IBAC's Operation Daintree Special Report – Government Response – October 2023

The Victorian Government sets out its response to the recommendations made by the Independent Broad-based Anti-corruption Commission (IBAC) in its *Operation Daintree Special Report* below.

No.	Recommendation	Portfolio	Response
1	That the Victorian Government ensures that lobbying activities by employee and employer associations are included in any reforms arising from IBAC's *Special report on corruption risks associated with donations and lobbying* (Corruption Risks Special Report).	Premier	**Support-in-principle** • The Government will support in principle lobbying activities by employee and employer associations being included in any reforms arising from IBAC's *Special report on corruption risks associated with donations and lobbying* (Special Report).
2	That the Victorian Parliament request the Ethics Committee (when established) to prepare guidance about the current scope of the convention on ministerial accountability and its application to Victorian Government ministers.	Premier	**Matter for Parliament** • The Government will work with the Parliament, including representatives of the Opposition and Crossbench, to consider what matters could be appropriately considered by the Ethics Committee, once established. • Establishment of the Ethics Committee is a recommendation of Operation Watts and will be created under the legislation to establish the Parliamentary Integrity Commission (PIC). The Government is currently consulting on legislation to establish the PIC and the Ethics Committee by June 2024.
3	That the Premier ensures that: a) the Ministerial Code of Conduct (Ministerial Code) is amended to be consistent with any guidance issued by the Ethics Committee in implementing Recommendation 2 b) the Ministerial Code is amended to require all ministers to:	Premier	**3(a) Under review** • The Government will consider any amendments to the Ministerial Code related to Ethics Committee guidance at a future time, noting this recommendation is subject to receiving and considering any guidance that may be issued by the Ethics Committee once it is established. • This recommendation is subject to the establishment of the Ethics Committee, which will be progressed as part of the

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	• observe the relevant protocols and conventions in providing instructions to, and communicating with, departments • ensure that their offices have effective arrangements for the supervision and accountability of staff, escalation of issues and clear lines of communication • ensure that their staff observe the relevant protocols and conventions in communicating with departments • complete a mandatory induction program • undertake mandatory refresher training on the Ministerial Code of Conduct • be fully aware of their obligations under the Ministerial Code of Conduct and their staff's obligations under the *Ministerial Staff Code of Conduct* (Ministerial Staff Code) • ensure the scope of all advisors' authority is clearly defined, and the manner they may discharge their functions are consistent with the Ministerial Staff Code and the protocols about interactions with public servants.		legislation to establish the PIC. The Government is currently consulting on legislation to establish the PIC by June 2024. **3(b) Support-in-principle** • The Government supports updating the Ministerial Code and is currently progressing this work. • Further consideration will be given to this recommendation, noting the Government's commitment to codify employment arrangements for ministerial staff in legislation.
4	In line with other jurisdictions, that the Victorian Government develop and introduce legislation to clarify and formalise the employment arrangements for ministerial staff to strengthen transparency and accountability. Options to consider include: a) clarifying employment responsibilities, such as: • designating the minister to whom the staff are assigned to be their employer, or alternatively,	Premier	**Support** • The Government supports this recommendation and will consider it as part of its commitment to codifying employment arrangements for ministerial staff in legislation.

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	vesting employer responsibilities in the minister to whom staff are assigned once they have been employed by the Premier, • providing for the accountability and supervisory arrangements for ministerial staff b) articulating the values and employment principles that apply to ministerial staff c) providing for the making of codes of conduct by the Premier to be observed by staff in performing their functions, including: • providing that a breach of the Ministerial Staff Code may constitute misconduct • requiring the Ministerial Staff Code to be published and reviewed at regular intervals d) articulating the principles for ministerial staff to follow when dealing with portfolio departments and agencies, including a specific prohibition on directing public sector employees.		
5	That the Victorian Government introduce legislation to require the Secretary to the DPC or the VPSC to include information in their annual report about the number of ministerial advisors and other staff who were employed in each ministerial office as of 30 June each year, and the total cost of employing ministerial advisors and staff during each financial year.	Premier	**Support-in-principle** • The Government supports-in-principle this recommendation and will consider it as part of its commitment to codifying employment arrangements for ministerial staff in legislation.
6	Subject to any legislation drafted pursuant to Recommendation 4, that the Premier, DPC and the VPSC collaborate to ensure that the Ministerial Code, the Ministerial Staff Code, and the VPSC guidance to ministerial staff, and department secretaries, executive	Premier	**Support** • The Government supports this recommendation and will consider it as part of its commitment to codifying employment arrangements for ministerial staff.

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	officers and non-executive officers are comprehensive, consistent and emphasise: a) role clarity and the need for ministerial staff and public servants to understand and act in accordance with the scope of their roles b) mutual respect in relations between ministerial offices and public servants c) greater awareness of potential conflicts of interest and the need for additional caution to be exercised in managing conflicts of interest, and d) the operation of the conventions on ministerial responsibility.		• The VPSC will update published guidance in line with any further direction from the Government, subject to legislation being passed.
7	a) That the Victorian Government, in consultation with the VPSC, provide a mandatory induction program for new ministerial staff that covers their obligations under the Ministerial Staff Code and other guidance b) All ministerial staff members and public service employees who regularly engage with ministerial offices undertake training in the relevant guidance governing relations between ministers, their offices and public sector departments and agencies and the principles underpinning the guidance at least once every two years c) DPC or the VPSC publish annual statements that detail the number of staff and advisors who attended training sessions in the previous financial year, broken down by individual portfolios.	Premier	**<u>Support-in-principle</u>** • The Government supports-in-principle training and reporting to support appropriate engagement between ministerial offices and the public service. • The Government, in consultation with the VPSC and DPC, will continue to develop and deliver regular induction and training programs for ministerial staff and public sector employees, and to consider the appropriate reporting of training.
8	That the Parliamentary Integrity Commissioner (PIC) be responsible for:	Premier	**<u>Under review</u>**

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	a) receiving and investigating complaints about possible, non-criminal breaches of the Ministerial Staff Code and other misconduct b) referring prima facie allegations of criminal or corrupt conduct to Victoria Police or IBAC c) referring minor breaches to the Premier for investigation and resolution, in the Commissioner's discretion and subject to the Premier advising the Commissioner of the outcome of the investigation d) where the PIC is satisfied a ministerial staff member engaged in conduct that is in breach of the Ministerial Staff Code, recommending further action to the employer of the ministerial staff member, including on potential sanctions e) promoting the revised Ministerial Staff Code and providing regular education on it f) monitoring and reporting on compliance with the Ministerial Staff Code and potential measures to improve it g) revising the Ministerial Staff Misconduct Policy and Procedure to align with this report's recommendations h) reporting annually on the performance of their functions with respect to ministerial staff (or on specific cases if warranted) to the Parliament.		• The Government has committed to establishing the PIC to investigate misconduct by MPs and ministers by June 2024 as recommended by Operation Watts. Consultation on the proposed PIC legislation is underway. • The Government will first implement its commitment to codifying employment arrangements for ministerial staff in legislation and will consider this recommendation following that work.
9	When developing the legislation to establish the ministerial staff complaints regime, that the Victorian Government ensure that the legislation includes a requirement for ministerial staff to cooperate with an investigation of a complaint against them (or another ministerial staff member) with:	Premier	**Under review** • See the response to recommendation 8. • The Government supports ministerial staff being held to the highest standards of conduct, integrity, and probity, and supports the efficient and fair handling of complaints about ministerial staff.

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	a) safeguards against the use of such information in other criminal or civil proceedings (other than for unfair dismissal or providing false or misleading information) b) a failure to cooperate with the PIC constituting misconduct enabling the Commissioner to recommend appropriate action to the employer of the ministerial staff member for that misconduct.		• Ministerial staff are currently subject to obligations under the Ministerial Staff Code, as well as detailed policies in relation to misconduct, bullying and occupational violence, sexual harassment, equal opportunity and diversity, and internal complaints resolution procedures.
10	When developing the proposed complaints regime in relation to ministerial staff, that the Victorian Government: a) require the Premier (or minister to whom a ministerial staff member is assigned if they have employment responsibilities) to: i. accept the recommendations of the proposed Parliamentary Integrity Commissioner in relation to a ministerial staff member from an investigation into their conduct; or ii. report to the Commissioner on their reasons for not accepting the recommendations and any alternative action they have taken or have determined should be taken b) provide that the Commissioner publish a report each year on the nature and number of recommendations made, accepted, and not accepted.	Premier	**<u>Under review</u>** • See the response to recommendation 8.
11	a) That the Victorian Government develop and introduce amendments to the *Parliamentary Committees Act 2003* to empower relevant Committees to compel ministerial staff members to	Premier	**<u>11(a) Do not support</u>** • The Government does not support this recommendation. The responsible Minister is accountable to the Parliament and

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	appear before them and answer questions in limited and defined circumstances, such as where a minister claims to be unaware of the staff member's conduct in a matter relevant to the minister's portfolio into which the committee is inquiring. b) The Standing Orders Committee of each House (or such other committee as may be appropriate) develops guidance material for parliamentary committees and ministerial advisors called before such committees on, among other things: i. what does or does not constitute permissible questions to put to an advisor ii. what an advisor's obligations are to answer questions iii. the consequences of an advisor failing to answer a legitimate question.		there are well established conventions that ministerial staff do not appear before parliamentary committees. • **<u>11(b) Matter for Parliament</u>**
12	That the Victorian Government and Parliament develop and introduce amendments to all relevant codes of conduct to provide that a breach of the relevant code includes conduct that: a) directly or indirectly intimidates or victimises a person who has reported conduct (or proposes to report conduct) of a ministerial staff member or made a complaint (or proposes to complain) about a ministerial staff member b) directly or indirectly interferes with any investigation or inquiry into the conduct of a ministerial staff member that is the subject of a complaint or a report for the purpose of influencing the outcome or findings.	Premier	**<u>Under review</u>** • See the response to recommendation 8. • The Government supports ministerial staff being held to the highest standards of conduct, integrity, and probity, and supports the efficient and fair handling of complaints about ministerial staff. • Ministerial staff are currently subject to obligations under the Ministerial Staff Code, as well as detailed policies in relation to misconduct, bullying and occupational violence, sexual harassment, equal opportunity and diversity, and internal complaints resolution procedures.

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13	That the Victorian Government ensure persons making legitimate or reasonable allegations of misconduct about a ministerial staff member are protected from detrimental action by: a) consulting with IBAC on the expansion of the Parliamentary Integrity Commissioner's remit to ensure that the office holder can engage effectively with the provisions of the *Public Interest Disclosures Act 2012* b) establishing procedures to provide protection for persons who are not otherwise eligible for protection under the Public Interest Disclosures Act, such as by developing and introducing amendments to the *Public Administration Act 2004*.	Premier, Attorney-General	**Under review** • See the response to recommendation 8. • The Government supports appropriate protections and safeguard for individuals who report misconduct. • The Government also supports ministerial staff being held to the highest standards of conduct, integrity and probity and notes that staff are already required to comply with an internal complaints investigation that includes requirements to ensure all parties are treated with respect, protection against victimisation and adherence to the principles of natural justice.
14	That the VPSC amend the *Code of Conduct for Victorian Public Sector Employees* (VPS Code) and the Victorian Government amend the Ministerial Staff Code to provide that the making of a frivolous, vexatious, or malicious allegation to the independent complaints process may constitute a breach of the relevant code with appropriate sanctions available to respond to such conduct.	Premier	**Under review** • See the response to recommendation 8. The Government supports appropriate protections against the making of frivolous, vexatious, or malicious complaints and is further considering amendments to relevant codes of conduct.
15	That the VPSC and Secretaries Board review their current programs and initiatives with a view to strengthening and supplementing them with specific training and materials directed to the challenges of ensuring a greater commitment in the Victorian Public Service to preventing and responding effectively to improper political interference.	Premier	**Support** • The VPSC is progressing several initiatives to implement this recommendation. These include: ▪ publication of a Circular on 5 May 2023 about Operation Daintree, which reinforces the requirement for public servants to provide frank and fearless advice. It also provides advice to VPS staff about how to access support in relation to their obligations when engaging with ministerial offices.

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			▪ recent updates to guidance relating to public sector apoliticism and impartiality such as the 'Informing and advising ministers',[1] guidance on the 'Referendum on altering the Constitution to recognise the First Peoples of Australia by establishing an Aboriginal and Torres Strait Islander Voice',[2] and 'Guidance during election periods'.[3] • The Victorian Secretaries Board continues to support robust integrity culture across the Victorian public sector and is reviewing initiatives to strengthen that commitment.
16	That the Department of Health reviews, and where necessary, strengthens its procurement policies, systems, and practices to address the corruption vulnerabilities identified by IBAC in this report, including: a) the assessment and management of unsolicited proposals to supply goods or services, regardless of how a proposal is conveyed to it b) its conflicts of interest framework so employees and contractors understand their obligations to identify, declare and manage such conflicts and avoid them where possible c) that suppliers are sourced in a way that complies with competition requirements in legislation and/or procurement policy and procedures.	Health	**<u>Support</u>** • The Department of Health (DH) has undertaken the following work: ▪ implemented a new fraud and corruption control framework ▪ delivered mandatory procurement training for all departmental staff engaged in procurement ▪ delivered mandatory integrity training for all staff ▪ undertook a review of all procurement related policies, systems, and practices as part of renewing their Victorian Government Purchasing Board (VGPB) accreditation. • DH notes that its existing procurement framework is fully compliant with relevant legislation and policy frameworks under the *Financial Management Act 1994 (*Vic) and the VGPB Supply Policies.

[1] https://vpsc.vic.gov.au/ethics-behaviours-culture/inform-and-advise-ministers/
[2] https://vpsc.vic.gov.au/about-vpsc/updates-from-the-commissioner/referendum-on-altering-the-constitution-to-recognise-the-first-peoples-of-australia-by-establishing-an-aboriginal-and-torres-strait-islander-voice/
[3] https://vpsc.vic.gov.au/ethics-behaviours-culture/codes-of-conduct/guidance-during-election-periods/

Operation Daintree Special Report – Parliament Progress Report (October 2023)

No.	Recommendation	Portfolio	Response
17	That the Victorian Government: a) consult with IBAC on the preparation of legislative changes arising from the implementation of recommendations in this report; and b) provide to Parliament: i. a progress report on the action taken in response to the recommendations in this report by 31 October 2023 ii. a further report on those actions (with a focus on the recommended complaints regime) by 30 June 2024, noting that IBAC may further publicly report on the adequacy or otherwise of those responses.	Premier (Attorney-General, Health)	**17(a) Do not support** • Responsibility for proposing legislation remains with Government and is subject to Cabinet in confidence processes. • The Government will consult with relevant stakeholders on legislation at the appropriate time. **17(b) – Support** • The Government will table a progress report in Parliament by 31 October 2023 and will prepare and table a further response to Parliament by 30 June 2024.