifications (which are prescribed by the regulations and not the Board) is not in all cases 'an examination'. Therefore, depending on the specific nature of the application, 'pass/ fail' is not necessarily the best descriptive concept ... In many cases, the Board is actually using the test, together with the interview, to obtain a view of the practical experience of the person.

...

The Board and the Commission are working to extend this to all other DB-Ls (where this is justified by numbers) and commercial builders. A test process for demolishers and temporary structure erectors is intended to be brought into operation early in 2013. This is a major long term project involving investments in computer programming and the development of a very extensive bank of secure test questions.

Written test

72. The written test requires applicants to identify faults on two mock building plans, such as the correct dimensions for bathroom waterproofing.¹² This test is often conducted on the same day as or directly before the face-to-face interview, is supervised by the Assessment Coordinator and conducted at the Commission's offices.
73. The Assessment Coordinator records the result obtained by an applicant in the written test and the computer-based test on an assessment sheet. The sheet is placed on the applicant's file and provided to the Competency Assessor who conducts the face-to-face interview.
74. As with the computer-based test, applicants who fail the written test progress and undertake the face-to-face interview.
75. For the period of January-March 2012, 105 DB-U applicants completed the written test for domestic builder registrations. Sixty applicants were granted registration (45 applicants were not granted registration). Of the 60 who were granted registration, 16 applicants (27 per cent) failed the written test.¹³
76. For this same period, 18 applicants for the DB-M category completed the written test. Five were granted registration (13 applicants were not granted registration). Of those five applicants, two (40 per cent) failed the written test.
77. In total, 18 applicants failed the written test in the period January-March 2012, yet were subsequently registered as domestic builders. Sixteen of those 18 applicants were registered DB-Us without any limitations on the type of domestic buildings they are licensed to build.

Face-to-face interview

78. Board appointed Domestic Builder Competency Assessors conduct the face-to-face interviews.

¹² Building Commission, *Domestic Builder Competency Assessment Manual*, August 2010.

¹³ Applicants who received a score less than 50 per cent.

79. A set of approximately 200 core questions are asked in every interview. The interview takes approximately three hours and is not audio-recorded.
80. A Competency Assessor can be:
- a Board member experienced in the category of registration relevant to the application
 - a Competency Assessor engaged on contract by the Commission
 - a person delegated by the Practitioners Board.¹⁴
81. In response to a draft of this report, Mr Brilliant said:
- Some assessors, BC staff and Board members have no understanding of the legislation, including the registration and assessment process. I have heard present assessors asking junior registration staff about registration and what they should do. This indicates a severe lack of knowledge, training and ability on the assessors to perform their duties.
82. Both the Manager, Boards, and the Acting Registrar said that the assessors use the results of the computer and written tests to identify a practitioner's strengths and weaknesses, and to determine the questions to ask at interview.
83. The investigation did not identify evidence of any assessment of a practitioner's strengths and weaknesses on the 27 registration files reviewed. A copy of the specific questions asked during the interview was also not on the files.
84. At interview the Manager, Boards, said that following the face-to-face interview the Competency Assessor's Assessment Report is placed on the applicant's file. The report includes a recommendation to the Practitioners Board on whether or not the practitioner should be registered.
85. In responding to this issue and my draft report the Chairman of the Building Practitioners Board stated:
- The current practice is for the assessor report to be held on the file and this process is audited on a monthly basis by the Registrar and Manager Boards.
86. My investigation identified that as the other two stages of the assessment are not 'hurdle requirements', the decision of whether an applicant should be registered is largely left to the Assessor conducting the face-to-face interview. At interview, the Manager, Boards acknowledged the shortcomings of such a system. He said:
- ... Look obviously we rely on the integrity and probity of the assessors ... any system that really is substantially dependent on what at the end of the day are, I suppose a fairly subjective judgement [by the Assessor] based on an interview - you've got that doubt.
87. My investigation was informed of the following concerns around practitioner assessments, particularly in regional areas:

¹⁴ Building Commission, *Domestic Builder Competency Assessment Manual*, August 2010.

- face-to-face interviews being conducted in practitioner's homes and at local cafes
- an instance where an assessor was allegedly assaulted whilst conducting an assessment in a practitioner's home
- assessors are often known to applicants before the face-to-face interview.

88. In response to the above issues, the Chairman of the Building Practitioners Board stated:

To my knowledge, face to face interviews have not taken place in cafés or similar places since 2010. It is a requirement of the assessor contract that interviews take place at an approved location. The single assault incident did not occur at a practitioners' home but took place at an approved location, a commercial office... The procedures and the assessor contract are quite clear on the need to avoid any conflict of interest.

Coaching of applicants

89. My investigation identified an industry whereby building associations, private companies and registered training organisations provide support, training and guidance to persons seeking to obtain building registration. This support includes:

- the provision of both formally accredited training and qualifications as well as unaccredited lower level certificates to applicants
- assisting applicants to fill in the application form, or completing an application on the applicant's behalf and mailing it to them for a fee
- providing applicants with proforma documentation to submit in support of their application for registration
- providing coaching on the Practitioners Board's assessment process
- conducting pre-assessment reports to determine whether applicants have the required knowledge and experience to be granted registration.

90. The Practitioners Board and its staff are well aware of this industry and the level of assistance it provides to applicants. At interview, the former Commissioner Mr Arnel said:

Look it's an interesting one ... on the one hand Victoria prided itself on having the most stringent requirements in the country which involved this testing arrangement ... other states didn't have that arrangement ... I always took the view that, properly run, this resulted in a better quality of practitioner that they had to go through these extra checks and balances but as you can see there is the potential that an industry develops around that and people get coached and assisted in a certain way which is a good thing ... but ... I guess the concern that I always had was that there was the potential for ... people to get information and otherwise get through their tests in an unfair way ...

91. By email to my office dated 23 July 2012, the Manager, Boards said:

The Practitioners Board is aware of the existence of consultants who will assist registration applicants for a fee. The Practitioners Board do not endorse or recognise these consultants and do not advise applicants that using such services provides any benefit. It should be noted that several registered training and industry organizations effectively market courses as required for builder registration. The Practitioners Board runs its own monthly registration awareness sessions to provide applicants with an opportunity to hear what is required to be submitted for registration.

92. Case studies 2 and 3 provide examples of coaching available to applicants from the private sector without oversight or regulation by the Practitioners Board.

Case study 2: The Universal Technical Institute (UTI) and its Director Mr Syed Shah

UTI was a registered training organisation with the Victorian Registration & Qualifications Authority (VRQA) between 2006 and January 2012.

In 2010, the same year he applied for registration as a domestic builder, Mr Syed Shah, the Director of UTI wrote to the former Commission employee and Registrar of the Building Practitioners Board, Mr Peter Brilliant, offering to provide courses for recognition by the Practitioners Board for the purpose of practitioner registration.

Until June 2012 UTI promoted itself on its website as a ‘fully accredited RTO [registered training organisation]’ providing 32 courses relating to the building industry, including:

- Certificate IV in Occupational Health and Safety
- Advanced Diploma in Building and Construction
- Certificate III in Construction.

My officers were advised that the staff supporting the Practitioners Board had verified UTI’s proposed courses with the VRQA and agreed to endorse the courses for registration.

My officers reviewed VRQA files in relation to UTI and identified that:

- UTI never had any student enrolments
- UTI was only accredited by the VRQA to provide courses in hospitality, information technology and Asian cookery
- UTI was not accredited by the VRQA to provide any building industry or occupational health and safety courses.

My investigation identified three examples where applicants had presented qualifications from UTI such as a Certificate IV in Occupational Health and Safety in support of their applications for registration as building practitioners.

Despite his lack of formal building qualifications my investigation identified that Mr Shah also provided coaching to prospective applicants for registration with the Practitioners Board. At interview, Mr Shah said:

... we were coaching students, anyone who wants to come make an application for the building commission ... if they did need coaching I was charging them myself. I was charging \$100 an hour so I can train you... they were not actual students from a college because I cannot enrol them [at UTI] as they are not on my scope [of what training the VRQA accredited the UTI to provide].

Mr Shah described the assistance he provided to applicants:

... what happens is that someone comes to me and says I need to prepare my application for building [registration] I have these sorts of experience ... so I say ok we can provide you this service and this is the fee we'll charge because business plan cost[s] \$500, fee is \$680, you provide a reference to us and we make business plan for you and then a simple basic form for you to fill it out and go and lodge it ...

Mr Shah stated that he had also used another private company to prepare a business plan for his clients, at a cost of between \$500 and \$800 per plan. He also said at interview that it was 'so easy' for an applicant to get registered, especially if an applicant took lessons with him. He said:

If I give you the questions and you read it ... you'll answer it, it's not hard questions at all

...

You [can] teach anybody underpinning knowledge ... if you come with me [and after] two hours, three hours study with me, you'll go and you'll pass an exam [for registration].

When asked how many applicants he had provided this assistance to, Mr Shah said:

I don't remember. Could be hundreds of people.

UTI was deregistered by the VRQA in January 2012 following significant failings in an audit completed by an independent auditor. These failings included:

- UTI's Director Mr Shah had not provided the required evidence that he met the 'fit and proper person' requirement
- UTI's website listed a wide range of qualifications that it was not accredited to deliver including courses in business and construction
- there was no evidence of UTI having any students or having employed any trainers.

93. In response to my preliminary concerns, Mr Shah said that he had recently provided the VRQA with a copy of his 'fit and proper person' statement. In relation to the 32 courses advertised by UTI that it was not accredited to provide, Mr Shah stated:

Any course promoted on the UTI Website was conducted in **partnership arrangement** [Mr Shah's emphasis] with other Registered Training Organisations in Australia.

94. In this regard I note the remarks of VRQA's independent auditor in her report that UTI had 'misrepresented this arrangement' on its website, and had implied that UTI was the provider of these courses.

95. Mr Brilliant said:

I recall UTI developed an OH&S training course which was put before the Board and agreed to. This was not an official qualification per se, but was OH&S training in line with the Board's requirements for builders. This was not a national qualification and was designed to suit OH&S requirements for Victorian builders. A similar situation occurred in respect to 'sustainability'; a number of bodies developed independent 'sustainability' training for the Board's requirements. As far as I am concerned everything was done properly and in accordance with administrative requirements.

... I wish to comment that numerous persons, RTO's and organisations perform these services and have for a number of years.

Case study 3 – Business relationships of the wife of the former Registrar

In early 2010 the wife of the then Registrar of the Practitioners Board, Mr Peter Brilliant, was contracted by Mr Shah to provide administrative assistance while Mr Shah was coaching applicants for the purpose of registration with the Practitioners Board.

In response to a draft copy of this report, the wife of the then Registrar stated:

He [Mr Shah] was looking for clients and resources for his business. I would research the Building Commission's website, other websites, local leader newspapers and yellow pages. I would get together resource information regarding builders or tradesmen that might be interested in the services Mr Shah provided.

The wife of the then Registrar also contracted a private company which assists applicants to obtain registration with the Practitioners Board. The private company provides the following services to prospective applicants:

- two-hour sessions on application preparation and the process of becoming a registered builder (Cost: \$150)
- four-hour sessions on the assessment process (Cost: \$300)
- three day Intensive Registration Workshops on application preparation and the assessment process (Cost: \$1,195)
- preparation of documents for a registration application (Cost: \$995)
- the supply of templates for applicants to fill in themselves (Cost: \$595)
- the supply of individual documents
- one-on-one coaching sessions on the assessment process (\$130 per hour).

The private company advertises on its website that it will provide 'your Business Plan, OH&S Policies and Checklists, Quality Control Checklists ... Projects Schedule ... Work History. We provide everything complete to put into the BPB [the Practitioners Board]'. It also states that in 10-15 days a 'professionally prepared application is received in the mail'.

The wife of the then Registrar said at interview that she assisted the private company in the collation, booking and liaison of clients for these services. In response to the draft report she stated:

I didn't meet any of the people, I didn't train them, I didn't 'coach' them. I would only tell them what information they should get together for [the private company] ... I clearly explained to anybody we dealt with that there were no short cuts to registration and they would have to be approved by the Building Practitioners Board.

...

I never sought Peter's [Peter Brilliant's] help with anything I was doing. He was busy with the Building Commission and I was able to do my administration work without his help. I have never seen any exam papers (I didn't even know there was one), and I have never mentioned Peter's name, title, or that he worked at the Building Commission to anybody.

Mr Brilliant also said:

I do recall that [my wife] had referred some applicants to ... [the private company] to assist them in preparation of registration documents and training. I see nothing improper in this ... [the private company] as with numerous other providers, has been doing this for years. The activities of [the private company] ... as well as a number of other providers was done with the knowledge and agreement of the board. To put some negative connotation on this is mischievous and wrong.

96. This arrangement raises concerns about a conflict of interest. I deal with this further in my conclusions.
97. On the issue of coaching the Chairman of the Building Practitioners Board stated in his response to my draft report:
- ... the Board view is that this practice, which is unnecessary, is not nevertheless improper, unless it results in the applicant actually making a false statement.
- ...
- I consider coaching as something we will encounter in all our professional lives and one I personally do not condemn.

The Approval process

98. Once an applicant for registration as a domestic builder has completed the three assessments and submitted all relevant documentation, their details are presented to the Practitioners Board for review at its monthly meeting.
99. The report to the Practitioners Board includes a recommendation from the assessor/Registrar as to whether the application should be approved. In some instances an applicant may be granted a lesser registration type than that applied for, rather than a rejection of their application.
100. Under section 170 of the Building Act, the Practitioners Board must:
- (1) ... register an applicant in each category or class applied for if it is satisfied that the applicant –
- (a) has complied with section 169; and
- (b) either –
- (i) holds an appropriate prescribed qualification; or
- (ii) holds a qualification that the Practitioners Board considers is, either alone or together with any further certificate, authority, experience or examination equivalent to a prescribed qualification;
- and

(c) is of good character; and

(d) has complied with any other condition prescribed for registration in that category or class.

(2) The Building Practitioners Board may refuse to register an applicant if the requirements of subsection (1) are not met.

101. My investigation received conflicting advice as to whether individual registration files and assessments were subject to any further scrutiny before being presented to the Practitioners Board for a decision.
102. According to the Practitioner Boards' *Domestic Builders Competency Assessment Manual*, DB-M applications are reviewed by an individual board member before consideration by the full Practitioners Board. No specific processes are outlined in relation to applications for DB-U or DB-L registration.
103. At interview, the Manager, Boards, said:
- All the DB-U files are viewed by Domestic Builder board member, who, if he's happy with them will pass them back to the Registrar and the approval or refusal will go on the report to the [Practitioners] board at the end of the month.
104. The Manager later said however:
- ... the files will have been or should have been looked at by the board member, although that might be only a cursory review because you are dealing with dozens of these files every month.
105. The Acting Registrar said:
- ... after the interview takes place and a recommendation is made by the assessor the files will come back ... the Practitioners Board get the report of everyone in their [practitioner registration] category ... the files are always available for the Practitioners Board to look at and sometimes the Practitioners Board have done that ...
106. In the three years, 2010 – 2012, the Practitioners Board considered 3,468 applications for registration, or around 100 applications per month.
107. While the Practitioners Board has the discretion to request the assessment files of any practitioner seeking registration, the Chairman of the Building Practitioners Board said at interview that it was rare for the Practitioners Board to review any more than 1 or 2 (1-2 per cent) application files out of the 100 or so applications it considered at each monthly meeting. Several witnesses said that the Practitioners Board rarely reviewed individual application files and where a file was requested, it 'may be a cursory review' only.
108. In responding to my draft report, the Chairman pointed to the number of registrations received in 2011-12 (2,368) compared to the number of registrations granted by the Practitioners Board (1,076) as evidence that 'the [Practitioners] Board is very stringent with their assessments'. He also stated:
- As an 'expert' Board and tribunal, it is not possible for the Board to entirely eliminate the subjective aspects of consideration of whether a person has sufficient practical experience for entry to the register of building practitioners. I agree that the reduction of avoidable

subjectivity should be an aim of the Board and the Commission in working on future processes. However, interview assessment has, I believe, been at the foundation of an application system that is seen as one of the most stringent in Australia.

...

The Board has made significant changes and improvements to its assessment, audit and control processes in the past two years.

109. The Chairman also provided statistics demonstrating that between November 2011 and October 2012 the Practitioners Board refused 46.8 per cent of DB-U and DB-L applications and 65.1 per cent of DB-M applications. As noted earlier, only DB-M applications are required to be assessed by an individual member of the Practitioners Board as part of the assessment process.

The role of the Registrar

110. The Registrar of the Practitioners Board reports to the Manager of Boards at the Commission. From 1998 to March 2012¹⁵, the Registrar was Mr Peter Brilliant.
111. The Registrar presents a report of prospective applicants each month to the Practitioners Board with a recommendation on whether applications should be approved or rejected.
112. The Registrar's duties include:
- managing the practitioner registration system
 - issuing practitioner certificates of registration on behalf of the Practitioners Board
 - maintaining a register of building practitioners in accordance with the building regulations
 - preparing and presenting registration appeal matters at the Building Appeals Board on behalf of the Practitioners Board.¹⁶
113. In some instances the Registrar can also be the de facto decision-maker in relation to certain applications for registration. Under section 186A (2) of the Building Act the Practitioners Board can delegate its power to approve applications for registration to the Registrar.
114. At interview, Mr Brilliant described the rationale behind the Practitioners Board's delegation power:
- ... if there's a requirement for somebody to get their registration, [and] they're suitable for registration ... rather than wait four or so weeks for the Practitioners Board to get it ... it'd be signed off under delegation [by the Registrar].
- ...
- It might be the person's ... got a job waiting to start ... they've been mucked around in the past ... I know of occasions when an applicant has been, has applied to us on more than one occasion and their application has supposedly been misplaced ... so sometimes yes ... I will say can we fast track that one.

¹⁵ Mr Brilliant was on leave or on alternative duties for a number of months during 2010-12 during which times Acting Registrars were appointed.

¹⁶ Building Commission, *Registrar of the Building Practitioners Board*, Position Description, 2010.

115. Records relating to 3,468 applications considered by the Practitioners Board between 2010 and 2012 were analysed to determine how frequently the Registrar was delegated this authority. The analysis identified that:
- on average 22 per cent of the total applications received by the Practitioners Board each month were considered and approved by the Registrar under delegation
 - in some months up to 93 per cent of applications received were delegated to the Registrar for approval. My investigation was unable to identify any guidelines, policies or procedures outlining the circumstances in which the Registrar can approve an application under delegation without prior reference to the Practitioners Board.
116. The Registrar is able to determine which matters are approved under delegation without any authorisation or oversight from the Practitioners Board. For example, Mr Brilliant often exercised his delegated authority in relation to matters that he considered should be decided upon before the Practitioners Board's next monthly meeting. Case officers also have discretion to notify the Registrar that a file requires delegated approval without prior notification to the Practitioners Board.
117. In these instances the application is approved and the practitioner is notified of the decision. The Practitioners Board is advised of all applications approved by the Registrar at its next monthly meeting. The Practitioners Board receives a report outlining the practitioner name, qualifications, registration class and the Registrar's recommendation or decision.
118. At interview, Mr Brilliant was asked whether the Practitioners Board checks all applications before delegating matters to the Registrar. He said:
- No they [the Practitioners Board] can't, it would be put on a list. They can call for any [application files] ... it's just ... impossible to check everyone.
- The registration file for each person should have recorded either a Board member approval or the Registrar's authorisation [to be granted registration].
119. This explanation does not address the difficulty that, under this practice Mr Brilliant was both assessor and ultimate decision-maker and the need for these roles to be separated to minimise the opportunity for a conflict of interest to occur.
120. In response to my draft report Mr Brilliant stated:
- I believe that I have always dealt with delegations in an appropriate manner.
121. At interview, the Chairman of the Building Practitioners Board said that from July 2012, a Board member will review each delegated decision by the Registrar before the Registrar's list of delegated approvals is tabled at the monthly Board meeting. He also said that no registration applications are currently being delegated to the Registrar for approval.

Conflict of interest

122. Commission staff, including those serving the Practitioners Board, are bound by the *Code of Conduct for Victorian Public sector employees* (the code of conduct). In relation to conflict of interest, the code states:
- Public sector employees declare and avoid conflicts of interest to help maintain community trust and confidence.
- A conflict of interest can be actual, potential or perceived. This relates to circumstances where the employee is or could be directly influenced or where it is perceived the employee might be influenced.
- Public sector employees ... [should] seek to ensure the interests of family members, friends or associates do not influence or could be perceived to influence their performance in the job.
123. My investigation identified that the former Registrar Mr Brilliant would at times conduct face-to-face interviews of applicants himself, and then approve the same application citing the authority delegated to him as Registrar by the Practitioners Board.
124. When asked at interview why he conducted these assessments Mr Brilliant said:
- ... I just did it to keep my hand in basically ... it was probably more relevant or more done over the last few years because I was off sick ... [and] it was part of my duties ... that I would do it [the assessments].
125. Mr Brilliant later stated:
- As Registrar and manager of the area I kept myself involved and experienced in all facets of the areas' duties. Over the years I have also from time to time administered practitioners files, prepared and presented appeals before the Building Appeals Board, prepared and presented discipline Inquiry hearing matters, administered Owner-builder consent applications, administered assessed and presented section 176(5) (application for exemption from registration) applications to the Board. The reasons for these are many, including; time and resource limitations, [and] that my position descriptions and performance plans required me to do this ...
126. While the Registrar is bound by the code of conduct, members of the Practitioners Board and Competency Assessors are required to consider if they have a conflict for each application allocated to them before conducting a face-to-face interview or considering an application at each monthly Board meeting.
127. At interview, the Manager, Boards, confirmed that the Registrar had in the past been involved in the practitioner assessment process whilst also approving applications under delegation. He said:
- ... the Practitioners Board can effectively delegate those functions if it wants to ... I don't think it was an ideal arrangement because it effectively brought someone who's responsible for the administrative process into the assessment process ...
128. The Manager, Boards, also told the investigation that he had requested Mr Brilliant to cease conducting applicant assessments in March 2010 as he did not consider a person responsible for administering the registration process should also be conducting assessments.

129. Commission data shows that Mr Brilliant conducted a further 14 assessments after the Manager, Boards, requested him to cease doing so in March 2010.
130. In response to my draft report Mr Brilliant stated:
- I disagree that [the Manager, Boards] asked me to cease conducting assessments in march 2010. From my recollection it was specifically part of my performance plan and temporary performance plan. At times during this period I was on alternative duties which included carrying out assessments ... When it was discussed with [the Manager, Boards] that I do other alternative duties, not including assessments, I ceased doing them and performed tasks I was directed to do.
131. At interview, Mr Brilliant was asked whether his role as assessor and decision-maker had placed him in a position of conflict. He said:
- ... it probably shouldn't be done that way... see you're not making a recommendation but it would be kind of like making a recommendation and then also signing off on it yourself and so it could be seen as inappropriate. Whilst I don't really see that it is, I could see that it could be seen as that.
132. My investigation also identified instances where Mr Brilliant knew the applicants whose face-to-face interviews he conducted, and whose applications he approved under delegation. In each case, Mr Brilliant failed to declare these conflicts.
133. For example, in the following case study, Mr Brilliant had a prior relationship with an applicant and was closely involved in the processing of his application for registration.

Case study 4 – Mr A

Mr A applied for a domestic builder-unlimited registration in May 2011.

In an email between Mr Brilliant and Mr A on 24 May 2011, Mr Brilliant stated:

I haven't been able to locate your recent application, but not to worry.

I will be making a recommendation to the Practitioners Board members that your application for DB-M [Domestic Builder – Manager] to DB-U [Domestic Builder – Unlimited] should be agreed to, in that I have assessed you and you meet all the requirements. So until I find out otherwise can you just give me a filled out application ... with the fee. You won't need to put any other documents with it other than the required warranty insurance.

Any queries give me a call.

Mr A submitted his application direct to Mr Brilliant's Commission email address several hours later.

The investigation found evidence of meetings and appointment bookings between Mr A and Mr Brilliant on 2 December 2010, 14 April 2011, 17 May 2011 and 21 July 2011 titled 'licence meeting', 'lunch [with Mr A]', 'Catch up meeting Peter [Brilliant] and [Mr A]' and '[Mr A] ... Coffee re – DB-U'. These meetings occurred both prior to and during the assessment of Mr A's application for registration.

At interview, Mr Brilliant was asked about his involvement with Mr A's application:

I'd met [Mr A] ... he'd come in and made an application ... I'd met him on a number of occasions, he was alright. I think he'd ... had knowledge of one of the Practitioners Board members or he was also involved with the Master Builders Association... he'd been complaining to the Practitioners Board and the Masters Builders Association and he sought an audience with myself ... look I've had coffee with him and it would only be to talk about ... his application ...

In response to whether this interaction placed him in a position of conflict when he assessed Mr A, Mr Brilliant said:

Yeah I don't see that there was anything wrong with [meeting with Mr A] ... because he was only working around the corner ... but if you're alluding to some kind of impropriety here there isn't, or some collusion it isn't ... he [Mr A] would say ... can we discuss this ... I would say yes ... I call it a business catch-up and I would have coffee with people [applicants] all the time ...

A further email from Mr Brilliant dated 24 May 2011 to two Practitioners Board members on behalf of Mr A stated:

We have had a recent applicant, [Mr A] ... provide his documentation for registration as a DB-U. ... The problem is that [Mr A] ... has put in his application documents on 2 occasions and each time they have gone missing. I know it sounds suspicious, but the last time he attended I checked all of his documents and they were lodged at front counter.

I took particular interest and control over [Mr A's] ... file after he said that he had lodged his first application and it couldn't be located. I have assessed [Mr A] ... on 10 May and he is fine as far as I am concerned will [*sic*] all aspects required of a DB-U.

... I have asked [Mr A] ... to complete another application form only at this stage and provide a further letter of eligibility. It would be a bit embarrassing to make him re-submit another full application. ... I have no concerns about his qualifications, knowledge or experience for DB-U; if I did I would request he re-submit another full application and just take the criticism on the chin.

There was no record of Mr Brilliant's face-to-face interview on Mr A's registration file.

Mr A was registered by the Practitioners Board as a Domestic Builder - Unlimited in November 2011.

134. In response Mr Brilliant stated:

I would like to make it quite clear that I am widely known within the building industry in general and to those involved in the education and training areas. It would be very difficult for me to interact with anybody that I didn't know directly or through someone else. I don't see anything wrong with this ...The *relationship* [Mr Brilliant's emphasis] between [Mr A] and myself was nothing more than that of him being an applicant.

...

I can say that [Mr A] was not given preferential treatment and was deserved of his registration. I believe that I acted appropriately taking into account all the circumstances of the matter.

...

I wish to point out that at no time during my employment with the BC [Building Commission] was any 'conflict of interest' ever brought to my attention.

Secondary employment

135. The *Building Commission and Plumbing Industry Commission* [Enterprise Bargaining] Agreement 2010 (the agreement) states:

Employees are expected to work under an exclusive arrangement with the Commission. An employee is not to be engaged, directly or indirectly, in any other paid business or occupation or hold offices as Director of any board or company without the prior consent of their Director.¹⁷

136. The code of conduct states in relation to 'other employment':

Public sector employees only engage in other employment where the activity does not conflict with their role as a public sector employee. Employment includes a second job, conducting a business, trade or profession, or active involvement with other organisations ... Victorian Public Service employees are required to seek approval to engage in any other paid employment.

137. My investigation identified that Mr Brilliant was actively involved in several property development 'businesses' during his employment with the Commission. Mr Brilliant is the Director of a family trust which has been involved in property development since 2009 and, a property development company with his wife and son-in-law. Despite the requirements outlined in both the agreement and the code of conduct Mr Brilliant said at interview that he was not aware of any requirement to declare his interest in these companies. He said:

No I don't think so, nothing that I know of.

138. The Commission became aware of Mr Brilliant's interest in these companies some time before his resignation in March 2012, but did not take any action on Mr Brilliant's failure to declare his conflict of interest. An email dated 25 June 2012 from the Manager of People and Culture to the Deputy Commissioner states:

As for Peter Brilliant, we were aware that he was actively running a family property development business and there was suspicion of participating in a training centre. I distinctly recall looking for any advice from Peter [Brilliant] advising if he had informed us of any conflict of interest, and I checked with [the then Director, IRC] and [the Manager, Boards] at the time, of which there was none. This investigation was put on hold as we finalised several other investigations for Peter. He resigned prior to the Conflict of Interest investigation starting.

139. In his response to the draft report, Mr Brilliant stated:

... I did not have any 'secondary employment'. [The family trust] is a family trust including several members of my family. The trust invested in a property development in Epping. I see nothing wrong with me, or any other person from the Commission being involved [in] any such arrangement.

The second matter being my involvement with [the property development company] is that it was intended to be a family business including my wife, daughter and son-in-law. My intention was that when and if I left the Commission I would have an involvement in the company. As far as I am concerned these were not secondary employment and to say otherwise is a gross exaggeration. In any event it appears the Commission were aware of these for some time but never mentioned them or expressed any concern.

¹⁷ *Building Commission and Plumbing Industry Commission Agreement 2010*, section 10.3.

140. The wife of the former Registrar also said in response to a draft of this report:

[The property development company] is a company of which I am a Director with my son-in-law, ... We started the company and if Peter left the Building Commission at any stage he could join us.

Allegation of kickbacks being received by the Registrar

141. On 8 June 2011, the Commission received allegations from an anonymous source that Mr Brilliant was receiving cash bribes from the Director, of the Universal Technical Institute (UTI), Mr Syed Shah in exchange for ensuring UTI applicants were granted registration by the Practitioners Board. It was alleged that cash payments were provided by applicants and then shared between Mr Brilliant and Mr Shah. It was also alleged that a Competency Assessor was involved.
142. An audit and risk management firm [the firm] was engaged by the Commission to conduct preliminary enquiries into these allegations. In August 2011 the Commission was provided with the firm's draft report and determined that no further action was warranted in respect to the allegations. Other matters raised in the report relating to the use of inappropriate emails were pursued and upon the request of the Commission, the report was provided as a final by the firm in February 2012.
143. My officers reviewed the firm's report and identified some concerns with the scope and detail of the investigation and the Commission's acceptance of the report's investigation methodology and findings. For example:
- the report found no evidence of cash bribes being accepted or offered to Mr Brilliant however the firm only reviewed Mr Brilliant's emails and telephone records for a period of less than three months in early 2011¹⁸
 - the report found no evidence of cash bribes being offered to or accepted by the Competency Assessor. It found no evidence that a Competency Assessor by that name had been employed by the Commission. The Commission had employed another Competency Assessor on contract with a very similar name for a number of years. The Commission failed to point out this similarity to the firm. As a result, the Competency Assessor I identified was not considered in the firm's investigation.
144. As a result of these concerns and the seriousness of the allegations, further enquiries were made by my investigators and Mr Brilliant's bank statements were examined. These were documents that the firm did not have access to. The statements detailed deposits made into a joint account Mr Brilliant held with his wife from Mr Shah and/or UTI throughout 2010, outside the period of the firm's audit. References were also made in these payments to a business that the former Registrar's wife has been a director of this since 2009.

¹⁸ Mr Brilliant's emails were reviewed for the period 1 April-22 June 2011 and his phone records for the period 23 March-22 June 2011, respectively.

145. Details of the payments identified by this investigation are as follows:
- 10 payments were deposited into the joint account between 22 February to 27 October 2010
 - the deposits relating to UTI and Mr Shah ranged from \$1,000 to \$5,000 each, totalling \$29,000.
146. Mr Brilliant, his wife and Mr Shah were all interviewed about these payments. All three witnesses stated that Mr Brilliant's wife had been engaged in business with Mr Shah through her business to assist him to provide training to building practitioner applicants.
147. Mr Brilliant later stated:
- The payments were made to [Mr Brilliant's wife] and not me, I can't recall the exact reason they were paid into a joint account.
148. Mr Shah said at interview that he had engaged the wife of the former Registrar from February 2010 for six to seven months. When asked how he came to meet her, Mr Shah said:
- When I was speaking to Peter [Brilliant] at that time I said 'Peter I need these resources [to get accredited by the VRQA for the building and construction courses he wished to provide for the Practitioners Board]', he [Mr Brilliant] was a nice person [and] he was guiding me [as to] what could be done ... [Mr Brilliant] mentioned to me that 'my wife is working as a consultant there with [another training provider] and you know, I can ask her if she can provide you with some assistance' ... she was giving me an invoice for \$100 per hour ...
149. On this issue Mr Brilliant stated:
- I am not sure how [Mr Brilliant's wife] came to meet Shah, it is probable that I referred her to him.
150. When asked what assistance his wife provided to Mr Shah, Mr Brilliant said at interview:
- ... help them with their applications, help them with placing them with training ...
- ...
- It was more or less organising the trainers, putting them onto your [a training provider] or elsewhere, getting them to people like [the private company] ... that's all.
151. Mr Brilliant said at interview that the level of support he provided his wife was minimal, stating:
- Not very much ... but I would give her support and she would ask me questions on what happens here.
152. The wife of the former Registrar said at interview that her husband had no involvement in business ventures, she said:
- ... I've never asked my husband to do [anything], I've never mentioned his name, his title, never tried to get any influence, anything I've got has been through public knowledge of internet, yellow pages, local paper, speaking to people. I have not done anything inappropriate whatsoever and my husband hasn't either.

153. She was also asked whether she considered that her involvement with Mr Shah and the private company placed her husband in a position of conflict with his duties as Registrar. She said:

I didn't feel because Peter worked at the Commission that I shouldn't be able to do the admin in this field ...

... we can't control what people say out there ... I feel some people are making this a muddy situation where it looks like something that happened and it just didn't.

154. Mr Brilliant said:

My wife has every right to work within the industry without fear or favour. I saw no need to discuss this with the Board or any other person.

155. My investigation identified that Mr Brilliant had also formed a business relationship with Mr Shah in early 2010, around the same time his wife began working for Mr Shah's company UTI.

156. Mr Shah said at interview that while Mr Brilliant was working for the Commission, Mr Brilliant had proposed to Mr Shah:

... projects for financing ... to use my networks ... one was a project in Epping [the development of a 24 apartment complex] ... at that time he was in the Commission.

157. In May 2010, Mr Brilliant conducted a face-to-face interview with Mr Shah for a Domestic Builder registration. Mr Brilliant approved this application under delegation on 29 September 2010 and Mr Brilliant was also involved in approving Mr Shah's commercial builder registration on 2 July 2011.

158. At interview, Mr Brilliant was asked about his understanding of conflict of interest. He said 'If I was ... previously in business with somebody ... it would be [a conflict of interest]'.

159. Both Mr Brilliant and Mr Shah told my officers that they were currently in negotiations about a new business venture involving the building industry. Mr Brilliant later stated that:

In early 2012, when I was contemplating resignation from the Commission, I contacted Mr Shah about possible business opportunities.

160. On 14 February 2012 the Commission advised Mr Brilliant that it proposed to terminate his employment without notice following an investigation into a number of staff for sending and receiving inappropriate emails. Mr Brilliant subsequently resigned from the Commission in March 2012.

161. In response to the draft report, Mr Shah said:

I have done nothing wrong and only developed a **closer** [Mr Shah's emphasis] relationship with Peter Brilliant after he resigned from the building commission.

162. Mr Brilliant said:

I cannot recall when I first met Mr Shah, but there was nothing improper about my 'relationship' with Mr Shah, even though my wife might have been doing some work for him ... I cannot recall specifically referring

Mr Shah to any specific projects or opportunities. However I don't see it as improper as mentioning possible opportunities to any person. The decision to take up on any opportunities, or not, is up to the individual.

Audits and reviews of the registration system

163. Two audits have been conducted in relation to the registration systems which have identified concerns. Further detail on these audits are outlined below:

Victorian Auditor-General's report

164. The Victorian Auditor-General's (VAGO's) 2011 report *Compliance with Building Permits* found:

- the Practitioners Board's assessment process for registering building surveyors is extensive, but not well documented, nor is it supported by clear guidelines, criteria or quality review standards¹⁹
- the Practitioners Board has no documented guidelines or criteria for evaluating the practical experience of building surveyors, and similarly has no guidelines to decide a 'pass' or 'fail' in relation to the competency examination and practical assessment.²⁰

Deloitte's report

165. In late 2011, the Commission engaged Deloitte to conduct an audit of the registration system. In March 2012, Deloitte completed its report: *Building Commission Internal Audit of the Domestic Builder Licence Assessment Process*. The report addressed:

- the three tiers of the assessment process: computer-based test, written test and face-to-face interview
- the retention of records from the assessment process
- the storage and confidentiality of assessment materials.

166. The report selected a sample of 10 applications for registration during a 15-month period (2010-2012). It identified that:

- 40 per cent of applicants had not completed the computer-based test
- one applicant was recorded as having achieved a result of 71 per cent on the computer-based test, having only completed seven of the 50 questions
- 50 per cent of applications did not have their computer-based test results accurately documented in the Assessment Coordinator's report
- in 40 per cent of applications the type of computer-based test completed by the applicant did not correspond with the registration class the applicant had applied for

¹⁹ Victorian Auditor General's Office, *Compliance with Building Permits*, 7 December 2011, page 7.

²⁰ *ibid*, page 7.

- in 30 per cent of applications it could not be determined if the applicant had completed the written test
- in 50 per cent of applications it could not be determined if the applicant had a face-to-face interview
- in 90 per cent of applications concerns were noted about the completeness of the Competency Assessor's report
- in one instance, an applicant who was refused a Domestic Builder – Manager registration was subsequently granted a Domestic Builder – Limited registration and issued with a letter from the Practitioners Board for both a Domestic Builder – Manager and Domestic Builder – Limited registration. The applicant remains registered in both these categories.

167. The Deloitte report also concluded that all three stages of the assessment process could be improved, in particular:

- the purpose of the computer-based test and written test and their contribution to the assessment process for domestic builder registration is unclear
- there was limited rotation of the computer-based test questions
- there was no formal requirement for Assessors to ask and document the answer to every question on the checklist during the face-to-face interview.

168. At interview the Chairman of the Building Practitioners Board said that he had no knowledge of the Deloitte audit report. In response to the draft report, he said:

I confirm I was not involved in this report nor was the report issued to the board or any of its subcommittees. This is very disappointing considering the board is responsible for the registration of practitioners and many of the assessments are carried out by board members or co-op board members.

In reviewing the Deloitte findings the board would have welcomed the opportunity to have commented on the issues raised and confirmed the reliability thereof (in reading some of their findings I have grave questions as to their reliability and accuracy) and where necessary taken the corrective action.

169. My officers conducted an audit of the assessment and approval process in 27 registration files held by the Practitioners Board. Nineteen of these files were domestic builder applications.

170. The audit identified gaps in the assessment process and in the Practitioners Board's decision-making. For example:

- an instance where the domestic builder/commercial builder checklist was not included in the file. This checklist records and assesses the information submitted by an applicant in their registration application to the Practitioners Board
- 13 files were missing confirmation of the decision by the Practitioners Board or the Registrar of whether a registration had been granted or refused

- two instances where the Assessor's report was not dated by the Assessor
 - in two instances the Assessor's report was missing from an applicant's file. The report records an applicant's assessment results and a recommendation for approval or refusal of registration
 - in two files the core questions checklist detailing the questions asked during the face-to-face interview was missing
 - 11 files did not include evidence that the applicant had sat the computer-based test or the written test or details of test results (58 per cent of the files examined). Three further files had incomplete assessment results
 - 16 of 19 domestic builder files were missing a conflict of interest declaration form, which is required to be filled out by Assessors for every application assessed.
171. My office was informed in June 2012 that, in response to the Deloitte report, the Practitioners Board were considering:
- introducing computer-based testing for the Domestic Builder - Limited category
 - a review and update of the structure, content and frequency of change of the computer-based testing questions
 - defining the purpose of the computer-based testing and its contribution to the overall assessment of applicants for domestic builder registration.
172. The current Commissioner, Mr Kefford has prepared several proposals to improve the registration process, noting that at present registration remains the responsibility of the Practitioners Board.

Conclusions

173. Despite audits, reviews and attempts to improve its integrity, the current registration system for building practitioners remains of concern.
174. The testing process aims to assess the competency of applicants. However it is ineffective and inefficient to have two separate tests to assess applicants if they are allowed to fail the test, yet still progress through the assessment process and, in many instances, gain registration. While the Practitioners Board has advised that it will introduce a threshold score that applicants must achieve before advancing past the computer test, there is still no requirement as regards the written test. Applicants who fail any stage of the assessment process should, in my view, not be allowed to continue with the assessment and be required to re-apply.
175. The registration files reviewed demonstrate a lack of evidence and consistency in the Practitioners Board's decision-making process and, how an applicant had satisfied the requirements for registration. The evidence demonstrates the vulnerability of the system to corruption.

176. The decision as to whether a practitioner is registered is largely a subjective one, based on decisions made by contracted Assessors and the Registrar. This is unsatisfactory and leaves the system open to abuse.
177. The Practitioners Board rarely scrutinises applications which come before it and therefore relies heavily on the recommendations provided to it by assessors and the Registrar. While individual board members are required to review the recommendations made on DB-M files, there is no such formal requirement with regards to DB-U and DB-L registrations. As noted earlier in my report these two registration types accounted for 86.7 per cent of domestic builder applications considered by the Practitioners Board in 2011-12.
178. The issues identified with the registration files audited by my investigation and others demonstrate that the Practitioners Board's practices in relation to the review of these files are deficient.
179. In response to my draft report the Chairman of the Building Practitioners Board advised:
- Board members in fact review the vast majority of individual files and check the assessment. It is manifestly impossible for the Board member, who is not a paid employee or contractor, to check them all in depth. To the extent that no Board members were involved, the structure of the staffing team that allowed this to occur was changed in 2010.
180. Recent external reviews and audits have found serious flaws and risks in the registration process. As a result the Practitioners Board cannot state with any confidence that only competent and suitably qualified and experienced practitioners have been registered to build in Victoria. This represents a substantial risk to the public and the integrity of the licensing regime.
181. The suggestion by the Acting Registrar that applicants should be given the benefit of the doubt regarding an unsuccessful test result due to potential nervousness is of concern.
182. In recent years an industry has evolved, separate to traditional tertiary institutions, to coach and support applicants through the registration process. Some of the services offered by these bodies are inappropriate; for example, the provision to applicants of a completed application form and supporting documentation for a fee.
183. There is confusion among Commission staff servicing the Practitioners Board regarding the supporting information to be provided with an application, who should prepare this information, and whether examples provided should be real or hypothetical. My investigation identified instances where applicants have submitted documents and information which were false or misleading, and not personally prepared by the applicant. Several senior Commission staff involved in the registration process acknowledged that this practice was widespread.
184. It is concerning that, despite this knowledge and the Practitioners Board having a statutory power to reject applications where false or misleading documentation has been submitted, it has not taken any action to address this practice.

185. I consider that the role of the Registrar and the delegation by the Practitioners Board of its authority to the Registrar to approve applications requires definition and greater oversight and supervision. Significant risks exist where one employee can control all elements of a process i.e. the liaison, assessment and approval of an applicant's registration. This creates the potential for conflicts of interest and corruption to arise.
186. In response to my draft report, the Chairman of the Building Practitioners Board stated:
- I agree with this and improved arrangements are now in place ... **all** [his emphasis] delegations must be reviewed by the Board or the Boards' registration subcommittee. Prior to introducing a policy that all registrations need to be approved by the Board or its subcommittee it was policy that a nominated Board member had to review the Registration file of all delegations and agree it was suitable or otherwise for registration.
187. As noted earlier in my report, my investigation identified examples where the former Registrar has in the past approved applications under delegation without review or oversight by a nominated board member.
188. I consider that the Registrar should only be able to approve matters under delegation in exceptional circumstances, and only after approval from the Practitioners Board or one of its members, has been formally received and recorded.
189. Despite the assertions of Mr and Mrs Brilliant, I consider that Mrs Brilliant's role in assisting applicants with the registration process has, at the very least, placed Mr Brilliant in a position of conflict concerning his role as Registrar. Mrs Brilliant's work has a direct correlation with the responsibilities of the Registrar. Mr Brilliant's failure to declare these conflicts to the Practitioners Board raises serious concerns about his judgement.
190. Mr Shah's evidence to my investigation, that he provided misleading statements and fictitious documentation regarding his building knowledge and experience in his domestic builder application, raises concerns about his competency to be registered as a building practitioner.
191. The fact that Mr Brilliant personally assessed and approved Mr Shah's application at the same time he and his wife had developed business relationships with Mr Shah, raises concerns about the integrity of Mr Shah's assessment.
192. The Commissioner, Mr Kefford, has prepared several proposals to improve the registration process. It is important that the concerns identified in my investigation are addressed to ensure that the processing of applications and the registration of practitioners demonstrates transparency and is effective.

Recommendations

I recommend that the Practitioners Board:

Recommendation 1

Review the registration process for all categories of registration and:

- develop minimum standards for qualifications and experience of applicants
- clearly identify the supporting documentation to be submitted with an application, including whether examples of experience cited can be hypothetical or must be real
- set out threshold scores for each stage of the assessment process which must be achieved before an applicant can progress to the next stage
- articulate the documentation that must be retained on a practitioner's file as a record of each stage of the assessment process
- ensure that it receives detailed information including the results of applicants for each stage of the assessment to inform its consideration of applicants for registration.

Building Practitioners Board response

A number of the specific requirements are contained in regulations. I agree the Board and the Commission (with the Minister) should urgently discuss adjustments to the regulations necessary to give effect to your suggestions and make other improvements.

Recommendation 2

Ensure that face-to-face interviews of applicants are audio-recorded and retained in support of an applicant's assessment.

Building Practitioners Board response

Agree in principle. The Commission would be required to provide the necessary resources.

Recommendation 3

Conduct regular audits of the audio recordings of face-to-face interviews to monitor the performance of its Domestic Builder Competency Assessors.

Building Practitioners Board response

Agree in principle. This audit could be conducted in conjunction with the monthly audit currently being conducted.

Recommendation 4

Consider whether the Practitioners Board should meet more frequently than once a month to consider registration applications.

Building Practitioners Board response

This can be discussed by the Board and the Commission. We have already implemented that registrations, that have in the past required delegation, are now reviewed by a Board subcommittee which in effect means registration is now being reviewed twice monthly.

Recommendation 5

Develop a policy concerning the approval process for a registered training organisation proposing qualifications to the Practitioners Board for the purpose of registration. This should include obtaining formal advice from the VRQA or its national equivalent to ensure that the courses offered are accredited.

Building Practitioners Board response

Agree. While this additional scrutiny of the training sector may be desirable, legislative change and a consideration of extra Board resources would be needed to give it effect. The Board has no powers to recognise or approve (or refuse) RTOs. Registration of RTOs is the responsibility of the Victorian Registration and Qualifications Authority.

Recommendation 6

Require that the Assessment Co-ordinator, Competency Assessors and the Registrar complete a conflict of interest declaration for each application considered and that:

- any conflict is discussed with an appropriate manager and recorded on the applicant's file
- where a conflict is identified, ensure that the staff member is unable to have further involvement with the application.

Building Practitioners Board response

Agree. This is already a stipulation in the Commission assessor contract. Board members must declare any conflicts at meetings.

Recommendation 7

Ensure that the Registrar is not involved in the assessment of applicants for registration.

Building Practitioners Board response

Agree. Already a current practice.

Recommendation 8

Introduce tighter controls to ensure the integrity of practitioner registration applications, including:

- requiring applicants to complete a statutory declaration that they have personally prepared all documentation submitted to the Practitioners Board
- requiring that applicants provide two technical referees by way of a statutory declaration.

Building Practitioners Board response

Agree. This is desirable but it may require some amendments to the governing legislation.

I recommend that the Commission:

Recommendation 9

Review all registration applications which have been:

- submitted by the Universal Technical Institute or Mr Syed Shah in light of this report
- approved under delegation by Mr Peter Brilliant and take appropriate action where practitioners have been registered without appropriate qualifications or experience.

Commission response

Recommendation accepted.

Governance and administration

Key issues

This investigation identified that:

- Significant public funds were spent by the Commission on industry bodies This included:
 - over \$200,000 on meals and entertainment over a three-year period
 - over \$100,000 in 18 months on entertaining at sporting events
 - over \$300,000 incurred by the former Commissioner and another Director over a three-year period in relation to overseas travel
 - nearly \$950,000 expended in less than four years on sponsoring various events and awards of bodies such as the Master Builders Association of Victoria and the Housing Industry Association of Victoria.
 - a substantial increase in the cost of developing the Commission's e-toolbox customer relationship management system – from an initial contract amount of \$698,000 to over \$4.65 million.

Use of corporate credit cards

193. My investigation identified a culture of extravagant spending at the Commission, particularly in relation to meals and entertainment.
194. Under the previous Commissioner, Mr Arnel and Senior Commission Executives each had a monthly credit card limit of \$5,000 and financial delegations of up to \$25,000 for non-capital or operational expenditure.
195. In this regard Mr Arnel stated:

I do not recall any discussion about setting monthly credit card limits while I was Commissioner. It is possible that the credit card limit was something that predated my employment ... had I put my mind to the issue, I would not have considered such a high limit as necessary. Nonetheless, I recall that credit card expenditure was always subject to audit and I do not recall any adverse audit findings in relation to the misuse of credit cards.

... As to the financial delegations ... I do recall that this amount was reviewed from time to time. My recollection is that this financial delegation was consistent with the level of financial delegation given to people of a like seniority and roles elsewhere in the Victorian public sector.

Hospitality and entertainment

196. The Commission's Hospitality/Entertainment Expenses policy states that:
- Funds for Official Hospitality are provided for, but not limited to, entertaining external stakeholders, diplomatic and foreign government officials, and fellow employees. Hospitality includes food and beverages provided in the workplace, seminars and conferences, restaurant or at home.

... Working meals would normally involve participation of persons outside the organisations or, on occasions, employees from within the organisation, for example, where for practical reasons participants can only meet during the normal daily meal periods.

... Official Hospitality expenses should only be incurred to advance public business in the interest of the Building Commission. The event to which the charge is related must have a direct relationship with the employee's duties.

Where the anticipated cost of hosting each...event/function exceeds \$500 GST inclusive the expenses must be approved, in advance by the responsible Manager ...

197. The policy further states that:
- ... subject to the purpose of the event being for a legitimate official purpose ... alcohol may be supplied for consumption ...
198. In response to the draft report, Mr Arnel stated that he did 'not recall how the \$500 limit came to form part of the policy'.
199. Between July 2009 and March 2012 Commission staff, including the former Commissioner, Mr Arnel, spent \$94,485.68 on meals. Over \$17,000 of this expenditure was accrued by one employee, the then Director of Strategic Projects.
200. At interview the Director said:
- ... I've taken a lot of stakeholders out ... I think my expenses would probably show that but I saw that as part of my role as Director of Strategic Projects is talking to stakeholders, talking about issues and seeing if we can work out things, and I think, my attitude towards it, and I think it would be the same as Tony's [Arnel] is that the benefit that we got in sorting out issues for the cost of a lunch or whatever far outweighed the cost of the lunch.
201. The Director said that he had the appropriate financial delegation to incur this expenditure.
202. Individual expenditure on meals incurred by Commission executives and managers was often in the hundreds of dollars, and in several instances, in excess of \$1,000.
203. The restaurant most frequented by Senior Executives was Bamboo House. Between July 2009 and February 2012 the Commission expended \$11,964.24 on meals at this venue.
204. In response to the draft report, Mr Arnel said:
- I accept that the Bamboo House was used frequently - it was particularly chosen because it had a private room which was suitable for some of our functions.
205. Commission staff would regularly dine and entertain external stakeholders, including the representatives of industry bodies such as the Housing Industry Association of Victoria (HIAV) and Master Builders Association of Victoria (MBAV). This included farewell dinners for the outgoing Presidents of the MBAV in May 2009, and the HIAV in June 2008, at a cost to the Commission of \$1,765 and \$1,655 respectively.

206. In response to my draft report, Mr Arnel stated that:
- The HIA and the MBAV are the principal industry bodies the Commission worked with.
207. Of the \$1,655 accrued by the 13 attendees at the dinner for the outgoing HIAV President, \$463.70 was spent on alcohol. Of the \$1,765 the Commission spent on farewelling the former MBAV President, \$722 was spent on alcohol, including three bottles of wine at \$120 each.
208. Mr Arnel also said:
- ... Because of the need to work closely with these people [HIAV and MBAV] over a long period of time, and the need to resolve contentious and complex issues, I believe that dealing with these people socially facilitated dialogue and was in the interests of the Commission and the Government.
- ...
- The outgoing HIA and MBAV Presidents in question had both made significant contributions to the industry and under their leadership both organisations had effective relationships with the Commission. I thought it important for the Commission to acknowledge their service and their contribution to cementing ongoing relationships within the industry. In my experience, functions which recognise such relationships, and the achievements of significant people, are a common practice both within the private sector and the public sector.
209. The investigation also identified Green Building Council of Australia Audit Committee Luncheons held at Grossi Florentino that were charged to the Commission. This included a luncheon on 2 November 2009 which was attended by the then Commissioner Mr Arnel and the Chief Finance Officer where \$1,009 was expended on six people. This included \$210 and \$135 bottles wines.
210. In response to the draft report, the Chief Finance Officer stated:
- The bottles of wine referred to ... were as a result of a member of the GBCA [Green Building Council of Australia] Audit Committee requesting these from a waiter and having them opened, without consultation or approval. I specifically remember this occurrence as the gentleman concerned thought it a humorous exercise and one that I was personally embarrassed by. I was particularly displeased knowing that it was going onto my credit card.
211. On this issue, Mr Arnel stated:
- I accept that the circumstances did not warrant anything more than a modest lunch to recognise work done by external members of the Committee.
212. When questioned at interview why the Commission would host and pay for such events, Mr Arnel said:
- Part of the Commission's responsibility ... was to promote the industry, and to engage with the industry and build industry confidence. So I took the view and I certainly often discussed it with Ministers that it was very important for us to be seen to be collaborating with industry stakeholders and industry partners, and the idea that we would have certain events, could be awards nights, could be lunches, could be dinners with the Minister. To me this was a very normal part of both Commissions' operations ...
- ...

I didn't think there was anything unusual about that in fact we were congratulated on it by all of our industry partners across the building side and plumbing industry side ...

213. This investigation also identified that the Commission would meet the cost of meals when staff met for:

- staff de-briefs
- performance reviews
- 'team' and 'working' luncheons
- Christmas and celebratory meals
- 'relationship meetings' between two Directors.

214. When questioned whether such events met the intention of the Commission's meals and entertainment policy, Mr Arnel said:

I'm not aware of that happening but I would have thought that that would need to be engaged in a sparing way.

215. Mr Arnel also said:

I believe that there is a place for an occasional meal to be paid for by the Commission as recognition of the work that staff undertake.

216. The following table outlines examples of hospitality expenditure by Commission staff:

Table 1 - Hospitality expenditure incurred by Commission staff

Date	Card holder	Description	Venue	Cost (\$)
2 Dec 2009	Chief Finance Officer	Commission Audit Committee luncheon	Grossi Florentino	1,009.00
22 Dec 2009	Chief Finance Officer	Goods Shed North Celebratory luncheon	The Nixon	831.10
19 Jan 2010	Chief Finance Officer	Goods Shed North Celebratory luncheon	The Nixon	875.50
17 Sep 2010	Director, People & Culture	People & Culture Team Luncheon	The Nixon	409.00
30 Nov 2010	Chief Finance Officer	Commission Audit Committee luncheon	Grossi Florentino	622.00
Dec 2010	Director, Industry Regulation and Compliance	Christmas lunch for Industry Regulation and Compliance Managers (IRC)	Red Spice Road	440.50
22 Dec 2010	Chief Finance Officer	Finance & Business Services End of year Break-up lunch	Langham Hotel	1,531.76
24 June 2011	Director, Industry and Regulatory Compliance	Meeting & Handover from Director, IRC to Director, Boards (including the Chairs of the Practitioners Board and Building Appeals Board)	Bobs Steak & Chop House	518.00

Source: Information from Commission records.

217. The Chief Finance Officer stated that two of the luncheons in the above table were paid for on his corporate credit card 'as the Building Commissioner, Mr Arnel did not have a corporate credit card ... and he directed me to make these payments on his behalf'. The Chief Finance Officer also stated:

All Director and staff related expenditure incurred by myself was done with [the] authority given to me as a Director by the Building Commissioner and under programs endorsed by the Building Commissioner and was only incurred where approved and considered appropriate to achieve business objectives within that delegated authority.

218. In relation to the luncheons that the former Director, IRC, attended, he stated that 'the expenditure was well within my authority. It was properly incurred and documented. It was never the subject of question, query or criticism.'

219. On the issue of stakeholder entertainment, the then Director of Strategic Projects said:

In the early 2000s the then Building Control Commission held an industry summit bringing together a wide range of stakeholders including the then Minister for Planning. A key outcome of the summit was an agreement that the Commission would actively engage and collaborate with all stakeholders. The Commission's Corporate Plans for the next 10 years reflected this outcome, as did work performance plans.

220. In relation to credit card expenditure, the Chief Finance Officer said:

Building Commission internal auditors ... have reviewed corporate card expenditure as part of their annual internal audit and have not reported any inappropriate use by any corporate card holders.

Corporate hospitality

221. For the period August 2009 and January 2012 the Commission also expended \$209,502.50 on corporate hospitality. This included the hosting of industry bodies at sporting events such as AFL games and the Australian Open tennis.

222. Appendix 1 shows that in 18 months from January 2010 to July 2011 the Commission spent \$101,336.45 entertaining external stakeholders at sporting events. At interview Mr Arnel confirmed that the Commission had been regularly providing entertainment to external stakeholders at sporting events since 2003.

223. Commission staff interviewed confirmed that representatives from industry bodies including the Master Builders Association of Victoria (MBAV) and Housing Industry Association of Victoria (HIAV), AIBS²¹ and IPAA²² were regular attendees at such events. Documents also showed that Mr Arnel and his wife were often the hosts of such events, and that partners of stakeholders were also invited.

21 The Australian Institute of Building Surveyors.

22 Institute of Public Administration Australia.

224. When asked why the Commission hosted these events, Mr Arnel said:

I would meet with the Minister for Planning on a regular basis, it could be every fortnight or every month and I would talk about who I'd met with, who I'd had an event with ... [it was] part of our business planning on an annual basis that we would effectively engage with industry, partner with industry and collaborate and work with them. And this was, in my view, a very successful part of what was at least 11 good years of the building commission.

225. Mr Arnel also stated:

The expenditure on corporate hospitality, like expenditure on meals, was intended to improve our communications with our stakeholders.

226. Mr Arnel was asked whether inviting attendees' partners and the hosting of such events by him and his wife could give the impression that the purpose of these functions was more social than business. He said:

Partners were always invited ... clearly it was a social event but the fact that there were senior people involved in my mind still made it a business event.

227. In relation to the Commission's entertainment of external stakeholders, the Chief Finance Officer said:

... it was expected that we would develop relationships and maintain relationships with key people and peak industry bodies ... you maintained relationships so that these organisations would work with you in developing services and delivering things for consumers and the industry, not against you.

228. My investigation also identified two examples where Mr Arnel hosted personal acquaintances in AFL corporate boxes organised and paid for by the Commission in May 2010 and September 2011. My officers did not identify any business relationship between either of these persons and the building industry. They are not builders and are not involved in industry associations. They are friends of Mr Arnel.

229. Mr Arnel confirmed this and said:

... [The invitees] had no connection within the industry, I accept that this is the case and that they should not have been invited. Having said this, these two invitations represent two invitations out of around 200 invitations over 6 or 7 years.

230. The Commission also spent \$108,166.05 on 'Official Functions' in the period July 2009 and February 2012. These functions included dinners hosted for the MBAV, the HIAV and the Property Council of Australia, as well as the Commission's sponsorship of various industry awards, conferences and golf days.

231. The Commission's combined expenditure for the period 2009-2012 on meals, official functions and entertainment at sporting events was \$303,988.18.

232. In response to my conclusions on entertainment and hospitality, Mr Arnel stated:

I accept that I was responsible for the appropriate use of public money and that some instances excessive expenditure have been identified [*sic*] ... My observation is that standards are difficult to define in this area... My judgement was that the Commission should maintain close links at senior levels with the industry and that these links should be both formal and informal.

Travel and accommodation expenditure

233. Between July 2009 and February 2012 the Commission expended a total of \$524,913.96 on travel and accommodation, including:

- \$349,659.19 on overseas travel
- \$175,254.77 on interstate travel.

234. Of the \$349,659.19 on overseas travel, \$302,408.70²³, or just over 86 per cent was expended by two staff members, Mr Arnel and the then Director of Strategic Projects (now Director, Boards).

235. Mr Arnel's travel costs arose from 13 overseas trips ranging from two to 23 days in duration. Almost all of the travel undertaken by Mr Arnel and the then Director, Strategic Projects, was in relation to meetings and events for the Green Building Council of Australia (GBCA) and its international equivalent, the World Green Building Council (WGBC).

236. In response to the draft report the Director of Boards said:

International travel was a critical element to assist in the development of the green building councils under the WGBC umbrella. Many countries, including China and India, government [*sic*] expect to engage with a government representative when dealing with international delegations.

...

The \$300,000 spent by the Commission to support its Government endorsed involvement in both the GBCA and WGBC represents only .34% of 1% of the Commission's expenditure over the same period. The involvement of 4 staff, Commissioner included, who was chair of both councils at the time, on even a full time basis (which it was not) also represents less than 3% of total staff which is hardly disproportionate.

237. In response to my preliminary concerns, Mr Arnel advised that, on several overseas trips, he had been invited by overseas governments and delivered keynote addresses. He also stated:

... on every occasion, my travel was approved by the Secretary ... I would often discuss with Ministers my overseas travel. While I was not seeking approval, the Ministers indicated their support for the work I was doing on these trips.

... I received many invitations to speak at international events ... For the most part I declined these invitations on the grounds that the time taken would have impinged on my responsibilities as Commissioner.

... Some of the [13] trips were paid for in full or in part by the organisations sponsoring the trips.

23 This expenditure is net of reimbursements received from other bodies that sponsored the travel.

Green Building Councils

238. During his time as Commissioner Mr Arnel held the position of Chair of both the World Green Building Council (WGBC) and Green Building Council of Australia (GBCA).
239. One of the objectives of the Building Act is to 'facilitate the construction of environmentally and energy efficient buildings'.
240. Since 2002 Mr Arnel has had a significant involvement in both councils. The WGBC provides green building organisations with support in influencing national bodies, including governments, to transform the building industry to one with a greater focus on green initiatives, such as changing regulations and standards to reflect environmentally and socially responsible building practices.
241. Since his resignation from the Commission Mr Arnel has maintained an involvement in both organisations, and is currently a Director of the WGBC and Chair of the GBCA. Whilst the Commission has continued as a member of the GBCA, none of its staff, including the Commissioner, Mr Michael Kefford, are currently individual members of either council.
242. In addition to the travel expenditure related to the green councils, my investigation identified that considerable Commission resources, both financial and human, have until recently been committed to supporting Mr Arnel in his roles with the green councils. For example:
- \$974,041 was spent to support and sponsor events, dinners and projects over a five-year period; around \$18,000 of this expenditure was reimbursed by the green councils
 - the hiring in July 2010 of a second executive assistant for Mr Arnel, at around \$50,000 per annum to deal exclusively with his WGBC and GBCA commitments²⁴
 - the use of other Commission staff to assist in matters related to the GBCA, including the Chief Finance Officer and the Director, Strategic Projects.

Recent information obtained by my investigation indicates that the Commission's total expenditure in support of the green councils since 2002 may be considerably more than the above figures.

243. Mr Arnel stated that 'the work undertaken by these people was proportionate to the work commitments identified in the Commission's business plans and corporate plans and did not detract from their other work'.
244. At interview, Mr Arnel disagreed that his role with the councils served as a distraction from his responsibilities as Commissioner and stated that his involvement in the green building councils had full support from the Minister:
- ... it was subject of discussion with the Minister of the day ... and the view was that this was a progressive thing to do and very consistent with the role of the Commission in developing building standards ...

²⁴ The assistant was engaged by the Commission for 11 months.

...
 ... the implication that the Commission was acting beyond its mandate in participating in the GBCA and the World Green Building Council (WGBC) is misplaced; these activities were encouraged by various Planning Ministers throughout the period of the ... [previous] Governments.

Sponsorship

245. Between July 2008 and March 2012 the Commission provided funds of \$949,237.99 to sponsor various events and awards, including golf days run by industry bodies such as the MBAV, HIAV, Australian Institute of Building Surveyors and the Australian Institute of Architects.
246. Table 2 lists the top four industry bodies provided the most sponsorship by the Commission since 2008-09.

Table 2 – Sponsorship of industry bodies by the Commission

Industry body	2008-09	2009-10	2010-11	2011-12	Total (\$)
Master Builders Association of Victoria	79,950.00	56,136.36	58,654.55	10,290.91	205,031.82
Housing Industry Association of Victoria	12,133.62	73,700.00	105,500.00	454.54	191,788.16
Australian Institute of Building Surveyors	25,799.99	38,181.82	33,000	28,636.37	125,618.18
Australian Institute of Architects	10,000	25,000	26,636.36	Nil	61,636.36

Source: Information provided by the Commission.

247. At interview Mr Arnel explained why the Commission provided the sponsorships:

It was expected of us ... when I became Commissioner and we developed a plan in relation to how we'd proceed under our corporate plan, industry engagement was a huge plank ... as I've said before on the building side there is something like 15 categories and the stakeholders included the Master Builders, the HIA, the engineers, the building surveyors, the building designers, the quantity surveyors – and each of those entities would have awards ... and they looked to us to assist them, in terms of promoting the industry and promoting leadership and promoting good practice, you know the commission was always very keen to promote the whole idea of awards and still does, and did before I got there.

248. In 2010, the Commission also agreed to sponsor a private catholic school in Hawthorn. Mr Arnel sponsored the school's 'Open House' event, for \$5,000 a year, over a three-year period after being approached by a friend involved with the school.²⁵

²⁵ This person is also referred to the Corporate Hospitality/Official Functions section of my report as having received hospitality from the Commission.

249. At interview, Mr Arnel was asked about the reasons he had agreed to provide sponsorship to a private school, and how this related to the core business of the Commission. He said:

... as I recall it, I was approached by one of the board members who I knew ... and they were very keen to promote sustainable living and promote the 5-star standard and also promote water saving, and they presented a written submission to the Commission ...

...

My view was that this was being supported by major other entities like 3AW and Jellis Craig, it was a big event promoting energy efficiency and water designs in building and the commitment I thought was good value for money.

250. The Commission has advised that it did not renew this sponsorship arrangement after it expired in March 2012.

251. In response to the draft report, Mr Arnel stated in relation to this issue:

... [The school board member] approached me on behalf of the school board. The school did not receive any special treatment. I do accept, however, that I should not have been part of the decision making process given [his friend's] involvement. The fact that the sponsorship arrangement has now ceased is simply an indication of the short term nature of the arrangement rather than an acknowledgement that it was inappropriate.

e-toolbox system

252. In November 2008 the Building and Plumbing Industry Commissions jointly advertised a request for tender for a Customer Relationship Management system (known as e-toolbox) to transfer the majority of their transactions with practitioners and consumers to an online environment.

253. In March 2009 the Commissions awarded the contract for the development of e-toolbox to a technology and consulting firm (the IT consultancy) for \$698,000. Under the contract, by 2 October 2009 e-toolbox was to be operational allowing building and plumbing practitioners to perform online the functions outlined in table 3.

Table 3 - Functions of the e-toolbox system

Building practitioners	Plumbing practitioners
Renew their registration	Renew their licence or registration
Report Continuing Professional Development	Purchase, lodge and retrieve Compliance Certificates
Maintain their contact information	Book drain or recycled water inspections
Re-order lost registration cards	

Source: Information provided by the Commission.

254. The system also allows consumers to search building practitioners across all registration types to confirm that they are registered.

255. In my November 2011 *Own motion investigation into ICT-enabled projects*²⁶ I identified the following common themes which led to projects in the Victorian Public Sector exceeding time and cost estimates:
- lack of leadership and accountability
 - poor planning
 - poor probity and procurement arrangements
 - poor project management.
256. My investigation identified that the development of the Commission's e-toolbox system was also affected by similar issues. The cost of e-toolbox has increased more than five times, from the initial contract amount of \$698,000 in March 2009, to over \$4.65 million (including project management fees) as at September 2012 with no variations to the contract. In addition the original completion date for the project was extended from October 2009 to July 2010. While the e-toolbox system went 'live' in July 2010, there were still some unresolved issues at the time the warranty period ended 12-months later. At interview, an IT contractor²⁷ to the Commission said:
- There was a list of about 30 of them [issues] that ... were defects or enhancements and that was agreed that we disagreed and it just never sort of got resolved
- ...
- It is working. I don't know that they've gotten everything that they were planning to get but it is working for them.
257. One of the internal sponsors of the project, the former Director, Plumbing Industry Commission, said:
- ... the scope of the project changed at various points particularly as options to take up additional functionality were considered. Significantly more functionality was delivered than was represented in the original scope of work or included as part of the \$698,000.
258. My investigation was not able to identify this 'additional functionality'.
259. At interview, the Chief Finance Officer raised concerns about the effectiveness of the contractual arrangements, and in particular the business requirements document, which he said [the IT consultancy] were able to 'shoot holes in' and which resulted in a number of variations and increased costs. He also raised concerns about the initial scoping of the project and the resources it was allocated. He said:
- I think that the first thing I'd say is that those who were running the project were short-sighted in not thinking about everything that needed to be done ... they took the attitude of - that the people who were managers and staff who were doing their day-to-day work were also going to do these other things, which was a big call. And I think that what that meant was that in developing the Business Requirements document it came up short.
260. Mr Arnel agreed that the project had been under-scoped, but expressed a view that the increase in costs corresponded with an increase in functionality. He said at interview:

²⁶ Victorian Ombudsman, *Own motion investigation into ICT-enabled projects*, November 2011.

²⁷ The IT contractor was not employed by the IT consultancy.

There were a couple of occasions where [the project sponsor] reviewed the budget and based on the scope of the works changing a bit there was some budget adjustments ...

261. My investigation identified that three project managers were engaged by the Commission at various stages of the project to represent the Commission's interests. All three project managers were from the system's vendor, the IT consultancy.
262. The IT consultancy contractors cost the Commission \$1,450 a day, or around \$24,000 per month in addition to the original contract price. These fees are included in the total cost of the project - \$4.65 million.
263. Several witnesses raised concerns about the appropriateness of employing a consultant from the system's vendor to represent the Commission's interests. At interview a senior executive of the Commission said:

At one stage we were in so much trouble with this e-toolbox project and things were just going from bad to worse, it was deemed we needed to hire a project manager ... the person they hired ... was working sitting there doing the [the IT consultancy] project, she was an [the IT consultancy] person and they hired her to represent the Commission to oversight the project.

...

To me it was like putting Dracula in charge of the blood bank.

264. An IT contractor to the Commission also expressed surprise at this arrangement. At interview the contractor said:
- You do see quite often that projects that are being commissioned by a client will have a contractor as a project manager but I've never seen it from the same company [as the vendor] ...

265. In response to the draft report, Mr Arnel stated:

While I accept that the degree of separation from [the IT consultancy] does not appear to be ideal, based on the advice given to me, the project manager was competent and represented the Commission's interests appropriately. I see no evidence in the draft report that the project manager (or her successor) in fact acted in the interests of [the IT consultancy] and against the interests of the Commission. The alternative would have been to engage someone we knew less about and who would not have been familiar with our requirements.

Conclusions

266. I can see little justification for managers and directors of a public authority to have access to credit cards with monthly limits of up to \$5,000 for non-operational expenditure. I support the decision taken by the new Commissioner to significantly reduce these limits, along with the financial delegations held by his staff.
267. I consider that the expenditure on meals and alcohol by Senior Executives, including the former Commissioner was extravagant and a misuse of public funds.
268. There is an inherent conflict where the Commission provides entertainment to stakeholders when its core function is the regulation of the very persons they are entertaining.

269. It is concerning that a public body such as the Commission could consider it appropriate to have a policy which allows staff to entertain external stakeholders, and indeed each other, at a cost of up to \$500 without any formal consent being required. I do not consider public funds should be expended by staff to meet with each other in the performance of their duties.²⁸
270. Although Mr Arnel has stated that his involvement in green councils was as a representative of the Commission and not as an individual, I note that his involvement with both councils has continued since his resignation from the Commissioner role. I also note that the current Commissioner has no involvement with either council.
271. The willingness with which the Commission has in the past provided sponsorship to industry bodies, especially those whose members it also regulates is concerning. I do not consider that there is a need for a statutory authority to enter into sponsorship agreements in order to promote itself. I consider that the Commission's justification for sponsoring industry groups in the past to be misguided.

Recommendations

I recommend that the Commission:

Recommendation 10

Review its practice of providing:

- hospitality including meals, and entertainment
- sponsorship to external stakeholders, particularly those whom the Commission has a responsibility to regulate
- general funding to external associations; and

Review its hospitality and entertainment policy, in particular the \$500 expenditure threshold in light of my report.

Commission response

Recommendation accepted.

Recommendation 11

Seek an audited statement on how monies paid by the Commission to the Green Building Council of Australia and World Green Building Council since their inception have been spent.

Commission response

Recommendation accepted.

²⁸ I have recently raised concerns about the use of gifts and hospitality in the *Investigation into allegations of improper conduct involving Victoria Police - Whistleblowers Protection Act 2001*, October 2012.

Recruitment, termination and contractors

Key issues

This investigation identified:

- consultants and contractors were engaged by the Commission and paid up to \$350,000 a year without competitive or open tender processes
- managers and directors knowingly employed people with questionable backgrounds and a criminal history
- a failure by the Commission to conduct criminal records checks as part of their recruitment processes
- examples of cronyism with regards to the staffing of the Audit and Investigation Unit (AIU) almost exclusively with former police officers
- favouritism and assistance being provided to preferred applicants
- the re-engagement of a former staff member as a contractor three days after his resignation. The former staff member earned nearly triple his previous annual salary in the ensuing 12-month period
- contractor invoices, often in the tens of thousands of dollars paid by the Commission with little to no detail regarding the work being billed for.

Contractors

272. My investigation identified a number of contractors that were engaged by the Commission without a competitive tender process and at significant expense to the Commission, as follows:

Mr B

273. Mr B was a former ANZ Bank and Melbourne City Council Executive. At interview Mr Arnel confirmed that he knew Mr B from his previous work in the public service.

274. Mr B was engaged by the Commission as a contractor on a number of occasions and in several different roles, commencing in early 2009. Mr B's roles included:

- Director, Industry and Regulatory Compliance – 4 May 2009-22 December 2010
- Acting Deputy Commissioner – February-November 2011 and Acting Commissioner – 14 June-11 July 2011
- Director (no department assigned) – November 2011-10 February 2012.

275. Mr B was paid between \$1,500 and \$2,500 a day at the Commission, totalling of \$677,345.55 between March 2009 and February 2012. On several instances, he was paid in excess of \$40,000 a month.
276. Mr Arnel said that in January 2011 he approached Mr B in relation to the Deputy Commissioner role which had been vacant since December 2010. A number of applicants, including executives from both the Building and Plumbing Commissions had been interviewed for the role in December 2010; none were considered suitable by Mr Arnel.
277. In a letter to Mr Arnel dated 7 January 2011 Mr B wrote:
- Further to our recent discussions, the following outlines my proposal for undertaking the role of Deputy Commissioner on a contract basis for an agreed period.
- ...
- ... it is anticipated that I will be available in the Commission offices for 4 days each week, however there will be some occasions where my availability will be restricted to 3 days each week.
- ...
- ... given the duration and commitment offered and required of this role, my daily rate for the assignment would be reduced to \$2,250.00 plus GST.
278. The letter further outlines Mr B would be initially engaged in the role for six months.
279. At interview Mr Arnel confirmed that he was responsible for engaging Mr B for each of the contracts he held with the Commission. In relation to Mr B's engagement as Acting Deputy Commissioner Mr Arnel said:
- At the end of 2010 when my previous deputy ... resigned we went through an executive recruitment process ... that proved to be unsuccessful and I think it was about in January of 2011 I said to [Mr B] would you mind doing the job for about 6-months whilst I re-visit this executive recruitment process and that was really the basis of it. He was clearly a person who could do the job, very well equipped, very well-credentialed, very experienced in large organisations, complex organisations and had an existing relationship with the relevant directors at the time so it was my professional view that he was well positioned to do that job.
280. Mr B was Acting Deputy Commissioner from February 2011 until the position was filled in November 2011. Mr B was paid \$348,287 for the 12 months he spent at the Commission, including nine months as an Acting Commissioner, at an average of around \$29,000 a month.
281. The Commission's procurement policy²⁹ states that if the expenditure for any 'services or works' exceeds '\$100,000, tenders must be invited publicly unless the Building Commissioner certifies that it is not practical or expedient to do so'.
282. Mr Arnel confirmed at interview that Mr B was not engaged via a public tender process for any of this contract work for the Commission.
283. Mr B's remuneration for this nine-month period was well in excess of both the limit set out in the procurement policy and Mr Arnel's own annual salary as Commissioner. When questioned on this, Mr Arnel said:

29 Building Commission, *Procedures for ordering/purchasing contract and non-contract goods and services*, 24 May 2011.

Well in hindsight, as I said, I wasn't sure whether this was going to last for three months or four months or six months. I mean it was a matter of getting the right person. If it had been for three months it would have been less than my salary but it was just one of those circumstantial things ... I really want to emphasise this. I'm concerned that the assertion here is that I went against what were the policies of the day but that wasn't the intention here, the intention was to get somebody in to do this job on an interim basis and it took much longer than I thought to get somebody.

284. When questioned why he chose to engage Mr B at the above rates Mr Arnel said:

He charged on a daily basis, my view was that based on 10hr days you know that was \$220 an hour ... it was my view it was a reasonable amount to pay for what was essentially a short term assignment. It worked out to be a month or two longer because of the fact that the new guy ... couldn't start but I don't resile for one minute from having appointed him, it was right at the height of the Auditor-General's reports which were obviously causing some internal concern and part of my remit to him was to manage that exercise in a professional way.

285. Mr Arnel also stated:

In my view, [Mr B] had excellent credentials for the position, he was familiar with the Commission's business and he was available for a short term assignment.

Outsourcing of investigations and technical advice

286. Since 2004 the Commission has engaged eight external investigation firms at a total cost of over \$3.15 million to conduct investigations.

287. Over the past five years the Commission has conducted on average around 588³⁰ investigations annually.

288. In his December 2011 audit report *Compliance with Building Permits* the Victorian Auditor-General found that 64 per cent³¹ of the Commission's investigations conducted in 2010-11 were undertaken by four external investigators. The remaining 36 per cent were undertaken by the Commission's 12 investigation staff in the Audit and Investigation Unit (AIU).³²

289. My investigation identified that:

- external investigators were initially subject to a tender process, however, the works have not been re-tendered in accordance with the Commission's procurement policy since 2004
- the Commission had not entered into formal contracts with its external investigators for the period 2004–2010.

30 *Review of Processes, Recruitment, On-boarding and Capacity Development for Building Commission Investigators (Internal and External Panel)*, Janis McFarland 22 December 2011, page 8.

31 Victorian Auditor General's Office, *Compliance with Building Permits*, 7 December 2011, page 46.

32 In addition to investigations, investigators in the Audit and Investigation Unit are required to conduct performance audits of building practitioners and some local councils.

290. In response to these issues, the former Manager, AIU, said:

Prior to mid-2011, I was never made aware of any Commission procurement policy. I do not recall undergoing any formal management induction, and I did not receive any training or instruction in procurement, corporate governance, or contract management. To put it simply, I was never made aware that works and services to a value in excess of \$100,000 were required to be put out to tender.

291. Mr Arnel also stated:

I accept that this is the case and also accept that steps should have been taken sooner to ensure that the engagement of investigators was subject to a competitive process.

292. The cost of external investigators to the Commission has risen significantly. In 2009-10 the Commission paid a total of \$381,301 to three external investigators; in 2010-11, \$878,569³³ was paid to four external investigators.

293. By comparison, the number of internal investigation staff employed by the Commission has only risen by one since 2004.

294. The former Manager, AIU, said in relation to this issue:

Since 2004, each manager including me raised the issue of increasing the number of internal investigation staff in order to deal with the workload and control the cost of contract investigations. However, due to an apparent ceiling on Commission staff numbers, the policy from senior management seemed to be that the only way to deal with the workload was to pay contractors.

295. The former Director, IRC stated:

Throughout 2006-2012 I personally importuned the Commission to employ appropriately technically qualified staff to create a dedicated audit team.

...

Investigators were engaged on an investigation by investigation basis ... there was and is a very small pool of experienced, professional and appropriately skilled investigators available to the Commission to undertake important complex investigations.

... I also wish to make it clear that during my tenure as manager of the Audit and Investigations Unit (AIU), I did not recruit any external investigative service providers.

296. In 2010-11 the four external investigators engaged by the Commission were each paid in excess of \$190,000 per annum. One external investigator was paid in excess of \$225,000 by the Commission for around nine months' work.

297. The Director and Principal Investigator of that company, Mr C, a former employee of the Commission was employed in the Commission's Audit and Investigation Unit for over 10 years. Mr C resigned from the Commission on Friday 3 September 2010 and returned as a contractor on the following Monday, 6 September 2010.

³³ *Review of Processes, Recruitment, On-boarding and Capacity Development for Building Commission Investigators (Internal and External Panel)*, Janis McFarland 22 December 2011, page 19.

298. Mr C confirmed at interview that he was not required to submit to a tender process in securing his contract with the Commission. At interview he said that he had been provided with confirmation that he would be re-engaged as a contractor several weeks prior to leaving the Commission:

It was made clear to me at the time that I couldn't come straight on as a sub-contract investigator, there had to be some sort of break, they didn't want the perception of an employee leaving and then coming back on as a sub-contract investigator earning a lot more money ... and about 2 weeks before I was due to resign I was told that the Commission were prepared to put me straight on as a contract investigator.

299. When asked at interview why Mr C was re-engaged as a contractor three days after his resignation took effect, the former Manager, AIU, said:

He came back on the panel, well because Tony Arnel said to, that's the bottom line ... When he resigned I got told give him work.

300. When questioned about his involvement in the decision to re-engage Mr C as a contractor, Mr Arnel said:

I wasn't involved. But on the one hand I was disappointed to see him go, he was one of the best investigators and when he returned after a period of time as an external investigator I wasn't too fussed about that. I think there's plenty of examples around the public sector where people have left and have come back but that's after a cooling off period ... it wasn't entirely surprising that he returned after a period of time.

301. When advised that Mr C had in fact returned to the Commission three days after he had resigned, Mr Arnel said:

It wasn't an area that I was particularly focusing on but I think it would have been desirable to have a bit more time in that respect.

...

I recall that I suggested to the Director that we needed someone who was very experienced and who was able to devote a significant amount of time to it. I said we would probably need someone from the [external investigators] Panel and that [Mr C] might be a good prospect. To the best of my recollection, this is the only involvement I had in [Mr C] being reengaged as a contractor.

302. In addition, the former Director IRC stated:

... I do not know who told [Mr C] prior to his resignation that he would be engaged after his resignation, if he was in fact told this ... I did not advise [Mr C] that on his resignation that he would be contracted for 12 months.

303. My investigation identified a confidential memorandum dated 19 August 2011 from the Manager, People and Culture, recording a discussion regarding external investigators between her and the then Manager, AIU. Of particular interest were the following issues noted by the Manager:

- There is no formal recruitment process, no expressions of interest or tenders for companies. There is no public advertisement. Historically the company directors are known to the Manager, Audit and Investigation.

- [Mr C] was advised on resignation from the BC [Building Commission] that he would be given a 12 month contract.
- There is no induction process
- There are no formal procedures for conducting an investigation.
- There is no performance management.

304. In response to the draft report, Mr Arnel stated that he had no knowledge of the above memorandum and:

As far as I was aware these investigators were performing their roles in a professional manner and were highly regarded in the industry.

... In the Commission's experience, a skilled investigator was more valuable to the Commission than a person who was familiar with the building industry but had no experience undertaking investigations in a law enforcement context.

I received no indication that there were any issues with the competence or integrity of the investigators.

305. In addition to external investigators, the Commission has a panel of 20 technical experts. The technical experts perform a range of functions including:

- inspections on behalf of the Commission in accordance with the *Domestic Building Contracts Act 1995*
- provision of technical reports and advice in relation to investigations conducted by the Audit and Investigation Unit
- site audit inspections.

306. In the period July 2004 and June 2012 the Commission spent over \$1.5 million on technical experts.

307. A number of witnesses said that the Commission's internal and external investigators would often require the assistance of technical experts as the investigators themselves did not generally have extensive building experience or knowledge.

Invoicing

308. There were deficiencies in the invoicing practices established between the Commission and its external investigators.

309. Invoices submitted by external investigators and examined by my officers showed that:

- invoices contained scant detail: they only listed case file numbers and a total amount charged for their services; some invoice amounts totalled in the tens of thousands of dollars
- invoices did not contain any particulars of services provided on the individual cases listed, such as hours claimed or kilometres travelled for each investigation.³⁴

³⁴ An hourly rate and a travel allowance per kilometre are outlined in the external investigators contracts.

310. The role of managing the external investigators, including the allocation of files and receipt and review of final investigation briefs is the responsibility of the Audit and Investigation Unit's three team leaders. However, notwithstanding this oversight role, the team leaders had no involvement in the checking of invoices submitted by the external investigators.
311. Instead, a practice existed where the external investigators would send their invoices direct to the then Manager, AIU, and he would forward them to finance for payment without making any enquiries with his Team Leaders as to the accuracy of the amounts claimed. At interview Mr C said of his time at the Commission:
- The invoices don't go in the files, they are emailed. And they were going directly to [the former Manager, AIU] ...
312. At interview, an AIU team leader said:
- A few years ago [the former Manager, AIU] changed the process where they were directly emailed to him so I never saw them ... he's never approached me about that [the invoices]
313. My officers interviewed five of the external investigators engaged by the Commission in the last three years. They all agreed that the lack of detail in invoices accepted by the Commission could be 'taken advantage of'. When asked at interview what information he was required to provide the Commission in his invoices, Mr C said:
- Not a lot. Up until I think it was the start of February, [we provided] a covering invoice which lists the file numbers, the subject name, and a total amount, that was it.
- ...
- There was no requirement [for] accountability. It should have been a lot tighter.
314. A former contracted investigator to the Commission was asked at interview whether the Commission's previous invoicing practice placed a large amount of trust in the honesty of external investigators. He said:
- That's right because they didn't know if you put in a file, 10 files and your invoice was \$15,000, one of those files might be worth \$3,500 because you've had to spend two weeks on it and the other one might be worth \$900. They didn't know from that invoice that you provided them.
315. When questioned at interview regarding the amount of information provided in the external investigator invoices and whether there was sufficient information to determine whether the claim was accurate, the former Manager, AIU, said:
- In hindsight, particularly after VAGO came through we started talking about how these things should be done, it was brought to my attention that you really should be looking at these things closer.
316. The former Manager also stated:
- As far as I am aware, the information on invoices was the same as had always been in place from 2004, and I inherited the systems of at least three previous managers - I did not change the invoicing practice of contract investigators. Given adequate procurement and contract

training, I (or one of the previous managers) may have earlier identified a need for better and more testable particulars on invoices and more stringent vetting processes.

...

Nobody, from the Director to anybody in the Finance unit ever questioned the information that was on any invoice or suggested that the information on them was inadequate for checking purposes.

317. The former Director IRC stated that:

There was ... regular contact between external investigators and one or other of the management group. As a result of day-to-day contact with external investigators, the management group within the AIU were intimately familiar with the work being done at any time on any file and so were able to audit accounts related to files as the accounts were rendered.

...

The material with which I have been provided contains ... no examples of inappropriate, inflated, unsubstantiated or improper billing.

...

In or about late 2011, I raised the issue of a lack of detail on some invoices with the AIU Manager and required more information to be included in the invoices submitted to the commission by the external contractors. This instruction was implemented.

318. The current Commissioner has advised my officers that the practice of assigning investigative work to external contractors ceased in August 2012.

Corruption risks

319. One of the Commission's statutory functions is to investigate allegations of breaches of the Building Act and associated legislation, including the Regulations. This includes complaints about the professional conduct of registered building practitioners.³⁵

320. The Commission undertakes this function through its Audit and Investigation Unit (AIU). Briefs of evidence and investigation reports are prepared by AIU investigators and considered by AIU Management.

321. Where it is considered that there is evidence of a breach, a decision is made by AIU management to refer the practitioner either to the Practitioners Board for a disciplinary hearing, or to the Magistrates court for matters requiring formal prosecution.

322. The AIU consists of 12 staff: four regional and eight metropolitan-based investigators.

Recruitment

Failure to conduct background checks

323. My investigation identified that the Commission does not require internal applicants for employment to undergo a criminal records check. This is despite concerns having been raised in the past by senior managers as to the backgrounds of a number of its staff, particularly in the AIU.

³⁵ Building Commission, *Investigation policy*, page 4.

324. Ten (83 per cent) of these investigators are former Victoria Police officers, as were the former Director and Manager of the AIU.
325. My investigation identified internal emails and memorandums where concerns were raised with the then Director and Manager of the AIU, and the former Commissioner Mr Arnel, regarding the backgrounds of some of the former Victoria Police officers and the need for staff to undergo a criminal records check. I have outlined two examples in the case studies below:

Case study 5 – Mr E

Mr E resigned from Victoria Police on 6 November 2010 and commenced with the Commission on 8 November 2010 as an Investigator in the AIU. Mr E was not required to undergo a criminal records check as part of the application process.

In December 2010, shortly after Mr E's commencement, concerns were raised regarding the circumstances in which he left Victoria Police. When approached, Mr E confirmed that he was being investigated for alleged theft by his former employer, Victoria Police, and that he'd also had a past history of cocaine use.

Despite still being on probation the Commission did not terminate Mr E's employment. Instead his probation was extended for a further three months while the Victoria Police investigation continued. It was not until April 2011, following a complaint that Mr E had been drinking with a builder he was inspecting, and had also accepted pain medication from the builder, that Mr E agreed to resign.

In June 2011 Mr E was found guilty and fined \$468.10 in relation to one count of theft and received a six month good behaviour bond for charges relating to use and possession of heroin.

Case study 6 – Mr F

Mr F commenced with the Commission on 2 May 2011 and is still employed there. Mr F had previously worked for an external investigator contracted to the Commission and held a Private Inquiry Agents Licence, under the *Private Security Act 2004*.

Prior to this Mr F had been a Senior Constable with Victoria Police until his resignation in September 2008. My investigation confirmed that in October 2008 Mr F had been found guilty and fined \$12,000 without conviction in relation to offences of possessing prohibited weapons and a firearm offences he was charged with whilst in the Victoria Police.

Mr F said at interview that the charges related to an old air rifle, equipment relating to his martial arts training (knives, batons and nunchucks) and chinese fire crackers.

In March 2011 Mr F was advised by Victoria Police of changes to the eligibility criteria for licences under the *Private Security Act 2004* that meant that effective July 2011, the offences he had been found guilty of in 2008 were now considered 'disqualifying' offences. Mr F was advised that his private security licence would therefore be cancelled.

Two weeks after receiving this notification Mr F submitted an application for an investigation position with the Commission. Despite the application being 10 days late it was accepted by the then Manager, AIU.

Mr F was not required to undergo a criminal records check as part of the application process. Both Mr F, and the then Manager of the AIU did however confirm that they had discussed Mr F's criminal record prior to him being awarded the position.

The then Manager, AIU confirmed at interview that he did not discuss Mr F's criminal record with anyone else until after Mr F had been employed, when the issues were identified by the Commission's human resources area. Despite still being on probation at the time, Mr F was allowed to remain at the Commission.

326. By comparison, the Commission requires persons applying for registration as a building practitioner to answer questions regarding criminal charges and convictions. For example:
1. Have you, within the last 10 years as an adult or the last five years as a child, been convicted or found guilty of an indictable offence or an offence that, if committed in Victoria, would be an indictable offence involving fraud, dishonesty, drug trafficking or violence?
327. My investigation obtained criminal and disciplinary records for a number of current and former Commission staff who had previously been employees of Victoria Police including the two staff mentioned in case studies 5 and 6. I identified the following charges, both criminal and disciplinary, that resulted in findings of guilt and/or convictions on the records of five Commission employees examined:
- drug offences such as possession and use of heroin
 - offences concerning accepting bribes, theft and unjustified charges
 - weapon related offences such as carry and possess unregistered or prohibited weapon
 - motor vehicle offences such as dangerous driving, drink driving and speeding.
328. The employees were predominantly employed as investigators in the Commission's AIU, but also included a Manager from its Registration area. One of them is still employed by the Commission.
329. My investigation confirmed that had criminal records checks been conducted as part of the Commission's recruitment process, details of criminal charges and/or convictions would have been available for at least two of these employees. Four of the five employees were also under investigation for other offences at the time they resigned from Victoria Police and as a result of their resignations, the disciplinary charges were not pursued by Victoria Police.
330. I note that Victoria Police requires applicants wishing to obtain a licence to conduct investigations in the private security industry to answer questions in relation to their criminal history such as whether they have been convicted of any offence in Australia or overseas or found guilty of an offence without a conviction being recorded.

331. At interview the Commission's Director, People & Culture said that she had raised concerns about the need to conduct criminal records checks on applicants wanting to work at the Commission, with Mr Arnel. She said:

I went to ... the Commissioner, and I said 'they've done it again, they've replaced like with like' ... we really should bring in Police checks', but it fell on deaf ears, he really wasn't interested.

332. When asked at interview why the Commission did not require applicants to submit to criminal record checks during his time as Commissioner, Mr Arnel said:

Look I really don't know. The People and Culture policies were designed to keep up with public sector policies, and if it was a public sector policy that required that well there should have been a matching arrangement.

333. Mr Arnel denied that concerns had been raised with him about the Commission's failure to conduct such checks. At interview he said:

I don't recall that. I mean if somebody had brought that to me, and once again to be perfectly blunt about it, if somebody had come to me and said I think in this case we should do a police check why would I go against that idea ... I don't recall that having ever been brought to my attention and if it was I would have said well let's do it.

Favouritism

334. During the course of my investigation, concerns were raised in relation to what could be perceived as favouritism regarding the employment of former police officers within the Commission's AIU.

335. At interview the Director, People & Culture said:

It seems that a number of my frequent flyers are ex-VicPol. So much so that for probably three of four years I've had a number of discussions with Tony Arnel that we should not be hiring ex-VicPol ... there is an invisible sign that says 'Bad coppers this way' and we always seem to pick them up ... and I've always been unsettled about this and how these people were engaged.

...

I don't believe the recruitment process is open and transparent. I believe we have cleaned up the process for all the rest of the Commission except for this one area. And the problem with this one area is that it seems that even in interviews ... I'm told by my staff, that they seem to know the person [interviewed] ...

336. In response to this issue, the former Director, IRC, himself a former Victoria police officer, said:

Ex-Victoria Police engaged by the Commission had undergone that expensive training ... Such a skill set is very rare and, as the results show, was a great advantage to the Commission ... Those with investigative training and experience can be easily taught the workings of the building industry; the reverse is simply not true.

337. My investigation identified questionable practices in relation to a number of internal recruitment processes involving the Commission's AIU. I have outlined two such examples below.

Appointment of Mr F

338. As noted earlier in case study six, Mr F applied for an investigator role with the Commission on 21 March 2011, forwarding his application via email to the then Manager, AIU.
339. Later that morning the former Manager, AIU, sent an email to the Commission's Human Resources department with Mr F's application attached advising that he had 'agreed to accept the late application; please add him [Mr F] to the shortlist for interview'.
340. In a separate email sent to Mr F 24 minutes later the former Manager, AIU wrote:
- Thanks [Mr F],
- I have forwarded your application to HR to organise an interview.
- I hope you don't mind, but I made a couple of very minor adjustments to the KSC document so that it's in line with Commission expectations.
- Give me a call if you would like a coffee to discuss.
341. In response Mr F wrote:
- [the former Manager, AIU],
- Your assistance is appreciated, please feel free to do anything you deem necessary.
- I would very much like to catch up during the week, just to say G'day.
- ...
- I will ring in a couple of days, unless you feel that a coffee is important to have quickly.
342. When asked at interview what adjustments he had made to Mr F's key selection criteria, the former Manager, AIU said:
- I've got no idea what they were. I've used the term very minor so I assume they were very minor, might have been spelling I don't know. I certainly wasn't going to write a KSC for him.
343. The former Manager denied that his editing of Mr F's job application was indicative of a predetermined outcome, but agreed that it could be perceived that way.
344. At interview, the Director, People & Culture spoke of her concerns regarding the recruitment practices in the AIU area. She said:
- ... it appears that there was this 'other' recruitment process that [the Manager, People and Culture] and I were suspicious about where [the former Manager, AIU] has coffees with people outside of the building ... for me it's just too cosy, it's far too cosy.
345. In response to this issue in my draft report Mr F stated:
- The only direct assistance I was ever aware of receiving from [the former Manager, AIU] was his facilitation of forwarding my application to People and Culture for consideration.

346. The former Manager, AIU also stated:

No 'recruitment' process existed that I am aware of other than the formal application process managed by People & Culture. I often had coffee meetings with people outside the building as did most staff, especially managers; if anybody perceived that as some sort of recruiting process, then they have a flawed perception.

...

I did not have any kind of a relationship with [Mr F] prior to this incident, and had no reason to predetermine an outcome in his favour...there was no intent in my mind to assist [Mr F] with his application or to improve his chances of succeeding in his application ... given the same circumstances again, I would not alter any application in any way.

347. In March 2012 the former Manager, AIU, received a demotion and first and final warning in relation to an internal investigation into the receiving and forwarding of inappropriate emails by Commission staff.

348. In August 2012 the Commission informed my office that it had identified further evidence of the former Manager having assisted another applicant prepare his application for an advertised investigator position. The Commission advised that on the basis of this, it had terminated the former Manager's employment.

Appointment of Mr G

349. On 24 August 2010, the then Director, IRC forwarded an application from Mr G, a former Leading Senior Constable with Victoria Police, to the Commission's HR department. The email read:

A late application of which I am quite prepared to accept given the calibre of the applicant.

Regards,

350. The former Director, IRC, confirmed at interview that he had not been the contact for applicants for this, or any other advertised position at the Commission.

351. My investigation identified a calendar entry in the former Director's emails dated 26 August 2010 for a 'Meet & Greet- [Mr G]. Other invitees included AIU two Team Leaders, one of whom was on the interview panel for the position Mr G was applying for.

352. The former Director denied that information was provided to Mr G in this meeting to assist him with the interview process or that the selection process was predetermined. He stated:

I can assure you that there is nothing sinister in that at all. If someone wanted to meet me and discuss a role that they were going to apply for at the Commission I would meet them. I'm not about to go and say no I can't, unless I'm on the selection panel, and then I definitely would say no.

353. My officers pointed out to the former Director that one of the AIU team leaders at the meeting was on the interview/selection panel for Mr G. He said:

Well that surprises me if they were on the selection panel ...

354. The AIU team leader did not wish to respond to a draft copy of this report.
355. When questioned as to whether he had met other applicants previously, the former Director said:
- Yeah, as I said that happened with [a current AIU Team Leader]. I mean it's like any job interview, if you are interested in putting in for vacancy you want to go find out about what the job entails. I don't think there is anything wrong with that, it's probably good.
356. The former Director, IRC, stated:
- I had not met [Mr G] prior to 26 August 2010. His application indicated his considerable calibre. I do not want the Commission to miss the opportunity of employing such a candidate simply on the basis that the application was late ... I did not advocate for him to be employed.
- ... I was not involved in making a decision about whether to employ Mr G and provided him with no information about any potential interview. Put simply, it was not something I knew anything about - I was not involved in it. My conduct was completely appropriate.
- ...The meeting [with Mr G] was anything but clandestine - it was held in the Commission office and plainly referred to in my diary.
357. The former Director resigned from the Commission in April 2012 after being advised by the new Commissioner Mr Kefford that his contract would not be renewed.

Termination payment

358. On 30 January 2012 the Secretary, Department of Planning and Community Development (the department) wrote to the then Commissioner Mr Arnel stating:
- Further to our recent discussions, this letter is to confirm your intention to resign from the role of the Building Commissioner and Plumbing Industry Commissioner with a notice period of 5 months. The notice period will become effective 5 February 2012 and conclude Monday 9 July 2012.
- I do not require you to work your notice period and you will be paid 5 months in lieu of notice and a one-off allowance of \$10,000 in lieu of your outplacement and career development services. In addition, I have further agreed to you continuing the use of your existing motor vehicle until the conclusion of your 5 month notice period.
359. The five months' salary and \$10,000 outplacement and career development payment made to Mr Arnel totalled \$124,978 (before tax).
360. My investigation identified that Mr Arnel's payout was not in accordance with the terms of his executive contract with the department. Under this contract Mr Arnel was required to give four weeks' notice and was entitled to a payout for the same period.
361. In contrast, had his employment been terminated Mr Arnel would have been entitled to four months' notice or a payment in lieu of this notice. He would also have been entitled to 'up to four months reasonable outplacement support and counselling during the notice period' and not a lump sum amount of \$10,000. There is also no provision in Mr Arnel's contract for him to retain the use of the Commission's motor vehicle when he received a payment in lieu of notice.

362. At interview, Mr Arnel was asked if his decision to resign was of his own volition. He said:

Yes it was ... the government had changed and I felt that after twelve years it was time for me to do something different ... I had spoken to [the Minister for Planning] on a couple of occasions, I had twelve months of my contract left and I'd said to him that I was thinking of doing something else, and subsequent to the Auditor-General's report, and there was a lot of publicity about it, I thought no it's time for me to do something different. And I spoke to the Secretary of the Department of Planning and Community Development and on the basis of the 12 months contract that I had left he was prepared to negotiate.

363. In response to the above issues, Mr Arnel stated:

The Secretary, for whatever reason, offered me terms on which I would leave my employment which I accepted. As to the car, had I worked out the period of notice, I would have had access to the car for the entire period including the benefit of the value of the private use of the car. I do not consider that I should have been worse off simply because the Secretary elected not to require me to work out my period of notice.

364. In light of my concerns I wrote to the Secretary of the department outlining the above evidence and recommending that it review its human resources practices to ensure that executives do not receive resignation or termination payments outside the entitlements contained in their employment contracts.

365. The Acting Secretary of the department responded by accepting my recommendation.

Conclusions

366. The Commission has failed to conduct adequate checks or set minimum standards in relation to the criminal history of its staff, and in particular, its investigators. As a result it has employed a number of staff with backgrounds and a record of behaviour that represented a risk to the Commission's integrity and reputation.

367. The Commission's decision not to undertake criminal record checks, require applicants to make a declaration about any convictions or antecedents, or assure itself of the integrity of its employees, means that a higher threshold is set for the integrity of building practitioners than the people charged with regulating them.

368. In one instance, management at the Commission made a decision to employ Mr F knowing that he had been deemed unsuitable by the Chief Commissioner of Police to perform the same role in the private industry due to his criminal record.

369. I consider that the internal recruitment processes for investigators have not been conducted in an open and transparent manner, and have been influenced by cronyism that existed in the Commission's AIU.

370. The staffing of the AIU predominantly with former Victoria police officers has meant that a gap has been created in relation to building knowledge and experience in the unit. As a result reliance is placed on external technical contractors, not only for advice and support on investigations, but also to carry out the Commission's responsibility to conduct audits on building surveyors. This has occurred at significant cost to the Commission.
371. The Commission's outsourcing of 64 per cent of its investigations into practitioner conduct to external contractors is, in my view, costly and reflects a failure to adequately resource one of its core functions.
372. The decision taken by the Commission to extend the probation period of Mr E following his admission of past cocaine use and that he was under investigation for theft and drug possession offences by his former employer, Victoria Police was wrong. In view of the seriousness of the alleged offences and Mr E's role, I consider that the Commission had more than sufficient grounds to terminate his employment. Its decision to extend his probation period was inappropriate.
373. The information required by the Commission in relation to invoices from its external investigators has been poor. Until recently the Commission accepted without challenge or regular vetting, invoices of up to \$30,000 despite their being scant detail of the services provided. This combined with the failure to put in place formal contracts with its investigators for six years has left the Commission exposed to inappropriate billing practices and the risk of inflated claims.
374. The terms settled on by the department and Mr Arnel with regard to his resignation as Building Commissioner were considerably more generous than the entitlements set out in his executive contract. I do not see any justification for this payment over and above contractual terms. I have recently raised concerns about this practice in another investigation.³⁶

Recommendations

I recommend that the Commission:

Recommendation 12

Strengthen its recruitment practices by requiring successful applicants to:

- undergo a criminal records and finger-print checks
- complete and sign a statutory declaration in relation to their background including any criminal history and antecedents, as well as whether they are, or have ever been the subject of an investigation by a law enforcement agency or current/former employer.

Commission response

Recommendation accepted.

³⁶ Victorian Ombudsman, *Investigation into allegations of improper conduct involving Victoria Police - Whistleblowers Protection Act 2001*, October 2012.

Recommendation 13

Review the criteria for investigator positions to ensure that appropriate emphasis is placed on investigative experience as well as technical knowledge/experience of the building/plumbing industry.

Commission response

Recommendation accepted.

Recommendation 14

Introduce specific training for investigators to ensure an adequate standard of technical knowledge.

Commission response

Recommendation accepted.

Recommendation 15

Review Mr F and Mr G's suitability for continued employment with the Commission in light of this report.

Commission response

Recommendation accepted.

I recommend that the Department of Planning and Community Development:

Recommendation 16

Review its human resources practices to ensure that executives do not receive payments upon their resignation or termination outside the entitlements set out in their employment contracts.

Department response

Recommendation accepted.

Summary of recommendations

I recommend that the Practitioners Board:

Recommendation 1

Review the registration process for all categories of registration and:

- develop minimum standards for qualifications and experience of applicants
- clearly identify the supporting documentation to be submitted with an application, including whether examples of experience cited can be hypothetical or must be real
- set out threshold scores for each stage of the assessment process which must be achieved before an applicant can progress to the next stage
- articulate the documentation that must be retained on a practitioner's file as a record of each stage of the assessment process
- ensure that it receives detailed information including the results of applicants for each stage of the assessment to inform its consideration of applicants for registration.

Building Practitioners Board response

A number of the specific requirements are contained in regulations. I agree the Board and the Commission (with the Minister) should urgently discuss adjustments to the regulations necessary to give effect to your suggestions and make other improvements.

Recommendation 2

Ensure that face-to-face interviews of applicants are audio-recorded and retained in support of an applicant's assessment.

Building Practitioners Board response

Agree in principle. The Commission would be required to provide the necessary resources.

Recommendation 3

Conduct regular audits of the audio recordings of face-to-face interviews to monitor the performance of its Domestic Builder Competency Assessors.

Building Practitioners Board response

Agree in principle. This audit could be conducted in conjunction with the monthly audit currently being conducted.

Recommendation 4

Consider whether the Practitioners Board should meet more frequently than once a month to consider registration applications.

Building Practitioners Board response

This can be discussed by the Board and the Commission. We have already implemented that registrations, that have in the past required delegation, are now reviewed by a Board subcommittee which in effect means registration is now being reviewed twice monthly.

Recommendation 5

Develop a policy concerning the approval process for a registered training organisation proposing qualifications to the Practitioners Board for the purpose of registration. This should include obtaining formal advice from the VRQA or its national equivalent to ensure that the courses offered are accredited.

Building Practitioners Board response

Agree. While this additional scrutiny of the training sector may be desirable, legislative change and a consideration of extra Board resources would be needed to give it effect. The Board has no powers to recognise or approve (or refuse) RTOs. Registration of RTOs is the responsibility of the Victorian Registration and Qualifications Authority.

Recommendation 6

Require that the Assessment Co-ordinator, Competency Assessors and the Registrar complete a conflict of interest declaration for each application considered and that:

- any conflict is discussed with an appropriate manager and recorded on the applicant's file
- where a conflict is identified, ensure that the staff member is unable to have further involvement with the application.

Building Practitioners Board response

Agree. This is already a stipulation in the Commission assessor contract. Board members must declare any conflicts at meetings.

Recommendation 7

Ensure that the Registrar is not involved in the assessment of applicants for registration.

Building Practitioners Board response

Agree. Already a current practice.

Recommendation 8

Introduce tighter controls to ensure the integrity of practitioner registration applications, including:

- requiring applicants to complete a statutory declaration that they have personally prepared all documentation submitted to the Practitioners Board
- requiring that applicants provide two technical referees by way of a statutory declaration.

Building Practitioners Board response

Agree. This is desirable but it may require some amendments to the governing legislation.

I recommend that the Commission:

Recommendation 9

Review all registration applications which have been:

- submitted by the Universal Technical Institute or Mr Syed Shah in light of this report
- approved under delegation by Mr Peter Brilliant and take appropriate action where practitioners have been registered without appropriate qualifications or experience.

Commission response

Recommendation accepted.

Recommendation 10

Review its practice of providing:

- hospitality including meals, and entertainment
- sponsorship to external stakeholders, particularly those whom the Commission has a responsibility to regulate
- general funding to external associations; and

Review its hospitality and entertainment policy, in particular the \$500 expenditure threshold in light of my report.

Commission response

Recommendation accepted.

Recommendation 11

Seek an audited statement on how monies paid by the Commission to the Green Building Council of Australia and World Green Building Council since their inception have been spent.

Commission response

Recommendation accepted.

Recommendation 12

Strengthen its recruitment practices by requiring successful applicants to:

- undergo a criminal records and finger-print checks
- complete and sign a statutory declaration in relation to their background including any criminal history and antecedents, as well as whether they are, or have ever been the subject of an investigation by a law enforcement agency or current/former employer.

Commission response

Recommendation accepted.

Recommendation 13

Review the criteria for investigator positions to ensure that appropriate emphasis is placed on investigative experience as well as technical knowledge/experience of the building/plumbing industry.

Commission response

Recommendation accepted.

Recommendation 14

Introduce specific training for investigators to ensure an adequate standard of technical knowledge.

Commission response

Recommendation accepted.

Recommendation 15

Review Mr F and Mr G's suitability for continued employment with the Commission in light of this report.

Commission response

Recommendation accepted.

I recommend that the Department of Planning and Community Development:

Recommendation 16

Review its human resources practices to ensure that executives do not receive payments upon their resignation or termination outside the entitlements set out in their employment contracts.

Department response

Recommendation accepted.

Appendix 1 – Expenditure by the Commission on sporting events, January 2010 – July 2011

Transaction date	Venue	Type of event	Amount \$
28 Jan 2010	Melbourne Cricket Club	AFL	1,795.45
			1,975.00
			1,795.45
			1,975.00
31 Jan 2010	Melbourne Stadiums Ltd	AFL	14,545.45
			16,000
	Melbourne Cricket Club	AFL	3,409.09
			3,409.09
30 Jun 2010	Tennis Australia	Australian Open	2,631.82
			2,895.00
Total 1/1/10 – 30/6/10			\$50,431.35
21 Jul 2010	Melbourne Stadiums Ltd	AFL	1,545.45
			1,700.00
25 Feb 2011	Melbourne Stadiums Ltd	AFL	9,181.82
28 Feb 2011	Melbourne Cricket Club	AFL	2,154.45
			2,370.00
23 Mar 2011	Melbourne Cricket Club	AFL	2,154.45
			2,370.00
25 Mar 2011	Melbourne Stadiums Ltd	Corporate Suite packages	6,681.82
			7,350.00
12 Apr 2011	Melbourne Stadiums Ltd	AFL	2,091.00
			2,300.00
23 May 2011	Melbourne Stadiums Ltd	Corporate Suite packages	2,500.00
			2,750.00
31 Jul 2011	Ticketek Pty Ltd	Australian Open	2,740.91
			3,015.00
Total 1/7/10 – 31/7/11			\$50,905.10
Total			\$101,336.45

Source: Information provided by the Commission.

Ombudsman's Reports 2004-12

2012

Whistleblowers Protection Act 2001 Investigation into allegations concerning rail safety in the Melbourne Underground Rail Loop
October 2012

Whistleblowers Protection Act 2001 Investigation into allegations of improper conduct by CenITex officers
October 2012

Whistleblowers Protection Act 2001 Investigation into allegations of improper conduct involving Victoria Police
October 2012

Whistleblowers Protection Act 2001 Investigation into allegations against Mr Geoff Shaw MP
October 2012

Investigation into the temporary closure of Alfred Health adult lung transplant program
October 2012

Investigation into an alleged corrupt association
October 2012

Whistleblowers Protection Act 2001 Investigation into allegations of detrimental action involving Victoria Police
June 2012

Own motion investigation into Greyhound Racing Victoria
June 2012

The death of Mr Carl Williams at HM Barwon Prison – investigation into Corrections Victoria
April 2012

Whistleblowers Protection Act 2001 Conflict of interest, poor governance and bullying at the City of Glen Eira Council
March 2012

Investigation into the storage and management of ward records by the Department of Human Services
March 2012

2011

Investigation into the Foodbowl Modernisation Project and related matters
November 2011

Investigation into ICT-enabled projects
November 2011

Investigation into how universities deal with international students
October 2011

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

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

SafeStreets Documents – Investigations into Victoria Police's Handling of Freedom of Information request
September 2011

Investigation into prisoner access to health care
August 2011

Investigation into an allegation about Victoria Police crime statistics
June 2011

Corrupt conduct by public officers in procurement
June 2011

Investigation into record keeping failures by WorkSafe agents
May 2011

Whistleblowers Protection Act 2001 Investigation into the improper release of autopsy information by a Victorian Institute of Forensic Medicine employee
May 2011

Ombudsman investigation – Assault of a Disability Services client by Department of Human Services staff
March 2011

The Brotherhood – Risks associated with secretive organisations
March 2011

Ombudsman investigation into the probity of The Hotel Windsor redevelopment
February 2011

Whistleblowers Protection Act 2001 Investigation into the failure of agencies to manage registered sex offenders
February 2011

Whistleblowers Protection Act 2001 Investigation into allegations of improper conduct by a councillor at the Hume City Council
February 2011

2010

Investigation into the issuing of infringement notices to public transport users and related matters
December 2010

Ombudsman's recommendations second report on their implementation
October 2010

Whistleblowers Protection Act 2001 Investigation into conditions at the Melbourne Youth Justice Precinct
October 2010

Whistleblowers Protection Act 2001 Investigation into an allegation of improper conduct within RMIT's School of Engineering (TAFE) – Aerospace
July 2010

Ombudsman investigation into the probity of the Kew Residential Services and St Kilda Triangle developments
June 2010

Own motion investigation into Child Protection – out of home care
May 2010

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

Whistleblowers Protection Act 2001 Investigation into the disclosure of information by a councillor of the City of Casey
March 2010

Ombudsman's recommendations – Report on their implementation
February 2010

2009

Investigation into the handling of drug exhibits at the Victoria Police Forensic Services Centre
December 2009

Own motion investigation into the Department of Human Services – Child Protection Program
November 2009

Own motion investigation into the tendering and contracting of information and technology services within Victoria Police
November 2009

Brookland Greens Estate – Investigation into methane gas leaks
October 2009

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

An investigation into the Transport Accident Commission's and the Victorian WorkCover Authority's administrative processes for medical practitioner billing
July 2009

Whistleblowers Protection Act 2001 Conflict of interest and abuse of power by a building inspector at Brimbank City Council
June 2009

Whistleblowers Protection Act 2001 Investigation into the alleged improper conduct of councillors at Brimbank City Council
May 2009

Investigation into corporate governance at Moorabool Shire Council
April 2009

Crime statistics and police numbers
March 2009

2008

Whistleblowers Protection Act 2001 Report of an investigation into issues at Bayside Health
October 2008

Probity controls in public hospitals for the procurement of non-clinical goods and services
August 2008

Investigation into contraband entering a prison and related issues
June 2008

Conflict of interest in local government
March 2008

Conflict of interest in the public sector
March 2008

2007

Investigation into VicRoads' driver licensing arrangements
December 2007

Investigation into the disclosure of electronic communications addressed to the Member for Evelyn and related matters
November 2007

Investigation into the use of excessive force at the Melbourne Custody Centre
November 2007

Investigation into the Office of Housing's tender process for the cleaning and gardening maintenance contract – CNG 2007
October 2007

Investigation into a disclosure about WorkSafe's and Victoria Police's handling of a bullying and harassment complaint
April 2007

Own motion investigation into the policies and procedures of the planning department at the City of Greater Geelong
February 2007

2006

Conditions for persons in custody
July 2006

Review of the *Freedom of Information Act 1982*
June 2006

Investigation into parking infringement notices issued by Melbourne City Council
April 2006

Improving responses to allegations involving sexual assault
March 2006

2005

Investigation into the handling, storage and transfer of prisoner property in Victorian prisons
December 2005

Whistleblowers Protection Act 2001 Ombudsman's guidelines
October 2005

Own motion investigation into VicRoads registration practices
June 2005

Complaint handling guide for the Victorian Public Sector 2005
May 2005

Review of the *Freedom of Information Act 1982*
Discussion paper
May 2005

Review of complaint handling in Victorian universities
May 2005

Investigation into the conduct of council officers in the administration of the Shire of Melton
March 2005

Discussion paper on improving responses to sexual abuse allegations
February 2005

2004

Essendon Rental Housing Co-operative (ERHC)
December 2004

Complaint about the Medical Practitioners Board of Victoria
December 2004

Ceja task force drug related corruption – second interim report of Ombudsman Victoria
June 2004