
ombudsman **VICTORIAN**

A report on misuse of council resources

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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 on misuse of council resources.



Deborah Glass OBE

Ombudsman

8 June 2016

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Foreword

I want you to do my mum's driveway, because I give you so much work, you can do it for free and I'll give you more work.

Sometimes my office deals with a series of cases that individually say little but collectively tell a significant story. This is a story of greedy officials. The three investigations set out in this report all involve allegations of misuse of public property by local council officers. One involved a council contractor paving a council officer's mother's driveway; another involved the misuse of a council fuel card to fuel an officer's own car for some two years; and the third involved officers buying machinery and equipment with council funds for private use.

The amounts involved are not huge in comparison with recent corruption scandals. But it is precisely the fact that they do not involve big sums that makes the wrongdoing so pernicious – local officials who either do not recognise that their conduct is wrong but see it as a perk of the job, or who think they can get away with it because no one will notice. And all too often people do not notice and the risk escalates of a minor misuse of public funds becoming a major one. In the case of the driveway, for example, the crushed rock was worth only a few hundred dollars, but the contractor felt the pressure to do the job or lose the council's business.

I am tabling this report in Parliament to draw attention to what appears to be an endemic problem within local government: despite codes of conduct that highlight the need for officials to act with honesty and integrity and avoid conflicts of interest, and despite the many people working in the sector who abide by those codes, too many people still do not recognise that codes of conduct apply to them, or simply do not care. Compliance and enforcement of codes of conduct is inconsistent and often relies on whistleblowers coming forward, rather than good governance and supervision.

All three of these cases were 'protected disclosures' – that is, they involved whistleblowers – and confirm the importance of a strong regime to allow people to report misconduct and protect them from reprisal when doing so.

The message in these cases should not be new or surprising to anyone: it is wrong to receive a private benefit from public office. My recommendations that individuals be disciplined for breaches of the code of conduct have been accepted by the councils involved in all but one instance, but this will not solve the wider cultural problem that plainly exists.

This problem has been highlighted in numerous reports by ombudsmen and anti-corruption bodies across Australia, including my own office and Victoria's Independent Broad-based Anti-corruption Commission (IBAC), with examples of council employees over-ordering turf, gravel, concrete and landscaping supplies to use for private purposes, including running businesses on the side. The reports repeatedly highlight the failure of management to supervise; workplace cultures where management is remote or invisible; and council employees, many of long standing, operating in small fiefdoms.

Managers ignore alarm bells, which should have tolled loudly when the head of the unit that acquired machinery for private use cancelled his leave when told that an officer outside the unit would act in his role. Bad or suspect behaviour is not challenged out of fear of reprisal including, for contractors, the fear of losing council business. This is no small matter in industries where local councils are often the largest customer in the region.

Much guidance already exists on how these issues can be avoided and healthy workplace cultures promoted, most recently by IBAC in its review of local council work depots in May 2015. The fact that warnings have been so oft repeated goes to a combination of failed practice and flawed culture.

These sorts of misdemeanours repeat across the state, as is clear from IBAC and the work of my office: the specifics might vary but the moral challenge is the same. I urge all those in local government – staff and councillors – to read this report and ask: Could any of these things happen here? If so, you have an obligation to your ratepayers to make changes in your culture and procedures before small private misuse becomes a large public scandal.

Deborah Glass
Ombudsman

Introduction

1. The purpose of this report is to draw attention to the types of low-level abuses of power that occur from time to time in local government, and are the subject of numerous complaints and protected disclosures investigated by my office. The case studies presented here cover outer metropolitan, metropolitan and regional councils, and are intended to illustrate the issues with governance, monitoring and culture that they can face.
2. All three matters relate to protected disclosure complaints referred to me by IBAC for further investigation pursuant to section 73 of the *Independent Broad-based Anti-corruption Commission Act 2011*. They were the subject of investigations conducted by my office between February 2015 and May 2016.
3. As case studies, they have been anonymised, to reinforce the point that my office deals with many such allegations. As these cases are presented as a representative sample of the issues, it would not have been fair to single out individuals or councils for public exposure. The investigations also included some unsubstantiated allegations, which have not been included in this report.
4. The matter involving the outer metropolitan council was referred to IBAC following an internal investigation by the council into a number of complaints about a staff member [the Construction Supervisor]. The council's investigation identified two allegations that required referral to IBAC on the grounds that they may be assessable disclosures.
5. IBAC determined these two disclosures to be protected disclosure complaints, and referred them to my office for investigation.
6. The main allegation was that:
 - a council staff member [the Construction Supervisor] offered a contractor regular work through council projects if he undertook excavation work at a residential property at no cost.
7. The matter involving a metropolitan council was referred to IBAC after the council's protected disclosure coordinator received an oral complaint. IBAC determined the allegation to be a protected disclosure complaint and referred it to my office for investigation.
8. The allegation was that:
 - a staff member [Team Leader Z] was using a council fuel card to refuel his private vehicle for private purposes.
9. The matter involving a regional council was received as an oral complaint to one of the council's directors on 9 January 2015 and forwarded to the council's protected disclosure coordinator. The matter was then referred to IBAC, who determined the allegation to be a protected disclosure complaint and referred it to my office for investigation.
10. The allegation was that:
 - staff working in one of the units [Manager A and Coordinator A] had purchased equipment with council funds for private use.

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11. A related disclosure that arose during the course of this investigation was that:

Manager A employed and subsequently promoted a close relative [Support Officer] to a management role in his unit, in breach of the council's recruitment and selection policies.
 12. My jurisdiction to investigate protected disclosure complaints is derived from section 13AAA of the Ombudsman Act, which provides that I have the function to investigate protected disclosure complaints about conduct by or in an authority or protected disclosure entity. A member of staff of a council is listed as a 'specified entity' at item 15 in Schedule 1 to the Act, and therefore meets the definition of 'authority'.
 13. In all three instances I wrote to the Minister for Local Government, the Hon Natalie Hutchins MP, and the chief executive officer, mayor and protected disclosure coordinator of the relevant councils, informing them of my intention to conduct an investigation and the outcomes of my investigation.

Methodology

14. The investigations referred to in this report involved the following.

Case study 1: Alleged improper conduct by an officer of an outer metropolitan council: driveway excavation

15. My investigation involved:
- reviewing the council's initial investigation into the complaints
 - interviews with four members of council staff
 - interviews with three contract staff
 - examining relevant council policies and procedures, including its gift and hospitality policy, procurement policy and user guide, and applicable code of conduct
 - reviewing council documents including contracts, project documentation, forms and staff profile documentation.
16. Of the seven people interviewed during my investigation, six were interviewed voluntarily and one compulsorily. Three witnesses were accompanied at interview by a legal representative and two were accompanied by a support person.

Case study 2: Use of a fuel card for a private vehicle in a metropolitan council

17. My investigation involved:
- examining relevant council policies including its:
 - code of conduct
 - motor vehicle policy
 - driver and operators handbook
 - examining documents held by the council including:
 - Team Leader Z's personnel file, leave records and timesheets
 - lists of equipment and vehicles assigned to Team Leader Z's team and associated fuel cards
 - fuel card transaction reports between September 2014 and October 2015
 - obtaining and reviewing closed-circuit television (CCTV) footage from a service station recorded on 13 and 24 November 2015
 - conducting interviews with four witnesses (including one telephone interview). Two witnesses were interviewed under oath via a 'compulsory appearance' under the Ombudsman Act. The other two interviews were voluntary appearances. No witnesses were legally represented; however, one witness attended with a union representative.

Case study 3: Purchase of council equipment for private use and recruitment of a close relative in a regional council

18. My investigation involved:

- considering the *Local Government Act 1989*
- examining relevant council policies and procedures including its:
 - code of conduct
 - procurement policies
 - recruitment process
 - recruitment and selection policy
 - enterprise agreement
- examining documents held by the council including:
 - personnel files of Manager A, Coordinator A and the Support Officer
 - Manager A's council emails and leave records
 - asset registers, 2014 and 2015
 - lists of minor equipment purchases, 2014 and 2015
 - lists of maintenance services, 2014 and 2015
 - quotes, requisitions and purchase orders for identified equipment purchased by Manager A's unit
 - test-and-tag records of equipment purchased by Manager A's unit

- interviews with seven witnesses. Four witnesses were interviewed under oath via a 'compulsory appearance' under the Ombudsman Act: three were supported by union representatives and the fourth was supported by a relative. Voluntary interviews were also conducted with three witnesses, none of whom were represented
- background information from six witnesses including a former council officer and officers of other councils.

Finalising the reports

19. In all the matters where there were adverse comments about any individuals, those people were, in accordance with section 25A(2) of the Ombudsman Act, provided with a reasonable opportunity to respond to the material in the reports. Their responses were taken into account in finalising the reports. Their responses were also fairly set out in the final reports.
20. In all three matters the councils were provided with a draft report, with a reasonable opportunity to respond to the material in the reports. Again, their responses were taken into account in finalising the reports and their responses were fairly included in the final reports. In two of these matters the councils accepted all of the recommendations, including that the subjects of the investigations face disciplinary action and that council procedures and policies be amended to reduce the risk of similar conduct occurring in the future. In one of the matters the council accepted a majority of the recommendations.

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21. In accordance with section 25A(3) of the Ombudsman Act, I advise that any other people who are identifiable or may be identifiable from the information in this report are not the subject of any adverse comment or opinion. No individuals are named in this report. If any are identifiable:
- I am satisfied that it is necessary or desirable to do so in the public interest
 - I am satisfied that identifying those persons will not cause unreasonable damage to those persons' reputations, safety or wellbeing.
22. My findings are detailed at the end of each case study and are made pursuant to section 23(2A) of the Ombudsman Act.
23. The standard of proof that was applied in each investigation was the balance of probabilities, and I also applied the High Court decision of *Briginshaw v. Briginshaw*.¹ In keeping with this decision, I considered the seriousness of the allegations and the gravity of the consequences if the allegations were substantiated.

¹ (1938) 60 CLR 336

Case study 1: Driveway quid pro quo

Council contractor offered regular work in return for excavating council officer's mother's driveway

I want you to do my mum's driveway, because I give you so much work, you can do it for free and I'll give you more work.

24. The allegations my officers investigated were that a council Construction Supervisor:
- offered a contractor regular work on council projects if he undertook excavation work at a residential property for no payment
 - favoured contractors who provided hospitality and failed to make appropriate declarations in accordance with council policy.
25. Specifically it was alleged that on a Saturday morning in September 2012 a private council contractor [Contractor B] was asked by the Construction Supervisor to dig out his mother's driveway, and that there was no payment for this work.
- ### The allocation of work to private contractors
26. My officers examined the process by which council construction work was allocated to private contractors, and the Construction Supervisor's involvement and influence on these decisions. While the Construction Supervisor had no official involvement in the process, my investigation identified that, in reality, he and other construction supervisors had a significant influence over which contractors were allocated work with the council.
27. The council had a number of construction crews, which could be supplemented by private contractors depending on the workload. All contractors were on a preferred supplier list for which the council issued a tender process every three years. Successful contractors were then given a schedule of rates contract, and work was allocated as required, managed by Manager A.
28. At interview Construction Engineer A said that he and the Construction Supervisor decided on the project requirements and bid for additional resources from Supervisor B, sometimes on a daily basis. Construction Engineer A said that the method of bidding centrally was designed to increase control over resources.²
29. When asked how the relationship between the Construction Supervisor and Manager A worked, Construction Engineer A said:
- The Construction Supervisor [CS] has more experience as to what is actually required on-site, so we usually work this out together. We make an estimate for each project, and the days we plan to have the plant on site ... If they know that somebody is a very efficient worker, they will ask, but there is no guarantee that they will get what they want ... [Manager A] normally allocates council-employed backhoes first ... But once all council employees have been allocated and an external will be allocated, the CS will ask if a specific person can be allocated. The CS will consider cost and efficiency, and that's the only reason we ask for specific people to be put on jobs. We never ask for external officers if council operators are available.³

² Interview with Construction Engineer A, 26 May 2015

³ Interview with Construction Engineer A, 26 May 2015

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30. As part of my investigation Manager A was interviewed. It was his responsibility to resource each of the construction teams. Manager A said:

I've been three years in the actual role. ... The abuse and stuff, I copped a fair bit being the meat in the sandwich I guess. Just trying to keep everyone's job ... Some people didn't get who they wanted or what they wanted so I used to cop it quite a lot. Yes so it just got to the stage where I couldn't deal with it anymore ... So I guess like [the Construction Supervisor] when I tried to put one of my staff members on ... we always ended up in a big fight because I didn't give him one of the two that he liked at the time. Then down the track I don't know what happened but he just didn't want [Contractor B] just [Contractor C] ... From my point of view I would just look at those fights – it was worthless...

31. Manager A also said:

When I try to sort out the jigsaw puzzle and I ring them back and say look this is what's going on, I get, 'Oh why have I got him?'... then you get the arguments ... they would use things like, they are not performing ... they would pick things which they thought were legit.⁴

Allegation 1: Excavation of a driveway at the home of the Construction Supervisor's mother

32. At interview, Contractor B confirmed that on 8 September 2012 he conducted excavation work on a driveway at a private property that he understood to be the Construction Supervisor's mother's house. Contractor B said that he was not paid any money for this work and that instead the Construction Supervisor had said words to the effect of:

I want you to do my mum's driveway, because I give you so much work, you can do it for free and I'll give you more work.⁵

33. Contractor B said that he believed that if he had not carried out this work as requested he would not have been allocated future council work by the Construction Supervisor.
34. It was further alleged that crushed rock from a council construction site had been used for the driveway and that another contractor, Contractor A, had used his truck to deliver that rock and carry away soil and debris from the site.
35. When questioned, Contractor A said that he recalled conducting the work at the Construction Supervisor's mother's house and that he received three slabs of beer by way of payment. Contractor A said that he was happy with the arrangement and did not feel that he was under any pressure to do the job.

4 Interview with Manager A, 26 May, 2015

5 Statutory declaration of Contractor B, 16 October 2015

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36. Contractor A denied that the crushed rock for the work was obtained from a council work site. He said that he received money from someone at the house for the rock, although he could not recall who. Contractor A said that he collected the crushed rock, which he estimated to be around 12 cubic metres, from a local company on the morning he did the work. Contractor A said that he believed that he had paid about \$200 for the rock, and that he had paid in cash.⁶
37. My officers made enquiries with the company, which advised that the only purchase of crushed rock for cash on 8 September 2012 was for nine cubic meters, not the 12 cubic metres mentioned by Contractor A. Furthermore the transaction was from 4.28 pm that afternoon, not in the morning, and was delivered in three separate three cubic metre loads at a cost of \$160, not picked up as per Contractor A's evidence.
38. At interview the Construction Supervisor confirmed that he had used council contractors - Contractor A and Contractor B - to carry out the work on his mother's driveway in September 2012. When asked whether he had paid these contractors for their work the Construction Supervisor said:
- ... it was just beer and food not as in money.⁷
39. The Construction Supervisor said that he was unable to recall much detail about the arrangements and the work itself, including the cost or where the materials to do the work came from. The Construction Supervisor was adamant, however, that he had not taken it from a council work site. He said:
- No I wouldn't have done that ...
40. When asked why he could not recall the details of the work at his mother's house he said:
- Because I use so many different things and how long ago it was. It's hard to remember where I got it from and even how much it costs. Because they're not things I would easily remember.
41. The Construction Supervisor denied asking Contractor B to do the work at his mother's house for free, or that he said that he would continue to give Contractor B council work in return. He said:
- No. I can't guarantee him work ... it's about 80 per cent of the time I get who I like ... I haven't got 100 per cent of being able to choose who I want.
42. When evidence of him apparently exerting pressure on Manager A to get the contractors he wanted was put to him, the Construction Supervisor said:
- I wouldn't say exert pressure, no. There are times when you turn around and say that you would prefer that person, but when it comes down to it we are given a particular person and there is no other option ... I can't have any influence into what the plant is. I can tell the office I don't want a person because they are working unsafely or they are not being productive, but I can't stipulate to the office that I want a specific person ...
43. The Construction Supervisor was asked if there were any records of complaints made by him about contractors and reasons for refusing them. He said:
- We usually ring the office and let them know that we are unhappy ... No I don't [keep records] ... I would say it's more the office's job because he is the one ordering the plant for the next day's work.
44. The Construction Supervisor said that he had no knowledge of there being any council forms for such feedback on contractors to be recorded.⁸

6 Interview with Contractor A, 2 July 2015

7 Interview with Construction Supervisor, 15 June 2015

8 Interview with the Construction Supervisor, 15 June 2015

Allegation 2: Favouring contractors who provide hospitality

45. It was also alleged that the Construction Supervisor favoured contractors who provided him with hospitality and that he failed to declare this hospitality in accordance with council policy.
46. In particular, it was alleged that the Construction Supervisor had been provided with hospitality at a major sporting event by a particular contractor. Following the provision of this hospitality, it was alleged that the contractor was rewarded with additional work by the Construction Supervisor.
47. Both disclosers alleged a culture of gifts or hospitality being provided by private contractors in return for work with the council construction teams. The Construction Supervisor in particular was singled out as giving work to his friends. Discloser A said at interview:
- His workers actually told me ... mate, don't get too comfortable here. You won't be here for long. It's just a matter of who offers him a nice gift. He'll go with that ... company ... These are the council workers who are with him every day on his team.⁹
48. Discloser B said at interview:
- ... if you're mates with [the Construction Supervisor], you're laughing, feed [the Construction Supervisor] grog, you're laughing. You got no problems at all. He'll look after you till the world's end. But if you don't give him help, look after him, then he'll short sheet you as well. If there's two machines on the job, he might give one eight, the other seven and a half [hours]. That's how he gets around it. He looks after his mates.¹⁰
49. Discloser A also recalled that the Construction Supervisor was taken to a sporting event by Company A. He alleged that since that time Company B had not worked with the Construction Supervisor's crew, with Company A the preferred contractor.
50. At interview the Construction Supervisor was asked how long he had worked with Company B and why he had stopped doing so. He said:
- Probably a year and a half. He got so complacent over that time ... so that's why I ended up going back to Company A, which I had before I do have that choice yes...
51. A review of the council's gifts register shows that the Construction Supervisor declared receipt of this hospitality at the sporting event from Company A on 30 August 2014, listing its value as \$25.00.¹¹ Initial enquiries conducted by the council into these matters showed that Company A had a six-seat box at the sporting event that included food and refreshments service throughout the game, at an average cost of \$190–220 per head.¹²
52. At interview the Construction Supervisor could not recall if he was in a box and could not remember if there was food and drink available. He was asked why he declared the ticket as being valued at \$25. He said:
- Because it was from [Company A]. It was like everything that we have to do. If we receive any gifts or anything like that ... I am pretty sure I spoke to one or two other gentlemen at the council and they said, that's what tickets are worth ... I can't remember.

9 Interview with Discloser A, 26 March 2015

10 Interview with Discloser B, 30 March 2015

11 Council Declaration of Token dated 29 August 2014

12 Printed advertisement for open air boxes, 2014

53. The Construction Supervisor was shown that the date of the sporting event was 30 August 2014 and reminded that a relevant job was conducted during August 2014. He was asked if the reason for the change in company was a result of the hospitality. He said:

No ... like I said the reason why was the way that [the manager] was doing his job. Prior to that, [Company A] were coming up to me for six to eight months, you know, phone calls and things, asking me if I wanted to start using them again. And it was over a period of time [Company B] hadn't been doing their job the way that they should be and I'd been weighing it up for a little while to go back to [Company A].

54. As noted above, the Construction Supervisor was not required to provide any written justification for this change of preference in contractors.

55. I noted that there were declarations on the register from two other council staff who received the same hospitality from Company A, and who also put the value at \$25. Like the Construction Supervisor's declaration, these had been signed off by a senior manager.

Findings

56. The evidence substantiated the allegation that the Construction Supervisor used council contractors to perform private works at his mother's home, albeit on a weekend, and that no financial remuneration or benefit was paid.

57. Due to his position, and the willingness of Manager A to acquiesce to his demands, the Construction Supervisor appeared to have been in a position to hold out promises of future work to contractors. I found the evidence of Contractor B to be credible and that the Construction Supervisor did request that this work be completed on the promise of further work being offered to the contractors.

58. Regarding the origins of the crushed rock used on the Construction Supervisor's mother's driveway, while I noted that Contractor A's evidence went some way to support the Construction Supervisor's version of events, his explanation of where the rock was obtained was not supported by the independent evidence obtained by my investigation. The Construction Supervisor could not recall any details about the crushed rock but was adamant that it did not come from council stock. Neither the Construction Supervisor nor Contractor A gave credible evidence in this regard.

59. According to Construction Engineer A, excess crushed rock is not common and is held at the council's depot. All construction supervisors have access to the depot, but responsibility for the excess falls to the construction supervisor on the project that generated it. Construction Engineer A was adamant that excess materials would only be used for other council projects not personal use. There is no policy on what to do with this type of material as far as he was aware.

60. My investigation found there were no written procedures for removing material from council depots. When materials were removed, no records were made of what, when or by whom.

61. While an inference could be drawn that the materials to construct the driveway at the Construction Supervisor's mother's home could have been obtained from the council depot, given the lack of records that were kept by the council, I was unable to make any such finding on the evidence available.

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62. Regarding the receipt of hospitality from a council contractor I found that this allegation was substantiated. I considered that it was inappropriate for the Construction Supervisor to have accepted such an offer of hospitality from a contractor to the council. This appears then to have been compounded by devaluation of the hospitality and, at interview, an inability to recall any details of the event.
63. After consideration of my investigation, the council confirmed it would take disciplinary action against the Construction Supervisor for his breaches of the procurement policy and code of conduct.
64. The council also advised that a review and report had been completed with respect to the processes and practices for engaging external contractors, that a review of processes for storing and disposing of excess materials from project sites would be undertaken and that depot staff would be undertaking fraud awareness training to strengthen their knowledge and understanding of the gifts and hospitality policy.

Case study 2: Use of a fuel card for private purposes

Honestly I didn't think there was a problem with what I was doing. But when you look back now, seems pretty silly to think that. I never stopped and thought about it, I just went about my daily business, doing what I thought was a good job for the council, doing extra things ... I look at that \$4,000 number and think, that's pretty bad ...

65. The allegation my officers investigated was that Team Leader Z, who works at a metropolitan council, used a council fuel card to refuel his private vehicle for private purposes.
66. Team Leader Z started work with the council in 2008 and was appointed as a team leader in 2013. He was based at the council's operations centre and lived about 37 kilometres away. His normal working hours were from 6.30 am to 3.30pm.¹³
67. From his appointment until mid-2015, Team Leader Z reported to Coordinator Y.¹⁴ His reporting line then changed to Coordinator X. Manager W was responsible for a number of teams at the operations centre, including Team Leader Z's.¹⁵
68. Team Leader Z had access to a council commuter vehicle when he acted in the role of team leader intermittently from 2008 to 2013. This ceased after his permanent appointment to the role in 2013 due to a change in classification.¹⁶ The discloser alleged that Team Leader Z told other council staff that he had been using a council fuel card to fuel his private vehicle in order to 'get back at the council' for taking away his access to a commuter vehicle.
69. At interview under oath on 16 December 2015, Team Leader Z said that not having access to a commuter vehicle like other team leaders was a 'frustration' and that he believed it was 'unfair'.
70. During my investigation, the council advised that Team Leader Z had access to seven fuel cards, allocated to vehicles and equipment used by his team. Of the seven cards, five were assigned to specific vehicles or large pieces of equipment. Of the other two, one was a generic fuel card that could be used for any fuel type or oils, and the other was a card for refuelling small equipment.¹⁷
71. Manager W advised that as team leader, Team Leader Z was the custodian of the small equipment card:
- Team Leaders assume responsibility for the small plant cards at appointment or the expiry of subsequent cards, there is no formal instrument acknowledging their use however [Team Leader Z] would have been given access to the card at the time of commencement in the role.
- At the time no formal written instructions were given regarding its use, team leaders are verbally informed of the card's purpose.¹⁸
72. Manager W advised that the amount of fuel he would expect to see in one transaction using the small equipment card was about 20 litres and that he would not expect to see any transactions where fuel was purchased outside the council area.

¹³ Interview with Team Leader Z, 16 December 2015

¹⁴ Email from the protected disclosure coordinator at the council, 21 December 2015

¹⁵ Council organisational charts, undated

¹⁶ Interview with Team Leader Z, 16 December 2015; interview with Coordinator Y, 23 December 2015

¹⁷ Email from Manager W, 29 October 2015; fuel transaction reports attached to email from Manager W, 13 November 2015

¹⁸ Email from Manager W, 16 November 2015

Use of the small equipment fuel card

73. My officers reviewed the fuel transaction reports for the three fuel cards assigned to Team Leader Z with which unleaded petrol could be purchased, including the small equipment card. The reports for two of the cards showed a reasonable number of transactions, all of which were relatively small in size and occurred at Service Station A in close proximity to the council's operations centre. However, the reports for the small equipment card showed excessive and unusual transactions when aligned with the card's approved purpose, the council's location and Manager W's evidence of the amount of fuel he would expect to see in one transaction.¹⁹
74. Reports from September 2014 to October 2015²⁰ showed a total of 49 transactions on the card, amounting to \$3,921.66.²¹ Of these:
- 28 transactions occurred at Service Station B located approximately three kilometres from Team Leader Z's home, and approximately 35 kilometres from the council's operations centre.
 - 38 transactions were for 60 litres or more, and three transactions were for an amount under 50 litres.
 - 38 transactions occurred outside Team Leader Z's normal working hours.
 - Seven transactions occurred on a Saturday, and a further one on a Sunday, with no record of overtime being worked by Team Leader Z on these dates.²²
75. As a result of my enquiries with Service Station B for times and dates when the small equipment card had been used, a further three transactions were identified totalling \$245.40.²³ When combined, the total amount charged to the small equipment card from September 2014 to November 2015 was \$4,167.06.
76. My officers obtained CCTV footage from Service Station B for two of the three further transactions,²⁴ both of which related to purchases of fuel of around 65 litres. The footage on both occasions showed Team Leader Z paying for fuel using a card, which correlated to the times of transactions on the small equipment card. On one occasion, the footage showed Team Leader Z putting the pump nozzle of the petrol bowser into his private vehicle minutes prior to the time of the transaction on the small equipment card.
77. At interview under oath, Team Leader Z was shown both pieces of CCTV footage. He confirmed that it showed him and his private vehicle, and that he had used the council fuel card. He was also shown a list of the small equipment fuel card transactions over the preceding year, at which time he admitted that he:
- was responsible for the majority and they were purchases of fuel for his private vehicle
 - had been frequently using the card to refuel his private vehicle for about two years; as such, transaction reports prior to September 2014 would show a similar frequency of transactions and most of these would relate to fuel for his private vehicle
 - had refuelled his wife's vehicle on at least one occasion because he drove it to work that day.

19 File note from telephone conversation between Manager W and Victorian Ombudsman officer, 13 November 2015, 4.20 pm

20 At the time of my officers' request to the council, the November 2015 report was not available.

21 Fuel transaction reports attached to email from Manager W, 13 November 2015

22 *ibid.*

23 Transaction receipt printouts dated 7 November 2015, 7.11 am; 13 November 2015, 5.30 am; 24 November 2015, 5.52 am, received from operator of Service Station B

24 The footage for the first transaction was not available.

78. Team Leader Z said that the small equipment card was the only council fuel card he had used to refuel his private vehicle.

Use of card while on leave

79. Seven transactions occurred while Team Leader Z was on leave,²⁵ and all of these were outside the council area.²⁶ The locations and the fact that Team Leader Z was on leave at the time of the transactions suggest none of these were business-related. When asked about the basis on which he used the card while on leave, Team Leader Z said 'stupidity', and he acknowledged that these fuel purchases mostly related to private use of his vehicle.

Alleged authorisation from former manager

80. While admitting to using the card for his private vehicle, Team Leader Z said he was given permission in about November 2013 by his then manager, Coordinator Y, to use the fuel card for his private vehicle if he needed to do jobs while travelling to or from work:

For the first probably six months to a year of being in the role, I had use of a commuter vehicle ... and then they asked me to stop taking the vehicle home but advised me that if I needed to do work with my vehicle I could use a council fuel card.

...

There was a meeting we had about ... when I was using the vehicle, I was doing these sort[s] of things on the way home to help with work, I was assessing jobs, putting witches hats out for jobs, dropping equipment off to suppliers, meeting with suppliers ... things like that, and I said 'If I'm going to continue to do these things, how should I do it?' And that's when the advice was given. If I do those things, you can use the council ... card.

81. Team Leader Z said that while he did have a conversation with Coordinator Y, he could not recall whether anything about the arrangement had been documented. He said that he had not spoken to anyone about the arrangement since this initial conversation more than two years ago, including his current manager; and nor had he checked with anyone whether his use of the fuel card for his private vehicle was still authorised.

82. Under oath, Coordinator Y denied providing any authorisation to Team Leader Z to use a council fuel card to refuel his private vehicle. He said:

I do recall a conversation about [Team Leader Z travelling] to and from work and ... this was at this contentious time of [Team Leader Z] trying to get access to a vehicle. [He said] well I work on the way in and the way home. [I said] well okay you can't do it. You need to go and do the task, bring the vehicle back, and then go home.

...

I would have said that the work needed to be programmed in work time ... don't use your own car ... there's no circumstance ... [where I] would say 'yes do that'.

...

These conversations ... with [Team Leader Z] about the commuter use vehicle were him trying to find ways and levers to get back to using that vehicle or have access to a [council] vehicle. This is pushback that's been going on for some months ... I would not support the use of a council fuel card [for his private vehicle] at all.

25 Leave application forms contained within Team Leader Z's personnel file between September 2014 and October 2015; Team Leader Z's timesheets for the period September 2014 to October 2015

26 Fuel transactions reports attached to email from Manager W, 13 November 2015

83. Coordinator Y said he was not aware that Team Leader Z had, as he claimed, completed jobs while travelling to or from work, and said he would be very surprised if Team Leader Z had done so but not claimed overtime, based on his experience working with him. He said that he never instructed Team Leader Z to work outside business hours, nor did he instruct him to work using his private vehicle. He said there was no need and little benefit in staff doing jobs on the way to or from work because:

[The council] is a very small municipality, very, very small indeed. It's not as if it's huge and there would be some benefit ... if you lived to the north and travelling from the work centre, 15 kilometres out, setting up a work site, you're only five kilometres from home, you'd take the vehicle home. It's three kilometres north south east, it's very very small. I would say 'go and set it up in the morning, set up and come back and go home'. I just can't see any time when I would say take a vehicle home.

Current manager

84. Team Leader Z's current manager, Coordinator X, similarly advised my officers that he was not aware of any arrangement permitting Team Leader Z to use a council fuel card for his private vehicle for any reason.²⁷ Coordinator X also told my investigation that:

All work activities ... are to my knowledge always completed during work hours. I have never instructed staff to complete work tasks on there [*sic*] way home from work. My staff start work at 6:30am and finish at 3:30pm. If [Team Leader Z] is completing tasks ... outside of the above hours then these are being completed on his own accord and without my knowledge.²⁸

85. When asked at interview why he didn't speak to Coordinator X about the arrangement when his reporting line changed, Team Leader Z said:

In hindsight, sitting here now I wish I did ... go to [Coordinator X] and put my cards on the table and say 'look I've been doing this, is this still supported?'. But I didn't do that.

...

Honestly I didn't think there was a problem with what I was doing. But when you look back now, seems pretty silly to think that. I never stopped and thought about it, I just went about my daily business, doing what I thought was a good job for the council, doing extra things ... I look at that \$4,000 number and think, that's pretty bad.

Private benefit

86. At interview, Team Leader Z said that he had not intended to privately benefit from his use of the council fuel card, however, acknowledged that, upon reflection, it was clear that he had. He said:

I never set out to rip off the council ... it was a conversation I had with [Coordinator Y]. I believed it to be the right thing I was doing, no one had stopped or questioned or asked me. Since that arrangement, I believed it was business as usual. I never set out to rip anyone off, but when you put the evidence in front of me, I can't deny that I probably have. And I'd love to take back time and not do it.

87. Team Leader Z also acknowledged that:

- the council would not approve the extent of his use of the fuel card for refuelling his private vehicle
- there were no records to differentiate the fuel he used for business purposes (i.e. jobs when travelling to or from work) and his private use of his vehicle

²⁷ Email from Coordinator X, 4 December 2015

²⁸ Email from Coordinator X, 23 December 2015

- he was putting significantly more fuel into his vehicle than he was using for the jobs he did travelling to and from work
- based on the frequency of the fuel card transactions, which on many occasions were once every seven to 10 days, it was reasonable to conclude that he had rarely (if at all) paid for fuel himself for his private vehicle over the preceding year
- no one at the council had instructed or asked him to do additional jobs when travelling to and from work, and his current manager was not aware that he was doing such work
- there were no records to evidence the jobs he had undertaken on his way to or from work.²⁹

Findings

88. The investigation found that the allegation against Team Leader Z was substantiated.
89. The evidence showed that Team Leader Z used the council small equipment fuel card extensively to refuel his private vehicle over at least the preceding two years, with the value for 14 months³⁰ coming to \$4,167.06. While the reports only go back to September 2014, Team Leader Z admitted to using the council small equipment fuel card for private purposes from around November 2013.³¹ Consequently, the total would far exceed \$4,000.

90. On many occasions over the preceding year, Team Leader Z used the card for his private vehicle once every seven to 10 days, suggesting that he rarely, if at all, paid for any fuel himself. On some occasions, Team Leader Z used the card five or six times a month.³²
91. While Team Leader Z stated that Coordinator Y authorised his use of a council fuel card to refuel his private vehicle when doing jobs while travelling to or from work, Coordinator Y denied providing any such authorisation; and there was no other evidence to indicate that this occurred. There was also no evidence to support Team Leader Z's claim that he frequently did jobs while travelling to and from work using his private vehicle. In the absence of any documentary evidence relating to these jobs, I would expect Team Leader Z's direct manager would have been aware that he was undertaking these jobs. Yet both his former and current manager said they had no knowledge of this. It was also apparent that Team Leader Z was not instructed to do such work, nor was this a requirement of his role. In particular, I noted Coordinator Y's comment at interview that there was little benefit in staff doing jobs when travelling to and from work given the size of the municipality.
92. On balance, I did not accept Team Leader Z's evidence that he was given permission to use a council fuel card to refuel his private vehicle when doing jobs while travelling to or from work. In my view, Team Leader Z used the council fuel card without authorisation or justification, and received a significant private benefit.

29 Interview with Team Leader Z, 16 December 2015

30 From September 2014 to November 2015

31 Interview with Team Leader Z, 16 December 2015

32 Fuel transaction reports attached to email from Manager W, 13 November 2015

93. Team Leader Z's use of the council fuel card for his private vehicle was in breach of the council's code of conduct on the basis that he:

- did not act in a fair and honest manner
- acted for an ulterior motive and had not appropriately and responsibly used council resources.

94. In response to my draft report, Team Leader Z said:

I would like to set up a payment plan to reimburse the council as it was never my intention [to] breach councils [*sic*] code of conduct. I did not set out to misuse the council fuel card[.] I have always tried to work with council's values of respect, courage and integrity.

Looking at the evidence I did make an error in judgement and misuse the card, which I deeply regret.

It is unfortunate that [Coordinator Y] cannot remember our conversation regarding the fuel card and I did not keep a copy of my notes of that conversation. I also agree that I should have discussed it with my current manager.

I hope that both council and myself can learn from the mistake and look at how the processes and policies are relayed to staff.

95. The lack of scrutiny and oversight by the council allowed this conduct to go undetected for a substantial period of time, which ultimately jeopardised the proper expenditure of council funds. Had the reports for the card used by Team Leader Z been reviewed at any stage by the council, it would have been clear from the frequency, size and location of the transactions that the card was not being used in line with its approved use.

96. When my officer sought clarification from the council regarding the review of fuel reports, the council advised:

The fuel transaction reports are used for expenditure monitoring purposes to determine if [there are] any major variances from previous payments ... the fuel card reports are not looked at in detail individually.³³

97. There were also gaps in the council's policies on the use of fuel cards: their use for private purposes and/or to refuel a private vehicle; requirements for cards not assigned to vehicles; or how fuel card usage reports were reviewed. My report made recommendations to the council to address these gaps, to provide greater guidance to staff on appropriate use, and to ensure that any potential misuse can be promptly identified.

98. The council accepted my recommendations to take disciplinary action against Team Leader Z and seek reimbursement from him. The council also accepted my recommendations to undertake an audit of fuel card use and to review its policies and procedures on fuel cards.

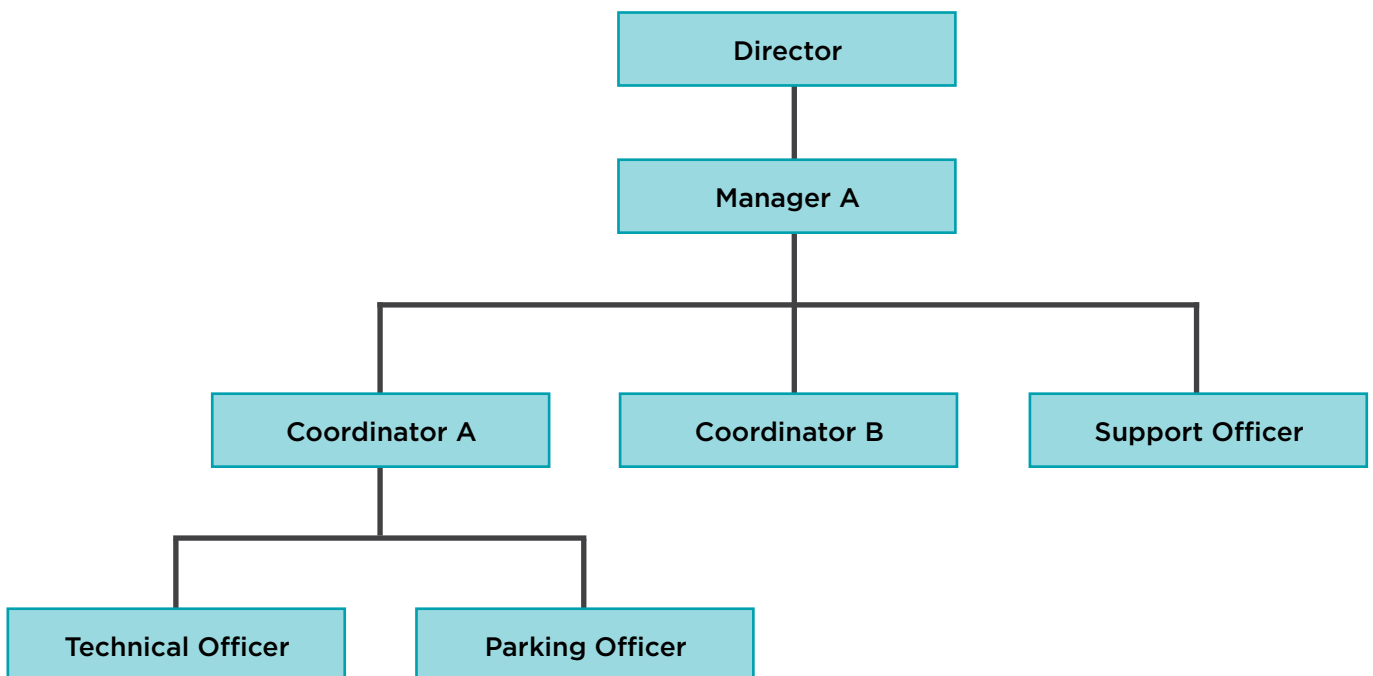
³³ Email from the protected disclosure coordinator at the council, 17 December 2015

Case study 3: Procurement and recruitment

I was aware that people borrowed stuff from the depot over the years. I've been around for a lot of years and that was pretty common practice. I was not aware that things had changed of recent times ... I was of the belief it was tolerated.

99. There were two principal allegations in this matter, which came from a regional council:
1. that staff working in Manager A's unit [Manager A and Coordinator A] had purchased equipment with council funds for private use
 2. that Manager A appointed a close relative [Support Officer] and subsequently promoted her to a managerial role within his unit in breach of the council's recruitment and selection policies.³⁴
100. Refer to Figure 1 for the reporting relationships in the work unit.

Figure 1: Reporting relationships in the regional council



³⁴ Attachment to letter dated 16 March 2015 from IBAC; and at the interview of the discloser

Allegation 1: Council officers purchased council equipment for private use

101. This allegation related to a number of purchases of equipment including:
- a sandblaster and attachments worth \$1,128
 - an air compressor worth \$805 to power the sandblaster.
102. During the investigation it was further alleged that a metal lathe worth \$4,795 had also been improperly purchased for personal use. This too was investigated as a related disclosure.

Sandblaster

103. A sandblaster can be used 'for various surface treatment and decoration purposes, such as removing rust, paint, scale or other foreign build-up from a metal, or making patterns on glass'.³⁵
104. It was alleged that between July and October 2014 six officers were asked to assist Coordinator A in unloading a sandblaster from a truck. One officer queried the need for a sandblaster. Coordinator A responded that it was to clean ticket machines. An officer challenged that view on the basis that council had had ticket machines for years yet had never needed a sandblaster.

Image 1: Sandblaster in the council workshop



³⁵ *Instruction Manual for SB-375 Sandblasting Cabinet (240V)*, page 2

Purchase and record keeping

105. On 10 July 2014, Coordinator A sent a requisition for the purchase of a sandblaster and glass beads for use in the sandblaster for \$1,056 to Manager A, which he approved the same day. A remittance advice dated 24 September 2014 noted the purchase of a sandblaster on 27 August 2014 for \$979 and the additional purchase of glass beads for the sandblaster on 29 August 2014 for \$149, totalling \$1,128. A written quote was required under the council's procurement policy; however, there was no evidence that one was obtained in this instance.
106. At interview, Coordinator A said if he had obtained a quote for the sandblaster he would have provided it with the requisition, but that a requisition could be submitted without a quote. He said that in any event he 'would have been out and spoken to [the supplier]' and that he would have discussed the purchase with Manager A.³⁶
107. In response to my draft report, Coordinator A sought to separate the cost of the sandblaster from the combined cost of the sandblaster and the glass beads, which are integral to its function. He said:
- ... the sandblaster at a cost of \$979 when purchased, is under the asset threshold of \$1,000 and as such was purchased from the maintenance budget and not from a capital account. Being under \$1,000 my understanding is that the item is not classed as a capital item.
108. At interview, Manager A told my officers that he does not keep a list or any record of purchases of less than \$1,000 and that there were no audits of the unit's equipment.³⁷
109. The Director, Manager A's manager, said that minor equipment was the responsibility of the relevant unit and she was not aware of any record or audit of purchases by the unit.³⁸
110. This was confirmed by the Finance Manager, who also said assets in excess of \$1,000 must be noted on the council's asset register and that the finance unit is not informed about items worth less than \$1,000. He said the only documentation that the finance unit retains of these purchases are the invoices. He said that 'different units have different approaches' and 'I just hope managers have their asset registers in place'.³⁹
111. The sandblaster was not recorded by the unit on the asset register; however, it was noted by the Parking Officer with responsibility for testing and tagging equipment.
112. At interview, Manager A said that other areas of the council may not be aware that his unit had purchased a sandblaster. This was confirmed in an internal email of 9 November 2015, in which Manager B, who has responsibility for equipment across council, responded to an enquiry by my office:
- We do not own a sandblaster and never have had this sort of equipment.

36 Interview with Coordinator A, 9 December 2015

37 Interview with Manager A, 9 December 2015

38 Interview with the Director, 22 October 2015

39 Interview with the Finance Manager, 9 December 2015

Council's need for and use of the sandblaster

113. An experienced officer in Manager A's unit told my officers he did not believe there was a use for a sandblaster since most maintenance functions were outsourced. The officer said that one of the maintenance officers had sandblasted a ticket machine door once 'just to try it out' but he had not seen the sandblaster used since.
114. At interview, Coordinator A explained the reason for the purchase:
- Well we purchased this primarily to, when you get vandalism with equipment and that, to rip the paint off it so that we can get it back on. Tune it up nicely. Even some of our parking meters and that sort of stuff ... Probably [used] on some of our ticket machines and some of our parking meters ... It's an item that will come in very handy for our operations ... These things will pull the paint off very well ... I wouldn't say that we often have to do it. I wouldn't say it's weekly but the point of this sort of equipment is it's there and we're able to use it and I try and give the maintenance crew as much support as I can. Otherwise anything that's wrecked we would have to send it out externally and get it fixed.
115. At interview, Manager A said:
- Somebody identified that it would be handy for meter maintenance. [Coordinator A] would have spoken to me about it and said can we get a sandblaster because it would be handy for doing ticket machine doors and things that needed a bit of work and I would have said 'yes, no problem' because I don't think it was very expensive ... \$800 ... For me to agree I would have to see a benefit in it as efficiency, a useful piece of equipment ... I would have trusted [Coordinator A's] judgement. I'd have no reason to question why it wouldn't be a reasonable purchase ... I remember a brief conversation with [him] about it. He did ask me about it ... Said it would be useful equipment for our meter technician.
116. At interview the Technical Officer told my officers that he'd 'never ever thought about a sandblaster'. He said that the first he knew about it was when he arrived one day and it was there, and that he did not use it very much. He said he did not know whose idea it had been to purchase the sandblaster.⁴⁰
117. In relation to its actual use, Manager A was not aware how many council items had been sandblasted in the last year.
118. In response to my draft report, Coordinator A stated:
- One would expect the life expectancy of [the sandblaster] to be in the order of 20 years.
- The cost of \$979 amortized over 20 years is approximately \$49 per year. I would expect that \$49 per year is acceptable for this piece of equipment and provides value for money based on the life expectancy of the equipment.
- ...
- I would like to add ... that a number of our parking meters through wear and tear or through vandalism would require, over time, to be refurbished and repainted. The sandblaster would be able to quickly remove faded, bubbled or flaking paint, any corrosion or other foreign material build up prior to repainting. This would assist us to keep parking equipment looking fresh and presentable.
119. At interview, the Director, to whom Manager A reports, said that it was 'hard to imagine' a sandblaster being used to clean a parking meter.

40 Interview with the Technical Officer, 9 May 2016

120. In response to my draft report, Manager A stated:

... [The] blaster is used to remove paint and rust.

... [The Director would] have never had any operational involvement with the parking program and would have limited knowledge or expertise with parking equipment use.

[Coordinator A] would have more knowledge than I, but I am aware of the sandblaster being used to remove rust from lock threads, bolts and fittings. The blaster is also used to remove the paint from the old parking meters that are painted blue for the disabled parking spaces. Following the interview I have made enquiries and I am aware of this happening over the past year.

As stated above I believe that [Coordinator A] has purchased his own sandblaster for private use.

121. My officers contacted three comparable councils to enquire about the equipment used to maintain parking meters. They informed my officers that they did not use a sandblaster.

122. My officers also contacted a Melbourne company that supplies the sandblaster model that was purchased by the council and were informed that:

- the sandblaster was used for cleaning parts and taking rust and grime off surfaces to prepare them for painting
- people usually purchased them to 'do up cars'
- councils did not purchase this product.

Private use of the sandblaster by Coordinator A

123. During my investigation, evidence was provided that Coordinator A had said that he had sandblasted hubcaps for a car he was restoring.

124. The Director told my officers that Coordinator A had talked about his hobby of restoring metal items and that he had also restored a car.

125. In response to my draft report, Coordinator A stated:

[The Director] is incorrect with her statement that I had talked about restoring a ... car. I have spoken to a number of people in regard to the [car] which in turn always begs the question, did you restore it. Which I reply no, it was fully restored when purchased.⁴¹

126. In response to my draft report, Manager A stated:

My recollection is [Coordinator A] purchased a ... car – he didn't restore one.⁴²

127. It was also alleged that after the delivery of the sandblaster, between July and October 2015, Coordinator A brought small pieces of machinery to work and told a number of people that he had spent the weekend sandblasting and painting machinery.

128. Manager A identified Coordinator A as a person in his unit who would potentially have a private use for the sandblaster. Manager A said he could not recall if Coordinator A had asked permission to use the sandblaster, 'but if he asked me I would have said yes'. Manager A's evidence is that he would have approved Coordinator A's personal use of the sandblaster, as he did the personal use of equipment for other staff.

41 Email from Coordinator A, 8 May 2016

42 Email from Manager A, 5 May 2016

129. At interview, Coordinator A told my officers he had used the council sandblaster for private tool restoration work. He said:

I had a little cast iron drill. And I did use that [the sandblaster] to blast the stuff off. Probably took me an hour or an hour and a half to probably do it ... could have been two or three months after we purchased that ... I did restore another little [piece]. I don't know whether I did it on mine or this one. There was a little fire plug. I did restore one of them ... I didn't purchase that at work so that I could go in and use it whenever I wanted to because it's just not feasible for me ... Because I like to get things at home and have them set out and blast them there and not have the chance of them getting contaminated and getting muck all over them and then having to redo things.

130. In response to my draft report, Coordinator A stated:

As part of my interview I stated that I recalled using ... the sandblaster twice for private use. Which [sic] as is stated in the report is allowed for in the Council's Code of Conduct.

131. Coordinator A told my officers that he had purchased a 1938 car but that he had 'not as yet' used a sandblaster to restore any part of the car. In response to my draft report, he stated:

Just to clarify the [car] was purchased fully restored, I have not restored anything on it. There has been nothing sandblasted on it or likely to be sandblasted on it in the near future.

132. He also told my officers that he had purchased his own sandblaster, identical to the council's, and later provided evidence of the purchase.

133. At interview, the Technical Officer acknowledged that Coordinator A could potentially use a sandblaster for his hobby, saying 'Oh he could, yeah'. He also said:

I don't think I've ever seen [Coordinator A] using it. I'm sure I haven't.

...

The problem is I've been away for so many, so much, you know, coming and going ... I don't know what has gone on really.

Air compressor

134. During the investigation, my officers were informed by a witness that a new air compressor had been purchased by the council to power the sandblaster.

Purchase and record keeping

135. A requisition dated 16 September 2014 showed that Coordinator A requested the purchase of a '3ho 1001 Ros Air Compressor and am/fm Radio Ear Muff' totalling \$805. Manager A approved the request the same day.

136. At interview, Coordinator A told my officers that the air compressor was purchased 'to boost the air flow' to the sandblaster as the existing air compressor was inadequate.

137. At interview, Manager A stated:

... my recollection of a conversation with [Coordinator A] is that the existing compressor wasn't powerful enough to drive the sandblaster ... [Coordinator A] at the time would have told me that the other air compressor wasn't big enough to run the equipment so I would have accepted that was right. I had no reason to doubt what [Coordinator A] was telling me was correct.

138. The air compressor purchased to support the function of the sandblaster was noted on the council's 2014 list of minor equipment, although the sandblaster was not.

Metal lathe

139. During the investigation, a related allegation was made regarding the purchase of a metal lathe by the council.
140. A metal lathe is an engineering tool used to fit and turn pieces of equipment. A lathe can be used to form and/or reduce the size of an item.⁴³

Purchase and record keeping

141. On 8 April 2011 Coordinator A obtained a written quote for a metal lathe for \$4,795. On 11 April 2011, Coordinator A forwarded this quote to the finance unit and requested a requisition for the purchase. The purchase order shows that the requisition was approved by Coordinator A on 11 April 2011. Coordinator A was also the contact person at the council for the purchase. The lathe was delivered to the council on 21 April 2011. The council's plant and equipment purchase/disposal advice notes Coordinator A as the custodian of the lathe and Manager A as the manager.

Image 2: The metal lathe purchased by the council



⁴³ Information provided by Hare and Forbes, Melbourne, a company that stocks metal lathes

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142. On the basis of the documentation, Coordinator A both directed the requisition for and then approved the purchase of the lathe, despite the council's procurement policy requiring that more than one person be involved in and responsible for transactions from end to end. When asked at interview under oath if there were any procedures to ensure that purchases were needed by the council, Coordinator A said 'I suppose that's where you have it signed off by a second person'.
143. Coordinator A said he obtained his authority to approve the purchase 'through the work flow'. Following the interview, Coordinator A advised that he was a delegated project officer under the council's procurement policy.
144. In response to my draft report, Coordinator A stated:
- When I stated in my interview that 'I suppose that's where you have it signed off by a second person', I believed that [the Finance Officer] was the first person as she had created the requisition and that I was the second person who subsequently authorised the order.
- Therefore there has been no contravention of ... the Procurement Policy as there was more than one person involved in and responsible for the transaction end to end.
145. Although the Finance Officer is noted as the submitter of the requisition, she acted on a direct request by Coordinator A, who effectively both submitted and approved the requisition.
146. Under oath, Manager A told my officers that there were threshold amounts that determined the number of quotes required:
- There's a capital process ... [Finance] will allocate a special account number ... There'll be quotes and if it's that sort of significance you would always discuss it because we want to make sure we get good value for the community ... You can't do your own requisition and approve it ... It's a work flow between the person that gets the quotes and puts the requisition together then the approval process ... Generally my [senior officers] would be the people who send me requisitions ... [Coordinator A], [Support Officer], [Coordinator B] ... [an] electronic request.
147. At interview, Manager A told my officers that he does not keep a list or any record of purchases of less than \$1,000 and that there were no audits of the unit's equipment. The Director repeated her comments on the sandblaster, saying that minor equipment was the responsibility of the unit and she was not aware of any record or audit of purchases. She also said she had never queried purchases by Manager A.
148. The council's Finance Manager confirmed that there are no audits, and that each manager has a budget and is responsible for buying capital.
149. The lathe does not appear on the council's asset registers for 2014 or 2015.

Council's need for and use of the lathe

150. An experienced officer in Manager A's unit told my investigation that he did not see why a lathe would be needed, including to make meter parts.
151. The council's procurement policy requires that the council's contracting, purchasing and contract management activities achieve value for money; this involves ensuring that public money is well spent and that decision making is transparent and accountable.
152. At interview, Coordinator A explained the justification for the purchase of the lathe as follows:
- I had a talk with [the Technical Officer] at the time [of the purchase]. It's just something we'd been talking about for a while ...
- We decided to purchase [the lathe] some time ago to try and help the maintenance guys with different parts and that sort of stuff ... They'd be turning down different bits of material, making up rollers [for ticketing machines], that type of stuff ... [the Technical Officer] was predominantly the one that used to use it ...
- ... [The Technical Officer] was always making little gadgets and little bits and pieces to fix parking meters and fix ticket machines and that and I just thought that that would be of some benefit to him.
153. Under oath, the Technical Officer told my officers that he has worked at the council for 26 years and that Coordinator A has been his manager for the past 10 years. He said the two:
- ... became great friends and since I've been sick [Coordinator A] visited me in hospital a number of times ... I'm much closer to [Coordinator A] than I am to [Manager A] ... not half as close as what me and [Coordinator A] have been.
154. The Technical Officer's main role has been to maintain parking meters and ticket machines. He works in the meter maintenance workshop located in a multi-storey carpark where the sandblaster and lathe are kept.
155. In response to the allegation that Coordinator A purchased the lathe for his private use, the Technical Officer responded:
- It sounds ridiculous to me. Definitely [Manager A] would not be interested in working on lathes and I'm sure [Coordinator A] didn't because he never had the opportunity ... he's hardly ever over in the workshop. I don't know when he would use it other than after hours. I don't think he ever has.
156. The Technical Officer told my officers that he had wanted a lathe since he started work at the council. He stated:
- Well I'd wanted a lathe for 20 years and years ago when I wanted one you were looking at \$20,000 ... now the Chinese tools have come in and they're dirt cheap so [Coordinator A] got it for me.
- [Coordinator A] just said ... 'How would you like a lathe? We could get a lathe now' and I said 'That'd be good' and that's how it came about ... Three years ago.
157. My officers asked the Technical Officer whether he had had a conversation with Coordinator A around the time the purchase of the lathe was proposed, to which Technical Officer responded:
- It came out of the blue.

158. In response to my draft report, Coordinator A stated:

This type of equipment has a useful lifespan of at least 20 years if not more. The cost of \$4,795 amortized over 20 years is approximately \$240 per year. I would expect that \$240 per year is acceptable for this piece of equipment and provides value for money based on the life expectancy of the equipment.

159. In relation to the council's current use of the lathe, Coordinator A stated:

At the moment I'm not sure how often it's used at all ... Before that it was used maybe every few weeks or so just depending on what they had on at the time ... It was used for two or three years.

160. At interview, Manager A said:

[The Technical Officer] at the time had spoke[n] several times about how useful a lathe would be for some of his works ... That was a capital purchase ... It'd be for turning small meter parts ... that are hard to get now ... I haven't seen it in operation.

161. At interview, the Technical Officer explained when he used the lathe:

When we had those old ... machines I was making lots of things for them. But now we've got the Swedish ones ... and I don't need to do as much ... The Swedish machines were introduced in bulk in the last couple of years.

...

It comes in spasms like I mightn't use it for a few weeks and then I'll have something I need to do.

162. At interview, the Director and another council officer told my officers that they could not see a use for this equipment.

163. My officers contacted a Melbourne company that supplies the lathe purchased by the council. An employee told my officers that it was possible councils had a use for a lathe in their maintenance department workshops as it could be used to make parts that could not be purchased.

164. My officers also contacted three comparable councils to enquire whether these councils used a lathe to maintain their parking meters. The councils advised that they did not, and one stated that a lathe would not be needed to maintain parking meters.

Private use of the lathe by Coordinator A

165. The lathe is located in a council workshop. Coordinator A is in charge of the area. A number of staff in the area have access to the workshop.

166. A staff member of Manager A's unit interviewed by my officers gave evidence that Coordinator A spoke to a group of officers about using the lathe to do some private work.

167. At interview, Coordinator A told my officers that his hobby is making and restoring tools.

168. All council officers interviewed were aware of Coordinator A's hobby. At interview on 22 October 2015, the Director stated:

[Coordinator A's] hobby is doing up old stuff ... He's got this shed that's set up like a Victorian tool shed ... old lamps, old metal stuff ... that he does up.

169. At interview, Coordinator A admitted to using the council lathe to pursue his private hobby, stating that he used the lathe to 'turn down a couple of little axles or something one time'. He said he 'probably would have asked [Manager A] at the time if he would mind if I used it'; however, he could not specifically recall having done so. He said that no record was kept of his private use.

170. Coordinator A told my officers that he now has a similar lathe at home. Following the interview, he provided a tax invoice for a lathe that he had purchased on 30 October 2014 for \$4,300. This is the same lathe that the council purchased.

171. In response to my draft report, Coordinator A stated:

I believe that the statement that I used the lathe to 'pursue' my private hobby to be misleading and incorrect. I did not admit to using the Council lathe to pursue my private hobby. I was asked at interview if I had ever used the lathe for private use. I stated at interview that my recollection was that I had used the lathe once for private use. I do not believe that using a piece of equipment once for private use is using the equipment to pursue a private hobby.

172. At interview Manager A told my officers that he had heard Coordinator A talk about using a timber lathe. Manager A told my officers that he did not know if Coordinator A had used the council lathe but that prior to this investigation he would most likely have permitted anyone to do some minor work on it. Manager A could not recall having given approval for any of his officers to use the lathe.

173. At interview, the Technical Officer stated:

[Coordinator A] and me had a play with it when we first got it to see what we could do ... That was the only time that anyone's played with it ...

[Coordinator A's] been brought up properly ... [Coordinator A's] been very good to me and I trust him. I can't see him ... be bothered buying a lathe to use for his own use ... that little bit of money. Because he's got plenty of money ... and [Manager A] ... he wouldn't be interested in it.

[Coordinator A] never used it when I was there and I don't know ... of anything he made.

Responses to advice from other councils

174. As described earlier, my officers contacted three councils to enquire whether they used a lathe to maintain parking meters.

175. In response to my draft report, Manager A challenged the comparability of the councils my officers had contacted. He then referred to other councils that he regarded as having greater similarities. He stated:

You are comparing larger metropolitan Councils who outsource their maintenance operations using a remove and replace program with a full in-house maintenance regime which the [council] is still operating. It is more difficult for the country municipalities to utilise City located maintenance contractors.

I am also aware that [a council] has a lathe and milling machine, but outsource their sand blasting and painting.

I am also aware that [another comparable council] has a lathe for meter and ticket maintenance purposes.

The thing that puzzles me is that I am aware that [Coordinator A] has purchased his own lathe and sandblaster, so if he purchased [council] equipment for the sole intention of personal use, why would he subsequently purchase his own?

176. In response to my draft report, Coordinator A stated:

Until approximately 12 months ago [contractors for a comparable council] had a metal lathe as part of their parking maintenance program.

[Another comparable council] also have or had a metal lathe as part of their parking maintenance program.

177. My officers contacted the contractor for one of the councils referred to by Coordinator A, who advised that:

- they have a lathe to make customised parts for parking machines but said it was not 'a necessity' since parts can usually be obtained from suppliers
- they do not have an in-house sandblaster but send parking machine casings to a private company that specialises in sandblasting, which is labour intensive work. In the last 12 months they have sandblasted parking meter casings.

178. My officers spoke with the officer in charge of maintaining parking meters at the second council referred to by Coordinator A. He told my officers that the council has a small metal lathe that has rarely been used over the last five to 10 years. It had been used to make pins for the old parking meters, now replaced by electronic parking meters. He advised that a sandblaster was not used to maintain parking meters.

179. My officers contacted another adjoining council that maintains its own parking meters. This council advised that it does not use a metal lathe or sandblaster to maintain its parking meters.

180. The final issue raised by Manager A was that since Coordinator A allegedly used council equipment for his private use he would have no reason to purchase it himself. However, I noted that at interview, Coordinator A told my officers that he was able to build a shed for his hobby when his circumstances changed in approximately 2013.

181. My officers understood this to mean that following a change in Coordinator A's financial circumstances he could afford to build a shed. The change would have enabled Coordinator A to buy equipment related to his hobby including a metal lathe and sandblaster. Using the council's equipment would have enabled him to trial the equipment before purchasing it.

182. My investigation found that, in October 2014, Coordinator A purchased the same model lathe that the council had purchased three years earlier. My investigation also found that Coordinator A purchased the same model sandblaster in August 2014 that was purchased by the council a year earlier.

183. In response to my draft report, Coordinator A stated:

There seems to be a belief and assumption that as I enjoy a recent hobby of fixing old things and have an old [car] that I purchased equipment to enable me to pursue this hobby. This ... is untrue and is not supported by the evidence.

There is clearly a demonstrated use and amortized value for money for the equipment as part of the parking maintenance program at the [council], which would have been supported by [the Technical Officer] if he were not so gravely ill.

... I also have purchased ... my own ... sandblaster and Lathe.

The [council] lathe was purchased in 2011, however I do not believe that I used it until at least 2014.

...

My hobby ... has been a gradual interest and did not really start until September 2014 ... The order for the [council] sandblaster was placed on 10 July 2014. I did not use the sandblaster for my private use until 8 September 2014. The Post Drill that I sandblasted was the first old tool that I restored.

...

... I did not use the lathe for private use until at least 3 years after its purchase.

... I did not have a private use for the sandblaster when the order was placed.

... the private item which I sandblasted was purchased at least 2 months after the order was placed.

Loans of other equipment

184. Some staff would regularly borrow council equipment for personal use in the belief that this was permitted by the council. Manager A told my officers:

We have loaned equipment from time to time ... But I've been advised in the last few days that our depot was doing it until recently but now they've ceased doing it but I wasn't aware of that until recently ... If somebody wanted to borrow something and it'd generally be a trailer ... they would generally let me know ... or they may ask ... [Coordinator A or Coordinator B] ... the general rule would be if you break it you fix it or you're responsible for it ...

My understanding was it [staff using council equipment] was tolerated ... I just wasn't aware it wasn't appropriate.

185. Manager A said there was no record of the loans of equipment and that if property went missing he 'may not know'.

186. An internal council email dated 9 November 2015 raised concerns about staff loaning equipment and stated:

This has been allowed to happen in previous years however in the last six months and after receiving the IBAC report this practice has been stamped out.

187. Following contact by our office to arrange an interview, Manager A sent an email dated 3 December 2015 to another council unit asking:

... can you advise me please the general rules around borrowing of Council equipment. I can't find any written policy. For instance is it generally tolerated if a manager was to allow one of their staff to borrow a trailer for a couple of hours for their personal use outside of business hours provided they are appropriately licenced and take all responsibility for the equipment?

188. The unit responded the next day:

I'm not aware of any policy but if there was one, it would be covered in the Fraud Prevention Policy. I am aware however, that the depot used to allow the hire of some equipment by staff but following a recent IBAC report, [Manager B] at the Depot has stopped any borrowing of equipment either from the Depot or out of vehicles.

I understand that the depot [required] a hire form to ensure things were signed out.

189. At interview, my officers asked Manager A about his enquiry and he stated:

I was aware that people borrowed stuff from the depot over the years. I've been around for a lot of years and that was pretty common practice. I was not aware that things had changed of recent times ... I was of the belief it was tolerated.

190. Manager A believed that this practice was approved by the council's executive on the basis that 'it has happened for so long'.

191. Officers gave evidence that jackhammers, trailers, cement mixers, drills and alternators had been loaned by some council staff.

Relationship between Manager A and Coordinator A

192. Borrowing council equipment by or with the permission of Manager A, Coordinator A and Coordinator B was considered by my officers in the context of the consistent evidence of witnesses of a very close working relationship between Manager A, Coordinator A and Coordinator B.

193. At interview, the Director described Manager A and Coordinator A as very close personal and work friends who clearly socialised together and knew each other's children well.

194. At interview, Manager A described his relationship with Coordinator A as follows:

We've worked together for about 25 years. He's my second-in-charge. He's somebody that I have coffee with most days. I go walking with him at lunchtime. We discuss work-related issues regularly. If I was wanting to make an important decision with work-related things I'd ask him about it. We get on well ... He's a good work colleague ... I went to his 50th birthday party but we don't socialise outside of that.

195. Coordinator A told my officers he considered Manager A to be a friend and at interview described his relationship with Manager A as follows:

Well he's my manager ... And I've known him for twenty years.

196. At interview, the Director spoke of her frustration with Manager A's refusal to allow officers other than Coordinator A and Coordinator B to act in his role when he was on leave.

197. The Director told my officers that when Manager A applied for five weeks' leave in December 2014 and she proposed that a senior officer from outside the unit act in Manager A's role, Manager A had reduced his leave from several weeks to six days. The Director told my officers she said to Manager A:

... [Y]ou've done this so you won't have someone [outside] acting.

198. At interview, Manager A stated:

We had someone teed up last year outside of the team but it didn't work out ... If it's long periods of time you might open it up to competition but that's generally six weeks or more ... Because it was a Christmas period it wasn't a really long enough stint to worry too much about it, a lot of public holidays ... so I think [the Director] said we won't worry about it this time.

199. In response to my draft report, Manager A stated:

My relationship with [Coordinator A] does not compromise my professional ability and impartiality in managing him.

Allegation 2: Manager A employed and promoted a close relative without due process

200. A related disclosure that arose during this investigation was that Manager A employed and promoted a close relative within his unit in breach of the council's recruitment and selection policies.
201. In interviews, Manager A and the Support Officer in question confirmed their close family relationship⁴⁴.
202. The council has not retained documentation regarding the Support Officer's recruitment and, given the passage of time, should not reasonably be required to do so. As a result, my officers relied on witness evidence in investigating this disclosure.

Recruitment processes

203. The Support Officer told my officers that in 1999 she started work at the council in a band 3 role that she held for two years. She stated that she initially responded to an advertisement, provided a resume to human resources and was interviewed by Manager A and the Manager of Community Services. The Support Officer said that on appointment she reported directly to Manager A.
204. In response to my draft report, Manager A stated:

At the time of [the Support Officer's] initial employment in 1999, I believe conflict of interest provisions were not widely known. I believe I flagged my relationship with [the Support Officer] to my manager ... and other staff at the time of her appointment. I have always been open about [the Support Officer] being my [close relative].

205. In 2002 the Support Officer was moved into a band 4 administration role and held this position until 2013. The Support Officer said she responded to an advertisement for this role, submitted a resume and was interviewed by a selection panel consisting of the Manager of Community Services and a representative from the human resources area. The Support Officer said Manager A was not involved in this second recruitment process. Following her appointment, she continued to report to him.
206. At interview, Manager A recalled being involved in a recruitment process but thought this was the second recruitment round in 2002 rather than the first, as described by the Support Officer.
207. In response to my draft report, Manager A stated:

I was not involved in the appointment of [the Support Officer] to her administration role in 2002, which was undertaken by [the Manager of Community Services]. I had some apprehension at the time about [the Support Officer] working in the same office as me.

Manager A's proposal to reclassify his close relative's role

208. On 22 July 2013 the Support Officer's administrative role was reclassified from a band 4 to a band 5 with a wage increase from \$54,089 to \$55,601 per annum with additional superannuation.
209. Documents provided by the council show that Manager A and his Director both signed the change of classification form.

⁴⁴ Interview with Manager A, 9 December 2015 and interview with the Support Officer, 10 December 2015

210. In an email dated 24 July 2013, Manager A advised staff as follows:

... just letting everyone know that [the Support Officer's] role has been changed in response to our increased responsibilities with our administrative functions.

[The Support Officer's] new title is 'ADMINISTRATION & SYSTEMS SUPPORT OFFICER'. She will now have more of a leadership role within the ... team. The Admin staff will now report directly to [her].

...

I am really pleased that [the Support Officer] has continued to rise to all challenges and that she has agreed to take on additional responsibilities to assist the team.

211. Manager A also sent a memo dated 9 August 2013 to the council's principal HR advisor:

Further to our discussion, I request that the following changes be implemented to formalise the recent reclassification of [the Support Officer].

Update the reporting structures in the Position Description of [three officers] to reflect that they now report to [the Support Officer].

...

I advise that the following consultation was undertaken ...

May 2013, I met with the Administration team as a group to explain that [the Support Officer] has been assigned the ... role in relation to the ... functions and for all decisions in relation to systems support to be channelled through [the Support Officer]. This was well received by the team and all agreed that this was a good idea.

July 2013, following the reclassification of [the Support Officer's] position, I met with the Administration team individually to seek their view on the idea of their reporting line changing from me to [the Support Officer]. They all agreed that this was really only formalising what was occurring anyway and supported the change.

[The Support Officer] has been training, nurturing and leading the administration team for the past 8 months and the formalisation of her role has not been a surprise to anyone.

July 2013, I advised the wider ... team of [the Support Officer's] expanded role and new title. There was widespread support for this minor structural change.

212. At interview, Manager A told my officers that it had been his idea to reclassify the Support Officer's role, that he had managed the reclassification process and that she continued to report directly to him. He stated:

We went through an outsourced service coming back in house at very short notice ... We had to recruit a large team, about eight people in about 10 weeks ... There was another work team that were interested in [the Support Officer] ... She was already doing the functions ... I suggested to [the Director] that she could be reclassified with a small incremental rise ... I spoke with the other staff about how did they feel about reporting to [the Support Officer] and they all seemed to be ok with it. Nobody voiced any disapproval. I put a memo to [the Director] ... she agreed it was a great idea ... it has to be signed off by Exec.

213. The Support Officer said that in April 2013, when she returned from leave, she became aware of the proposed reclassification from Manager A and she stated 'It just happened'. She said Manager A told her that:

... he had spoken to all the staff [individually] who thought it was about time, it was well deserved, it's something that [the Support Officer] does anyway.

214. One of the officers who now reports to the Support Officer told my officers that rather than a discussion, Manager A told staff of her appointment. At interview, Manager A said that this was not his recollection.

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215. The Director who approved the Support Officer's reclassification told my officers she had spoken to people about the reclassification but did not document this.
216. In response to my draft report, Manager A stated:

The most recent reclassification of [the Support Officer] was merit based and justified. With full approval and sign off from my [Director] ... [The Director] and I discussed this proposal before I commenced the process. I understand that [the Director] also had a discussion with the Director of Community Support. [The Director] was very supportive of this proposal.

Manager A's failure to declare his relationship

217. Despite the Support Officer being closely related to Manager A, he has never made a formal declaration of any conflict of interest regarding the Support Officer.
218. At interview, Manager A confirmed that he had not made any declarations of conflict regarding anyone he worked with, nor had he taken any action to manage any perceptions of conflicts. He said he would be 'relying on the people in the organisation who are the experts to advise me if I'd done wrong'.
219. At interview, Manager A said:
- It's not an ideal situation, no. I didn't appoint [the Support Officer] initially ... It's not ideal, but it works ok.
220. At interview, the Support Officer told my officers that she had never declared any conflict to the council regarding her relationship with her manager and close relative, Manager A. The Support Officer said she was not aware of any requirement to declare personal relationships.
221. While no formal declarations have been made, Manager A told my officers that the familial relationship between him and the Support Officer was common knowledge at the council. However, Manager A's Director told my officers that it was a number of years after the Support Officer started work that she became aware of their relationship, and that the Support Officer's husband also worked at the council.
222. The Director stated:
- Given the emphasis the organisation had in place on recording conflicts ... I would have expected that a conflict had been recorded. I've never checked.
223. At interview, when Manager A was asked if he could see any issue with being on a selection panel for the Support Officer, he responded:
- Well I was the manager ... I just basically was looking for the best person for the role ... At our work we've got lots of people who are related that work together. We've got them in the finance area, HR area. In a small town that's going to happen.
224. Manager A described his relationship with the Support Officer as follows:
- I'm probably harder on [the Support Officer] than anybody ... I have expectations on her. I don't really see her much outside of work. Only at family dos. I don't visit. I avoid visiting if I can. We get on fine. Professional.

225. However, a close relationship is evident in emails between Manager A and the Support Officer as follows:

Manager A: Miss me?

Support Officer: Sure do.

[Support Officer's husband] and I have done a notam [sic] and he f---d it up so we've just done another, he has no idea how to do abbreviations!!

All is sorted – but I just needed a bitch!!

I really really miss you xxxx

226. At interview, Manager A responded to the email stating:

I've got a pretty friendly relationship with a lot of people. That's not unusual.

227. The Support Officer was provided with an opportunity to respond to the emails but has not done so.

228. In response to my draft report, the Chief Executive Officer of the council stated:

On the matter of [Manager A] employing and promoting his [close relative], it does raise broader issues for us and other regional Councils. Family and other close relationships are common and conflicts of interest must be avoided. We have just updated our recruitment policy to thoroughly deal with the issue.

Other relatives employed in Manager A's unit

229. The Support Officer informed my officers that her mother and husband also work in Manager A's unit. Manager A confirmed this at interview. It is unclear whether Manager A was involved in their recruitment. There have been no declarations of conflicts regarding these two staff members.

230. In August/September 2010, a close relative of Coordinator A provided a service for Manager A. Council documentation shows that the Support Officer requested the service, Manager A authorised it and the council paid for the service.

231. At interview, Coordinator A stated:

I don't think I [made any declaration]. I think [Manager A] made [me] aware that he could get it done through my [relative] ... Should I have made a declaration, should I? ... I had no idea it was a conflict.

232. At interview, Manager A said he had not required any declaration by Coordinator A but that Manager A had spoken to the Director about the matter.

233. In response to my draft report, Coordinator A stated:

I refute the claim that I had a conflict of interest.

I did not solicit, or request this service. I was asked for an opinion on whether my [relative] could [provide the service]. I made an enquiry with my [relative] as to whether he could or could not provide the requested service and passed the information received onto [Manager A].

As stated in the draft report [the Support Officer] requested the service and [Manager A] authorised it.

234. The Director told my officers that she had not known of the relationship between Coordinator A and his relative at the time the service was provided, and only discovered it after the contract had been entered into. The Director said she then told Manager A and Coordinator A, 'that surprised me that you'd use your [relative]', to which they responded that the relative was the only accredited person in the region who could provide this service.

235. The Director said she investigated this matter and what they told her seemed to be correct.

236. In response to my draft report, Manager A stated:

[The Support Officer's close relatives] were both employed some time back ... [in] very low paid role[s] and often hard to fill. I can't specially remember, but I don't recall having any involvement in their recruitment.

...

It should be noted that [the Support Officer's close relative] won ... [an] award

...

I don't believe I have a conflict of interest with [Coordinator A's relative], as he is a local businessman who I have no relationship with. He is neither a personal friend nor a relative of mine.

Findings

Allegation 1: Sandblaster and lathe were purchased for Coordinator A's personal use

Sandblaster

237. The investigation established that Coordinator A was involved in purchasing a sandblaster and attachments integral to the functioning of the sandblaster.

238. Coordinator A admitted that he used the sandblaster for his personal use twice. The evidence of witnesses, however, was that he used the sandblaster more often and had chosen to minimise his use when responding to the allegations. It was clear that Coordinator A personally benefitted from the purchase of the sandblaster with council funds.

239. One year after purchasing the sandblaster for the council, Coordinator A purchased the same model for himself. It is highly likely that Coordinator A made the purchase for the council to satisfy his own desire for the equipment at a time when he was not able to make a personal purchase. It also allowed him to trial the sandblaster to determine whether it was suitable for his personal use.

240. Manager A's evidence was that Coordinator A told him a sandblaster would benefit the Technical Officer. However, the Technical Officer's evidence was that he had never thought about using a sandblaster, had not been involved in any discussions about its purchase and did not use it much. The Technical Officer said he had not seen Coordinator A use the sandblaster; however, he also gave evidence that he had often been absent from work due to ill health and that he had a strong friendship with Coordinator A.

241. The evidence of a supplier, other councils and other officers was that the unit would not have needed a sandblaster.

242. I did not find that Coordinator A and Manager A were credible witnesses. I did not accept the evidence of either Coordinator A or Manager A that the sandblaster was purchased primarily for maintaining the council's parking meters. Nor did I accept Coordinator A's evidence that he only used the sandblaster twice for private use.

243. I was satisfied on the balance of probabilities that Coordinator A proposed the purchase of the sandblaster by the council for his personal use.

Lathe

244. The investigation established that Coordinator A purchased a metal lathe with council funds by orchestrating a request that he then approved. In doing so, Coordinator A breached the council's procurement policy by effectively being the only person involved in the transaction.
245. Coordinator A admitted that he used the council lathe for his personal use once.
246. The evidence was that the lathe was used sporadically by the council, and other councils did not think that Manager A's unit would have needed a lathe.
247. Evidence was provided by the Technical Officer, who has reported to Coordinator A for the past 10 years and described their relationship as friendly. The Technical Officer said that while he had wanted a lathe since he started work with the council 26 years ago, it was only in 2011 that Coordinator A offered to purchase one for the council. The Technical Officer said the purchase had not arisen from any recent requests from him and came 'out of the blue'.
248. While the Technical Officer said he was not aware that Coordinator A had used the lathe, the Technical Officer also told my officers that due to ill health he had been regularly absent from work and that he didn't know what was going on.
249. I also noted that three years after purchasing the lathe for the council, Coordinator A purchased the same lathe for himself. As with the sandblaster, an inference may be drawn that Coordinator A wanted the equipment for use at a time when he could not afford to buy it, and when he was in the financial position to do so, he purchased the same model. The purchase of the lathe with council funds also gave him the opportunity to trial the lathe before he purchased one for himself.
250. I did not accept the evidence of either Coordinator A or Manager A that the lathe was purchased primarily for maintaining the council's parking meters. Nor did I accept Coordinator A's evidence that he only used the lathe once for private use.
251. I was satisfied on the balance of probabilities that Coordinator A purchased the lathe with council funds for his private use.

Poor record keeping

252. There is evidence of poor recording keeping in Manager A's unit and inconsistent use of the assets register and the list of minor equipment. The failure to record the purchase of the sandblaster and lathe meant other areas of the council could not use the equipment and, more seriously, that there was no outside scrutiny nor accountability for the purchases. This supports the inference that the sandblaster and lathe were purchased for personal use.

Breaches of legislation, codes and policies

253. In using his position to benefit himself regarding the lathe and the sandblaster, Coordinator A breached section 95(1) of the Local Government Act in failing to act with integrity.
254. Manager A approved Coordinator A's request to purchase a sandblaster and failed to record the purchase on the council's assets register. There was no evidence that Manager A scrutinised the request to satisfy himself that the items were required by the council and represented value for money.
255. Manager A's failure to do so meant that the council purchased equipment that it did not need. The evidence suggested that the close relationship between Manager A and Coordinator A affected Manager A's judgement and scrutiny of the request he received. This was a reasonable perception given the closeness of their perceived relationship, including evidence from Manager A's Director that Manager A was reluctant to allow officers other than Coordinator A and Coordinator B to act in his role when he took leave.
256. I also found that Manager A breached section 95(1) of the Local Government Act by failing to act with integrity in failing to meet his obligations to ensure council equipment was purchased in accordance with council policies and procedures. He did this by allowing Coordinator A to arrange the purchase of equipment with council funds for Coordinator A's own benefit and without ensuring that these purchases represented good value for money for the council.

257. In response to my draft report, Manager A stated:

In relation to [Coordinator A] purchasing a lathe and sandblaster for personal use, I find your finding quite bizarre.

At the time of purchase [the Technical Officer] was the primary technician but has since become very ill. [The Technical Officer] is very much old school and loves to tinker with and repair parking equipment. He thrives on the challenge and will often look for ways to improve the functionality of equipment. The new technician is more modern in approach and is inclined to replace not repair.

Therefore, at the time of purchase I had no reason to doubt that [Coordinator A] would make use of the lathe for [council] purposes. In addition [the Technical Officer] had mentioned to me in the past that a lathe would be handy. I have since been advised that [the Technical Officer] does in fact use the lathe to make parts for parking equipment maintenance from time to time.

I had no reason to doubt [Coordinator A's] purchase intentions.

A lathe is a piece of equipment that is not used regularly but is a once in a lifetime purchase and the cost is amortised over many years.

I have **never** used the lathe and have no personal use for such equipment.

Personal use of council equipment

258. While it is understood that it is now council policy that staff can no longer use council equipment for their personal use, the council's code of conduct has not been updated to reflect this. On the basis of the council's policy at the time, which permitted staff to use council equipment, Coordinator A and Manager A did not breach the council's code of conduct by their personal use of council equipment. My investigation found that there has, until very recently, been an understanding or tolerance by council managers that staff could use council property for their own personal use. The council has failed to ensure that all staff are aware that these practices are no longer acceptable.

Allegation: Manager A employed and promoted a close relative without process

259. Although some recruitment and selection processes were followed in the Support Officer's appointments, the allegation that Manager A employed and promoted his relative without proper process was substantiated. Manager A failed to declare his familial conflict of interest on a number of occasions: when he was on a selection panel that appointed her to either her first or second council role, and when he proposed her reclassification.

260. Failure to act with integrity and avoid conflicts of interest puts Manager A in breach of:

- the council's code of conduct, in particular the section which requires staff to not take part in any decisions relating to the employment of family members
- section 95(1) of the Local Government Act, where a failure to act with integrity includes a failure to avoid a conflict of interest.

261. Manager A committed the same breaches in his failure to declare his relationships with two other relatives who work in his unit, both of whom are closely related to the Support Officer.

262. For similar reasons, Coordinator A breached the council's code of conduct in failing to make a timely formal declaration of his conflict regarding his relative's engagement to perform paid services for the council. In addition, Coordinator A also breached the council's procurement policy, which provides that staff shall not participate in any contract where any member of their immediate family has a significant interest.

263. After receiving the report of my investigation, the council confirmed it would take disciplinary action against Manager A and Coordinator A for various breaches of its code of conduct and policies and procedures. However, the council did not accept the finding that either Manager A or Coordinator A purchased property with council funds for their own private use.

Conclusions

264. The three cases set out here were chosen to demonstrate that these issues can arise in any context. The councils are different sizes and have different geography and demography.
265. Each of the individuals in this report were bound by the provisions of the Local Government Act, codes of conduct and specific council policies and procedures. Individuals in all three case studies were found to have been in breach of their codes of conduct. Individuals in case studies 1 and 3 were also in breach of procurement standards, as well as procedures for declaring gifts and hospitality and conflict of interest respectively. In all three case studies, applying existing policies and procedures would have either prevented or revealed poor behaviour long before it came to my office.
266. While there were gaps in procedures, particularly in procurement and monitoring the use of council resources, the overarching standards of integrity and appropriate and responsible use of council resources, common to all the codes of conduct, should have functioned as a catch-all in these circumstances.
267. Taken separately, these incidents could be seen as small infractions of the rules, begging the question: 'Why does it matter?'
268. This was undoubtedly the perspective taken by the individuals concerned: a little work on the side leveraging council relationships, use of a fuel card or a sandblaster for personal purposes – small beer and no more than a person deserves as a council officer with standing.
269. Codes and standards of integrity are critical, particularly where public money is on the line. To benefit personally from resources paid for with ratepayer funds for a public purpose is a corrosion of trust and an abuse of power, no matter how small.
270. So whose responsibility is it to ensure that these standards are adhered to?
271. It is a condition of employment that employees abide by codes of conduct. It is also inherent in any managerial role to hold staff to account and ensure they understand how those standards are maintained in practice.
272. In each of these cases, however, poor supervision and management allowed misconduct to go unchecked. Had anyone reported the rumours or reviewed the fuel card reports for Team Leader Z, it would have been obvious that it was being misused for personal gain. Had anyone reviewed the council's gifts register against council contractors, the Construction Supervisor's fiefdom might have been exposed sooner. And had Manager A's Director put an outside person into his position when the opportunity arose, the practices and cosy relationships in the unit might have come to light before my investigation.
273. IBAC has recently published two reports looking at broader corruption risks affecting local councils and council work depots.⁴⁵ Those reports did not make specific recommendations but highlighted areas for focus and improvement and offered useful guidance in preventing problems.
274. It was evident from my investigations that longstanding employees who have not adopted new codes and policies as their cultural norm present a particular risk, exacerbated where outlying units remote from head office can operate as fiefdoms.
275. Finally, it is the responsibility of the leadership of any organisation, and particularly a public one, to actively support a culture of honesty, transparency and courage to call out behaviour when people transgress.

⁴⁵ IBAC: *Review of Integrity Frameworks in Six Victorian Local Councils*, March 2015; *Review of council work depots*, May 2015