Investigation of three protected disclosure complaints regarding Bendigo South East College

September 2018
Letter to the Legislative Council and the Legislative Assembly

To

The Honourable the President of the Legislative Council

and

The Honourable the Speaker of the Legislative Assembly

Pursuant to sections 25 and 25AA of the Ombudsman Act 1973 (Vic), I present to Parliament my Investigation of three protected disclosure complaints regarding Bendigo South East College.

Deborah Glass OBE
Ombudsman

12 September 2018
## Contents

<table>
<thead>
<tr>
<th>Topic</th>
<th>Page</th>
</tr>
</thead>
<tbody>
<tr>
<td>Foreword</td>
<td>5</td>
</tr>
<tr>
<td>Executive summary</td>
<td>6</td>
</tr>
<tr>
<td>Background</td>
<td>13</td>
</tr>
<tr>
<td>The protected disclosure complaints</td>
<td>13</td>
</tr>
<tr>
<td>Jurisdiction</td>
<td>14</td>
</tr>
<tr>
<td>Methodology</td>
<td>15</td>
</tr>
<tr>
<td>Relevant legislation and the Code of Conduct</td>
<td>18</td>
</tr>
<tr>
<td>Bendigo South East College and the Bendigo Education Plan</td>
<td>19</td>
</tr>
<tr>
<td>Nepotism</td>
<td>21</td>
</tr>
<tr>
<td>Relevant departmental regulation and policies</td>
<td>21</td>
</tr>
<tr>
<td>Recruitment and promotion of family members</td>
<td>23</td>
</tr>
<tr>
<td>Findings</td>
<td>43</td>
</tr>
<tr>
<td>Misuse of position and conflicts of interest</td>
<td>51</td>
</tr>
<tr>
<td>School Bus Program and the role of bus coordinators</td>
<td>51</td>
</tr>
<tr>
<td>Michael Bulmer’s engagement as regional bus coordinator and ‘bus charter coordinator’</td>
<td>52</td>
</tr>
<tr>
<td>Relationship between Michael Bulmer and Brandt Fleming</td>
<td>56</td>
</tr>
<tr>
<td>Awarding of college business to Bendigo Coachlines by the Bulmers</td>
<td>60</td>
</tr>
<tr>
<td>Awarding of work to italktravel by Ernest and Karen Fleming</td>
<td>70</td>
</tr>
<tr>
<td>Findings</td>
<td>72</td>
</tr>
<tr>
<td>Misuse and mismanagement of public funds</td>
<td>76</td>
</tr>
<tr>
<td>Relevant policies</td>
<td>76</td>
</tr>
<tr>
<td>Athlete Development Program financial issues</td>
<td>76</td>
</tr>
<tr>
<td>Teaching of ‘curriculum’ in the ADP</td>
<td>78</td>
</tr>
<tr>
<td>Use of official purchasing cards</td>
<td>82</td>
</tr>
<tr>
<td>Reimbursements</td>
<td>82</td>
</tr>
<tr>
<td>Use of contractors</td>
<td>84</td>
</tr>
<tr>
<td>Consulting the college council</td>
<td>85</td>
</tr>
<tr>
<td>Tax obligations</td>
<td>86</td>
</tr>
<tr>
<td>Findings</td>
<td>87</td>
</tr>
<tr>
<td>Oversight by the regional office</td>
<td>93</td>
</tr>
<tr>
<td>Relevant policies</td>
<td>93</td>
</tr>
<tr>
<td>Complaints about Ernest Fleming</td>
<td>94</td>
</tr>
<tr>
<td>Findings</td>
<td>113</td>
</tr>
<tr>
<td>Conclusions</td>
<td>117</td>
</tr>
<tr>
<td>Appendix 1</td>
<td>125</td>
</tr>
</tbody>
</table>
Foreword

It is a sad but sorry fact that despite a steady stream of Ombudsman reports highlighting nepotistic behaviour by senior public servants, the problem persists. This is the latest such report, and if a case study into nepotism is needed, this is it.

Ernest Fleming was the Principal of Bendigo South East College, where he had been for many years. We were not investigating his long record or achievements in the education sector; this investigation focussed on specific allegations from multiple sources about his nepotistic practices at the college.

The investigation found that for many years, Ernest Fleming ran the college as a personal fiefdom, employing and promoting family members, providing substantial benefits to his son’s business partner and companies owned by his son, and using public funds as he saw fit without consultation or approval from the college council.

His actions showed little regard for department policy, relevant legislation and regulations or for his obligations under the Code of Conduct to avoid conflicts of interest; use his power for authorised purposes; and uphold standards of honesty, integrity and financial probity.

Detailed concerns about his conduct were repeatedly raised with the regional office, which took no or little action, and must take some responsibility for the length of time this conduct was able to go on. The pattern appears to be that Mr Fleming responded to complaints with denial, belligerence and threats. He maintained that department conflict of interest policies were ambiguous, claimed that all his actions were in the best interests of the college, blamed an ‘unsanctioned’ and ‘orchestrated’ anonymous letter campaign making ‘false accusations’, and commented that he should have taken disciplinary action against these ‘agitators’.

This investigation confirms the truth of the majority of allegations made against him, anonymously or otherwise. If anything, the large number of anonymous complaints confirms the fear felt by whistle-blowers about coming forward.

Ernest Fleming spent many years as an educator and enjoyed an excellent reputation with many in the local community. So how much does his failure to adhere to policy and standards matter? In my view, a great deal. His family and associates obtained substantial private benefits out of public funds, including at the expense of bus operators in the Bendigo region not connected to the family. Parents paid for a sports programme that wrongly claimed to be delivering the mandatory curriculum. His conduct impacted the culture of the college and the careers of numerous past and current teachers and staff. Nepotism is particularly pernicious in rural and regional areas with fewer job opportunities.

Mr Fleming is no longer employed by the department, which spares me the need to make the only recommendation I could in the circumstances.

Deborah Glass
Ombudsman
Background

1. This report details what has been a lengthy and complex investigation into allegations of improper conduct by the now former principal of the Bendigo South East College, Ernest Fleming, and others associated with him and his family.

2. The investigation is the result of three protected disclosure complaints referred to the Ombudsman by the Independent Broad-based Anti-corruption Commission (IBAC) under the Protected Disclosure Act 2012 (Vic) in August and September 2016.

3. The disclosures made allegations relating to nepotism, conflict of interest and financial mismanagement of the college by Ernest Fleming, and of improper use of the bus coordinator role by his son’s business partner, Michael Bulmer, to further his private business interests. The investigation also examined the handling of over 20 complaints received between August 2014 and February 2016 by the Department of Education and Training’s North Western Region office about Mr Fleming’s conduct.

4. The Ombudsman notified the Minister for Education and Training of her intention to investigate on 14 October 2016. The Department of Education and Training suspended Mr Fleming on full pay in January 2017 while it conducted an internal investigation into his conduct. Mr Fleming resigned in May 2018 after the department informed him of its decision to terminate his employment.

5. The college terminated its ‘informal’ bus coordination arrangement with Mr Bulmer and his wife on 14 March 2017.

6. This was a lengthy investigation, protracted not only by the complexity of the issues raised and large amount of documentary evidence collected, but also by the need to refer further matters to IBAC and the commissioning of two audits to assist the investigation.

7. The investigation was further drawn-out by the significant efforts made to ensure procedural fairness to subjects of the investigation. Mr Fleming and others were provided with multiple extensions of time to respond to the draft report and copies of documents relied upon by the investigation. Because Mr Fleming was suspended from the college during the investigation, the investigation provided him with hard drives containing copies of his departmental computer, hard drive and departmental emails, to assist him to respond to the Ombudsman’s draft report. As Mr Fleming was unable to open these files on his system, the investigation rebuilt Mr Fleming’s departmental computer and email environments and allowed him to access the material at the Ombudsman’s office.

8. In Mr Fleming’s response to the draft report, he provided information relating to Mr Bulmer’s lease of a minibus to the college, which resulted in further adverse comments being added to the draft report. Mr Fleming, Mr Bulmer and Ms Bulmer were given a further opportunity and the relevant documents to respond to this material.

Nepotism

9. It was alleged that Ernest Fleming misused his position as principal by engaging and promoting his wife, Karen Fleming, and son, Adam Fleming, at the college. He also allegedly engaged in nepotism by promoting an in-law of one of his sons to an Assistant Principal position.
10. Ernest Fleming insisted in his first response to the draft report that he was not involved in the recruitment or promotion of his relatives, that his actions were in the best interests of the college, and that he ‘never approached or encouraged’ his wife or son to apply for positions at the college.

11. However, the investigation substantiated the allegations in relation to Karen Fleming and Adam Fleming and found that his promotion of his son’s in-law, while not nepotism and in some respects to her disadvantage, violated departmental policies relating to recruitment and conflicts of interest, and the relevant workplace agreement.

Appointment and promotion of Karen Fleming

12. Ernest Fleming told the investigation his wife began volunteering at the college in late 2009 to ‘keep an eye on him’ after he suffered a heart attack, with ‘every intention’ of returning to her former employment. She was subsequently employed at the college in a range of Education Support Officer positions from January 2010 and became the Personal Assistant to the Principal (Ernest Fleming) in January 2014.

13. The Personal Assistant to the Principal role was advertised externally and three people other than Mrs Fleming applied. Mrs Fleming was appointed to the role – a promotion – despite no evidence that she submitted a valid application. She was entered in the system as having submitted an application in January 2010, years before the position was advertised. The contact email address provided for Karen Fleming was her husband’s departmental account.

14. There is no evidence that applications for the role were assessed by a selection panel; and the only evidence of how the decision was made was a note to the college’s Business Manager from Ernest Fleming, instructing her to appoint his wife.

15. Despite his claim to have remained at arm’s length from his wife’s employment, Ernest Fleming was listed on job advertisements as the contact person for at least two roles his wife obtained at the college, one in 2010 and one in 2014. At a minimum this demonstrates he did not do everything in his power to mitigate his conflict of interest. It potentially gave him knowledge of the process, such as details of people who were enquiring about or applying for the positions. It also created the perception that his wife received favourable treatment.

16. Mr Fleming’s decision to allow his wife to volunteer at the college from 2009, before applying for an advertised position, also created a perception that she was given an unfair advantage in relation to future recruitment processes by giving her work experience that she would not have gained if she were not married to the principal. Mr Fleming repeated this pattern with the engagement of his son, Adam, in late 2013.

Appointment and promotion of Adam Fleming

17. Ernest Fleming improperly engaged his son, Adam Fleming, as a paid consultant from December 2013 to December 2014. In December 2014, Ernest Fleming also appointed Adam Fleming as Manager of the college’s specialist sports program, the Athlete Development Program (ADP), over a more qualified candidate.
18. Between December 2013 and December 2014, the college paid Adam Fleming at least $54,500 for his services. There was no recruitment process; and Adam Fleming held no formal role at the college, despite giving himself a range of titles in emails, including ‘Sports Coordinator’, ‘ADP Manager’ and ‘ADP Director’. Ernest Fleming told college staff his son was a ‘volunteer’ during this time.

19. During this time, Ernest Fleming supported his son in assuming a leadership position over employees of the college and allowed him to develop the ADP. The college had a Sports Manager, whose position description said she was responsible for developing the ADP; however Ernest Fleming told her Adam Fleming was in charge of the program.

20. In October 2014, the college advertised the ADP Manager position, as required by the department’s Recruitment in Schools policy. Adam Fleming and the Sports Manager applied. The Sports Manager had more formal qualifications and experience than Adam Fleming, was a qualified sports teacher and had extensive work experience in elite sport at the national and state levels. Adam Fleming’s previous work experience was as a pharmacist and tennis coach.

21. Adam Fleming and the Sports Manager were interviewed in November 2014 by a panel chaired by the Assistant Principal, who denied improperly favouring Adam Fleming’s application, but told the investigation he thought Ernest Fleming wanted his son to get the role. Adam Fleming was appointed to the role by a formal letter of offer from his father dated 17 December 2014.

22. Ernest Fleming claimed he remained at arm’s length from the process due to his son’s involvement, however he:
   - asked an acquaintance to be on the panel and discussed the composition of the panel with the Assistant Principal, who chaired the panel
   - discussed another candidate’s application with the Assistant Principal, who said Ernest Fleming did not like the candidate (the candidate was not shortlisted for interview, despite meeting the selection criteria)
   - emailed staff at the college advising them his son had been appointed to the position, shortly after applicants were interviewed and before the panel had provided him with its written recommendation.

23. Several external candidates who met the key selection criteria and were more qualified than Adam Fleming also applied. None were shortlisted for interview, and the Assistant Principal was unable to explain why to the investigation. As they were listed as contact people on the advertised ADP positions, Ernest and Adam Fleming both received enquiries from people interested in applying for the ADP Manager role, all of whom appeared to meet the selection criteria. They forwarded these to the Assistant Principal, who failed to respond to all but one. He was unable to explain to the investigation why he had not responded to these enquiries. Whether deliberately or otherwise, the Assistant Principal’s actions favoured Adam Fleming’s application, as they contributed to reducing the field of potential competitors who were more qualified for the role.

24. Adam Fleming commenced in the role of ADP Manager in January 2015. Six weeks later, without any documented process, his father gave him a backdated promotion, increasing Adam Fleming’s annual salary by $7,203. Ernest Fleming told the investigation this was the Assistant Principal’s idea. However, there is no evidence to support this.
Creation of two Assistant Principal roles

25. In late 2016, Ernest Fleming promoted an in-law of one of his sons, along with another staff member, to new Assistant Principal positions.

26. Although required to advertise new positions externally, Mr Fleming went to great lengths to circumvent departmental policy by appointing his favoured candidates using ‘special payments’. He did so in spite of written advice from his line manager that special payments could not be used for this purpose, and in breach of the Victorian Government Schools Agreement.

27. In doing so, Mr Fleming created a perception that he favoured his son’s in-law because of their personal association. There is no suggestion she was not qualified for the position, and Mr Fleming’s actions unfairly damaged her reputation.

Misuse of position and conflicts of interest

28. The investigation also examined allegations of improper conduct involving Ernest Fleming and Michael Bulmer. Brandt Fleming, Ernest Fleming’s son, was Mr Bulmer’s business partner.

29. Michael Bulmer was the college’s ‘regional bus coordinator’ from May 2013 to December 2015, responsible for coordinating bus services for the college and surrounding schools. His wife, Lynn Bulmer, took over his bus coordinator duties at the college in 2016 and continued in the role until the college terminated the arrangement in March 2017.

30. It was alleged that Mr Bulmer misused the role to channel business to Bendigo Coachlines, a company in which he was a manager and which he subsequently bought with Ernest Fleming’s son, Brandt Fleming, in June 2016. Ernest Fleming was accused of facilitating the conduct and having a conflict of interest in relation to his son’s part ownership of Bendigo Coachlines.

Michael and Lynn Bulmer

31. The investigation substantiated these allegations and found that Mr Bulmer’s wife, Lynn Bulmer, also engaged in improper conduct when she took over the bus coordinator function from Mr Bulmer in 2016.

32. Throughout Mr Bulmer’s time as bus coordinator (May 2013-December 2015), he did nothing to relinquish his conflicts of interest. Instead he used, or attempted to use, his engagement as bus coordinator and responsibility for booking excursions to maximise his personal gain, by:

- using his bus coordinator email address to seek business from another local school for one of his companies
- directing school business to Bendigo Coachlines, which his wife continued to do when she took over the role in 2016
- planning to access students’ personal information held by the department – including sensitive medical details – to further another of his business ventures which he was developing with Brandt Fleming
- leasing a minibus belonging to another of his companies to the college at a cost of at least $15,000, and charging the college extra, through Bendigo Coachlines, for specific trips using the bus. This resulted in the college booking fewer bus trips through Mr Bulmer’s local business competitors.
33. Despite Michael Bulmer’s claim that he ‘regularly’ sought comparative quotes, and Lynn Bulmer’s claim to have sought ‘three quotes’ for all local bus trips she booked, the investigation found the only time either of them sought comparative quotes from companies they did not have an interest in was for an interstate trip in 2016, where it would have been impossible to use one of their own companies. On one other occasion, when two quotes were required by the excursion destination, Ms Bulmer (as bus coordinator) arranged for her husband to submit the quotes from two of their own companies.

Ernest and Karen Fleming

34. Ernest Fleming engaged Michael Bulmer as regional bus coordinator in May 2013. Mr Fleming also made Mr Bulmer responsible for booking bus charter work for the college, despite knowing that Mr Bulmer had a conflict of interest as the Business Development Manager at Bendigo Coachlines.

35. This appointment allowed Mr Bulmer and his wife to channel college business to Bendigo Coachlines, a business the Bulmers went on to purchase with Brandt Fleming in June 2016 and to which they continued to direct college funds. Ernest Fleming also approved Mr Bulmer’s lease of the minibus to the college, knowing Mr Bulmer owned the vehicle.

36. Ernest Fleming had several conflicts of interest in relation to his engagement of Mr Bulmer, as he was aware from at least September 2014 that Mr Bulmer was a business partner of his son, Brandt Fleming.

37. On his own evidence, Ernest Fleming instructed Mr Bulmer to give all bus work for trips outside of Bendigo to Bendigo Coachlines from May 2013.

38. He was also aware of his son Brandt’s purchase of Bendigo Coachlines with Mr Bulmer in June 2016. Despite this, he allowed the Bulmers to remain in charge of bus hire at the college and direct bus work to Bendigo Coachlines.

39. Mr Bulmer and Brandt Fleming also purchased a travel agency in June 2016. Shortly after they purchased the company, Ernest Fleming and his wife booked two school excursions through the company at a cost of over $18,000. They liaised directly with Brandt Fleming regarding the bookings.

40. Mr Fleming did not declare his conflicts to the Regional Director of the North Western Region office, as required by the department’s Conflict of Interest policy. He also breached the policy by failing to manage Mr Bulmer’s conflict and to prevent him taking personal advantage of his position.

41. Mr Fleming also misled the college council by informing them of his son’s directorship of Bendigo Coachlines, but failing to disclose that Brandt Fleming was also an owner of the company. Nor did he disclose Mr Bulmer’s interest in the company – key information given Mr Bulmer’s role as bus and charter coordinator. This was inconsistent with Mr Fleming’s obligation under section 2.3.7(2) of the Education and Training Reform Act 2006 (Vic), to provide the council with ‘adequate and appropriate advice’.

Misuse and mismanagement of public resources

42. It was alleged that Ernest Fleming spent money on, and allocated resources to, the Athlete Development Program (ADP) – managed by his son, Adam Fleming – at the expense of other areas of the college.
43. It was also alleged that Ernest Fleming and Adam Fleming allowed Education Support Officers and at least one unregistered teacher in the ADP to ‘teach classes and report on students using the [mandatory] F-10 Curriculum standards’.

44. Audits commissioned by the department at the request of the investigation identified broader concerns about Ernest Fleming’s financial management of the college. This included a pattern of unexplained and insufficiently documented reimbursements to Mr Fleming from public funds. He systematically failed to seek approval for expenditure from the college council; failed to provide records to demonstrate the legitimate business nature of expenses, as required by the Schools Purchasing Card guidelines; and did not provide the college council with the information it required to fulfil its financial oversight obligations.

45. Mr Fleming also employed a contractor who held major cleaning and maintenance contracts at the college to do work on his home and accepted ‘mate’s rates’ for the private work. Although the investigation did not find evidence the contractor was paid for private work using public funds, as alleged, Mr Fleming opened himself up to allegations of this nature by failing to ‘maintain a strict separation between work-related and personal financial matters’ as required by the Code of Conduct for Victorian Public Sector Employees (the Code of Conduct).

**Misrepresentation of curriculum in the Athlete Development Program**

46. Ernest Fleming and Adam Fleming used college resources to run a program, the ADP, that misled parents and students into believing the program delivered the mandatory Health and Physical Education curriculum.

47. Children graduating from the program – whose parents paid hundreds of dollars per year for them to participate – left the college without completing the mandatory curriculum all Victorian children are entitled to, and all schools are obliged to deliver.

48. Adam Fleming denied responsibility for the misleading portrayal of the ADP as delivering the official Victorian Curriculum F-10, which included assessment documents made available to students and parents that explicitly stated children were being marked against the ‘F-10’ curriculum.

49. It is not credible that Adam Fleming was not aware or involved, as at interview, he emphasised that he had developed the ADP from the beginning and was responsible for its content, management of staff and operation. This was confirmed by extensive documentary evidence collected by the investigation, including emails and ADP management and staffing documents, the evidence of other witnesses, and the department’s audit of the ADP.

50. At best, Adam Fleming lacked the experience and qualifications to understand that only registered teachers could teach the mandatory curriculum, or to ensure the ADP’s content met its criteria.

51. As principal, and given his long experience in the education system, Ernest Fleming ought to have been aware of the requirements relating to the registration of teachers and the teaching of the mandatory curriculum.

52. The Flemings ran the program at a deficit each year and Ernest Fleming used the college’s ‘contingency’ and ‘council development’ funds to cover ADP expenses. He misled others into believing there was sufficient money in these funds for the expenses.
Oversight by the regional office

53. Long before IBAC referred these matters to the Ombudsman, the department was aware of the allegations against Ernest Fleming and some of those against Mr Bulmer.

54. Many of the allegations of Mr Fleming’s nepotism and financial mismanagement, substantiated by the investigation, were reported to the department’s North Western Victoria Region office in over 20 complaints it received between August 2014 and February 2016.

55. The regional office’s failure to meaningfully investigate the complaints or take action to address Mr Fleming’s conduct enabled him to continue to engage in improper conduct with impunity. According to witnesses, the regional office’s inaction, and a perception of its closeness to Ernest Fleming, discouraged staff from coming forward with their concerns.

56. Those who identified themselves to the regional office were told their names would be provided to Ernest Fleming if they wanted their concerns investigated, even though this was not required by the department’s complaints policy. On the contrary, the department’s complaints policy required managers to act on allegations of misconduct. These employees were not advised they may be entitled to protections under the Protected Disclosure Act. The regional office failed in its duty of care to these employees.

57. Instead of investigating the allegations against Ernest Fleming, his line manager in the regional office, the Senior Adviser, accepted Mr Fleming’s assurances he had done nothing wrong and told her superiors she had looked at selection documentation for his relatives (which did not exist). She declined to investigate further complaints, even those raising new information, on the basis the allegations had already been investigated.

58. In February 2015, the Ombudsman received a complaint about Mr Fleming’s conduct. As it was not a ‘protected disclosure’, the Ombudsman did not have jurisdiction to investigate Mr Fleming directly. The Ombudsman made enquiries with the department to find out whether it was aware of the allegations and what action it had taken and requested copies of all complaints the department had received about Mr Fleming. The Regional Director assured the Ombudsman that the allegations had been investigated and that Mr Fleming understood his obligations.

59. However, the investigation found the Senior Adviser was aware at the time that Ernest Fleming did not accept his conflict of interest obligations and the Regional Director was aware that Mr Fleming had ‘attitudinal issues’.

60. The Regional Director’s response to the Ombudsman did not include some of the complaints detailing more serious allegations regarding Ernest Fleming’s bullying of staff who raised concerns. While the investigation accepts that this was not a deliberate omission on the Regional Director’s part, her response had the effect of misleading the Ombudsman into believing no further action was warranted.

61. Had the regional office investigated the complaints and managed Ernest Fleming in accordance with the department’s own complaints, conflict of interest and recruitment policies, it could have acted earlier in relation to some of the conduct, allayed complainants’ fears of reprisals, and prevented further improper conduct.
The protected disclosure complaints

62. On 3 August 2016, the Independent Broad-based Anti-corruption Commission (IBAC) referred a matter to the Victorian Ombudsman for investigation pursuant to section 73 of the Independent Broad-based Anti-corruption Commission Act 2011 (Vic), which it had determined to be a protected disclosure complaint under the Protected Disclosure Act 2012 (Vic).

63. On 1 September 2016, IBAC referred two further protected disclosure complaints to the Ombudsman.

64. The complaints contained allegations of conflicts of interest and misuse of position by:

- Ernest Fleming, Principal of the Bendigo South East College (the college)
- Michael Bulmer, the ‘regional bus coordinator’ engaged by Ernest Fleming to coordinate bus services to the college and surrounding schools.

65. The protected disclosure complaints referred by IBAC included the following allegations:

1. Ernest Fleming misused his position as the college’s principal to engage in nepotism in recruitment and/or promotion of family members, including:
   - Karen Fleming, his wife
   - Adam Fleming, his son
   - An in-law of one of his sons (the Leading Teacher).

2. Michael Bulmer, the ‘regional bus coordinator’ engaged by Ernest Fleming from 2013, had a conflict of interest as he was a manager of Bendigo Coachlines, a bus company that received business from the school.

3. Mr Bulmer misused his position as bus coordinator to channel business to Bendigo Coachlines.

4. Mr Bulmer misused his position as bus coordinator to benefit another of his businesses, italktravel.

5. Ernest Fleming had a conflict of interest in relation to Bendigo Coachlines, as his son Brandt Fleming became a co-owner of the business in 2016.

6. Ernest Fleming spent money on, and allocated resources to, the Athlete Development Program (ADP) - which is managed by his son Adam Fleming - at the expense of other areas of the college.

7. Ernest Fleming and Adam Fleming allowed Education Support Officers and at least one unregistered teacher in the Athlete Development Program to ‘teach classes and report on students using the F-10 Curriculum standards’.

66. The investigation also considered an allegation it received, which was referred to IBAC and determined not to be a protected disclosure complaint, that Ernest Fleming used public funds to pay contractors for works on his private home.
67. In considering the allegations of improper conduct, the investigation also examined the context in which the alleged conduct occurred, including whether the department was aware of, and had any opportunities to address, the alleged conduct. This included considering:

- the handling of a series of complaints about Ernest Fleming spanning 2014-16, detailing many of the allegations investigated in this report, by the department’s North Western Victoria Region office (the regional office)
- the regional office’s response of 10 March 2015 to enquiries made by the Victorian Ombudsman regarding a complaint about Ernest Fleming.

**Jurisdiction**

68. The Ombudsman’s jurisdiction to investigate protected disclosure complaints is derived from section 13AAA of the Ombudsman Act 1973 (Vic), which provides that she has the function to investigate protected disclosure complaints about conduct by or in an authority or protected disclosure entity.

69. Part 2.4 of the Education and Training Reform Act 2006 (Vic) deals with the Government Teaching Service. Part 2.4.3, section 1 outlines who may be employed in the teaching service, which includes principals and assistant principals, and ‘persons engaged or employed as teacher aides, assistant teachers, or to perform professional, administrative, clerical or computing or technical duties in schools’. This definition includes people who are employed as Education Support Officers in the public education system.

**Jurisdiction to investigate Ernest Fleming**

70. As a principal employed by the department, Ernest Fleming is a member of the teaching service within the meaning of the Education and Training Reform Act and therefore a ‘protected disclosure entity’ as defined in section 2 of the Ombudsman Act.

**Jurisdiction to investigate Michael Bulmer**

71. The initial protected disclosure complaint incorrectly alleged that Michael Bulmer was employed within the South Eastern Region Office of the department, which would have made him an employee of an ‘authority’ under section 2 of the Ombudsman Act.

72. However, the investigation established that Mr Bulmer was engaged as bus coordinator at the college by Ernest Fleming, to whom he submitted invoices for his services. As such, he was not an employee of an ‘authority’ or a ‘protected disclosure entity’ for the purposes of section 2 of the Ombudsman Act.

73. Notwithstanding this, the definition of ‘improper conduct’ includes conduct of persons who are not an employee of an ‘authority’ or ‘protected disclosure entity’. Section 4(2)(da) of the Protected Disclosure Act states that improper conduct includes conduct:

- of a person (the first person) intended to adversely affect the effective performance or exercise by a public officer or public body of the functions or powers of the public officer or public body and result in the first person or an associate of the first person obtaining –
  - (iii) a financial benefit or real or personal property; or
  - (iv) any other direct or indirect monetary or proprietary gain – that they would not have otherwise obtained.
74. Mr Bulmer’s alleged conduct involved using his position as bus coordinator to obtain a financial benefit for one of his companies (Bendigo Coachlines), and attempting to benefit another of his businesses (italktravel), that he would not otherwise have obtained. If proven, this conduct would adversely affect the ‘effective performance’ of the functions of a public body, the department. The investigation was therefore able to examine Mr Bulmer’s conduct.

75. The investigation also considered the conduct of Mr Bulmer’s wife, Lynn Bulmer, who took over Mr Bulmer’s responsibility for bus charter coordination in 2016.

Methodology

76. On 14 October 2016 the Ombudsman notified the Minister for Education and the Acting Secretary of the department of her intention to conduct an investigation into this matter.

77. The investigation involved:
   - examining relevant legislation and regulations, including:
     - the Public Administration Act 2004 (Vic)
     - the Education and Training Reform Act 2006 (Vic)
     - the Education and Training Reform Regulations 2007 (Vic)\(^1\)
   - examining departmental and Victorian public sector policies, including:
     - the Victorian Public Sector Commission’s Code of Conduct for Victorian Public Sector Employees (previous version issued on 1 July 2007 and current version issued on 1 June 2015)
     - the department’s Recruitment in Schools policy (versions dated 17 October 2014, 2 December 2014, 6 August 2015 and 17 October 2016)
     - the department’s Conflict of Interest policy (1 October 2013 and 9 February 2016 versions)\(^2\)
     - the department’s Guidelines for Managing Complaints, Unsatisfactory Performance and Misconduct – Teaching Service (1 June 2012)\(^3\)
     - the department’s Schools purchasing card: DEECD guidelines and procedures (May 2012) and two later versions, the Schools purchasing card: Department guidelines and procedures (January 2015) and the Schools purchasing card: Department guidelines and procedures (May 2016).
   - issuing seven confidentiality notices
   - conducting nine voluntary interviews and six compulsory interviews
   - seeking expert advice from the Merit Protection Boards
   - conducting an inspection of records at the college
   - issuing a summons to the Acting Secretary of the department for:
     - all departmental electronic devices issued to Ernest Fleming, Karen Fleming, Adam Fleming, Michael Bulmer and Lynn Bulmer
     - relevant recruitment and appointment documents
     - conflict of interest declarations

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1 The Education and Training Reform Regulations 2007 were in force for the period covered by this investigation, and were superseded by the Education and Training Reform Regulations 2017.

2 The policy was replaced by a new version on 7 July 2017. In October 2016 the department also introduced a policy entitled Managing Conflicts of Interest in the Recruitment of Family Members in Schools.

3 The guidelines were updated on 29 September 2016, and again on 8 December 2017.
documents relating to the North Western Victoria Region school bus program and bus charter services relating to student transport from 2013 to present

- college council meeting records from 2013 to present
- documents relating to organisational change and/or staffing restructures at the college from 1 January 2013

- obtaining and reviewing the above information and other documents, including:
  - staff personnel files
  - staff email records
  - complaints made to the regional office regarding Ernest Fleming

- releasing a draft report to subjects and interested parties and considering their responses
- releasing a draft report incorporating these responses to the department and considering its response.

78. In order to protect the identity of the discloser, the Ombudsman provided anonymity to most of the current and former staff members of the college who gave contextual evidence to the investigation and who are not the subject of adverse comments. These witnesses are referred to as Staff Member A, B, C, D, E and F respectively.

79. The findings in this report rely on documentary evidence and evidence from identifiable witnesses. None of the findings in this report rely on the evidence of anonymous witnesses.

80. In Ernest Fleming's response to the draft report, he named a number of people whom he assumed had provided evidence to the investigation and accused them of conducting a ‘protracted and coordinated campaign of opposition and obstruction’ against him. The investigation reminded Mr Fleming and his legal representative that, under the Protected Disclosure Act, disclosers and witnesses who cooperate with the investigation are protected from ‘detrimental action’.

81. In reaching the findings in this report, the investigation was guided by the civil standard of proof, the ‘balance of probabilities’, in making its factual findings, taking into consideration the nature and seriousness of the conduct in question, the quality of the evidence, and the gravity of the consequences for the persons involved in the matters under investigation.

82. This report includes adverse comments, or material that could be perceived to be adverse, about Ernest Fleming, Michael Bulmer, Lynn Bulmer, Adam Fleming, Karen Fleming, the Assistant Principal, the Senior Adviser and the Regional Director.

83. In accordance with section 25A(3) of the Ombudsman Act, any other persons who are or may be identifiable from the information in this report are not the subject of any adverse comment or opinion and:

- The Ombudsman is satisfied that it is necessary or desirable in the public interest that the information that identifies or may identify those persons be included in this report and
- The Ombudsman is satisfied that this will not cause unreasonable damage to their reputation, safety or well-being.
In the interests of procedural fairness, the subjects of adverse comments, along with four people mentioned in the report who are not the subject of adverse comments, were issued with the relevant sections of the Ombudsman’s draft report, which included citations of all relevant evidence, and provided an opportunity to respond. All of the subjects of adverse comments were represented by lawyers in responding to the draft report.

Ernest Fleming, Michael Bulmer and the Senior Adviser were each provided with several extensions of time to respond. At their request, Ernest Fleming, Adam Fleming and Michael Bulmer were provided with copies of documents cited and relied upon in the draft report.

Ernest Fleming submitted general requests for documents and electronic material, most of which were not held by the investigation and were not cited in the draft report. Mr Fleming was offered opportunities to clarify his requests and ask for specific documents but did not do so. In an email dated 15 May 2018, his legal representative stated:

Mr Fleming believes that there are copious relevant documents that he could refer to in any number of electronic and hard copy files and folders. To ask him to specify a particular document in a veritable sea of information, is a contrived position.

The investigation therefore provided Mr Fleming with most documents cited in the draft report, with some documents partially redacted or not provided to protect the identities of witnesses and disclosers, or where it contained sensitive information relating to third parties.

As Mr Fleming was suspended from the college during the investigation, the investigation provided him with hard drives containing copies of his departmental computer, hard drive and departmental emails. As Mr Fleming was unable to open these files on his system, the Ombudsman’s office rebuilt Mr Fleming’s departmental computer and email environments and allowed him to access the material at the Ombudsman’s office. The Ombudsman’s office allowed him to copy documents onto a USB key and offered to provide him with assistance in opening these documents on his personal computer; however Mr Fleming declined this assistance.

The investigation did not interview Karen Fleming or Lynn Bulmer. Mrs Fleming was offered an interview, but, through her legal representative, advised she would comment on the findings in the draft report and ‘if necessary’ take up the invitation to be interviewed. Along with the draft report, Karen Fleming and Lynn Bulmer were offered the opportunity to attend an interview with the investigation. Neither took up this offer.

In her response to the draft report, Ms Bulmer expressed concern that she was not provided with documents cited in the report or interviewed as part of the investigation. The investigation therefore provided her with the relevant documents and further time to respond and reiterated the offer for her to attend an interview. Ms Bulmer did not respond.
In his response to the draft report, Ernest Fleming provided information relating to Michael Bulmer's lease of a minibus to the college in 2015. This information resulted in further adverse comments being added to the report in relation to Ernest Fleming, Michael Bulmer and Lynn Bulmer, and a further finding with respect to Ernest Fleming. All three were provided with the new material, all of the related documents and an opportunity to respond. Michael Bulmer and Lynn Bulmer did not respond. Mr Fleming responded after being provided with further information and two extensions of time to respond.

Relevant legislation and the Code of Conduct

*Education and Training Reform Act 2006 (Vic)*

92. The Education and Training Reform Act is the primary piece of legislation governing education and training in Victoria, including the establishment and regulation of Government and non-Government schools; the recognition and regulation of the teaching profession and the maintenance of standards of professional practice for the profession; employment in the teaching service; and the roles of school principals and school councils.

*Education and Training Reform Regulations 2007 (Vic)*

93. The Education and Training Reform Regulations, in force during the period covered by this investigation, were made under the Education and Training Reform Act. They regulate a wide range of matters relating to the Victorian education system, including the conduct of school education and minimum standards for the registration of schools, and the responsibilities and operations of school councils.

*Public Administration Act 2004 (Vic)*

94. The Public Administration Act provides a framework for Victorian public sector organisations and officers to understand their governance and public administration obligations and meet community expectations in relation to accountability and integrity.

95. Public officials are required to act in a manner that is consistent with the public sector values, in accordance with section 7 of the Public Administration Act. Section 61 requires the Victorian Public Sector Commissioner to issue codes of conduct to promote adherence to these values.

*Code of Conduct for Victorian Public Sector Employees*

96. The Code of Conduct for Victorian Public Sector Employees (the Code of Conduct) outlines the values all Victorian public sector employees are obliged to uphold. The Code is binding, including on members of the teaching service and school councils, and states that ‘failure to behave in the ways described in the Code of Conduct may lead to action under relevant performance management or misconduct processes’. This may also amount to misconduct under section 4 of the Public Administration Act. The Code applied to Ernest, Karen and Adam Fleming, but not to Michael and Lynn Bulmer who were not departmental employees.

97. During the period covered by the investigation, the relevant Code of Conduct was the 1 July 2007 version, followed by an updated version which came into force on 1 June 2015 and remains current. Section 3.2 in both versions emphasises that public servants must demonstrate integrity and not abuse their power.
[Public sector employees] do not use their power to provide a private benefit to themselves, their family, friends or associates. They exercise power in a way that is fair and reasonable, and family or other personal relationships do not improperly influence their decisions. They respect the rights and dignity of those affected by their decisions and actions.

98. Public sector employees must observe ‘the highest standards of integrity in financial matters’, comply with all relevant financial management legislation, policies and procedures, and ‘maintain a strict separation between work-related and personal financial matters’ (section 3.3). They must not seek or accept gifts or benefits that could reasonably be perceived as influencing them or undermining the integrity of their organisation or themselves (section 4.2).

99. Section 3.7 of the 2007 Code of Conduct required public sector employees to ‘declare and avoid’ actual, potential or perceived conflicts of interest; to ‘ensure their personal or financial interests do not influence or interfere with the performance of their role’; and to ‘seek to ensure the interests of family members, friends or associates do not influence or could be perceived to influence their performance in their job’.

100. Section 3.7 of the 2015 Code of Conduct maintains most of these requirements but states that public sector employees must avoid conflicts of interest ‘wherever possible’ and must ‘manage any conflicts of interest that cannot be avoided in accordance with their organisation’s policies and procedures’.

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**Bendigo South East College and the Bendigo Education Plan**

101. According to its website, Bendigo South East College ‘was formed in 2009, when Kangaroo Flat, Golden Square and Flora Hill Colleges merged to create Bendigo South East and Crusoe College - part of the Bendigo Education Plan (BEP) regeneration project’.

102. It is appropriate to note that in Ernest Fleming’s response to the draft report, his legal representative stated that the context of the BEP, 2008-17, and its ‘radical change’ agenda had an important impact on Mr Fleming’s actions and management of the college during the period under investigation. The response stated the BEP:

> had at its core, the delivery of curriculum based on personalised, flexible programs by teams of teachers and specialists – a significant and, some would say, radical change.

103. The response stated the BEP was a joint partnership between the department’s central and regional offices, Bendigo state secondary colleges, La Trobe University, the City of Greater Bendigo, the Department of Health and Human Services and the Australian Education Union.

104. A departmental fact sheet describes the BEP as:

> A Place-Based Education Plan ... a tool to harness collective responsibility for transforming education in a community, with a focus on improving learner achievement, engagement and wellbeing outcomes. The key characteristic of a Place-Based Education Plan is the needs and aspirations of the community guide its development. Local stakeholders collaborate to identify the challenges to improving these outcomes, and to find holistic, comprehensive solutions tailored to their local context.
105. Ernest Fleming’s response stated the BEP contained 39 recommendations that became ‘signed on commitments’. One was for schools to develop ‘specialisms’, including the Athlete Development Program.

106. According to Mr Fleming’s response, the BEP presented significant challenges for the college and its leadership, including:

- ‘major staffing challenges’ and ‘difficult behaviour’ from staff who did not accept ‘radical change’
- insufficient support from the regional office
- departmental processes and tools for human resources, budgeting and workforce planning that had ‘limitations in this environment’, and new programs that were ‘not covered by current [departmental] processes’.

107. The response stated that the challenges of the BEP context took a significant personal and physical toll on him, as he worked long hours, seven days a week, and postponed leave to meet the BEP’s requirements. His response stated that despite these challenges, the college developed ‘new, world class and next best practice processes to support the implementation and ongoing evaluation of all initiatives’, and received national and international recognition for the quality of its processes, innovation, and BEP outcomes.

108. Mr Fleming’s response also stated that under the BEP, the college was ‘asked by the Department to do more than any other’ participating community.

109. The department addressed this comment in its response to the draft report, stating:

The requirements of Mr Fleming [under the BEP] were very similar to those of principals in similar situations, including [another college] in Bendigo, and other similar projects across the state.

110. The department also stated in its response:

The Department confirms that all principals are expected to attend to governance responsibilities and financial management in accordance with Departmental policy. While the Bendigo Education Plan (BEP) encouraged innovation in line with best practice evidence, this was not at the expense of compliance with department policies or processes. Mr Fleming makes repeated references to the BEP involving ‘radical change’. This expression is not one that formed part of the documentation or plans for the BEP, and appears to have been coined by Mr Fleming. The BEP … had a strong emphasis on evidence based practice, innovation and collaboration.
Nepotism

Allegation 1

Ernest Fleming misused his position as the college’s Principal to engage in nepotism in recruitment and/or promotion of family members, including:

- Karen Fleming, his wife
- Adam Fleming, his son
- an in-law of one of his sons (the Leading Teacher).

Relevant departmental regulation and policies

Recruitment in Schools policy

111. Four iterations of the department’s Recruitment in Schools policy (dated 17 October 2014, 2 December 2014, 6 August 2015 and 17 October 2016) are relevant to the period under investigation. All stated that principals are responsible for selection decisions in schools, and for ensuring that all parts of the selection process are undertaken correctly. All vacancies of six weeks or longer must be advertised, and the principal is required to constitute a panel of three or more people for each vacancy, to assess applications and recommend the best applicant to the principal.

112. At all times the policy required principals and panel members to ‘avoid any real or perceived conflict of interest in the selection process, including the selection decision’ and cited ‘the employment of a family member’ as an example of a conflict. The panel was required to provide a selection report to the principal detailing its recommendations and reasoning, including reasons for not shortlisting applicants. All selection documents must be retained by the school for two years once a selection decision is confirmed.

Conflict of Interest policy

113. The department’s Conflict of Interest policy (both the 1 October 2013 version and the almost identical 9 February 2016 version) required all employees to declare any identified conflict of interest to their manager. Principals were to declare conflicts of interest to the Regional Director. The policy did not specify the form such declarations should take. The policy emphasised the responsibility of all employees to avoid any conflict of interest that may affect their public duty, and the obligation to take ‘reasonable steps’ to address any identified conflict.

114. Activities which carry a high risk of conflict of interest should ‘be subject to considered and systematic scrutiny’. ‘Recruitment and selection’ was identified as a significant risk area, as were ‘contractor management, other work (external employment), receiving gifts, benefits or hospitality, complaints management and disciplinary processes’. The policy stated that as principals undertake these functions regularly, they needed to be ‘particularly aware of the risks’.

115. The policy assigned managers a crucial role in assessing and managing conflict of interest (COI), stating:

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

116. In his response to the draft report, Ernest Fleming stated the department’s 2013 Conflict of Interest policy was ambiguous and did not provide sufficient guidance on how to manage conflicts, compared to the 2016 policy. In particular, he stated the 2013 document did not define ‘immediate family’, whereas the 2016 document defined ‘immediate family’ as ‘a spouse, child, sibling or parent’.
However, neither the 2013 policy nor its 2016 version explicitly defined ‘immediate family’. Material attached to both policies provided further guidance. Both policies were accompanied by a Conflict of Interest Framework which, while not defining ‘immediate family’, contained guidelines around managing conflicts, identified recruitment as a particularly high risk area, and emphasised the specific sections of the Code of Conduct forbidding public servants from using their power to provide a private benefit to family members and to ensure the interests of family, friends or associates could not influence or be perceived to influence them in their official capacity.

In November 2014, the department published a Conflict of Interest Toolkit. One of the case studies in the toolkit involved a principal’s son applying for a position at the college. The toolkit provided a detailed analysis of the real and perceived conflicts involved in such a scenario and stated that the principal should have declared her interest from the outset and referred the approval of the selection panel’s decision to the Regional Director. The toolkit also provided guidance around managing conflicts of interest involving people with whom a principal has a personal relationship. The risks involved included ‘receiving and managing complaints against the staff member’ and ‘management of [performance] and awarding progression’. The toolkit stated:

For school principals this can pose significant practical difficulties. It is expected that high risk decisions are directly referred to the Regional Director. In some cases, it may be sufficient for a Principal’s decision to be subject to probity oversight by the Principal of another school. In all cases, advice should be sought from the Regional Director on an appropriate strategy to manage particular COI risks.

The toolkit listed ‘typical conflict of interest scenarios’ for principals, including, ‘a family member has applied for a job at the school’, ‘a family member already works at the school’ and ‘the school wishes to purchase something or use the service of a company owned by a family member or close associate’.

The November 2014 toolkit also contained detailed information about the real and perceived risks involved ‘when a contractor used by the school or Department is engaged for private work’. It stated that such work should be avoided if possible, but that if undertaken, it must be declared appropriately, and that provision of a discount for private work would constitute the improper provision of a private benefit.

The Conflict of Interest Toolkit (9 February 2016) associated with the 2016 policy contains much of the same information, including the ‘typical conflict of interest scenarios’ for principals and case studies involving the recruitment of a principal’s son and the use of a school contractor for private work on a principal’s home.

Remuneration – Teaching Service policy

The policy deals with remuneration of employees in the teaching service, including Education Support Officers (ESOs). It allows a principal to review an ESO’s salary range ‘at any time in the context of changes to the work value of the position and the performance of the employee’. Such a review may result in the employee being moved to either a higher or lower salary range within the employee’s classification.

The relevant version of the policy (dated 1 January 2015) policy was silent on whether a principal could backdate an employee’s pay increase. The current version of the policy (dated 31 August 2017) allows a principal to apply the salary increase retrospectively, from the date on which the principal initiated the review.
Recruitment and promotion of family members

Karen Fleming

124. Karen Fleming is the wife of Ernest Fleming and mother of their children Adam Fleming and Brandt Fleming. According to Ernest Fleming’s response to the draft report, in 2009 she took long service leave from her then employer (a retirement home) to volunteer at the college to ‘keep an eye’ on Ernest Fleming after he had a heart attack. He said she ‘fully intended to return’ to her job at the retirement home at the end of her long service leave in mid-2010 but stayed on at the college to care for a ‘cluster’ of students who developed ‘pseudo seizures’ and needed ‘virtually full-time monitoring’. Mr Fleming’s response said Mrs Fleming took on the care of these students at the suggestion of the college’s former Business Manager.

125. Karen Fleming was subsequently employed at the college in a range of Education Support Officer (ESO) positions from January 2010 onwards. According to Mrs Fleming’s personnel file and extracts from Recruitment Online (the department’s human resources portal), all the positions were advertised as ESO Level 1 positions.

Integration Aide, January to December 2010

126. Karen Fleming’s first position at the college was as an Integration Aide, from 27 January 2010 to 9 April 2010.

127. According to an extract from Recruitment Online provided to the investigation, the position was advertised on Recruitment Online and Mrs Fleming was the only applicant.

128. At interview, Ernest Fleming said he remained ‘completely separate’ from the recruitment of his wife. He said the process was conducted by the college’s then Business Manager. In her response to the draft report, Mrs Fleming also said Ernest Fleming was not involved in the application process:

There was a selection panel. [The former Business Manager] was responsible for the process and it was [she] that informed me I had gained the position.

129. The Flemings’ evidence is consistent with the evidence of the former Business Manager. In a telephone conversation with the investigation on 20 March 2018, the former Business Manager said she believes she was involved in a panel recruitment process for Mrs Fleming in 2010, as this was part of the Business Manager’s role. She said she could not remember the details of Mrs Fleming’s recruitment, given the large number of people she interviewed for different roles over the years. However, she said there ‘would have been’ a panel process and Ernest Fleming ‘definitely wouldn’t have been’ on the panel. She said the panel would have consisted of herself, an ‘integration teacher’ and another staff member.

130. The former Business Manager added that Mrs Fleming was ‘excellent’ in the role of Integration Aide.

131. There are no records to confirm who made the decision to appoint Mrs Fleming, nor the process that was followed.

132. According to the advertisement found on Mrs Fleming’s personnel file, the Integration Aide position was re-advertised as an ESO Level 1, Range 1 position on Recruitment Online on 3 May 2010. Ernest Fleming was listed as the contact person for the role. The position was advertised from 15 May 2010 to 17 December 2010. The Recruitment Online extract shows Mrs Fleming was one of three applicants.
133. It is unclear from these records whether there was a shortlisting process, whether applicants were interviewed for the role (and if so, by whom), or by whom Mrs Fleming was appointed. Her cover letter, dated 13 May 2010 and found on her personnel file, begins ‘Dear Panel’, suggesting there may have been an interview panel. The investigation found no other evidence of involvement by anyone other than Ernest Fleming in her appointment. A document on her personnel file recording her appointment to the position is signed by Ernest Fleming.

134. In her response to the draft report, Mrs Fleming stated:

I went through the interview process that was conducted by [the former Business Manager and the former Integration Aide Coordinator], I recall that [the former Integration Aide Coordinator] was quite a strong person and asked many direct questions. The interview was held in the interview room in the Flora Hill General Office building. As Principal, Ernie Fleming had nothing to do with the process. I am a professional person and sought to achieve the position in my own right.

135. Karen Fleming was subsequently appointed Student Services Manager (First Aid), and worked in the role full-time from 1 February 2011 to 22 December 2011. A document on her personnel files shows the position was ESO level 1, Range 1-2, and her starting salary was $35,397 per year.

136. The position was advertised on Recruitment Online. While Mrs Fleming was one of two applicants, there is no evidence of any formal selection process. The only evidence of how the appointment was made is a handwritten note from Ernest Fleming on his wife's personnel file dated 17 December 2010, addressed to the college's Business Manager: ‘Please appoint Karen Fleming to the Student Services position’.

137. In her response to the draft report, Mrs Fleming said she ‘believe[s] that there was a panel to consider applicants’ and that she was interviewed by the former Business Manager and the Assistant Principal. She said she had ‘no knowledge of the [human resources processes] or entering of data regarding recruitment’, and added that she ‘applied for and gained the position totally on my own skills and on merit’.

138. The Recruitment Online extract referred to above shows Mrs Fleming was made ongoing in the role on 12 January 2012.

139. Mrs Fleming worked full-time as Personal Assistant to the Principal (her husband) from January 2014. She formally remained in the position throughout the Ombudsman’s investigation but was on leave from 6 March 2017 until she resigned on 5 September 2018.

140. The position was advertised on Recruitment Online on 26 November 2013, as a Level 1, Range 2 position. Mr Fleming was listed as the contact person for enquiries about the position. Three people (other than Mrs Fleming) applied.

141. According to Recruitment Online records, Mrs Fleming did not submit an application after the position was advertised. However, she was entered in the Recruitment Online database as having made an application on 28 January 2010 – nearly four years before the position was advertised, and one day after she commenced her employment at the college.

142. It is unclear who entered this backdated ‘application’ into the system. However, the contact email address provided for Mrs Fleming was her husband’s departmental email address. Mr Fleming’s response to the draft report stated he did not make this entry in the online database and did not insert his email address in the application. He said the person responsible was probably the college’s Business Manager.
143. There is no evidence of any recruitment process for the position. At interview, Staff Member C said there was no formal recruitment process, even though three other people applied. Staff Member C said they observed Ernest Fleming leave a note on the Business Manager’s desk instructing her to appoint his wife to the role. This is consistent with a note in Mr Fleming’s handwriting found on Mrs Fleming’s personnel file, addressed to the Business Manager, which states: ‘please appoint Karen Fleming to the ESO 2 PA position’.

144. At interview, Ernest Fleming said he did not recall doing this. Mr Fleming’s legal representative, in response to the draft report, stated:

[The investigation] fails to acknowledge that this is standard practice – it presents the matter with a sinister and self serving overlay – virtually claiming that the note was created separately in this case and exclusively in favour of Ms K Fleming – when in fact the process was standard – purely normal.

145. Payroll documents on Mrs Fleming’s personnel file state that she received a ‘promotion’ to an ESO Level 1, Range 2 grade (as advertised), with an annual salary of $44,650, on 24 January 2014.

146. In her response to the draft report, Mrs Fleming wrote:

I was not interested in being the Personal Assistant to the Principal. I was aware that the position was not filled. I assisted the current PA with doing some typing as needed. I maintained my position in Student Services – and took on additional administrative tasks.

147. Mrs Fleming also stated in her response that she believed her pay increase was the result of increasing her hours to full-time and ‘changes to the [Enterprise Bargaining Agreement]’. She said that the extra ‘Principal Administrative’ work she took over ‘was not an extra paid position, it was added onto the duties I already performed’.

148. Mrs Fleming’s evidence is inconsistent with the documentary evidence showing that the Personal Assistant to the Principal role was a separate, advertised position at the ESO level 1, Range 2, for which an application in her name was entered into Recruitment Online. It is also inconsistent with Ernest Fleming’s note to the Business Manager instructing her to appoint Mrs Fleming to the position, and with the payroll records showing her salary increase was the result of a ‘promotion’ to an ESO Level 1, Range 2 position.

Ernest Fleming’s response to the draft report

149. Ernest Fleming’s response to the draft report stated he was not involved in selection processes for his wife, other than signing off on appointments after the relevant selection panels advised him of their decision. The response stated that his understanding of the department’s Conflict of Interest policy at the time was that they only applied to selection panels, not the ‘administrative aspect’ of recruitment, which principals were required to sign off on.

150. The response stated that Mr Fleming was not responsible for inadequacies in documentation in the recruitment processes involving Karen Fleming, as human resources documentation was processed ‘by the Business Manager’. According to the response, he was unaware that his email was not changed from the college’s ‘template staffing package for positions family members might apply for’, a reference to him being listed as the contact person on advertisements.
151. Mr Fleming’s response stated that Mrs Fleming’s line manager was always the Business Manager, and that the Business Manager and another staff member were responsible for conducting her formal performance reviews. In separate telephone conversations with the investigation on 27 July 2018, both the current Business Manager and the former Business Manager confirmed they were Mrs Fleming’s line manager.

152. The former Business Manager said she was responsible for line managing all ESOs and treated Mrs Fleming no differently from any other, and that she and Mr Fleming were always ‘very aware’ of Mr Fleming’s relationship with Mrs Fleming. She stated that while she was Mrs Fleming’s line manager, Mr Fleming ‘had an overview of all staff’ and it would not be ‘reasonable’ to remove him from any involvement in management of Mrs Fleming, given he was the principal and had to be involved with all staff members. She added that ‘everything was above board’ and Mr Fleming was ‘very, very aware of all those processes’ and was ‘a stickler for it’.

153. The current Business Manager, who took up the position in 2014, stated that Mr Fleming did not interfere in her line management of Mrs Fleming.

154. With respect to Mrs Fleming’s performance reviews, the former Business Manager said she was responsible for them, however they were not written reviews. She stated that at the time, the college did not have a very ‘professional’ performance review system for any of its staff, but later hired someone to do the reviews of all staff. She stated that this staff member also completed Mrs Fleming’s reviews.

155. This evidence was confirmed by two documents located on Mrs Fleming’s personnel file detailing ‘performance development discussions’ with Mrs Fleming. One, dated 23 October 2014, was signed by the current Business Manager. The other, dated 21 July 2015, was signed by the Business Manager and the staff member brought in to conduct performance reviews.

Adam Fleming

156. It was alleged that Ernest Fleming:

- engaged his son, Adam Fleming, as a paid consultant to the college’s Athlete Development Program (ADP) (December 2013 – December 2014)
- appointed Adam Fleming as ADP Manager over a more qualified candidate, following a flawed and nepotistic recruitment process (December 2014).

‘Consultancy’ role at the college, December 2013 to December 2014

157. The investigation confirmed that between December 2013 and December 2014, the college paid Adam Fleming at least $54,500 on the basis of 23 invoices he submitted during this time.

Engagement

158. At interview, Adam Fleming said he was approached by his father at a family Christmas function in late 2013. He said his father wanted to build a program for elite athletes at the college and sought him out for his ‘knowledge in healthcare’ and ‘background in high performance sport as a competitor and as a coach.’

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4 This calculation is based on creditor payment vouchers detailing payments made to Adam Fleming for invoices he submitted during this period. Adam Fleming invoiced the college for $56,800, however the investigation was unable to locate the payment voucher for one invoice worth $2,300 and therefore only able to confirm payments of $54,500.
159. Ernest Fleming’s response to the draft report stated he approached his son after two unsuccessful advertisements for an ADP Manager (High Performance) position in 2012 and 2013, after which the college had been unable to appoint a suitable candidate. At interview, he said the position was advertised in 2013, and about five people from around Australia applied, along with at least one internal candidate. He said three or four people were interviewed, but no appointment was made because none of the applicants had the ‘vision for it’.

160. The investigation examined a list of all vacancies advertised at the college in 2012 and 2013 and did not find any that correspond to such a position. All positions advertised under ‘Health Education’, ‘Physical Education’, ‘Sport’ and ‘Special Education’ were described as ‘Filled’ rather than ‘No appointment’.

161. Adam Fleming’s previous work experience was as a pharmacist. In his response to the draft report, Adam Fleming said he was working as a tennis coach in 2013. According to Ernest Fleming’s response, Adam Fleming had ‘decided to change careers’, and was ‘taking up studying for an online teaching degree’. Adam Fleming’s professional background and qualifications are discussed in more detail later in this report.

162. Adam Fleming acknowledged he did not go through a recruitment process or have an official position at the college throughout 2014. He said he could not remember who told him he could invoice for his services, and that the college’s Business Manager may have asked him to do it.

163. Adam Fleming’s invoices were signed by either Ernest Fleming, the Assistant Principal or the college’s Business Manager. All three also signed the ‘creditor payment vouchers’, authorising each payment to be made to Adam Fleming.

164. Other than these invoices and payment vouchers, the investigation did not find any evidence of a contract or written agreement between the college and Adam Fleming in 2013-14. Ernest Fleming’s response to the draft report stated that Adam Fleming was employed as a ‘casual, fee for service, independent contractor, hence no written agreement or contract required’. He added:

   All payments [to Adam Fleming] have ‘separation steps’ ie Business Manager, Accounts Payable and the Principal’s and a College Council nominee’s signature as per the Financial Manual requirements. Schools can employ casual staff.

165. Staff Members A, B, C, E and F said Ernest Fleming consistently presented his son as a ‘volunteer’ during this time. The investigation found documentary evidence supporting this, including emails sent by Ernest Fleming to staff during 2014, and one to his line manager (the Senior Adviser) dated 14 December 2014, in which he referred to his son as a volunteer.

166. For example, in an email dated 10 March 2014 to a staff member, Ernest Fleming attached a document which he said he was planning to ‘speak to’ at an upcoming meeting with PE staff. The document states: ‘Adam currently “helping out” - three days a week free!’ A document labelled ‘Staff letter’, addressed to ‘Dear Team Member’ and signed by Ernest Fleming, created on 12 October 2014, states, ‘Adam volunteered to run a trial program’.
167. Similarly, in his application for the ADP Manager position in October 2014, Adam Fleming stated:

This year I volunteered to design, implement, promote, manage and grow an Athlete Development Program (ADP) ... at Bendigo South East College.

168. Ernest Fleming’s response to the draft report stated:

[Ernest Fleming] always explained that Mr Adam Fleming was doing the development program as a volunteer, and like the other coaches, was being paid for that aspect ... his negotiated coaching hours of 23 hours was approximately one third of the time he put in. [original emphasis]

Nature of paid work

169. In contrast to assertions to college staff that Adam Fleming was a volunteer on the ADP, Adam Fleming’s invoices (a sample is attached at Appendix 1) stated they were for ‘Sports Coordinator/Coaching’ work and five invoices, dated between 2 May and 24 October 2014, said ‘ongoing ADP’ or ‘ongoing order ADP’ in handwriting. In his response to the draft report, Adam Fleming said this was not his handwriting. The investigation also obtained a purchase order dated 7 February 2014, signed by Ernest Fleming, for ‘ADP Development ongoing order’ (see Appendix 1). The number of this purchase order was written on two of Adam Fleming’s invoices, dated 28 February 2014 and 14 March 2014.

170. At interview, Adam Fleming said he was only paid for work on the ADP during January 2014:

I was paid for some work during January [2014] I recall, and it was in terms of doing the documentation and the setting up of the [ADP] in the school.

171. Adam Fleming said this work included drafting a framework and booklet for the program, entitled How to Train a Dragon, inspecting the facilities and providing ‘expert advice’ on how to run the program. He said that throughout the rest of 2014, he was paid $50 per hour for 23 hours per week as a Level 2 sports coach, while volunteering on the ADP. In his response to the draft report he said he also took on Sports Coordinator duties in early 2014 after the Sports Coordinator, a paid staff member, resigned. He said he was not paid for his Sports Coordinator duties. His evidence is inconsistent with invoices and purchase orders which indicate he was paid for ADP work and ‘Sports Coordinator’ duties from February to October 2014.

172. Ernest Fleming’s responses to the issue of whether Adam Fleming was paid for ADP work were inconsistent. At one point in his interview, Ernest Fleming indicated that his son was paid for work on the ADP in 2014, but stated that this was instigated by the then Business Manager:

in 2014 [the ADP] was a before and after school program ... there was no talk of remuneration at all. In mid-January it was ... this is a pilot, we’ll put it to kids. 300 kids put up their hand, we were going to do it for 30, we’ll do it for 60 ... and any pay of that in my recollection is always just [the former Business Manager], she was an experienced business manager, she would have worked that through.

173. However, later in the interview, Ernest Fleming said his son was only paid for tennis coaching in 2014, and all of his work on the ADP during that year was voluntary.
174. In his response to the draft report, Ernest Fleming again stated Adam Fleming was paid for some ADP work:

Negotiated 23 hours for coaching commitments only – a week at Level 3 coaching rate of $50. Mr Adam Fleming was doing more than 23 hours coaching. ([He] was entitled to $60 given his coaching credentials by established coaching rates) – this included negotiated hours for developing *How to Train a Dragon* draft ADP proposal Dec'13/Jan'14. ([He] was at the school from 6am every morning til 6/7pm at night, and spent significant time on weekends with students at sports events or developing the program.)

175. It was not clear from Ernest Fleming’s response who had ‘negotiated’ Adam Fleming’s hours and pay rate, however elsewhere in the response, it stated: ‘the front office “negotiated” pay and how it was processed’.

**Use of college resources**

176. As early as April 2014, Adam Fleming was sending emails from his own college email address, and on 7 November 2014, the department’s IT service set up a departmental email address for him at his father’s request.

177. Throughout 2014, Adam Fleming used his college email address and private email addresses to email ADP stakeholders (including suppliers, college staff members, Ernest Fleming and staff at a college in Melbourne that also ran an ADP). In some of his emails, he used titles suggesting he held an official position at the school, including ‘ADP Manager’, ‘Sports Coordinator’, and ADP ‘Director’.

178. Emails obtained by the investigation show that Ernest Fleming authorised his son to use college funds to purchase uniforms for the ADP. He also authorised the purchase of an iPhone for his son with college funds in February 2014.

179. Adam Fleming’s response to the draft report said the iPhone was purchased because of the ‘nature of the [ADP] program and the times at which it operated (before school, after school, weekends, holidays)’. He wrote that there was ‘extensive interest in the program and a lot of telephone contact’ and that before the phone was purchased, his personal mobile was the point of contact for the ADP, at his own expense.

180. Ernest Fleming’s response stated the phone was ‘provided to [Adam Fleming] for use by him and the other staff assisting in developing the program’. He stated the team needed a telephone for ‘student safety OHS reasons’ as they often worked off campus and outside of school hours, and other staff working in similar situations also had telephones [original emphases].

**Issuing directions to staff**

181. Staff Members, A, B, E and F said despite Adam Fleming’s lack of an official position, he soon started issuing directions to staff working in the Physical Education and Sports area of the college.

182. Emails between the college’s Sports Manager and Ernest Fleming, quoted in the following paragraphs, demonstrate that Ernest Fleming supported his son in assuming a leadership role over college employees and was aware his son’s presence at the college was causing tension with Sports and PE staff.
183. The college’s Sports Manager was employed in April 2014. Her position description, advertised on Recruitment Online, said she would have ‘a leading role in delivering the BSE Sports Program, including developing an Athlete Development Program’ and that duties included ‘Athlete Development Program (ADP) Development and Delivery.’

184. Emails show that in August 2014, the Sports Manager raised concerns with Ernest Fleming over the lack of clarity in her role and that of Adam Fleming.

185. Ernest Fleming responded to the Sports Manager by email on 17 August 2014 that he was ‘incredibly disappointed’:

I have explained Adam’s ‘role’ to you – he is the one responsible for establishing the 2014 model [of the ADP], and as such, for 2014 he is the leader … It would be unfair not to recognise the struggle and his ‘ownership’ of the 2014 [Athlete Development] program. I am not blind to his ‘lack of knowledge in schools’ – in some ways this has also helped!

186. The Sports Manager responded on 18 August 2014 that she was:

... now aware that Adam is responsible for developing the ADP for 2015 and the sport structure going forward and that my role is purely a supporting role to him and that I have no leadership role. As Principal you are the decision maker and can redesign roles at any stage, as an employee I will follow your direction.

187. In his response to the Sports Manager later that day, Ernest Fleming noted he thought that ‘given the program was in development, the goodwill and excitement of building the program would mean a strong, collaborative team that didn’t rely on a hierarchy’.

188. Ernest Fleming’s response to the draft report stated:

Mr [Ernest] Fleming followed up the email with a personal conversation with [the Sports Manager], explaining her key leadership role going forward and reminding her of the conversation they had had when she expressed she was interested in joining the program in May.

189. The investigation notes that the Sports Manager commenced at the college in April, not May, of 2014.

Management of Adam Fleming

190. At interview, the Assistant Principal said he was Adam Fleming’s line manager throughout 2014. He said Ernest Fleming ‘wanted to keep that distance between Adam and he’.

191. The Assistant Principal was unable to provide any details about his management of Adam Fleming. He said he did not know whether Adam Fleming was a volunteer or an employee, or whether he was being paid (despite having signed all but one of the creditor payment vouchers authorising payments). He told the investigation: ‘Adam didn’t come to me a heck of a lot, he would go to Ernie instead.’

192. Ernest Fleming said at interview the Assistant Principal was responsible for managing ‘staffing issues to do with ADP’. When asked to clarify whether the Assistant Principal was managing Adam Fleming throughout 2014, Ernest Fleming replied, ‘It’s complicated’. Ernest Fleming’s response to the draft report said:

[The Assistant Principal] was Mr Adam Fleming’s line manager for issues … Mr [Ernest] Fleming took an active interest in developing the ADP program as he did to all other areas of the College – a principal’s role – in his hands on approach throughout the BEP period.
At interview, Adam Fleming said that throughout 2014 he reported directly to his father. However, his response to the draft report stated he ‘knew to go to see [the Assistant Principal] for personal support’ and Ernest Fleming for ADP program development advice. He also said he did not need an official line manager because he was a volunteer in the ADP.

Recruitment as ADP Manager, late 2014

After an externally advertised recruitment process in October to November 2014, Adam Fleming was formally offered the position of ADP Manager in a letter dated 17 December 2014, signed by his father. This letter was found on Adam Fleming’s personnel file. Prior to this, Adam Fleming was involved in creating staffing structures for the ADP role, and was the contact person for other ADP positions advertised at the same time as the ADP Manager role. Ernest Fleming was the contact person for enquiries about the ADP Manager position.

Creation of staffing structures for the ADP

At interview, Adam Fleming told the investigation he initially volunteered to set up the ADP as a pilot program in 2014 and had no intention of remaining at the college beyond the first 12 months. He said he became aware of the ADP Manager position in late 2014 because it was ‘widely advertised’ and decided to apply, ‘with, I guess, no expectations of getting the role’.

Ernest Fleming’s response to the draft report stated:

[Ernest] Fleming did not, at any time, discuss Mr Adam Fleming’s intentions with him.

However, Ernest Fleming’s email of 12 October 2014 to a potential panel member, quoted below, stated that ‘Adam will most likely apply’, showing he was aware of his son’s intentions before the position was advertised on 21 October 2014.

From July 2014 until he was appointed ADP Manager, Adam Fleming created multiple versions of staffing structure documents setting out his vision for who would staff the ADP in 2015. He sent versions of these documents to his parents and, according to Staff Members A, B and D, distributed them to other staff at the college. These structure documents invariably listed Adam Fleming as ‘ADP Manager’. In some versions, Ernest Fleming was listed as ‘Director of Sports’, while the then Sports Manager was described as ‘Sports Manager’ or ‘Sports Manager and ADP Curriculum Advisor’.

Staff Member D observed at interview:

I just don’t think it’s appropriate to be putting people’s names on jobs in a school that has a merit and equity process. It’s different if it’s my own business, I can do whatever I like. But you can’t be doing that in schools, everyone needs an opportunity to apply for these jobs fair and square.

When presented with some of these structure documents at interview, Adam Fleming said he began to entertain the idea of staying on as ADP Manager in around August 2014. He said he could not recall whether he told his father he wished to remain at that time, or whether his father discussed the possibility with him.

Examples include: a document entitled ‘structures doc’, created on 26 June 2014 and emailed by Adam Fleming to Ernest Fleming, 27 July 2014; a document entitled ‘structures x 2’, created 7 August 2014; documents entitled ‘Structure – EFT 6.5’ and ‘flowchart structures’, emailed from Adam Fleming to Ernest Fleming on 7 August 2014; and structure documents shown to the investigation by two Staff Members at interview, which they stated were authored by Adam Fleming.
201. In his response to the draft report, Adam Fleming wrote that ‘any ADP planning document emailed...in 2014 was a draft’. He added:

   If DRAFT was not labelled on the documents [the investigation] selected, it should be clear that everything was a draft, as the development of the ADP was in draft phase in 2014. Those who received ADP planning documents from [Adam Fleming] would have known them to be drafts.

202. In accordance with the Recruitment in Schools policy, the role of ADP Manager was advertised on the department’s Recruitment Online portal on 21 October 2014. The advertisement stated the successful applicant would be required to ‘work with the Sports Director (Principal) to design, implement and evaluate the ADP programs, policies and curriculum’.

203. At the same time, the college advertised several positions within the ADP, all of which would report to the ADP Manager.

204. In the position description and in the information for candidates on Recruitment Online, Ernest Fleming was listed as the contact person for enquiries about the ADP Manager position.

205. Emails obtained from Ernest Fleming’s email server show at least five people emailed him asking for further information about the position. He forwarded four of these enquiries to the Assistant Principal without comment or instruction. Ernest Fleming’s response to the draft report stated:

   Mr Fleming correctly passed all enquiries to Panel Chair, [the Assistant Principal]. Given ‘at arms length’ from the panel process, Mr Fleming has very limited knowledge of [the Assistant Principal’s] actions in handling the process.

206. The Assistant Principal provided email evidence showing he replied to one of the enquiries on 30 October 2014, from a person who asked about the salary two days earlier. The Assistant Principal responded that the ADP Manager salary range was $73,539-$86,711, significantly lower than the enquirer was currently earning (over $103,000).

207. The investigation found no evidence the Assistant Principal contacted the other three people who made enquiries. In an email to the investigation on 11 April 2017, the Assistant Principal advised he could not find any responses to them in his emails.

208. In their enquiries, two of the three described having relevant qualifications in teaching, high-level coaching and sports management (the third did not mention his background). On 26 October 2014 one wrote that he was a qualified physical education (PE) teacher; had recently been head of PE at a school in Queensland; had a Masters in Sports Coaching and was due to complete a Masters in Business in Sports Management. In an email dated 28 October 2014, another said he had tertiary qualifications in exercise science and teaching and was a Level 3 athletics coach with a youth development background.

209. The investigation contacted these three people by telephone in February 2017. Two said they had never received a reply from Ernest Fleming or anybody at the college. Neither went on to apply for the position. The third said he received a telephone call from Ernest Fleming but decided not to apply when he discovered the Principal’s son had been ‘acting’ in the ADP Manager role for some months.
210. At interview, the Assistant Principal said he had no memory of receiving these emails. He said:

I can’t answer why I didn’t respond to these people. If I haven’t, I haven’t done the right thing. No one said to me at any stage ‘don’t contact these people’. If they did, I can’t remember it.

211. On the information for candidates on Recruitment Online, Adam Fleming was listed as the contact person for all the other ADP positions. In at least one case, on 29 October 2014, a potential applicant emailed him directly with an enquiry about the ADP Manager position after receiving no response from Ernest Fleming.

212. A fifth person (referred to below as Applicant 1) addressed an enquiry about the ADP Manager role to both Adam Fleming and Ernest Fleming on 26 October 2014.

213. In his response to the draft report, Adam Fleming said he ‘promptly forwarded all requests for information about the … ADP Manager position to the required contact person’ (Ernest Fleming).

214. Ernest Fleming, in his response, stated he could:

only assume Mr Adam Fleming’s name was made the contact by the front office who prepared the documentation, because he had the “best knowledge” of the program and therefore best placed to explain it. Mr Fleming “flicked on” applications that were sent to his email.

215. Adam Fleming also wrote in his response that he was ‘the most suited person’ to be listed as a contact for enquiries about the ADP positions because the positions were ‘coaching positions, not teaching positions’; due to his ‘working knowledge of the [ADP] program’; and because of his ‘ability to engage with and relate well to high level junior coaches across a range of sports’, given his ‘professional coaching background in junior sport; profile in Bendigo and connection to the sporting community’ and his ‘high level communication skills developed through tertiary training and years of working as a health professional and coach’.

216. Adam Fleming also wrote that the reason he was not asked to be the contact person for the ADP Manager position was because he ‘was not a Manager at [the college] in 2014 and had not been a Manager within a school prior’.

Applications

217. According to the list of applicants provided by the college, five people (Adam Fleming, the Sports Manager and three external applicants) applied for the ADP Manager position. Only Adam Fleming and the Sports Manager were shortlisted for interview.

218. On paper, all three external applicants appeared to meet the selection criteria for the position. Two held more formal qualifications for the role than Adam Fleming, who did not have any formal qualifications in education or sports management.
• Applicant 1 wrote he had a Masters degree in Sports Management, postgraduate business qualifications and a Diploma of Education, had worked as a teacher and delivered sports programs in schools, and had 15 years’ sports coaching experience.

• Applicant 2 wrote he had a Bachelor of Applied Science (Human Movement) and eight years’ professional experience in sporting industries. This included employment with the Victorian Institute of Sport and as Director of a sporting program and Head Coach at a high school.

• Applicant 3, who was then Operations Manager of a local amateur sporting league, referred to 10 years’ experience with a range of elite state and national-level sporting organisations. This included a role in which he managed ‘elite [sportsperson] development programs’.

219. The Recruitment in Schools policy then in force required selection panels to include in their report to the principal the names of any applicants who were not shortlisted for interview, and the reasons for this decision. It is unclear why the panel chose not to interview the three external candidates, as the selection panel report of 25 November 2014, signed by the Assistant Principal, did not include this information.

220. At interview the Assistant Principal was unable to explain why two of the three external applicants were not shortlisted. He said the third was known to Ernest Fleming from a sports club, and Ernest Fleming did not like him. The Assistant Principal admitted he discussed this application with Ernest Fleming, but said they did not discuss the applications of either the Sports Manager or Adam Fleming.

221. Aside from the selection panel report, the college did not keep any of the selection documents relating to the position, despite being required to do so for two years by the Recruitment in Schools policy. At interview the Assistant Principal said he provided the selection documents to Ernest Fleming when the process was completed. Ernest Fleming denied this and said he did not know what had happened to the documents. The investigation was unable to locate them.

Applications of Adam Fleming and the Sports Manager

222. Key selection criteria for the ADP Manager role included:

• experience in Sports Management
• proven ability to work with talented and elite student athletes
• demonstrated coaching and competition at an elite level.

223. Candidates were also required to be ‘tertiary educated with a minimum of Level 2 coaching qualification and registration’. The advertisement did not state in which discipline applicants should be tertiary educated.

224. The Sports Manager’s curriculum vitae stated she was a qualified and registered teacher who also held a Bachelor of Applied Science (Physical Education), a Graduate Diploma of Elite Sports Coaching from the Australian Institute of Sport, and a university Certificate in Sports Management. In addition to 10 years’ experience as a secondary school PE teacher in the region, her employment history included:

• over 20 years’ elite coaching experience of young athletes at the regional, state and national levels, including an Australian Under 21 sports team
• senior roles with the Australian Institute of Sport (AIS), a state-level Institute of Sport and as ‘Athlete Development Manager’ of a national sporting body.

225. Adam Fleming held a Bachelor of Pharmacy. In his application, he described himself as ‘mid-way through – currently deferred’ a ‘Masters of Education’. However, the investigation’s enquiries with the university in April 2017 revealed that as of October 2014, he had completed four subjects in a 16-course Masters of Teaching, but had not re-enrolled for 2015.

226. Prior to working at the college throughout 2014 he had worked in several pharmacy positions between 2005 and 2013.

227. His curriculum vitae listed a range of sports coaching experience at tennis clubs in Bendigo and elsewhere between 1998 and 2014, including coaching and head coach positions.


229. At interview Adam Fleming was asked whether he had ever been employed as a coach or manager of elite athletes at any organisation. He initially stated that he had, while working at the VIDA tennis academy for an unspecified period in 2002. Asked for further details about his coaching of elite athletes at VIDA, he replied:

I was employed as part of the coaching team for part time and full-time junior tennis players who were trying to perform at an elite level.

230. When asked to clarify whether he had personally coached or managed any elite athletes while working at VIDA, he repeatedly stated that he was ‘part of a coaching team’ before stating, ‘I can’t comment. I can’t recall and I can’t comment, it was a long time ago’.

231. In his response to the draft report, Adam Fleming’s legal representative added:

The use of the word ‘elite’ does not apply to the ADP. The word ‘elite’ was misunderstood by [the college] in the early and drafting phase of the ADP Program – but was soon corrected ... The ADP was designed to coach, develop and care for aspiring yet non matured athletes from 11 years of age – some of whom ... had little to no experience in sport. It was deemed quite inappropriate to use the ‘elite’ phrase to describe school children as young as 11 years ... There is no question that [the Sports Manager] held elite coaching experience, but it is at least open to the [Ombudsman] to conclude that that was not a prime requirement ... for this particular position.

**Composition of the selection panel**

232. The *Recruitment in Schools* policy (both the 17 October 2014 and later versions) provides that the principal is the ultimate decision maker in school recruitment decisions and must ensure correct processes are followed. The selection panel assesses the applications, including through interviews and referee checks, and makes a recommendation to the principal ‘based solely on the relative merits of the applicants’. Selection processes and decisions must provide procedural fairness, and decisions must be documented and able to be reviewed.
233. The policy in force at the time stated:

Principals and panel members are to avoid any real or perceived conflict of interest in the selection process including the selection decision. A conflict may arise where it could be reasonably believed that a principal or panel member is influenced by the private interest of facilitating employment (for example the employment of a family member). Where there could be a perception of favouritism and bias, the principal and/or panel member may need to remove himself or herself from the selection process and/or selection decision.

234. In response to the draft report, Ernest Fleming’s legal representative stated the policy had a ‘discretionary element to it’ because it said the principal ‘may’ need to remove himself or herself from selection processes and decisions involving conflicts of interest. He also referred to the reference to conflicts of interest being inherently ‘subjective and personal’ in the 2013 Conflict of Interest policy.

235. The investigation sought expert advice from two senior officers of the Merit Protection Boards (MPB), an independent statutory body which hears grievances, appeals and reviews from employees of the department. At a meeting with the investigation on 9 March 2017, the MPB officers advised that where a close family member of a principal is an applicant at the principal’s school, the principal is expected to step aside entirely from the selection panel and appoint an independent person to chair the panel, often a principal from another school.

236. Asked whether it would be acceptable for a school’s assistant principal to chair a selection panel when a principal’s son or daughter was an applicant, one of the MPB officers advised this would be an ‘untenable position’ for the Assistant Principal, given they work closely with and report to the Principal and might come under pressure to hire the Principal’s family member.

237. Mr Fleming’s response to the draft report stated that it seems ‘unfair that [the investigation] is adapting MPB advice based on current policy and not past policy’.

238. The selection panel that interviewed Adam Fleming and the Sports Manager for the role of ADP Manager was chaired by the Assistant Principal. The other panel members were two Leading Teachers from the college, the then president of the college council, and the principal of another college in Melbourne whose college ran an Athlete Development Program. The other principal was the only member of the panel from outside the college.

239. The Assistant Principal’s evidence to the investigation highlights the difficult position he was in as chair of the panel, consistent with the MPB officer’s advice. At interview he said it was his belief at the time that Ernest Fleming wanted Adam Fleming to get the position. However, he said he genuinely believed Adam Fleming to be the stronger candidate. He said this was because:

There were a couple of parts that we felt that Adam was better in. We knew that [the Sports Manager] was really good with elite athletes, whereas the program we wanted to run was about developing the athlete rather than an elite type of student or program itself.

240. Ernest Fleming told the investigation he asked the Assistant Principal to chair the panel and discussed with him ‘who could be on the panel’. Ernest Fleming said he suggested the principal from the other college and the president of the school council, but the composition of the panel was the Assistant Principal’s decision. However, email evidence shows Ernest Fleming approached the other principal directly on 12 October 2014, asking him, ‘Would you be prepared to be on the panel? I will not be participating in the process given Adam most likely will apply’.
241. Emails show that both Ernest Fleming and Adam Fleming had a relationship with the other principal, whose college ran an Athlete Development Program that, according to the Flemings at interview, was the inspiration for the college’s ADP. Emails between the other principal and Ernest and Adam Fleming respectively show that the other principal provided extensive advice about setting up an ADP at the college, to Ernest Fleming as far back as 2012, and to Adam Fleming in 2014.6

242. In a telephone conversation with the investigation on 11 October 2017, the other principal said his relationship with the Flemings was ‘professional’ only, and that he considered himself an independent member of the panel.

243. In Adam Fleming’s response to the draft report, his legal representative stated Adam Fleming had not met the other principal before working on the ADP.

244. Ernest Fleming’s response to the draft report stated that he believed the Sports Manager had known the other principal for longer than him due to her previous role in ‘[sport] in Melbourne’. The response stated he also took the Sports Manager to meet with the other principal for ‘several hours as part of recruiting her to the program’:

To imply [the other principal’s] integrity was compromised, with no evidence, only insinuation, is not only wrong but disrespectful.

245. At a compulsory interview with the investigation, another member of the panel said the other principal would have had ‘more contact with Adam [Fleming] as opposed to [the Sports Manager]’ through Adam Fleming’s prior work on the ADP.

Panel decision

246. The other principal told the investigation Adam Fleming was the far better candidate. He also said he had not wanted the word ‘elite’ to be part of the key selection criteria and had asked Ernest Fleming to take it out of the position description.

247. The panel member referred to above said the Sports Manager was the better applicant, as she ‘had the strength of both coach[ing] and administration’ whereas Adam Fleming’s strength was ‘more the administration’. The panel member said this view was:

From the evidence on their applications. [The Sports Manager’s] application was more extensive and had lots of examples of both coaching [and] administration, having written a text in relation to coaching and her job in relation to [a national sporting body as Athlete Development Manager]. Adam’s [application] was more on his pharmaceutical side, administration, and [he] had just started a course in relation to teaching.

248. The panel member said the others on the panel, however, were ‘more in favour of Adam’. The panel member indicated they respected the collective decision and said the panel ‘followed process’ in its decision making.

249. The Assistant Principal’s panel report to Ernest Fleming, dated 25 November 2014, recommended Adam Fleming be appointed to the role of ADP Manager. The report was not signed by the other members of the panel, as required by the Recruitment in Schools policy, and as noted earlier, was missing other requisite information.

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6 The investigation found extensive emails between the Flemings and the other principal regarding the establishment of the ADP at BSEC. E.g. emails exchanged between Ernest Fleming and the other principal on 13 October 2012, 22 October 2012 and 4 November 2012; an email from Ernest Fleming to the other principal dated 24 February 2013; emails exchanged between Ernest Fleming and the other principal on 24 February, 27 February and 12 April 2014; emails exchanged between Adam Fleming and the other principal on 10 and 30 April and 1 May 2014.
250. The report stated that Adam Fleming:

presented strongly as a manager of a
program that would develop the whole
athlete, whereas [the Sports Manager]
presented as a high performance
manager of athletes.

251. On 24 November 2014, the day before
the Assistant Principal sent him the
panel’s recommendation, Ernest Fleming
emailed college staff advising them his
son had been appointed to the role. Adam
Fleming’s response to the draft report
said the Assistant Principal told Adam
Fleming he was the successful applicant
on the same day, and it was at this time
the Assistant Principal asked him to
be part of the interview panel to select
applicants for staff positions within the
ADP. Interviews were held on 2 and 3
December 2014. These positions would
report directly to the ADP Manager. The
Assistant Principal was the chair of this
panel. In the information sent to interview
candidates about the panel, dated 27 and
28 November 2014 and signed by the
Assistant Principal, Adam Fleming was
described as ‘ADP Manager’.

252. Adam Fleming was formally offered the
position of ADP Manager in a letter dated
17 December 2014, signed by his father.
Records on his personnel file show he took
up the position of ADP Manager on 23
January 2015.

253. Ernest Fleming’s response to the draft
report stated:

Mr Adam Fleming was offered – and
accepted – the role by [the Assistant
Principal] Nov 24 ... The paperwork –
‘formally’ – is processed at the end of
a round of panels. Mr [Ernest] Fleming
completed the standard template note
for the file/package to applicants with
Principal signatures as required by [the
department’s] HR rules.

Retrospective salary increase

254. Adam Fleming commenced as ADP
Manager at the top of the advertised salary
range of Education Support Officer, Level 1,
Range 4, on a salary of $86,711.7

255. The investigation found a letter on his
employment file dated 6 March 2015,
signed by Ernest Fleming and addressed
to the college’s Business Manager. It states:

Please alter Adam Fleming’s classification
and salary range as set out below:
Current Range: ESO Level 1 Range 4-6
New Range: ESO Level 1 Range 5-2.
This change is effective from 23/01/15.

256. This promoted Adam Fleming by two
salary ranges, and retrospectively
increased his salary to $93,914. The
investigation did not find any documents
to explain the reason for this salary
increase.

257. At interview, Ernest Fleming said he had
increased his son’s salary to bring it up
to the same level as the salary of one
of the coaches working in the ADP. The
coach in question was recruited during
the December 2014 recruitment round
in which Adam Fleming was a panel
member. Ernest Fleming said the coach
had negotiated a higher salary on being
offered the role and that this ‘set the
bar’ for other salaries in the ADP. Ernest
Fleming said he wished to ensure his son,
who was managing the coach, was paid
the same amount as his employee.

7 Information on salaries in this section is from Department of
Education and Training, Human Resources – Education Support
Class Salaries in Victorian Government Schools, updated 1
October 2013. The document lists salaries for ESOs, including
scheduled future increases until 1 August 2015.
258. At interview, Ernest Fleming said he ‘probably’ discussed the issue with his son, but said he could not remember whether the salary increase was his idea, or his son’s. He also said he did not recall seeking any advice about whether departmental policies allowed it, or going through a formal process to reclassify his son’s position. However, his response to the draft report stated he was ‘hesitant’ to reclassify his son’s position ‘given potential accusations of COI’ and consulted widely about the decision with the Assistant Principal, the Business Manager and Consultative Committee members.

259. In his response to the draft report, Adam Fleming’s legal representative said:

[The Assistant Principal] informed [Adam Fleming] that he was not the highest paid person in the department, and [the Assistant Principal] said he felt [Mr Fleming] should be paid at least the same as others seeing [Mr Fleming] was the Manager. [Mr Fleming] did not approach anyone at any stage about his salary. It is not in his nature to go about negotiating a salary or requesting pay rises.

260. Ernest Fleming’s response to the draft report also stated that it was the Assistant Principal’s idea to increase Adam Fleming’s salary, based on the salary negotiated by a coach working under Adam Fleming. Ernest Fleming included as an attachment a statement dated 29 December 2017 from the Assistant Principal, stating that the salary increase was the Assistant Principal’s suggestion.

261. The investigation telephoned the Assistant Principal on 19 July 2018 to verify the Flemings’ claim. The Assistant Principal initially said he had had a conversation with Ernest Fleming about increasing Adam Fleming’s salary, but ‘wasn’t sure what Ernie did with regard to that’. He said they discussed whether it was ‘fair for the Manager to be getting paid less than one of the people below’. Asked who raised the subject, the Assistant Principal initially said he ‘assumed Ernie brought it up with me’. However, when informed of the contents of the statement he said he could not remember whether he or Ernest Fleming initiated the conversation. He said he had ‘probably’ authored the statement but could not remember what it was for or what was in it, and could not confirm whether it was his or Ernest Fleming’s idea to reclassify Adam Fleming’s position. He also said he was not aware of the salaries of either Adam Fleming or the coach.

262. Ernest Fleming’s response to the draft report also stated his reclassification of Adam Fleming’s position was in accordance with departmental policy:

Principals can reclassify positions … Reclassification for Mr Adam Fleming and the other coaches was finalised in accordance with [the Recruitment in Schools policy] 2015 … after deciding that ‘… the work requirements had changed …’ given the skill set of selected coaches was much higher than expected and the significantly increased potential for the program as a result – borne out by the success of the program. The selection of level 5 [for the ADP Manager position] as the appropriate level is clearly in line with the ‘Dimensions of Work’ [for ESOs listed in the] … VGSA 2013.
The Leading Teacher

263. It was alleged that Ernest Fleming acted improperly by promoting the Leading Teacher, a relative by marriage of one of his sons, to an Assistant Principal position in 2016 without following appropriate recruitment processes. Documents on the Leading Teacher’s personnel file show she had been a Leading Teacher at the college since 2010. In a telephone conversation with the investigation on 20 June 2017, the Leading Teacher confirmed her relationship by marriage with Mr Fleming’s son.

264. Ernest Fleming’s response to the draft report stated he does not socialise with the Leading Teacher. In her response, the Leading Teacher also said she did not have a personal relationship with Ernest Fleming:

   I have much pride in my career in maintaining professional relationships with my work colleagues. I have made a point of never socialising – attending social events, coffee dates, activities etc. with the people I work with. That includes Mr [Ernest] Fleming. The only social event that I attended where Mr Fleming was present in an out of the school context was at [the wedding of her relative to Mr Fleming’s son] in 2008. My relationship with Mr Fleming was professional at all times and communication was few and far between, probably having a quick greeting and ‘check in’ every four to six weeks. Other contact was in weekly scheduled leadership meetings with other staff members.

265. The Leading Teacher also stated:

   My employment position at the Bendigo South East College or any other place of employment at any time was not influenced by my [in-law] status. My appointments have been gained by my credibility and capacity as a teacher and a leader with the Department of Education and guided strictly within the criteria of positions applied for ... All cases of potential conflict of interest have been addressed in the appropriate manner and in line with department policy and regulation.

266. Mr Fleming’s response stated:

   [The Leading Teacher’s] curriculum leadership roles ... made her eminently qualified to carry out the [Assistant Principal for Curriculum] role.

267. Staff Member B told the investigation that in the latter half of 2016, Ernest Fleming announced a restructure of the college’s leadership team, to commence in 2017. The restructure would include the creation of two new Assistant Principal roles, bringing the number of Assistant Principals to three. The Leading Teacher and another Leading Teacher obtained the new roles.

268. The Recruitment in Schools policy stated that all vacant positions in the Teaching Service of over six weeks must be advertised, ‘to promote fair and open competition and provide the best opportunity to attract a wide field of applicants’.

269. The Acting Principal of the college, who took over after Mr Fleming’s suspension in January 2017, confirmed the positions were never advertised externally. In an email dated 1 June 2017, he told the investigation they appeared to have been filled through an internal process.

270. According to Staff Member B, Ernest Fleming went to some lengths to avoid creating new substantive positions, which would have to be advertised externally. Staff Member B said that before settling on ‘special payments’, Ernest Fleming told a consultative committee meeting he wanted to fund the positions through ‘higher duty’ payments, which could be filled without advertising externally.
271. Higher duty payments are for staff who are acting at a higher level to fill an existing position, for example to cover leave. Staff Member B said that after it was pointed to Ernest Fleming that he could not use ‘higher duty’ payments for a new position, he announced the positions would be funded using ‘special payments’ to existing staff members.

272. Staff Member B’s evidence is supported by an email exchange between Ernest Fleming and his acting line manager on 12 September 2016. Mr Fleming initiated the exchange, stating he proposed to:

- have Acting [Assistant Principals] – HDAs [on Higher Duty Allowances] given to substantive [Leading Teachers] for at least Semester 1 (preferably whole year) with a view to advertising them as substantive once ‘the dust had settled’ on our 2017 curriculum initiatives etc. If this is not possible, can I tag them Special Payment positions with the allowance being equivalent to the Acting [Assistant Principal] level proposed.

273. Mr Fleming’s acting line manager replied later that day, advising that the positions would have to be publicly advertised, and that an internal process could only be used if no suitable applicant were found through an open recruitment process:

As there is a clearly identified and agreed need and role description for the [Acting Principal] position/s, it/they must be advertised ... If there were no applicants deemed suitable through the school’s [departmental] selection process, the panel could consider a ‘no appointment’ recommendation. In the case of a ‘no appointment’ ... in the shorter term, this could be covered by an internal process where the successful school-based applicant would receive an appropriate special payment until the position was re-advertised and substantively filled.

274. Notes from the college’s consultative committee meetings, attended by Ernest Fleming, show:

- At a meeting on 14 August 2016, the issue of whether the positions would be advertised externally was discussed.
- At a meeting on 13 September 2016, the day after the email exchange with his line manager, Ernest Fleming advised he did not want to advertise the positions and would like to use ‘special payments’ to fund them instead: ‘when we are confident that the structure works then the positions can be advertised’. There was also discussion of special payments for twelve months for the two Leading Teachers.
- At a meeting on 6 October 2016, the following was listed as a topic of discussion: ‘AP positions $8000 special payment ([for the two Leading Teachers]) for 2017’.

275. In relation to the notes from the consultative committee meetings and the evidence of Staff Member B, the Leading Teacher said in her response to the draft report:

[The above was] not my understanding of the anticipated positions at all as they do not comply with well known regulations of employment of substantive higher level positions ... It is clear that those people questioning the process were naïve about the situation and did not understand that the positions were planned for advertisement early in [2017].
276. The Leading Teacher added that her understanding was the special payments were to be used until the positions were to be advertised externally in early 2017, and that Mr Fleming was suspended by the department before this could occur. She said she would ‘never have taken the temporary role if there were not an opportunity to gain a substantial position at the set level’. She said that at other points in her career, she had been in temporary positions until a formal recruitment process had taken place, and ‘at times I was a successful applicant and at other times not’.

277. The Leading Teacher stated she was disadvantaged by the continuation of the special payments arrangement after Mr Fleming was removed from the college:

The special payment position was at a much lesser salary than a substantive Assistant Principal … This unfortunate position I was in, put me in a compromising position in the eyes of ‘doubting’ staff and the extensive work [I] carried out in 2017 lacked considerable effectiveness in creating an atmosphere that was open and conducive to changes planned when Mr Fleming was at the helm. This also impacted on the possible retirement benefits I may have obtained if I had acquired the planned substantive advertised placement.

278. In 2016, the workplace agreement covering employees in the Victorian Teaching Service defined ‘special payments’ as ‘any payment in the nature of an allowance or incentive’. Special payments could be made to employees:

(a) for undertaking a task that is additional to the responsibilities that can be required of an employee at their respective classification level and salary range;

(b) as an attraction and/or retention incentive;

(c) for recognition of outstanding performance.8

279. There is nothing in either the Victorian Government Schools Agreement (VGSA) 2013 or the VGSA 2017 to suggest special payments may be used to create new positions to promote staff members, thereby avoiding the requirement to advertise externally.

280. The Acting Principal confirmed in his email to the investigation that the two new Assistant Principal roles created by Ernest Fleming were not substantive positions; rather, the two Leading Teachers were paid using special payments.

281. The consultative committee meeting notes from 6 October 2014 refer to the appointments having been made, but do not mention the process for filling the roles. In her telephone conversation with the investigation, the Leading Teacher said she submitted an Expression of Interest to obtain the role. Several witnesses said the Expressions of Interest were only open to Leading Teachers; Ernest Fleming confirmed this in his response to the draft report.

282. In her response to the draft report, the Leading Teacher said the Expressions of Interest were ‘presented to a panel including the Principal [and two other senior staff members], who were all well aware of my [relative’s] family connection to the Principal and also my capacity to carry out the role’. Mr Fleming’s response did not state that he was on the panel but confirmed the Leading Teacher’s account of the other two panel members.

8 The Victorian Government Schools Agreement 2013 (VGSA 2013). The current agreement (VGSA 2017) contains the same definition and wording in relation to special payments, but they can no longer be awarded for ‘for recognition of outstanding performance’.
Mr Fleming’s response to the draft report stated:

(i) A consultative process spanning two years was used to structure a major change to the leadership profile of the College. Difficulties in finalising the new model resulted in timelines needing to be changed;

(ii) Although initially there was a misunderstanding regarding [higher duty allowances] and ‘new positions’, once the rule was known, a compliant way forward was found;

(iii) A Principal can negotiate roles. Mr Fleming formed a panel to assist with assessing the EOIs … Taking [the two panel members’] unanimous recommendations, Mr Fleming approached ALL the substantive leading teachers with the recommendations. No Leading Teacher requested the opportunity to make a personal representation to the panel even though given the option.

Mr Fleming stated that a ‘threatened grievance’ about the process from the local Australian Education Union sub-branch ‘didn’t eventuate’ after he had a ‘generally positive discussion’ with union representatives.

Declaration and management of conflicts of interest

285. Under the Conflict of Interest policy (1 October 2013), Ernest Fleming was required to declare any conflict of interest to the Regional Director, and work with his line manager to manage the conflict.

286. There is no evidence that Ernest Fleming declared to the Regional Director that he had engaged or promoted family members, Karen Fleming and Adam Fleming, or his son’s in-law, the Leading Teacher.

287. At interview, the Regional Director said she only became aware that Ernest Fleming’s wife and son were employed at the school when her office received an anonymous complaint in August 2014. In her response to the draft report, Karen Fleming disputed the Regional Director’s evidence. Mrs Fleming advised that she had spoken to the Regional Director on ‘many’ occasions at the college and had been in email communication with the Regional Director’s secretary when sending invitations to the college’s awards evenings. Mrs Fleming also stated the previous Regional Director was aware she worked at the college.

288. The Senior Adviser confirmed at interview that Ernest Fleming did not make any conflict of interest declarations to her about his employment of family members. The role of the regional office in this matter is explored in more detail later in this report.

Findings

289. The allegation that Ernest Fleming wrongly employed and promoted family members is substantiated in relation to Karen Fleming and Adam Fleming. His promotion of the Leading Teacher and another staff member to Assistant Principal roles, while not nepotism, showed a disregard for the department’s recruitment policies and the requirement to avoid perception of conflict of interest.

290. Ernest Fleming’s actions did not meet the standard of section 3.2 of the Code of Conduct, which forbids public servants from using their power to provide a private benefit to their family and states that family and personal relationships must not improperly influence their decisions. These actions were also inconsistent with the Code of Conduct’s provisions to ensure that conflicts of interest do not influence – and could not be perceived to influence – the performance of a public servant’s role (section 3.7).
291. Ernest Fleming demonstrated a disregard for the department’s Recruitment in Schools and Conflict of Interest policies over several years. He engaged and promoted his wife and son on several occasions, failed to report his conflicts to the Regional Director, did not take adequate steps to manage or avoid his conflicts, and promoted his son’s in-law and another staff member in contravention of the Recruitment in Schools policy and the VGSA 2013 and against explicit advice from his acting line manager.

292. Ernest Fleming’s response to the draft report stated:

Mr Fleming understands that [in] the current climate of cynicism and suspicion, having multiple family members in a workplace will always attract COI allegations from ‘haters’. However, if the starting point is there are still people who are dedicated and committed, whose motivation is not ‘personal interest’, who have decades of a history of unblemished, selfless contribution to a community, then on the ‘balance of probability’, there is no nepotism. [original emphasis]

293. The response stated that allegations of conflict of interest against him were investigated a number of times from 2014 by his line managers at the department’s regional office, and that in all cases he was found to be compliant with departmental policies and ‘not given any direction to change practice’. However, the investigation found that the regional office failed to manage or adequately investigate Mr Fleming’s conflicts of interest over several years, despite receiving numerous detailed complaints about his conduct. Findings in relation to the regional office are detailed later in this report.

294. Ernest Fleming referred throughout his response to the description of conflicts in the 2013 Conflict of Interest policy as inherently ‘subjective and personal’, as evidence that the policy was ambiguous and provided insufficient guidance for him to understand his responsibilities. However, in context, this passage – which also appears in later versions of the policy – highlights the importance of conflicts being appropriately declared and managed by an employee’s manager.

295. Ernest Fleming’s response to this section of the draft report stated that there was ‘no private benefit from [his] actions’ and that his appointments of family members were in the best interests of the college:

All Findings are strongly rejected in that reasonable people would conclude that … Mr Fleming’s decisions were in the best interests of the College … there were NO appeals against any appointments by unsuccessful applicants and no grievances re any staffing processes throughout Mr Fleming’s principalship … Mr Fleming was reassured by his Line Managers – both [the Regional Director] (July 2016) and [the Senior Adviser] after each investigation [of a complaint to the department’s regional office] that his COI actions were ‘compliant’ and ‘there was no evidence to support any of the allegations contained in the “anonymous letters”.’ [original emphasis]

296. Mr Fleming’s response also stated:

The results of poor management of [conflicts of interest] were listed in the 2013 [Conflict of Interest policy] document p3 as –

- Poor substantive outcomes arising from decisions in which merit is compromised
- Loss of stakeholder confidence and the erosion of proper processes
- Considerable expense and loss of efficiency to remedy actions which are tainted by undisclosed or improperly managed COI
- Loss of employee trust in management
- Loss of public confidence in government

At [the college] there was no evidence of these negative ‘results’ except for a handful of staff in 2016 … who had a long history of obstruction to the ‘radical change’ BEP agenda. [original emphasis]
Mr Fleming’s response emphasised his view that schools are ‘family based’ and listed numerous examples from schools he had worked at (including the college) where husbands and wives were employed at the same establishment:

Schools are ‘family based’ – this makes them unique in the Public Service. Although ‘everyone went to school’, how schools operate, cannot be fully understood unless you have lead one. As with a lot of ‘teacher families’ that Mr Fleming knows, there is a shared commitment to giving back, working for the common good and volunteering. All members of Mr Fleming’s family - Ms Karen Fleming, her parents, and three boys - have all given numerous hours to the schools Mr Fleming has worked at, in a voluntary capacity. Mr Fleming never approached, or encouraged Ms Karen Fleming or Mr Adam Fleming to apply for positions with the Department. The opportunities arose ‘accidently’, and grew from voluntary contributions - there had been plenty of instances before these - that were never envisaged to lead to ongoing employment. The college community clearly appreciated the Fleming family’s contribution.

Employment of family members

Karen Fleming

The investigation found Ernest Fleming had significant involvement in, and was ultimately responsible for, the appointment of his wife as his personal assistant in January 2014. This is because there is no evidence that Mrs Fleming submitted an application for the role (other than a backdated application with Ernest Fleming’s contact details listed instead of hers) or that applications were assessed by a selection panel, and the only evidence of the decision is a note to the Business Manager from Mr Fleming advising her to appoint his wife to the role. In response to this finding, Mr Fleming’s legal representative stated:

Rejected – Mr Fleming only carried out the expected principal administrative tasks where family members were involved.

Despite his claim to have remained at arm’s length from his wife’s employment, Ernest Fleming was listed as the contact person for at least two roles she obtained – those of Integration Aide (advertised in May 2010) and Personal Assistant to the Principal (advertised in November 2013). While Mr Fleming argued this was due to ‘templates’ being used in recruitment advertisements, at a minimum it demonstrates he did not do everything in his power to mitigate the conflict of interest. Being listed as the contact person gave him control over whether to pass on any enquiries to the person managing the process, and potentially gave him knowledge of the process, such as details of people who were enquiring about or applying for the position. It also created the perception that Mrs Fleming received favourable treatment.

Mr Fleming’s decision to allow his wife to volunteer at the college from 2009, before applying for an advertised position, also created a perception that Mrs Fleming was given an unfair advantage in relation to future recruitment processes by giving her work experience that she would not have gained if she were not married to the principal. Mr Fleming repeated this pattern with the engagement of his son, Adam Fleming, in late 2013.

However, the investigation did not substantiate the allegation that Ernest Fleming was improperly involved in the initial engagement of Karen Fleming as an Integration Aide in January 2010. There is insufficient documentation to determine the process followed by the college and the extent of Ernest Fleming’s involvement. Both Ernest Fleming and Karen Fleming told the investigation that Mr Fleming was not involved in the selection process and that the process was managed by the former Business Manager. This is consistent with the evidence of the former Business Manager. Under the Recruitment in Schools policy, as Principal, Ernest Fleming was responsible for all recruitment decisions in the college and he said he signed off on Mrs Fleming’s engagement in this capacity.
302. The investigation also accepts Mr Fleming’s evidence, corroborated by both the current and former Business Managers, that he was not Mrs Fleming’s line manager and that her performance reviews were carried out by other members of staff.

303. In her response to the draft report, Mrs Fleming said:

I wholly deny that my position was granted to me on the basis that my husband was the principal of the school and that he was involved in the hiring process, thus being the sole reason I gained employment at [the college]. Like all applicants, I submitted my applications, went through the interview process with the Business Manager. I strongly believe that my application was successful on merit and merit alone.

304. The investigation acknowledges Mrs Fleming’s comment and does not suggest Mrs Fleming was not qualified for the positions she obtained at the college. The findings in this section relate to Ernest Fleming’s inappropriate role in some of the processes.

Adam Fleming

305. The investigation found Ernest Fleming engaged his son, Adam Fleming, at the college in 2013-14 and was involved in the appointment of his son as ADP Manager.

306. In relation to the engagement of Adam Fleming in December 2013 to December 2014, Ernest Fleming:

- paid his son from college funds without a recruitment process and with no formal position or documented agreement to define his role and salary
- misled staff into believing his son was not being paid
- allowed his son to make purchases for the ADP using public funds, to represent himself as the future ADP Manager and to propose assignment of future roles to college employees
- authorised the purchase of an iPhone for his son to use with respect to the ADP, using public funds.

307. Ernest Fleming’s involvement in the recruitment process for the ADP Manager and failure to retain the selection documentation for two years contravened the department’s Recruitment in Schools policy. He did not declare his conflict of interest to the Regional Director or take steps to manage or avoid the conflict as required by the Conflict of Interest policy. Instead he:

- was the contact person for enquiries about the position
- personally approached an acquaintance to be on the panel and made suggestions to the Assistant Principal as to who should be on the panel
- emailed staff at the college advising them his son had been appointed to the position, shortly after applicants were interviewed and before the panel had provided him with its written recommendation as required by the Recruitment in Schools policy.

308. There was nothing to suggest the other principal should not have been on the selection panel, particularly given his school ran a similar program. However, it was inappropriate for Ernest Fleming to select panel members and approach them directly, given Ernest Fleming knew his son was ‘likely to apply’.

309. Ernest Fleming also gave his son an unfair advantage by allowing him to develop the ADP in 2014, and by telling the Sports Manager she was not to lead the program, even though her position description said she was responsible for its development. In providing his son with such an opportunity, Ernest Fleming acted inconsistently with section 3.2 of the Code of Conduct. Ernest Fleming’s response to this finding stated that the Sports Manager ‘was a key member of the team developing ADP 2014’.
310. On paper, Adam Fleming’s qualifications and experience prior to developing the ADP were inferior to those of other candidates who applied for the manager position, particularly the Sports Manager. It is inconceivable that Adam Fleming would have been appointed to the ADP Manager role if Ernest Fleming had not been his father and given him the opportunity to develop the program in late 2013 and throughout 2014.

311. Ernest Fleming’s email to staff announcing his son had been awarded the position, before the selection panel had even provided him with its recommendation, demonstrates this. It also shows a clear disregard for proper process.

312. The investigation acknowledges the ‘untenable position’ of the Assistant Principal, as chair of the selection panel, given how closely he worked with Ernest Fleming and his knowledge that Ernest Fleming wanted his son to get the role.

313. Notwithstanding this, the investigation found the Assistant Principal failed to protect the integrity of the ADP Manager recruitment process by:

- discussing at least one application for the ADP Manager position with Ernest Fleming during the selection process, despite Mr Fleming’s conflict of interest
- allowing Adam Fleming to be a member of a selection panel for ADP staff and signing letters to the interview candidates describing Adam Fleming as ADP Manager, before Adam Fleming had been formally appointed to the ADP Manager role, creating a well-founded perception that his appointment was a fait accompli.

314. The Assistant Principal also failed to respond to all but one of the potential applicants who enquired about the ADP Manager position and did not shortlist for interview a number of candidates who met the selection criteria. These actions – whether deliberate or a result of poor administration – favoured Adam Fleming’s application, as they contributed to reducing the field of potential competitors who were more qualified for the role.

315. The investigation gave the Assistant Principal an opportunity to respond to the Ombudsman’s draft report. He advised:

I do not propose to respond to the draft report. However in adopting that course it should not be assumed that I accept or agree with any particular adverse comment or opinion in the report.

Ernest Fleming’s response to the draft report

316. Ernest Fleming’s response stated that he was mandated to introduce the ADP as part of the college’s obligations under the Bendigo Education Plan The response stated:

As the father of Mr Adam Fleming, Mr [Ernest] Fleming’s private interest and instinct was to NOT accept Mr Adam Fleming’s offer of helping get a specialist sports program going. It would have been hypocritical not to on the other hand, given his boys had been taught reciprocity (ie to give back) and Mr Adam Fleming saw this as a chance to contribute to his old school [original emphasis].

317. The response also stated:

The only guide Mr Fleming had in 2013/2014 was a generic document emailed by [the department] – no [Conflict of Interest] Framework as in 2016 – that was not followed up with any training.
318. However, both the *Conflict of Interest* policy 2013 and the *Conflict of Interest Framework* 2013 were available to members of the teaching service in December 2013. These documents are discussed in more detail in the introduction to this section of the report. Both documents contained guidelines around managing conflicts of interest and identified the relevant obligations under the Code of Conduct. The investigation therefore does not accept Mr Fleming’s claim that there were insufficient departmental guidelines available in late 2013 compared to 2016.

319. In relation to the 2014 ADP Manager recruitment process, Ernest Fleming’s response stated:

> Mr Adam Fleming was recommended on merit by the panel - for some, the wrong surname. [The Sports Manager] did not appeal the decision. [original emphasis]

320. That the Sports Manager did not appeal the appointment does not confirm its merits. Ernest Fleming’s response does not consider the difficulty of appealing a decision to appoint the principal’s son while working at the principal’s school.

321. Ernest Fleming’s response also stated that the Assistant Principal was Adam Fleming’s line manager, and that Adam Fleming’s performance reviews were conducted by the Assistant Principal and another staff member (who also conducted Mrs Fleming’s reviews).

322. There is no evidence that the Assistant Principal was Adam Fleming’s manager, and Adam Fleming’s personnel file contains no record of him ever having his performance reviewed.

**Adam Fleming’s response to the draft report**

323. In response to the draft report, Adam Fleming’s legal representative stated:

> The implication throughout the [Ombudsman’s] report that [Adam Fleming] was anything other than a volunteer in relation to the ADP [in 2014] is strongly rejected ... Adam Fleming was paid only for coaching services throughout 2014 and for a document titled [How to Train a Dragon].

324. However, the investigation is satisfied the evidence shows Ernest Fleming inappropriately paid his son from school funds from December 2013 to December 2014, both for work on the ADP and for Sports Coordinator work. This is because:

- all of Adam Fleming’s invoices stated they were for ‘Sports Coordinator’ work
- several of his invoices had ‘ongoing ADP’ or ‘ongoing order ADP’ in handwriting on them
- Ernest Fleming signed a purchase order for ‘Ongoing ADP Development’ and the number of this purchase order appeared on some of Adam Fleming’s invoices.

325. In relation to the investigation’s draft findings with respect to the ADP Manager recruitment process in late 2014, Adam Fleming’s response stated:

> [Adam Fleming] was under no impression at any stage that he was being favoured in the process. [Adam Fleming] knows he submitted a very strong application, performed strongly at the interview, and was a great candidate for the role. The selection of [Adam Fleming] by the panel was clearly justified. [Adam Fleming] was a well credentialed applicant. The ADP grew dramatically, it was immediately popular and an instant success.
326. The response stated the ADP program ‘required a junior athlete development program manager, not a teacher, or manager or coach of elite athletes from a national sports institute’. It stated that Adam Fleming’s qualifications, credentials and experience in health care and sport, and his ‘proven track record during 2014 in the ADP program’, made him the most suitable candidate for the role.

327. The response also stated the investigation had ‘wrongly assumed the position of “expert” in determining the credentials and suitability of applicants for the ADP Manager program’ and noted the expertise and credentials of the members of the selection panel to understand the needs of the program and assess applicants appropriately:

[Adam Fleming] had a deep working knowledge of the program ... the ability to bring it about during 2014 with great success and a significant increase in applications for the following year ... overwhelming support from the athletes and their parents, evident from messages and a signed framed t-shirt from the athletes; was committed to working long hours way beyond the rate of remuneration. It is completely conceivable and highly plausible that the expert selection panel could see and understand, that [Adam Fleming] not only had great credentials, qualifications and experiences to suit this highly specific and unique program role, but that other applicants had irrelevant experiences and credentials for the role.

Promotion of family members

Karen Fleming and Adam Fleming

328. Ernest Fleming’s actions in relation to the promotion of family members were part of a broader pattern of his disregard for departmental policies around recruitment and use of public funds.

329. Ernest Fleming promoted his wife when he hired her as his Personal Assistant at a higher salary, a position for which there is no evidence of her submitting an application and to which he directed the Business Manager to appoint her.

330. In March 2015, he reclassified his son’s position to a higher grade, entailing a salary increase of $7,203. He also applied the pay rise retrospectively. The department’s Remuneration – Teaching Service policy allowed a principal to review an employee’s salary range ‘in the context of any changes to the work value of a position and the performance of the employee’ and was silent on whether an increase in salary could be applied retrospectively.

331. However, Ernest Fleming’s decision to increase Adam Fleming’s salary was still a conflict of interest. There is no record of any formal review being undertaken, or anyone other than Ernest Fleming being involved in the decision. It is also implausible that the work requirements of the position, or Adam Fleming’s performance in the role, had changed so much within six weeks of his being recruited as to warrant such a promotion. There was no justification for backdating the salary increase to the date of Adam Fleming’s commencement in the role.

332. Adam and Ernest Fleming’s claims, that the reclassification of Adam Fleming’s position was the Assistant Principal’s idea, are also implausible. Ernest Fleming did not mention this at interview, and the Assistant Principal initially said he assumed Ernest Fleming raised the issue with him, before stating he could not remember whose idea it was when informed of Mr Fleming’s claim.

333. In using his power to benefit his relatives in this way, Ernest Fleming did not meet the standard of sections 3.2 and 3.7 of the Code of Conduct.
Creation of two Assistant Principal roles

334. In late 2016, Ernest Fleming misused his position of authority in the way he promoted two Leading Teachers to Assistant Principal roles. As noted above, this was not nepotism, but an example of Mr Fleming’s broader disregard for departmental policies.

335. Rather than creating two new substantive positions, which he would have had to advertise externally under the Recruitment in Schools policy, he circumvented the policy by creating a ‘special payments’ scheme to install the two Leading Teachers in the roles. He did so in spite of written advice from his acting line manager that he would need to advertise the positions, and could only use special payments as a temporary measure if no suitable candidate was found through an open recruitment process.

336. This was a misuse of special payments, as it did not fit the criteria in the VGSA 2013.

337. Even if Mr Fleming intended to advertise the positions in 2017, as he claimed, his use of special payments to promote the two Leading Teachers would have given them an advantage in any subsequent recruitment process for substantive Assistant Principal positions, as it allowed them to gain experience in the roles before applying. This is similar to Ernest Fleming allowing Karen Fleming to ‘volunteer’ at the college before she was hired in 2010, and his informal engagement of Adam Fleming in late 2013, which gave him valuable experience before he applied for the substantive ADP Manager position in October 2014.

338. The special payment arrangement disadvantaged the two staff members in several respects, including in relation to their employee entitlements and the perceptions of other staff. This illustrates why appropriate recruitment policies should be followed.

339. There is no evidence that either of the two staff members were not suitable for the roles. However, Ernest Fleming’s actions created a perception that he favoured one Leading Teacher because of their personal association. In doing so, he unfairly damaged her reputation and acted inconsistently with his obligations under section 3.7 of the Code of Conduct.

340. Ernest Fleming’s response to the draft report stated that he ‘declined’ the findings:

primarily in that [the Leading Teacher] is not “immediate family” by COI 2016 definition ie ‘... spouse, child, sibling or parent' and therefore his actions cannot be judged against nepotism...reasonable people would conclude that on the basis of, ‘balance of probabilities’ ... Mr Fleming’s decisions were in the best interests of the College.

341. As noted previously, the 9 February 2016 Conflict of Interest policy did not specifically define ‘immediate’ family. However, the policy made it clear that conflicts are not confined to those involving family members:

Private interests include both financial and non-financial interests, and can include the interests of family members and close friends or associates.

342. The Code of Conduct and the department’s 2016 Conflict of Interest Framework also refer to ‘family members, friends or associates’ in relation to conflicts of interest.
Allegations 2, 3, 4 and 5

- Michael Bulmer, the ‘regional bus coordinator’ engaged by Ernest Fleming from 2013, had a conflict of interest as he was a manager of Bendigo Coachlines, a bus company that received business from the school.
- Mr Bulmer misused his position as bus coordinator to channel business to Bendigo Coachlines.
- Mr Bulmer misused his position as bus coordinator to benefit another of his businesses, italktravel.
- Ernest Fleming had a conflict of interest in relation to Bendigo Coachlines, as his son Brandt Fleming became a co-owner of the business in 2016.

School Bus Program and the role of bus coordinators

343. The School Bus Program provides free travel to and from school to eligible public and private school students in rural and regional Victoria. The department sets the program’s policy, while Public Transport Victoria (PTV) contracts and maintains the bus service networks.

344. According to information provided by the department’s Student Transport and Allowances Branch, which oversees the program, 65,000 students across 330 bus networks participate. Each network of schools has a coordinating principal who is responsible for bus coordination. Ninety of these networks – including the Bendigo network – receive funding from the department to assist with bus coordination.

345. The funding is provided to schools through their School Resource Package allocation. Schools control how their bus coordination funds are spent, and may use them to recruit a bus coordinator or to pay an existing staff member to coordinate bus services. The Student Transport and Allowances Branch does not oversee how the funds are spent by schools and has no oversight role in relation to the appointment of bus coordinators for school networks.

346. Public Transport Victoria advised the investigation that the bus coordinator role includes:

- coordinating and assessing applications to travel on school bus services in their network
- determining whether students are eligible to travel for free
- preparing and submitting anticipated loading data for their bus network to PTV annually
- data collection (including route, passengers, timetables, standards of student behaviour and emergency procedures)
- communicating with parents.

347. The bus coordinator also liaises with PTV regarding operational issues and with the department in relation to requests for new services, safety issues and service variations.

348. The Bendigo bus network is made up of several public schools in Bendigo, including the Bendigo South East College. At their interviews, Michael Bulmer and Ernest Fleming said the principals of these schools are known collectively as ‘the collegiate’.
349. The previous bus coordinator (before Mr Bulmer took over the role) was a departmental employee and worked out of the regional office before being located at another college in Bendigo. A departmental document obtained by the investigation stated:

As the bus coordinator for Bendigo schools, [the former bus coordinator] is accountable in the first instance to the collegiate principal for the Bendigo schools. This position rotates [to a different principal] each year.

350. Bus charter work – for example arranging buses for excursions, school camps and sporting events – is not part of the bus coordination function under the School Bus Program, and individual schools make their own arrangements for this.

Michael Bulmer’s engagement as regional bus coordinator and ‘bus charter coordinator’

351. Email records show Mr Bulmer commenced in the role of regional bus coordinator on 6 May 2013. As of that date, he had a departmental email address and a college email address.

352. Mr Bulmer said at interview that Ernest Fleming asked him to fill in temporarily for the then bus coordinator, who was on extended leave. He said Ernest Fleming made the offer during a meeting when Mr Bulmer was ‘seeing Ernie Fleming on business development work for Bendigo Coachlines’. Ernest Fleming’s response to the draft report said that Mr Bulmer continued acting in the role once the previous bus coordinator resigned in early 2015, because the collegiate was waiting on a ‘review of country buses’ by the department and PTV, which was ‘promised from 2010’ but did not get underway until 2016-17.

353. At the time of his engagement in 2013, Mr Bulmer was the Business Development Manager at Bendigo Coachlines, a private bus charter company. He continued as Business Development Manager after purchasing the company in June 2016. Mr Bulmer told the investigation that the role involves:

product development, camps, touring, charter work... promoting our products [and] seeing how the past performances were of our drivers, our equipment.

354. In response to the draft report, Mr Bulmer’s legal representative stated that prior to purchasing the company in June 2016, Mr Bulmer was:

a ‘contractor’ to Bendigo Coachlines and was not a senior manager during the period he undertook the activities of [bus coordinator]. This was known and disclosed by our client to [Ernest Fleming]. As a contractor to Bendigo Coachlines, our client held no authority or financial decision making ability and did not obtain a financial benefit from this company.

355. Ernest Fleming said he did not know Mr Bulmer when he engaged him in 2013, but chose Mr Bulmer because he was ‘recommended’, and in response to the draft report he added that the recommendation came from a staff member at the department’s regional office. He said he engaged Mr Bulmer on behalf of the collegiate.

356. At interview, Mr Bulmer told the investigation he had a ‘verbal agreement’ with Ernest Fleming throughout 2013. He said he did not sign a contract or any other documentation.

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9 Emails Mr Bulmer sent from his Bendigo Coachlines address in July 2016 used the email signature ‘Michael Bulmer, Business Development Manager’, and as of 27 February 2017 his LinkedIn page described him as the company’s Business Development Manager.
357. Mr Bulmer said Mr Fleming engaged him as a sole trader, rather than through one of his companies. He said he submitted monthly invoices to Mr Fleming, but was based at another college in Bendigo for most of 2013. On 15 January 2014, Mr Bulmer emailed schools and bus operators in the area to inform them that ‘the position of Bus Coordinator is now located at [the Bendigo South East College]’.

358. Mr Bulmer said that once it became clear the previous bus coordinator would not return to work, he submitted a ‘service agreement’ to Mr Fleming for consideration, outlining Mr Bulmer’s responsibilities as bus coordinator. Mr Bulmer said he signed this document before submitting it to Mr Fleming, but Mr Fleming never mentioned it to him again or gave him a copy. Mr Bulmer said he never followed up with Mr Fleming about the proposed service agreement. Mr Fleming’s response to the draft report stated Mr Fleming had ‘no “recall” of a service agreement’ and that he would ‘not have agreed to one’ given the previous bus coordinator did not resign until 2015.

359. Mr Bulmer’s response to the draft report said the bus coordinator role as performed by him was an administrative support function and that he had no financial delegation.

360. Mr Bulmer said at interview that after he became bus coordinator, Mr Fleming asked him to take on the additional function of ‘bus charter coordinator’ for the college. Ernest Fleming said Mr Bulmer performed the additional bus charter coordinator role for free as a ‘parent volunteer’. Mr Bulmer said this function involved booking bus charters (for example, for camps and excursions) for teachers at the college. Mr Fleming’s response to the draft report stated:

The decision to centralise bookings at the College started before Mr Bulmer was moved to the [Bendigo South East College] in August 2014 – well before he became a Director/part owner [of Bendigo Coachlines] in 2016 ... the booking of buses for [the college] was done by Mr Bulmer as a ‘parent volunteer’ ... the bus booking role [was] never given a ‘Co-ordinator’ title by Mr Fleming ... any trip requiring multiple quotes/overnight stay, was the responsibility of the staff member leading the camp/tour/excursion using the online Events Planning Platform.

361. As noted above, Mr Bulmer began to be based at the college in January 2014, not August 2014.

362. On 1 June 2016, Mr Bulmer purchased Bendigo Coachlines with Brandt Fleming. Mr Bulmer told the investigation that in January 2016, he ‘removed [himself] from the school’ to ‘focus on other interests’. He said this was because it was too difficult to manage his businesses and the bus coordinator role at the same time, and not because he had a conflict of interest.

363. Email evidence shows that on 27 January 2016, the Director of the department’s Student Transport and Allowance Branch contacted Mr Bulmer raising concerns that he had a conflict of interest. The Director’s email was prompted by an email Mr Bulmer sent to a local school from his bus coordinator email address, proposing one of his bus companies (McIvor Transit) set up another bus service to the school.

364. In his email, the Director stated:

Can you please advise what the below is and how you are involved with the transport for [the school]? Who has with either DET or PTV provided approval to any extension request for the service? I see this as a conflict of interest. Your involvement with a Transport company whilst wearing your education school bus coordinator cap.
365. In Mr Bulmer’s response the same day, into which he copied Ernest Fleming, two other departmental staff and two PTV staff, he stated that with his ‘School Bus Coordinators hate [sic] on’ he had discussed the school’s transport needs with the school’s Business Manager.

Now transferring Hats, I am a shareholder of McIvor Transit and operate several timetabled services … I consider myself to be reasonably informed when it comes to transport solutions, I am aware of my various roles and I am transparent.

366. In response to the draft report, Mr Bulmer’s legal representative noted that Mr Bulmer copied Ernest Fleming into the email, along with ‘various senior [departmental] and PTV staff’. He stated:

It is reasonable to infer from this exchange the parties accepted from [Mr Bulmer’s] response that a financial gain was not obtained by our client’s suggestion and that there was no actual conflict of interest and this is why no further correspondence on the matter was raised by STU, PTV or [Ernest Fleming].

367. Ernest Fleming’s response stated:

Mr Bulmer did inform Mr [Ernest] Fleming regarding the need to explain possible COI – ‘some heat coming’. [The department] made no contact re concerns with Mr Fleming. Given no direction came from [the department] to either Mr Bulmer or Mr Fleming, again the only conclusion was actions were compliant and again our approach to COI was correct. [original emphasis]

368. The investigation did not find evidence that the department followed up with Mr Bulmer after this email exchange. However, in response to the draft report, the Director of the Student Transport and Allowances Branch outlined the action he took when Mr Bulmer’s approach to the school came to his attention, stating that as a result, ‘Mr Bulmer left the position and a review was conducted of the Bendigo Bus Network’.

After establishing that the STU [Student Transport Unit, which sits within the branch] had not instigated or had involvement in the proposal set out in [Mr Bulmer’s email to the school], I recall raising this matter with my Manager … who encouraged me to address the matter as needed … On 27 January 2016, I sent an email to Mr Bulmer … In my email, I … expressly called out the perceived conflict of interest. I also copied in [two senior PTV staff members]. I did this because PTV manage the contract for McIvor Transit and I wanted to alert them to the perceived conflict. Given that Mr Bulmer’s response copied in Ernest Fleming, who is Mr Bulmer’s line manager and responsible for overseeing bus coordination, I had expected that Mr Fleming would take appropriate steps to address any perceived or apparent conflict. Apart from their working relationship at the school, I was not aware that Mr Bulmer and Mr Fleming were friends or otherwise known to each other so I had assumed that Mr Fleming would take appropriate action.

369. The Director added that he became aware in February 2016 that Mr Bulmer was no longer working as bus coordinator at Bendigo South East College. He advised he was not sure whether Mr Bulmer was removed from the role or left of his own accord. The Director stated that he also became aware that Mr Bulmer’s proposal to the other school did not proceed. He added:

In February 2016 I requested that PTV include the Bendigo Bus Network into their School Bus Program network review list. I did this because the review activity provides for a thorough review of the bus coordinator function and assesses the correct application of the Department’s School Bus Program Policy … I understand that PTV commenced the review during 2016 and into 2017. I am aware that the review was not finalised as it was ultimately determined to include the Bendigo network into the School Bus Management System, a centralised system designed, with my involvement, to replace the localised function for bus coordination. In the meantime, I was also aware of the commencement of the Department’s investigation [into Ernest Fleming] and the investigation by the Victorian Ombudsman.
370. Email evidence shows that when Mr Bulmer removed himself from the college, his wife, Lynn Bulmer, stepped into the bus coordinator role. Ms Bulmer began sending emails as bus coordinator from his college bus coordinator account, which remained in his name. At interview, Mr Bulmer said Mr Fleming verbally agreed to this arrangement. However, Ernest Fleming’s response to the draft report stated:

At the end of 2015, Mr Bulmer approached Mr Fleming asking if his wife … could do the ‘filling in’ of the role. Mr Fleming responded that [Mr Bulmer’s] agreement with the Collegiate was that he was the Acting Regional Bus Co-ordinator and he would prefer he stayed responsible – Ms Lyn [sic] Bulmer could help with the administrative work. Mr Bulmer and the Collegiate agreed to this arrangement … The Acting Regional Bus Co-ordinator arrangement with Mr and Mrs Bulmer, saved [the college]/Collegiate nearly $30,000 a year.

371. Mr Bulmer’s response to the draft report stated that when Mr Bulmer ‘self-terminated his engagement [at the college] around December 2015 to focus on other business interests’, Ernest Fleming informally engaged a private company, Regional Transport Solutions Pty Ltd, to take over the provision of bus coordinator and bus charter coordinator activities.

372. Australian Securities and Investment Commission (ASIC) records show that Regional Transport Solutions was registered in November 2015 and owned by the company Cademily, which was owned by Michael and Lynn Bulmer; Mr Bulmer was also the director of Regional Transport Solutions.

373. Mr Bulmer’s response to the draft report stated that Regional Transport Solutions was a ‘separate legal entity’ for the purposes of the ‘informal’ arrangement with the college from December 2015, and:

... it is therefore the legal entity RTS [Regional Transport Solutions], which should reasonably be considered, and not [Mr Bulmer] for the [Regional Transport Solutions] period.

374. Mr Bulmer’s response also stated:

During the [Regional Transport Solutions] period of engagement [Mr Bulmer] was not directly involved with the activities of the [bus coordinator] or [bus charter coordinator], and it was RTS staff that were instructed by [Ernest Fleming] during that period.

375. The ‘RTS staff’ referred to in Mr Bulmer’s response was Lynn Bulmer who, in response to the draft report, stated:

I was employed by RTS, which is a private transport advisory company, as a casual employee. For a period of roughly nine months commencing in 2016 and concluding in 2017 I assisted, under instruction and direction, of Mr Enst [sic] Fleming (as agent for the Collegiant [sic] … ) with the bus coordination activities. I am not nor have I at any stage been an owner or director of RTS and was casual employee only … At no stage did I receive a financial benefit or real or personal property, or obtain any other direct or indirect monetary or proprietary gain [during this period].

376. However, the ASIC records referred to above show that Ms Bulmer was a 50 per cent shareholder of the company that owned Regional Transport Solutions (Cademily Ptd Ltd), with her husband holding the other 50 per cent.

377. Ms Bulmer also emphasised that she was never ‘an employee of the college, the Victorian government, an authority or a department or agency’ and was ‘at all material times a casual employee of RTS’.
378. Ms Bulmer wrote that while ‘seconded’ to the college, her role was to ‘assist Mr Fleming and the teachers of the college with bus coordination and charter activities’. She stated she did not have the financial delegation to award work to any particular bus company, and awarded work under instruction from Mr Fleming and teachers, each of whom ‘had their own particular bus companies which they preferred to use’.

379. Referring to the PTV review of the Bendigo bus network initiated by the Director of the Student Transport and Allowances Branch, Ms Bulmer added:

The appointed auditor [name of PTV officer] said to me after she completed her audit that ‘I was performing the work in accordance with the Regional School Bus Policy Guidelines’ and that I was doing ‘a great job’.

380. This claim is inconsistent with an email exchange between Ms Bulmer and the PTV officer, in which the PTV officer told Ms Bulmer on 19 December 2016:

[The STU] met with PTV last week to discuss the network review currently being undertaken, and as we understand, there are some major concerns with the application of policy in the Bendigo Network.

381. The concerns identified in the PTV officer’s email related to the application of eligibility guidelines and priority of access for school bus services, rather than the Bulmers’ conflicts of interest.

382. The Bulmers’ company’s unwritten arrangement with the college was terminated by the Acting Principal, on behalf of the college council, on 14 March 2017. The termination letter was addressed to Mr Bulmer at Regional Transport Solutions Pty Ltd and stated:

As you are aware, the School Council have held an arrangement with Regional Transport Solutions Pty Ltd … since around December 2015 for the provision of bus co-ordination services … This arrangement has been on an informal basis.

383. The letter does not refer to the arrangement between Ernest Fleming and Mr Bulmer from 2013-15, whereby Mr Bulmer was paid as a sole trader for bus coordinator services.

**Relationship between Michael Bulmer and Brandt Fleming**

384. Emails and meeting notes between Ernest Fleming’s son, Brandt Fleming, and Michael Bulmer show they were working together from at least September 2014 to develop an application (app) aimed at schools, called ‘Tracking Safe’ (see table below). From at least October 2014, they were also working on an app they referred to as ‘Excursion Tracker’, which would allow teachers to have at hand all necessary information about students while on excursions, such as emergency contact and medical details.

385. ASIC records show that Brandt Fleming and Mr Bulmer were partners in a range of registered transport and travel-related business ventures, from as early as November 2014. The table on the next page sets out these relationships.
386. Emails between Brandt Fleming and Mr Bulmer show that as early as March 2015, they were in talks with the owner of K.F.B.L Pty Ltd about purchasing the business. ASIC records show that Bendigo Coachlines, where Mr Bulmer had been working as Business Development Manager, is a business name of K.F.B.L..

387. According to ASIC records, on 1 June 2016 the Fleming Collective Pty Ltd (owned by Brandt Fleming, the sole shareholder) and Cademily Pty Ltd (owned by Michael and Lynn Bulmer) purchased K.F.B.L. Pty Ltd. The Fleming Collective and Cademily each held 50 per cent of shares in K.F.B.L..

388. In her response to the draft report, Lynn Bulmer said she was ‘not a party to the purported business dealings between my husband and Mr Brandt Fleming’.

<table>
<thead>
<tr>
<th>Business name</th>
<th>Date of appointment</th>
<th>Role</th>
<th>Date of appointment</th>
<th>Role</th>
</tr>
</thead>
<tbody>
<tr>
<td>Tracking Safe Pty Ltd.</td>
<td>25 November 2014</td>
<td>Director</td>
<td>5 February 2014</td>
<td>Director</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td>(cease date 31 March 2017)</td>
<td></td>
</tr>
<tr>
<td>Heathcote Transit Pty Ltd</td>
<td>14 July 2015</td>
<td>Director &amp; Secretary</td>
<td>14 July 2015</td>
<td>Director</td>
</tr>
<tr>
<td>Trekkaz</td>
<td>8 January 2016</td>
<td>Director</td>
<td>8 January 2016</td>
<td>Director</td>
</tr>
<tr>
<td></td>
<td>(cease date 4 August 2016)</td>
<td></td>
<td>(cease date 4 August 2016)</td>
<td></td>
</tr>
<tr>
<td>K.F.B.L. Pty Ltd</td>
<td>1 June 2016</td>
<td>Director</td>
<td>1 June 2016</td>
<td>Director</td>
</tr>
<tr>
<td></td>
<td>(cease date 30 March 2017)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Southern Cross Travel Bendigo Pty Ltd</td>
<td>1 June 2016</td>
<td>Director</td>
<td>1 June 2016</td>
<td>Director</td>
</tr>
<tr>
<td></td>
<td>(cease date 30 March 2017)</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>J.P. Nihill Pty Ltd</td>
<td>19 June 2016</td>
<td>Director</td>
<td>28 March 2013</td>
<td>Director</td>
</tr>
<tr>
<td>Mclvor Transit Pty Ltd</td>
<td>30 June 2016</td>
<td>Director</td>
<td>2 July 2014</td>
<td>Director</td>
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</tbody>
</table>
Ernest Fleming’s awareness of the relationship

389. Mr Bulmer told the investigation he informed Ernest Fleming of all his business interests when Mr Fleming engaged him in 2013, including his role as Business Development Manager for Bendigo Coachlines and his work on the Tracking Safe app with Brandt Fleming. He said he also informed Ernest Fleming of his purchase of Bendigo Coachlines with Brandt Fleming in June 2016. He said:

I would have expected that by disclosing my interests, that the person I’m disclosing to, being Ernie Fleming, would have acted and said, ‘right, we wish to cease or continue’.

390. In response to the draft report, Mr Bulmer’s legal representative added:

[Ernest Fleming] was the [departmental employee] and ‘manager’ (as described in the relevant [departmental] Conflict of Interest document) and responsible to act once he was aware of such disclosure. [Ernest Fleming] accepted such and [Mr Bulmer] did continue to act in accordance with the approval and in a lawful manner.

391. There is no evidence that Ernest Fleming made any declarations to the regional office about his son’s business relationship with Mr Bulmer while Mr Bulmer was bus coordinator at the college (and before Ms Bulmer took over the role in January 2016). Mr Fleming’s failure to declare the relationship was confirmed by the Senior Adviser at interview.

392. Ernest Fleming’s response to the draft report stated that Mr Bulmer did not inform him of the Tracking Safe app in 2013, that he had ‘little if any knowledge of any of Mr Brandt Fleming’s business financial partnerships ... before June ’16’, and that the collegiate was informed of Mr Bulmer’s business interests, including his work for Bendigo Coachlines.

393. The response also stated that Mr Bulmer was not ‘immediate family’ for the purposes of the 2013 Conflict of Interest policy, but that despite this, Mr Fleming still informed his line manager at the regional office of Mr Bulmer’s business interests.

394. The response also stated:

Mr Fleming was never directed to put information he shared with his line manager in writing obviously believing that informing his [line manager] was the [regional office’s] ‘way’ of letting the Regional Director know ...

395. In documents dating from September and October 2014, Brandt Fleming and Mr Bulmer described conversations with Ernest and Karen Fleming about some of their business ventures, including discussions about using school resources and students’ personal data to develop them.

396. For example, in an email dated 10 September 2014 sent to Mr Bulmer’s college email address, Brandt Fleming said he had discussed with his father ‘implementing “Tracking Safe” into [the college]’:

Dad would be happy to have [the college] take part in the program initially ... In relation to ‘Seed’ funding from [the college] ... their budget is basically full for the remainder of the year. Dad indicated that there could possibly be $30k early next year, but I mentioned that was too far away.

397. The minutes of a meeting on 23 September 2014 between Mr Bulmer, Brandt Fleming and other business associates to discuss the Tracking Safe app stated:

BF [Brandt Fleming] indicated that Ernie [Fleming] is willing to implement a pilot study through [the college] using their systems, staff and support networks to trial a test model.
398. In an email dated 9 October 2014, Mr Bulmer, writing from his college bus coordinator address, advised Brandt Fleming he had spoken to Karen Fleming about accessing sensitive personal data of students held by the department to assist with the development of the Excursion Tracker app:

I’ve just had a chat with Karen about the information in Cases [CASES21, the department’s student records database] and it includes the fields that we need including the medical conditions ...

3 processes are required
Extraction of information from Cases via a “Filter”
Importing of this information into Tracking Safe Excursion (TSE)... [including:]
• Student Name
• Emergency contact name
• Emergency contact phone number
• Medical condition
• Medication treatment
...
I’m thinking that we should ask Ernie nicely on how they export the Cases information into BSE virtual for excursions and if the gods are favouring us whether this export is automated and produces a file.

399. In reply on 10 October 2014, Brandt Fleming wrote:

That’s some good information. What about a meeting on Monday ... This will give me some time to do some research and have a chat to dad over the weekend.

400. In response to the draft report, Mr Bulmer’s legal representative stated that Mr Bulmer:

acknowledges accessing information and that such information was provided with the relevant authorisation from [Ernest Fleming].

401. Other than this statement, the investigation found no evidence that Karen Fleming or Ernest Fleming provided Mr Bulmer or Brandt Fleming with information from CASES21, or that Ernest Fleming took steps to ‘implement’ Tracking Safe at the college. The emails, however, suggest that Mr and Mrs Fleming were aware of their son’s business relationship with Mr Bulmer.

402. In response to the draft report, Brandt Fleming wrote:

The conversations that took place with Ernie and Karen Fleming [about Tracking Safe] didn’t progress any further than just a conversation. As you would have found, there was no pilot study completed by Tracking Safe Pty Ltd with Bendigo South East College.

403. In her response to the draft report, Karen Fleming stated:

At no stage was I asked to disclose confidential material to Brandt [Fleming] or Mike [Bulmer]. From my memory it was a general conversation along the lines of what the roles of ‘CASES’ in education was. For example, it was the engine/database that stored all the education information ... I had limited knowledge of [CASES21] and only used it in the role of attendance and entering of medical incident forms for students. My computer was used by a range of staff when needed.

404. Ernest Fleming’s response stated:

Mr Fleming said ‘no’ to a request to share private information. Mr Fleming and [the college] have had nothing further to do with Tracking Safe other than the initial ‘informal chat’ ... There were similar ‘chats’ about a range of ‘ideas’ his son, Mr Brandt Fleming, was exploring with a range of people. The Tracking Safe App idea, five years later, is not in use, or to Mr Fleming’s understanding, viable.
405. Ernest Fleming was aware of his son’s purchase of Bendigo Coachlines with the Bulmers. On 15 August 2016, six weeks after the purchase, Ernest Fleming told a meeting of the college council that one of his sons was a director of Bendigo Coachlines and ‘nothing will change with [the college]. The meeting minutes do not record him indicating his son was a 50 per cent owner of the company, nor that the Bulmers were the other owners. He did not report his conflict of interest to the Regional Director, as required by the department’s Conflict of Interest policy.

406. The investigation reviewed the college council’s meeting minutes from 25 February 2013 to 21 November 2016; this was the only discussion of a ‘conflict of interest’ recorded in the minutes during this period.

407. Ernest Fleming’s response to the draft report stated:

The Collegiate were informed [of Brandt Fleming’s purchase of the company] where Mr Fleming’s line manager was present. There was no instruction by his line manager that [the regional office’s] practice had changed and things now needed to be put in writing … Director is the correct term given ‘synonymous’ with ownership in a private company.

408. Mr Fleming’s evidence conflicts with that of his acting line manager at the time, who advised that Mr Fleming only disclosed the conflict of interest when the acting line manager sought a meeting with him, prompted by a complaint to the regional office. The acting line manager’s evidence is outlined in later sections.

Awarding of college business to Bendigo Coachlines by the Bulmers

409. The bus charter coordinator role allowed the Bulmers to allocate college business to Bendigo Coachlines. The department’s audit of the ADP noted that the Bulmers:

placed the orders for transportation services for camps, excursions and ADP with Bendigo Coachlines, which was a direct conflict of interest of their role. [The audit] did not find any documentary evidence to support whether these contracts were negotiated fairly and at market price.\(^{10}\)

410. Mr Bulmer’s response to the draft report stated that he ‘rejects and denies’ the ADP audit’s finding, and reiterated that Mr Bulmer allocated bus business under instruction from Ernest Fleming and in accordance with the college’s bus services policy (discussed below). He also stated the audit was in error as it relates to the period in which his company RTS was engaged in the role.

411. Ms Bulmer, in her response, also denied the ADP audit’s finding and reiterated that she allocated bus charter work according to the instructions of Ernest Fleming and teachers at the college. She stated:

All contracts were negotiated fairly and the award of work from my recollection was made to the lowest bidder and based on availability.

412. The table below, from data provided to the investigation by the department, shows payments by the college to bus companies it engaged each year from 2011 to 2016. Those connected to Mr Bulmer are highlighted.

\(^{10}\) ADP audit, 13.
<table>
<thead>
<tr>
<th>Table 2: Bendigo South East 7-10 College payments for bus services – 2011-16</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Bus Company 1</strong></td>
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<tr>
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<td></td>
</tr>
<tr>
<td><strong>Bus Company 2</strong></td>
</tr>
<tr>
<td><strong>Bendigo Coachlines</strong></td>
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<tr>
<td><strong>Bus Company 3</strong></td>
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<tr>
<td><strong>Bus Company 4</strong></td>
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<tr>
<td><strong>Bus Company 5</strong></td>
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<tr>
<td><strong>Michael A Bulmer</strong></td>
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<tr>
<td><strong>Bus Company 6</strong></td>
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<td><strong>Bus Company 7</strong></td>
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<tr>
<td><strong>Southern Cross Travel Bendigo</strong></td>
</tr>
<tr>
<td><strong>Bus Company 8</strong></td>
</tr>
<tr>
<td><strong>Tanderrum Tours</strong></td>
</tr>
<tr>
<td><strong>Total</strong></td>
</tr>
</tbody>
</table>
Graph 1: Bendigo South East College’s top payments for bus services, 2011-16
413. At interview, Mr Bulmer said the payments to ‘Michael A Bulmer’ in the table were his earnings for the bus coordinator role, while the $25,372 paid to his company, Regional Transport Solutions, in 2016 was for his wife’s bus coordinator services (including the charter coordinator function).

414. The data shows that prior to Mr Bulmer’s engagement as bus charter coordinator, Bendigo Coachlines was the largest provider of bus services to the college, earning significantly more than its closest competitors.

415. The data also shows that after Mr Bulmer’s engagement, from 2014 onwards, Bendigo Coachlines’ income from the school increased significantly, from $60,351 in 2013 to $89,963 in 2014 and $117,812 in 2015.

416. Of the three other bus companies that provided services to the school from 2011 onwards:
   • Bus Company 1 saw its income from the college decrease each year after Mr Bulmer’s appointment, from $22,227 in 2013 to $395 in 2016
   • Bus Company 3, which had earned $2,555 in 2013, received slightly less the next year and only $586 in 2015
   • Bus Company 5 went from earning $14,758 in 2014 to $4,458 in 2016.

417. Payments to Bendigo Coachlines declined from $117,812 in 2015 to $76,209 in 2016 (still significantly more than other companies received from the college). The investigation notes that in January 2016 the department raised the issue of conflict of interest with Mr Bulmer and the Ombudsman commenced her investigation into the matter in October 2016.

418. Ernest Fleming’s response to the draft report stated the reasons for the increase in college business to Bendigo Coachlines in 2014 and 2015 were:
   • increased enrolments at the college
   • an increase in off-campus extracurricular activities
   • ADP off campus training sessions, and the ADP doubling in numbers in 2015
   • a significant increase in ‘student success’, resulting in a significant increase in out of town travel to sports finals etc.

419. Ernest Fleming’s second response to the draft report stated:
   Most of the so-called competitors were not in competition with Bendigo Coachlines at all. Bendigo Coachlines was the largest supplier of services to the college prior to Mr Bulmer taking on the Co-ordinator role … [original emphasis]

420. In his first response to the draft report, he said the decrease for companies other than Bendigo Coachlines in 2016 was due to a decrease in bookings of local excursions, which resulted from Mr Bulmer suggesting the college could reduce the cost of transport by having a mini bus parked at the school for a flat rate for the college. College Council agreed.’ Mr Fleming estimated that this saved the college $50,000 in 2016.

‘Judith’ the bus

421. Mr Fleming’s response did not mention that the minibus leased to the college was owned by Mr Bulmer (through one of his companies, Tanderrum Tours).
422. Emails show Mr Bulmer first proposed leasing a minibus to the college on 4 December 2014, in an email entitled ‘do you a deal’. He proposed to lease the vehicle to the college for three years at a cost of $20,000 and GST for the duration, with the college to pay $10,000 and GST upfront and a further $5,000 and GST to be paid in 2016 and 2017. Mr Fleming responded on 13 December 2014, ‘Sounds like a plan!!’ Mr Bulmer forwarded the email chain to Adam Fleming on 29 January 2015 and Karen Fleming on 18 February 2015. In his email to Mrs Fleming, he wrote:

Thanks for the support with this, if you can weave some magic that would be great... Once the bus arrived at school then it would be available for ADP or with clever accounting allow this vehicle to be used by other departments @ [the college] for a ‘fee’. Trying not to put any pressure on but we would like to use this money to assist with paying for Patent Lawyers to protect the “Tracking Safe” app that we are developing.

423. The next day, he emailed Mrs Fleming again to say:

Thank you for the divine intervention, had a chat with the Boss this morning and he has approved the bus, this is sensational news on so many fronts.

424. Bank records show that on 11 March 2015, the college transferred $15,000 to Tanderrum Tours’ bank account. An email of 16 March 2015 to Mr Bulmer from a Tanderrum Tours employee, who was also involved in the Tracking Safe Project, stated ‘the 15K is in the ANZ account.’ Later that day, the employee emailed a ‘patent and trademarks attorney’ stating, ‘I’ve transferred the first $5K into your account today to start our PPA for the Tracking Safe IPP’. Mr Bulmer and Brandt Fleming were copied into the email.

425. Ernest Fleming’s response stated:

What Mr Bulmer/Bendigo Coachlines did with the money was not relevant and not discussed with Mr Fleming - it would have meant nothing to Mrs Fleming. He obviously spent more money on the bus than he was paid originally. Mr Bulmer was always open about what he was thinking – his emails indicate his personality and sense of humour. He had many ideas that he openly shared - most were not taken up.

426. A transfer of registration document shows the minibus was purchased by Tanderrum Tours on 18 March 2015. The contact details provided on the document were Mr Bulmer’s mobile number and the college bus coordinator email address.

427. On 23 March 2015, Mr Bulmer emailed the college’s Business Manager, with Ernest Fleming in copy, advising her that ‘we have taken delivery of a school bus’ and asking her to organise a fuel card and e-tag for the vehicle. The registration number he provided matched the number on the transfer of registration document cited above. On 25 March 2015, Mr Bulmer emailed Ernest Fleming, Karen Fleming, Adam Fleming and the Business Manager from his bus coordinator email address with instructions for the use of the bus. He wrote:

Yes the bus now has a name "Judith", treat her well ... Keys – Ernie, Adam and myself have one each. We also have another additional "spare", let me know where this is to be kept. I will show all staff how to undertake a Pre Trip inspection and how to fill the Water and Oil. The bookings for the bus will be done through myself so I need to know when ADP and other departments require the bus, date, duration etc.

428. Emails between Lynn Bulmer, Michael Bulmer and the Business Manager from June 2016 show that the vehicle was not leased to the college for a flat rate, as Mr Bulmer charged the college additional fees for trips undertaken in the vehicle.
429. On 3 June, Ms Bulmer emailed the Business Manager from the college bus coordinator email address noting that the Business Manager did ‘not feel comfortable in processing an invoice in regard to Judith travel costs …’ She asked the Business Manager:

Can you please advise, as to how an invoice can be created to cover this cost, fact being, the bus is actually owned by Bendigo Coachlines and does incur costs to use and maintain.

430. The Business Manager included Mr Bulmer’s Bendigo Coachlines email address in the chain, and on 8 June 2016, Mr Bulmer emailed her a Bendigo Coachlines invoice for $880 for a journey in the bus to and from the college on 31 May 2016.

431. Mr Fleming’s second response to the draft report stated that this excursion was ‘most likely one where the cost of transport was “sponsored” by the event and therefore an invoice was needed for reimbursement’.

432. Mr Fleming’s response also said the college council had considered purchasing or leasing a bus several times over the years before Mr Bulmer proposed leasing ‘Judith’ to the college:

None of the [previous] proposals were cost effective. The changes to the learning program, in particular the addition of the specialisms ADP and ACA, that had many before and after school and out of town events … saw the cost of transport significantly increase in 2014 and 2015 … Again the school purchasing a bus was considered but the College was not in a position to do that in 2014 … Mr Bulmer looked at options. Mr Bulmer’s proposal of having a Bendigo Coachlines Bus parked at the College was considered and accepted. The figures show this was a good deal for the College and a significant reduction in work to and income for Bendigo Coachlines. Mr Bulmer’s actions were for the benefit of the college.

433. There is no record in the college council minutes (February 2013 to November 2016) of the council discussing the purchase or lease of a bus or Mr Bulmer’s proposal to lease ‘Judith’ to the college, and no record of the council approving the proposal.

434. Mr Fleming’s response also argued that ‘Judith’ saved the college ‘well over $130,000 in three years’. He noted this was ‘significant money – money that would have [otherwise] been paid to Mr Bulmer connected businesses!’ This is inconsistent with Mr Fleming’s original response to the draft report, which stated that the lease of ‘Judith’ was the reason the college booked less travel through businesses not connected to Mr Bulmer, who were supposed to receive local work under Mr Fleming’s ‘bus protocols’ (detailed below).

‘Policy’ on bus charter work

435. At interview, Mr Bulmer said that when he became bus coordinator (with the attendant bus charter coordinator function), Ernest Fleming instructed him to allocate all out-of-town charter work to Bendigo Coachlines, while charter services within Bendigo were to be split between two other companies. Mr Bulmer said this was a long-standing arrangement that had been in place for ‘over twenty years’, but he did not see any documents relating to this arrangement. Ernest Fleming’s response confirmed that he ‘instructed Mr Bulmer to maintain the protocols, also explaining the COI issues with [two other local bus companies whose owners had relatives working at the college]’.
436. The investigation found no written evidence of such a policy existing before Mr Bulmer became bus coordinator. An email chain provided by Ernest Fleming in response to the draft report suggests that, on the contrary, bus charter work was allocated to other companies before Mr Bulmer became bus coordinator. On 21 June 2016, shortly after Mr Bulmer and Brandt Fleming purchased Bendigo Coachlines, the operator of another Bendigo bus company emailed Ernest Fleming stating:

Just a short note to see if there is any problems with myself doing charter for [the college], as there has been a lot of jobs ... being contracted out. I text[ed] Mike [Bulmer] to see if there is an issue but he says your [sic] the new bus co-ordinator if this is the case I am still happy to do charter, I make my Bus available like I have done for the Past ten years.

437. Mr Fleming drafted a response to the bus operator on 26 June 2016. It is unclear whether he sent this response to the other operator. He forwarded the draft to Mr Bulmer’s departmental email address, writing, ‘This response ok???’

438. In the draft response forwarded to Mr Bulmer, Mr Fleming did not clarify that Mr Bulmer’s wife was the new bus coordinator contact. He wrote:

Not sure where you are getting your ‘misinformation’ from. We are still operating as per last couple of years. On checking you are still getting more charters than others. We do try to ‘balance it between local operators’...As we have always done, we use Bendigo Coachlines for out of town given no country bus restrictions or when multiple buses are required and [another company] can’t cover.


440. The document stated:

To avoid potential COI (Bendigo Coachlines Directors – Mike Bulmer & Brandt Fleming) the following guidelines will continue to be policy to manage potential COI:

- Local excursions – country bus operators eg [Bus Company 3 and Bus Company 5]
- Out of Town – Bendigo Coachlines

Comparative rates of operators to be tabled at College Council at the beginning of each semester.

Line Manager at Regional Office informed.

441. Metadata shows the document was created by Karen Fleming at 8.09am on 6 June 2016, hours before Ernest Fleming’s acting line manager met with Mr Fleming to discuss a complaint regarding Mr Bulmer.

442. The acting line manager told the investigation in an email dated 10 July 2018 that Mr Fleming did not inform the regional office of his son’s part ownership of the company until this meeting:

I met with Ernie Fleming on Monday, 6 June 2016 at 11.30am at Bendigo South East College. This was to follow up on an anonymous complaint ... regarding the regional bus coordinator, Mr Mike Bulmer. When I asked the question about whether Mike Bulmer had declared to Ernie that he was a company director of Bendigo Coachlines, Ernie said that Mike had declared it verbally but had not yet put it in writing ... Ernie then went on to inform me that in the last two weeks, Mike Bulmer had become a part owner of Bendigo Coachlines, along with Ernie’s son, Brandt Fleming. This was the first time that Brandt Fleming’s part ownership of Bendigo Coachlines had been mentioned. Mr Fleming handed me what he termed a draft Conflict of Interest document ... that he said he intended presenting at the next ... school council meeting.
443. Metadata shows the document was last modified by Ernest Fleming on 15 August 2016, the day of the college council meeting at which he advised his son was now a director of the company.

444. The investigation did not find evidence of this document being circulated to college staff. There is no record in the college council minutes of the ‘bus protocols’ document being discussed, or comparative rates of bus operators being tabled at any time. Mr Fleming’s substantive line manager, the Senior Adviser, said at interview that Mr Fleming did not declare the conflict of interest to the regional office.

445. Mr Bulmer’s response to the draft report stated that the existence of this document is evidence that Mr Bulmer made timely declarations to Ernest Fleming regarding his business interests:

How [Ernest Fleming] implemented that document to discharge his duties as an employee [of the department] and ‘manager’ was not a matter for [Mr Bulmer] ... It was not [Mr Bulmer’s] obligation to act on such disclosure nor was [Mr Bulmer] aware or part of any college council meetings and cannot comment on what was or was not discussed.

446. In his response to the draft report, Brandt Fleming wrote:

K.F.B.L. ([trading as] Bendigo Coachlines) was a regular bus supplier to Flora Hill Secondary College and then Bendigo South East College prior to my involvement. As K.F.B.L. Pty Ltd is one of the largest Bus charter [companies] within the Bendigo region; mainly due to the large number of vehicles within the fleet, all large schools within the area (and not just Bendigo South East College) used the services of ... Bendigo Coachlines ... to assist with the movement of large number of students locally, state wide and around Australia, for many years prior.

447. As noted above, the Bulmers’ responses to the draft report stated that they allocated bus charter work under instruction from Ernest Fleming and teachers. Both responses also referred to the instructions in Ernest Fleming’s ‘BSE Bus Protocols’ document.

448. However, although the document stated that local excursions should be allocated to companies other than Bendigo Coachlines, the investigation found one example where Lynn Bulmer booked a local excursion through Bendigo Coachlines, and then appears to have subcontracted it to one of the companies mentioned in the ‘bus protocols’ document. On 25 May 2016, Ms Bulmer arranged with Karen Fleming (who was listed as the ‘Teacher in Charge’ for the excursion) for the college to pay Bendigo Coachlines. Ms Bulmer advised Mrs Fleming in an email that the other company would then invoice Bendigo Coachlines for the work. Mrs Fleming replied, ‘Sounds good, thanks’. There is no evidence that Ms Bulmer booked the excursion through Bendigo Coachlines under instruction from Ernest Fleming or Karen Fleming. The arrangement was made days before Brandt Fleming and Michael Bulmer purchased the company.

449. On another occasion, on 11 April 2016, Adam Fleming contacted Lynn Bulmer to confirm whether ‘Judith’ was available ‘on Tuesday and Thursday mornings this term to pick up the cricketers’. Ms Bulmer responded the same day that ‘Judith’ was available for most occasions, but:

a few of [the trips] will have to be charter, for which I will use Mike [Bulmer] and [Bendigo] Coachlines as they are the cheapest.
Quotes for bus services

450. With few exceptions, the Bulmers did not seek comparative quotes before booking charter bus services. In response to the draft report, Ms Bulmer stated:

For all local work I provided [Ernest] Fleming with three quotes and he then allocated funds. Copies of such are held in the [bus coordinator] email account controlled by [the department].

451. Mr Bulmer’s response also said that he ‘regularly provided’ Ernest Fleming with quotes ‘and [Mr Fleming] then allocated the funds’.

452. To assess these claims, the investigation searched through the college bus coordinator email account used by the Bulmers and Ernest Fleming’s email account.

453. The search revealed that in May 2016 and February 2017, Lynn Bulmer contacted rival bus operators from the bus coordinator address to enquire about their prices generally (as opposed to obtaining quotes for specific jobs). Three companies responded, providing estimated prices for trips within Bendigo. In an email dated 30 May 2016, Ms Bulmer asked a local bus operator to ‘please send a quote to Ernie Fleming advising the local transfer costs for your vehicle this year 2016’. Before sending the email, Ms Bulmer forwarded the draft to Michael Bulmer at his Bendigo Coachlines address with the subject ‘is this ok’. Mr Bulmer replied: ‘Perfect’.

454. The search did not, however, find any examples of Michael Bulmer or Lynn Bulmer seeking three quotes before allocating bus work, for specific trips either outside or inside of Bendigo, with the exception of the trip to Tasmania outlined below. Nor was there evidence of either of the Bulmers ever seeking comparative quotes from bus companies before making a booking, with two exceptions.

455. The first exception was for a college trip to Tasmania in October 2016. On this occasion, Ms Bulmer sought four quotes from different Tasmanian bus companies.

456. The second exception was when the excursion destination required the college to obtain two quotes before booking a bus service. In this case, the Bulmers obtained quotes only from their own companies.

457. In July 2016 a teacher wrote to the bus coordinator email address to book a bus for an excursion to Ecolinc, a departmental Science Specialist Centre, on 24 November 2016. Ecolinc told the teacher it required schools to obtain quotes from two bus companies and forward them to Ecolinc. Ms Bulmer, as bus coordinator, wrote to her husband at his Bendigo Coachlines email address on 15 July 2016, asking him to provide two quotes, in line with Ecolinc’s policy.

458. On the same day, Mr Bulmer provided Ms Bulmer with two quotes, one from Heathcote Transit Pty Ltd., trading as Comet Tours and Charter (owned by Mr Bulmer and Brandt Fleming), and a cheaper one from Bendigo Coachlines. Ms Bulmer forwarded these quotes to the teacher who had requested the booking.
Email evidence shows Ecolinc chose the Bendigo Coachlines quote and made the booking. Mr Bulmer, in his capacity as Business Development Manager of Bendigo Coachlines, was the contact person for Ecolinc in relation to the booking.

In response to this evidence, Ms Bulmer told the investigation that although the two written quotes were from her husband’s companies (which were also part-owned by Ms Bulmer), she also obtained ‘verbal quotes’ from two other companies:

All written and verbal quotes were then provided to the [the teacher] who then exclusively dealt with Ecolinc and wasn’t privy to the final commercial discussion or the award of business … I informed [the teacher] that I intended to get quotes from my husband’s companies and he was in agreement due to the urgency of the matter.

In her emails to the teacher, Ms Bulmer provided the written quotes from Heathcote Transit and Bendigo Coachlines but did not mention the ‘verbal quotes’ she claims to have received. It is unclear why she would have sought four quotes, given Ecolinc only required two.

Mr Bulmer’s legal representative, in response to the draft report, stated:

of the quotes in question, one was incorrectly issued. [Mr Bulmer] did speak with Ms Bulmer by phone to confirm this error … subsequent to that call the incorrect quote did not proceed.

The relevant email chain shows that Mr Bulmer did issue an incorrect quote on behalf of Bendigo Coachlines to Ms Bulmer: he initially quoted only for one bus instead of two. Within an hour and a half, he reissued the quote from Bendigo Coachlines to quote for two buses. This does not change the particulars of the incident, that the Bulmers arranged two quotes from two of their own companies, Bendigo Coachlines and Comet Tours and Charter. Ernest Fleming’s response to the draft report stated:

Mr Fleming has no recall of the Ecoline [sic] request. However, given the Regional Bendigo context, (ie Bendigo Coachlines is the only - proprietary line - available charter company in Bendigo) it was the only available busline to do the work. If asked, Mr Fleming would have instructed Mr Bulmer to ring Ecoline and explain why only one company was available, and if they insisted on two quotes, Mr Fleming would have asked Mr Bulmer to obtain an out of town quote. The [department’s] Financial Manuals ‘encourage’ the use of ‘local suppliers’.

The response also stated that the college built an online ‘Events Planning Portal’ in 2015, which staff were expected to use when organising excursions.

The online Events Planning Portal, built in 2015, had ‘quoting’ built into it. It took some time to make user friendly and then ensure staff used it as intended … This is a clear example of Mr Fleming working to mitigate COI risk ...

Attached to Mr Fleming’s response were documents relating to two excursions booked through the portal. However, both were overseas excursions that involved air travel, not bus travel, and neither contained any evidence that multiple quotes were obtained when booking the travel.
Awarding of work to italktravel by Ernest and Karen Fleming

466. italktravel is a Bendigo-based travel agency, and a business name of Southern Cross Travel Bendigo Pty Ltd since 2015. Southern Cross Travel was registered on 23 June 1993 and purchased by Brandt Fleming and Michael and Lynn Bulmer on 1 June 2016. ASIC records show that Brandt Fleming remained a director of the company until 30 March 2017.

467. Data provided by the department shows that after the Bulmers and Brandt Fleming purchased the company, the college paid italktravel and Southern Cross Travel a total of $19,894.50 in four transactions between 1 August and 7 September 2016. Prior to this, the school had last purchased services from Southern Cross Travel on 21 February 2011, worth a total of $243.02. The college’s 2016 payments to italktravel were listed as being for:

- Camps (Sciences and Engineering Tour): $11,390
- Health and Physical Education (Sport General): $6,796
- Administrative Services (Professional Development): $850
- General purpose (Contingency Fund): $858.50.

468. Only one other local school made payments to italktravel/Southern Cross Travel in the latter half of 2016; these were two deposits for interstate excursions worth $2000 in total.

469. Ernest Fleming’s response said that the college used italktravel only in ‘emergency circumstances’, and that a printout of the college’s Events Planning Portal would confirm this. The investigation does not dispute that there is only evidence of four instances of the college booking travel through italktravel in 2016.

470. The investigation did not find evidence of the Bulmers’ involvement in booking college travel through italktravel. Instead, at least two of the college’s four purchases from italktravel in 2016 (worth $11,390 and $6,796) were arranged by Karen Fleming. Mrs Fleming liaised with Brandt Fleming to book college trips through italktravel, with Ernest Fleming’s knowledge.

471. In July and August 2016, Brandt Fleming and Karen Fleming exchanged emails regarding a trip to Hobart for 36 students in October 2016. Mrs Fleming forwarded an email from Brandt Fleming with proposed details of the trip to Ernest Fleming on 22 July 2016. The exchange culminated in Brandt Fleming sending his mother an italktravel invoice, addressed to the college, for $11,390 in flights and accommodation.

472. Brandt Fleming and Karen Fleming also emailed each other in June and July 2016 regarding the college aerobics team’s trip to the Gold Coast to compete in the National Schools Aerobics Championships in August 2016. Brandt Fleming copied Ernest Fleming to the following email, addressed to Karen Fleming, on 1 July 2016:

   Revised prices as discussed today. Please confirm which one you want and I will get [italktravel staff member] to book.

473. On 6 July 2016, Brandt Fleming emailed Karen Fleming an italktravel invoice for $6,796 in flights and accommodation. Mrs Fleming forwarded the invoice to Ernest Fleming with the message:

   This is the aerobics [trip] for [the aerobics team’s coach] are you able to pay on the credit card???

474. Ernest Fleming replied, ‘Yes’.
475. There is no evidence of Ernest Fleming declaring a conflict of interest regarding italktravel to the regional office.

476. Ernest Fleming’s response to the draft report stated that although he had known of italktravel since the early 1990s and assumed it was part of Bendigo Coachlines, with which it shared an office, the college never used it until ‘special circumstances’ in 2016 required it. His statement added:

‘Short notice’ interstate excursions involving a group of students, made meeting not only the [department’s] compliance [requirements] virtually impossible, but quoting also exceptionally hard. The [Events Planning] Portal required [staff to obtain] three quotes – this was a ‘challenge’ for staff to get their heads around. Hence where Ms Fleming was asked if she could assist – Ms Fleming was ‘the go to’ for many staff when they needed help with ‘things they found hard’ - Ms Fleming simply contacted Mr Brandt Fleming to provide one of the quotes for two staff members ‘under the pump’ to have ‘late offer interstate’ excursions organized…To the best of Mr [Ernest] Fleming’s recall, the common denominator for using iTalk in 2016 for ONLY these trips was, they were ALL short notification opportunities, that created major planning difficulties … hence it was either accept the iTalk quote or students missed out. [original emphasis]

477. In her response to the draft report, Karen Fleming wrote:

Our only concern when organising experiences for our students is to obtain the lowest cost possible and with all the safety components met.

478. Mrs Fleming said a teacher had requested help at short notice to book the Hobart trip as he was ‘snowed under’ and had been unable to find anything cheaper:

iTalk[travel] gave him a quote with no expectations attached. I was not involved or aware of the planning details for this trip (my only job was to provide the necessary first aid bags and cameras) ...

479. Mrs Fleming’s response is inconsistent with the emails outlined above, showing her obtaining an invoice from Brandt Fleming.

480. In relation to the Gold Coast trip, Mrs Fleming wrote that another teacher had similar difficulties booking travel and accommodation, and that italktravel ‘went above and beyond’ to arrange it. She stated that she did not make the decision to book through italktravel and that the teacher in charge of the trip made the booking. This is inconsistent with the email chain showing Mrs Fleming liaising with Brandt Fleming to obtain an invoice, and with Ernest Fleming to arrange payment to italktravel.

481. In his response to the draft report, Brandt Fleming wrote:

[Southern Cross Travel] has been associated with KFBL Pty Ltd since 1993. Due to the licences and connections to travel supply partners that come from being a travel agent, KFBL Pty Ltd utilises the services of [Southern Cross Travel] to book large group items like accommodation and travel, which only travel agents have access to … Hence, both entities have been a supplier to the majority of schools within the Bendigo region far before I became involved in these companies.
Findings

Ernest and Karen Fleming

482. Ernest Fleming was aware when he engaged Michael Bulmer as bus coordinator and made him responsible for booking charter buses at the college, that Mr Bulmer was Business Development Manager at Bendigo Coachlines, a company that stood to gain from Mr Bulmer directing college business to it.

483. Mr Fleming engaged Mr Bulmer despite this conflict of interest and did not put in place measures to prevent Mr Bulmer using his role at the college to seek a private benefit.

484. In response to this finding, Mr Fleming said the college’s Events Planning Portal, developed in 2015, had the college’s ‘established protocols built in that had been in use for some years, eg for managing [conflicts of interest]’. There is no evidence that the existence of this portal mitigated Mr Bulmer’s conflict of interest, given that the ‘bus protocols’ referred to by Mr Fleming directed all out of town charter work to Bendigo Coachlines.

485. Mr Fleming was aware that Mr Bulmer used his position as bus coordinator to seek business from another school for McIvor Transit, because Mr Bulmer copied him in to his email to the Director of the department’s Student Travel and Allowances Branch in January 2016.

486. Mr Fleming also authorised Mr Bulmer to lease a minibus (‘Judith’) to the college. Mr Fleming claimed this arrangement saved the college $130,000 in transport over three years and that this explains why the college spent less money on travel in 2016, but did not mention that Mr Bulmer benefited financially as the bus was owned by his company.

487. Mr Fleming’s failure to act on Mr Bulmer’s conduct – and his active facilitation of it in the case of ‘Judith’ the bus – contravened his responsibilities as a principal under the department’s Conflict of Interest policy. In response to this finding, Mr Fleming’s legal representative stated:

   The arrangement [in relation to ‘Judith’] clearly saved the College significant money – the reason Mr Fleming, on behalf of the College Council, agreed to having the bus ‘leased’ - ie parked at the College for self drive excursions…The connection between Mr Bulmer/Bendigo Coachlines and Judith was obvious and well known. College Council knew of the connections and fully supported the proposed arrangements seeing, as they did, the obvious benefits to the school.

488. However, there is no evidence Mr Fleming sought approval from the college council for the arrangement, and the lease remains an example of Mr Bulmer using his position at the college to obtain a private benefit with Mr Fleming’s approval.

489. From at least September 2014, Ernest Fleming also had a conflict of interest in relation to Mr Bulmer’s engagement at the college owing to his awareness of his son’s business relationship with Mr Bulmer.

490. He was also aware of his son’s purchase of Bendigo Coachlines with Mr Bulmer in 2016. Despite this, he allowed the Bulmers to remain in charge of bus hire at the college and direct charter bus work to Bendigo Coachlines, knowing that his son would receive a benefit every time a booking was made with the company. When a competitor emailed him shortly after the purchase to enquire why his company was receiving less charter work from the college, Mr Fleming forwarded his draft response to Mr Bulmer, asking him ‘is this response ok???’
491. On his own evidence, Mr Fleming instructed Mr Bulmer to give all bus charter work to Bendigo Coachlines from May 2013, as Mr Bulmer and Ms Bulmer claimed. This evidence, and Mr Fleming’s draft ‘bus protocols’ document, created on the day he met with his acting line manager regarding a complaint about the alleged conflict of interest, show he endorsed the Bulmers’ actions. Mr Fleming’s response to this finding stated:

Rejected – No ‘unfair advantage’ – established protocols and role widely communicated. Mr Fleming had started talks with the Collegiate re relinquishing the responsibility he had ‘reluctantly’ taken on for them/[the department].

492. Mr Fleming was also aware that his son was part owner of italktravel. Emails show that he authorised his wife, who was also his personal assistant, to book college trips through italktravel, thereby directly benefitting their son.

493. The investigation accepts that at the meeting cited above, Mr Fleming orally informed his acting line manager of Brandt Fleming’s recent purchase of Bendigo Coachlines, which could be considered a declaration of conflict of interest.

494. He did not declare any of his other conflicts to the Regional Director as required by the Conflict of Interest policy. He also misled the college council. While he informed the council of his son’s directorship of Bendigo Coachlines, he failed to disclose that Brandt Fleming was also an owner of the company. Nor did he disclose Mr Bulmer’s interest in the company – key information given Mr Bulmer’s role as bus and charter coordinator. This was inconsistent with Mr Fleming’s obligation under section 2.3.7(2) of the Education and Training Reform Act, to provide the council with ‘adequate and appropriate advice’.

495. Mr Fleming’s actions were inconsistent with section 3.1 of the Code of Conduct relating to honesty at work, section 3.2 preventing public servants from using their power to provide a private benefit to their family, and the conflict of interest provisions in section 3.7.

496. In booking college travel through her son’s travel agency, Karen Fleming also acted inconsistently with sections 3.2 and 3.7 of the Code of Conduct.

Michael and Lynn Bulmer

Buses

497. Michael Bulmer had a conflict of interest when he became bus coordinator and took over responsibility for bus charter work, as he held a management position at Bendigo Coachlines, a company which benefitted financially from his use of the bus charter coordinator role to direct business to it. Mr Bulmer’s argument that he was a ‘contractor’ rather than an employee when working as the company’s Business Development Manager does not change this. Email evidence also shows Mr Bulmer was in talks with the owner about purchasing Bendigo Coachlines from at least March 2015. He had a financial interest in the company from June 2016, when he purchased it with Brandt Fleming.

498. Throughout Mr Bulmer’s time as bus coordinator (May 2013-December 2015), he did nothing to relinquish his conflicts. Instead, he used, or attempted to use, his engagement as bus coordinator and responsibility for bus charter coordination to maximise his personal gain, by:

- using his bus coordinator email address to seek business from a school for one of his companies, McIvor Transit.
• directing school business to Bendigo Coachlines; Mr Bulmer’s wife Lynn Bulmer also participated in this conduct when she took over the role in 2016
• planning to access students’ personal information held by the department – including medical details – to further another of his business ventures, Tracking Safe
• leasing a minibus belonging to his company Tanderrum Tours to the college at a cost of at least $15,000, and charging the college extra, through Bendigo Coachlines, for specific trips using the bus.

499. In separate responses to the draft report, Michael and Lynn Bulmer claimed they did not personally benefit from the bus coordinator and bus charter functions after December 2015, because Mr Bulmer stopped working at the college and Ernest Fleming ‘informally’ engaged a private company, Regional Transport Solutions (RTS), to provide these services.

500. Mr Bulmer also argued that as RTS was a ‘separate legal entity’, the company, not him, should be held liable for conduct that occurred from 2016 onwards. This argument relies upon the concept of the ‘corporate veil’, the legal principle that upon incorporation, a company is generally considered to be a new legal entity separate from its shareholders. This means at law that a proprietary limited company such as RTS is a distinct legal entity, separate from and independent of the persons who formed it, invest money in it, and direct and manage its operations.

501. However, since this principle was established, courts in Australia and elsewhere have found in a number of cases that the ‘corporate veil’ may be pierced when a shareholder has ‘has such a degree of effective control that the company is held to be an agent of the shareholder, and the acts of the company are deemed to be the acts of the shareholder’.

502. RTS was owned by the Bulmers through their company Cademily, and the employee ‘seconded’ from RTS to work as bus coordinator was Ms Bulmer. Mr Bulmer was also bound by various duties as a director of RTS, including duties about the use of information obtained as a director. Under section 183 of the Corporations Act 2001 (Cth), a person who obtains information because they are, or have been, a director of a company must not improperly use the information to gain an advantage for themselves or someone else.

503. Mr Bulmer, as director of RTS, would have been aware of the types of contract opportunities he had to obtain work from the college for his bus companies such as Bendigo Coachlines. His ‘insider’ knowledge had already created a problem for him when he used his bus coordinator role to seek business for his company McIvor Transit. His argument that he was no longer involved in bus coordination from late 2015 is inconsistent with his email to a departmental employee in January 2016 in which he referred to himself wearing different ‘hats’ as both school bus coordinator and as ‘a shareholder of McIvor Transit’.

504. Both Michael and Lynn Bulmer stated in their responses that they directed bus charter business to Bendigo Coachlines under instruction from Ernest Fleming and teachers at the college.
505. Email evidence does not support the Bulmers’ assertion that teachers at the college routinely instructed them which bus company to book. Nor does it support their claims to have regularly sought quotes from multiple companies to obtain the best price. There is no evidence of Mr Bulmer ever seeking comparative quotes for specific jobs, and Ms Bulmer did so only on two occasions: once, when the excursion was in Tasmania and therefore could not have been carried out by Bendigo Coachlines, and once when the excursion destination (Ecolinc) required the college to provide two quotes. On the second occasion, Ms Bulmer sought two written quotes from her husband, who provided them from two of his own companies. Her statement that she sought verbal quotes from two other companies is implausible, as it is not reflected in the relevant emails, and as Ecolinc only required two quotes.

506. Ernest Fleming’s June 2016 ‘BSE Bus Protocols – potential COI’ document, stated that all charter work would ‘continue’ to be awarded to Bendigo Coachlines. This document, and Ernest Fleming’s own evidence, supports the Bulmers’ claim that Ernest Fleming endorsed their conduct. However, there is no evidence of such a policy existing at the college before Mr Bulmer became bus coordinator. The email Mr Fleming received from the owner of a rival bus company in June 2016 asking why he was receiving less charter work from the college suggests that other companies were awarded charter work before Mr Bulmer took on the bus charter coordinator role.

507. On at least one occasion, and with no evidence she was instructed to do so by Ernest or Karen Fleming, Ms Bulmer also used her position as bus charter coordinator to book a local excursion through Bendigo Coachlines and subcontract it to another company, even though the ‘bus protocols’ said local work should go to companies other than Bendigo Coachlines. On another occasion, she told Adam Fleming she would book Bendigo Coachlines to pick up a sporting team regularly.

508. The investigation is therefore satisfied that the Bulmers used the bus charter coordinator role to obtain a private financial benefit they would not otherwise have received. Their actions undermined the integrity of the college’s processes, adversely affecting the ‘effective performance’ of the department, which necessitated the awarding of bus charter work based on a competitive process and at market price. The Bulmers’ conduct meets the definition of ‘improper conduct’ at section 4(2)(da) of the Protected Disclosure Act.

509. The allegation that Mr Bulmer used his position as bus coordinator to benefit his business, italktravel, was not substantiated. Rather, Karen and Ernest Fleming were found to have booked school excursions through the company, facilitated by their son Brandt Fleming, Mr Bulmer’s business partner.
Misuse and mismanagement of public resources

### Allegations 6 and 7

- Ernest Fleming spent money on, and allocated resources to, the Athlete Development Program – which is managed by his son Adam Fleming – at the expense of other areas of the college.
- Ernest Fleming and Adam Fleming allowed Education Support Officers and at least one unregistered teacher in the Athlete Development Program to ‘teach classes and report on students using the F-10 Curriculum standards’.

511. To assist with the investigation of allegation 6, the Ombudsman requested that the department conduct a full audit of the Athlete Development Program (ADP) to consider all financial matters associated with the program and the appropriateness of staffing and recruitment matters. This audit (the ADP audit) was conducted by the department’s Integrity and Assurance Division. The ADP audit report also commented on broader issues concerning financial management and operations at the college.

512. In light of information about the college’s finances obtained in the early stages of the investigation, the Ombudsman also asked the department to carry out a full financial audit of the college (the financial audit). The department commissioned an external auditor, Deloitte, to carry out the financial audit.

513. Both audits cover the 2012-16 calendar years.

### Relevant policies

**Purchasing card guidelines**

514. The president of the school council is responsible for authorising and approving expenditure on any purchasing card issued by the school council to the principal.\(^{11}\) The principal must maintain supporting documentation to justify all expenditure on the card and submit monthly card statements and verified documentation to the council president.\(^ {12}\)

**Athlete Development Program financial issues**

515. As noted earlier, Ernest Fleming was the college’s Director of Sport. He was therefore responsible for the ADP not only as the principal, but as Director of Sport, with the ADP Manager (his son, Adam Fleming) reporting directly to him.

516. In their responses to the draft report, both Adam Fleming and Ernest Fleming stated that the Assistant Principal was the ADP’s line manager.

517. The ADP audit found that despite having no authority from the college council to engage in financial and operational matters, Adam Fleming was responsible for most ADP-related financial and operational decisions and most of the program’s expenditure, which amounted to $321,037 in 2014-16.

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\(^ {11}\) Department of Education and Training, *Schools Purchasing Card: Department guidelines and procedures*, (May 2016) 6-7; this was also a requirement under the previous versions of the policy.

\(^ {12}\) Department of Education and Training, *Schools Purchasing Card: Department guidelines and procedures*, (May 2016) 3; this was also a requirement under the previous versions of the policy.
518. According to the ADP audit, the ADP ran at a deficit each year from its inception (a total deficit of $147,091 from 2014-16) and there was no evidence of any processes in place to ensure funds were available for the expenses incurred. The ADP audit stated that despite being required to do so, and requests from the college council, Ernest Fleming and Adam Fleming did not prepare a complete budget for the ADP or present its financial results to the council.

519. The ADP audit reported that Ernest Fleming frequently used the college’s ‘council development fund’ and ‘contingency fund’ to ‘charge numerous expenses seemingly belonging to ADP, advertising, gifts and donations’. These included $14,000 for television commercials to promote the ADP; $11,950 for Adam Fleming’s invoices before he was a college employee; and $9,312 worth of sports equipment. The ADP audit found there was not enough money in these two funds to cover the expenses, yet Ernest Fleming led the college’s Business Manager, Assistant Principal and Accounts Payable Clerk to believe there was.

520. The ADP audit noted that without authorisation from the college council, Adam Fleming negotiated terms with ‘sports consultants’ to work in the ADP. The consultants were then hired by the college without contracts. Adam Fleming did not require ADP staff to keep timesheets to allow verification of the number of hours worked.

521. Adam Fleming also set fees for the ADP without obtaining the school council’s approval. The ADP audit found that he unilaterally raised fees each year (from $230 in 2014 to $350 in 2015, $400 in 2016 and $450 in 2017), without any rationale or approval from the college council.

522. In response to the draft report, Adam Fleming’s legal representative denied that Adam Fleming negotiated terms with sports consultants and stated that Ernest Fleming, not Adam Fleming:

- determined the fees, and changes to fees, in the ADP
- hired all ADP staff and allocated their hours of work
- determined ADP staff salaries.

523. Ernest Fleming’s response stated:

As a pilot – and to protect the College Financial position – part time staff with specific skills were sourced as casual, fee for service, independent contractors for negotiated hours – therefore no contracts – in line with [human resources] processes all schools use. Time sheets were used. External audits assessed all as compliant.

524. The only reference to a discussion of ADP staffing in the minutes of the college council’s meeting minutes is a reference to a council member enquiring at a meeting held on 18 August 2014 ‘as to the cost of staffing ADP program’. The minutes record:

E. Fleming advised that Program is costed as part of staffing structure. E. Fleming happy to chat to any staff with inquiries [sic].

525. The advertisement of ESO positions in the ADP was also mentioned at a college council meeting on 20 October 2014.

526. In relation to the audit’s finding that Adam Fleming set fees in the program, Ernest Fleming’s response stated:

The fees for ADP … were passed through College Council … The fees were also included on ADP draft material tabled at College Council and widely distributed.
527. In support of this claim, Mr Fleming provided copies of draft documents listing levies for programs and items at the college for 2017, which list ADP fees of $450, with ‘college council endorsed’ in handwriting. Mr Fleming also provided copies of a document entitled ‘College Levy breakdown 2016’, which did not contain any reference to the ADP.

528. There is no record of these documents being tabled at college council meetings. The college council minutes for 2013-2016 do not record any discussion of ADP fees, although other fees (including school fees, netball and basketball team registration fees and computer program fees) were discussed at council meetings.

529. Adam Fleming’s response to the draft report stated that he was never given responsibility for finances or budgets while working at the college, and that all purchases for the ADP were made with ‘prior approval and authorisation’. The response also said he:

followed all directions given by [the Assistant Principal], the Principal, Payroll Officers and the Business Manager, regarding purchase orders, invoices and receipts … nor was [Adam Fleming] ever directed to prepare a budgetary report or financial results for the college council. Nor was [Adam Fleming] ever aware of being ‘required to do so’.

530. Ernest Fleming’s response to the draft report said that Adam Fleming ‘obviously had delegated authority from the College Council to engage in financial and operational matters – as given to all school team leaders’, but that in order to ‘mitigate potential COI’ he was never given an order book and had oversight from the Business Manager and College Council.

531. The response added:

The ADP brought a minimum of 150 extra enrolments to the College in 2015/2016 adding $1.5 million plus to the SRP – not including the significant, positive impact to culture and student outcomes. The College Council investment of $321,037 in ADP was justified! [original emphasis]

532. Ernest Fleming’s response stated that the apparent budget deficit in the ADP was the result of a ‘coding error’ by the college’s former Accounts Payable Manager which he pointed out but did not follow up on: hence spending in the ADP appears to be ‘over budget’.

Teaching of ‘curriculum’ in the ADP

533. To work as a teacher in Victoria it is obligatory to be qualified and hold a current registration with the Victorian Institute of Teaching (VIT). Teacher registration is dealt with under the Education and Training Reform Act 2006 (Vic), Part 2.6, Division 3.

534. It is an offence for a person who is not a registered teacher to ‘undertake the duties of a teacher in a school’. It is also an offence for ‘a person or body’ to employ an unregistered person to teach in a school.

535. From 2013 until the end of 2016, the mandatory curriculum taught at Victorian schools was known as AusVELS. The current curriculum, known as the Victorian Curriculum F-10 (or VC F-10) was released in September 2015 and implemented in Victorian schools from 2017.
536. As outlined above, the ADP incurred significant expenses and charged parents hundreds of dollars in annual fees for their children to participate in the program. The VIT advised the investigation that children enrolled in the ADP did so in lieu of participating in the college’s PE program in which the mandatory Victorian curriculum for Health and Physical Education was delivered by registered teachers. At interview, Adam Fleming acknowledged that ADP students did not participate in the college’s PE program, and that students participated in ADP sessions during school time.

537. In his response to the draft report, Adam Fleming’s legal representative stated that students could enrol in PE as well as the ADP, and that some students did both.

538. All staff in the ADP were engaged as Education Support Officers (ESOs), a class of employment that covers support services in the Victorian education system. According to the department’s Roles and Responsibilities Teaching Service document (22 August 2017), ESOs might typically be engaged in areas such as human resources, finance, school libraries, providing classroom assistance to teachers or careers counselling to students.

539. Several of the staff employed in the ADP were registered as teachers with the VIT, meaning that although employed as ESOs they could ‘undertake the duties of a teacher’. Most staff working in the program were not registered teachers.

540. At interview, Adam Fleming said there was no problem with unregistered people assessing students in the ADP, as the mandatory curriculum was never taught in the program:

> We’re not PE. We’ve never claimed to be, we’ve never claimed to be teachers, we’ve never claimed to have a curriculum.

541. Promotional material for the ADP stated that staff in the ADP were indeed delivering a ‘curriculum’. In Adam Fleming’s response to the draft report, his legal representative stated:

> Readers of these Booklets understand that it refers to the range of ADP topics presented by expert speakers … There is clearly no mention or resemblance to the F-10 [mandatory curriculum].

542. A presentation about the ADP found on Adam Fleming’s computer described the program’s Professional Development Class as ‘curriculum based around physical and mental health’. Adam Fleming’s response to the draft report said he ‘almost certainly’ had not presented it, given he ‘couldn’t access presentations from his personal files on his desktop in other areas of the school due to the IT setup and his preference to use an IBM desktop over a laptop’.

543. The investigation did not find any ADP material which explicitly stated that the mandatory Victorian curriculum was not taught in the ADP. Adam Fleming said ‘curriculum’ might have been ‘the wrong choice of words’ and was supposed to refer to ‘a range of topics’ to be covered in the ADP.

544. Adam Fleming’s response to the draft report stated:

> What the ADP staff provided was personalised monitoring and specific feedback to athletes. This was done directly during coaching and training sessions, and by monitoring the athlete’s progress and performance … a range of means …

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13 Examples include: the 2015 and 2016 information booklets, which, according to Adam Fleming’s response to the draft report, were provided to parents. The booklets referred to ADP staff delivering a ‘professional development curriculum’. The 2016 Application Pack also described the ‘professional development curriculum’ as a core component of the ADP. The investigation also found a document in Adam Fleming’s computer entitled ‘Curriculum 7-10 ADP Planner’, which Adam Fleming said at interview was created by one of his staff members and never used.
545. ADP assessment documents made available to students and parents explicitly presented students as being assessed against the soon-to-be implemented VC F-10 Health and Physical Education curriculum (an example is at Figure 1 on the next page). College documents detailing students’ results in all subjects also described ADP staff as ‘teachers’, including at least one who was not a registered teacher at the time.

546. Adam Fleming’s response to the draft report said he had never seen the document at Figure 1 before and that he questioned its authenticity.

547. Adam Fleming suggested the decision to portray children as being marked according to the F-10 curriculum had been made by ‘the school’:

> Each kid has a dashboard at the school [where student results are displayed]. What the school has advised to us is that...they wanted to recognise all the hard work that these kids were doing in the [ADP], and they wanted to recognise that hard work on their dashboard. How they did that, that’s beyond me and that’s behind the scenes.

548. Adam Fleming was presented with examples of an assessment document in which an ADP staff member who was not registered with the VIT was described as a ‘teacher’ and the student was marked under the heading ‘ADP’ against elements of the VC F-10 Health and PE curriculum. Adam Fleming said the document was not compiled by his staff: ‘That’s way beyond us. We’re coaches.’ When asked who had created the document, he replied, ‘I’m not aware of that. That’s the school, that’s IT.’

549. When presented with further examples of assessment documents showing ADP staff purporting to assess students against the VC F-10 curriculum, Adam Fleming said he had never seen them before.

550. Ernest Fleming’s response to the draft report stated that for the purposes of displaying results on the college’s Student Dashboard:

> given ‘personalised programs’ such as ADP [and other specialisms] did not have Vic F-10 marks, a system of ‘matching results’ based on F-10 principles...[was] developed...so student results in these studies/programs, could be part of their Dashboard. [original emphasis]

551. During the Ombudsman’s investigation in 2017, the ADP was also investigated by the VIT and the Victorian Registration and Qualifications Authority, over allegations that:

- unregistered persons working in the ADP were purporting to teach and assess students against the mandatory Health and Physical Education curriculum
- the content of the course did not meet the criteria for the mandatory curriculum, meaning students in the ADP were missing out on mandated content.

552. The VIT confirmed that the ADP was not delivering the mandatory curriculum. In relation to both of these investigations, the VIT told the investigation in an email dated 29 January 2018:

- The VRQA referred the matter to the department for investigation as to whether the college had breached the minimum standards for school registration. At the time of writing, the department’s investigation had not concluded.
- The college’s Acting Principal had addressed the registration issues of concern to the VIT by:
  - having all ADP classes on the college timetable delivered by VIT-registered teachers
  - conducting an audit (still underway at the time of writing) of the extent to which the ADP aligned with the mandatory curriculum, with a view to adjusting it so it delivers the mandatory curriculum to ADP students in the future.
Figure 1: ADP assessment document showing student being marked against the mandatory VC F-10 curriculum

Semester 2 ADP LA 3

Period
Semester 2, 2016

Student

Teacher

Subject
08 Athlete Development

Description
Students will be assessed against ADP Student Athlete Agreement. This will be assessed through each student’s Dashboard indicators, Student Athlete Performance Plan, Interview Participation and Training Diary.

VC F-10 Outcomes

Student Results

Health and Physical Education: Personal, Social and Community Health
Level: Highest level Learning passport. No overdue LA's 100% PD & Squad attendance Honours/12 months growth
Rating: [9.00] A

Health and Physical Education: Personal, Social and Community Health
Level: Highest level Learning passport LA's 100% Excellent workload & wellbeing recording All Fitness Test results & video uploaded
Rating: [9.00] A

Health and Physical Education: Personal, Social and Community Health
Level: No Learning Cultures Co/extra-curricular points National or higher Leadership Roles
Rating: [9.00] A

Health and Physical Education: Movement and Physical Activity
Level: Excellent sport attitude displayed toward training, competing & testing
Rating: [6.50] A

Health and Physical Education: Movement and Physical Activity
Level: Outstanding Athlete Progress Check
Rating: [9.00] A

Health and Physical Education: Movement and Physical Activity
Level: Excellent assessment of lift techniques, swimming & running/cycling
Rating: [9.00] A
553. Ernest Fleming’s response stated that in 2015 and 2016, the VIT investigated the issue of an unregistered person allegedly teaching the curriculum in the ADP and found the complaint unsubstantiated. The response stated that Mr Fleming’s responses to VIT enquiries satisfied VIT and the department that the ADP was ‘an additional program, outside mainstream curriculum,’ and that ESOs in the program were not required to be registered teachers. Mr Fleming provided a copy of part of an email he received from a VIT Compliance Officer which stated, ‘based on the information you have provided about [the role of the ADP employee in question] as an ESO, we can confirm that he does not require registration’. Mr Fleming’s response to the draft report added:

After Mr Fleming was stood down [in] January 2017, the complaint was again made to VIT – Mr Fleming wasn’t there to again explain what the program was about (eg a coaching approach not teaching), how it fitted in with BEP recommendations etc, and thus why it didn’t require VIT registered teachers.

555. The financial and ADP audits identified significant breaches of the department’s Schools Purchasing Card guidelines. The financial audit noted that these breaches posed risks the college may be liable for, and unable to identify, unauthorised expenditure on official purchasing cards. The audits stated:

- In all years covered by the financial audit, not all transactions listed on the purchasing card statements had supporting tax invoices or receipts. The ADP audit found that Ernest Fleming paid for furniture, shoes, groceries, flights, courses and conferences using his personal credit card and the college’s purchasing card, with no receipts retained.
- In 2012, 2013 and 2014 there was no evidence of approval by the school council president for the transactions incurred by Mr Fleming on his official purchasing card.
- The college’s purchasing card register was not up to date, and in 2014 a new credit card issued to Mr Fleming was not recorded in the register.

Use of official purchasing cards

554. The department’s Schools Purchasing Card guidelines provide that the president of the school council is responsible for authorising and approving expenditure on any purchasing card issued by the school council to the principal. The principal must maintain supporting documentation to justify all expenditure on the card, and submit monthly card statements and verified documentation to the council president.

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- In all years covered by the financial audit, not all transactions listed on the purchasing card statements had supporting tax invoices or receipts. The ADP audit found that Ernest Fleming paid for furniture, shoes, groceries, flights, courses and conferences using his personal credit card and the college’s purchasing card, with no receipts retained.
- In 2012, 2013 and 2014 there was no evidence of approval by the school council president for the transactions incurred by Mr Fleming on his official purchasing card.
- The college’s purchasing card register was not up to date, and in 2014 a new credit card issued to Mr Fleming was not recorded in the register.

Reimbursements

556. The ADP audit identified a pattern of unexplained or insufficiently documented reimbursements to Ernest Fleming.

557. For example, in November 2012 Mr Fleming approved reimbursement to himself of $8,031 for old invoices for music stores, a furniture shop and car parks, with insufficient details on the payment voucher to determine whether the expenses were for legitimate business purposes.
558. In another example, the ADP audit found a staff member used Mr Fleming’s personal credit card to purchase a laser cutter on 21 July 2016. Mr Fleming later approved and signed a cheque to reimburse himself $8,304. The audit noted that ‘the laser cutter was not available at the School upon physical inspection’.

559. The staff member who made the purchase provided email evidence to the Ombudsman’s investigation showing she had purchased the laser cutter from a company in the United States. However, the college never received it. On 19 December 2017, the Acting Principal told the investigation the college had received a reimbursement for the purchase cost on 1 November 2017. The investigation found no evidence that Mr Fleming sought approval from the school council for the purchase. Mr Fleming’s response to the draft report said the college council was informed. There is no record of this in the college council minutes.

560. In October 2013, Mr Fleming approved reimbursement to himself of $11,000 to cover costs incurred 18 months earlier to register students for a camp, paid for on his personal credit card. The ADP audit found the payment order to reimburse the cost had no written quote and no information about which students attended the camp.

561. Both the financial and ADP audits highlighted a lack of separation of duties in financial matters. The ADP audit, for example, noted that in 2012 and 2016, the college issued 64 purchase order books, containing 3,200 purchase orders, to Ernest Fleming. The audit stated:

Further, the Principal had prepared the budget, made actual purchases, raised purchase orders after making the purchases, approved purchase orders, coded expenses to sub-programs, approved invoices, authorised reimbursements to himself amounting to $51,006, to family members amounting to $59,518, to local payroll employees and to creditors (excluding salary payments to Adam Fleming and Bendigo Coachlines).

562. Mr Fleming’s response to the draft report stated:

All reimbursement/procurement card purchases order forms were accompanied by receipts. The ‘no receipts retained’ is patently wrong…If provided with the documentation re ‘furniture, shoes, groceries, flights, courses and conference’, Mr Fleming would provide the details re the assets, students assisted, programs and processes, and events the expenditure was used for (eg [the college] has a ‘no excuse’ uniform policy. To assist struggling families, [the college] stocks uniform items and shoes that can be borrowed for a day, and in special circumstances, purchases them for individual students). Food items were for Staff meeting afternoon teas, student event catering, student rewards eg McDonald’s etc.

563. Mr Fleming’s response also stated:

The ‘Finding’ is clearly at odds with [the department’s] own external audit reports and Deloitte’s summary April 2017 that ‘the report presents fairly,…the financial position…and of its financial performance of the year,’ then ended ‘…IN ACCORDANCE with the reporting requirements of the Finance Manual for Victorian government schools’. Further, [from the financial audit] ‘If based on the work we have performed, we conclude that there is a material misstatement…we are required to report that fact. We have nothing to report in this regard.’ [original emphasis and rephrasing of the audit original]:

564. The meaning of the two statements referred to by Mr Fleming is discussed in the findings at the end of this chapter.

565. Mr Fleming also provided copies of a number of purchase orders authorising reimbursements to himself, all of which had receipts attached for the goods or services purchased. Some of the purchase orders were accompanied by creditor payment vouchers signed by Mr Fleming and the Business Manager and a school council nominee. In many cases, however, the evidence provided consisted only of purchase orders made out to Mr Fleming and signed solely by Mr Fleming.

Use of contractors

566. The investigation received an allegation that Ernest Fleming used college funds to pay for works on his private residence. The allegation was referred to IBAC, which determined that it was not a protected disclosure complaint and referred it back to the Ombudsman. The investigation considered this allegation under the Ombudsman Act and did not substantiate it.

567. Ernest Fleming’s response to the draft report described the allegations as:

offensive. Mr Fleming personally paid for countless school items, only occasionally seeking reimbursement for a fraction of what was spent ... Mr Fleming should be lauded for his benevolent contribution of direct value to [the college]. He has always been a bona fide contributor and not a ‘taker’ as is implied.

568. The investigation obtained an invoice dated 1 August 2016 from a contractor, for $1,937.92 of ‘home maintenance’ at Mr Fleming’s private home. The invoice stated Mr Fleming would receive a ‘mate’s rates’ price for the contractor’s labour. On 8 September 2015, the contractor invoiced Mr Fleming for $4,642.77 of work on his private residence, again listing a ‘mate’s rates’ price.

569. The investigation did not find evidence that Mr Fleming used college funds to pay for the private work. The contractor provided statements from his bank account which showed payments for $1,937.92 and $4,642.77 transferred by bank accounts belonging to ‘E Fleming’ and ‘E K Fleming’, corresponding to the dates the invoices were paid.

570. Between 2011 and 2016, two companies belonging to the contractor were paid nearly $1.6 million by the college for cleaning and maintenance services. The ADP audit noted:

[Ernest Fleming] provided [the contractor] with a purchase order book to raise purchase orders for maintenance work. The contractor raised three purchase orders to [one of his companies] and then raised three corresponding invoices of $44,000 to [another company] ... The school paid the invoices though the names on the purchase orders and invoices did not match.

571. At interview with the investigation, the contractor denied receiving any payment from college funds to cover the cost of work at Mr Fleming’s home. He told the investigation his company was awarded the cleaning contract through a tender process. He said that before the tender process, he discussed his bid with Mr Fleming and explained he would charge the college much more than other companies would for the same services, but this was because he provides full entitlements to his employees.

572. Mr Fleming’s response to the draft report stated:

Mr Fleming made it clear to contractors and businesses he would not accept ‘Mates Rates’ or ‘Discounts’. Mr Fleming was unaware ‘Mates Rates’ was on these two invoices as Ms Fleming handles the family finances. Mr Fleming has employed [the contractor] a number of times over twenty years and NEVER asked for, or to his knowledge/recall, received ‘mates rates’. [original emphasis]
573. The response also stated that Mr Fleming could have done the work on his private home himself, but while he was ‘paying contractors for work he could have done,’ he was ‘completing grounds, maintenance and furniture tasks at school to save the College money’.

574. Ernest Fleming’s response to the draft report also stated that his ‘discretion, as a principal, in sourcing and quoting was based on his industry expertise, extensive local knowledge and years of experience.’ The response stated:

Mr Fleming sourced quotes, and over time, established suppliers and contractors who ‘gave the best advantage to the school’, given their price competitiveness, quality of product and customer service (eg Mr [Y]).

Consulting the college council

575. In Victoria, school councils play a crucial role in school governance, including authorising, approving and monitoring expenditure and ensuring that adequate internal controls are in place to prevent unauthorised use of funds. The Education and Training Reform Act obliges school councils to ‘ensure that all money coming into the hands of the council is used for proper purposes relating to the school’.

576. School councils have a president and are made up of parents and departmental employees (they can also include community members co-opted to provide specific skills or perspectives). The principal is the executive officer of the council and under the Act, must ensure that ‘adequate and appropriate advice is provided to the school council on educational and other matters’ and that its decisions are implemented.

577. School councils are obliged to develop and maintain adequate budgeting and accounting systems and internal financial controls. They also approve the annual budget and review expenditure throughout the year.

578. All payments from any account under the control of the school council must be jointly authorised by the principal and a member of the school council nominated to authorise payments. Payments made the previous month, and invoices awaiting approval, must be tabled at monthly school council meetings.

579. The financial and ADP audits found that over the period covered by the audit, Ernest Fleming frequently failed to consult, obtain requisite approval, or apprise the college council of important financial matters. Some examples are outlined above in relation to purchasing cards and the ADP.

580. Throughout the period in question, key monthly financial reports were not presented to the college council, or were not minuted as presented, meaning the council ‘may not be aware of the school’s financial position each month’. Similarly, in 2013, 2014, 2015 and 2016, end of year financial reports were not approved by the college council or signed by the council president and principal.

581. Mr Fleming’s response to the draft report stated:

All the required financial reports were tabled, explained as required and minuted every month – again shown by [the department’s] own external audits over many years including February 2015. [original emphasis]

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16 Education and Training Reform Regulations 2007, Regulation 36(2). (Superseded by the Education and Training Reform Regulations 2017, which contain the same requirements at Regulation 45(2)).
582. In support of this claim, Mr Fleming provided a copy of a ‘draft management letter’ detailing issues identified by an external audit of the school, emailed to him by the auditor on 9 April 2015. It is unclear what the final audit report concluded, however the draft letter provided by Mr Fleming detailed a number of concerns about financial management at the college, including that ‘our review of the School Council minutes did not indicate that the annual school budget has been approved by the School Council’.

583. On 31 December 2016, the college wrote-off fixed assets worth $120,951. There was no evidence that Ernest Fleming obtained approval from the college council for this action. Mr Fleming’s response stated that next college council meeting was not until February 2017, and that he was ‘on leave at this stage’. The response added that ‘updating the asset register was a “work in progress” throughout the BEP years’ and that the ‘asset rules also significantly changed during this period’.

584. The 2012 college budget was not approved by the college council. The 2014, 2015 and 2016 budgets were not entered into the electronic CASES21 system, meaning that revenue and expenditure could not be adequately monitored against the budget. Mr Fleming’s response stated that the entry of the budget into CASES21 was ‘not the only tool [the college] relied on due to its unique environment’:

[The college’s] highly innovative program, driven by its commitment to the [BEP], the financial tools required ongoing adjustment of priorities and processes. Consequently, the school operated primarily on ‘bottom line’ budgeting – especially 2014-2016 ... Mr Fleming kept College Council updated as shown by the phrase in a number of College Council minutes...‘The budget is a work in progress’. College council was also provided with specific data for cash budget items in a timely manner, for example, Trips/Camps once they had been run ... Mr Fleming regularly monitored budgets. College council endorsed changes as required.

585. Mr Fleming’s response also outlined a ‘well tried and true budget developing and monitoring process at [the college]’ with the budget influenced by ‘25 persons in the school system’ and input and monitoring provided by the Principal, Business Manager and college council.

586. The financial audit also identified three transactions on 15 December 2015, worth a total of $1,469, in which Mr Fleming, without obtaining approval from the college council, authorised payments to a business of which his son, Brandt Fleming, was a director.

587. The department advised the investigation that the company in question was Heathcote Transit Pty Ltd.

**Tax obligations**

588. The financial audit found evidence the college was not complying with its obligations to the Australian Taxation Office (ATO).

589. In February and June 2014 and March 2015, for example, Ernest Fleming did not sign the college’s Business Activity Statement (BAS). The auditor found ‘no evidence of authorisation or review’ before BAS were lodged with the ATO, and no audit trail to support the documents lodged with the ATO.

590. The audit also found evidence from the 2014 calendar year that the college had not accurately reported its PAYG obligations to the ATO.

591. Mr Fleming’s response to the draft report stated:

audits never raised these ‘alleged’ errors and even if correct, they are inconsequential and possibly oversights of a new, inexperienced Business Manager, who would have corrected them immediately if raised with her.
592. As noted above, responsibility for reviewing and authorising the college’s BAS lies with the principal. The draft 2015 audit letter referred to above, supplied to the investigation by Mr Fleming, raised concerns about this issue in April 2015 and noted:

The BAS is an important business report for Council and it is necessary that a review is undertaken [by] somebody independent of the processing cycle … We recommend that the Principal review and authorise all BAS statements (via signature) prior to lodgement with the ATO.

Findings

Misuse of funds and resources

593. The investigation, along with the department’s ADP and financial audits, found Ernest Fleming ran many aspects of the school’s finances singlehandedly, without the appropriate separation of duties and accountability mechanisms in place to ensure proper scrutiny and approval of financial transactions.

594. He failed to seek the requisite college council approval for thousands of dollars’ worth of expense claims and credit card purchases, approved reimbursements to himself, and failed to keep basic records to justify their business purpose, in breach of the Schools Purchasing Card Guidelines.

595. In the absence of such records, Mr Fleming cannot demonstrate that purchases of items such as furniture, groceries, shoes, flights and music were legitimate business expenses.

596. Ernest Fleming failed to declare a conflict of interest related to his use of a contractor employed at the college to complete works on his private residence, in breach of the department’s Conflict of Interest policy and the Code of Conduct, and despite clear guidance in the Conflict of Interest Toolkit with respect to use of contractors. However, the investigation found no evidence that Mr Fleming paid for private work using college funds.

597. Accepting ‘mate’s rates’ for private work from the contractor – whose companies earned $1.6 million from the college between 2011 and 2016, and who said he told Ernest Fleming he would charge the college more than other comparable companies – could be ‘reasonably perceived to influence’ Mr Fleming to award the contractor work at the college. This was inconsistent with section 3.3 of the Code of Conduct, which requires a ‘strict separation between work-related and personal financial matters’, and section 4.2, which states that public servants must not seek or accept gifts or benefits that could be perceived as influencing them. Mr Fleming’s response to this finding stated:

Declined … not required by COI 2013 documents – never ‘heard’ of this requirement in 20 years in the principal class! In a regional/country setting, use of contractors and businesses is not always ‘avoidable’ … An expectation Mr Fleming informs the Regional Director he is making purchases from all the places where the school makes purchases is impractical and shows a complete lack of trust. [original emphasis]

598. However, both the November 2014 and February 2016 versions of the department’s Conflict of Interest Toolkit outlined the risks involved in using contractors who work at a school to do private work for departmental employees, including a case study of a contractor who does work on a principal’s home. Both versions of the toolkit warned:

The contractor may be tempted to do private work at a discounted rate to ensure they remain in good favour for future public contracts. This way, the public official would improperly receive a private benefit … Even without the provision of any discount, if the contractor does regular private work for the public official, their mutually beneficial relationship might be seen to influence the public official in providing future public contracts.
599. The toolkit also instructed employees to declare the private work appropriately prior to any future public contract being awarded, and to:

- ensure the contractor’s work performed in a private capacity is charged at the standard and published rates.
- (Remember, though that this is not likely to address a perception in the community that the contractor provided a discount).

Response of Ernest Fleming

600. In response to the overall findings in this section, Ernest Fleming’s legal representative stated:

All findings are strongly rejected in that reasonable people would conclude that on the basis of the ‘balance of probabilities’ ... it is demonstrably clear, Mr Fleming’s decisions were in the best interests of the College ... It is not understood that [the college’s] Financial Management practices were inherited by Mr Fleming and had been used effectively for over twenty years. No mention is made in the draft report of the ‘Budget 2017’ paper that clearly summarised the ‘bottom line’ approach through the BEP years and the plan for post BEP, starting with 2017 ... [original emphasis]

601. Throughout Ernest Fleming’s response, his legal representative relied on a statement found in Deloitte’s management letter attached to each year of the financial audit, arguing that this statement showed the audit had found no evidence of financial mismanagement on the part of Mr Fleming:

If, based on the work we have performed, we conclude that there is a material misstatement of this or other information, we are required to report that fact. We have nothing to declare in this regard.

602. The statement in full from the management letter read:

The Members of the School Council are responsible for the other information [provided to the audit, in addition to a financial report]. The other information comprises of the “Current Month Actual and Budget” and “Year to Date Budget” columns of the operating statement for the year ended 31 December 2016, does not include the financial report and our auditor’s report thereon.

Our opinion on the financial report does not cover the other information and we do not express any form of assurance conclusion thereon.

In connection with our audit of the financial report, our responsibility is to read the other information and, in doing so, consider whether the other information is materially inconsistent with the financial report or our knowledge obtained in the audit, or otherwise appears to be materially misstated. If, based on the work we have performed, we conclude that there is a material misstatement of this other information, we are required to report that fact. We have nothing to report in this regard.

603. In response to a query from the investigation about the meaning of this statement, the department advised on 17 July 2018:

“Material misstatement” relates to misstatements contained in the financial statements which may affect the economic decision of the end user. The fact that Deloitte hasn’t found a material misstatement simply indicates that they do not consider the financial statements were materially misleading.

As set out in the management letter that accompanied the [audit] reports, Deloitte did identify a number of control weaknesses during the audits, including but not limited to:
• Failure to regularly provide relevant financial reports to school council;

• Failure to prepare budgets and profit and loss statements for trading activities;

• Failure to enter budgets into CASES21, impacting the ability to monitor revenue and expenditure against budgeted amounts.

In this situation, while the financial statements may not have been misleading, they were not regularly presented to school council and did not contain budget figures which would enable the school council to meaningfully monitor expenditure and revenue.

The nature of the Deloitte audits is that they reviewed samples of transactions. One of the concerns our internal auditor identified while conducting the audit of the Athletic Development Programme was that the school had a substantial quantity of outstanding invoices which had not been entered into CASES21. This meant that any financial reports produced about the school’s outstanding financial obligations were significantly understating what was actually owed, and accordingly, there was no transparency about the school’s actual financial position. This was not identified by the Deloitte audits due to the limitations of the audit approach.

604. Mr Fleming’s response also repeatedly referred to a statement that was supposedly in the financial audit: ‘In accordance with the Financial Manuals’, as evidence that the financial audit had cleared him of any inappropriate management of the college’s finances. The investigation was unable to find such a statement, or any reference to the Financial Manuals, in the audit report.

605. Mr Fleming’s response blamed many of the college’s financial issues on failures by the department to honour funding commitments made to the college under the BEP, which he stated resulted in many unforeseen costs to be borne by the college.

606. Mr Fleming’s response said he ‘inherited an approach of, “… spend the year’s revenue, on that year’s cohort.”’ The response added:

Mr Fleming acknowledges [the college] pushed the limit each year; given the circumstances, this was not only good management, but also necessary … The budget strategy resulted in annual improvement and asset growth. [The college] improved all aspects of its program - this success became exponential from 2015 onwards.

607. The response also stated that the college council had a long established budget development process that ‘passed audits’. Mr Fleming attached a page from a 2015 college council document entitled ‘Policies, Programs and Budgets’ with the initials of Leading Teachers on it in handwriting, as evidence of his ‘consulting and informing leaders re budgets’. The page in question explains the purpose of the handbook to ‘document all policies, programs, statements and budgets’ for the operation of the college in 2015. The response stated that staff were informed each year of how to access these documents.

608. Mr Fleming’s response included as an attachment the department’s Statewide Report: School Council Finance Assurance for the 2016-2017 Financial Year. The response stated:

This report clearly indicates [the college’s] Mr Fleming’s practices are ‘not uncommon’ in Victoria’s state schools. The report clearly shows Mr Fleming’s management in the BEP ‘radical change’ environment was still better than most (eg the school has never been in Workforce planning – 60% of the state has been, including all secondary schools in Bendigo. [The college] has never ended the year in deficit, unable to meet its obligations.) [original emphasis]
Mr Fleming's response added:

There is a failing to understand/acknowledge, that in a ‘radical change’ environment, ‘unorthodox’ approaches are needed i.e. try new ways to see if you get better student results. [original emphasis]

In relation to his financial practices as principal, Mr Fleming's response stated:

[The college] met all the system’s ‘checks’ that Principals/Business Managers/School Councils rely on for assurance of compliance, i.e. Financial Audits including Hot Desk audits introduced 2016 ... Enrolment Audits, School Reviews, P&D Plans. Deloitte’s 2017 audit Term 1, 2017, confirmed compliance and integrity again. Obviously the alleged ‘oversights’ were not significant – not picked up by audits over a twenty year period ... and even if correct were inadvertent (e.g. ATO entries). They had no negative consequences, and in the context of the BEP ‘trial and error’ ‘radical change environment’, were perfectly understandable to any fair minded employer or ‘reasonable person’. [original emphasis]

In addition, according to the response, Mr Fleming ‘voluntarily’ undertook many tasks at the school – such as maintenance and the ‘student leadership program’ – which he estimated saved the school around $60,000 per year.

The response stated that from 2015, the college had communicated that 2017 (at the start of which, Mr Fleming was suspended by the department), ‘was the year when all processes (including financial/[human resources]) and programs would be audited, and online processes fine tuned’.

As a final comment, the response added that the college received two large Treasury Co-operative loans during Mr Fleming’s principalship, and stated that ‘treasury loans are only approved where there is conclusive evidence of a history of good financial management’.

### Mismanagement of ADP funds and resources

614. The investigation found both Ernest Fleming and Adam Fleming were responsible for the management of the ADP.

615. While in their responses to the draft report, Adam Fleming and Ernest Fleming said the ADP Manager’s line manager was the Assistant Principal, this is inconsistent with the position description for ADP which stated that the ADP Manager would ‘work with the Sports Director (Principal)’. It is also inconsistent with Adam Fleming’s evidence at interview that Ernest Fleming was his line manager, and with Adam Fleming’s statements in response to the draft report that Ernest Fleming was responsible for employing ‘all ADP staff’, setting their salaries and working hours, and determining all fees for students in the ADP.

616. Adam Fleming was the ADP Manager and, on his own evidence at interview, was engaged to develop the program and responsible for managing its staff. For these reasons, on the balance of probabilities, the investigation accepts the ADP audit’s finding that Adam Fleming hired staff and made the bulk of financial decisions within the program, without obtaining authorisation from the college council. This contravened Regulation 37 of the Education and Training Reform Regulations, which required the college council nominee’s authorisation for expenditure of funds under the council’s control.

617. The program ran at a deficit each year and Ernest Fleming used the college’s ‘contingency’ and ‘council development’ funds to cover ADP expenses, misleading others into believing there was sufficient money in these funds for the expenses. This did not meet the standard of section 3.1 of the Code of Conduct, which requires public sector workers to ‘act honestly in the performance of their duties’. Ernest Fleming’s response stated that the contingency and council development...
funds were in fact one fund, and was specifically created for the college's specialist programs and:

funded by Credit to cash – made possible by Mr Fleming’s ‘extra roles’. ADP accounted for less than 10% of the $3.5 million dollars in this fund. Clearly there were sufficient funds. [original emphasis]

618. The Flemings’ mismanagement of public funds and resources in the ADP demonstrates a disregard for relevant legislation, regulations and departmental policies. Their conduct was inconsistent with section 3.3 of the Code of Conduct, which states:

Public sector employees observe the highest standards of integrity in financial matters and comply with the requirements of relevant financial management legislation, policies and procedures.

619. Both Adam Fleming and Ernest Fleming hindered the operations of the council by declining to submit the ADP, including its budget, to its scrutiny. This was despite Ernest Fleming’s legal obligation, as principal, to ensure the college council was provided with ‘adequate and appropriate advice’ and his obligations to comply with the relevant legislation under sections 3.3 and 5.6 of the Code of Conduct.

620. Ernest Fleming’s response to the draft report stated:

Declined … College Council were regularly updated re progress of the [ADP] trial, challenges and plans as shown by College Council Minutes.

621. However, there is no record in the college council meeting minutes of discussion of the ADP’s budget.

622. While Ernest Fleming was responsible for much of the financial mismanagement at the college, it was also the result of a breakdown in the usual accountability mechanisms and internal controls that are so vital to prevent corruption and mismanagement. This will be a matter for the college council to monitor and address.

‘Curriculum’ in the ADP

623. Adam Fleming and Ernest Fleming were responsible for running a program, the ADP, that wrongly purported to be delivering the mandatory curriculum to students.

624. Children graduating from the program – whose parents paid hundreds of dollars per year for them to participate - left the college without completing the mandatory curriculum all Victorian children are entitled to, and all schools are obliged to deliver.

625. Adam Fleming denied responsibility for the misleading portrayal of the ADP as delivering the F-10 curriculum, which included assessment documents made available to students and parents that explicitly stated children were being marked against the ‘F-10’ curriculum.

626. It is not credible that Adam Fleming was not aware or involved, as at interview he emphasised that he had developed the ADP from the beginning and was responsible for its content, management of staff and operation. This was confirmed by extensive documentary evidence collected by the investigation, including emails and ADP management and staffing documents, the evidence of other witnesses, and the department’s audit of the ADP.

627. At best, Adam Fleming lacked the experience and qualifications to understand that only registered teachers could teach the mandatory Health and Physical Education curriculum, or to ensure the ADP’s content met the criteria of the mandatory curriculum.

628. As principal, and given his long experience in the education system, Ernest Fleming ought to have been aware of the requirements relating to the registration of teachers and the teaching of the mandatory curriculum.
Response of Adam Fleming

629. In response to the draft report, Adam Fleming’s legal representative emphasised the popularity and success of the program:

The ADP was a harmonious and highly successful program. It was team oriented, goal driven, and had inherent esprit de corps ... There was significant growth in applications each year, a very high re-enrolment rate ... surveys that showed overwhelming positive feedback.

At no stage prior to 2017, did any of [Adam Fleming’s] line managers ever raise concerns with him about his role or the program. Feedback from Adam Fleming’s line managers, college council presidents, students and parents, was always extremely supportive ... [By the end of 2016, the ADP] had grown from a starting goal of 30 athletes in 2014, to approximately 240 in 2017.

630. The response also stated:

The use of the word ‘curriculum’ ... in the ADP was not misleading or confusing. This is further emphasised by the fact that no concern over the phrase Professional Development curriculum was ever raised to [Adam Fleming] by a student, parent or other staff members at [the college] ... At no stage did the ADP mislead or inform anyone about the ADP program ... The ADP staff, and their qualifications and experiences, were listed on the ADP website under staff profiles for anyone to see ... The ADP program was clear, and was fully informed to students, parents and the community via an extensive range of communications ...

Response of Ernest Fleming

631. Ernest Fleming’s response to the draft report stated that parents ‘made informed choices re involvement in programs such as ADP and [the college’s arts specialism program]’, for example through information evenings, ‘extensive documentation’ and a personalised selection process. The response stated:

A school’s ‘curriculum’ by definition, encapsulates all parts of the learning program, hence the terms curriculum and EXTRA curriculum ... Given four of the six staff in the program were VIT qualified teachers, the terminology used by them was at times, ‘teaching terminology’ ... The program was a coaching program. [original emphasis]

632. Mr Fleming’s response relied upon enquiries by the VIT in 2015 and 2016 about an unregistered person employed in the program, which concluded that teacher registration was not required for ESOs working in the program.

633. However, as outlined above, the VIT found in 2017 that students in the ADP were missing out on the mandatory PE curriculum. The concerns identified by the Ombudsman’s investigation relate to the program purporting to deliver the VC F-10 curriculum, for example through misleading assessment documents, and with children not being instructed in the mandatory curriculum as a result.

634. In response to the finding that Ernest and Adam Fleming acted inconsistently with section 3.3 of the Code of Conduct, Ernest Fleming’s response stated:

‘Their (The Flemings’) conduct’ in reality amounts to the development of BEP required, ‘locally, nationally and internationally’ recognised learning program initiatives, that through their dedication, hard work and sacrifice, was a key underlying factor in [the college’s] improvement and success. [original emphasis]
Oversight by the regional office

635. The department delivers its educational services using a regional model. Schools are overseen by a regional office, headed by a Regional Director. The Bendigo South East College is one of around 350 schools reporting to the department’s North Western Region office.

636. Formally, principals report to the Regional Director. In practice, many of the responsibilities relating to management and oversight of principals are delegated to staff within the regional office; often to Senior Education Improvement Leaders (SEILs), known as Senior Advisers in 2014. SEILs may coordinate all components of the Performance and Development Plan (PDP) process for principals, including making recommendations about a principal’s performance to the Regional Director. However, the Regional Director is responsible for the final decision.

637. Ernest Fleming’s line manager during the relevant period is referred to as the Senior Adviser in this report.17

638. This section examines the regional office’s handling of complaints about Mr Fleming, as well as its management of him. It also explores the response the Regional Director provided to the Ombudsman in March 2015 when the Ombudsman made enquiries about the complaints the regional office had received about Ernest Fleming.

Relevant policies

Complaints policy

639. The department’s Guidelines for Managing Complaints, Unsatisfactory Performance and Misconduct – Teaching Service (1 June 2012) was in force for the period covered by the investigation, until it was replaced by an updated version on 29 September 2016. The policy emphasised the responsibility:

> incumbent on a principal or manager to act where a complaint, unsatisfactory performance or misconduct involving an employee is observed or brought to his or her attention, whether or not a formal complaint has been lodged.

640. The policy set out both formal and informal processes for dealing with complaints and allegations of misconduct, depending on factors such as the nature of the allegation and whether the complainant would like to resolve the matter informally. Informal resolution of a complaint might include mediation, the responsible manager speaking with one or both parties, or providing advice to the complainant about how to handle the matter themselves.

641. A formal process would involve investigating the complaint (which may include reviewing documents and conducting interviews), making a finding based on the balance of probabilities, and determining appropriate action. A formal investigation must be ‘sufficiently thorough’ to allow the principal or manager to be reasonably satisfied that the complaint is or is not substantiated.

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17 The Regional Director advised at interview that one of three Deputy Regional Directors sat between the Regional Director and the Senior Adviser in the regional office’s structure; however, the department’s guidelines for performance and development of principals do not prescribe a role for Deputy Regional Directors in the management of principals.
642. A manager conducting a formal process had the discretion to afford the complainant anonymity, although the policy stated, ‘in most cases, it is not possible for the complainant to remain anonymous due to the right of the respondent to natural justice and to know the allegation(s) being made against him or her’.

643. However, the policy also acknowledged the department’s obligations under the Protected Disclosure Act, stating that complainants may be entitled to protections under the Act (which include anonymity).

**Conflict of Interest policy**

644. The department’s *Conflict of Interest* policy (1 October 2013 and 9 February 2016) stated that all conflicts of interest by principals must be reported to the Regional Director. The policy highlighted the key role of line managers in managing conflicts of interest by departmental employees, including members of the teaching service, in ‘moderating … decisions and adding perspective to the options available’. It stated:

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

645. The policy also stated:

> Private interests include both financial and non-financial interests, and can include the interests of family members and close friends or associates. They can be positive or negative interests - personal enmity towards someone can be just as relevant as loyalty to them.

646. The policy also empowered managers, where necessary, to direct their employees to take action the employee may disagree with in order to resolve a conflict of interest, including to ‘relinquish’ the private interest.

**Complaints about Ernest Fleming**

647. Between 9 August 2014 and 17 February 2016, the regional office received at least 21 complaints about Ernest Fleming’s conduct, including multiple allegations of nepotism and financial mismanagement. Many of the allegations have been substantiated by this investigation.

648. The complaints to the regional office are summarised in Table 3 on the next page. 

649. In her response to the draft report, the Senior Adviser wrote:

> My recollection is that the complaints often had a ranting quality that contained personally derogatory or abusive comments about Ernest Fleming’s personal characteristics … and did not simply present discrete, coherent “allegations against Ernest Fleming” as you have set out in your table [see Table 3].

650. However, the investigation notes that many of the letters contained detailed and specific allegations relating to nepotism, the ADP Manager recruitment process, Ernest Fleming’s alleged intimidation of staff and financial management at the college.

651. Some of the letters also acknowledged Mr Fleming’s contributions to the college and expressed concern for his health and wellbeing. For example, the first letter, dated 4 August 2014, said:

> Before detailing my concerns I wish to acknowledge the good work that Mr Fleming [sic] has done over many years as principal … It is out of respect for him that I send this letter to you so that any changes that need to be made can be done in a controlled manner …

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18 Copies of written complaints were obtained from the Department of Education and Training. Details of the AEU grievance come from the Senior Adviser’s table; the original grievance was not provided to the investigation by the department. Information about the four staff members who met with the Senior Adviser on 6 November 2014 was obtained at interviews with Staff Member B and the Senior Adviser at interview. All other written complaints listed here were reviewed by the investigation.
Table 3: Complaints to the regional office about Ernest Fleming (2014-16)

<table>
<thead>
<tr>
<th>Date</th>
<th>Complainant(s)</th>
<th>Allegations against Ernest Fleming</th>
</tr>
</thead>
</table>
| 4 August 2014    | Anonymous letter                                    | • nepotism regarding Karen and Adam Fleming  
• misuse of college resources to fund the ADP  
• workplace bullying by Ernest Fleming. |
| 24 October 2014  | Anonymous letter                                    | • nepotism  
• inappropriate ADP Manager recruitment process – role likely to go to Ernest Fleming’s son  
• inappropriate email sent by Ernest Fleming to union representative  
• students not receiving mandated teaching hours. |
| October 2014     | Anonymous letter                                    | • conflict of interest regarding employment of relatives  
• detailed timeline of Adam Fleming’s engagement at the college  
• Adam Fleming listed on planning documents as ADP Manager for 2015 and interviewing participants for the 2015 ADP  
• misuse of college resources and failure to submit ADP budget to school council  
• Ernest Fleming treats staff who question him with ‘extreme prejudice’ and tells them to ‘mind their own business’. |
| November 2014    | Anonymous letter                                    | Complainant withdraws allegations in ‘October 2014’ letter and apologises for ‘tone and intent of my letter’ and ‘any damage I may have caused to the reputations and integrity of those mentioned in this letter’. |
| 6 November 2014  | Four college staff members meet with the Senior Adviser in person | Concerns that inappropriate process for recruitment of ADP Manager will result in Adam Fleming being awarded the position over a more qualified candidate. Concerns that Ernest Fleming will seek retribution against the complainants if he discovers their identities. |
| 9 November 2014  | Anonymous letter                                    | Staff member expressing concern for the wellbeing of the four staff members who met with the Senior Adviser on 6 November 2014, should Ernest Fleming find out about their complaint. The staff member claims not to have been a participant in the meeting. |
| 19 November 2014 | Anonymous letter                                    | • Ernest Fleming ‘verbally abused’ a female staff member in his office after discovering she had spoken to Adam Fleming about Adam Fleming’s behaviour  
• this was not the first time Ernest Fleming had behaved this way and the author was concerned for members of staff should they go public with their concerns about the way Ernest Fleming was running the college  
• potential for staff to suffer ‘psychological injury’ as a result of Ernest Fleming’s behaviour. |
<table>
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<tr>
<th>Date</th>
<th>Complainant(s)</th>
<th>Allegations against Ernest Fleming</th>
</tr>
</thead>
</table>
| 12 May 2015  | Anonymous letter | • Adam Fleming was awarded the ADP Manager position over a more qualified candidate  
• the other candidate was mistreated by Ernest Fleming who ‘maligned, obstructed and isolated’ her ‘in an attempt to get rid of her’. |
| 21 May 2015  | Anonymous letter | • nepotism regarding employment of Karen and Adam Fleming  
• misuse of college resources to fund ADP  
• non-teaching staff in the ADP ‘acting like teachers and being portrayed as teachers when they are actually [Education Support] staff’  
• the complainant intended to contact IBAC about their concerns. |
| 25 June 2015 | Anonymous letter | • changes made to college to save money to fund ADP. |
| 1 July 2015  | Anonymous letter | • nepotism  
• lack of consultation by Ernest Fleming  
• requests the department’s help to ‘improve the situation at our school’. |
| 14 July 2015 | Anonymous letter | • allegation the college was a ‘banker’ school  
• allegation Ernest Fleming organised a $1million loan to the college from the State Treasury several years ago. |
| 24 October 2015 | Anonymous letter | • nepotism  
• financial mismanagement and unethical financial practices  
• at a recent committee meeting Ernest Fleming became so angry when questioned about his decision-making process that he was ‘physically shaking’  
• legal obligation of department to provide a safe working environment; risk that staff may suffer harm due to Ernest Fleming’s actions. |
| 1 November 2015 | Anonymous letter | • nepotism relating to Karen and Adam Fleming  
• inappropriate recruitment processes, in breach of departmental policy  
• Ernest Fleming inappropriately instructed staff not to raise concerns by email (evidence attached). |
| 2 November 2015 | Anonymous letter | • Ernest Fleming inappropriately instructed staff not to raise concerns by email (evidence attached)  
• Ernest Fleming recently spoke to staff about ‘power bases, misinformation and challenging opinion in a way that suggests he is becoming quite paranoid about his staff’  
• Ernest Fleming instructed staff in writing to ‘choose your boss carefully’. |
<table>
<thead>
<tr>
<th>Date</th>
<th>Complainant(s)</th>
<th>Allegations against Ernest Fleming</th>
</tr>
</thead>
</table>
| 12 November 2015 | Anonymous letter                | • inappropriate use of college funds  
                                • nepotism.                                                                                     |
| 15 November 2015 | Anonymous letter                | • Ernest Fleming breached conflict of interest guidelines regarding employment of Karen and Adam Fleming and the Leading Teacher  
                                • ‘The lack of accountability by [the regional office] is sending a strong message to the staff at this school that you do not care what [Ernest Fleming] does’. |
| 27 November 2015 | Australian Education Union grievance | • lack of consultation in relation to a change of structure for Year Level Coordinators  
                                • college protocol for staff emails  
                                • ‘comment regarding [Ernest] Fleming’s ... health’.                                             |
| 1 December 2015  | Anonymous letter                | • lack of planning/consultation by Ernest Fleming  
                                • the department has a duty of care to both Ernest Fleming and staff at the college.          |
| 17 December 2015 | Anonymous letter                | • decision by Ernest Fleming to close the college library without consulting the school community  
                                • Ernest Fleming ‘behaves as if he owns the school and that any money under his control is to be spent as he sees fit’  
                                • nepotism  
                                • culture within the organisation to ‘protect the Principal at all costs’.              |
| 17 February 2016 | Anonymous email via ‘Speak Up’ service | • nepotism regarding Karen Fleming, Adam Fleming and the Leading Teacher  
                                • financial mismanagement  
                                • fear of reprisals from Ernest Fleming if identified.                                     |
652. Ernest Fleming’s response to the draft report stated the letters were part of a ‘malicious, orchestrated campaign’ to end his career, conducted for four years by a ‘small group of agitators’ amongst college staff. His response stated that the first letter received by the regional office was in fact the fifth in a series, and that the letters sent to the regional office had a ‘more respectful tone’ than the ones he received:

The anonymous, personal letter campaign Mr Fleming endured, started in 2013 – the first three … were addressed only to Mr Fleming, threatening that if he didn’t resign/retire they would start sending the letters to his line managers/politicians etc. They were malicious, libellous and made generalisations about Mr Fleming’s capacity … The College Council Presidents were fully informed re the history of the anonymous letter campaign; they decided the letters had no credibility or substance after asking Mr Fleming to explain the background to the allegations.

653. The response quoted from a letter allegedly received by Mr Fleming, however Mr Fleming did not provide a copy to the investigation.

654. Mr Fleming’s response also said:

The malicious, personal nature of the letters caused Mr Fleming great distress as his medical history clearly shows – by 2016 the workload and the campaign meant he was ‘physically and emotionally exhausted’. [original emphasis]

655. Mr Fleming’s response noted that the Conflict of Interest policy stated, ‘personal enmity toward someone can be just as relevant as loyalty to them’ in determining conflict of interest.

Alleged intimidation of complainants

656. Complainants – both anonymous and those who identified themselves to the department – expressed fear of what Ernest Fleming might do to them professionally if he found out who they were.

657. An anonymous letter to the Regional Director dated 9 November 2014, shortly after the meeting with the Senior Adviser, stated:

I have heard that some other [staff members] have been to the region about Ernie. If I have heard this then it is most likely that Ernie will find out. I fear greatly for the well-being of these [staff members] if Ernie was to ever identify who they are … I know what Ernie can do to someone if he is not happy about them.

658. The fear of repercussions expressed by complainants to the department in 2014-16 was consistent with the concern expressed by witnesses interviewed by this investigation. Staff Members A, B, C, D, E and F spoke of a climate in which staff feared reprisals from Ernest Fleming for making complaints or openly disagreeing with him.

659. Staff Member B, one of the four who met with the Senior Adviser on 6 November 2014, told the investigation at interview that it was known there would be ‘repercussions’ for staff who spoke up against Ernest Fleming if he managed to identify them, and that he would make their professional lives ‘uncomfortable’.

660. Staff Member C said they were ‘scared’ to stand up to Ernest Fleming as there would be professional consequences for anyone who criticised his hiring of relatives:

It wouldn’t be good…He would have made it unpleasant … You’d be moved sideways – there’d be a way.
661. Staff Member C said they believed Ernest Fleming would find out if staff complained to the regional office.

662. Similarly, Staff Member D said:

I knew that every time you went to [the union or the regional office], Ernie found out about it straight away anyway ...

Everyone in the school basically said, if you complain, Ernie finds out about it then you … [get] treated differently and you don’t get positions and responsibility, you’re ostracised … I thought, well, I’ve got to work here, I don’t really want to get into that position.

663. The regional office had indications that some of the concerns expressed by complainants about Ernest Fleming’s reaction if he discovered their identity might be well-founded.

664. Two separate complaints received by the department, dated 1 and 2 November 2015, attached a copy of a document reportedly distributed by Ernest Fleming to staff after a meeting. In the document, Mr Fleming instructed staff not to raise concerns by email and to do so in person only. The document also stated that he would not respond to concerns in writing, only in person or at a staff meeting.

665. Ernest Fleming also sent the Senior Adviser an email on 22 October 2014 asking the regional office to help him identify complainants, and another on 14 December 2014 indicating he had been involved in a confrontation with someone whom he suspected of making complaints about his employment of family members, in which the other person had made a ‘tearful apology’ for ‘unfairly slandering [Mr Fleming’s] family’.

666. Mr Fleming’s response to the draft report said:

There is no history of Mr Fleming ever harassing or intimidating staff members, students, parents or community members throughout his career. Members of the small group constantly harassed leaders, other staff – particularly ESOs – and students – behaviour Mr Fleming and team leaders had to address regularly. Making the victim out to be the bully is classic bullying behaviour. [original emphasis]

667. Mr Fleming’s response also made it clear that he believed he knew who the complainants were, and that he regretted not taking disciplinary action against them. His legal representative quoted him as saying:

On reflection, I acknowledge … instead of spending so much time and emotional energy to get the small group on board, I should have taken formal action regarding their unprofessional classroom practice and undermining of leaders and programs. This would have established clear COI [conflict of interest] for these people, given they would have been the subject of disciplinary action. [original emphasis]

Handling of complaints

668. At interview, the Senior Adviser said she had known Ernest Fleming since 2000, when she was principal of a school neighbouring another where he was Assistant Principal. Ernest Fleming’s response, too, said they had had a ‘long professional association’. After commencing as Senior Education Officer in the regional office in 2003, the Senior Adviser said she was Ernest Fleming’s line manager ‘on and off’ until 2015, when she moved into a different role.
First complaint

673. The Senior Adviser’s table states that in response to the first anonymous complaint, dated 4 August 2014, she met with Ernest Fleming, requested information about the selection processes for his wife and son, and ‘examined the documentation associated with the process.’

674. At interview, the Senior Adviser said her meeting with Mr Fleming took place in August 2014. As a result of this meeting, according to the table:

- The region found that Mr Fleming did not participate in the selection processes and is not involved in the performance and development process for his family members.

675. The Senior Adviser also noted in the table that the college did not have a conflict of interest policy and that, as a result, she worked with Ernest Fleming to create one. However, principals and schools were already bound by the department’s Conflict of Interest policy, which did not require schools to develop their own conflict of interest policies.

676. In her response to the draft report, the Regional Director wrote that she sees value in schools having ‘their own written conflict of interest’ policies, consistent with the department’s, as this ‘gives greater prominence to the obligations at a local school level, including by indicating to staff that the school takes the issues seriously’. She added:

- It was for these reasons that we felt it important to encourage Mr Fleming to have a written policy in place, notwithstanding that it was our belief that reasonable steps had been taken by him [to manage the conflict] at the time of his family members’ appointments.
677. It is unclear how, at the time of her first meeting with Ernest Fleming in August 2014, the Senior Adviser could have viewed selection documentation that satisfied her that Adam Fleming had been recruited in an appropriate manner. As outlined earlier, in August 2014 Adam Fleming was still being paid by invoice. He had not been through a formal recruitment process, and the ADP Manager position had not been advertised. He was not an official employee or contractor of the college and reported directly to his father.

678. At his interview with the investigation, Ernest Fleming denied having shown the Senior Adviser any selection documentation relating to selection processes for his relatives at this time. He said there had not been any documents to show her.

679. When asked at interview whom Adam Fleming reported to in August 2014, the Senior Adviser said she could not remember, but it was ‘certainly not Ernie’. She said she did not make any enquiries about this beyond speaking to Ernest Fleming.

680. When asked which documents she had seen in relation to Karen Fleming’s employment, the Senior Adviser conceded she had not viewed any, despite what she had written in the table. She said she had relied on Ernest Fleming’s advice about the process and had no reason to doubt him. She said she believed Ernest Fleming had told her the Assistant Principal and the college’s former Business Manager were on a panel that interviewed Mrs Fleming for her initial role, and that Ernest Fleming was not involved in the selection process.

681. The Senior Adviser said Ernest Fleming also told her his wife’s manager was the Assistant Principal. She said she did not speak to the Assistant Principal at the time to confirm this.

682. According to the Senior Adviser, Ernest Fleming also assured her he was not involved in any performance and development management of staff at the college, and that another staff member was responsible for all PDP processes.

683. The Senior Adviser said she had spoken with this staff member, but her discussions with him were ‘very much about how supportive he was of Ernie [and] the great leadership that Ernie provided’.

684. In her response to the draft report, the Senior Adviser stated:

I do remember sighting documentation about recruitment processes and financial management provided to me by the College’s Business Manager. But from the evidence in the report, I cannot reconcile when I saw particular documentation or how it could have been sufficient. I cannot explain those discrepancies.

685. Mr Fleming’s response stated each letter received by the regional office was ‘investigated by [the Senior Adviser]’:

At the meetings with [the Senior Adviser], Mr Fleming would table documents and discuss the processes in place ... At no stage did Mr Fleming receive any formal feedback and direction to change, which he assumed meant he was doing the right thing. [original emphasis]
686. According to the response, Mr Fleming outlined the 'processes in place' to the Senior Adviser:

- **Reviews/Salary Progressions**
  (b) Ms Karen Fleming - Managed by [Former Business Manager/current Business Manager]
  Reviewed by [the Former Business Manager/current Business Manager] and in 2015/16 [another staff member/ Business Manager]

(b) Mr Adam Fleming - Managed by [the Assistant Principal] … (See ‘setting level’) - Reviewed by [the other staff member] and [the Assistant Principal] …

- **Line Manager - Complaints/Issues etc**
  (c) Ms Karen Fleming – [the Former Business Manager/current Business Manager]
  (d) Mr Adam Fleming – [the Assistant Principal and current Business Manager]

*In doing this, Mr Fleming clearly had processes in place re Ms Karen Fleming and Mr Adam Fleming that met ALL the COI expectations of DET as presented in COI 2013!* [original emphasis]

687. The response added:

On the balance of probabilities, in the 2013/2014 Mid Cycle review, [the Senior Adviser’s] praise for Mr Fleming’s initiatives, leadership and excellent student and parent survey data, clearly indicates there was none of the outcomes - consequences from his actions - of poor handling of COI against 2013 expectations! Mr Fleming was clearly even handling COI, ‘enmity’. [The Regional Director] noted the school was ‘unusually successful’ - further proof COI was managed successfully except in the eyes of those running the orchestrated campaign.

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**Subsequent anonymous complaints**

688. After her first discussion with Ernest Fleming in August 2014, according to the Senior Adviser’s table, the Senior Adviser declined to investigate any of the subsequent complaints relating to nepotism, as she considered the matter had been dealt with. For example, in relation to complaints dated 1 October and 1 November 2014, she wrote:

The issues outlined relating to employment of family members had previously been discussed and investigated.

689. For a complaint dated 19 November 2014, the Senior Adviser wrote:

Senior Advisor determined the matter of the employment of family members to have been previously raised with principal.

690. In relation to a complaint about the hiring of Adam Fleming as ADP Manager, dated 2 May 2015, the Senior Adviser wrote:

The selection process that related to this position at [the college] was previously investigated and deemed to have followed appropriate processes.

691. In this way the Senior Adviser dismissed further complaints about nepotism after August 2014, even when they referred to new events such as the recruitment of Adam Fleming as ADP Manager.

692. Mr Fleming’s response stated that the Senior Adviser interviewed him at least three more times following receipt of anonymous letters:

At one of these interviews, [the Senior Adviser] said, ‘I know these are hurtful BUT I have been instructed to investigate.’ … *Mr Fleming would provide relevant documents and explain processes and again ask if there was anything else he needed to do.* Mr Fleming was desperate for a solution. The impact on his health was enormous … [original emphasis]
Complaint made in person

693. The Senior Adviser’s table does not mention the four staff members who met with her in person on 6 November 2014 to outline their concerns about Ernest Fleming’s involvement in the recruitment process for the ADP Manager. The meeting took place two weeks before Adam Fleming and the Sports Manager were interviewed for the position on 21 November 2014.

694. At interview, Staff Member B, who participated in the meeting, said the four staff members outlined their concerns that the process was being manipulated to ensure Adam Fleming would be awarded the role. Staff Member B said they described Adam Fleming’s activities at the school from January 2014 and his sidelining of the college’s Sports Manager, and showed the Senior Adviser documents distributed by Adam Fleming to staff in August 2014 in which he described himself as ADP Manager for 2015.

695. As noted earlier, Staff Member B said the group expressed concerns to the Senior Adviser that Ernest Fleming would retaliate against them professionally if he found out their identities. Staff Member B said [the Senior Adviser] advised them she could only investigate their allegations if they submitted a formal letter with their names on it, which would be provided to Ernest Fleming.

696. At interview, the Senior Adviser said she had been under the impression the staff members were complaining about a recruitment decision that had already been made, rather than a process that was underway. She said she did not remember the staff members showing her any documents.

697. The Senior Adviser indicated she told the staff members the unsuccessful applicant, who was not present, would need to pursue the matter. She said she told them the unsuccessful applicant could appeal the decision through the Merits and Equity process, or write to the Regional Director. She said she told the group the complainant could not remain anonymous because for Ernest Fleming to be able to answer to the complaint, ‘it would be more appropriate if he had [their] name’.

698. The Senior Adviser’s evidence at interview does not match an email she sent to the Regional Director, dated 11 November 2014. In the email, the Senior Adviser informed the Regional Director of her meeting with the four staff members, saying they had raised ‘several allegations and concerns about aspects of Ernie Fleming’s leadership and issues at the school’ and expressed ‘concern of retribution from Ernie [Fleming]’. She wrote they ‘plan to put in writing these matters and have agreed to be named’.

699. Staff Member B said that following the meeting, the group drafted a letter to the Regional Director, but decided to withdraw their complaint out of concern about their names being provided to Ernest Fleming. Staff Member B provided a copy of the draft letter to the investigation, attached to an email sent to another participant in the meeting on 26 November 2014.

700. In her response to the draft report, the Senior Adviser said:

It is my clear recollection that the four staff members came to me in support of a particular applicant in a particular recruitment process … In those circumstances … it was appropriate and correct to say that there were appeals processes for the affected candidate and that the person would need to exercise those rights themselves … In the usual way, using their name …
701. The Senior Adviser added that she does not recall ‘saying broader allegations of corruption would definitely require a letter from named authors’. She stated:

It is my belief and recollection … that the four staff members planned to put a named complaint in writing, but did not do so. I do not believe this stemmed from my saying that it was required for complaints about nepotism or potential retribution … I do not believe I ever would have said that complaints about retribution from a principal would have to be named so that the principal could respond. That is obviously nonsensical …

Knowledge of the protected disclosure regime

702. At the time of the Senior Adviser’s meeting with the four complainants, the department’s complaints policy stated:

Where a complainant has real and substantial concerns that, as a result of raising a complaint, they may suffer a detriment, they may have access to protection under the provisions of the Protection Disclosure Act 2012. The [Act] defines the types of complaints that may be accepted as complaints under the Act.

703. At interview, the Senior Adviser was asked whether there was a reason people had to provide their names for her to be able to investigate. She replied, ‘Probably not in the true sense of legal proceedings’, but that it was necessary to provide procedural fairness to the subject of the complaint.

704. When asked whether she had considered telling the four staff members they could make a protected disclosure\(^1\) if they were seeking protection and anonymity, the Senior Adviser replied that she wasn’t aware of protected disclosures or the Protected Disclosure Act.

705. Later in the interview, the Senior Adviser clarified that as of the day of her interview with the investigation on 5 April 2017, she was still not aware of the Protected Disclosure Act. She said she had heard of IBAC. She said that if somebody came to her seeking to disclose serious corruption by a principal who reported to her, she might refer the matter to the Conduct and Ethics Branch or seek advice from the department’s legal branch.

706. The investigation sought the Regional Director’s comment about the Senior Adviser’s advice to the four complainants that their names would have to be provided to Ernest Fleming, for their complaint to be investigated. At interview, the Regional Director said:

There is a lot of misunderstanding about that in our Department … I have noticed in our Department, there was a belief that that’s the case.

707. In relation to the protected disclosure regime, the Regional Director said:

Regional Director: The term ‘protected disclosure’ would not have been known to our Department in 2014.

Interviewer: What do you mean by that, sorry?

Regional Director: That wouldn’t be a term that we would be using. I can’t think of a time Conduct and Ethics would have used the term ‘protected disclosure’ to me, or to [the Senior Adviser].

708. The Regional Director clarified that she ‘would have been broadly aware’ of the Protected Disclosure Act in late 2014, but said her office relied on advice from the Conduct and Ethics Branch, which never suggested any of the complaints should be treated as a protected disclosure.

\(^1\) The Protected Disclosure Act 2012 (Vic) came into force on 10 February 2013, replacing the Whistleblowers Protection Act 2001 (Vic).
Advice from the Conduct and Ethics Branch

709. Both the Senior Adviser and the Regional Director told the investigation their handling of the complaints was based on advice from the department’s Conduct and Ethics Branch (now known as the Employee Conduct Branch). The branch develops and maintains the department’s guidelines on managing complaints, misconduct and unsatisfactory performance, and provides support to managers and principals about these issues.

710. At interview, the Regional Director said:

   Our analysis of [the complaints], or [the Senior Adviser’s] analysis of them, which I accepted and … Conduct and Ethics accepted, was that they didn’t meet a threshold to warrant a more formal follow up.

711. Email evidence demonstrates that on several occasions, she instructed the Senior Adviser to seek advice from the branch about individual complaints. However, the emails show the branch’s advice relied on information from the Senior Adviser that was in some respects inaccurate.

712. For example, on 7 October 2014, the Senior Adviser emailed the Regional Director with ‘background and context’ relating to the first and second anonymous letters. The next day, the Regional Director emailed this advice to the branch with the covering message:

   Based on [the Senior Adviser’s] thorough advice, I do not see any need for any further action, unless you advise otherwise.

713. The Senior Adviser’s email contained a number of inaccuracies, as summarised below:

Table 4: Inaccuracies in the Senior Adviser’s email to the Regional Director

<table>
<thead>
<tr>
<th>Statement in the Senior Adviser’s email</th>
<th>Evidence of the investigation</th>
</tr>
</thead>
<tbody>
<tr>
<td>‘A leadership position for [the ADP] was advertised and unfilled’ in 2013</td>
<td>No such position was advertised until October 2014.</td>
</tr>
<tr>
<td>Adam Fleming commenced on a volunteer basis in 2014 as a coach/organiser of implementation of the program</td>
<td>Adam Fleming was paid $50 an hour for his work at the school throughout 2014, to a total of at least $54,500.</td>
</tr>
<tr>
<td>Adam Fleming was paid on local payroll</td>
<td>Adam Fleming was not paid on local payroll in 2014; rather, payments to him were made from a range of college funds including the ‘contingency fund’ and the ‘council development fund’.</td>
</tr>
<tr>
<td>‘Any positions that may be advertised in the future for this program would be conducted by a fully constituted panel with an outside principal’</td>
<td>Although Adam Fleming was interviewed by a selection panel, Ernest Fleming was involved in the recruitment process for the ADP Manager position advertised in October 2014, as outlined earlier, Ernest Fleming selected the ‘outside principal’, an acquaintance who had advised Ernest and Adam Fleming in developing the ADP, to be on the panel. Adam Fleming was appointed to selection panels and described as ‘ADP Manager’, recruiting staff for the program, while the recruitment process for ADP Manager was still ongoing.</td>
</tr>
</tbody>
</table>
714. In contrast to the Senior Adviser’s evidence to the investigation that Ernest Fleming did not accept or understand that there was a perception of conflict of interest in relation to his employment of family members, the Senior Adviser’s advice also stated:

Ernie understands the perception issue but firmly believes that the outcomes for students, the pathway opportunities the program creates for students and the profile this area of specialisation brings to state education is what is important …

Ernie also has received a lengthy letter from same author, I did not see the letter but he described it as libellous, it was also anonymous. He is aware that the sports specialisation program has possibly threatened the status of the college’s PE department.

715. The response from the branch, dated 8 October 2014, was:

I assume that Adam [Fleming] became the leader of the coaches because no one else wanted to do it; I also assume they will be advertising the position again … Leaving that aside, I agree that no further action is needed but the employment of [Ernest Fleming’s] wife (even though he wasn’t on the panel) doesn’t show good judgement.

716. This advice was not only based on incorrect information supplied by the Senior Adviser, but also relied on the following assumptions that turned out to be incorrect:

- the ADP Manager position would be readvertised according to a fair and independent process
- Adam Fleming had taken the position in 2014 as no one else wanted it.

717. There is also no evidence Karen Fleming was interviewed by an independent panel for her then position of Personal Assistant to the Principal.

718. The Senior Adviser replied on the same day:

Yes you are correct no one else wanted the position that Adam has … [Karen Fleming] was also the only applicant for the position she is currently in.

719. As noted earlier, there were three applicants other than Mrs Fleming for the role of Personal Assistant to the Principal.

720. On another occasion in November 2015, according to the Regional Director, the branch reviewed the regional office’s handling of the complaints and advised it was open to the regional office to conduct a workplace investigation into the school.

721. The Regional Director said she considered this option and consulted with the Deputy Secretary about it, however decided it would be inappropriate to investigate at that time. She said this was because a workplace grievance lodged by the sub-branch of the Australian Education Union (AEU) at the college, which related to ‘selection panels’, had been settled on 27 November 2015.

722. The Regional Director said she had not read the details of the grievance, but the settlement had involved a commitment from the principal and the AEU sub-branch to endeavour to have a better working relationship. She felt there had therefore been a ‘process that involved the staff’. In her response to the draft report, the Regional Director added that her decision was based on a briefing from the Senior Adviser who facilitated the settlement of the grievance, and ‘discussions with the Deputy Secretary and other senior staff’ of the regional office.
Advice from the Deputy Secretary

723. At interview, the Regional Director said she sought advice about how to handle the complaints from two different Deputy Secretaries of the department, twice in 2014 and four times in 2015. She said the advice from the respective Deputy Secretaries was to ‘keep working with Conduct and Ethics’.

Proposed reference to the complaints in Ernest Fleming’s Performance and Development Plan

724. Email evidence shows that both the Regional Director and the Senior Adviser were aware in late 2014 that Ernest Fleming did not understand or accept his obligations in relation to conflict of interest, whether real or perceived.

725. On 14 December 2014, the Senior Adviser emailed Ernest Fleming summarising the comments she intended to record in his mid-cycle PDP document, a routine assessment of a principal’s performance over the previous six months. Most of the email praised initiatives introduced by Mr Fleming, his leadership and ‘strong outcomes in the parent and student survey data’. The Senior Adviser also wrote:

During the year I have raised with you the perception of conflict of interest with the employment of family members at the school, it is important that the correct policies are in place and adhered to and that these are monitored by other members … of the leadership team at the school.

726. This referred only to a ‘perception’ of conflict of interest and did not require Mr Fleming to take any specific action in relation to his relatives’ employment.

727. In response on the same day, Mr Fleming wrote he wanted a written statement from the Regional Director that he had done nothing wrong. The following excerpts give a sense of the tone of his email:

Given I have a tearful apology [from an unnamed person] for ‘...unfairly slandering your family ...’, (and I forgave the unforgivable - more you don't know)... Why is it [the conflict of interest issue] going to be mentioned in my [PDP] report? As established, I have done nothing wrong! I would like that in writing from [the Regional Director] please. My family have sacrificed a lot to establish a program that is fantastic for kids and wouldn't have happened without voluntary work...

I still believe you can run a large school as a community where there is open communication, trust, respect, is family based, etc.

728. Mr Fleming wrongly claimed in the email that his son had only been paid from Term 2, when in fact, as noted earlier, he had been paid from before Term 1.

For the record (and between us), I average 90 to 100 hours a week 51 weeks of the year, Karen 60 to 70 (ESO paid for 38) and Adam 70 to 80 (Paid on local payroll for 23 hours a week Terms 2 to 4 ...)

729. Mr Fleming’s response to the draft report stated that the reference to Terms ‘2 to 4’ was most likely an ‘inadvertent typo’ on the part of the investigation, and that it should have read ‘Terms 1-4’. Mr Fleming’s response added that if not a typo, ‘the other explanation is it was referring to the Sports Coordinator role’. This contradicts the statement elsewhere in his response that Adam Fleming was not paid for Sports Coordinator work in 2014.
730. The investigation confirms that Mr Fleming’s email read ‘Terms 2 to 4’ and notes that the investigation provided Mr Fleming with a copy of the relevant email chain to assist him in preparing his response to the draft report.

731. Mr Fleming’s email to the Senior Adviser continued:

I am not naïve – I understand how perception works! I know we live in a more cynical world. At times it needs to be challenged, especially when uninformed and libellous! ... As I have said to Karen [Fleming], it is unfair what I am asking/accepting from my family for this community. Anyone suggesting we get any advantage out of our roles and contribution simply don’t know what we give.

732. The email concluded, ‘Will have a long think over the holidays as to whether it is time’, which appeared to be an indication he was considering resigning.

733. On 18 December 2014, the Senior Adviser responded with an email inviting Mr Fleming to catch up as ‘we have both ended up being upset and distressed’. Mr Fleming responded the next day that he would be back in January and thanked her for being his ‘listening post, anchor and a great support’.

734. The Senior Adviser placed her email to Ernest Fleming on his PDP file but did not enter any comments into the PDP document directly, which provides space for ‘reviewer comments’ and should be signed by both the reviewer and the subject of the PDP. As a result, Ernest Fleming did not sign a document acknowledging they had spoken about conflict of interest or accepting that he needed to adhere to the department’s policies. The Senior Adviser did not mention the conflict of interest issue in her written comments on any of Ernest Fleming’s other PDP reviews between 2014 and 2016.

735. When presented with this email exchange at interview, the Senior Adviser said she remembered it well. She described Ernest Fleming’s email of 14 December 2014 as a ‘diatribe’ and ‘a whole mixture of ranting and raving’. She said she had not been surprised to receive it.

736. She said the email was typical of Ernest Fleming’s reaction to her when she attempted to discuss the employment of his family members with him. She described his ‘belligerence’ to the issue and said he ‘was not accepting’ of it and ‘couldn’t see it from a perception point of view at all’. She said the email showed he was ‘incensed’ she had raised the issue, and that his attitude to conflict of interest was ‘concerning but not surprising’. At another point in her interview, she said it had been difficult to speak to him about the allegations made in the complaints, as he was defensive and dismissive and felt there was nothing to answer to. She said:

In discussing these matters with him, it would always be about the dedication that he and his family had.

737. When asked how she responded to the email, the Senior Adviser said she had discussed it with the Regional Director. She said they did not pursue any further action because they ‘put it as a rant’ and felt Mr Fleming had been writing ‘in distress’. On 17 December 2014 the Senior Adviser forwarded Mr Fleming’s email to the Regional Director and her Deputy Regional Director, seeking their advice on how to respond.

738. The Regional Director told the investigation she had not replied to the Senior Adviser by email and could not recall what advice she had given her.
739. The Regional Director said Mr Fleming was ‘emotional’ and that his email had ‘a sense of the ends justifies the means’. She said that over time, the Senior Adviser had provided feedback to the Regional Director that Ernest Fleming did not accept his obligations in relation to conflict of interest. She said she and her office believed, however, that he was ‘complying with what he should do’ and had ‘done what was required of him’.

740. In her response to the draft report, the Regional Director said she had not meant to imply that Mr Fleming did not understand or accept his obligations, and she believed at the time that he had taken steps to manage his conflicts of interest. She stated:

When I referred at interview to [the Senior Adviser] providing me with feedback ‘over time’ about Mr Fleming’s understanding of his obligations, I was referring to my recollection that he had been taking umbrage at criticism that he should not have permitted family members to be employed at the school at all, because of the perception it created.

741. In her interview with the investigation, the Regional Director said her handling of this matter was influenced by the tragic suicide of a principal on 7 December 2014, while the department was investigating a complaint about him, which had a heavy impact on departmental and teaching staff in the region. The Senior Adviser also told the investigation the regional office was concerned about the impact of the anonymous complaints on Mr Fleming’s health and wellbeing.

742. The Regional Director acknowledged in her response to the draft report that Mr Fleming’s reaction in the email was ‘less than ideal’ and that ‘in hindsight the Regional Office could have taken steps to further identify why he was reacting in that way’. She reiterated that she was unable to recall her specific discussions with the Senior Adviser or others at the time, but said she believes ‘we took into account a number of factors in interpreting [Mr Fleming’s] reaction’. These factors, according to the Regional Director, included:

The high potential for stress in his position as principal generally, the fact that the anonymous complaints were raising multiple disagreements over teaching and education principles, strategies and priorities (…likely to be contributing to Mr Fleming’s particular stress levels at the time) and the fact that another principal had committed suicide only weeks earlier during the course of an investigation … I believe that the view I would have held is that his response was not ideal, but that it was to some extent explicable and that he could (and should) be encouraged to reflect on it further.

743. The Regional Director added that in adopting this approach:

I would have been seeking for the Regional Office to strike a balance between performance managing Mr Fleming responsibly (ie…in a way that also had regard for his well-being) and investigating him, both of which the Office was required to do at the same time … The role of performance managing principals is a challenging one at the best of times, given the myriad local issues that can arise and the pressures of that particular job. It is even more challenging when specific allegations of wrongdoing are made which require investigation.

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20 The circumstances referred to by the Regional Director at interview were confirmed in an email from the President of the Australian Principals Federation dated 7 December 2014, forwarded by the Regional Director to the investigation.
744. With respect to his email to the Senior Adviser, Mr Fleming’s response to the draft report stated:

Having raised, discussed, and in the context of now two years of anonymous letter harassment, Mr Fleming was distressed that someone he trusted for advice, needed for support and had asked for help with this issue quite a number of times, would put it in writing, a long time after they had discussed it earlier in the year, that he needed ‘to be careful’. Mr Fleming believed he was ‘being careful’ and with no specific advice, again felt ‘victimised’.

745. The response added:

The ‘personal nature’ of the email, clearly indicates the longstanding strong professional relationship Mr Fleming and [the Senior Adviser] had. Mr Fleming simply shares his frustrations re what he considered an unfair attack on his reputation by people who had waged a campaign of harassment ... The [PDP] process allowed Mr Fleming to express an opinion on [the Senior Adviser’s] draft. Given COI is ‘Subjective, Complex and Personal’, it is very easy for ‘haters’ – those with ‘enmity’ – to make unfair allegations based on misinformation.

Regional office’s perception of the complaints and complainants

746. The Regional Director said at interview that aside from the complaints, other formal indicators – notably the annual staff survey, parent and student satisfaction survey and NAPLAN results – suggested the school was ‘unusually successful’. In his response to the draft report, Ernest Fleming said the ‘unusually good’ survey results were ‘a direct result of the introduction of the ... ADP in particular’.

747. The Senior Adviser said she believed the anonymous complaints came from a single person, who may have been acting alone or on behalf of a group of union members. She said this was based on Ernest Fleming’s advice to her. The Regional Director also said she felt there was an ‘industrial undertone’ to the complaints.

748. Some of the anonymous letters were undoubtedly written by a single person, who referred to previous anonymous letters they had sent. However, there is evidence that not all the letters had the same author. For example, two separate letters, dated 1 and 2 November 2015 and signed ‘a very concerned member of the BSEC community’ and ‘a Senior teacher of the Bendigo South East College’ respectively, raised concerns about a staff meeting held on 1 November 2015. Each letter enclosed a copy of the notes distributed by Ernest Fleming at the meeting. The letter dated 1 November stated, ‘This is the only letter I intend to send on this matter as I expect you will do nothing about Ernie’. These letters appear to have been sent by two separate people who were concerned about the same incident.

749. Similarly, the regional office received a series of letters dated 4 August 2014, 24 October 2014, undated October 2014 and undated November 2014. The undated November 2014 complaint referred to the department receiving ‘a letter from me’ the previous week, and withdrew all the statements in the undated October 2014 letter. The author did not seem to be aware that the department had received two anonymous letters the previous week, and did not refer to the letters of 4 August 2014 and 24 October 2014. This suggests the author of the undated letters was not the same person who wrote the letters of 4 August 2014 and 24 October 2014.
Response to Ombudsman enquiries,  
February – March 2015

750. In February 2015 the Ombudsman made enquiries with the department about an anonymous complaint alleging that Ernest Fleming had failed to adhere to the Conflict of Interest policy by employing family members. The Ombudsman’s office received internal legal advice that it does not have jurisdiction over the actions of school principals or other members of the teaching service unless the matter has been determined by IBAC to be a protected disclosure complaint.

751. The Ombudsman therefore made enquiries with the department under section 13A of the Ombudsman Act about its handling of the allegations, including:

- whether the department had received any complaints regarding the employment of Adam and Karen Fleming at the school
- whether Adam Fleming had been paid for consultancy or contract work provided to the school
- whether Ernest Fleming had declared a conflict of interest at any time during the employment, recruitment or engagement of his wife and son.

752. The Ombudsman also requested copies of all complaints the department had received about Mr Fleming.

753. At the time of the Ombudsman’s enquiries, the department had received five written complaints about Ernest Fleming (dated 4 August 2014, undated October 2014, 24 October 2014, 9 November 2014 and 19 November 2014) and an undated letter in November 2014 withdrawing the allegations made in the undated October 2014 complaint. The Senior Adviser had also met with four college staff members on 6 November 2014.

754. Yet in a letter dated 10 March 2015 – three months after Ernest Fleming’s email to the Senior Adviser demanding she not mention his conflicts of interest in his PDP – the Regional Director told the Ombudsman that her office had received only three complaints about Ernest Fleming. The Regional Director only disclosed the complaints from 4 August and October 2014, along with the letter withdrawing one of the complaints.

755. The Regional Director’s letter did not mention the four staff members who came forward in person on 6 November 2014. Nor did it mention the two further letters her office received in November 2014. Both of these letters went further than the others in detailing author’s, or authors’, fears of retribution by Ernest Fleming if he were to discover complainants’ identities.

756. The letter of 9 November 2014 is quoted earlier. The letter of 19 November 2014 detailed an alleged incident where Ernest Fleming gave a ‘dressing down’ to a senior staff member who had raised concerns with Adam Fleming about his behaviour. The letter states:

Ernie found out about this discussion and had this female ... staff member come to his office. This staff member was given a dressing down despite the legitimate nature of the conversation that she had with Adam Fleming ... This is not the first time Ernie has behaved in this manner and that is why I have great concerns for members of staff should they go public with their concerns regarding the way Ernie is running this school.

757. In her letter to the Ombudsman, the Regional Director said the Senior Adviser had spoken with Ernest Fleming and reviewed the personnel files of Adam and Karen Fleming, and was ‘satisfied that Mr [Ernest] Fleming had taken reasonable steps to manage the conflicts of interest in relation to the employment processes’. 

oversight by the regional office  111
758. The Regional Director’s letter said Adam Fleming had been paid in Semester 2, 2014 ‘along with 9 other sporting coaches’ for ‘work in the before-school-hours coaching program’. In response to the question about whether Ernest Fleming had declared a conflict of interest, the letter stated:

Mr Fleming took steps to manage the conflicts of interest in relation to the employment of Adam and Karen Fleming … he did not take any part in the selection processes and he involved a principal from another school in each selection panel. Mr Fleming’s line-review manager, [the Senior Adviser], has discussed his obligations under the Department’s Conflict of Interest Policy with him during their performance and development meetings in 2014; she is satisfied that his responses demonstrate a sound understanding of his obligations.

759. At interview, the Regional Director said she did not draft the letter herself, but was provided with the letter to sign by her staff. Emails she provided, dated 6 March 2015, confirmed that both the Senior Adviser and staff from the Conduct and Ethics Branch helped to draft the letter.

760. The Regional Director said neither she nor her office deliberately withheld information from the Ombudsman about the full extent of complaints. She said the failure to advise the Ombudsman of the three November 2014 complaints was an administrative oversight.

761. In her response to the draft report, the Regional Director added that she did not personally assemble the documents to provide with the letter. She noted that it had been months since her office had received the written complaints and she was confident that by that time she would ‘not have had an independent recollection of the number of written complaints’, as it is ‘not possible in [her] role as Regional Director to personally recall all correspondence received by the [regional] office’.

762. The Regional Director wrote she does not believe her staff provided her with a copy of Mr Fleming’s email to the Senior Adviser of 14 December 2014 at the time she reviewed and signed the letter to the Ombudsman, and therefore does not believe she recalled it or considered it at the time.

763. The Regional Director was asked at interview why her letter to the Ombudsman stated Ernest Fleming had convinced the Senior Adviser he had a ‘sound understanding of his obligations’, given her evidence that the Senior Adviser had advised her over time that he did not accept his obligations in relation to conflict of interest. She replied:

What he objects to is the community raising the conflict of interest and [the Senior Adviser] raising the conflict of interest, which doesn’t mean he doesn’t understand it, he objects to it being raised.

764. In her response to the draft report, the Regional Director clarified:

It was my belief at the relevant time that [Mr Fleming] did understand that the situation involved a conflict and he had taken steps to manage it (and was prepared to take further steps...) … He did not appear to be oblivious or wholly rejecting of his responsibilities … but he was taking offence at the issue being raised when he felt that appropriate arm’s length processes had been adopted.

765. However, the Regional Director also acknowledged in her response:

… the statement that Mr Fleming had demonstrated a ‘sound understanding of his obligations’ was not sufficient to convey the whole of the circumstances. Further explanation of [the Senior Adviser’s] discussions with Mr Fleming, including his attitude to the complaints raised, would have assisted and I accept that the absence of such an explanation gave a misleading impression to the Ombudsman.
766. The Regional Director reiterated that it was ‘absolutely not [her] intention to mislead the Ombudsman in any way’. She wrote that at the time she signed the letter, she believed Mr Fleming understood his obligations in relation to conflict of interest because, ‘based on the reports [she] had received from [the Senior Adviser]’, she believed:

- the appointments of Karen Fleming and Adam Fleming had occurred without Ernest Fleming’s direct involvement in the process
- Mr Fleming was not involved in ongoing performance management of his relatives
- Mr Fleming had agreed with the Senior Adviser to develop and implement a written conflict of interest policy for the college.

767. On this basis, the Regional Director stated, she did not believe that Mr Fleming was ‘actively avoiding his obligations or that he had no understanding of them’.

Findings

768. The regional office’s handling of over 20 complaints it received between August 2014 and February 2016 represents numerous missed opportunities to act early to address Ernest Fleming’s conduct.

769. The individual actions and decisions of the Senior Adviser and to a lesser extent, the Regional Director, who were responsible for handing the complaints, warrant particular attention.

770. In their responses to the draft report, both the Regional Director and the Senior Adviser acknowledged shortcomings in the department’s handling of allegations against Mr Fleming.

771. The Regional Director wrote:

Having read the Ombudsman’s draft report … I acknowledge that the steps taken by the Department to investigate, in particular following receipt of the initial complaints, could have been more extensive. In particular, additional steps might have been taken to seek access to relevant documents to verify the answers that Mr Fleming had provided to [the Senior Adviser].

772. The Senior Adviser stated:

I recognise that there were failures in the handling of this matter and that the systems and procedures that were or are in place for the oversight of principals would benefit from review and improvement. It is clear, now that the Ombudsman has brought to bear its considerable powers of forensic investigation to this scenario, that things should have been done differently and the ultimate issues here could have been identified and resolved much earlier.

773. Both the Regional Director and the Senior Adviser also stated that during the period under investigation, a lack of resources made it difficult for the regional office to adequately oversight principals or conduct investigations.

774. According to the Senior Adviser:

The supervisory role of regional offices is a very challenging function, not least because school principals are accustomed to operating (and are required to operate) with significant autonomy. This is particularly so with the large number of schools that we were overseeing during the period of these events for each region … Additional resources have been allocated to regional offices in recent times to reduce the ratios of senior staff to school as well as an Integrity Liaison Officer. These additional resources have had a positive impact on the ability to work more closely with schools and school leaders. Indeed, it was necessary for our regional office to place significant trust in individual principals and routinely to rely on their having high standards of behaviour and professional ethics.
Similarly, the Regional Director stated that downsizing in 2013 significantly reduced staff levels and the capacity of regional offices to carry out investigations. She stated that throughout 2016, the state government increased the number of Senior Advisers (now SEILs) in regional offices by 40 per cent. ‘This,’ she wrote, ‘has reduced the number of schools each of these SEILs works with and allows them to have more time and a greater focus on specific issues within each school’.

The Senior Adviser

While recognising the resourcing challenges described, the investigation found the Senior Adviser, as the Regional Director’s delegate, did not adhere to her obligations under the Conflict of Interest policy, which emphasised the key role of managers in supporting employees to manage their conflicts of interest. This included the power to direct an employee to take action they may disagree with, such as relinquishing a conflict of interest.

The Senior Adviser was tasked with looking into the complaints about Ernest Fleming. The department’s complaints policy allowed her to recommend to the Regional Director that a formal process be initiated, which would have allowed her to view documents and speak with witnesses.

Despite a series of complaints containing detailed allegations about Ernest Fleming’s nepotism and financial mismanagement of the college - many of which could have been easily substantiated by viewing the relevant documentation - the Senior Adviser limited her enquiries to speaking with Ernest Fleming and accepting his denials of the allegations.

In her response to the draft report, the Senior Adviser stated:

With hindsight I clearly see that in my conversations with my line manager and our contact with Conduct and Ethics I continued to rely too heavily on what I had been told by the principal, Ernie Fleming. However...this presents a difficult circular problem – I would have had the power to investigate more thoroughly if a formal process had been initiated, but until then I was reliant on what I had been told by the principal to get advice on whether to initiate a formal process.

Both the Regional Director and the Senior Adviser said they had relied on advice from the department’s Conduct and Ethics Branch. However, the investigation found the branch itself relied on information provided by the Senior Adviser which was inaccurate and tended to downplay the seriousness of the allegations.

Of particular concern were the Senior Adviser’s inaccurate statement in the table that she had ‘examined the documentation’ associated with the recruitment processes for Adam Fleming and Karen Fleming, and her email to the Regional Director of 7 October 2014 containing inaccurate ‘background and context’ to the complaints.

The Senior Adviser dismissed subsequent complaints on the basis she had already investigated the allegations and found no wrongdoing, even when the complaints related to new issues, such as the recruitment process for ADP Manager that commenced in October 2014.
783. The Senior Adviser told her superiors that Ernest Fleming understood his obligations regarding conflicts of interest, despite being aware in late 2014 that this was clearly not the case. At interview, she described his ‘belligerence’ when she attempted to raise the issue of conflict of interest with him and said he could not understand the ‘perception issue’. Yet, she took no further action to address this. In addition, she:

- wrote in her table documenting her handling of complaints that she had viewed recruitment documents for Adam Fleming in August 2014, when it would have been impossible for her to do so
- wrote to the Regional Director on 8 October 2014 that Mr Fleming ‘understands the perception issue’ in relation to his employment of family members, even though she knew that Mr Fleming was ‘not accepting of it’ and ‘couldn’t see it from a perception point of view at all’.

784. The investigation accepts the Senior Adviser was to some extent misled by Ernest Fleming and did not deliberately mislead her superiors on every occasion she passed on information provided to her by Mr Fleming.

785. In her response to the draft report, the Senior Adviser wrote:

I acted honestly at all times, on the available facts. I may have treated the word of an otherwise high-performing principal as superior to the content of anonymous complaints, and consequently failed to investigate with sufficient rigour - to the potential detriment of the school, its students, my department and myself. But I did so honestly.

786. On the Senior Adviser’s own evidence, Ernest Fleming was angry and emotional about the complaints against him. The regional office had enough information about his behaviour to prompt them to take seriously complainants’ fears of reprisals.

787. Yet when four staff members identified themselves to her in November 2014, the Senior Adviser told them the department could not investigate unless complainants provided a written statement with their names on it, which would be provided to Mr Fleming. This prompted them not to pursue the complaint due to their fear that Mr Fleming would take detrimental action against them.

788. The Senior Adviser’s advice to these complainants breached her responsibility under the department’s complaints policy to act where misconduct is brought to a manager’s attention, whether or not a formal complaint has been lodged. Her advice did not take into account her discretion to consider complainants’ requests for anonymity, nor that the complainants might be entitled to protections under the Protected Disclosure Act.

789. In response to this finding, the Senior Adviser stated that her advice to the complainants was ‘complicated by their primary desire to advocate for a particular staff member in a particular recruitment process’:

I do not believe that my advice...breached my responsibility under the complaints policy, because I believe that I advised them that anonymity was not appropriate for an appeal by an unsuccessful candidate in a recruitment process, not a requirement for a general misconduct complaint.
790. However, this is inconsistent with the email the Senior Adviser sent to the Regional Director shortly after meeting with the complainants. The email did not mention a complaint about a recruitment process but said the staff members had raised ‘allegations and concerns about aspects of Ernie Fleming’s leadership and issues at the school’ and expressed ‘concern of retribution from Ernie’.

791. For a senior public officer in the Senior Adviser’s position to be unaware of the Protected Disclosure Act in November 2014, let alone in April 2017, is concerning.

792. In response to this finding, the Senior Adviser stated:

I find it difficult to accept that my ignorance of the protected disclosure regime was an unacceptable personal breach ... or at least one that was solely my failure ... There is a considerable amount of legislation and other subordinate material that is and was directly relevant to the performance of my duties, and I have always attempted to be aware of and comply with all of it. I believe that, particularly where the report acknowledges another senior public servant [the Regional Director] as describing ignorance of the protected disclosure regime as common in my department, and there are bodies in the public sector that are charged with increasing the awareness and education of public servants about protected disclosures, it is unfair to present this as simply a personal failure ...

794. However, with responsibility for around 350 public schools in the region, day-to-day line management of Mr Fleming was largely delegated to the Senior Adviser. This arrangement was in line with practices in other regions, and in accordance with the department’s guidelines on the supervision of principals.

795. To a significant degree, the Regional Director relied on advice provided by the Senior Adviser about her enquiries into the complaints against Ernest Fleming. The Regional Director could not have reasonably known the Senior Adviser had not viewed selection documentation for Karen Fleming and Adam Fleming in August 2014. Nor could she have known the Senior Adviser’s advice about the background to the complaints was factually inaccurate.

796. The investigation accepts that the failure in March 2015 to disclose to the Ombudsman the full number of complaints received by the regional office was not a deliberate act on the Regional Director’s part.

797. Notwithstanding this, it is concerning that the Regional Director’s letter of 10 March 2015, drafted in part by the Senior Adviser, told the Ombudsman that the Senior Adviser was satisfied Mr Fleming demonstrated a ‘sound understanding of his obligations’ in relation to conflict of interest. The Regional Director recognised this in her response to the draft report, stating:

I acknowledge that the letter did not refer to the attitudinal issues concerning Mr Fleming that the Ombudsman has highlighted. As a consequence, it did not provide as fulsome an explanation of the [regional] office’s management of the complaints and investigations as it should have.

The Regional Director

793. The Regional Director was responsible for signing off on Ernest Fleming’s PDP process, and ultimately responsible for her office’s management of Ernest Fleming and handling of the complaints against him.
Conclusions

798. The investigation found that for many years, Ernest Fleming ran the Bendigo South East College as a personal fiefdom, employing and promoting family members, providing substantial benefits to his son’s business partner and two companies owned by his son, and using public funds as he saw fit without consultation or approval from the college council.

799. His actions showed little or no regard for departmental policy, relevant legislation and regulations, and his obligations under the Code of Conduct to avoid conflicts of interest, use his power for authorised purposes, and uphold standards of honesty, integrity and financial probity.

800. Michael Bulmer, the bus and charter coordinator engaged by Ernest Fleming, misused his position to obtain, and attempt to obtain, private benefits for his own businesses. His conduct was authorised and facilitated by Ernest Fleming.

801. Ernest Fleming was allowed to engage in improper conduct for so long because the regional office failed to act early and decisively on detailed reports about his conduct it received regularly from August 2014. Ernest Fleming’s line manager failed to take appropriate action or provide support to complainants who came forward with their concerns about nepotism in an ongoing recruitment process.

802. The actions – or inaction – of the regional office and the breakdown of the usual accountability mechanisms contributed to a culture in the college in which Ernest Fleming’s actions went largely unchallenged and staff who attempted to report improper conduct felt they had nowhere to go.

Nepotism

803. Ernest Fleming used his considerable power and autonomy as principal, which included the final say in recruitment decisions, to employ and promote his wife, Karen Fleming and son, Adam Fleming, and unilaterally increase his son’s salary.

804. Ernest Fleming’s actions in relation to the employment and promotion of family members breached the department’s Recruitment in Schools and Conflict of Interest policies.

805. He also promoted two staff members to Assistant Principal roles without following due process. He did so knowingly, against the advice of his acting line manager. One of the staff members was related by marriage to one of his sons. Mr Fleming’s promotion of these staff members contravened the rules governing special payments in the Victorian Government Schools Agreement 2013 and the Recruitment in Schools policy.

806. Mr Fleming’s actions contravened section 3.2 of the Code of Conduct, which prevents public servants from using their power to provide a private benefit to their family, and section 3.7, which obliges them to ensure they are not influenced – and could not be perceived to be influenced – by conflicts of interest. He also failed to declare numerous conflicts of interest involving family members to the Regional Director as required by the department’s Conflict of Interest policy.

807. Despite his obvious misuse of his power, he met perceived criticism of his actions with ‘belligerence’, in the words of his line manager. When she raised the issue of his conflicts of interest with him, he demanded a written statement from the Regional Director that he had ‘done nothing wrong’.
Nepotism erodes public trust and is unacceptable in any area of the public service. Its impacts can be particularly severe in a regional area, in a close-knit community where there are fewer employment prospects than in a major city. This report details some of the negative effects of Mr Fleming’s nepotism and failure to manage conflicts of interest, including its impacts on the culture of the college, unfair recruitment processes and outcomes, and the potential to undermine public trust in public officials. Despite his claim that recruitment processes involving his relatives and associates were never the subject of appeals or grievances, Mr Fleming is aware that multiple complaints were made to the regional office.

Current and former staff members gave evidence to the investigation of the profound impact Mr Fleming’s conduct had on the culture at the school, their working environment and in some cases, their careers.

### Misuse of position and conflicts of interest

810. Ernest Fleming engaged Michael Bulmer as regional bus coordinator in May 2013. Mr Fleming also made Mr Bulmer responsible for booking bus charter work for the college, despite knowing that Mr Bulmer had a conflict of interest as he was the Business Development Manager at Bendigo Coachlines.

811. This appointment allowed Mr Bulmer and his wife to channel college business to Bendigo Coachlines, a business the Bulmers went on to purchase with Brandt Fleming in June 2016 and to which they continued to direct college funds.

812. In 2015 Mr Bulmer, as bus coordinator, leased a minibus to the college, which not only provided him with a financial benefit but also meant the college booked fewer bus trips through his business competitors. This arrangement was made with Ernest Fleming’s knowledge and approval.

813. Mr Bulmer also sought to use his position as bus coordinator to access sensitive medical and other personal information about students to develop a private business interest.

814. The investigation accepts Mr Bulmer’s statements that he was entirely transparent with Ernest Fleming about his business interests, and that he was not a departmental employee or bound by the VPS Code of Conduct. However, although not a public officer, Mr Bulmer and later his wife, Lynn Bulmer, were engaged using public funds to perform a public service.

815. Michael and Lynn Bulmer’s conduct adversely affected the ‘effective performance’ (under section 4(2)(da) of the Protected Disclosure Act) of the department, which necessitated that bus charter work be awarded on the basis of a competitive process and at market price.

816. Ernest Fleming breached the department’s Conflict of Interest policy by failing to manage Mr Bulmer’s conflicts and to prevent him taking personal advantage of his position.

817. Ernest Fleming had several conflicts of interest in relation to his engagement of Mr Bulmer, as he was aware from at least September 2014 that Mr Bulmer was a business partner of his son, Brandt Fleming. In June 2016, the Bulmers and Brandt Fleming purchased Bendigo Coachlines together. The investigation accepts that Mr Fleming advised his acting line manager of this when his line manager met with him to discuss a complaint about Mr Bulmer’s involvement in the company on 6 June 2014.
818. Mr Bulmer and Brandt Fleming also purchased a travel agency, italktravel, in June 2016. Shortly after they purchased the company, Ernest Fleming and his wife Karen Fleming booked two school excursions, at a cost of over $18,000, through the company. They liaised directly with Brandt Fleming regarding the purchases.

819. Although he informed his line manager of Brandt Fleming’s ownership of Bendigo Coachlines, Ernest Fleming failed to declare any of his other conflicts of interest to the Regional Director, in breach of the Conflict of Interest policy. He also misled the college council about the nature of his son’s interest in Bendigo Coachlines and did not mention Mr Bulmer’s interest in the company at all, despite his obligations under the Education and Training Reform Act to provide adequate and appropriate advice to the council, and section 3.1 (honesty at work) of the Code of Conduct. Mr Fleming’s actions were also inconsistent with sections 3.2 (using powers at work) and 3.7 (conflict of interest) of the Code.

Misuse and mismanagement of public resources

820. This investigation, and audits commissioned by the department at the request of the investigation, highlighted misuse and mismanagement of public funds by Ernest Fleming. The breakdown of accountability mechanisms, such as appropriate separation of financial duties and oversight by the college council, allowed Ernest Fleming to operate largely unchecked.

821. The audits identified a pattern of unexplained and insufficiently documented reimbursements to Mr Fleming from public funds. He systematically failed to seek approval for expenditure from the college council, failed to provide records to demonstrate the legitimate business nature of expenses, as required by the Schools Purchasing Card guidelines, and did not provide the college council with the advice it required to fulfil its financial oversight obligations.

822. Mr Fleming also employed a contractor who held major cleaning and maintenance contracts at the college to do work on his home and accepted ‘mate’s rates’ for the private work. This was inconsistent with the Code of Conduct’s provisions on gifts and benefits (section 4.2) and conflicts of interest (section 3.7), and the Conflict of Interest policy. Although the investigation did not find evidence the contractor was paid for private work using public funds, as alleged, Mr Fleming opened himself up to allegations of this nature by failing to ‘maintain a strict separation between work-related and personal financial matters’ as required by the Code of Conduct.

823. Ernest Fleming and Adam Fleming used college resources to run a program, the ADP, that misled parents and students into believing the program delivered the mandatory Health and Physical Education curriculum. This was a betrayal of the trust of students and their parents, who paid participation fees and had the right to expect that their children would be taught the curriculum.

824. The Flemings ran the program at a deficit each year and Ernest Fleming used the college’s ‘contingency’ and ‘council development’ funds to cover ADP expenses. He misled others into believing there was sufficient money in these funds for the expenses, inconsistent with section 3.1 of the Code of Conduct.
Oversight by the department

825. Long before IBAC referred these matters to the Ombudsman, the department was aware of the allegations against Ernest Fleming and at least some of those against Mr Bulmer.

826. Many of the allegations of nepotism and financial mismanagement by Mr Fleming, substantiated by the investigation, were reported to the regional office in over 20 complaints it received between August 2014 and February 2016.

827. The regional office’s failure to meaningfully investigate the complaints or take action to address Mr Fleming’s conduct enabled him to continue to engage in improper conduct with impunity. According to witnesses, the regional office’s inaction, and a perception of its closeness to Ernest Fleming, discouraged staff from coming forward with their concerns.

828. Those who did were told their names would be provided to Ernest Fleming if they wanted the regional office to investigate, even though this was not required by the department’s complaints policy. On the contrary, the policy required managers to act on allegations of misconduct. These employees were not advised they may be entitled to protections under the Protected Disclosure Act. The regional office failed in its duty of care to these employees.

829. Instead of investigating the allegations against Ernest Fleming, the Senior Adviser assured her superiors she had looked at non-existent selection documentation and declined to investigate further complaints on this basis.

830. The Senior Adviser was aware that Ernest Fleming did not accept his conflict of interest obligations and the Regional Director was aware of Mr Fleming’s ‘attitudinal issues’. Yet, the Regional Director assured the Ombudsman in March 2015 that Mr Fleming understood his obligations.

831. The Regional Director’s response to the Ombudsman did not include complaints detailing some of the more serious allegations regarding Ernest Fleming’s bullying of staff who raised concerns. While the investigation accepts that this was not a deliberate omission on the Regional Director’s part, the response had the effect of misleading the Ombudsman into believing no further action was warranted.

832. Had the regional office investigated the complaints and managed Ernest Fleming in accordance with the department’s own complaints, conflict of interest and recruitment policies, it could have acted early in relation to some of the conduct and prevented further improper conduct.

Ernest Fleming’s response to the draft report

833. Ernest Fleming provided a 208-page response to the draft report, accompanied by 102 attachments. While Mr Fleming’s response is quoted throughout this report, it warrants summarising here. His legal representative noted in the response:

Using the same methodology that underpins the [investigation's] Findings, on the balance of probability, it can only be concluded that the consequences of Mr Fleming’s actions ... significantly improved student outcomes and the successful completion of public investment in the BEP project at [the college]!
The Bendigo Education Plan context

834. Mr Fleming argued that the context of the 10-year Bendigo Education Plan (2008-17) is crucial to understanding the conduct examined in this report. In particular, he stated the BEP required participating colleges to operate with flexibility, in an environment of ‘radical change’, and to develop new ways of delivering the curriculum by teachers and specialists. Not all staff, he stated, accepted the requirements of ‘radical change’.

835. Mr Fleming also stated that under the BEP, the college was required to do ‘more than any other [participating] community’, despite what he described as insufficient support from the regional office.

836. According to Mr Fleming, traditional departmental processes relating to human resources, budgeting, recruitment and workforce planning were insufficient to implement the innovations required by the BEP. Mr Fleming’s establishment of the ADP was, he stated, an attempt to meet the BEP’s recommendation that schools establish ‘specialisms’. He described ‘current rules … re staffing’ as ‘not relevant’ to ‘innovative programs’ such as the ADP.

837. Mr Fleming’s legal representative quoted Mr Fleming as saying:

I have no doubt that once the investigator has a full understanding of the BEP context … [and] the ongoing harassment and false allegations by a toxic [group of staff members], that they will understand that all decisions were made with integrity, with the goal of maximising, limited resources – finances, staff and leadership capacity, infrastructure – to achieve best outcomes for students and the school as a whole.

838. In its response to the draft report, the department disputed Mr Fleming’s characterisation of departmental policies and processes as ‘not relevant’ under the BEP. The department confirmed that the BEP did not excuse principals from their compliance obligations. The department also noted that Mr Fleming appears to have coined the term ‘radical change’, and that this characterisation of the BEP did not form part of the department’s documentation or plans.

School results

839. Despite the challenges of this environment, which he stated took a major toll on his health and wellbeing, Mr Fleming said the college met all BEP outcomes and received international, national and local recognition for the quality of its processes, innovation, and BEP outcomes. Mr Fleming’s response also referred to annual parent, staff and student surveys showing high levels of satisfaction with the college. Mr Fleming stated that these ‘unusually good’ results were the result of the success of the ADP in particular.

840. Mr Fleming’s response stated that in 2016, The Educator magazine named the college as ‘one of Australia’s leading innovative schools’ and Cambridge University also chose the college as ‘one of 800 worldwide schools that was leading educational reform’. Mr Fleming also provided copies of letters and notes he received from students, parents and community members over the years, thanking him for his contributions to the college and for the positive impact he had had on them, or their children.
Previous departmental audits and reviews

841. According to Mr Fleming’s response, previous departmental reviews and financial audits of the college had cleared him and the college of any inappropriate management of the college’s finances and resources. The response also referred to a line in the management letter attached to the 2017 Deloitte audit of the college commissioned by the department to assist the Ombudsman’s investigation, summarised in Mr Fleming’s response as ‘no material misstatement’.

842. In an email to the investigation dated 17 July 2018, the department advised that Mr Fleming’s interpretation of this statement was incorrect, and pointed out that the audit highlighted numerous concerns with the way in which Mr Fleming had managed the college’s finances, resulting in a lack of transparency regarding the college’s financial position.

Orchestrated campaign

843. Throughout his response, Mr Fleming stated he was the victim of a long-running, orchestrated campaign to destroy his career, fomented by a small group of staff, who maliciously raised a series of anonymous complaints about him. Mr Fleming stated that despite their allegations, he was ‘cleared’ by his line manager, the Senior Adviser, who investigated the claims several times in 2014 and 2015.

844. Mr Fleming denied harassing or intimidating anybody, as alleged in the anonymous complaints, and expressed regret that he had not taken disciplinary action against the complainants.

845. Mr Fleming’s response also raised concerns about the department’s ‘Speak Up’ initiative, introduced in April 2016, which allows staff to anonymously report allegations of misconduct. The response argued that the system would destroy trust between the department and principals, and that any principal could now be targeted with false claims by vindictive and disgruntled employees.

Conflicts of interest

846. Mr Fleming stated that prior to 2016, the department’s Conflict of Interest policy was ambiguous, for example by not defining what was meant by ‘immediate family’. Mr Fleming maintained that he had appropriate processes in place to manage the conflicts of interest involved in the employment of his wife and son, and purchases from companies belonging to another son.

847. Moreover, he argued that his actions in employing his relatives were in the ‘best interests’ of the college and did not have any negative impacts on the college. He added that no unsuccessful applicants ever lodged grievances or appealed a recruitment decision involving one of his relatives.

848. Mr Fleming stated that he had in place ‘an extra degree of separation where family members were involved and kept my line manager informed’, but that once the anonymous letter campaign started in 2013, he should have ‘considered putting in place further steps to avoid any chance of false accusations by the agitating group’.

Investigation procedure

849. Mr Fleming’s response to the draft report claimed that the investigation denied him procedural fairness, and specifically the ability to fully respond to the allegations against him, by:

- failing to provide him access to all documents he requested
- interviewing him only once, and for an insufficient length of time
- relying on flawed departmental documents
- relying on the evidence of anonymous witnesses
- the length of time taken to conclude the investigation.
The investigation went to significant lengths to provide procedural fairness to Mr Fleming. The measures put in place are outlined in more detail in the ‘methodology’ section at the start of this report. They included providing Mr Fleming with several extensions of time to respond to the draft report; providing him with relevant documents; and allowing him to access his work computer and emails at the Ombudsman’s office, along with IT support to assist him in opening documents and using the system.

Accompanied by his legal representative, Mr Fleming was interviewed by Ombudsman officers for three hours before the draft report was prepared. During the interview, Mr Fleming was advised that he could make a further submission in writing to the investigation if he wished to add anything later, and that he would be provided with a copy of the relevant sections of the draft report should the Ombudsman make any adverse comments or findings about him.

Mr Fleming’s first response to the draft report consisted of a 208-page response and six large folders of ‘attachments’. This demonstrates that he had both time and access to documentation in preparing his response.

As noted in the ‘methodology’ section, none of the findings relies on the evidence of anonymous witnesses. All findings are based on documentary evidence and the evidence of identified witnesses. The reasons for the length of time taken to investigate this matter are detailed in the ‘background’ section.

Ombudsman’s comment

At the conclusion of an investigation, I usually make targeted recommendations to agencies. In cases such as this, these may include that they strengthen their policies to clarify the rules for employees and enable managers to identify and act on improper conduct. The conduct identified in this report, however, occurred in spite of a comprehensive policy framework for recruitment processes, conflicts of interest, financial accountability and complaint handling.

It is telling that the subjects of the investigation, Ernest Fleming and Michael Bulmer, are no longer engaged at the college.

Ernest Fleming resigned in May 2018 after the department informed him of its decision to terminate his employment.

In March 2017 the department terminated the college’s informal arrangement with Michael Bulmer and his wife for the provision of bus coordinator services.

Adam Fleming resigned in April 2017, and the college is taking steps to ensure the content taught in the ADP meets the standards of the mandatory curriculum and is delivered by registered teachers.

Karen Fleming was on leave from 6 March 2017 and resigned on 5 September 2018.

Accordingly, no recommendations have been made in relation to any of these individuals. However, had he not resigned, I would have recommended the department consider Ernest Fleming’s suitability to remain as Principal of the college, and to revisit the appropriateness of allowing the Bulmers to continue providing bus coordinator services to the college in light of their conduct and ongoing conflicts of interest.
861. While this report does not make any recommendations with respect to specific remedies in this case, it is important that the department reflect on the conduct identified by the investigation and the regional office’s failure to respond to it appropriately, to ensure such conduct is not allowed to flourish in the future.

The department’s response

862. In correspondence to the Ombudsman dated 26 August 2018, the Secretary of the department stated:

I support the proposed findings in the draft report … Your investigation in relation to this matter has identified serious concerns relating to the conduct of the former principal of Bendigo South East College, Mr Ernest Fleming, particularly in relation to conflict of interest, nepotism, and misuse and mismanagement of public resources …

Your report also raises some important issues for the Department regarding complaint handling and obligations under the Protected Disclosure Act 2012. Integrity and Assurance Division is prioritising a body of capacity building work that aims to continue to raise awareness about avenues for employees to raise concerns and to build on the Speak Up culture work that has been done to date. This project will include training and resources for managers in relation to complaint handling and obligations under the Protected Disclosure Act 2012.

Considerable work has been undertaken over the past three years, as part of the Department’s Integrity Reform Program, to foster a culture that encourages staff to speak up about improper conduct. Effective management and handling of those reports is critical to building trust in the Department’s processes and to continuing to promote a culture where people feel confident that their concerns will be well managed and appropriate actions will be taken. This continues to be an area of focus under the Department’s Integrity Strategy.

I am pleased to note that your draft report does not make any recommendations and that you consider the Department has a comprehensive policy framework in place for recruitment processes, conflicts of interest, financial accountability and complaint handling. With this policy framework in place, the Department will focus on building awareness and capability in relation to conflicts of interest, complaint handling and understanding obligations under the Protected Disclosure Act 2012.

In addition, through the Integrity Reform Program, the Department has focused on raising awareness and understanding about the importance of appropriately managing conflicts of interest, with a particular focus on school leaders. In July 2017, awareness-raising initiatives included the development of a Conflict of Interest Quick Guide and case studies. Regional directors wrote directly to all principals to provide copies of these materials. Principal organisations … have been closely consulted and have actively supported these initiatives through their own newsletters and activities.

In July this year, after further stakeholder consultation, the Department launched a new online declaration form for employees to declare conflicts of interest. For the remainder of 2018, the Department will continue to raise awareness about conflicts of interest and the obligation to declare all existing and new conflicts of interest. This will include building capability through targeted training of regional staff to assist principals to manage conflicts of interest.
Appendix 1

Athlete Development Program development purchase order and sample of Adam Fleming's invoices in 2014.
Adam Fleming

Invoice: 006
28 Feb 2014
The Bendigo South East College, Elles St Flora Hill 3350
Ref: Sports Coordinator/Coaching

Date worked | Hours per fortnight | Rate
---|---|---
15-25 Feb | 25 | $25
26-28 Feb | 20 | $25
Total = 45

46 hours @ $25/hour

Total: $1150

Acc. Details:

Thank you!

---

Adam Fleming

Invoice: 006
28 Feb 2014
The Bendigo South East College, Elles St Flora Hill 3350
Ref: Sports Coordinator/Coaching

Date worked | Hours per fortnight | Rate
---|---|---
15-25 Feb | 25 | $25
26-28 Feb | 20 | $25
Total = 45

46 hours @ $25/hour

Total: $1150

Acc. Details:

Thank you!
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<th>Hours worked</th>
<th>Hours per contract</th>
<th>Total</th>
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<tr>
<td>3.5 Hour</td>
<td>50</td>
<td>175</td>
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<tr>
<td>6-8 Hour</td>
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<td>300</td>
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Total: $2200

App. Date: 30th May 2014

App. Details: ADP

Thank you!

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<td>28.75 Hour</td>
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Total: $2200

App. Details: ADP

Thank you!
Victorian Ombudsman’s Parliamentary Reports tabled since April 2014

2018

Investigation of allegations referred by Parliament’s Legal and Social Issues Committee, arising from its inquiry into youth justice centres in Victoria
September 2018

Complaints to the Ombudsman: resolving them early
July 2018

Ombudsman’s recommendations – second report
July 2018

Investigation into child sex offender Robert Whitehead’s involvement with Puffing Billy and other railway bodies
June 2018

Investigation into the administration of the Fairness Fund for taxi and hire car licence holders
June 2018

Investigation into Maribyrnong City Council’s internal review practices for disability parking infringements
April 2018

Investigation into Wodonga City Council’s overcharging of a waste management levy
April 2018

Investigation of a matter referred from the Legislative Council on 25 November 2015
March 2018

2017

Investigation into the financial support provided to kinship carers
December 2017

Implementing OPCAT in Victoria: report and inspection of the Dame Phyllis Frost Centre
November 2017

Investigation into the management of maintenance claims against public housing tenants
October 2017

Investigation into the management and protection of disability group home residents by the Department of Health and Human Services and Autism Plus
September 2017

Enquiry into the provision of alcohol and drug rehabilitation services following contact with the criminal justice system
September 2017

Investigation into Victorian government school expulsions
August 2017

Report into allegations of conflict of interest of an officer at the Metropolitan Fire and Emergency Services Board
June 2017

Apologies
April 2017

Investigation into allegations of improper conduct by officers at the Mount Buller and Mount Stirling Resort Management Board
March 2017

Report on youth justice facilities at the Grevillea unit of Barwon Prison, Malmsbury and Parkville
February 2017

Investigation into the Registry of Births, Deaths and Marriages’ handling of a complaint
January 2017
2016

Investigation into the transparency of local government decision making
December 2016

Ombudsman enquiries: Resolving complaints informally
October 2016

Investigation into the management of complex workers compensation claims and WorkSafe oversight
September 2016

Report on recommendations
June 2016

Investigation into Casey City Council’s Special Charge Scheme for Market Lane
June 2016

Investigation into the misuse of council resources
June 2016

Investigation into public transport fare evasion enforcement
May 2016

Conflict of interest by an Executive Officer in the Department of Education and Training
September 2015

Reporting and investigation of allegations of abuse in the disability sector: Phase 1 - the effectiveness of statutory oversight
June 2015

Investigation into allegations of improper conduct by officers of VicRoads
June 2015

Investigation into Department of Health oversight of Mentone Gardens, a Supported Residential Service
April 2015

Councils and complaints – A report on current practice and issues
February 2015

Investigation into an incident of alleged excessive force used by authorised officers
February 2015

2015

Reporting and investigation of allegations of abuse in the disability sector: Phase 2 – incident reporting
December 2015

Investigation of a protected disclosure complaint regarding allegations of improper conduct by councillors associated with political donations
November 2015

Investigation into the rehabilitation and reintegration of prisoners in Victoria
September 2015

Investigation following concerns raised by Community Visitors about a mental health facility
October 2014

Investigation into allegations of improper conduct in the Office of Living Victoria
August 2014