

**Australia's Public Sector Anti-Corruption  
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*Both sides of the fence*

**A case study on Corrupt Conduct**

**Presented by:**

John R Taylor  
Deputy Ombudsman  
Victoria

**ABSTRACT**

This is a story about greed and how a small number of dishonest public servants took advantage of their ability to buy equipment for their agencies and thereby obtaining a personal benefit.

An investigation was conducted by the Victorian Ombudsman following information provided by the Corruption and Crime Commission of Western Australia in April 2010. The Victorian Ombudsman's investigation identified that a number of Victorian Government agencies were placing large orders for toner cartridges from The Company and officers were receiving gifts as a result.

The Ombudsman investigated Arts Victoria, a number of Victorian Government schools, and a prison. The investigation identified several purchasing officers who had used public money inappropriately to purchase toner cartridges from The Company and benefited by accepting gifts.

In particular, in 2009 an Arts Victoria employee received over \$8000 in pre-paid VISA cards and Coles/Myer vouchers as a result of significant and unwarranted toner cartridge purchases. This corrupt conduct cost Arts Victoria over \$80,000.

This presentation will address the lessons learnt from the investigation and the steps put in place by the relevant Departments to limit the opportunity for such dishonest conduct in the future.

## **BACKGROUND**

In April 2010 the Acting Commissioner of the Corruption and Crime Commission of Western Australia (The Commission) wrote to the Victorian Ombudsman informing him that the Commission was investigating allegations that public offices in Western Australia were purchasing printer toner cartridges from a toner cartridge supplier (The Company) that was not an authorised Government supplier.

The Acting Commissioner advised the Ombudsman that the company is a Victorian based organisation with a number of subsidiaries trading throughout Australia selling toner cartridges “at 3-4 times the price of genuine cartridges”.

In light of this advice the Ombudsman decided to conduct an investigation on his own motion to determine whether this was also taking place in the Victorian public sector.

The following issues of concern were identified during the investigation:

- purchasing outside the State purchase contract
- improper expenditure of public money
- acceptance of gifts
- destruction of public records.

In light of our enquires, we decided to investigate the following public bodies which had made a large number of orders, received gifts and/or spent a significant amount of money with the company on toner cartridges:

- Arts Victoria
- a number of Victorian Government Schools
- a Prison.

The heads of these agencies were informed of the investigation.

## **AGENCY RESPONSE**

### **INVESTIGATION**

The investigation involved:

- interviewing staff from public bodies
- making enquiries with
  - the Department of Justice and the Prison
  - the Department of Education and Early Childhood Development and various Victorian Government schools
  - the Department of Premier and Cabinet and Arts Victoria.
- examining departmental files
- inspecting some of these agencies
- examining invoices and internal documents
- reviewing relevant policy documents, purchasing guidelines and legislation

- reviewing copies of invoices, confirmation orders and recordings of verification telephone calls from The Company
- making enquiries with the Victorian Government Purchasing Board and the Department of Treasury and Finance.

In the course of the investigation, 19 interviews were conducted mostly under oath. It was necessary to issue two summonses to obtain information and documents. Two witnesses requested legal representation at interview, which was agreed to.

We obtained documents from The Company by summons relating to orders from public bodies made to The Company in 2009-10.

## **ISSUES IDENTIFIED**

**The following issues of concern were identified:**

- **purchasing outside the State purchase contract**

On 1 January 2006 the Victorian Government Purchasing Board (VGPB) established a State Purchase Contract for the use of public bodies when purchasing stationery and office products. The State Purchase Contract includes the purchase of toner cartridges.

The VGPB's 'Good Practice Guidelines', states:

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

In 2006-10, under the State Purchase Contract, OfficeMax was the approved supplier for stationery and office products to the Victorian public sector.

All of the toner cartridge purchases were made outside these purchasing guidelines.

- **Improper expenditure of public money**

The investigation identified significant differences between the prices of toner cartridges offered by The Company and OfficeMax.

In one instance, invoices analysed by our officers showed that the already inflated unit price of a toner cartridge quoted by The Company (\$167) increased by \$202 to \$369 over a five month period.

We identified a number of purchasing officers who had used public money inappropriately during the purchase of toner cartridges from The Company by:

- Purchasing toner cartridges at inflated prices
- Purchasing toner cartridges that were not required.

Splitting invoices was also a practice used by office's to avoid scrutiny. For example, the investigation identified a purchasing officer who requested that an order from The Company be split into four invoices to ensure each invoice would not trigger further enquiry.

- **Acceptance of gifts**

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

- Public sector employees do not – for themselves or others – seek or accept gifts or benefits that could be reasonably perceived as influencing them.
- Public sector employees comply with any policies of their public sector employer in relation to accepting, declaring and/or recording the receipt of gifts or benefits. Public sector employees who are unsure about accepting a gift or benefit seek advice from their manager.

Our officers analysed a large number of invoices issued by The Company to public bodies. This analysis identified instances where initially the unit price of a toner cartridge was low and the comparative value of the gift offered was low. However, when the unit price of a toner cartridge increased, the value of the gifts offered also increased.

Once a public officer accepts a gift and fails to declare it, there is potential for that public officer to engage in a pattern of corrupt behaviour, placing them in a position that makes it difficult for them to discontinue purchasing or decline gifts from The Company in the future.

## **ARTS VICTORIA**

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

Our enquiries identify that Arts Victoria spent \$148,000.00 dollars in 2005-2009 on toner cartridges from the company.

During a review of invoices obtained from The Company, we identified that the purchaser of toner cartridges on behalf of Arts Victoria was a Project Officer, purchasing toner cartridges for a Ricoh CL7000 printer.

The investigation at Arts Victoria therefore focused on the purchases made by this Project Officer.

In June 2003, Arts Victoria purchased a Ricoh CL7000, black/white and colour printer. The purchase of this printer included a service contract with Ricoh Australia (Ricoh).

OfficeMax, the approved supplier under the State Purchase Contract, does not supply toner cartridges for a Ricoh CL7000 printer. OfficeMax advises purchasing officers to purchase toner cartridges for this printer from Ricoh.

The Ricoh service contract included:

- regular servicing
- black toner cartridges free of charge
- colour toner cartridges at a set price of \$342 each. In January 2004, Ricoh reduced the price of colour cartridges for this printer to \$263 each.

We received advice from Ricoh that the price of \$263 per unit for colour toner cartridges for a Ricoh CL7000 printer was available to Arts Victoria and remained so until May 2010.

On 17 July 2003, the Project Officer was the first officer from Arts Victoria to order toner cartridges from Ricoh under the service contract. Six other Arts Victoria staff members purchased toner cartridges under the Ricoh service contract in 2003-10.

The Project Officer's purchases from Ricoh under the service contract were as follows:

- Between July 2003 and March 2009, she obtained 16 black toner cartridges under the service contract at no charge.
- Between September 2004 and March 2009, she ordered 43 colour toner cartridges from Ricoh under the service contract for \$263 each. The total cost to Arts Victoria was:
  - Black toner cartridges \$0
  - Colour toner cartridges \$11,309

On 24 February 2006, the Project Officer purchased toner cartridges from The Company for the Ricoh CL7000 printer for the first time. In 2009, she spent approximately \$54,000 on toner cartridges purchased from The Company for Arts Victoria.

At interview she stated:

the purchasing I did I honestly believed it was saving Arts Victoria money

...

[the] prices that Ricoh gave us ... were similar if not slightly higher ... at the time ... my belief was at the time that this was comparable to the Ricoh prices.

Invoices viewed during the investigation identified a number of transactions where the Project Officer purchased black toner cartridges from The Company for \$799 and \$899 per unit. This is despite black toner cartridges being available free of charge under the Ricoh service contract, an offer which she had accepted on numerous prior occasions.

Based on the various prices paid by the Project Officer, the total amount spent by Arts Victoria when purchasing toner cartridges from The Company is as follows:

- Colour toner cartridges \$57,814.90
- Black toner cartridges \$42,380.80
- Total \$100,195.70

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

When confronted with recordings of telephone conversations she had with The Company, the Project Officer admitted that she hid the fact that she was received gifts from The Company of \$8,300 in shopping vouchers and prepaid Visa Cards.

She said:

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

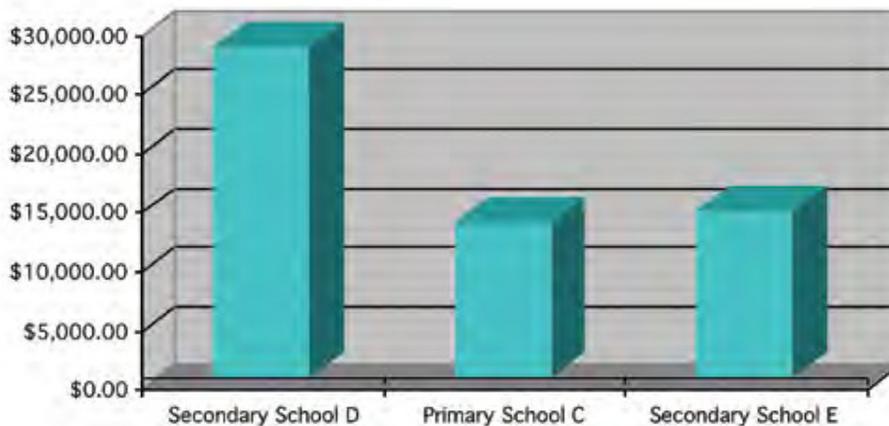
The Project Officer resigned during my investigation.

## THE DEPARTMENTS RESPONSE

### THE DEPARTMENT OF EDUCATION

The conduct of the officer in Arts Victoria was not unique. Our investigations into officers of the Department of Education identified similar kickbacks by way of gifts from the company with the investigation focused on 3 schools.

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



As a result of identifying significant expenditure at the three schools, including gifts totalling thousands of dollars, the Ombudsman recommended that the Department of Education and Early Childhood Development audit all procurement activity undertaken by purchasing officers at the three schools and report on the outcome. The Department accepted the recommendation.

In some instances the conduct was so serious that we considered it warranted discipline action against the individuals. The Department of Education accepted the recommendation that discipline action will be taken against the officers identified at the three schools.

## THE DEPARTMENTS RESPONSE

### LESSON LEARNT FOR THE WIDER PUBLIC SECTOR

While the obvious lesson learnt was in identifying and limiting the improper expenditure of public money there were a number of other issues that warranted reporting on publicly. These included:

- **Acceptance of gifts**

In many instances, the investigation identified that a lack of management and auditing provided an environment which allowed this conduct to go undetected.

It also found that several of the purchasing officers interviewed by our officers understood the difference between their private and public interest, but conducted themselves corruptly in favour of their private interest, at the expense of the public interest when purchasing toner cartridges with The Company.

The investigation identified that once a public officer accepts a gift and fails to declare it, there is potential for that public officer to engage in a pattern of corrupt behaviour, placing them in a position that makes it difficult for them to discontinue purchasing or to decline gifts from The Company in the future.

I am of the view that all gifts of more than \$20 in value, should be declared by the recipient to their manager in writing and recorded on a gift register.

- **Destruction of Public Records**

The investigation also identified that several public officers breached their obligations under the Public Record Office Disposal schedule by destroying documents relating to their purchases from The Company that are public records.

It is clear that the destruction of these records by a number of public officers were deliberate attempts to disguise and conceal gifts received from The Company. This was particularly so when the gift and invoice were sent to their home address.

- **Conflict of Interest**

The investigation also identified a culture within Arts Victoria where gift and benefits to stakeholder events (such as opera, theatre and ballet) are regularly accepted and not declared or recorded by staff on the grounds that such gifts relate to staff members' professional roles. I consider this rationale to be naïve, given that providers of these gifts are bodies which exist and survive on the basis of grants, many of which are supplied by the State Government. The amounts and beneficiaries of those grants are influenced by the advice of public officers and in particular public officers at Arts Victoria.

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

Arts Victoria had no entries in its gift register. This raises concerns about its fundamental understanding of the acceptance of gifts and hospitality in the public sector. This culture should be addressed by the Department of Premier and Cabinet as a priority.

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

## **DEPARTMENT'S RESPONSE**

### **FINALLY**

As a result of this investigation the Ombudsman made a number of recommendations aimed at:

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