

Response to Operation Liverpool recommendation to the Department of Health and Human Services

Department of Health and Human Services

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1. Background

On 9 March 2017 the Independent Broad-based Anti-Corruption Commission's (IBAC) report titled *Operation Liverpool* was tabled in Parliament. The report examines the conduct of two officers of Bendigo Health: Mr Adam Hardinge, former construction manager and Mr John Mulder, Chief Executive Officer. Operation Liverpool found that Mr Hardinge acquired Bendigo Health property without authorisation, abused his position of authority and circumvented the usual procurement controls in place at Bendigo Health for the benefit of himself and certain contractors. The investigation also identified instances of Mr Mulder misusing Bendigo Health resources, services of Bendigo Health employees and contractors and claiming payment for rental of properties owned by his wife under the guise of living away from home expenses.

2. IBAC's recommendation to the department

The Operation Liverpool report includes six recommendations to Bendigo Health and one recommendation to the Department of Health and Human Services (the department). IBAC's recommendation to the department reads as follows:

Recommendation 7

That the Department of Health and Human Services consider the issues raised in Operation Liverpool and whether similar vulnerabilities could exist in other Victorian health services. The Department is to report to IBAC by 30 September 2017 on steps taken to address any such vulnerabilities in the broader health sector.

3. Purpose and scope

While the prevalence of corrupt and inappropriate conduct in health services is difficult to measure, it is apparent that the vulnerabilities identified in Operation Liverpool have application to the broader health sector. The purpose of this document is to provide IBAC with a response to recommendation seven. In considering the implementation of IBAC's recommendation, the department has had regard to:

- the specific vulnerabilities identified in Operation Liverpool;
- IBAC's recommendations made to Bendigo Health and how these may apply to the broader health sector;
- the department's current oversight of Victorian health services and the extent of the authorising environment that enables oversight;
- new steps the department has or will take to address vulnerabilities identified in Operation Liverpool, within the broader Victorian health sector; and
- the protected disclosure regime.

4. Vulnerabilities identified in Operation Liverpool

Operation Liverpool highlights key vulnerabilities identified during IBAC's investigation into Bendigo Health. These include:

- the ability to circumvent Bendigo Health's procurement policies;
- lack of monitoring to ensure that appropriate financial and procurement policies or controls were implemented;
- insufficient oversight of individuals;
- failure to act on financial anomalies when brought to the attention of Mr Hardinge's manager;

- lack of focus on corruption risks, organisational culture and executive leadership within Bendigo Health; and
- insufficient control over assets of both high and low value.

5. Summary of recommendation implementation

The below dot points provide a summary of the key ways in which the department will implement IBAC's recommendation. Further detail and context relating to each dot point is provided throughout this paper. The department will:

- disseminate a draft *Model Fraud and Corruption Control Framework* to portfolio agencies, public bodies within the department's remit and department funded agencies for their customisation and implementation;
- advise 97 department portfolio agencies¹ in writing of the requirement to report suspected corruption to IBAC;
- develop a capability assessment for completion by health services for the purpose of ensuring salient integrity risks and fraud and corruption issues are addressed;
- monitor capability assessment outcomes and take action where risks are not adequately addressed;
- require health services to review their integrity related policies;
- require health services to review their staff training for the purpose of communicating new policy requirements and delivering information about the management of fraud and corruption risks;
- review and revise the department's program of education and communication to health services regarding integrity and corruption risks;
- promote learnings from Operation Liverpool across the health sector through educational forums;
- update guidelines for capital works in the Victorian health sector to address multiple issues, including those identified in IBAC's report that have relevance to the broader health sector;
- require members of health capital works governance committees to complete all requirements of the conflict of interest process;
- conflict of interest is a standard agenda item for declaration and documenting at each governance committee meeting;
- seek an attestation of compliance from the relevant Steering Committee (or equivalent) for complex projects, such as capital works and ICT, in relation to implementation of key integrity policies;
- develop and disseminate guidelines for health services to implement a *Chief Executive Officer and Executive Business Expense Policy*;
- investigate the use of collated data from health services staff surveys as a means to monitor staff perceptions of organisational culture and address issues relating to integrity, impartiality and accountability within health services;
- advocate for declarable associations to be included in template conflict of interest policies and declaration forms made available to the public sector;
- require health services boards to complete an attestation about the implementation of a conflict of interest policy within their respective health service; the completion of Declaration of Private Interest forms by board members; and retaining conflict of interest as a standing agenda item during board meetings;

¹ This figure represents health services and applicable cemeteries and crematoria.

- advocate for the protected disclosure regime to better capture portfolio agencies and department funded bodies; and
- provide advice and protected disclosure support to portfolio agencies, public bodies within the department's remit and department funded bodies where amendments to the Protected Disclosure Act are made.

6. Current governance model

6.1 Governance and Statement of Priorities

Victoria has a long-established system of governance, with Victorian public health services established as independent legal entities under the *Health Services Act 1988 (Vic)*. Public health service governance operates within a broader public sector accountability framework. The board of each health service is appointed by the Governor-in-Council on recommendation of the Minister for Health, with each board directly accountable to the Minister. The Minister may direct a health service, initiate reviews or request information in the public interest. Where it is identified that a significant risk may exist, the Minister may appoint a Ministerial Delegate to the board of a health service to provide additional oversight and guidance on addressing this risk.

The department assists the Minister in accounting to Parliament for the actions and performance of health services. One of the key mechanisms of the management of health services is the annual Statement of Priorities (SoP) between the health service and the Minister for Health. This annually prepared document details the health service's strategic priorities and the specific deliverables the health service will achieve in the year ahead. Health service achievement of these deliverables are monitored by the department as part of the Victorian Health Services Performance Monitoring Framework (PMF), with the achievement or non-achievement of these measures contributing to an overall risk rating and monitoring level for each health service.

In addition, the department supports health services to comply with departmental policies and guidelines by providing guidance and advice on specific requirements. Health service boards and executive are required to ensure that their health service is compliant with the relevant policy and legislation. Monitoring and supporting health services to meet these requirements is also a key part of the PMF process, with health service executive and boards meeting and reporting regularly to senior department staff on key service and governance matters.

6.2 Performance monitoring

The PMF outlines the Government's approach to overseeing the performance of Victorian health services. The PMF is primarily focussed on achieving the best outcomes for patients of health services. However, the PMF also provides a mechanism to improve governance, leadership, culture and financial management within health services, elements of which are relevant to the vulnerabilities identified in Operation Liverpool. The PMF operates within the legislative context of the Health Services Act. The PMF outlines the departments, Safer Care Victoria, the Office of the Chief Psychiatrist and the Victorian Agency for Health Information's roles in performance oversight of the health sector.

The PMF allows for a risk based approach to performance management of Victorian health services across a number of domains. In the event significant risks relating to fraud and corruption were identified, the department can elevate a health service's level of monitoring, support and intervention. The department is also able to utilise external sources of performance intelligence in identifying risk; such as the Health Complaints Commissioner, Victorian Managed Insurance Authority and Australian Health Practitioner Regulation Agency.

Interventions include more frequent meetings with health service executive or board and engaging independent experts to make recommendations for improvement. Where a health service fails to address areas of identified risk appropriately, the Minister's range of powers include the appointment of a board delegate, who reports to the Minister directly on actions the health service is undertaking to address the identified issue.

6.3 Policy and funding guidelines

The department annually publishes policy and funding guidelines², which consist of three volumes:

- Volume 1: Department of Health and Human Services overview;
- Volume 2: Health operations 2017-18; and
- Volume 3: Human services policy and funding plan 2015-19, update 2017-18.

Volume 1 provides an overview of information about the department, its Ministers and the 2017 budget overview.

Volume 2 of the policy and funding guidelines apply to all organisations funded by the former Department of Health. It reflects the government and department's role as a system manager and underpins the contracts at an organisational level (Statements of Priorities and service agreements). It also sets out the requirements that funded organisations must comply with in addition to their contractual and statutory obligations, outlines activity that are required in order to receive funding, and details expectations of administrative and clinical conduct.

The policy and funding guidelines are relevant for all funded organisations including health services, community service organisations and other funded organisations such as Ambulance Victoria.

Volume 3 of the policy and funding guidelines apply to all organisations funded by the former Department of Human Services. It provides funded organisations and departmental staff with information about the department's policy framework, objectives, budget, service deliverables, desired outcomes, reporting requirements, program guidelines and funding initiatives.

6.4 Financial governance of public health services

Victorian public hospitals are classified as general government entities within the health and human services portfolio, and as such are subject to the provisions of the *Financial Management Act 1994 (Vic)* and the *Standing Directions of the Minister for Finance 2016* (the Standing Directions). Health services have a board independently appointed by the Minister for Health, and are accountable for financial governance and effective financial management to the Victorian Government via their portfolio department.

Under the Standing Directions each agency is required to establish a sound control environment including the safeguarding and security of property and money. The control environment also includes the systems, rules, delegations and accountabilities to minimise the prospect of fraud or corruption occurring.

In the event that the preventative control systems fail, the agency is required to record all actual and suspected fraud, corruption and other losses. The health service is required to report the loss or theft to the department, along with the responsible Minister, the Auditor General and the health service's Audit Committee.

To supplement financial governance at health services, the department's Chief Finance Officer chairs an Industry Finance Committee meeting with the larger metropolitan and regional health services every six weeks to present current financial issues including financial controls, process improvements; any recent actual and potential fraud and loss events that may impact on the sector. Similar forums are held bi-annually with smaller rural and regional health services.

6.5 Capital works Guidelines

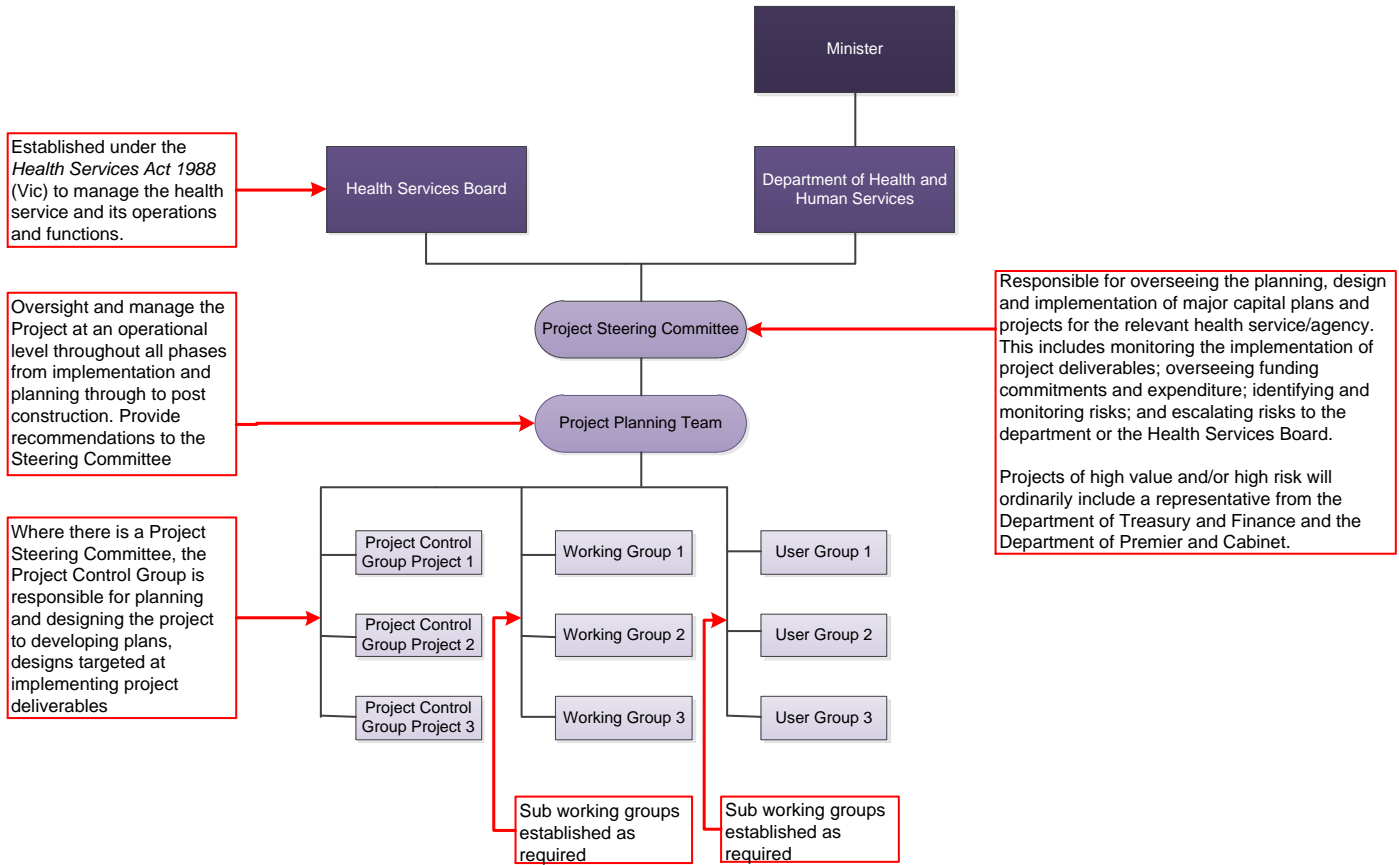
The department has developed a range of Planning and Development Guidelines to direct the delivery of health capital projects in Victoria, regardless of size, cost, complexity and source of funds. These Guidelines are publically available on the department's website (<http://www.capital.health.vic.gov.au/>). The Guidelines cover all phases of project planning and delivery; assist in establishing a consistent approach; and advocate best practice in the management, planning, design and implementation of capital projects. A number of the Guidelines are relevant to procurement processes and the department's oversight of health capital projects, including the following Guidelines:

² <https://dhhs.vic.gov.au/publications/downloads-dhhs-policy-and-funding-guidelines-2017>.

- Project Governance;
- Roles and Responsibilities;
- Engagement of Capital Consultants;
- Tendering, Evaluation and Acceptance;
- Monthly Reports;
- Approval to Tender; and
- Construction Contract Administration.

6.5.1 Health sector capital works governance

As referenced above, there is a specific *Guideline for Project Governance* that outlines the typical governance structure and membership for health capital projects. Projects delivered by the department are managed jointly by the department and the relevant health agency. The governance structure for each project is designed to support this approach, with representation from both parties at all levels of the structure. For smaller projects that are managed directly by health agencies, the principles within *the Guideline for Project Governance* are still relevant. The below depicts a typical governance structure for larger capital works.



The Project Steering Committee, Planning Team, Control Group, Working Groups and User Groups do not have financial delegation to commit major funds. A financial delegate from the department, health agency, or in some cases the Minister or Treasurer must approve the commitment of major funds. Smaller purchases which may be relevant to the broader project, such as the purchase of furniture items and equipment, are approved through the health agency's usual purchasing policies and procedures.

In accordance with the Guidelines, the Project Steering Committee or the Project Control Group is responsible for ensuring that all members in the governance groups complete and sign a conflict of interest form.

Some major and more complex projects may also report through to the Capital Committee, in addition to their dedicated Steering Committee. The Capital Committee is comprised of senior executives from the key government budgetary, economic and health areas. This includes the Secretary of the department (Chair), in addition to executive level personnel from the Department of Treasury and Finance. The Capital Committee is responsible for:

- assess and provide feedback to the Executive Board on proposals for future asset investment, including their alignment with strategic directions;
- identify emerging issues and key risks related to the department's assets and infrastructure investments and report to the Executive Board on these, with mitigation strategies;
- monitor and provide advice to the Executive Board on Whole of Government developments including the Asset Management Framework, cross-portfolio asset opportunities and key government policies;
- provide advice to the Executive Board in relation to assets owned, leased, and where there is an interest managed by the Secretary and/or Director of Housing;
- provide advice to the Executive Board on any at risk projects, including monitoring:
 - in association with the Department of Treasury and Finance; and
 - the delivery of major capital projects (Director of Housing funded)
- sharing knowledge and coordination of Whole of Government asset proposals and major infrastructure co-investment.

7. New steps to address vulnerabilities

The vulnerabilities identified in Operation Liverpool indicate that additional work needs to be done to address the risk of improper and inappropriate conduct in Victorian health services. The department's current oversight of Victorian health services, as described above, provides a platform for developing new steps to address vulnerabilities.

7.1 Developing a Fraud and Corruption Control Framework

The findings in Operation Liverpool and IBAC's recommendations to Bendigo Health demonstrate the importance of embedding integrity related policies and procedures within health services. During the course of IBAC's investigation, the department developed a *Model Fraud and Corruption Control Framework* (model framework) for department funded agencies and for portfolio agencies and public bodies within the department's remit. The model frameworks were developed for the purpose of guiding organisations on primary topics to consider when managing fraud and corruption. The model frameworks were drafted with consideration of legislation and best practice principles relevant to the detection, prevention and response to fraud and corruption, including the Minister for Finance's Standing Directions and the *Australian Standard Fraud and Corruption Control AS 8001-2008*.

The model framework for portfolio agencies and public bodies promotes the importance of a strong whistleblowing regime in accordance with the *Protected Disclosure Act 2012 (Vic)* and the requirement to report suspected corruption to IBAC. The department's dissemination of the model framework to health services that are public bodies, such as hospitals, is referenced in section 8.3 of this paper.

The model framework for funded agencies forms part of the department's Service Agreement with those agencies. Many funded agencies do not fall within the current definition of a 'public body'³ and are therefore not subject to the Protected Disclosure Act or the *Independent Broad-based Anti-corruption Commission Act 2011 (Vic)*. However, the model framework encourages confidential complaint management in circumstances where the Protected Disclosure Act does not apply. Further, the Service Agreement specifies that department funded agencies must:

- report suspected fraud and corruption within their organisation to the department; and

³ As per the definition provided in section six of the Independent Broad-based Anti-corruption Commission Act.

- have in place their own reporting, investigation and management strategies for fraud and corruption.

7.2 Informing portfolio agencies about mandatory reporting

The introduction of mandatory reporting to IBAC about suspected corruption within the Victorian public sector is a vehicle for addressing corruption in its earlier stages before it causes significant and irreversible damage to public agencies, its staff and clients.⁴ The department is committed to ensuring agencies within the department's portfolio comply with mandatory reporting, as specified in section 57 of the Independent Broad-based Anti-corruption Commission Act. In January 2017 the Secretary wrote to the principal officer of 97 public agencies within her portfolio to advise of mandatory reporting requirements. The Secretary's letter to principal officers also included:

- a fact sheet providing information about IBAC;
- directions for making mandatory notifications of suspected corrupt conduct;
- a document containing frequently asked questions and responses; and
- a mandatory notification form.

7.3 Health Sector review of policies and training

The department is in the process of developing communications to the Victorian public health services under the PMF which will require each public health service to review their integrity related policies for the purpose of ensuring they address:

- codes of conduct and organisational values;
- gifts, benefits and hospitality;
- conflict of interest;
- financial audits;
- fraud and corruption risk management;
- protected disclosures (for public bodies); and
- mandatory reporting of suspected corruption to IBAC (for public bodies);

Health services will also be required to consider vulnerabilities identified in Operation Liverpool and how similar vulnerabilities may be prevented in their agency through policy reform. In this regard, health services will also be asked to review policies and procedures relevant to:

- procurement;
- asset management;
- information security, specifically in relation to tendering information for major projects; and
- salary packaging and living away from home expenses.

The department's communications to health services will include reference to a number of documents and templates to assist health services with their review of policies and implementation of new policies where they currently do not exist. The information provided to health services will include reference to the:

- *Code of Conduct for Victorian Public Sector Employees 2015*;
- *Code of Conduct for Directors of Victorian Public Entities 2016*;
- public sector values as provided in part two of the *Public Administration Act 2004 (Vic)*;
- Victorian Public Sector Commission's (VPSC) *Model Gifts, Benefits and Hospitality Policy*;
- VPSC's *Model Conflict of Interest Policy*;
- VPSC's model conflict of interest and private interest declaration forms;

⁴ <http://www.ibac.vic.gov.au/docs/default-source/mandatory-notifications/directions-for-mandatory-notifications.pdf>

- VPSC's executive resource suite;
- department's *Model Fraud and Corruption Control Framework* for portfolio agencies and public bodies;
- department's *Model Fraud and Corruption Control Framework* for funded bodies;
- Minister for Finance's Standing Directions; and
- Victorian Government Purchasing Board policies.

The department will engage independent consultants to develop an integrity capability assessment for distribution to health services for the purpose of:

- ensuring that the health service's review of policies has addressed salient integrity risks and fraud and corruption issues;
- assisting health services to identify weaknesses within their current policies and processes that require fixing; and
- providing guidance on how to address integrity risks.

It is anticipated that each health service will be required to submit a completed capability assessment to their executive and the Audit and Risk Committee of the board for sign off. The department will discuss the capability assessment with health services as part of quarterly performance monitoring discussions, including new actions and processes implemented as a result of the assessment.

Following the completion of the capability assessment, health services will be required to develop and implement training for the purpose of communicating new policy requirements and delivering information about the management of fraud and corruption risks. Health services will also be asked to consider any additional training that may be necessary for identified high-risk positions or high-risk issues relevant to that particular agency.

7.4 Promoting learnings across the public health sector

Findings from Operational Liverpool will be used as an educational tool for public health services. In particular, during 2017-18 the department will discuss IBAC's report, key vulnerabilities identified at Bendigo Health and relevance to the broader health sector during:

- meetings with health services Chief Executive Officers (CEO);
- quarterly performance meetings undertaken as part of the Victorian Health Services Performance Monitoring Framework (PMF);
- regional health services board forums; and
- Industry Finance Committee meetings, attended by health services' Chief Financial Officers.

The department will also review and revise the program of education and communication to health services regarding integrity and corruption risks. This will include communication to Health Services, including CEO and Board members.

7.5 Updating capital works Guidelines

The department is in the process of reviewing *Planning and Development Guidelines* (the Guidelines) for capital works in the Victorian health sector. The review will address multiple issues, including issues identified in IBAC's report that have relevance to the broader health sector.

The ability to circumvent existing procurement processes within the health agency was a key vulnerability identified in Operation Liverpool. In particular, IBAC's report notes '*Mr Hardinge took advantage of the separate governance arrangements for the new hospital...[and] used these separate arrangements as an excuse not to follow the usual procurement processes in place at Bendigo Health*' (p. 11). The review of the Guidelines will seek to address this by strengthening advice to the health sector during capital projects about:

- the requirement for health agencies to comply with their internal expenditure and procurement policies during capital work projects;
- the health agency establishing their own instrument of delegation for expenditure that identifies delegated officers within the agency and the monetary amounts within each officer's delegation;

- the role of the Project Control Group and Steering Committee in overseeing expenditure; and
- approval of expenditure and contract arrangements to be sought from a financial delegate, noting that financial delegation sits with an individual, not the Project Control Group, Steering Committee or other groups identified in the governance arrangement.

The Guidelines will also be amended to provide for health agencies to submit an attestation to the department about compliance with internal health agency financial processes, including the requirement for expenditure to be approved by a financial delegate during major capital works involving the department. This will be an annual requirement of health agencies undertaking any multi-year capital projects or otherwise at project completion for projects less than 12 months duration, where the health service is provided capital funding for some or all of the project.

The broader issue of how smaller purchases can be better monitored will also be considered. Expenditure for minor works and non-building aspects of a project (such as the purchase of furniture, fittings and equipment) are not ordinarily overseen by the capital works governance group; however, the review of the Guidelines will examine the role of governance committees in overseeing such expenditure.

In addition to the above, IBAC's recommendations to Bendigo Health which have application to the broader health sector will also be considered for other complex projects. For example,

- requiring Steering Committees (or equivalent where a Steering Committee is not convened) for complex projects, such as capital works and ICT, to disseminate and seek an attestation of compliance from all governance group members in relation to:
 - the code of conduct;
 - gifts, benefits and hospitality policy;
 - conflict of interest policy; and
- integrity related issues to be a standing agenda item for formal governance group meetings.

The intention being to ensure all parties involved in the management of these complex projects, regardless of if they are health service executive staff or not, are clear as to their responsibilities as members of the Steering Committee.

The department's review and updating of relevant Guidelines will be completed by June 2018.

7.6 Developing CEO and executive expenditure guidelines for health services

During the course of IBAC's investigation, the department engaged an external firm to conduct a review of the tools, policies and protocols available to health services to guide appropriate CEO and executive expenditure. The review identified current gaps in processes and provided the department with information to be included in the development of business expense guidelines. The department has subsequently commenced drafting the *Guidelines for CEO and Executive Business Expense Policy* (expenditure guidelines) for dissemination to health services upon completion. The expenditure guidelines have been developed based on the external firm's review and with regard to findings and recommendations made in Operation Liverpool. The expenditure guidelines specify that at a minimum, all health services must have:

- Delegations of Authority which include a section on business expenses;
- Credit Card or Purchasing Card Policy (if the organisation has such cards);
- Travel Policy;
- Declarable Private Interests Policy; and
- Protected Disclosure policies.

Operation Liverpool provides clear examples of the misuse of public money and how a conflict of interest can breed corrupt and inappropriate conduct if not declared or if poorly managed. The expenditure guidelines remind health services of the requirement to have the above policies in place and that failure of an individual to declare a known interest could be a breach of the Code of Conduct. If an officer is found to have misused public funds, consequences

could include disciplinary action, financial penalties or criminal charges or convictions. The expenditure guidelines specify that approvers, with authorised delegation, must review business expense claims to ensure that:

- business expenses are reasonable and incurred in carrying out business on behalf of the health service;
- approval was sought for expenditure if required; and
- supporting documentation is provided for each business expense item of the claim.

7.7 Addressing organisational culture through data

Organisational culture and setting the right 'tone from the top' is frequently referenced as an integral part of a corruption-free work environment. The department will investigate ways in which collated data from health service staff surveys, such as the People Matter Survey⁵, may be used to improve and monitor organisational culture within health services. Results from staff surveys will be discussed with health service executives to highlight how their organisation compares against their peers and to inform the implementation of mechanisms targeted at improving culture.

Example survey questions from the People Matter Survey that the department will consider collective responses to are:

- 'My manager encourages behaviours that are consistent with the public sector values';
- 'Senior managers model the public sector values';
- 'In my organisation, avoiding conflict of interest is seen as important';
- 'In my organisation, behaving impartially is seen as important';
- 'People in my workgroup are honest, open and transparent in their dealings';
- 'I would be confident in approaching my manager to discuss concerns and grievances';
- 'In my organisation, engaging in improper conduct is not tolerated'; and
- 'I am confident that I would be protected from reprisal for reporting improper conduct'.

7.8 Advocating for Declarable Associations across the public sector

There is an array of information available to public sector agencies about the management of conflict of interest. The Victorian Public Sector Commission (VPSC) has released a *Model conflict of interest policy* and associated model *Declaration of private interest form* and *Declaration of conflict of interest form* for the public sector. The VPSC's model documents are positive steps in addressing conflict of interest issues in the Victorian Public Sector that lead to corruption or contravene the public interest.

While the *Model Conflicts of Interest Policy* includes reference to the identification, declaration and management of a conflict of interest, there is value in extending the definition of conflict of interest to provide for the declaration of all relevant associations that may bring the public sector into disrepute. As identified in Operation Liverpool, declarable associations were a central issue for Bendigo Health to address. IBAC's second recommendation to Bendigo Health states:

Bendigo Health consider the introduction of a 'declarable associations' policy to require employees to identify, declare and manage associations that may be incompatible with an employee's professional responsibilities.

IBAC's findings in Operation Liverpool are not unique to Bendigo Health or the health sector. There are clear examples of misuse of public money as a result of an inappropriate intersect between personal and professional

⁵ The People Matter Survey is a public sector employee opinion survey conducted by the Victorian Public Sector Commission (VPSC). As specified on the VPSC website, the survey enabled public sector employees to express their views 'on how our shared public sector values and employment principles are demonstrated in their organisation by colleagues, managers and senior leaders. The survey also measures the level of staff engagement and job satisfaction.' (Available at: <http://vpsc.vic.gov.au/data-and-research/people-matter-survey/>)

relationships or associations across the Victorian Public Sector. Comparable findings have been made in other IBAC investigations such as IBAC's Operation Ord and public reports tabled by the Victorian Ombudsman, including:

- *Investigation into allegations of improper conduct by officers at the Mount Buller and Mount Stirling Resort Management Board* (tabled March 2017);
- *Conflict of interest by an Executive Officer in the Department of Education and Training* (tabled September 2015);
- *Conflict of interest in the Victorian public sector - ongoing concerns* (tabled March 2014); and
- *Investigation into allegations of improper conduct by CenITex officers* (tabled October 2012).

The department will consider drafting a submission to the Integrity and Reform Sub-committee (the sub-committee). The sub-committee is run by the Department of Premier and Cabinet and has a Deputy Secretary or Deputy Commissioner from each of the seven Victorian government departments, the VPSC and Victoria Police. The department's submission to the subcommittee may suggest the below recommendations:

1. consider reviewing the current VPSC *Model conflict of interest policy and Declaration and management of conflict of interest form* template⁶ to include declarable associations. The review may address, but is not limited to:
 - a. Including the definition of declarable associations within the model policy. For example, the definition of declarable associations may include any association that:
 - is incompatible with the role of the employee or the employer;
 - is incompatible with the role of the employee and/or the employer in upholding the law;
 - may give rise to a perception that the employee is not upholding his or her obligations as a public officer; or
 - may reflect adversely on the employee's standing and reputation in the eyes of the community as a public officer.⁷
 - b. Requiring the completion of *Declaration and management of conflict of interest forms* to cover declarable associations.
2. Consider other mechanisms to encourage the identification and management of declarable associations across the Victorian Public Sector.

In the interim, the department will write to health service boards seeking an attestation that:

- a conflict of interest policy is implemented within their respective health service;
- Declaration of private interest forms have been completed by executive staff within the health service and members of the board; and
- conflict of interest is a standard agenda item for declaration and documenting at each executive board meeting.

7.9 The protected disclosure regime: Protections and limitations

The conduct subject to investigation in Operation Liverpool transpired for some time prior to detection. Operation Liverpool is one of several examples that highlight the importance of a strong protected disclosure regime in detecting improper conduct before it escalates over time. The *Protected Disclosure Act 2012* (Vic) (PD Act) enables people to make complaints about improper conduct, including corruption, in the Victorian public sector and receive protections under the PD Act. The protections are varied and include:

⁶ The *Declaration and management of private interests form* template already includes reference to personal financial interests, family interests and other interests. However this form is mostly specific to executives and is only completed on an annual basis. Conversely, the *Declaration and management of conflict of interest form* is relevant to all VPS employees, is not time-specific and is for use as part of any process in which a conflict may be apparent (for example, recruitment, internal governance arrangements, procurement, contract management and tendering).

⁷ See for example the Australian Government Department of Immigration and Border Protection Declarable Associations document. Available at <<https://www.border.gov.au/AccessandAccountability/Documents/integrity-declarable-associations.pdf>>

- confidentiality of the complainant's identity;
- immunity from civil or criminal liability or any liability arising by way of administrative process (including disciplinary action) for making the disclosure;
- protection from defamation action;
- protection from detrimental action in reprisal for having made, intending to make or believing to have made a protected disclosure; and
- protection from detrimental action for cooperating with an investigation of a protected disclosure.

The operation of the PD Act is limited for some public bodies and funded agencies. The PD Act and its associated *Protected Disclosure Regulations 2013 (Vic)* (the Regulations) prescribe *what* protected disclosures can be made about, *how* protected disclosure complaints are to be made and *who* can receive complaints about improper conduct for referral to IBAC under the PD Act.

The PD Act does not enable the department's Secretary or Protected Disclosure Coordinator to receive complaints about improper conduct within public entities regulated by the department, such as hospitals, or within department funded agencies. As a result, protections afforded to complainants under the PD Act may not apply where complaints have not been made in strict accordance with the Act and the Regulations. The department has experienced instances where complainants have sought to make a complaint to the department's Protected Disclosure Coordinator about the conduct of staff within a public entity or agency overseen or funded by the department. In these scenarios, the complainant is strongly encouraged to make their complaint directly to IBAC on the basis that the department cannot accept the complaint under the PD Act.

Further to this, the definition of 'public bodies' and 'public officers' restricts who a protected disclosure can be made about. This has resulted in complaints about improper conduct within the broader Victorian public sector, including funded agencies, not being subject to IBAC's jurisdiction.

7.9.1 Advocating for amended legislation

The department has made submissions to the Independent Broad-based Anti-corruption Commission Committee (IBAC Committee) and the Department of Premier and Cabinet concerning limitations with the operation of the PD Act and suggestions for improvement. The department's submissions addressed the need to expand the protected disclosure regime to allow for greater flexibility for whistleblowers in the way complaints can be made and inclusion of funded agencies in the definition of 'public body'.

7.9.2 IBAC Committee report

On 6 June 2017 the Independent Broad-based Anti-corruption Commission Committee's (IBAC Committee) report titled *Improving Victoria's whistleblowing regime: a review of the Protected Disclosure Act 2012 (Vic)* was tabled in parliament. The IBAC Committee report includes 22 recommendations aimed at improving the law and processes on making, assessing and investigating protected disclosures; the protection of whistleblowers; and the provision of compensation and assistance to whistleblowers. Of particular relevance to the limitations raised by the department are the below recommendations made in the IBAC Committee's report:

That the Victorian Government amend section 6 of the IBAC Act 2011 (Vic) to provide that a body that receives substantial public funds is a public body for the purposes of the Act. (Recommendation 5)

That the Victorian Government consult with the Victorian Ombudsman, IBAC and the Auditor-General with regard to simplifying the definition of 'public body,' and making it consistent across the relevant Victorian legislation. (Recommendation 6)

That the Victorian Government amend the law so that IBAC may assess any notification it receives, whatever the source (with the exception of notifications of disclosures made under sections 19 and 21(3) of the PD Act 2012 (Vic)), as a possible protected disclosure complaint. (Recommendation 10)

The Government is required to respond to the IBAC Committee's report within six months of the final report being tabled.

7.9.3 Encouraging protected disclosures across the public sector

Pending anticipated amendments to the PD Act, the department will review its communication materials to the health sector in relation to the protected disclosure regime. The department's Protected Disclosure Coordinator will attend a selection of health services CEO forums and board forums for the purpose of providing advice and information about protected disclosures.

It is acknowledged that the proposed amendments to the PD Act would vastly extend the reach of the legislation and mandate a number of department funded agencies to comply with the protected disclosure regime. Should the IBAC Committee's recommendations five and ten be accepted and applied in legislation, the department's *Model Fraud and Corruption Control Frameworks* will be updated to provide complainants with the option of making an assessable disclosures about portfolio, funded and public bodies within the department's remit to the department's Protected Disclosure Coordinator.