

# **VICTORIAN** **ombudsman**

**Corrupt conduct by public officers  
in procurement**

**June 2011**

**Ordered to be printed  
Victorian government printer  
Session 2010 - II  
P.P. No. 42**

## Letter to the Legislative Council and the Legislative Assembly

To

The Honourable the President of the Legislative Council

and

The Honourable the Speaker of the Legislative Assembly

Pursuant to sections 25 and 25AA of the *Ombudsman Act 1973*, I present to Parliament my report into corrupt conduct by public officers in procurement.



G E Brouwer

**OMBUDSMAN**

15 June 2011

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## Executive summary

### ***Referral from the Corruption and Crime Commission of Western Australia***

1. On 21 April 2010 I was informed by the Acting Commissioner of the Corruption and Crime Commission of Western Australia (the Commission) that it was investigating allegations that public officers from Western Australian state and local government agencies were purchasing printer toner cartridges from a toner cartridge supplier (The Company) that was not the authorised government supplier.
2. The Acting Commissioner advised that The Company is Victorian based with a number of subsidiaries trading throughout Australia, selling toner cartridges 'at 3-4 times the price of genuine cartridges'.
3. The Acting Commissioner informed me that '... this [has] cost the [Western Australian] government, approximately, an extra \$300,000 over the three year period'.
4. The Acting Commissioner also advised that he had received evidence that The Company offers rewards in the form of gifts to public officers in exchange for their continuing to purchase toner cartridges.
5. In light of this advice I decided to conduct an investigation on my own motion to determine whether this was also taking place in the Victorian Public Sector.
6. The following issues of concern were identified by my officers in this investigation:
  - purchasing outside the State Purchase Contract
  - improper expenditure of public money
  - acceptance of gifts
  - destruction of public records.

### ***Purchasing outside the State Purchase Contract***

7. On 1 January 2006 the Victorian Government Purchasing Board (VGPB) established a State Purchase Contract for the use of public bodies when purchasing stationery and office products. The State Purchase Contract includes the purchase of toner cartridges.
8. Agencies bound by the State Purchase Contract must purchase toner cartridges in accordance with this contract.
9. Victorian public bodies falling outside the scope of the State Purchase Contract have guidelines regarding how purchasing should be conducted. In 2006-10, OfficeMax was the approved supplier for the provision of toner cartridges to the Victorian public sector.

10. In late 2009, the Department of Justice identified that nine government bodies had purchased goods outside the State Purchase Contract from The Company in the amount of \$260,937. My officers identified that one public officer was responsible for approximately \$148,000 of this expenditure.
11. During my investigation, I obtained information from The Company relating to orders made between Victorian public bodies and The Company in 2009–10.

### ***Improper expenditure of public money***

12. In light of this information, I decided to investigate the following public bodies which had made a large number of orders, received gifts and/or spent a significant amount of money with The Company on toner cartridges:
  - Arts Victoria
  - a number of Victorian Government schools
  - a Prison.
13. My investigation identified a number of purchasing officers who had used public money inappropriately in the purchase of toner cartridges from The Company by:
  - Purchasing toner cartridges at inflated prices. In one instance the already inflated unit price of a toner cartridge quoted by The Company increased by a further \$202 per unit from \$167 to \$369 over a five month period. Throughout this period, OfficeMax toner cartridges cost \$99.
  - Purchasing toner cartridges that were not required. For example, one officer purchased enough black toner cartridges to supply the government department for 40 years. Toner cartridges expire after 24 months.
  - Splitting invoices. For example, my officers identified a purchasing officer who requested that an order from The Company be split into four invoices to ensure the total amount of each invoice would not trigger further enquiry.

### ***Acceptance of gifts***

14. In return for these purchases, a number of public officers accepted gifts from The Company for their personal benefit. For example, in 2009 an Arts Victoria employee received over \$8,000 in prepaid Visa cards and Coles Myer vouchers. This corrupt conduct cost Arts Victoria, and the public purse, over \$80,000. This officer resigned during my investigation.
15. In many instances, I found that a lack of management and auditing provided an environment which allowed this conduct to go undetected.

16. I also found that several of the purchasing officers interviewed by my officers understood the difference between their private and public interest, but conducted themselves corruptly in favour of their private interest, at the expense of the public interest when purchasing toner cartridges with The Company.
17. My investigation identified that once a public officer accepts a gift, and fails to declare it, there is potential for that public officer to engage in a pattern of corrupt behaviour, placing them in a position that makes it difficult for them to discontinue purchasing or to decline gifts from The Company in the future.
18. I am of the view that all gifts, more than \$20 in value, should be declared by the recipient to their manager in writing and recorded on a gift register.

### ***Destruction of public records***

19. My officers also identified that several public officers breached their obligations under the Public Record Office Disposal schedule by destroying documents relating to their purchases from The Company that are public records.
20. It is clear that the destruction of these records by a number of public officers may have been or appeared to be deliberate attempts to disguise and conceal gifts received from The Company.

### ***Conflict of interest***

21. My investigation also identified a culture at Arts Victoria where benefits and gifts to stakeholder events (such as opera, theatre and ballet) are regularly accepted and not declared or recorded by staff on the grounds that such gifts relate to staff members' professional roles. I consider this rationale to be naïve, given that providers of these gifts are bodies which exist and survive on the basis of grants, many of which are supplied by the State Government. The amounts and beneficiaries of those grants are influenced by the advice of public officers and in particular public officers at Arts Victoria.
22. In my view, if there is a business need for a staff member to attend an event as outlined above, Arts Victoria should pay for its staff to attend, which would avoid any perception of a conflict of interest.
23. Arts Victoria has no entries in its gift register. This raises concerns about its fundamental understanding of the acceptance of gifts and hospitality in the public sector. This culture should be addressed by the Department of Premier and Cabinet as a priority.
24. In my view, the response to my draft report provided by the Director of Arts Victoria as detailed in this report reflects a reluctance to come to grips with the fact that a lack of management and auditing at Arts Victoria contributed to a culture that allowed the corrupt conduct to go undetected. It also reinforces the need for a thorough review of the way Arts Victoria is managed.

### ***Improving processes***

25. I have made a number of recommendations aimed at:

- action being taken to improve procurement processes across the Victorian Public Sector
- ensuring public bodies bound by the State Purchase Contract comply with the Contract's requirements
- alerting public officers to their role and obligations during procurement activities
- improving process in relation to the acceptance of gifts and hospitality in the Victorian Public Sector.

## Background

### Information from the Corruption and Crime Commission of Western Australia

26. On 21 April 2010 I was informed by the Acting Commissioner of the Corruption and Crime Commission of Western Australia (the Commission) that it was investigating allegations that public officers from Western Australian state and local government agencies were purchasing printer toner cartridges from a toner cartridge supplier (The Company) that was not the authorised government supplier.
27. The Acting Commissioner advised me that The Company is Victorian based with a number of subsidiaries trading throughout Australia, selling toner cartridges 'at 3-4 times the price of genuine cartridges'.
28. The Acting Commissioner informed me that '... this [has] cost the [Western Australian] government, approximately, an extra \$300,000 over the three year period'.
29. The Acting Commissioner also advised that he had received evidence that The Company offers rewards in the form of gifts to public officers in exchange for their continuing to purchase toner cartridges.
30. In light of this advice I decided to conduct an investigation on my own motion to determine whether members of the Victorian Public Sector were also purchasing toner cartridges and receiving gifts from The Company.

## The Company

### *The ordering process*

31. The Company's sales strategy is that public officers are contacted three times by The Company during the ordering process, as follows:
  - i. A 'cold' telephone call is made to the public officer to pitch and sell the toner cartridges. This call is not recorded by The Company.
  - ii. The Company sends the public officer a confirmation order when an order is made, confirming the following:
    - model and quantity of cartridges ordered
    - length and details of the agreement entered into
    - details of product vouchers purchased
    - total amount of order, payable in 30 days
    - any gifts to be provided
    - the public officer is asked to sign the confirmation order and fax it back to The Company.

- iii. A verification call is made to the public officer to confirm the order. The public officer is advised that this call is being recorded. This recording is kept by The Company.
32. At interview on 11 November 2010, the General Manager of The Company said:
  - ... sometimes there will be a separate invoice raised because the promotional item is not sent out at the time when the goods are sent out.
33. My investigation also identified a number of instances where public officers purchased product vouchers from The Company, despite the fact that they had already purchased an excessive supply of toner cartridges from The Company and did not need toner cartridges at the time.
34. A product voucher is the pre-payment of toner cartridges to be delivered in the future at the request of the public body. A product voucher must be paid in full within 30 days.

## Investigation

35. On 16 September 2010 I notified:

- the Minister for Corrections
- the Secretary of the Department of Justice
- the Secretary of the Department of Education and Early Childhood Development
- the Minister for Education

that on my own motion, I would investigate the purchase of toner cartridges by public officers outside of the Victorian State Purchase Contract. On 20 December 2010, I also notified the Premier and the Secretary of the Department of Premier and Cabinet of my intention to investigate.

36. My investigation did not examine the methods or ethical practices of The Company but rather those of the Victorian public sector.

### *Investigation methodology*

37. My investigation involved:

- interviewing staff from public bodies
- making enquiries with
  - the Department of Justice and the Prison
  - the Department of Education and Early Childhood Development and various Victorian Government schools
  - the Department of Premier and Cabinet and Arts Victoria.
- examining departmental files
- inspecting some of these agencies
- examining invoices and internal documents
- reviewing relevant policy documents, purchasing guidelines and legislation
- reviewing copies of invoices, confirmation orders and recordings of verification telephone calls from The Company
- enquiries with the Victorian Government Purchasing Board and the Department of Treasury and Finance.

38. In the course of my investigation, 16 formal interviews were conducted under oath and three interviews were not conducted under oath. It was necessary to issue two summonses. Two witnesses requested legal representation attend the interview, which was allowed by my office.

### **Freedom of Information Request**

39. In the initial stages of my investigation, my officers identified a Freedom of Information (FOI) request made by Mr David Davis MP on 2 November 2009. Mr Davis' request was to 17 government bodies, agencies and statutory authorities for documents relating to payments made to The Company from 1 July 2005 to 2 November 2009. The Department of Justice coordinated a response to Mr Davis on behalf of the 17 public bodies.
40. The Department of Justice prepared a list of the government bodies that had purchased goods from The Company. Nine such bodies were identified on this list as having purchased goods from The Company in the amount of \$260,937. My officers identified that one public officer was responsible for approximately \$148,000 of this expenditure.

### **Nine bodies were identified as having purchased goods from The Company in the amount of \$260,937.**

#### **Scope of the investigation**

41. I obtained documents from The Company by summons relating to orders from public bodies to The Company in 2009-10.
42. In light of the above information, I investigated the following public bodies which had made a large number of orders, received gifts and/or spent a significant amount of money with The Company on toner cartridges:
  - Arts Victoria
  - various Victorian Government schools
  - a Prison.
43. In all three areas, the following issues of concern were identified by my officers in the purchase of toner cartridges from The Company:
  - purchasing outside the State Purchase Contract
  - improper expenditure of public money
  - acceptance of gifts
  - destruction of public records.

#### **Purchasing outside the State Purchase Contract**

44. On 1 January 2006 the Victorian Government Purchasing Board (VGPB) established a State Purchase Contract for the use of public bodies when purchasing stationery and office products. The State Purchase Contract includes the purchase of toner cartridges.
45. The VGPB's 'Good Practice Guidelines', state:

Agencies bound by the VGPB Procurement Policies must use SPCs [State Purchase Contracts] where they exist.

46. The VGPB's website lists the public bodies that must purchase under the State Purchase Contract (Appendix 1). Prisons and Arts Victoria lie within bodies on the list. Victorian Government schools may purchase from the approved supplier under the State Purchase Contract and are required to ensure that all purchases represent good value for money.
47. In 2006–10 under the State Purchase Contract, OfficeMax was the approved supplier for stationery and office products to the Victorian public sector.

### ***Improper expenditure of public money***

48. My investigation identified significant differences between the prices of toner cartridges offered by The Company and OfficeMax.
49. In one instance, invoices analysed by my officers showed that the already inflated unit price of a toner cartridge quoted by The Company (\$167) increased by \$202 to \$369 over a five month period.

***Invoices analysed by my officers showed that the already inflated unit price of a toner cartridge quoted by The Company (\$167) increased by \$202 to \$369 over a five month period.***

50. Several purchasing officers said they had not noticed a difference in price or compared the price when purchasing toner cartridges from The Company. They also said they failed to check other suppliers to ensure that the product purchased was the best value for money. Some of these public officers were required to purchase from OfficeMax, and all were required to purchase on a 'best value for money' basis.
51. I identified a number of purchasing officers who had used public money inappropriately during the purchase of toner cartridges from The Company by:
  - Purchasing toner cartridges at inflated prices
  - Purchasing toner cartridges that were not required
  - Splitting invoices. For example, my officers identified a purchasing officer who requested that an order from The Company be split into four invoices to ensure each invoice would not trigger further enquiry.

### ***Acceptance of gifts***

52. The State Services Authority's 'Code of Conduct for Victorian Public Sector Employees' outlines the obligations for public officers in relation to accepting gifts. Section 4.2 states:

Public sector employees do not – for themselves or others – seek or accept gifts or benefits that could be reasonably perceived as influencing them.

Public sector employees comply with any policies of their public sector employer in relation to accepting, declaring and/or recording the receipt of gifts or benefits. Public sector employees who are unsure about accepting a gift or benefit seek advice from their manager.

53. My officers analysed more than 100 invoices issued by The Company to public bodies. The analysis identified instances where the unit price of a toner cartridge was low and the comparative value of the gift offered was low. However, when the unit price of a toner cartridge increased, the value of the gifts offered also increased.
54. Once a public officer accepts a gift, and fails to declare it, there is potential for that public officer to engage in a pattern of corrupt behaviour, placing them in a position that makes it difficult for them to discontinue purchasing or decline gifts from The Company in the future.

**Once a public officer accepts a gift, and fails to declare it, there is potential for that public officer to engage in a pattern of corrupt behaviour.**

### ***Destruction of public records***

55. The Public Record Office of Victoria's 'Disposal Authority' states that all public bodies<sup>1</sup> should keep principal accounting records relating to the management of an agency's revenue and expenditure for seven years after the completion of the financial year in which the record was created<sup>2</sup>. This includes invoices, receipts, orders for the payment of money, promissory notes and credit notes.
56. My investigation identified a number of instances where public officers did not comply with this Disposal Authority in relation to retaining copies of invoices and confirmation orders provided by The Company regarding the purchase of toner cartridges and any gifts received.
57. Invoices inspected by my officers demonstrated that it is The Company's practice to send two invoices to the public officer. One invoice lists the gifts associated with the purchase and carries a zero balance with no requirement for payment. The second invoice lists the quantity and model of the toner cartridges ordered and total amount due.
58. This practice resulted in two sets of invoices: one carrying a zero balance and listing gift(s) which public officers often failed to retain; and another omitting gifts that had been received and only listing the cost of the products purchased which were often retained.

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1 Section 1.2.2, Public Record Office Victoria, PROS 07/01 General Retention and Disposal Authority for Records of Common Administrative Functions.

2 Section 5.1.1, Public Record Office Victoria, PROS 07/01 General Retention and Disposal Authority for Records of Common Administrative Functions.

## Department of Premier and Cabinet (Arts Victoria)

### Introduction

59. A list coordinated by the Department of Justice in response to the FOI request identified that the Department of Premier and Cabinet spent \$145,000<sup>3</sup> in 2005–09 on toner cartridges from The Company. The Department of Justice noted that the Department of Premier and Cabinet's expenditure included Arts Victoria which does its own printing.
60. Of the 17 public bodies involved in the Department of Justice's coordinated response, this is the largest amount of expenditure with The Company during 2005–09 by a single agency.
61. During a review of invoices obtained from The Company, my officers identified that the purchaser of toner cartridges on behalf of Arts Victoria was a Project Officer, purchasing toner cartridges for a Ricoh CL7000 printer.
62. My investigation at Arts Victoria therefore focused on the purchases made by this Project Officer. The Project Officer resigned during my investigation.

### Arts Victoria

63. The role of Arts Victoria is to promote the arts and the development and funding of Victoria's artists and creative industries.

### *Improper expenditure of public money*

#### *Ricoh CL7000 printer*

64. In June 2003, Arts Victoria purchased a Ricoh CL7000, black/white and colour printer. The purchase of this printer included a service contract with Ricoh Australia (Ricoh).
65. OfficeMax, the approved supplier under the State Purchase Contract, do not supply toner cartridges for a Ricoh CL7000 printer. OfficeMax advises purchasing officers to purchase toner cartridges for this printer from Ricoh.
66. The Ricoh service contract included:
  - regular servicing
  - black toner cartridges free of charge
  - colour toner cartridges at a set price of \$342 each. In January 2004, Ricoh reduced the price of colour cartridges for this printer to \$263 each.
67. My officers received advice from Ricoh that the price of \$263 per unit for colour toner cartridges for a Ricoh CL7000 printer was available to Arts Victoria and remained until May 2010.

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<sup>3</sup> My officers identified that the Project Officer at Arts Victoria was responsible for approximately \$148,000 worth of expenditure in the purchase of toner cartridges from The Company, rather than the amount of \$145,000 calculated by the Department of Justice.

## Purchasing

### Ricoh service contract

68. On 17 July 2003, the Project Officer was the first officer from Arts Victoria to order toner cartridges from Ricoh under the service contract. Six other Arts Victoria staff members purchased toner cartridges under the Ricoh service contract in 2003-10.
69. The Project Officer's purchases from Ricoh under the service contract were as follows:
- Between July 2003 and March 2009, she obtained 16 black toner cartridges under the service contract at no charge.
  - Between September 2004 and March 2009, she ordered 43 colour toner cartridges from Ricoh under the service contract for \$263 each. The total cost to Arts Victoria was:

Black toner cartridges	\$0
Colour toner cartridges	\$11,309

### Toner cartridges purchased from The Company by Arts Victoria

70. On 24 February 2006, the Project Officer purchased toner cartridges from The Company for the Ricoh CL7000 printer for the first time.
71. In 2009, she spent approximately \$54,000 on toner cartridges purchased from The Company for Arts Victoria.
72. She stated to my officers:
- the purchasing I did I honestly believed it was saving Arts Victoria money  
...  
[the] prices that Ricoh gave us ... were similar if not slightly higher ... at the time  
... my belief was at the time that this was comparable to the Ricoh prices.
73. Invoices viewed during my investigation identified a number of transactions where the Project Officer purchased black toner cartridges from The Company for \$799 and \$899 per unit. This is despite black toner cartridges being available free of charge under the Ricoh service contract, an offer which she had accepted on numerous prior occasions.
74. Between February 2006 and August 2009, she purchased 55 black toner cartridges and 74 colour toner cartridges from The Company.
75. Based on the various prices paid by the Project Officer, the total amount spent by Arts Victoria when purchasing toner cartridges from The Company is as follows:

Colour toner cartridges	\$57,814.90
Black toner cartridges	\$42,380.80
<b>Total</b>	<b>\$100,195.70</b>

76. By contrast, if the same amount of toner cartridges had been purchased under the Ricoh service contract, the cost to Arts Victoria would have been as follows:

Colour toner cartridges	\$1 9,462
Black toner cartridges	\$0
<b>Total</b>	<b>\$19,462</b>

77. Based on the above figures, between February 2006 and August 2009 the Project Officer expended an additional \$80,733 by choosing to purchase cartridges from The Company.

***The Project Officer expended an additional \$80,733 by choosing to purchase cartridges from The Company.***

78. At interview, the Senior Finance Manager stated to my officers that in response to a question regarding the amount of money spent by the Project Officer on toner cartridges:

I had no idea that this was going on.

***Financial delegation***

79. From October 2008 to 2009, the Project Officer had a financial delegation of \$5,000.
80. In the years preceding her 2008 financial delegation, she did not hold a financial delegation at Arts Victoria. She nevertheless placed the following orders (GST inclusive) with The Company:

6 October 2005	\$3,506.90
4 May 2006	\$10,198.90
31 May 2006	\$10,370
13 April 2007	\$10,398

81. The above purchases were made prior to the Project Officer's financial delegation.
82. In addition, she made the following purchases which exceeded the financial delegation she held from 2008-09:

15 January 2009	\$9,588
5 May 2009	\$7,191
22 June 2009	\$10,788
8 July 2009	\$11,985
4 August 2009	\$14,382

83. Arts Victoria provided me with an analysis of toner cartridges purchased from The Company by the Project Officer compared to the annual expenditure of Arts Victoria in 2008-09. Her purchases comprised:
- 2% of the total Corporate Administration Expenditure<sup>4</sup>
  - 27% of the Office Requisites Expenditure<sup>5</sup>.
84. In 2009-10, her purchases of toner cartridges from The Company amounted to:
- 5% of the total Corporate Administration Expenditure
  - 47% of the Office Requisites Expenditure.
85. These figures do not include other purchases of toner cartridges made by Arts Victoria through OfficeMax or other manufacturers.

### **Product vouchers**

86. A product voucher is the pre-payment of toner cartridges to be delivered in the future at the request of the public body. A product voucher must be paid in full within 30 days.
87. In a verification call recording between the Project Officer and The Company in June 2009, she confirmed a forward order of product vouchers for 12 black toner cartridges, totalling \$10,788.
88. On 8 July 2009, she forward ordered another product voucher for 15 colour toner cartridges, totalling \$11,985. On 4 August 2009, she forward ordered another 18 colour toner cartridges for the same printer, totalling \$14,382. The Project Officer also ordered four colour toner cartridges in 2009 from the Ricoh service contract.
89. At interview on 7 January 2011, the Project Officer agreed that Arts Victoria did not need the 12 black toner cartridges that she ordered in product vouchers and that she purchased product vouchers 'to get them [The Company] off my back'.
90. In 2009, the Ricoh CL7000 printer at Arts Victoria printed 110,615 sheets of colour pages and 11,966 sheets of black and white pages.
91. A black toner cartridge for this type of printer produces 20,000 printed pages and a colour toner cartridge produces 10,000 printed pages.
92. Ricoh advised my officers that on the basis of the number of pages printed by Arts Victoria, the total number of colour cartridges required in 2009 by Arts Victoria was 11 colour toner cartridges. In addition, Ricoh advised that as Arts Victoria only used approximately 60 per cent of one black toner cartridge in 2009, only one black toner cartridge was required that year.

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4 This describes the total expenditure of Arts Victoria.

5 This describes the total expenditure of Arts Victoria on office and stationery products.

93. My investigation identified that the Project Officer purchased 24 black cartridges and 42 colour cartridges from The Company in 2009. On Ricoh's figures, this is a sufficient supply of black toner cartridges for this printer for the next 40 years and a sufficient supply of colour toner cartridges for the next four years.

***The Project Officer purchased 24 black cartridges from The Company in 2009. This is a sufficient supply for this printer for the next 40 years.***

94. I am advised that toner cartridges have a shelf life of 24 months before expiring and becoming unusable.

**Split invoices**

95. During the same recording of a verification call in June 2009, the Project Officer requested that the product vouchers ordered be split into four invoices:

Company representative: ... and the invoice of \$10,788 all ... cartridges coming out to you as product vouchers could I attention the invoice to yourself or accounts payable?

The Project Officer: Attention it to myself ... and is it possible to get the invoice broken up into, I don't know four?

Company representative: ... No that's fine.

96. The Project Officer stated that if she did not split the invoices, then the invoice:

... would have had to have gone higher up ... I probably would have been asked why we [Arts Victoria] were ordering the toners.

97. At the end of the interview, the Project Officer said in relation to splitting invoices:

It was the wrong thing to do.

98. My officers interviewed the Financial Operations Manager, Department of Treasury and Finance regarding the Project Officer's request to split the invoices. The Financial Operations Manager is the State Purchase Contract Manager for the Department of Premier and Cabinet, which includes Arts Victoria. At interview, she stated:

... asking for it to be broken up into four or five invoices is just wrong ... whenever people have rung up and said to me ... can I break it up ... we've always said no you cannot do that because it is just completely wrong.

## Acceptance of gifts

99. The Project Officer was interviewed by my officers as to whether she had received gifts from The Company. She initially denied that she had received any gifts. She stated:

They would offer and entice gifts, yes and we were asked if we wanted them ... but we declined.

100. A short time later she clarified this statement and stated, 'I declined ...'

101. The Project Officer stated that she had informed the Senior Finance Manager at Arts Victoria that she had received gifts from The Company without asking for them on a couple of occasions and that she had sent them back to The Company.

102. When she was asked by my officers the circumstances concerning the gifts she sent back, she stated that she:

Didn't open them [the boxes containing the gifts], I figured that if I didn't open them then I didn't know what was in there. I was more concerned that if it was opened it would have been considered a receipt of it so it was returned

...

I didn't think gifts were necessary ... the deal was good enough.

103. She advised that she felt 'hounded' by The Company to keep purchasing toner cartridges.

104. In a recording of a verification call between The Company and the Project Officer on 22 June 2009, she confirms an order for toner cartridges, totalling \$10,788 and indicates her acceptance of a \$1,000 Coles Myer voucher:

Company representative: I was just calling to confirm that order for the ... cartridges

The Project Officer: Yep

Company representative: ... that are coming out to you as product vouchers

...

I've got the 12 ... black [toner cartridges] coming out to you at \$899 each, I'll let you know calls are recorded ... invoice is \$10,788 payable in full 30 day terms but its coming out to you as product vouchers.

The Project Officer: Yep

Company representative: And you're also receiving a Coles Myer voucher as well to come out?

The Project Officer: Yep

105. During the interview with her, my officers played the Project Officer the recording of the verification call. When asked for her comment on this recording and her use of the \$1,000 Coles Myer voucher or any gifts received, she initially stated that she did 'nothing' with the gift vouchers.

She then stated:

I spent most of it on food and sometimes I might have bought myself something.

106. Invoices obtained from The Company showed that in 2009–10, the Project Officer received \$8,300 in Coles Myer vouchers and prepaid Visa cards from The Company. An example of the gifts received by the Project Officer is at Appendix 4.

***In 2009–10 the Project Officer received \$8,300 in Coles Myer vouchers and prepaid Visa cards from The Company.***

107. The Project Officer admitted that she had concealed all of the gifts she had received from The Company from Arts Victoria and had not declared the gifts to a Manager:

Interviewer: Was it correct that you hid the fact from everyone that you were receiving these \$1,000 gift ... vouchers?

The Project Officer: Yes

Interviewer: You've hidden that fact from everyone at work ... at Arts Victoria?

The Project Officer: Yes I take sole responsibility for all of it.

108. In response to why she did not declare the gifts to a manager, the Project Officer stated:

probably because at the time they were a saving grace for me ... I was financially quite strapped.

...

I saw the gifts as an ability to get me through what was a very tough period of time.

109. At the time of the FOI request in 2009, the Senior Finance Manager sent the Project Officer an email which requested that she confirm whether she had received any gifts from The Company. The Senior Finance Manager advised my officers that the Project Officer provided an oral response to her that she had not received any gifts.
110. At interview, the Project Officer admitted to lying to the Senior Finance Manager in response to this email. The Project Officer advised my officers 'I told her that no gifts were received, so I lied'. She further advised that the reason for lying to the Senior Finance Manager was 'to protect myself'.
111. The Director of Arts Victoria stated to my officers at interview on 6 January 2011, that she was not aware that the Project Officer was receiving gifts from The Company.

112. The Director of Arts Victoria said that her general view of the Project Officer's purchases of toner cartridges was that:

Prima facie ... [the Project Officer] appears to have ... over a period of time ... acted outside her authority ... in terms of her role for ordering this type of stuff ... it appears not even sought to save money ... appears to have received a personal benefit ... prima facie appears to have taken some actions to cover her tracks ... those are some immediate reactions ... personally ... I'm disappointed to learn that this has happened.

113. When asked by my officers why she initially lied under oath during the interview, the Project Officer said that she did so:

To protect myself because that's all it is. I made a really stupid decision and as I said it was purely to just try to get myself through.

114. On 9 October 2009, the Project Officer ceased purchasing with The Company and began to purchase toner cartridges with another toner cartridge supplier.<sup>6</sup> This supplier also offers gifts and incentives when toner cartridges are purchased.

115. In addition to the gifts received through her purchases with The Company, the Project Officer stated to my officers that she estimated that she had received a further \$3,000 worth of gifts from the other supplier which were used for her private benefit. There is no evidence that she declared the gifts received from the other supplier.

### ***The Project Officer estimated that she had received a further \$3,000 worth of gifts from the other supplier.***

#### ***Destruction of public records***

116. When the Project Officer was asked whether she kept invoices listing gifts that she received and toner cartridges ordered from The Company for financial accounting purposes, she said: 'I generally didn't keep copies of the invoices'.
117. The Project Officer advised that she did not wish to comment on my draft report.

#### ***Management of the Project Officer***

118. When interviewed on 7 January 2011, the Project Officer stated to my officers that the way she was managed at Arts Victoria 'had a massive impact' on her dealings with The Company.
119. Given her comment, I interviewed staff responsible for managing the Project Officer. I sought to understand how the Project Officer's actions did not come to the attention of Arts Victoria management. My officers identified the following:

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<sup>6</sup> The other supplier was not a toner cartridge supplier subject to the FOI request.

- The Project Officer commenced employment with Arts Victoria in 1998 and on her own evidence, she stated at interview on 7 January 2011 that:

I was fairly self managed ... I had been left fairly much left to manage those jobs on my own and at my discretion.
- In response to my draft report the Director of Arts Victoria said:

I submit that it is at least possible, that [the Project Officer] might have 'over emphasised' her autonomy in an interview with you as a way of seeking to protect her former supervisors from any adverse consequences of her actions.
- A Senior Manager at Arts Victoria gave evidence that the Project Officer's previous manager advised her that:

... probably I would have some difficulty in managing [the Project Officer] because [she] had been there a long time and she was really well ensconced I suppose, or and she had a habit of kind of bypassing I suppose the direct manager and going above that if she, you know I think she ... pretty much ran her own race and it was very difficult to try and supervise her.
- In relation to the management of the Project Officer at Arts Victoria, the Senior Manager further stated that:

I would repeatedly ask her [the Project Officer] to do things, and I think in a way sometimes she was just annoyed, I mean she really ... just wanted to be autonomous and do her own thing. She was quite difficult to try and rein in.
- The Project Officer had 109 days annual leave owing to her in 2010 as she rarely took annual leave.

120. The following example shows how the Project Officer was not effectively performing her duties and was not being adequately managed at Arts Victoria:

- The Project Officer, who was responsible for approving VicFleet invoices for payment at Arts Victoria failed to approve and action 10 invoices dating back to 13 June 2008, a total value of \$83,423.66.
- I was advised that on 20 April 2010, Arts Victoria provided the Department of Treasury and Finance with the relevant approval for the VicFleet invoices, some of which were 20 months overdue.

121. In response to my draft report, the Director of Arts Victoria stated:

That [the Project Officer] was not heavily supervised in the performance of her duties – which were essentially administrative – does not form a basis for concluding that there were problems in her management. Nor does the fact of her professional misconduct – particularly given her apparently concerted efforts to keep her misconduct from detection.

122. The Director of Arts Victoria further stated that:

Ultimately if there were performance issues in relation to [the Project Officer] there was a system in place for those issues to be addressed. Your report does not acknowledge and your investigation did not examine the management systems that exist within Arts Victoria.

Further, it is my understanding that you did not interview the executive responsible for the Agencies and Infrastructure division in Arts Victoria. I also state that, until your investigation, I have not been required to personally take charge of matters relating to the procurement of toner cartridges.

***The Director of Arts Victoria stated that ‘until your investigation, I have not been required to personally take charge of matters relating to the procurement of toner cartridges’.***

- I 23. In my view, the response provided by the Director of Arts Victoria reflects a reluctance to come to grips with the fact that a lack of management and auditing at Arts Victoria contributed to a culture that allowed the corrupt conduct to go undetected. It also reinforces the need for a thorough review of the way Arts Victoria is managed.

***Gifts and hospitality culture at Arts Victoria***

- I 24. The Department of Premier and Cabinet’s ‘Gifts and Hospitality Policy’, which is applicable to Arts Victoria staff provides:
- ... a person must not accept gifts ... from people or organisations about whom you are likely to make decisions involving ... procurement.
- I 25. The Project Officer stated at interview that she did not consider declaring any gifts received from The Company in accordance with the Gifts and Hospitality Policy, ‘because I was keeping all of that pretty much to myself’.
- I 26. At interview, she stated to my officers that:
- ... Arts Victoria people, they get free tickets to shows ... I mean Arts Victoria ... it’s just full of free tickets to operas, to ballets ... I don’t know what they declare on that.
- I 27. Following further enquiries with Arts Victoria, I identified that it is common for gifts and benefits to be offered to staff at Arts Victoria by their stakeholders.
- I 28. By email dated 21 January 2011, the Director of Arts Victoria advised me that the Department of Premier and Cabinet has a gifts register in place for Arts Victoria staff to use. However, the Director of Arts Victoria stated the gift register does not contain ‘any record of a gift, benefit or hospitality from any Arts Victoria staff member’ from 12 October 2009 to 30 June 2010.
- I 29. The Director of Arts Victoria further stated that Arts Victoria staff are offered gifts as part of their official duties. She advised:
- It has been our clear view that the performance by staff of their official duties did not fall into the categories of gifts, benefits and hospitality contemplated by the policy [Gifts and Hospitality Policy].

## Conclusions

130. I am satisfied that the Project Officer was involved in improper conduct for over four years. During that period, she inappropriately accepted a substantial number of gifts to the value of at least \$8,300 from The Company, and at least a further \$3,000 from a second supplier. This corrupt conduct has cost Arts Victoria, and the public purse, over \$80,000.

***This corrupt conduct has cost Arts Victoria, and the public purse, over \$80,000.***

131. The result is that Arts Victoria is now left with potentially 40 years' supply of toner cartridges which only have a shelf life of 24 months.
132. I consider that the Project Officer's statement to my office that she considered the toner cartridge prices from The Company to be 'comparable to Ricoh prices' to be dissembling. It is clear that by virtue of her numerous purchases through the Ricoh service contract over a six year period she would have been aware that the prices offered were less than a third of those of The Company, and in the case of black cartridges, free.
133. I can therefore only conclude that her decision to purchase from The Company was motivated by a desire to receive gifts for her personal benefit. Indeed, she later admitted she was 'financially quite strapped'. This conduct was known by the Project Officer to be improper and yet she engaged in the conduct for a lengthy period.
134. I am of the view that a lack of management and auditing at Arts Victoria provided an environment that allowed the improper conduct to go undetected.

***Lack of management and auditing at Arts Victoria provided an environment that allowed the improper conduct to go undetected.***

135. The Project Officer said that she was 'hounded' by The Company to buy toner cartridges. My investigation found no evidence to suggest that her actions were the result of anything other than a desire to obtain free gifts. I also note in this regard that she later continued her improper conduct by sourcing another supplier that provided similar incentives.
136. The Project Officer's actions demonstrated that she was well aware of her obligations but she decided to engage in improper conduct for her own benefit. She has also been willing to lie to my office and to Arts Victoria to conceal her conduct.

- I 37. By not taking leave, I consider that this assisted the Project Officer to hide her conduct and possibly prevent another person acting in her position discovering her dealings with The Company.
- I 38. In response to my draft report on this issue, the Director of Arts Victoria said that my report:
- ... does not acknowledge Arts Victoria was actively managing it [the Project Officer's leave] and that within a month of [the Project Officer] taking leave [in April 2010] the purchasing and compliance issue created by [the Project Officer's] conduct was detected and remedied.
- I 39. However, the reality is that Arts Victoria took no action in relation to the Project Officer until informed of my investigation.
- I 40. The Director of Arts Victoria further stated:
- Neither I, nor other managers within Arts Victoria, have received correspondence from the VGPB alerting us to who authorised suppliers under the State Purchase Contract are and any changes that occur. Instead the burden falls on management to trawl through the VGPB website. Perhaps one of the most obvious lessons to come from this experience is that the VGPB should regularly and directly advise us as to who authorised suppliers are. This would increase the profile of the State Purchase Contract and make incidents like this less likely.
- I consider that your analysis of why [the Project Officer's] actions did not come to Arts Victoria's attention and ultimate conclusions are deficient in not factoring in these matters. These matters put [the Project Officer's] conduct in its true context and demonstrate there is no essential flaw in Arts Victoria's policies or systems – **this was an isolated practice caused by a singular set of circumstances, including** [the Project Officer's] **efforts to evade detection** [the Director of Arts Victoria's emphasis].
- I 41. In this regard, I note that Arts Victoria provided invoices from The Company to the Department of Justice in response to the FOI request in November 2009 however it failed to identify the inappropriate expenditure of public money or conduct an internal investigation into the purchases made by the Project Officer.
- I 42. I consider that there is a general culture at Arts Victoria where benefits and gifts to stakeholder events (such as opera, theatre and ballet) are regularly accepted and not declared or recorded by staff on the ground that such gifts relate to a staff member's professional role. I consider this rationale to be naïve, given that providers of these gifts are bodies which exist and survive on the basis of grants, many of which are supplied by the State Government. The amounts and beneficiaries of those grants are influenced by the advice of public officers and in particular public officers at Arts Victoria.

***There is a general culture at Arts Victoria where benefits and gifts to stakeholder events are regularly accepted and not declared or recorded by staff.***

- I 43. The Director of Arts Victoria provided the following comment in response to my draft report:

The practice that exists in Arts Victoria is accepted practice in the industry. This practice is transparent, supported by contractual obligations and open to scrutiny.

For you to conclude that this accepted and longstanding practice is effectively a breach of government policy, is not fair:

- In the context of an investigation into the supply of toner cartridges
- In circumstances where you decline my invitation to meet with relevant staff to gain an appropriate understanding of this practice.

Nor is it fair of you to dismiss my position as 'naïve'.

... I do not consider it fair of you to make conclusions about the 'culture' of Arts Victoria without having gained knowledge of it through engagement with staff, site visits or comparisons with similar organisations.

Your sweeping statement that 'providers of these gifts are bodies which exist and survive on the basis of (state) government grants' is without any documented foundation and should be deleted. It is inconsistent with my knowledge of the arts sector in Victoria; very few organisations are as heavily dependent on government support as you suggest.

... Tickets to cultural events in question, overwhelmingly do not have a market value of \$150 and for this additional reason would not have to be entered on the DPC register. Further, the guidelines to the DPC policy state that 'hospitality ... from a Government host or Government sponsored entity can generally be accepted without advising your manager'.

- I 44. In my view, if there is a business need for a staff member to attend an event as outlined above, Arts Victoria should pay for its staff to attend, which would avoid any perception of a conflict of interest.

- I 45. In response to this issue in my draft report, the Director of Arts Victoria said:

The current arrangement is cost-effective, transparent and consistent with industry practice. I deny any inconsistency between this arrangement and DPC policy. I ask that my position on this issue and the basis for it be acknowledged in this part of your report.

You conclude staff attendance should be funded by Arts Victoria without any reference to the underlying contractual position and without having afforded Arts Victoria an opportunity to be heard on such a fundamental shift in its practice. This is not fair and goes well beyond the scope of your investigation.

- I 46. Despite the Director of Arts Victoria's comment that this is an accepted practice by Arts Victoria staff, I consider that this conduct is inconsistent with the Victorian Public Sector Code of Conduct and the Department of Premier and Cabinet's Gifts and Hospitality Policy.

- I 47. In response to my draft report, the Director of Arts Victoria said:

I have never said the acceptance of gifts by Arts Victoria staff is an accepted practice. My position has been consistent and clear – the provision of tickets by funded organisations is not a gift, it is the performance of a contractual obligation and fundamental to Arts Victoria's performance of its statutory obligations. I object to this paragraph and ask that it be deleted.

148. The fact that Arts Victoria has no entries in its gift register raises concerns about its fundamental understanding of the acceptance of gifts and hospitality in the public sector. This culture should be addressed by the Department of Premier and Cabinet as a priority.
149. In response to my draft report, the Director of Arts Victoria said:
- ... The absence of entries on the register is not evidence that the policy is being breached – it is prima facie evidence that no reportable gifts or benefits have been received.
150. The Director of Arts Victoria also provided the following general comments in response to my draft report:

In summary, your conclusions go [to] the heart of how Arts Victoria performs its statutory functions. From a limited review of previous reports of yours that are on the public record I appreciate that you have a particular interest in the public service's acceptance of gifts and benefits. As someone who has had a long career in the private sector, federal and state public services – and as a private citizen – I share your concern. However, Arts Victoria, by virtue of the statutory obligations set out in section 4 of the Arts Victoria Act, stands in a very different position. Whilst many people might appreciate tickets to cultural events as a gift, the situation for my staff is quite different. For Arts Victoria, attendance at cultural events is a fundamental obligation of their professional life, and their responsibilities as Arts Victoria staff.

As a result of my interview and review of your draft report I have given some thought to how we can ensure that our record-keeping in relation to staff performing their duties and responsibilities can be further formalised. I am inclined to the creation of an 'attendance register' for each team, separate from the individual diaries which already exist, and subject to regular perusal by senior management. Although it should not be necessary to set up special record of activities which are integral to the day to day functioning of Arts Victoria, I am inclined to the setting up of a register in order to put this matter beyond doubt.

## Recommendations

I recommend that the Department of Premier and Cabinet:

### **Recommendation 1**

Conduct an audit of all procurement activity by Arts Victoria.

### **Department's response:**

The Department of Premier and Cabinet accepts the recommendation.

### **Recommendation 2**

Conduct a review of the management at Arts Victoria.

### **Department's response:**

The Department of Premier and Cabinet accepts the recommendation.

### **Recommendation 3**

Request The Company to advise how many product vouchers remain to be redeemed at Arts Victoria and seek to have these refunded.

#### **Department's response:**

The Department of Premier and Cabinet accepts the recommendation.

### **Recommendation 4**

Revise Arts Victoria's purchasing policy regarding product vouchers.

#### **Department's response:**

The Department of Premier and Cabinet accepts the recommendation.

### **Recommendation 5**

Conduct training of all Arts Victoria staff in relation to obligations under the Code of Conduct for Victorian Public Sector Employees, *Public Administration Act 2004* and 'Gifts, Benefits and Hospitality' policy in relation to acceptance and declaration of gifts.

#### **Department's response**

**Accepted.** ... [T]he Department will consider the application of the *Gifts, Benefits and Hospitality Policy* to tickets for arts and cultural events sponsored or funded by the State. Indeed, as part of usual business processes, the Department has recently emphasised the importance and application of the *Gifts, Benefits and Hospitality Policy* to our senior leadership team.

### **Recommendation 6**

Provide training to its agencies regarding the State Purchase Contract, with an emphasis on the importance of procuring goods that are value for money.

#### **Department's response:**

The Department of Premier and Cabinet accepts the recommendation.

### **Recommendation 7**

Ensure that effective oversight of purchasing officers is maintained by its agencies.

#### **Department's response:**

The Department of Premier and Cabinet accepts the recommendation.

## Education – Schools

### Introduction

151. My officers requested information from The Company in relation to the purchase of toner cartridges by the Department of Education and Early Childhood Development.
152. The Company provided copies of invoices and confirmation orders. Analysis of this information identified that 66 schools purchased toner cartridges from The Company in 2009–10.
153. Victorian government schools are not required to comply with the State Purchase Contract, however it is open to them to purchase from the government supplier (OfficeMax). There are purchasing guidelines contained within the Schools Reference Guide that all schools are required to comply with. Section 7.12.1 of the Guide states:
- A school ... may purchase directly from any source of supply when it is to the best advantage of the school. The school is required to ensure that such purchases represent good value for money taking into account equipment compatibility, availability of materials and servicing arrangements where applicable.
154. The following case study of a Victorian primary school illustrates that a rise in the unit price of a toner cartridge was directly linked to the receipt of more substantial gifts from The Company.

#### **Primary School A, an increase in value of rewards linked to price of toner cartridges.**

In September 2009, an officer at a school purchased two toner cartridges from The Company for \$99 each and received no gift. In February 2010, the same officer purchased four of the same model of toner cartridges for \$399 each and received a \$100 Coles Myer store voucher. In June 2010 another officer purchased four toner cartridges for the school at \$429 each and received \$150 worth of Coles Myer vouchers.

155. The case study below is an example of a public officer at a school soliciting a gift and requesting that gift be sent to a private address, apparently to avoid detection.

#### **Primary School B, public officer soliciting gifts to be sent to home addresses.**

In a recording of a verification call in October 2009 obtained from The Company, an Assistant Principal at Primary School B confirmed an order of toner cartridges, totalling \$198 and a \$20 JB HI-FI voucher. In response to the gift offered by The Company, he requested that the voucher be sent to a separate address. When questioned by The Company as to whether this was his home address, he confirmed that it was his private address. The Company refused the request.

Invoices examined from The Company show that the Assistant Principal also received a \$50 Borders voucher and a MinoHD Flip Camcorder (recommended retail price \$242) in 2009-10.

At interview on 16 March 2011, the Assistant Principal stated that in relation to the JB HI-FI voucher, '... I think I kept that for my personal use.' In relation to the \$50 Borders voucher, he stated '... I didn't give that to the school, and I don't know where that is'.

When asked by my officers why he requested that The Company send the JB HI-FI voucher to his home address, he stated: '... I don't know why'.

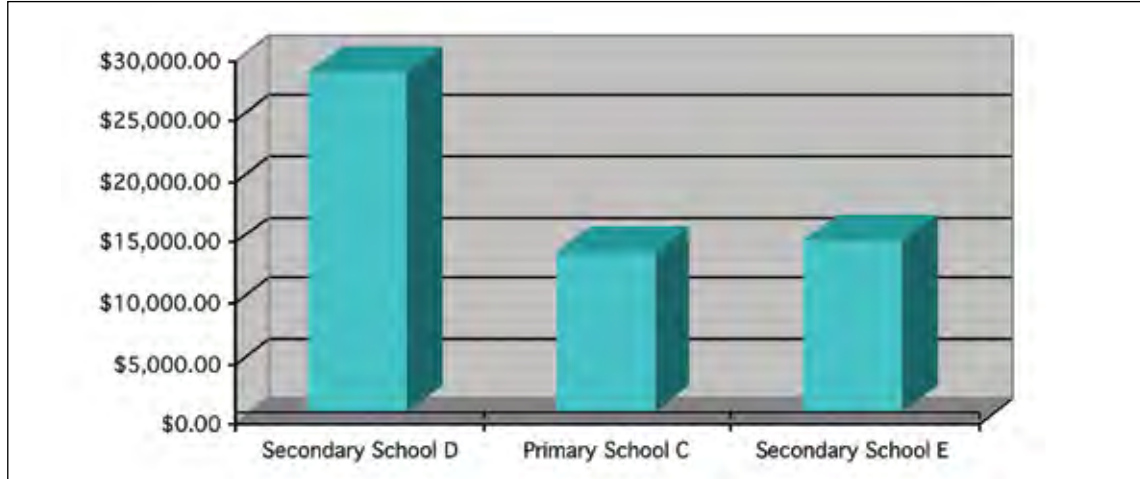
The Assistant Principal stated that the camcorder is currently at the school however he did not record the camcorder as a school asset, as he did not 'know that I had to do that'.

In relation to why he accepted gifts from The Company, he stated 'I obviously didn't know or think ... at the time and then I was told that there was some new ... thing [Gifts and Hospitality Policy] that came about ... that employees weren't allowed to accept gifts'. He further stated 'I wasn't aware that it wasn't the done thing ... [until] 2010'.

156. In response to my draft report, the Assistant Principal stated that the Flip Camcorder:
- is the property of the school and has been used by school staff for school use including in the classroom, presentations, school excursions and a school camp.
157. In relation to the gift vouchers, he made the following comments:
- ... Purchasing items for the school is not something that forms any significant part of my function in the school and therefore the issue of being offered or accepting gifts is not one that I have been necessarily cognisant of. Furthermore I was not aware of the Gifts and Hospitality Policy or any such policy until 2010.
158. Further analysis of the invoices provided by The Company identified that three of the schools had made significantly more purchases from The Company than the others.
159. I therefore focused my investigation on the three schools:
- Secondary School D
  - Primary School C
  - Secondary School E.

160. The table below illustrates the cost to the three schools when purchasing from The Company in 2009 and 2010.

**Table 1: The cost to three schools when purchasing toner cartridges from The Company from 1 January 2009 to 31 December 2010.**



## Secondary School D

161. My investigation focused on the purchases made by Secondary School D as it had made a large number of orders via product vouchers and had received a number of gifts from The Company during 2009 and 2010.
162. The public officer responsible for purchasing toner cartridges at Secondary School D was the Business Manager. She is still employed by the school and reports to the Principal.

### *Improper expenditure of public money*

163. During 2009 and 2010, the Business Manager purchased 63 colour toner cartridges from The Company. Between January and June 2009, these toner cartridges increased in price by \$202 per unit from \$167 to \$369. Throughout this period, OfficeMax toner cartridges cost \$99.
164. The increase in price is shown in the table below:

**Table 2: Increase in price of colour toner cartridges purchased by Secondary School D.**

Date	The Company Cost per unit	OfficeMax Cost per unit
27 January 2009	\$167	\$99
6 March 2009	\$269	\$99
3 April 2009	\$299	\$99
30 April 2009	\$349	\$99
16 June 2009	\$369	\$99

165. At interview on 25 November 2010, the Business Manager said that she did not recall whether she checked The Company's prices against other suppliers. She stated:

I don't recall if I did or not but I'm sure I did.

The Business Manager said that her failure to notice the rising cost of the printer toners was due to '... my bad administration and practices'.

166. At interview on 8 December 2010, in response to the amount of expenditure on toner cartridges from The Company, the Principal said:

... the gift part yeah ok you can be naïve and you can think oh that's ok ... you know although ... there's a public policy, there's a, there's 6000 public policies around all this sort of stuff in terms of integrity and I'll say [the Business Manager's] pretty good with most of those ... but so I can see depending on your moral compass ... you can say oh well that's just a nice side bit of a \$100 that's not hurting anyone but when it then goes and it's costing as you pointed out, it's costing my organisation that sort of money that's where I got a bit frustrated with that because I hate paying more than, more than the odds in fact I like to think that often we get things better than the odds.

167. He also said:

We [schools] wouldn't think of ourselves as public sector ... I think that schools think of themselves as separate from the public service.

168. In response to my draft report on this issue, the Business Manager provided the following comment:

I no longer order toners of any type for printers etc at [Secondary School D].

### **Product vouchers**

169. Invoices examined demonstrated that the Business Manager purchased five product vouchers in 2009 and 2010 to supply toner cartridges for one printer at the school. Each product voucher purchased by the Business Manager was for eight toner cartridges to be delivered in the future, a total of 40 toner cartridges.
170. My officers attended Secondary School D on 8 December 2010 and identified 18 toner cartridges from The Company in storage which had not been used by the school. She also had a further eight cartridges in a product voucher which were yet to be delivered. The Business Manager admitted that she did not require these cartridges.
171. The following photographs (photograph 1 and 2) were taken by my officers of the 18 toner cartridges held in storage by Secondary School D.



Photograph 1: Toner cartridges in stock for one printer at Secondary School D.



Photograph 2: Total number of toner cartridges in stock at Secondary School D for one printer.

## Acceptance of gifts

172. The Department of Education and Early Childhood Development's 'Gifts, Benefits and Hospitality Policy', provides that:

... employees and school councillors may be able to keep a gift worth \$100 or more, but less than \$500, subject to the documented approval of their Deputy Secretary or school council ... Gifts worth \$500 or more must be surrendered to the State or school under all circumstances.

... For school-based employees and school councillors, acceptance and offers of a gift worth more than \$100 (nominal value) must be formally registered on the school's gift register. Where a school gift register does not exist, principals are required to institute one.

173. Each product voucher purchased by the Business Manager included a separate invoice listing the gift to be received. A copy of one of these invoices is at Appendix 2.

174. Invoices provided by The Company show that during 2009 and 2010, the Business Manager received the following gifts:

- Coles Myer vouchers totalling \$500
- Target vouchers totalling \$400
- A 1 GB memory stick (approximate value \$8)
- 8.1 mega pixel Samsung camera (recommend retail price of \$169)
- Total value: \$1,077.

175. When questioned about how she used these gifts, she said that, in relation to the Samsung camera she 'used it ... personally' and it was at her home. She said that she used the gift vouchers to purchase food for her family.

***She said that, in relation to the Samsung camera she  
'used it ... personally' and it was at her home.  
She said that she used the gift vouchers  
to purchase food for her family.***

176. She also said that she had not declared the gifts to the Principal and that she did not think that she had to record that she was receiving gifts.

177. She said she had not been provided with training in procurement nor read the purchasing guidelines or the Department of Education and Early Childhood Development's emails concerning the 'Gifts and Hospitality Policy'.<sup>7</sup>

178. The Principal said it was his view that the Business Manager's conduct had an 'element of naivety' and that Secondary School D did not have a gift register.

<sup>7</sup> These emails were sent to all Victorian schools in July 2010 and September 2010.

179. In response to my draft report, the Business Manager stated:

I now realise that this was inappropriate of me to accept these offers. I have now put in place a gift register so that any vouchers of this type will be recorded and pass through ... [Secondary School D's] Council.

## Primary School C

180. Primary School C purchased toner cartridges from The Company in 2008-10. The public officer responsible for purchasing toner cartridges was a Leading Teacher and Information Communication Technology Manager (Leading Teacher). She is still employed by the school and reports to the Principal and the Business Manager.

### *Improper expenditure of public money*

181. During 2008-10 the Leading Teacher had a \$15,000 annual budget for Information Communication Technology to purchase goods, including toner cartridges on behalf of Primary School C.

182. She spent the following amounts each year on toner cartridges:

2008	\$4,682.70
2009	\$7,121.80
2010	\$5,241.70

183. Overall, the purchase of toner cartridges with The Company comprised 37 per cent of her budget for Information Communication Technology during 2008-10.

184. On 30 January 2009, the Leading Teacher purchased one particular model of toner cartridge from The Company for \$449 each. On 3 September 2009, she purchased the same model of toner cartridges from The Company at \$599 each. This is an increase in price of \$150 in eight months.

185. In January 2009, OfficeMax, the approved supplier under the State Purchase Contract, was selling this same model of toner cartridge for \$123.48 each.

186. In response to my draft report, the Leading Teacher said:

I failed to pick up the discrepancy in price. This was a truly honest mistake. I acknowledge that I should have gone back and checked previous orders to compare the price but I did not ... I made the error of not shopping around, due to the convenience of with [sic] dealing with one company.

187. The Business Manager at Primary School C stated to my officers that she was unaware of the difference in cost between toner cartridges purchased with The Company and toner cartridges purchased with OfficeMax.

188. The Principal at Primary School C stated at interview that she saw her role as being to check whether the total amount spent on each invoice was within the Leading Teacher's budget.

In particular, she stated:

... so long as it wasn't in excess of the purchasing amount [\$2,500] we [the Principal] would have signed it off.

189. Following an interview with my officers the Business Manager provided a document showing the estimated financial loss to Primary School C of ordering toner cartridges with The Company rather than OfficeMax.

190. This estimate of financial loss is:

2008	\$2,083
2009	\$5,428
2010	\$3,428
Total:	\$10,939

191. In response to my draft report, the Leading Teacher further stated:

Prior to my interview with the Ombudsman I had not been made aware of the Victorian Government Purchasing Board's State Purchase Contract, or the 'Good Practice Guidelines'. I therefore was not aware that OfficeMax was the preferred and approved supplier for office stationery and products ... I had not been made aware of the purchasing guidelines contained within the Schools Reference Guide. I have since read the purchasing guidelines thoroughly.

### **Acceptance of gifts**

192. When questioned by my officers regarding whether she had received any gifts from The Company, the Leading Teacher said 'yes, not personally, no' and that:

Everything received ... I had shown the Principal or the Business Manager.

193. Invoices obtained from The Company in 2009-10 identified that she had received the following gifts from The Company:

- prepaid Visa cards totalling \$400
- MP3 player (approximate value \$83)
- 8GB Apple iPhone (recommended retail price \$719)
- Safeway vouchers totalling \$150
- Total value: \$1,352.

194. In addition to the gifts recorded in the invoices, at interview she stated to my officers that she had also received an LCD television and a digital photo frame.

***In addition to the gifts she stated to my officers that she had also received an LCD television and a digital photo frame.***

195. In response to my draft report, she made the following comment:

I did not personally receive or accept any gifts from the Company ... The gifts were part of the orders delivered to the School, and were gifts to the School.

### **Apple iPhone**

196. On 13 May 2009, the Leading Teacher purchased a forward order of toner cartridges from The Company, totalling \$5,988. This forward order was a commitment by her to purchase 12 toner cartridges from The Company over the next eight months, in three separate deliveries. As part of the forward order, was the offer of an 8GB Apple iPhone which she accepted. A copy of the forward order that the Leading Teacher purchased from The Company is at Appendix 3.

197. At interview on 24 November 2010, the Leading Teacher stated that when she received the iPhone she declared it to the Principal who suggested a silent auction to dispose of the iPhone.

198. The silent auction was conducted between teachers at Primary School C via email and was facilitated by the Business Manager. The Leading Teacher stated that she participated in the auction and bid \$440.40 for the iPhone. She said that she was the successful bidder in the auction.

199. The Business Manager said that she was aware of some gifts that the Leading Teacher received:

... [there] was a digital photo frame which was used as a raffle prize in the Mothers Day stall. There was some MP3 players that [the Leading Teacher] handed in. They were used as prizes in the Chocolate Drive.

200. The Principal at the school stated to my officers 'I am aware that there were some gifts'. She further said:

I think there was a photo frame ... from this crowd [The Company] and I think that went into a hamper, you know a hamper basket. That's the only one I'm aware of.

### **Request for invoices to be sent to a residential address**

201. In a recording of a verification call in May 2009 confirming the order referred to in paragraph 196, the Leading Teacher confirmed the forward order of toner cartridges and accepted the offer of an Apple iPhone from The Company.

202. During that recording, she confirmed that she would like the toner cartridges delivered to her at the school's address.

203. When The Company representative asked her whether she wanted the invoice (listing the toner cartridges ordered and Apple iPhone reward) sent to the school, she states on the recording 'Yes, no no no no' (she then stated her home address).

204. When asked by The Company's representative whether this was a separate business address, she answers 'yep'.

205. My investigation identified four invoices with her private home address listed as to where the invoice would be sent and the school's address for where the toner cartridges would be delivered. The most recent invoice to contain her residential address is dated 5 August 2010.

206. The General Manager of The Company stated to my officers it is 'against our company policy' to send invoices or gifts to an officer's private address.

207. At interview, the recording of the verification call was played to the Leading Teacher. In the verification call she states:

Company representative: Just calling to confirm the first part of your forward order for you. I will let you know calls are recorded for training and verification.

The Leading Teacher: Yep

Company representative: ... I have four ... cartridges for this type, \$499 each, complimentary Apple iPhone of 8GB and you're on the 3 network?

The Leading Teacher: Yep

Company representative: Great, this invoice is \$1,996 ... and the invoice there [to the school] or do you want to another address?

The Leading Teacher: No yeah ah actually can you send the invoice to me?

Company representative: At that address?

The Leading Teacher: Yes ah no no no no [the Leading Teacher then states her residential address]

Company representative: Great is that another separate business address?

The Leading Teacher: Yep

208. In response to her request for the invoice to be sent to her home address, she stated:

In all honesty I don't know why I did that ... I really don't know.

209. In response to the draft report on this issue, she said:

The provision of my home address as the billing address was a genuine, and careless, mistake, and was honestly an accident. The delivery address always remained the School's address, and no deliveries of any goods, toner cartridges or gifts, were ever made to my home address.

210. As to the Leading Teacher advising The Company's representative that her residential address was a 'separate business address', she stated at interview to my officers that she:

... probably wasn't even thinking ... I may not even have heard what she asked me.

- 2 11. At interview on 6 December 2010, in relation to the invoices being sent to the Leading Teacher's home address, the Business Manager said:

I did query that at one point ... I asked her why her home address was on there she said she'd been contacted ... they tried to deliver something to the school and we were away ... and that it had been delivered to her instead because the school was closed ... I did say to her I cannot have your home address on invoices that come to the school can you rectify that please ... she said she would ... I contacted The Company and explained to them that ... we cannot have our employees' addresses on our invoices ... must have the school address only ... but then I've noticed on the last bill that came ... [that the Leading Teacher's] home address is back on the bill.

- 2 12. In January 2011, the Principal of Primary School C conducted a disciplinary investigation in relation to the Leading Teacher. The Principal held that all budgets administered by the Leading Teacher would be co-managed by the Business Manager and that the Leading Teacher would no longer purchase toner cartridges on behalf of Primary School C. On this basis, the Principal considered the matter finalised.

## Secondary School E

- 2 13. Secondary School E purchased from The Company in 2007-10. The officer responsible for purchasing toner cartridges was an Information Communication Technology Manager and the Acting Assistant Principal (the Acting Assistant Principal). He is still employed by the school and reports to the Principal.
- 2 14. He stated at interview that he considered his purchases of toner cartridges at Secondary School E to be appropriate.

### Acceptance of gifts

- 2 15. In 2009-10, the Acting Assistant Principal received \$1,290 in JB HI-FI gift vouchers.
- 2 16. The following photographs, which were provided by him, are examples of the JB HI-FI gift vouchers he received from The Company:



Photograph 3: Front of JB HI-FI gift vouchers received by the Acting Assistant Principal.



**Photograph 4: Back of JB HI-FI gift vouchers received by the Acting Assistant Principal.**

217. At interview on 24 November 2010, when asked how the Acting Assistant Principal used the JB HI-FI gift vouchers, he said:
- I use the JB HI-FI vouchers for a specific educational purpose at school ... that's to run many of the multimedia things that we do at the college ... but basically it is in support of the radio station at the college and all that it's trying to do.
218. He also said:
- I've been trying to get a radio station off the ground for about 5 years and it's slowly building its way into the curriculum ... I use the vouchers that I get from [The Company] as a way of getting that program to work.
219. He said that he personally runs a radio segment at the radio station on Thursdays at the school.
220. At interview on 24 November 2010, the Acting Assistant Principal stated that he purchased 'DVDs, CDs [and] anything to do with multimedia' with the JB HI-FI vouchers.
221. The Acting Assistant Principal also stated to my officers that he deliberately did not declare the gifts to the Principal or the bursar (Business Manager) because:
- My main reason is that I don't want to lose the funding towards my radio project I suppose because the bursar [Business Manager] would see that as funds that she could tap into to put towards things elsewhere maybe. She might sort of put them towards awards for other kids or I don't know.
222. When provided with the draft report, the Acting Assistant Principal provided this comment:
- Whilst not declaring the gifts to the bursar, there was nothing underhanded about the project itself or the way the money was used. I even believe that the gifts would probably have been endorsed for the radio station because it was a project that was heavily supported by the school. There was nothing 'sneaky' in the use of the gifts, stupidly, I did not know there was a gift policy and felt I could direct the money to where I felt it would be best used.

223. He also stated:

It was not my purpose to seek vouchers with the prior intention to set up the radio station ... The radio station was already set and underway and it was my intention to fund whatever needed funding. The radio station needed resources and it seemed to be [a] most beneficial way to use money that was gifted to the school. I used my discretion of surplus monies to fund this project that was a unit project by the college community. I certainly did not think there was anything wrong with directing the money back into a needed area of the school ... The radio station is run with the students and they are instructed on the workings of broadcasting to air.

***The Acting Assistant Principal said 'I did not know there was a gift policy and felt I could direct the money to where I felt it would be best used'.***

224. He further stated that he was not sure of the value of the JB HI-FI gift vouchers received from The Company in 2007-10 but that the value of gift vouchers received could have been approximately \$2,000.

225. The Business Manager at Secondary School E confirmed that there is no budget for the radio station and stated to my officers that she was not aware that the Acting Assistant Principal had received gifts from The Company.

***Apple iPhone***

226. When the Acting Assistant Principal attended my office for interview on 24 November 2010, he was in possession of an Apple iPhone. When questioned, he stated to my officers that the phone was his personal phone that he had purchased privately from a supplier called 'F'.

227. During the interview, he admitted that the iPhone was the school's phone.

228. Further enquiries made by my officers regarding the iPhone identified that the organisation 'F' is owned by a former student of Secondary School E. In a letter dated 5 May 2010 addressed to the Information Technology Manager, the former student offers the Acting Assistant Principal the iPhone as a gift in exchange for his purchase of a network switch for Secondary School E. In the letter, the former student advises the Acting Assistant Principal:

Please feel free to use the device for internal testing or as a student reward.  
Thank you kindly for your ongoing [sic] business.

229. The Secondary School E Assets Register Form relating to the iPhone was examined. My officers were advised by Secondary School E that the Asset Register Form was submitted by the Acting Assistant Principal for entry on the register in late November 2010. This was after he was interviewed by my office.

230. An analysis of the contents of the iPhone revealed:

- 1,955 audio files

- 92 images – these images included private photos of the Acting Assistant Principal and his family. My officers identified that 11 of these images were of activities and functions relating to the school
- Three video files: two video files are of a football match that he attended and one video file is of his children
- private SMS messages and private telephone calls.

231. In response to this issue in my draft report, he stated:

I was not informed by anyone at the college of the rules of what calls could be made on the phone ... these [audio files] are the resources for the media class and radio station which are stored on the phone to use everyday ... they also formed the basis for playlists for walk to class music that is aired 3 times a day every school day.

232. He further stated:

Phone calls made to me out of school hours were not mentioned. My role required me to be on call at all times and no mention was made of calls that included a emergencies [sic] at school such as when school portables were set on fire and required my immediate attention.

233. I could not find any evidence that he used the iPhone for 'school testing' purposes. In response to this, the Acting Assistant Principal stated in response to my draft report:

I highly resent the comment that he [the investigator] could not find any evidence that I used the iPhone for 'school testing' purposes and would like to question what is his [the investigator] definition of 'testing' ... Had he [the investigator] enquired about my testing he [the investigator] would have understood that testing meant trying out every aspect of the device including on occasions he [the investigator] claimed to be 'personal uses'. Obviously I familiarised myself with the device at many different opportunities, including out of school hours. Further, at NO [the Acting Assistant Principal's emphasis] time was the device hidden from public view or used covertly from the school community.

### ***Destruction of public records***

234. The Acting Assistant Principal stated to my officers at interview that he did not keep the invoices which listed the gifts received or the confirmation orders. He stated that he puts the confirmation orders 'in the bin' at the end of the school term.

235. In response to this in my draft report, he stated:

My fault was that I did not know and I should have known to declare gifts ... I did not realise the invoices needed to be kept since they were of zero balance so I had them on my desk and at the end of term, discarded what I thought was not needed. If I was acting dishonestly, clearly I would have discarded the invoices as soon as I had received them. On the contrary, I made no secret of hiding or discarding the invoices throughout the term.

***The Acting Assistant Principal stated  
'I did not realise the invoices needed to be kept'.***

## Conclusions

### *Improper expenditure of public money*

236. A public officer responsible for procurement has a duty to ensure public funds are spent appropriately by, for example comparing the price of toner cartridge suppliers with at least two suppliers before choosing to purchase with a supplier and annually checking the prices of the printer toners to ensure that their purchases with the supplier remain best value for money.
237. The purchasing officers at the schools I investigated failed to comply with the minimum standards expected of a purchasing officer.

### ***The purchasing officers at the schools I investigated failed to comply with the minimum standards expected of a purchasing officer.***

238. I am concerned that officers such as the Leading Teacher who is responsible for purchasing toner cartridges on behalf of a school was not aware of the School Purchasing Guidelines that govern the purchases or the State Purchase Contract with which the school may comply.
239. Significant and unnecessary expenditure was allowed to continue within these schools without examination by the Business Manager, Principal or any auditing process. The lack of oversight during the procurement process led to a number of public officers acting without appropriate management and with an inappropriate freedom to make decisions outside of their purchasing authority.
240. The purchase of product vouchers in the manner described in this report clearly opens the door to improper conduct, allowing public officers to receive gifts from The Company to the financial disadvantage of the school.

### ***Acceptance of gifts***

241. The Public Sector Standards Commissioner has recently issued his gifts, benefits and hospitality policy framework which approves of public bodies having a gifts policy which allows public officers to keep gifts of a 'nominal value' without reporting. The Public Sector Standards Commissioner does not set the upper level of 'nominal value' but specifies that it is typically 'between zero and \$150'. I have long been concerned regarding the exclusion of nominal value gifts from the requirement of reporting, as to many public officers a gift of \$150 is not 'nominal' in value.
242. This is particularly so as many public officers who are engaged in purchasing roles are relatively junior officers and gifts of such 'nominal' value can be of significant attraction and have the potential to affect the performance of their duties. If the 'nominal' value policy is to persist, that word should be given its normal English meaning, minimal in value and should not exceed more than \$20.

243. It is my view that the purchasing officers interviewed understood the difference between their private and public interest, however they conducted themselves in favour of their private interest when purchasing toner cartridges with The Company, at some cost to the public interest.

***The purchasing officers conducted themselves in favour of their private interest when purchasing toner cartridges with The Company, at some cost to the public interest.***

244. I do not accept the Leading Teacher's explanation that she did not know why she requested invoices listing gifts to be sent to her personal address. Her statements at interview and in response to my draft report do not make sense.
245. Nor do I accept the Acting Assistant Principal's testimony that his use of the JB HI-FI gift vouchers was for a 'specific education purpose' for the following reasons:
- he chose to accept JB HI-FI gift vouchers from The Company without consulting the Principal or Business Manager
  - he used the vouchers for a particular purpose of his choosing without consulting the Principal or the Business Manager, despite the fact that he was aware that proper disclosure of the vouchers would mean that the funds may have been used in other ways based on the business needs of the school.
246. His use of an Apple iPhone provided by 'F' is a further example of improper behaviour that extends beyond his purchase of toner cartridges from The Company. I do not accept his assertion that the iPhone was a school phone simply by virtue of him placing a school sim card in it. He clearly used the iPhone for his private use, which was purportedly given to him for school testing purposes or a student reward.
247. It is concerning that all of the schools that I investigated did not have a gifts register in place. Since my investigation commenced, only Primary School C has introduced a gifts register.
248. From the instances I have identified in my investigation the public officers concerned were indifferent to their obligations in relation to accepting gifts and declaring any gifts received. I am of the view that gifts, more than \$20 in value, should be declared to the recipient's manager in writing and recorded on a gifts register.

***The public officers concerned were indifferent to their obligations in relation to accepting gifts and declaring any gifts received.***

### ***Destruction of public records***

249. Confirmation orders and invoices sent by The Company to public bodies are financial records which verify and confirm the order made by the public officer and list any gifts to be received. I am concerned that public officers such as the Acting Assistant Principal have breached their obligations under the Public Record Office Disposal schedule by destroying documents that are public records.
250. While the gifts listed on the invoices are listed as having a zero value and do not require payment, this does not imply that they should not be kept by the public body as a public record. Given that they make reference to gifts, I consider it is important that an agency retain copies of these documents so that it may be accountable and transparent if consulted by a third party about any orders made or gifts received.
251. It is clear that the destruction of these records by a number of public officers may have been or appeared to be deliberate attempts to disguise and conceal the gifts received from The Company.

***The destruction of these records by a number of public officers may have been or appeared to be deliberate attempts to disguise and conceal the gifts received from The Company.***

### **Recommendations**

I recommend that the Department of Education and Early Childhood Development:

#### ***Recommendation 8***

Audit all procurement activity undertaken by purchasing officers at Secondary School D, Secondary School E and Primary School C and report to my office on the outcome.

#### ***Department's response:***

The Department of Education and Early Childhood Development accepts the recommendation.

#### ***Recommendation 9***

Consider taking disciplinary action against the Leading Teacher (Primary School C); Business Manager (Secondary School D) and the Acting Assistant Principal (Secondary School E) in light of my report.

#### ***Department's response:***

The Department of Education and Early Childhood Development accepts the recommendation.

### **Recommendation 10**

Ensure that in all Victorian schools:

- office requisites be appropriately procured
- a gifts register be introduced
- any gifts received by public officers be declared and registered in line with departmental policy.

#### **Department's response:**

The Department of Education and Early Childhood Development accepts the recommendation.

### **Recommendation 11**

Make enquiries to determine how many product vouchers remain to be redeemed from The Company.

#### **Department's response:**

The Department of Education and Early Childhood Development accepts the recommendation.

### **Recommendation 12**

Reinforce the need in all schools that:

- goods and services procured are value for money
- effective oversight of purchasing is maintained
- staff are aware of the rules and requirements in undertaking procurement activities.

#### **Department's response:**

The Department of Education and Early Childhood Development accepts the recommendation.

### **Recommendation 13**

I recommend that the Victorian Auditor General consider conducting an audit of all public sector agencies and departments in relation to purchases made from The Company and purchasing generally.

### **Recommendation 14**

I also recommend that the Public Sector Standards Commissioner reconsider the definition of nominal value under the gifts, benefits and hospitality policy framework to ensure it reflects that gifts of more than \$20 in value should be declared, in light of the concerns raised in my report.

## Department of Justice – Corrections

### Introduction

252. The Department of Justice and its agencies, including Victorian prisons are bound by the State Purchase Contract.
253. In their review of the Department of Justice’s coordinated response to the FOI request, my officers became aware that the Department of Justice had received an MP3 player from The Company. My officers made enquiries and identified that the MP3 player was received by a prison in May 2009.

### The Prison

254. The Prison is bound by the State Purchase Contract. However, toner cartridges were purchased from The Company throughout 2005–09.
255. The following public officers were responsible for purchasing toner cartridges on behalf of the Prison:
- the Industry Supervisor
  - the Industry Officer
  - the former Industry Supervisor.
256. The Prison made the following purchases of toner cartridges with The Company in 2005–09:

**Table 3: Toner cartridges purchased by the Prison from The Company in 2005–09.**

Year of purchase	Number of toner cartridges purchased from The Company	Total spent with The Company
2005	3	\$825.90
2006	5	\$970.70
2007	17	\$1,590.80
2008	75	\$3,803.70
2009	42	\$2,079.40
<b>Total</b>	<b>142</b>	<b>\$9,270.50</b>

257. The VGPB’s ‘State Purchase Contracts Policy’ states that the State Purchase Contract Manager:
- ... may grant an exemption from an established mandated SPC where the entity can demonstrate special circumstances have arisen in relation to sourcing from the SPC.

258. This applies to all public bodies bound by the Contract. These special circumstances include:
- a supplier is no longer able to effectively service a regional area
  - regional suppliers within regional Victoria can offer the same or better value for money.

### **Purchasing toner cartridges outside the State Purchase Contract**

259. An internal investigation by the Department of Justice instigated shortly after the receipt of the FOI request, questioned the issue of obtaining an exemption to purchase from The Company. In a response to the internal investigation, an officer at the Prison advised the Department of Justice that:

... they [prison officers] have tried a number of different cartridges from Officemax and none of them printed heavy enough for a quality result. The numberplates industry have been purchasing cartridges from a local provider because the cartridges were not able to produce a legible print, required on records in the numberplate manufacturing process. Both areas raised the problem with me (industry manager) and I gave approval to purchase cartridges from different suppliers, at the time not considering the obligation with Officemax.

260. This officer does not have authority to provide this approval as he is not a State Purchase Contract Manager.
261. Based on my officers' review of invoices received from The Company, I interviewed the three purchasing officers from the Prison who purchased toner cartridges from The Company.
262. At interview, the Industry Officer stated to my officers that:
- ... the purchasing contract was for stationery, to me [toner] cartridges aren't stationery ...
263. In response to my draft report, the Industry Officer stated that he did not wish to make a comment.

### **Acceptance of gifts**

264. In its internal investigation, the Department of Justice identified that the Industry Supervisor received an MP3 player from The Company which he placed in his drawer and did not disclose to his manager. At interview with my officers on 29 October 2010, he said:

When it become [sic] to my knowledge that all of a sudden there was an issue with this company and giving gifts and that and they mentioned this iPod [MP3 player] I thought 'oh my god, it should still be in ... [my] bottom drawer because I hope to god it is.'

265. The Department of Justice has advised that the MP3 player is now in the possession of the General Manager at the Prison.

266. In response to my draft report, the Industry Supervisor made the following comment:

I was unaware of the State Purchase Contract for the use of public bodies when purchasing stationery and office products.

267. In relation to his acceptance of the MP3 player, he said:

As it was my belief this item was of little value and also my understanding at the time, items with a value under \$20 did not require declaring ... I did not become aware that there was a problem with this company until several months after receiving the item when I was questioned by the prison General Manager ... I immediately went to my office and checked the drawer; the item was still there in its original packaging. I immediately gave the item to my manager.

268. The former Industry Supervisor stated to my officers at interview on 28 October 2010 that his response to The Company when offered gifts was 'sorry, we cannot accept'.

269. He later telephoned my officers and said that he did recall accepting a 'digital device' from The Company in 2007. In an email dated 29 October 2010 to my office, he said:

I do remember realising how stupid I was accepting the offer, and immediately ringing The Company back and stopping the gift offer. I never received the gift. I was never pressured to buy because of any contract. Even though I stopped the gift, I have great regret for my moment of failure.

270. In response to my draft report, the former Industry Supervisor stated that he did not have a comment to make.

## Conclusions

271. I am concerned that the Prison officers, despite being bound by the State Purchase Contract purchased a number of toner cartridges with a non-approved supplier without appropriate authority over a five year period.

272. It is important for all government bodies bound under the State Purchase Contract to comply with its requirements, to ensure that:

- purchases comply with the State Purchase Contract
- the purchase price is standardised and best value for money
- the goods purchased are good quality.

## Recommendation

I recommend that the Department of Justice:

### **Recommendation 15**

Provide training to its staff regarding the State Purchase Contract with an emphasis on the correct process when obtaining an exemption to purchase outside the State Purchase Contract.

## Department's response

**Accepted.** In relation to Draft Recommendation 15, the Department accepts the Ombudsman's recommendation and will arrange specifically for the three ... prison staff to attend the next departmental forum on State Purchase Contracts scheduled in the near future. During these presentations, topics covered will include the use of the panel, what is included, what is not and includes the processes required for any exemptions.

The Manager Procurement Policy, also participates in the regular Prison Business Managers' meetings and has presented on procurement requirements, and will be presenting on whole of government procurement reforms in the near future. These reforms include the assessment and development of procurement capability within the department and the associated training requirements.

The Department developed an electronic Procurement Toolbox which contains all requirements of the procurement process. A general reminder will be forwarded to all staff to remind them of their obligations.

The Chief Financial Officer (CFO) has advised as soon as the Department became aware of the Freedom of Information request in November 2009, seeking details of payments made to the company, we removed [The Company] ... from our Master Vendor list. Finance branch advised the staff responsible for maintaining the information that they were banned from dealing with [The Company] ... and any request to re-create them as a vendor should be rejected, and raised with the CFO.

## Summary of recommendations

I recommend that the Department of Premier and Cabinet:

### **Recommendation 1**

Conduct an audit of all procurement activity by Arts Victoria.

### **Department's response:**

The Department of Premier and Cabinet accepts the recommendation.

### **Recommendation 2**

Conduct a review of the management at Arts Victoria.

### **Department's response:**

The Department of Premier and Cabinet accepts the recommendation.

### **Recommendation 3**

Request The Company to advise how many product vouchers remain to be redeemed at Arts Victoria and seek to have these refunded.

### **Department's response:**

The Department of Premier and Cabinet accepts the recommendation.

### **Recommendation 4**

Revise Arts Victoria's purchasing policy regarding product vouchers.

### **Department's response:**

The Department of Premier and Cabinet accepts the recommendation.

### **Recommendation 5**

Conduct training of all Arts Victoria staff in relation to obligations under the Code of Conduct for Victorian Public Sector Employees, *Public Administration Act 2004* and 'Gifts, Benefits and Hospitality' policy in relation to acceptance and declaration of gifts.

### **Department's response**

**Accepted.** [T]he Department will consider the application of the *Gifts, Benefits and Hospitality Policy* to tickets for arts and cultural events sponsored or funded by the State. Indeed, as part of usual business processes, the Department has recently emphasised the importance and application of the *Gifts, Benefits and Hospitality Policy* to our senior leadership team.

### **Recommendation 6**

Provide training to its agencies regarding the State Purchase Contract, with an emphasis on the importance of procuring goods that are value for money.

#### **Department's response:**

The Department of Premier and Cabinet accepts the recommendation.

### **Recommendation 7**

Ensure that effective oversight of purchasing officers is maintained by its agencies.

#### **Department's response:**

The Department of Premier and Cabinet accepts the recommendation

I recommend that the Department of Education and Early Childhood Development:

### **Recommendation 8**

Audit all procurement activity undertaken by purchasing officers at Secondary School D, Secondary School E and Primary School C and report to my office on the outcome.

#### **Department's response:**

The Department of Education and Early Childhood Development accepts the recommendation.

### **Recommendation 9**

Consider taking disciplinary action against the Leading Teacher (Primary School C); Business Manager (Secondary School D) and the Acting Assistant Principal (Secondary School E) in light of my report.

#### **Department's response:**

The Department of Education and Early Childhood Development accepts the recommendation.

### **Recommendation 10**

Ensure that in all Victorian schools:

- office requisites be appropriately procured
- a gifts register be introduced
- any gifts received by public officers be declared and registered in line with departmental policy.

**Department's response:**

The Department of Education and Early Childhood Development accepts the recommendation.

**Recommendation 11**

Make enquiries to determine how many product vouchers remain to be redeemed from The Company.

**Department's response:**

The Department of Education and Early Childhood Development accepts the recommendation.

**Recommendation 12**

Reinforce the need in all schools that:

- goods and services procured are value for money
- effective oversight of purchasing is maintained
- staff are aware of the rules and requirements in undertaking procurement activities.

**Department's response:**

The Department of Education and Early Childhood Development accepts the recommendation.

**Recommendation 13**

I recommend that the Victorian Auditor General consider conducting an audit of all public sector agencies and departments in relation to purchases made from The Company and purchasing generally.

**Recommendation 14**

I also recommend that the Public Sector Standards Commissioner reconsider the definition of nominal value under the gifts, benefits and hospitality policy framework to ensure it reflects that gifts of more than \$20 in value should be declared, in light of the concerns raised in my report.

I recommend that the Department of Justice:

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**Accepted.** In relation to Draft Recommendation 15, the Department accepts the Ombudsman's recommendation and will arrange specifically for the three ... prison staff to attend the next departmental forum on State Purchase Contracts scheduled in the near future. During these presentations, topics covered will include the use of the panel, what is included, what is not and includes the processes required for any exemptions.

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The Department developed an electronic Procurement Toolbox which contains all requirements of the procurement process. A general reminder will be forwarded to all staff to remind them of their obligations.

The Chief Financial Officer (CFO) has advised as soon as the Department became aware of the Freedom of Information request in November 2009, seeking details of payments made to the company, we removed [The Company] ... from our Master Vendor list. Finance branch advised the staff responsible for maintaining the information that they were banned from dealing with [The Company] ... and any request to re-create them as a vendor should be rejected, and raised with the CFO.

## Appendix I

The use of the Stationery and Office Products State Purchase Contract is mandatory for the following 14 departments and agencies:

- Environment Protection Authority
- Department of Education and Early Childhood Development
- Department of Human Services
- Department of Transport
- Department of Innovation, Industry and Regional Development
- Department of Justice, including all Victorian prisons
- Department of Premier and Cabinet
- Department of Primary Industries
- Department of Sustainability and Environment
- Department of Treasury and Finance
- Department of Planning and Community Development
- Victoria Police
- Barwon Water
- Metropolitan Fire and Emergency Services Board.

# Appendix 2

15/06 2009 MON 16:37

001/001

## CONFIRMATION OF ORDER

All our products have the same guarantees as the original manufacturers, and come out to you on an open thirty day account.

PRODUCT/DESCRIPTION (product to suit)	QUANTITY	UNIT PRICE	TOTAL COST
HP 3600 BLK	2	369	738
CYAN	2	369	738
MAGENTA	2	369	738
YELLOW	2	369	738
\$100 TARGET VOUCHER	1	FREE	N/C
All prices are inclusive of GST			
TOTAL (GST inc.)		\$ 2,952	

Your Senior Accounts Manager is

I wish to confirm this order:

Signature:

*Please carefully check that the number of items you have ordered is correct.*

Company:

Contact:

Phone:

Fax:

Address:

State:

Post Code:

Purchase Order number:

Date of Order: 15.6.09

By signing this confirmation you are consenting to receiving calls from regarding our products and services until 31/12/2010

## PAYMENT DETAILS

2.5% discount applies for immediate Credit Card payments.

AMEX   Diners   Bankcard   VISA   Master card (Please circle)

Credit Card Expiry Date \_\_\_\_ / \_\_\_\_ ID No \_\_\_\_

Credit Card Number:

Card Holders Name: \_\_\_\_\_

Signature: \_\_\_\_\_

Version 2006-01

DNM008

Updated 17 Dec 08

*retains the title to the products subject to this order form until those products have been paid for in full.*

Fax ID

# Appendix 3

13/05/2009 02:36

PAGE 01

PAGE 01

### CONFIRMATION OF ORDER - WITH FREE APPLE IPHONE

All our products come to you on a 30-day account, and have the same guarantees as the original manufacturers.

PRODUCT DESCRIPTION	Mth	Qty	Price	Mth	Qty	Price	Mth	Qty	Price	Mth	Qty	Price
(Product to Suit)												
KYOCERA FS 1300	4	4	\$499	4	4	\$499	4	4	\$499			
PLUS THE APPLE I-PHONE ON ME !!												
<b>TOTALS</b>	<b>4</b>	<b>4</b>	<b>\$1976</b>	<b>4</b>	<b>4</b>	<b>\$1976</b>	<b>4</b>	<b>4</b>	<b>\$1976</b>			

ORDER TOTAL (inc GST): \$ 5988 *over 3 deliveries / invoice*

Senior Account Manager

I wish to confirm this order:

Signature:

Please carefully check that the number of items you have ordered is correct.

Phone:

Purchase Order: 6301

Date of Order: 13/5

Fax:

By signing this confirmation you are consenting to receiving calls from Ems regarding our products and services until 31/12/2018

#### Ordered By

Company:

Name:

Address:

City:

State:

Postcode:



#### FREE FANTASTIC APPLE I-PHONE!!!

- Display - 3.5-inch diagonal widescreen Multi-Touch display 480x320-pixel resolution at 16:9 pp
- Support for display of multiple languages and characters simultaneously
- Audio - Frequency response: 20Hz to 20,000Hz
- Audio formats supported: AAC, Protected AAC, MP3, MP3 VBR, Audible (formats 2, 3, and 4), Apple Lossless, AIF and WAV
- Video, Camera and photos

Carefully check that the number of items you have ordered is correct. All prices are inclusive of GST. Please sign the above signature area to confirm this order and fax it back attention to your account manager. Ems Imaging Australia retains title in the products subject of this order from the time these products have been paid for in full.

#### CREDIT CARD PAYMENT DETAILS - 2.5% discount applies for immediate Credit Card Payments

Please circle:

AMEX

DINERS

BANKCARD

VISA

MASTERCARD

Expiry Date:

Credit Card Number:

□□□□ □□□□ □□□□ □□□□

Card Holders Name:

Card Holder Signature:

30 DAY ACCT.

Version 2008-01

DNE008

Updated 09 Oct 08

Fax ID



# Ombudsman's Reports 2004-II

## 2011

Investigation into record keeping failures by WorkSafe agents  
May 2011

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

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

The Brotherhood – Risks associated with secretive organisations  
March 2011

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

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

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

## 2010

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

Ombudsman's recommendations second report on their implementation  
October 2010

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

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

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

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

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

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

Ombudsman's recommendations – Report on their implementation  
February 2010

## 2009

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

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

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

Brookland Greens Estate – Investigation into methane gas leaks  
October 2009

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

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

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

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

Investigation into corporate governance at Moorabool Shire Council  
April 2009

Crime statistics and police numbers  
March 2009

## **2008**

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

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

Investigation into contraband entering a prison and related issues  
June 2008

Conflict of interest in local government  
March 2008

Conflict of interest in the public sector  
March 2008

## **2007**

Investigation into VicRoads' driver licensing arrangements  
December 2007

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

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

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

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

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

## **2006**

Conditions for persons in custody  
July 2006

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

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

Improving responses to allegations involving sexual assault  
March 2006

## **2005**

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

*Whistleblowers Protection Act 2001* Ombudsman's guidelines  
October 2005

Own motion investigation into VicRoads registration practices  
June 2005

Complaint handling guide for the Victorian Public Sector 2005  
May 2005

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

Review of complaint handling in Victorian universities  
May 2005

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

Discussion paper on improving responses to sexual abuse allegations  
February 2005

## **2004**

Essendon Rental Housing Co-operative (ERHC)  
December 2004

Complaint about the Medical Practitioners Board of Victoria  
December 2004

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