

Response to the Victorian Ombudsman's report: *Alleged politicisation of the public sector: Investigation of a matter referred from the Legislative Council on 9 February 2022 – Part 2*

Background

The Ombudsman tabled the report *Alleged politicisation of the public sector: Investigation of a matter referred from the Legislative Council on 9 February 2022 – Part 2* on 6 December 2023. The report responded to item (d) of the 9 February 2022 motion from the Legislative Council referring several matters to the Ombudsman for investigation under section 16 of the *Ombudsman Act 1973*.

Some matters relating to the Legislative Council referral were addressed in the Ombudsman's report of 28 July 2022, *Investigation of a matter referred from the Legislative Council on 9 February 2022 – Part 1*. The Ombudsman has stated that other matters relating to the referral are being separately addressed in correspondence to the President of the Legislative Council.

Response

The Victorian Government and the Victorian Public Sector Commissioner (Commissioner) thank the Ombudsman for this report, which followed an intensive investigation, and acknowledge the significant work of the Victorian Ombudsman's office in preparing the report.

Victorians deserve to have trust in the people and institutions that serve them. Maintaining that trust relies on the strength and integrity of our public sector. Transparent, fair and merit-based recruitment processes are crucial to that trust and to the performance of the public sector.

The Victorian Public Sector Commission (VPSC) also plays a critical role driving excellence, professionalism, and integrity in the public sector. The VPSC supports an apolitical and trusted public service, including by establishing employment standards that guide the development of employment processes.

The Government's and the Commissioner's responses to the report's individual recommendations follow.

Recommendations directed to the Victorian Government and the Premier

Recommendation	Government response
<p>Recommendation 1:</p> <p>Review the <i>Public Administration Act 2004</i> (PAA) and introduce amendments to:</p> <ul style="list-style-type: none"> a) establish a public service Head, to act as employer of Department Secretaries and administrative office heads b) require the Premier to consult and obtain approval from a Joint House Committee chaired by a member of a non-government party (such as the foreshadowed Parliamentary Ethics Committee) before recommending an eligible person be appointed as public service Head c) establish a new and independent selection process for the appointment of Department Secretaries and administrative office heads, to be administered and chaired by the public service Head or their representative (and allowing for consultation with the Premier and relevant Ministers) d) empower the public service Head to participate (at their discretion, and directly or through representatives) in selection panels for other public service executive vacancies e) empower the public service Head to review, on their own initiative, whether actions relating to the employment of public service executives are unfair, contrary to the Act, or contrary to the standards issued under section 62 of the Act f) specify grounds upon which the employment of public service executives may be terminated, to preclude ‘at will’ termination. 	<p>Support in principle</p> <p>The government will review the <i>Public Administration Act 2004</i> (PAA). As part of the review the government will:</p> <ul style="list-style-type: none"> • review processes for the selection and appointment of Secretaries, administrative office (AO) heads and executives • revisit recommendations in relation to executive employment made in the VPSC’s 2016 Review of Victoria’s Executive Officer Employment and Remuneration Framework (EO Review) • consider further amendments to executive employment provisions in line with best practice in other Australian jurisdictions. <p>The government does not support establishing a new office, separate to the Victorian Public Sector Commission (VPSC), solely to employ department Secretaries and AO heads. Such an office has not been established in any other comparable jurisdiction and would require significant resources to operate effectively.</p> <p>Under the Westminster system of government, it is appropriate the executive government retain responsibility for decisions regarding the employment of Secretaries and AO heads in the public service. Similarly, it is appropriate that Secretaries and AO heads are responsible and accountable for employing executives within their departments and AOs.</p> <p>In Victoria, the Secretary of the Department of Premier and Cabinet (DPC) is the head of the public service. This reflects DPC’s role as the first Minister’s department. The Secretary, DPC supports the Premier in relation to the employment of other Secretaries and AO</p>

Recommendation	Government response
	<p>heads and administers some employment-related matters on the Premier’s behalf.</p> <p>The VPSC has existing powers to establish processes for the appointment of executives, including recruitment and selection processes, through binding employment standards that it is required to issue under section 62 of the PAA. The VPSC can participate in executive recruitment panels on request.</p> <p>The VPSC also has significant information-gathering powers under section 41 of the PAA. These powers enable VPSC to require public sector bodies to provide any document or information required by the VPSC in connection with the performance of its functions.</p> <p>Under section 63 of the PAA, the VPSC monitors compliance with the employment principles and standards, public sector values and codes of conduct. The VPSC can make non-binding recommendations to Secretaries and AO heads to change or introduce processes to promote or comply with the values, codes, principles and standards.</p> <p>The government notes the VPSC is reviewing the current employment standards and welcomes this review.</p>
<p>Recommendation 2:</p> <p>Pending amendments to the Public Administration Act, agree to extend the notice period for ‘at will’ termination of employment of public service executives to nine months, as previously recommended by the VPSC’s <i>Review of Victoria’s Executive Officer Employment and Remuneration Framework</i>.</p>	<p>Support in principle</p> <p>The government will review the standard employment contract for executives, including the ‘at will’ termination notice period.</p> <p>This review will be informed by the VPSC’s EO Review and by any relevant findings of the Victorian Independent Remuneration Tribunal in its 2024 Determination setting the values of the remuneration bands for executives employed in public service bodies, which is expected to be published in June 2024.</p>

Recommendations directed to the VPSC

Recommendation	Commissioner's response
<p>Recommendation 3:</p> <p>Prepare and issue a policy explaining the minimum steps that should be taken by public sector employers to give effect to the requirement of the <i>Standards for Application of the Public Sector Employment Principles 2017</i> (Standards), that employment documentation be sufficiently clear and comprehensive so that decisions are transparent and capable of effective review.</p>	<p>Support</p> <p>The VPSC is commencing a review of the Standards in 2024 and will address this issue both as part of that review and through parallel planned updates to recruitment policy settings and associated guidance materials.</p>
<p>Recommendation 4:</p> <p>Review the <i>Standards for Application of the Public Sector Employment Principles 2017</i> to clearly set out the circumstances, if any, in which public sector appointments may be made without an open and advertised selection process.</p>	<p>Support</p> <p>The VPSC is commencing a review of the Standards in 2024 and will address this issue as part of that review.</p>
<p>Recommendation 5:</p> <p>Revise the data specifications for the Executive Data Collection to require public service employers to specify in yearly reports the recruitment and selection method used to appoint each executive.</p>	<p>Support in principle</p> <p>The degree of support is dependent on the outcomes of the review of the Standards. That review will consider among other things the circumstances, if any, in which public service appointments may be made without open and advertised selection processes. Consideration as to the need for additional data collection will occur after this review.</p>
<p>Recommendation 6:</p> <p>Publish, as part of annual data reporting, the number of public service executive appointments made without open and advertised selection processes, specifying the proportion of such appointments made at the system and agency level.</p>	<p>Support in principle</p> <p>The degree of support is dependent on the outcomes of the review of the Standards. That review will consider among other things the circumstances, if any, in which public service appointments may be made without open and advertised selection processes. Requirement for publication of data will be considered following this review.</p>

Recommendations directed to the Department of Premier and Cabinet and the Premier

Recommendation	Government response
<p>Recommendation 7:</p> <p>Develop a policy requiring all Cabinet submissions, agendas and decision papers (and appendices) to be proactively disclosed and published online within 30 business days of a final Cabinet decision, subject to specified reasonable exceptions.</p>	<p>Do not support</p> <p>Cabinet confidentiality, including after decisions are complete, supports robust policy development and Cabinet deliberation. Current arrangements governing Cabinet materials under the <i>Freedom of Information Act 1982</i>, <i>Public Records Act 1973</i> and <i>Audit Act 1994</i> balance considerations of transparency and accountability with the importance of Cabinet confidentiality.</p>

Recommendations directed to the Victorian Government and the Attorney-General

Recommendation	Government response
<p>Recommendation 8:</p> <p>Review the <i>Ombudsman Act 1973</i> (Vic) and introduce amendments to sections 19, 19A and 25A(1)(b) to:</p> <ul style="list-style-type: none">(a) empower the Ombudsman to obtain Cabinet information where necessary for the purposes of an investigation(b) authorise the Ombudsman to include this information in a report to Parliament under section 25 of the Act where the Ombudsman is of the opinion that it is in the public interest to do so. <p>Consideration should also be given to similar amendments to the <i>Independent Broad-based Anti-corruption Commission Act 2011</i> (Vic).</p>	<p>Do not support</p> <p>The government does not support a review or amendments to these Acts to authorise access to Cabinet information for the reasons outlined in response to recommendation 7.</p>