

# VICTORIAN ombudsman

## Alleged politicisation of the public sector

Investigation of a matter referred from the  
Legislative Council on 9 February 2022 - Part 2

December 2023



Published by order, or under the authority, of the Parliament of Victoria  
December 2023

**Accessibility**

If you would like to receive this publication in an alternative format, please call 9613 6222, using the National Relay Service on 133 677 if required, or email [vocomms@ombudsman.vic.gov.au](mailto:vocomms@ombudsman.vic.gov.au).

**The Victorian Ombudsman pays respect to First Nations custodians of Country throughout Victoria.  
This respect is extended to their Elders past and present. We acknowledge their sovereignty was never ceded.**

# 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 report on the *Alleged politicisation of the public sector: Investigation of a matter referred from the Legislative Council on 9 February 2022 - Part 2*.



Deborah Glass OBE

**Ombudsman**

6 December 2023

# Contents

<b>Foreword</b>	<b>4</b>	<b>Part B: Lines of investigation</b>	<b>83</b>
<b>Summary</b>	<b>8</b>	<b>Chapter 4: Former ministerial staffers appointed to the public sector</b>	<b>84</b>
<b>Scope and methodology</b>	<b>20</b>	What we investigated	84
Referral from the Legislative Council	20	Ministerial staffers	84
Giving meaning to the referral	20	Movement to the public sector	85
Issues Paper	23	Victorian trends	93
How we took submissions	23	Appointments we examined	97
Selecting lines of investigation	24	What we found	114
Interviews and use of coercive powers	24	<b>Chapter 5: Executive hiring at DJCS and DJPR after the 2018 State election</b>	<b>116</b>
Cabinet confidentiality	26	<b>Executive hiring at the Department of Justice and Community Safety</b>	<b>119</b>
Poor record keeping	26	What we investigated	119
How we investigated	27	About DJCS	121
Procedural fairness	29	New DJCS Secretary appointed	121
About this report	29	Appointments we examined	122
<b>Part A: Sustaining an apolitical public sector</b>	<b>31</b>	Why did some people perceive politicisation at DJCS?	151
<b>Chapter 1: The apolitical public sector tradition</b>	<b>32</b>	What we found	158
Foundations	32	<b>Executive hiring at the Department of Jobs, Precincts and Regions</b>	<b>162</b>
Contemporary landscape	34	What we investigated	162
Key themes for this investigation	38	About DJPR	164
<b>Chapter 2: Politicisation: what does it mean?</b>	<b>40</b>	DJPR's Secretary	164
Why is public sector political neutrality important?	40	Appointments we examined	164
How is public sector political neutrality damaged?	41	Why did some people perceive politicisation at DJPR?	179
Is there a trend towards politicisation in Australia?	44	What we found	184
<b>Chapter 3: Submissions and evidence to the investigation</b>	<b>50</b>	<b>Chapter 6: Alleged politicisation of key transport infrastructure project</b>	<b>188</b>
Potential politicisation of public sector appointments	52	What we investigated	188
Possible impacts of politicisation on the public service	58	About the Suburban Rail Loop	191
Possible impacts of politicisation on public administration and outcomes	68	How was the SRL conceived and developed?	194
Suggested reforms to address politicisation risks	76	Why was the SRL kept secret, and what were the consequences?	201
		What we found	210

<b>Chapter 7: Alleged politicisation of Commonwealth Games delivery</b>	<b>216</b>
What we investigated	216
Securing the Commonwealth Games	220
Commonwealth Games hiring	222
Cancellation of the hosting agreement	224
What we found	226
<b>Chapter 8: Alleged political intrusion in senior V/Line hiring</b>	<b>228</b>
What we investigated	228
V/Line Board recruits for a new CEO	231
Why was V/Line restructured?	232
The Government-chosen CEO	233
Other issues we investigated	235
What we found	237
<b>Part C: Findings, observations and recommendations</b>	<b>239</b>
What we found	240
Recommendations	247
<b>Appendix A: <i>The Age</i> article</b>	<b>252</b>
<b>Appendix B: Issues Paper</b>	<b>256</b>
<b>Appendix C: Public sector employment in Victoria</b>	<b>264</b>
Public sector values	265
Code of Conduct	265
Public sector employment principles and VPS Standards	265
<b>Appendix D: Persons who are not the subject of adverse comment or opinion</b>	<b>268</b>
<b>Appendix E: DPC response</b>	<b>272</b>
<b>Glossary</b>	<b>282</b>

# Foreword

*“I can’t tell them the bad news, no one wants to know it.”*

*“Do this and retrofit the arguments in the Cabinet submission.”*

*“The notion that the VPS should just implement government policy, not challenge policy or offer new ideas, is a misguided article of political faith.”*

– Quotes from former agency heads

Forty years ago, the British political satire *Yes, Minister* depicted a public service that paid lip service to the government of the day while civil service mandarins ignored the politicians and pursued their own agenda.

Today, the boot is on the other foot. Numerous reports around Australia, particularly the recent Robodebt Royal Commission, have revealed a public service overly responsive to the elected government of the day, whatever its colour. Concerns widely shared by retired public sector luminaries, academics and political commentators reveal the erosion of a core Westminster principle: an apolitical public service that serves the government while providing it with ‘frank and fearless’ advice.

The referral from the Legislative Council, which referenced a newspaper article, alleged the public service had been improperly ‘stacked’ with ALP operatives. We did not find this. A single media report does not always tell the full story. We did find instances where people’s reputations had been unfairly sullied by stints, sometimes many years previously, in ministerial offices. Public sector leaders should feel relieved, in some cases vindicated, by this outcome.

But the newspaper article also referred to other problems, which we did substantiate. Politicisation can take many forms. It is not just the hiring of people with political affiliations. It is also the closing down or marginalisation of apolitical, independent voices.

We found ongoing marginalisation of the traditional public sector – a more subtle form of politicisation – in the early development of the Suburban Rail Loop.

The brainchild of a former Ministerial staffer – whom we do not criticise – this project was shrouded in excessive secrecy until it was announced as an election promise in 2018. It was so secret it was kept from the Secretary of the relevant department, and most of the board of the originating agency. The stated reason for the secrecy – to mitigate against land speculation – does not stack up, as no land was acquired by the responsible agency before a public announcement, and in any event would not justify keeping the relevant Secretary in the dark. It was ‘proved up’ by consultants rather than developed by public servants, and its announcement ‘blindsided’ the agency set up by the same government to remove short-term politics from infrastructure planning.

Since its announcement, its projected cost, evaluated by both the Auditor-General and the Parliamentary Budget Office, has increased exponentially and will dominate Victorian infrastructure spending for generations. As the (now former) Secretary pointed out, a project of this scale competes with many other claims on public funds. They told us that not being able to test the opportunity costs creates a high risk that better uses of funds have been crowded out.

Excessive secrecy and the use of consultants also featured in the early Commonwealth Games planning. History has since revealed major flaws in the assumptions underpinning the financial modelling.

The lack of rigorous public sector scrutiny of such projects before they were announced poses obvious risks to public funds.

We also found that confidence within the public sector that senior hiring decisions are based on merit has been undermined. While our examination of recruitment did not find partisan ‘stacking’ of the public service, the justification for some appointments was questionable, and we could easily understand why so many senior figures suspected decisions had been politicised.

These included the frequent appointment of former Ministerial staffers without open and advertised processes; often explained by a pressing need to hire someone familiar with Government policy to ‘get things done’. We found multiple examples of rushed and shoddy recruitment practices, poor record-keeping and opaque selection methods.

Perception matters. Not only must merit selection be done, it must be seen to be done. Disregarding this principle makes it less likely that the public sector will attract and retain capable leaders. The quality and candour of advice upon which important decisions are made will suffer. Confidence in the strict neutrality of public service will be shaken.

Perceptions are heightened by the increasing growth and influence of the Premier’s Private Office. In 2022 the Victorian Premier had roughly as many staffers as the Australian Prime Minister and New South Wales Premier combined.

Decisions made in ‘echo chambers’, not subject to the scrutiny of expert career officials, do not make for good public administration. While it is impossible to quantify the impact of marginalisation on either the public interest or the public purse, we should all be worried about the trend.

Creeping politicisation is a reality in Victoria, and requires urgent attention.

We were also deeply troubled by the number of people who were afraid to speak to us.

While the response to our request for submissions was overwhelming, particularly from current and former senior public officials with deep knowledge of the issues we were examining, many more declined to speak on the record. Two sentiments stood out – concern and fear. Concern about what people saw as the quickening corrosion of longstanding Westminster principles of responsible government. Fear that if they spoke up, if they were in any way identifiable as having done so, their careers would be finished.

Whatever the truth of the question at the heart of this investigation, that so many people were concerned and fearful should be a signal to this Government that all is not well. A culture of fear in the upper echelons of the public sector does not support frank and fearless advice.

It is disappointing and disturbing that to protect the identities of so many people we were unable to follow some promising lines of enquiry, and the report does not set out the evidence as fully as I would have wished. Restrictions on Cabinet documents also prevented other lines of enquiry from being followed to a conclusion. Definitive answers about the early development of the Suburban Rail Loop are shrouded in the fog of Cabinet secrecy.

Not all departments were alleged to be 'politicised'; tens of thousands of dedicated public servants carry on their business serving the public, and their Ministers, without question or controversy. But many people noted a growing pressure to tailor official advice to the preferences of the government of the day. This 'over responsiveness' appeared more common when major infrastructure development and job creation was the desired political goal, not coincidentally those areas required to deliver major election promises.

I thank all those who spoke to my investigators, formally and informally, for their insights – and in several cases, courage. I also thank Professor John McMillan AO, whose leadership, wise counsel and independent viewpoint was invaluable; and my investigation team, who worked with the utmost professionalism and dedication to deliver this report.

What now? Is there a need for reform, and if so, what needs to be done?

Neither the current nor the former Premier responded to a draft of this report, so I cannot say whether there is any appetite for change within the Government, nor indeed if there is any consideration of the need for it.

But it seems to me the case for reform is compelling, not only from the individual strands of this investigation, but from the evidence of current and former senior public officials who are deeply troubled by these problems.

There will always be a creative tension between an unelected bureaucracy adhering to public sector values and an elected government eager to deliver on its election promises. That creative tension is a feature and strength of our system of governance. It energises the former and tempers the latter. But good public administration relies on the observance of boundaries, which either are, or are in danger of, being crossed.

There are greater issues at play than we could possibly examine fully, including the diminution in at least some areas of government of public service expertise, and the extent to which its traditional advice role is being outsourced to consultants and ministerial advisers. It is also apparent that some of these trends have been continuing for decades under multiple governments of all stripes, and elsewhere around Australia.

Work being done elsewhere, most recently in Canberra, points to some common solutions. Our recommendations also speak to the need for greater independence in the appointment of public officials and improved security against 'at will' termination to mitigate the fear of speaking out. Reversing or addressing the trends highlighted in this report will take time and investment.



But nothing will change without a recognition at the highest levels of government that change is necessary.

Around Australia public trust in government has been falling for years. If this report does not convince those with the power to make changes, I must leave it to the public to judge for themselves.

Deborah Glass OBE

**Ombudsman**

# Summary

## Why we investigated

1. In February 2022 the Legislative Council passed a motion requiring the Ombudsman to investigate several matters, including an allegation about the politicisation of the public sector.
2. This required us to consider claims made in an August 2021 media article which raised concerns about ALP-aligned people holding senior roles in Victorian Government departments and other agencies.

## How we investigated

3. The allegation referred to us was very broad, and required one of the more intensive investigations conducted in the Ombudsman's 50-year history.
4. To explore the matter, we published an Issues Paper and invited comment on whether public sector hiring was becoming too political, the impacts if so, and possible reforms to manage related risks.
5. Based on the matter referred to us and the contents of 186 submissions we received, we interviewed 45 highly placed public officials and reviewed millions of individual records across more than a dozen agencies.
6. We also explored the history of public administration in Victoria, and the possible ways that political neutrality of public agencies can be compromised. This helped us understand the contemporary pressures facing agency heads when making hiring decisions.

7. Though as thorough as possible, our investigation was unable to fully explore every scenario highlighted by contributors. Restrictions on accessing Cabinet documents, poor record-keeping, and reluctance of witnesses to 'go on the record' were all significant barriers.

## What we heard from contributors

8. Two-thirds of submissions were from current or former public sector employees, including CEOs and Department Secretaries. We also heard from peak bodies, academics, think tanks and members of the public, and consulted with current and former senior officials about information received.
9. Some contributors expressed firm belief that Victoria's public sector had maintained its traditional political neutrality, while a significant proportion perceived a shift towards politicised hiring and decision-making. Current and former Department Secretaries and other senior executives were among those who were uneasy about trends towards politicisation, indicating a level of concern within the public sector's upper ranks.
10. One of the strongest themes to emerge was a lack of confidence that public sector hiring is based on merit. While most agreed partisan hiring was not widespread in Victoria, we heard of many instances which had left people wondering if individual executives were put on or promoted for political reasons. Merit selection is a key defence against politicisation, meaning such concerns – even if based on incomplete or inaccurate information – are worrying for their potential to chip away at morale and trust.

## Some important concepts

- **Westminster government** refers to the system adopted in Australia, including Victoria. Under the Westminster tradition, the political arm of the executive branch of government (ie the Ministry) is chosen by and accountable to Parliament, which is elected by the people. The non-political arm (ie the public sector) is functionally independent from the Ministry.
- **A politically neutral public sector** is central to our democratic system, able to serve any elected government with equal loyalty and to provide frank and impartial advice. Victoria's public sector is made up of the public service, plus employees of public entities such as public hospitals, and of special bodies such as the Ombudsman and Victoria Police.
- **Politicisation** refers to breaches of the boundary between the political and non-political arms of government that put the apolitical character of the public sector at risk. It can take many forms, not all obvious. For example, a minister directing that a department hire someone with political connections would be a clear breach. A more subtle example would be a public servant toning down advice at odds with a decision they think the government wants to make.
- **Merit selection** acts as a key defence against politicisation. It requires that public sector hiring decisions and promotions are made through clear processes, from a field of suitable candidates, and based on relative ability.
- **Direct appointments** are those made without an open and advertised selection process.
- **Ministerial staffers** are employed by the Premier to provide support and advice to an assigned Minister. They are not public sector employees, and different standards guide their behaviour because they work in a political environment.

11. Many pointed to other practices indirectly picked up by the referral: Government bypassing traditional bureaucratic structures; concentration of decision-making outside of specialist departments; and a culture of 'over responsiveness' in the public sector towards the preferences of ministers. Like partisan hiring, these all potentially undermine efforts to build a capable and politically neutral bureaucracy.
12. Marginalisation of the public sector loomed large in many authoritative submissions, and featured prominently in some lines of investigation. We heard some expert officials are feeling 'cut out' as ministers and agency heads seek advice and support from consultants and other external sources, potentially eroding the influence and capacity of the bureaucracy, and resulting in costly mistakes.
13. Related to this was the fear of 'speaking out' raised by many senior contributors. We heard career insecurity was dissuading some executives from speaking candidly – to us, to senior leaders, and to the elected Government. This included reports of people holding back unwelcome information, advising in line with a political agenda, or having their employment abruptly terminated after cautioning against risky decisions – threatening poor outcomes because options, risks and costs are not fully considered.
14. The increasing size and influence of both the Department of Premier and Cabinet ('DPC') and the Office of the Premier ('PPO') also drew a lot of comment, with suggestions from some the PPO was now too 'hands-on'. The prospect that politicisation – perceived or actual – left the public sector open to improper conduct and other integrity risks was among other issues raised.

15. Considered together, contributions showed political pressure is being felt throughout senior levels of the Victorian public sector in a way that is threatening to undermine good public administration. This finding points to a need to reform how executives are hired and employed – a conclusion that was also reinforced by several of our lines of investigation.

## Lines of investigation

16. From our analysis of the submissions, we chose five focus areas to explore various aspects of the allegation of politicisation contained in the Legislative Council referral. These covered executive hiring across many departments and agencies and involved different types of alleged politicisation.

### Appointment of former ministerial staffers

17. Concerns about the movement of senior staffers between political offices and the public sector were central to the Legislative Council referral, and prominent in submissions.
18. It is not unusual for people to move from ministerial staffer roles to public sector employment. Experience in a political office is often highly valued. We identified 129 people who made such a switch between 2012 and 2022, and another 53 between 2001 and 2011 where data was more limited.
19. Based on submissions and media reporting, we selected 16 former staffers and closely examined their appointment to senior public sector roles at nine different agencies. We checked recruitment and personnel files to see how and why people were selected. In some cases, we reviewed emails, messages, and other work activity for evidence of politicised behaviours.

20. While the justification for some appointments was questionable, we did not find evidence of partisan hiring of former ministerial staffers to inappropriately advance ALP objectives. Nor did we find evidence these staffers engaged in inappropriate partisan conduct while employed in the public sector.
21. However, we did find frequent side-stepping of merit-based recruitment processes by agencies. Eleven of the 16 hiring decisions we examined involved direct appointments. Candidates were often hand-picked without an open and advertised process and slotted into new roles – sometimes without position descriptions, defined duties or a clearly documented business need.
22. Decision-makers told us it was sometimes necessary to quickly hire people familiar with Government policy to ‘get things done’, and public sector employers do have the option to make direct appointments provided they comply with the merit selection principle and legislated standards. Even so, we found this option was not always appropriately used or justified in official records, and left agencies exposed to perceptions of politicisation.
23. Decision-makers told us it was sometimes necessary to quickly hire people familiar with Government policy to ‘get things done’, and public sector employers do have the option to make direct appointments provided they comply with the merit selection principle and legislated standards. Even so, we found this option was not always appropriately used or justified in official records, and left agencies exposed to perceptions of politicisation.
24. Submissions questioned the reasons for the rapid, large-scale change. Some felt a central agency ‘takeover’ was underway when senior staff departed and many former DPC staff obtained roles. Others queried whether the recruitment was overly responsive to Government priorities.
25. We did not substantiate allegations of a planned ‘takeover’ of either DJCS or DJPR, nor did we identify evidence that the two Department Secretaries made hiring decisions based on inappropriate political factors.
26. We did, however, identify recruitment shortcomings which, in our view, led or contributed to perceptions of politicised hiring. The nature and extent of these shortcomings – many of which the now former Secretaries disputed – differed between the two Departments.
27. At DJCS, a new Board made up of Deputy Secretaries was recruited quickly, with no records kept of the shortlisting, interview or candidate selection processes. A later ‘spill and fill’ of more than 50 executive positions was more robust but still lacking, with flaws in organisational policy an obvious factor. The now former Secretary emphasised there was no partisan hiring at DJCS during their time, and we accepted this. They also dismissed concerns about hiring practices, arguing these were not held in good faith. But we considered a fair-minded observer would justifiably question the fairness and transparency of the hiring activities we examined.

### **Senior hiring at two Departments after the 2018 election**

23. Another focus area for the investigation was the appointment of dozens of senior staff following the 2018 State election to two Departments led by new Secretaries:
- the Department of Justice and Community Safety (‘DJCS’)
  - the Department of Jobs, Precincts and Regions (‘DJPR’).

28. At DJPR, we found a notable use of direct appointments, often poorly documented. Many of the successful candidates had political or DPC backgrounds. We accepted setting up a new Department and responding to emergencies including the COVID-19 pandemic sometimes required quick hiring. The former Secretary emphasised concerns about politicised hiring at DJPR were unfounded, and we agreed – though we understood why some observers had jumped to the wrong conclusion.

### **Early development of the Suburban Rail Loop**

29. The Legislative Council referral required us to investigate whether the hiring of politically aligned people posed a risk to public sector objectivity, professionalism and integrity.
30. As part of this, we examined the appointment of a former Ministerial staffer to an executive role at a key infrastructure agency, and how this influenced early phases of the Government's flagship transport project, the Suburban Rail Loop ('SRL'). Construction of the SRL was directly tied to the ALP's electoral prospects at the 2018 Victorian election, held less than three months after the project was announced.
31. We did not find the executive was appointed to advance the SRL through the public sector. Nor did we find they acted in an inappropriately 'politicised' way.
32. Though not driven by partisan hiring, we considered aspects of the SRL's early development were at odds with core aspects of the Westminster tradition and relevant to the theme of politicisation in the referral.

33. A reliance on consultants and unusually heavy secrecy prevented key public sector input in the early stages of the SRL. Those behind the veil told the investigation they genuinely believed it was necessary to avoid information leaks and property speculation. Other witnesses queried this, and we found the responsible agency acquired no land before the project was publicly announced as an election commitment.

34. Those within Government who were excluded from the project – including the State's then transport and economic development Secretary – were left wondering why specialist Departmental knowledge was left untapped, and whether, if fully tested, the funds devoted to the SRL might instead have gone to better uses. The former Department Secretary observed Government over-reliance on external sources of advice weakened the public sector, and the more this happened, 'the more politicised it has effectively become'.

### **Commonwealth Games planning**

35. We investigated allegations people with political links were installed in key public sector roles to plan and deliver the (now aborted) 2026 Victorian Commonwealth Games. To do this we examined the circumstances surrounding 31 executive hires at DJPR.
36. We did not identify any evidence inappropriate political considerations influenced how Commonwealth Games positions at DJPR were filled. Those we interviewed said they did not witness any inappropriate political intrusion into their work.

37. While we were reviewing executive hiring, the Government suddenly withdrew from the hosting agreement, blaming unexpected cost blowouts. Given there are other formal inquiries underway, we did not examine the cause of the agreement's collapse.
38. That said, two factors relevant to the broader politicisation theme stood out: excessive secrecy and a heavy reliance on consultants to prepare initial costings. As noted in the case of the SRL, both practices potentially frustrate the public sector's ability to provide frank, impartial and timely advice.

### Senior V/Line hiring

39. Senior hiring at regional rail operator V/Line Corporation ('V/Line') attracted multiple submissions. We heard the Board's chosen candidate for CEO missed out when a Minister directly appointed a former ALP Ministerial staffer instead.
40. We did not find any evidence appointments to V/Line were politicised. While the events leading up to a new CEO - including the seemingly abrupt halt to an open selection process, and the new appointee's historic ALP ties - caused some to suspect politicisation, the facts did not support this.
41. Government changes to V/Line's structure were brewing in response to largely unrelated issues before the Board started hunting for a new CEO. We found no evidence these changes were to bypass the Board-led recruitment process, or to favour somebody with ALP connections. Given the law expressly allowed the Minister to have a greater say in choosing transport agency heads, this was also not an example of inappropriate political intrusion into public sector hiring.

## Key findings and observations

42. Our extensive investigation, conducted across multiple fronts, found no direct evidence of widespread partisan hiring of the kind suggested in the Legislative Council referral.
43. This conclusion was heartening, but it was not all we found. Other issues indirectly raised by the referral - Government bypassing of traditional bureaucratic structures, concentration of decision-making outside of specialist departments, and a culture of 'over responsiveness' towards the preferences of ministers - all loomed large across our various lines of investigation.
44. These were among a host of broader threats we observed to the public sector's adherence to three principles forming part of the referral: objectivity, professionalism, and integrity. These principles reflect aspects of the public sector values which are essential to maintaining a politically neutral bureaucracy.
45. We uncovered rushed and shoddy recruitment practices, overuse of direct appointments often involving former ministerial staffers, executives fearful of providing 'frank and fearless' advice, and the marginalisation of public officials around keynote projects.
46. Equally worrying were the harmful perceptions of partisan hiring and promotion we found across the public sector. Perceptions of politicisation are highly corrosive to integrity and trust. Even when misinformed, they stoke insecurity and fear, suppress debate, and distort outcomes, and are a red flag that cannot be ignored.

47. Perceptions do not always align with the facts, and our investigation of examples raised with us often revealed a less disturbing picture than first painted. With facts in hand, we could understand why many of the senior officials we asked about partisan hiring were upset at having their integrity questioned.
48. However, we could also understand why some observers without the benefit of the Ombudsman's powers and access to information had come to feel the bureaucracy's broader political neutrality had slipped.
49. Politicisation can take many forms. It is not just the hiring of people with political links. It can be as subtle as shutting down critical voices or giving weight to those deemed most responsive to government political objectives.
50. The weight of the evidence we reviewed suggests there are cracks in the pillars upholding our Westminster tradition of responsible government. While some senior bureaucrats we spoke with were hopeful about the public sector's ability to hold firm under pressure, others believe significant changes are required to reverse concerning trends.

### **Loss of confidence in merit selection**

51. An apolitical public sector relies heavily on recruitment and promotion being based on merit. Public sector bodies need to ensure all employment decisions are fair and can withstand scrutiny – not least for executive roles, where a five-year salary package starts at \$1 million. Yet there is a high level of concern that senior appointments in Victoria do not always reflect the merit selection principle.
52. We found direct appointments are used too frequently by some agencies, often to hire or promote former ministerial staffers. Direct appointments can have a legitimate place in government provided they comply with binding employment principles and standards, and the ones we probed did not appear partisan-motivated.
53. However, decisions were not always properly recorded or explained. We also noticed poor record keeping and procedural irregularities when it came to filling some advertised vacancies. To preserve trust in merit selection, all employment decisions must not only be fair, but be seen as such.
54. Perceptions of politicised hiring are detrimental to the integrity of the public sector, and to the reputation of people involved. There is a clear need to take steps to rebuild public sector – and public – confidence in merit selection.

### **Blurred lines and increased pressure**

55. We heard concerns from within senior levels of the public sector that the merit selection principle comes under particular strain when responsiveness to Government is at stake.
56. Responsiveness is a core public sector value, and nobody we heard from disputed its importance. But there were mixed views on whether the current balance is right, with some perceiving an unhealthy focus on supporting the Government's political aims.
57. Senior public officials with little job security are feeling more pressured to tailor their advice to the preferences of the government of the day. Over-responsiveness – where decisions or policy design are influenced by inappropriate political considerations – is a key indicator of politicisation.



58. Right or wrong, there is a widely held perception among executives that speaking candidly about the Government's preferred course carries a personal cost. It was of significant concern that many senior officials who spoke to us – voluntarily or under summons – feared possible career repercussions for doing so.
59. Frank, impartial and timely advice is critical to the Westminster system of government. But fixed-term employment and short 'at will' termination clauses – standard features of executive contracts in Victoria – are acting as a barrier and discouraging some from freely sharing advice and expertise.
60. We also heard criticism, not backed by evidence we reviewed, that DPC has become overly intrusive in the affairs of other agencies. In part, these perceptions stemmed from large numbers of ex-DPC personnel obtaining senior roles at other departments and agencies, prompting some people to suspect responsiveness was trumping expertise. Though we did not substantiate this, the fairness of hiring processes was in some cases highly questionable.
61. Growth in the number and influence of ministerial staffers in the Premier's Private Office has likewise generated concerns about intrusion, with the PPO perceived as having become more 'hands-on' with the bureaucracy. This expansion has the potential to diminish the influence of the public sector on Government decision-making.

## **Marginalisation of traditional voices**

62. Ministers and some agency heads are also increasingly seeking advice from a broad range of external sources, including consultants, lobbyists, special interest groups, and political networks.
63. The public sector does not have a monopoly on good advice, and government should seek information from a wide variety of sources. Yet major policy must be adequately and apolitically tested. Excluding the input of senior bureaucrats may result in public funds being committed to ill-advised purposes, at the expense of other vital projects or services.
64. The Westminster system is significantly undermined if apolitical public sector advice is not valued by government or is otherwise neglected – for example, due to excessive secrecy or deliberate avoidance.
65. Lowered regard for public sector knowledge and expertise can not only lead to inferior policies, projects or services but in the longer term can also dent the capability of the public sector, to the detriment of all Victorians.

## Recommendations for reform

66. Politicisation – actual and perceived – is a problem undermining public administration in Victoria. Responding to the trends highlighted in this report will take significant time, investment and leadership. We identified four key areas for reform.
67. The first is to enhance public service independence by establishing an independent Head responsible for evaluating, recommending and employing department Secretaries and other agency leaders, rather than the Premier.
68. The second is to safeguard merit selection at senior levels. The new public service Head should be empowered to play a role in filling executive vacancies. We also recommend the existing Victorian Public Sector Commission clarify how the law applies to direct appointments, and closely monitor and report on their use.
69. Our third proposed change is to improve career stability for senior public servants and remove barriers to ‘frank and fearless’ advice. We recommend an overhaul of the employment framework, including reconsideration of ‘at will’ termination clauses for executives.
70. Finally, to improve public sector transparency, we recommend a rethink of Cabinet confidentiality. Current restrictions limited our access to some relevant material for this investigation. We recommend change, including enabling the Ombudsman to obtain Cabinet information where necessary in the public interest.
71. We again thank all those who assisted the investigation and urge relevant decision-makers to consider this report as an opportunity to protect and strengthen Victoria’s public sector.

## Limits on our investigation

Our investigation was as thorough as possible, but what we could look at was limited by the scope of the referral and other constraints. This meant we had to drop several important lines of investigation we had intended to report on.

### What was referred by the Legislative Council...

...the allegations in the 14 August 2021 article published in *The Age* titled 'The Chosen Few: How Much [sic] is Victoria really Governed', that ALP activists are 'stacked' into the public service thus compromising objectivity and professionalism and increasing the risk of corruption

### ... and what this allowed us to investigate

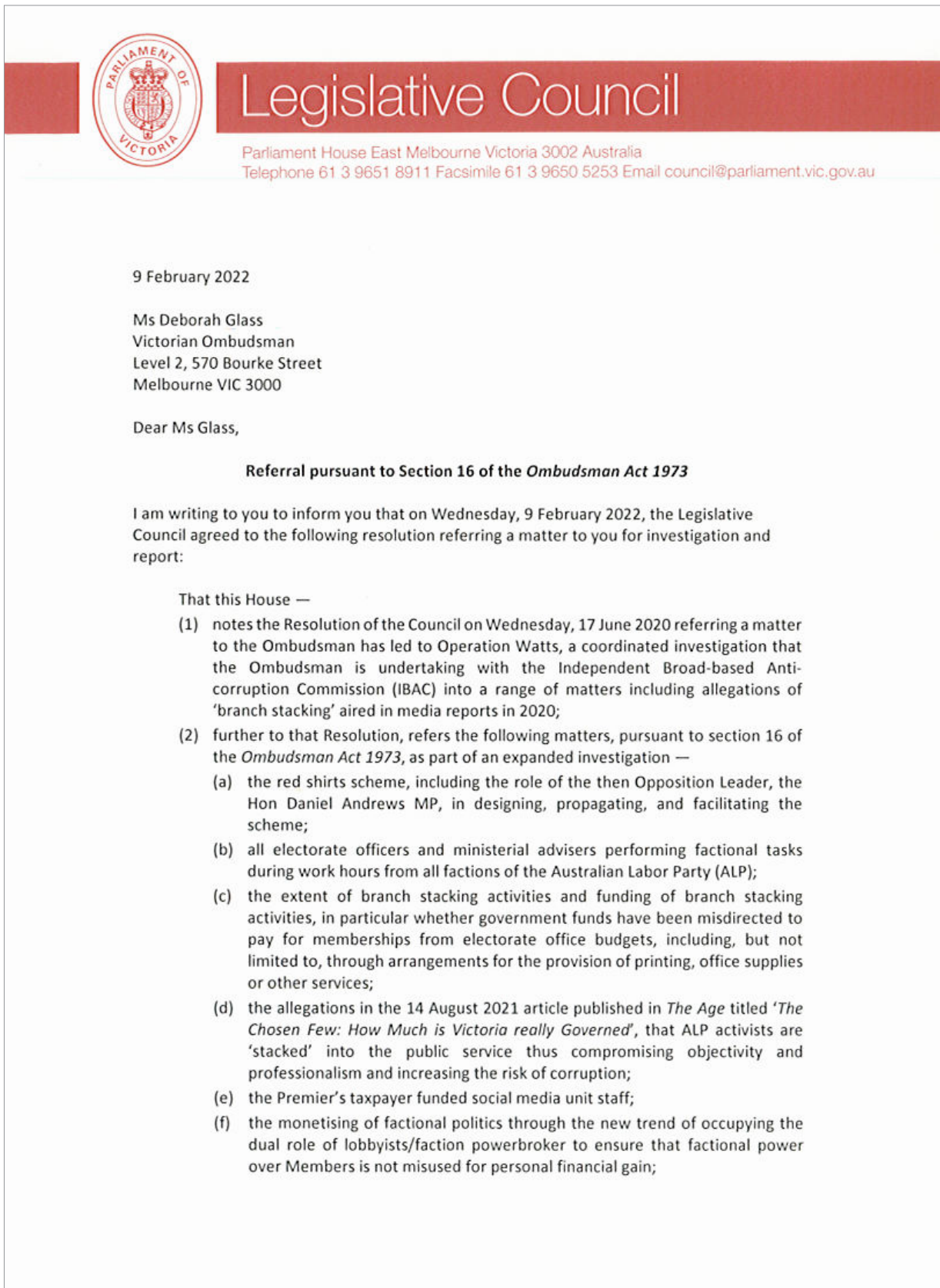
- ✓ Entry of former Ministerial staffers into the public sector
- ✓ Political intrusion into 'arms-length' public sector recruitment
- ✓ VPS hiring and firing after State elections
- ✓ Influence of former Ministerial staffers on key Government projects

### What stopped us following up some matters

- ✗ **The referral itself** meant topics some people wanted us to investigate were simply 'out of bounds'
- ✗ **A fear of reprisal** for speaking out resulted in us dropping a matter raised by a former Secretary from our final report
- ✗ **Cabinet restrictions** completely blocked us from investigating one troubling claim in submissions, and kept us from viewing key documents in multiple other instances
- ✗ **Poor record keeping** hindered most of our lines of enquiry
- ✗ **Welfare concerns** about key witnesses caused us to drop our enquiries into one important matter
- ✗ **Witness reluctance** to participate halted progress probing one scenario and affected others



Figure 1: The referral



(3) requires the Ombudsman to consider her powers and obligations under the *Ombudsman Act 1973* to refer matters to, and share information with IBAC and other integrity bodies, with a view to expanding the scope of Operation Watts to include the matters referred to in paragraph (2);  
and requires the Clerk to write to the Victorian Ombudsman and the IBAC Commissioner to convey the terms of this Resolution.

Pursuant to section 25AB of the *Ombudsman Act 1973*, where a matter is referred to the Ombudsman by the Legislative Council under section 16, the Ombudsman shall send the report to the President of the Legislative Council.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Anne Sargent', with a stylized flourish at the end.

Anne Sargent  
**Acting Clerk of the Legislative Council**

# Scope and methodology

## Referral from the Legislative Council

72. On 9 February 2022 the Legislative Council referred to the Ombudsman several matters under section 16(1) of the *Ombudsman Act 1973* (Vic).
73. Section 16(2) of the Ombudsman Act requires the Ombudsman to ‘forthwith investigate’ a matter referred by Parliament under section 16(1) and ‘report thereon’.
74. This report responds to item (d) of the referral, which required the Ombudsman to investigate:

the allegations in the 14 August 2021 article published in *The Age* titled ‘*The Chosen Few: How Much [sic] is Victoria really Governed*’, that ALP activists are ‘stacked’ into the public service thus compromising objectivity and professionalism and increasing the risk of corruption.
75. The Ombudsman responded to items (a) to (c) of the Legislative Council referral in her report of 28 July 2022, *Investigation of a matter referred from the Legislative Council on 9 February 2022 – Part 1*.
76. The remaining items – specifically, (e) and (f) – will be addressed in separate correspondence to the President of the Legislative Council.
77. Following the Legislative Council referral, the Ombudsman began an investigation and appointed Professor John McMillan AO as Strategic Adviser to assist and lead the investigation team. At the time, John McMillan had not worked for or in the Victorian public sector.

## Giving meaning to the referral

78. The Legislative Council referral was imprecise and careful consideration was necessary.
79. It required the Ombudsman to investigate allegations made within an online article published by *The Age* newspaper on 14 August 2021 titled, *The chosen few: How Victoria is really governed* (published in print as *Working the Network*; ‘*The Age* article’ – see Appendix A), characterised (in part) as the ‘stack[ing]’ of ‘ALP activists’ into the public service.
80. The referral did not explain what was meant by ‘ALP activists’, and given the vagueness, we turned to *The Age* article to give the term substance.
81. *The Age* article did not directly refer to ‘ALP activists’. Instead, it contained a range of other terms and phrases: ‘people ... strongly politically aligned to current ministers’, ‘political operatives’, ‘Labor loyalists’, ‘public servants [who] start thinking like political operatives’, and ‘political advisers’.
82. It referred to concerns, attributed to academics and some public servants, that the employment of such people in Victorian Government agencies was eroding traditional Westminster notions of impartiality and political neutrality – in short, that the public sector was being politicised. We concluded this was the allegation we were required to investigate.

## The Westminster tradition

'Westminster government' refers to the system of government adopted in Australia, including Victoria. Under the Westminster tradition, the political arm of the executive branch of government (ie the Ministry) is chosen by and accountable to Parliament, which is elected by the people. The non-political arm (ie public sector) is functionally independent from the Ministry but faithfully carries out its will, regardless of which political party holds power.

The public sector must be politically neutral in order to serve any government equally and avoid partisan controversies. Each government must be able to rely on the public sector to implement legislation and programs, however different they may be to those of the former government. Equally, the public sector must make decisions apolitically and provide frank, impartial and timely advice to government.

Various practices have been adopted to reinforce the Westminster tradition. One is that public officers are appointed on merit and can generally only be removed with good cause and due process. The values and professionalism of the public sector are monitored by an independent commission – in Victoria, the Victorian Public Sector Commission ('VPSC').

The Westminster model has many benefits. It sustains democracy by reassuring the community that the elected government will be properly and ethically supported by the public sector. It promotes high-quality policy development and public administration by ensuring advice to the political branch of government is frank and impartial, and that decision-making is principled and evidence-based. It also builds a superior public sector because it attracts and retains high quality employees seeking a secure, professional and rewarding career.

In Australia, the importance of respecting and adhering to the Westminster tradition has been repeatedly stressed by successive independent reviews. These have cautioned against adopting a 'Washminster' system – a hybrid of the Westminster and United States models, where agency heads routinely change with the government and public sector employees are openly aligned with political parties.

These warnings recognise the Westminster tradition has continued to evolve in Australia, with elected governments dealing with the complex challenges facing them by seeking alternative sources of advice and increasing the number of ministerial support staff.

## Issues Paper

83. On 10 May 2022 we published an [Issues Paper](#) to give context to the investigation, provide clarity for potentially affected parties, and explain the proposed areas of focus we derived from the referral.
84. The Issues Paper explained that the investigation would focus on the appointment of executives within the Victorian Government. We called for submissions from interested parties to help us identify possible examples of the alleged politicisation practices identified in the Legislative Council referral.
85. In the Issues Paper, we explained our investigation would focus on four key questions:
1. Whether there were recent examples of impropriety in the way executives had been appointed in Victoria.
  2. Whether the appointment of people with political affiliations had resulted in any negative impacts or benefits to the public service.
  3. Whether the appointment of people with political affiliations had resulted in any negative impacts or benefits to public administration.
  4. What reforms, if any, were required to how executives were appointed by the Government.
86. The Issues Paper is included as Appendix B of this report.

### Public service or public sector?

Both the Legislative Council referral and *The Age* article referred to alleged politicised hiring involving the ‘public service’. Yet several people *The Age* article alleged had benefited from this practice were not public servants, but people employed in public entities forming part of the broader Victorian public sector.

Although ‘public service’ and ‘public sector’ have different meanings in Victorian legislation, commentators and Members of Parliament often use the terms interchangeably. Both are subject to the same values and employment principles, and similar codes of conduct, which incorporate aspects of the apolitical Westminster tradition. (See Appendix C for more detail about public sector employment in Victoria).

The Legislative Council’s debate of the motion resulting in the referral did not suggest it intended to limit our investigation to just the public service. As in *The Age* article, several examples of alleged politicisation discussed during the debate involved public entities, not public service bodies. Given this, our Issues Paper invited submissions about appointments to both the public service and broader public sector. In this report, we generally use ‘VPS’ when discussing things that are unique to the Victorian public service, and ‘public sector’ in all other cases.

We did not ask for submissions about public board appointments – because these were not raised in the referral or *The Age* article, and because most involve Cabinet decision making, which we are ordinarily unable to examine (see ‘Cabinet Confidentiality’, later in this chapter).



## How we took submissions

87. We invited submissions from public sector employees and members of the public. People making submissions were encouraged to identify possible examples of politicisation they had witnessed or otherwise address the key questions in the Issues Paper. Where possible, we took details of participants but allowed them to remain anonymous if they wished.
88. We took submissions confidentially by phone, email and in person. The original deadline - 15 July 2022 - was extended by two weeks due to strong interest. We continued to receive and assess a small number of submissions after the formal submissions period ended.
89. We received 186 submissions in total - most by phone or email. Sixty-seven per cent were made by current or former Victorian public sector employees. Twenty per cent were made by current or former executives, including CEOs and Department Secretaries.
90. Where relevant, we informed people making submissions about the *Public Interest Disclosures Act 2012 (Vic)* ('PID Act'), which provides protections to people making disclosures about corrupt conduct, improper conduct and detrimental action involving public officers and public bodies. In keeping with our obligations under the PID Act, we notified the Independent Broad-based Anti-corruption Commission ('IBAC') of two submissions relating to alleged improper conduct.
91. Section 16E of the Ombudsman Act requires us to notify IBAC of any matters we reasonably suspect involve corrupt conduct. We did not receive any submissions or evidence meeting this threshold.
92. Chapter 3 of this report summarises the key themes identified in submissions made to the investigation and witness interviews.

Figure 2: Submissions received

	# Submissions	% Submissions
<b>Submission method</b>		
Email	85	46%
Phone	78	42%
In person	16	9%
Online complaint form	4	2%
Letter	3	2%
<b>Relationship to Victorian public sector</b>		
Current or former executive	38	20%
Current or former employee (non-executive)	87	47%
Other / Not specified	61	33%

Source: Victorian Ombudsman. Note method total exceeds 100 per cent due to rounding.

## Selecting lines of investigation

93. We reviewed every submission and, where necessary and appropriate, consulted our existing holdings and public sources to discreetly corroborate information received.
94. While taking submissions, we summonsed records from several Government agencies to build a profile of the public sector executive workforce. This included extracts from the VPSC's yearly collections of workforce data.
95. We also obtained lists of current and former Victorian ministerial staffers from the Department of Education (which administers payroll services on behalf of the Premier) and electorate officers from the Department of Parliamentary Services.
96. At the end of the submission period, the Ombudsman and Strategic Adviser met with the investigation team to select appointments and incidents for further investigation, having regard to the nature of allegations made, the possible dimensions of politicisation and, ultimately, the terms of the Legislative Council referral.
97. We determined to investigate scenarios involving more than a dozen public sector bodies – ranging from isolated executive appointments to bulk hiring and firing. Some lines of investigation were consolidated, and others were discontinued for various reasons as the investigation progressed.
98. Before proceeding, we consulted with IBAC in accordance with section 13AB(2) of the Ombudsman Act to ensure we did not prejudice any IBAC investigations.

## Interviews and use of coercive powers

99. During the investigation, it was necessary to obtain and review a large volume of sensitive records. Most were obtained by summons issued to the principal officer of the relevant public sector agency.
100. Our approach was to generally invite cooperation from witnesses whose actions or decisions were not being investigated. This included people who made submissions, human resources staff and executives with direct knowledge of scenarios under investigation.
101. Most witnesses we approached expressed significant concern about being identified in our report. There was a general sentiment – even among former Department Secretaries and other agency heads – that speaking candidly about trends in the VPS or specific incidents they had witnessed could amount to 'career suicide'.
102. We informed witnesses that wherever possible we would avoid disclosing their cooperation. In some cases we also undertook to seek consent before quoting oral evidence in this report. Where requested, we issued a summons to ensure witnesses could disclose sensitive or privileged information.

103. Despite these accommodations, a small number of witnesses told us they were uncomfortable giving evidence under any circumstances – due to possible career impacts or other welfare reasons. We generally respected this choice unless we considered there was an overriding public interest in compelling their participation. This meant we had to abandon some lines of investigation as we progressed. In other cases, we agreed to speak with people without formal interview to discreetly test information received from other sources.
104. While gathering evidence, we were careful to avoid unnecessary harm to the reputation and welfare of people who allegedly benefited from ‘politicised’ appointments. As a general rule, we did not compel these people to attend an interview unless we considered there was a strong need to obtain their response to the evidence. We issued confidentiality notices where necessary to restrict disclosure of the appointments and incidents we were investigating.
105. Witnesses substantially involved in the actions or decisions under investigation were generally issued a summons requiring them to give evidence at interview.
106. Witnesses have generally been assigned pseudonyms in this report, and other efforts have been made to deidentify people who are not the subject of adverse comment where practical. We have deidentified some public sector agencies and agency heads to avoid indirect identification of witnesses or other parties.
107. Based on evidence received, it was not necessary to interview the Premier, former Premier, or any Ministers in relation to our lines of investigation.

Figure 3: Witnesses interviewed or consulted about evidence received

Classification (current or previous)	# Witnesses
Department Secretary	12
Other agency head (eg Chief Executive Officer)	8
Executive – SES-3 or equivalent (eg Deputy Secretary)	15
Executive – SES-2 or equivalent (eg Executive Director)	11
Executive – SES-1 or equivalent (eg Director)	6
Non-executive (eg VPS Grade 6)	5
Other (eg Board member)	4

Source: Victorian Ombudsman.

## Cabinet confidentiality

108. Section 19(1) of the Ombudsman Act generally prevents the Ombudsman from receiving records and information about the 'deliberations of Ministers' – typically, Cabinet information. Section 25A(1)(b) also generally prevents the Ombudsman from including information about Cabinet decisions in an investigation report.
109. Some lines of investigation inevitably intersected with Cabinet deliberations. During the investigation we received records that appeared to relate to Cabinet decision-making or were otherwise marked 'Cabinet-in-Confidence'. These were flagged and quarantined from the investigation team.
110. In a small number of cases, the investigation team obtained legal advice to help determine whether records engaged section 19(1) of the Ombudsman Act. This was because it was not always clear whether documents marked 'Cabinet-in-Confidence' actually related to Cabinet decision-making.
111. For example, we identified evidence that some consultancy staff were instructed to label all work on a public sector project as 'Cabinet-in-Confidence' unless advised otherwise. The implications of excessive government secrecy are discussed further in chapters 6 and 7.
112. When responding to a summons, some parties declined to provide evidence on the grounds it would disclose information about the deliberations of Cabinet. This was in line with their obligations under section 19(1) of the Ombudsman Act, but consequently impeded our investigation.
113. In this report we have generally noted where Cabinet confidentiality limited our understanding of the relevant facts.

## Poor record keeping

114. Poor record keeping was a persistent issue encountered across many lines of investigation.
115. Recruitment files frequently lacked adequate documentation, with some, for example, comprising only a letter of offer and million-dollar employment contract. This meant we sometimes needed to review significant volumes of emails and other data to piece together why senior hiring decisions were made.
116. In a smaller number of cases, record keeping was so poor, or so irregular, that we felt compelled to interview witnesses to get a proper understanding of the facts. This unfairly impacted many people – particularly those hired – who often had no idea why insufficient records were kept by decision-makers.
117. In this report we have generally noted where poor record keeping limited our understanding of the relevant facts, and where it had the potential to contribute to perceptions of politicisation by undermining confidence in the merit selection principle.

## How we investigated

118. The broad scope of the Legislative Council referral required a similarly broad investigation.
119. During the investigation, we:
  - issued 30 summonses to 18 public sector bodies for documents and information
  - reviewed or analysed about 5.4 million records relating to 545 public sector appointments with a combined contract value of more than \$477 million
  - interviewed 45 people, totalling 185 hours and 3,787 pages of transcripts – 24 interviews were conducted as voluntary appearances, and 21 were conducted as compulsory appearances in response to a summons. Sworn evidence was provided by all people interviewed.
  - issued 29 confidentiality notices to protect the integrity of the investigation and the privacy and reputations of people involved
  - undertook 57 consultations to clear the use of de-identified quotes from submissions and oral evidence
  - provided extracts from a draft report to 41 people for their response
  - provided complete draft reports to the Premier, the former Premier, the Department of Premier and Cabinet, and the Victorian Public Sector Commission
  - consulted with the Department of Premier and Cabinet and the Victorian Public Sector Commission about our proposed recommendations.

Figure 4: Our investigation, by the numbers

**186** submissions received, including:  
**38** from public sector executives  
**87** from other public sector employees



**5.4 million** records reviewed or analysed by investigators, including:  
**2.1 million** emails **2.3 million** calendar entries **896,981** documents

**51** summonses issued:  
**30** for documents or information  
**21** for compulsory interviews

**29** confidentiality notices issued to protect the investigation

**109** routine statutory notifications required to be made to the Victorian Inspectorate



**45** interviews encompassing:  
**24** voluntary appearances  
**21** compulsory appearances  
**185** hours  
**3,787** transcript pages

**61** senior public officers interviewed or consulted about evidence received, including:  
**20** agency heads (eg Department Secretaries and CEOs)  
**32** other executives

**545** public sector appointments reviewed by investigators, involving:  
**14** public sector bodies  
**\$477 million** combined contract value

Source: Victorian Ombudsman

## Procedural fairness

120. The investigation was guided by the civil standard of proof, the balance of probabilities, in determining the facts – taking into consideration the nature and seriousness of the matters examined, the quality of the evidence and the gravity of the consequences that could result from any adverse opinion.
121. This report includes comments or opinions that are adverse to several people. In accordance with section 25A(2) of the Ombudsman Act, these people were provided a reasonable opportunity to respond to the material in a draft report. Their responses are fairly set out in this report.
122. In accordance with section 25A(3) of the Ombudsman Act, any other people who are or may be identifiable from the information in this report are not the subject of any adverse comment or opinion. They are named or identified in the report as the Ombudsman is satisfied:
  - it is necessary or desirable to do so in the public interest
  - identifying those people will not cause unreasonable damage to their reputation, safety or wellbeing.
123. Appendix D lists people who may be identifiable from the information in this report who are not the subject of adverse comment or opinion.
124. This report also includes adverse comments or opinions about actions or decisions taken within several authorities. In accordance with section 17(4) of the Ombudsman Act, the principal officers of those authorities were provided opportunity to comment on the subject-matter of the investigation. Their responses are fairly set out in this report.

## About this report

125. This report is divided into three parts. Part A is about sustaining an apolitical public sector. It is divided into three chapters discussing the apolitical public sector tradition, the possible dimensions of politicisation, and the key themes identified in submissions and evidence provided to the investigation.
126. Part B sets out selected lines of investigation and what we found. It is divided into five chapters, each describing a particular scenario or set of appointments we investigated.
127. Part C sets out our conclusions and recommendations to address politicisation risks in Victoria.





---

**Part A:**

Sustaining an apolitical public sector

---

# Chapter 1: The apolitical public sector tradition

128. Since 1855, the Victorian Constitution has provided a framework for responsible government, and a series of subsequent Public Service Acts has shaped the notion of a stable, merit-based public sector based on the Westminster tradition.
129. The most recent of these is the *Public Administration Act 2004* (Vic). Relevantly, two key objects of the Act are to ensure:
- the maintenance of an apolitical public sector
  - that employment decisions in the public sector are based on merit.
130. The Act sets out seven values requiring public sector employees to provide 'frank, impartial and timely advice to the Government', nurture public trust, avoid conflicts of interest, and implement Government policies and programs equitably. It also lists six employment principles requiring that decisions are based on merit and that a career public service is fostered.
131. Public sector employees must comply with VPSC-issued codes of conduct – generally, the *Code of Conduct for Victorian Public Sector Employees* ('Code of Conduct'). Most agency heads, including Department Secretaries, must also comply with [the public sector employment principles and binding standards](#) ('VPS Standards').

## Foundations

132. Some fundamentals underpinning Victoria's current Public Administration Act trace back to the seminal 1854 Northcote-Trevelyan report on the British Civil Service.
133. The Northcote-Trevelyan report noted patronage and favouritism in government staffing had nurtured officers it colourfully described as 'the unambitious, and the indolent or incapable' – people 'of very slender ability, and perhaps of questionable character'. As a counter, the report recommended tighter assessments for new hires and promotions, and better training and supervision. The report's guiding philosophy was:
- Government of the country could not be carried on without the aid of an efficient body of permanent officers, occupying a position duly subordinate to that of the Ministers who are directly responsible to the Crown and to Parliament, yet possessing sufficient independence, character, ability, and experience to be able to advise, assist, and to some extent, influence, those who are from time to time set over them.
134. Many reports since – both in the United Kingdom and Australia – have made recommendations contributing to the development and evolution of a professional and skilled public sector, able to serve governments of any political complexion and deal with contemporary challenges.
135. These include at least six formally constituted broad inquiries into the VPS.

## Key observations from previous inquiries into the VPS

- An **1856 Board of Inquiry** into 'arrangements for the better organization of the civil service of the colony' followed Britain's Northcote-Trevelyan report. It called for merit-based recruitment and promotion, and a reduction of Parliamentary patronage. Observing a deplorable level of political influence in England's civil service, it declared it a 'matter of primary importance to prevent, in this Colony, the rise of those evils ... which exercise so pernicious an influence upon the service, and the Parliament and the people'.
- An **1859 Royal Commission** report on the civil service of the colony observed a 'radical defect ... is the total absence of any general rules' – including around appointments, promotions or dismissals. The report effectively laid the ground for the first legislation covering the VPS, the *Civil Service Act 1862*.
- An **1873 Royal Commission** report on the state of the VPS and the working of the new Civil Service Act noted patronage appointments had continued, despite efforts to tighten the system. The report observed: 'The evil of this practice is flagrant. It admits of a prejudicial exercise of Ministerial patronage; it has a tendency to burden departments with persons whose services are not needed ... and to bring into the service of the State, persons, at salaries not fixed by Parliament, who have given no evidence whatever of their fitness for the office bestowed on them'.
- A **1917 Royal Commission** report on the VPS noted steps taken to abolish political patronage since the 1873 report but observed 'much greater recognition of merit must be shown than has hitherto been the case'.
- A **1927 Board of Inquiry** report looked at whether there was 'waste, extravagance, overlapping or overstaffing' in the administration of VPS departments. It noted some 'temporary' appointments had lasted for years and appeared to 'have a flavour of patronage about them'. It also noted potential political interference in the work of the Public Service Commissioner.
- A **1973-76 Board of Inquiry** urged major reforms to the *Public Service Act 1958* (Vic), noting 'the Service is not what it should be'. It observed the Government had become 'fragmented' over many years, as more and more statutory authorities were set up outside the VPS 'with no philosophic framework'. Regarding hiring practices, it said applicant selection processes ranged from 'the well organised to the haphazard', and emphasised the need for improved identification and development of executive talent. The Board warned unless its proposals were adopted, the VPS had no hope of coping with the complexities and obligations confronting it.

136. In 1976, a paramount national report flowed from the Royal Commission on Australian Government Administration ('Coombs Report'), which examined how the Australian Public Service ('APS') and broader public sector needed to evolve and adapt to present-day tasks. Key themes in the report, endorsed by governments over time, were that the public sector must be more responsive to political direction, improve implementation of government policy, engage better with the public, and adopt more flexible and tailored employment practices.

137. Though recognising traditional notions of Westminster government were ill-suited to the changed way that ministers and public officials interacted and exercised power, the Commission strongly endorsed the retention of the merit selection principle in public sector employment:

The quality of administration is a function of the quality of the people who undertake it. ... [T]he general concept of a career service has come to mean (i) *recruitment by merit* (however defined and determined) to a (ii) *unified service* ... subject to (iii) *independent, non-political control of recruitment* ... Application of the merit principle is widely believed to guarantee that objectivity, rationality and equality of opportunity prevail in recruitment.

138. Recognising that application of the principle needed to adapt with the times, the Commission commented that it would be appropriate for agency heads to keep ministers informed of the appointment of senior staff to 'take into account ... any views the minister might care to express'.

139. An important 1977 New South Wales review by Dr Peter Wilenski AC identified the merit selection principle in public sector employment as one of five pillars for reform:

[A]ppointment to and promotion within the administration should be solely on the basis of merit. ... The basic principles of a career service in the public sector have often been laid down as independent, non-political control of recruitment, recruitment and promotion by merit, a unified service, the majority of senior positions filled from within the service, legislative protection against arbitrary dismissal and a distinctive retirement and pension system. ... The one feature central to the whole concept of a career service that has been consistently breached in the past and is continuing, to an extent, to be breached today, is recruitment and promotion by merit.

## Contemporary landscape

140. In the nearly 50 years since the landmark Coombs Report, many inquiries and reports at both national and state level have continued to analyse and discuss the evolution of key notions surrounding the public sector and administration. The following section outlines key discussion points and findings from some more recent reports.

### VPSC Review of Victoria's Executive Officer Employment and Remuneration Framework, 2016

141. The VPSC performed the first major review in more than 20 years of executive employment and remuneration arrangements. [The Commission's 2016 report](#) noted the essential role executives play in effective service delivery, the realisation of Government objectives and stewardship of the VPS. It found a 'piecemeal' mix of legislation, policy and convention around executives that did not provide transparency, fairness or rigour, and suggested major changes to improve integrity and accountability.

142. Key recommended changes included a new classification and remuneration framework, a revised VPS employment offer, new governance arrangements, and a new approach to performance management.
143. Regarding the employment of Department Secretaries, it noted a potential role for the Commissioner to be involved in ‘the recruitment and termination processes, at least in an advisory capacity’.
144. The VPSC review also noted four-month ‘at will’ termination clauses in standard executive contracts were ‘too short’ and acted as a disincentive. To help reduce career insecurity, it recommended an increase of the ‘at will’ notice period to nine months, although this was not adopted. It also recommended that revised contracts better reflect, among other things, confidentiality and integrity expectations.

### **Independent Review of the Australian Public Service (‘Thodey Review’), 2019**

145. The [2019 Thodey Review](#) provides the most recent comprehensive picture of national public administration. Its central theme echoed some earlier reports – that the APS was unprepared and falling short of expectations to meet complex and evolving challenges facing government. It urged reform and adaptation of the public service, ‘reinforced and supported’ by a firm commitment to the Westminster tradition:

The modern Westminster principles of government remain essential: an apolitical, merit-based, and open public service, underpinned by integrity, serving the Government, Parliament and the people of Australia.

146. Acknowledging that the evolution of Westminster principles harboured a risk of politicisation, the Thodey Review noted essential elements that must always remain:
- public servants to provide high-quality, independent and evidence-based advice, and implement the Government’s decisions efficiently, effectively and ethically
  - public servants to ensure their advice and implementation, or the perceptions of these, are not affected by political factors
  - mutual respect between public servants and ministers and parliamentarians, and between public servants themselves, to allow a free flow of ideas and information and ensure that responsibility for decisions is taken as and when required
  - a career structure for public servants that is independent and based on merit, and
  - stakeholder confidence that decisions by public servants are not affected by their personal, financial, political or other interests or those of their relatives or friends.

## COVID-19 Hotel Quarantine Inquiry Final Report ('Coate Report'), 2020

147. The inquiry into failures of Victoria's COVID-19 Hotel Quarantine Program and its role in the devastating second wave of cases in Victoria touched briefly on responsible government when it found no person or agency claimed responsibility for a decision to use private security firms to enforce quarantine for returned travellers.
148. While acknowledging an examination of the Westminster system of Ministerial and public service lines of accountability and responsibility was beyond its remit, [the report](#) commented:
- The decision was made without proper analysis or even a clear articulation that it was being made at all. On its face, this was at odds with any normal application of the principles of the Westminster system of responsible government. That a decision of such significance for a government program, which ultimately involved the expenditure of tens of millions of dollars and the employment of thousands of people, had neither a responsible Minister nor a transparent rationale for why that course was adopted, plainly does not seem to accord with those principles.
149. It went on to reiterate that ensuring ministers are thoroughly and properly briefed is part of the Westminster tradition, both to create checks and balances on bureaucratic decision-making and to allow the minister to maintain proper oversight.

## Review of culture and accountability in the Queensland public sector ('Coaldrake Review'), 2022

150. A major [review of the Queensland public sector](#) undertaken by Dr Peter Coaldrake AO in 2022 described it as 'beleaguered', and not up to the task of providing government with the high level of expert advice and thinking required to meet major challenges. It identified the main reason as officials succumbing to pressure to withhold unwelcome advice:

There is a view, repeatedly confirmed, that public service advice is too often shaped to suit what are assumed to be the preconceptions of the people receiving it, that the price for frank and fearless advice can be too high, sometimes devastatingly so, and the rewards too low. All this encourages a reluctance to depart from what is perceived to be the 'official line'.

151. The review was also critical of officials being pressured by ministerial staffers to tailor or sanitise their advice, and of framing recommendations to align with a minister's presumed preferences.

## Appointment of a Senior Trade and Investment Commissioner to the Americas (Head Review), Aug 2022

152. The tendency in government to test the limits of the merit selection principle in public sector employment was laid bare in a New South Wales review into the appointment of a former Deputy Premier to a senior trade commissioner role.

153. A central breach identified in the review conducted by former NSW Public Service Commissioner Graeme Head AO was that an executive appointment was not made at arms-length from the portfolio minister, who was consulted and briefed during the process and expressed views that were taken into consideration – though stopped short of direct influence.
154. In proposing changes to New South Wales public sector legislation and the Ministerial Code, the report stressed public confidence in merit-based hiring directly relies on the integrity of employment processes and an ethical culture.

### **IBAC *Operation Daintree* special report, April 2023**

155. IBAC's *Operation Daintree* investigated whether improper influence by Ministerial staffers at the Office of the Premier (also known as the Premier's Private Office, ('PPO')) compromised a Victorian Department's procurement and management of a \$1.2 million contract.
156. The report observed growing politicisation of public administration generally and said that in IBAC's view 'Victoria has not been immune from this trend'. Key issues emerging from IBAC's investigation included:
- the inappropriate influence of ministerial staffers on departmental advice, decisions and actions
  - the influence of the PPO on ministers and their offices and, through them, their departments
  - the lack of oversight of advisers by ministers (raising questions about the efficacy of the Westminster convention of individual ministerial responsibility).
157. The report observed a decline in standards and transparency, and a rise in preferential treatment of people and organisations linked to decision-makers or parties in power. It also noted significant deterioration in adherence to traditional rules and conventions, affecting the role and independence of ministers and their departments, and increasing the influence of ministerial staffers and the centralisation of power in the PPO.
158. It noted while ministerial advisers perform a 'critical' role in modern Australian government, their number, role and influence 'has presented new issues about their accountability for their actions and the nature of their relationships with their portfolio departments'.
159. IBAC said the evidence it obtained suggested the practice of ministerial staffers 'instructing, influencing or applying pressure to public servants is not uncommon'. It warned if staffers continued to operate in a 'shadow zone' it would deny Parliament and the public the ability 'to scrutinise a significant and growing area of executive government activity'.
160. IBAC also found conduct by senior public servants fell short of required standards. This aspect of *Operation Daintree* is discussed in more detail in chapter 2.

## Royal Commission into the Robodebt Scheme, July 2023

161. The most recent national inquiry to substantially influence public expectations of government administration is the [Royal Commission into the Robodebt Scheme](#). The Commission examined a government program that sought to identify welfare overpayments by comparing income data from taxation and welfare claim records.
  - [There were] repeated failures by members of the Australian Public Service to discharge their professional obligations and to adhere to the values and standards that applied to their roles.
  - The Commission heard evidence about APS leaders (both Secretaries and SES leaders) being excessively responsive to government, undermining concept[s] of impartiality and frank and fearless advice.
  - The evidence before the Commission was riddled with instances in which no record could be found to explain why significant action was taken or not taken.
  - Nothing I have seen in ministerial briefs or material put to Cabinet suggests any tendency to give full and frank advice that might be impaired by the possibility of disclosure.
162. The Commission found the program did not have proper legislative support and produced inaccurate results that had a harsh and damaging impact on benefit recipients.
163. These flaws were known within the APS but were not properly brought to the attention of ministers who advocated the program. The Commission found senior officials knowingly shielded ministers from unwelcome advice. It referred several senior public servants who had failed in their official duties to other bodies to examine if further action was required to address unprofessional, unethical or criminal behaviour.
164. The following quotes from the Commission's report illustrate its findings about breaches of the fundamental values of the Westminster tradition:
  - It is remarkable how little interest there seems to have been in ensuring the Scheme's legality, how rushed its implementation was, how little thought was given to how it would affect welfare recipients and the lengths to which public servants were prepared to go to oblige ministers on a quest for savings.

## Key themes for this investigation

165. Four common principles appearing in many of the reports discussed above were especially relevant to our investigation.
166. First, the style and structure of the public sector must change over time so that it can best serve the elected government. Remaining fit for purpose may require adapting traditional understandings of 'responsible government'. For example, as the Issues Paper outlined, governments rely increasingly on external as well as internal advice, and it is not uncommon that senior executives have experience working in a ministerial office or, sometimes, a party affiliation.



167. Second, the public sector must remain politically neutral and impartial. The public sector must maintain its ability to provide independent and objective support to the government of the day, whatever its political complexion. Only in this way can it properly serve the community and sustain public confidence.
168. Third, an apolitical and professional public sector relies heavily upon merit-based recruitment and promotion with competitive and transparent processes. For the VPS, the guiding objective must be the development of a career public service.
169. Fourth, the public sector must honour community trust by providing frank, impartial and timely policy advice to government, and must cherish and nurture its independence.
170. All four principles can be undermined by politicisation in different ways, as discussed in the next chapter.

# Chapter 2: Politicisation – what does it mean?

171. 'Politicisation' generally refers to breaches of the boundary between the political and non-political arms of government in a way that compromises the political neutrality or apolitical character of the public sector. There is an element of subjectivity both in defining and applying the concept.
172. Politicisation can happen in different ways, both obvious and subtle. One clear breach is inappropriate ministerial intrusion into public sector hiring. A more subtle example is when the professionalism of the public sector slips, and it is no longer willing or able to provide frank and impartial advice to government.
173. Sitting behind these examples are three complex themes taken up in this section:
1. Why is it important to preserve the political neutrality of the public sector?
  2. What actions compromise neutrality?
  3. Is there currently a trend towards politicisation in Australia?
174. While commentators generally agree there is a healthy side to integrating political and non-political roles in government, opinions differ on how far this should go.
175. This discussion of politicisation draws heavily on several thoughtful submissions we received – notably from the VPSC, Emeritus Professor John Halligan, and other sources, some of whom requested we keep their involvement confidential. The Ombudsman also engaged five law student interns from Monash University and the University of Melbourne to assist with research into dimensions of politicisation, public sector executive appointment frameworks and the role of public sector commissioners.

## Why is public sector political neutrality important?

176. As discussed earlier, maintaining an apolitical public sector is a central element of the Westminster tradition. The benefits are many, and include:

### Stable democratic government

177. A politically neutral public sector can serve any elected government with equal loyalty and efficiency and avoid partisan controversies.
178. Though governments may change at elections, and the Ministry can change in between, the personnel and values of the public service are more durable. This provides stability and reassurance – both to the elected government and the community – and has other democratic benefits such as promoting integrity, controlling conflicts of interest, and managing corruption risks.

### Professionalism

179. A competent and impartial public sector is made up of capable people appointed on merit rather than political affiliation.
180. Open competition for vacant positions, objective evaluation of candidates, and transparent decision-making lead to the appointment of skilled staff without conflicting loyalties, and allow for flexible hiring to meet contemporary challenges, including those defined by a newly elected government.
181. Merit selection also gives public servants confidence in each other, and enhances career security and professionalism.

## Better decisions and outcomes

182. A neutral public sector provides frank, impartial and timely advice to support government planning and policy design. This advice is typically not tied to the immediate political cycle and draws widely on the knowledge and expertise of the public sector.
183. Effective government also requires that policies and programs, once settled, are dutifully implemented by the public sector, acting without self-interest.
184. Public sector advice can readily be supplemented by input and support from external sources, however the Westminster tradition is undermined if expert, apolitical public sector advice is not valued by government or is otherwise neglected – for example, due to lack of resources, excessive secrecy or deliberate avoidance.
185. Outcomes are also improved if ministerial staffers have relevant expertise, are trained to think beyond the immediate political cycle, and are supported by apolitical staff.

## Public trust in government

186. The key principle of the Westminster tradition is that government must be accountable to the people.
187. Public confidence in the public sector is therefore essential. The public needs to see that staff are professional, non-aligned and committed to public sector values. Reflecting this, the core of the public sector is customarily called the ‘public service’, and its individual officers, ‘public servants’.

## How is public sector political neutrality damaged?

188. Responsible government is not a static system. Elected governments differ widely in their style and agenda, as well as in their expectations for the public sector. Major reviews have recognised periodic changes are necessary to improve the sector’s ability to deal with new challenges and respond to political direction.

**The key principle of the Westminster tradition is that government must be accountable to the people.**

189. These pressures sometimes lead to structural changes – such as fixed-term contracts for agency heads, and an increase in the number of ministerial support staff. The way the political and executive arms of government interact has also changed, driven by the higher visibility of political leaders and their greater demands for a responsive, fast-paced public sector.
190. Taken too far, this risks becoming what internationally renowned political scientist Peter Aucoin called ‘New Political Governance’, where:  

governments seek to use and misuse, even abuse, the public service in the administration of public resources and the conduct of public business to better secure their partisan advantage over their competitors.
191. The challenge is to adapt to pressures while not weakening key principles – the apolitical tradition, committed staff, and merit selection. This requires a clear understanding of how political neutrality can be compromised.

192. In the *Oxford Research Encyclopaedia of Politics*, Professor John Halligan identifies seven main types of politicisation (see Figure 5). These and other examples are discussed in further detail below.

Figure 5: Politicisation types identified by Professor John Halligan

Type	Variations
Appointments to the public service	Partisan and political appointments
	Party affiliation in recruitment and promotion
	Influence over professional appointments
Ministers' expanding roles	Taking on and intervening in public service roles
Public servants in political roles	Power sharing
	Political roles at the interface
	Political decision-making
Political advisers	Ministerial cabinets and Ministerial offices
Responsive bureaucrats	Public servants operating beyond, or ignoring, professional judgements
Political patronage	Rewarding personal and political loyalty
Public servants' political involvement	Party activity and campaigning

Source: John Halligan, 'Politicization of public services in comparative perspective', *Oxford Research Encyclopaedia of Politics* (2021)

### **Political patronage, partisanship and disrespect of merit selection**

193. Appointment of officers through patronage, nepotism and 'political spoils' used to be blatant. These practices have largely been suppressed, but can still occur.
194. One example is when people with well-known partisan connections (eg party membership or past political work) are appointed to public sector roles. These staff may not be accepted by a different government, and this can chip away at the tradition of a stable, apolitical public sector. The damage can be greater if the position is specially created, the selection process is not open or advertised, or employment conditions are unusually favourable.
195. Failing to follow conventional recruitment practices also damages public sector morale, particularly when the person appointed has political connections. Confidence is also harmed when candidates preferred by ministers are hired over better qualified alternatives.
196. Arbitrary or unexplained hiring and firing, especially soon after an election or change of government, can also create perceptions of politicisation. Suspicion will be greater if many senior appointments are hastily made in bulk appointment rounds.

### **Political disregard for conventions**

197. It is often said that an independent and apolitical public sector should provide 'frank and fearless' advice to government. This can be undermined by politicians in many ways.

198. One is when an agency is pressured to give advice endorsing the decision a government already wishes to make. Government is free to reject public sector recommendations, but should not preempt the advice it receives. Another is when public sector employees are discouraged from providing unwelcome information or ministerial staffers inappropriately influence how advice is prepared.

**An independent and apolitical public sector should provide 'frank and fearless' advice to government. This can be undermined by politicians in many ways.**

199. Inappropriate political pressure can also be imposed on public sector decision-making – for example, interference with an agency's response to information requests (eg under freedom of information laws), or with how it independently awards contracts and grants.
200. Many commentators observe these types of subtle politicisation have worsened with the growth in size of ministerial offices and, in Victoria, the PPO – described as the new 'powerhouse of government', and a 'force amplifier' heightening pressure on agencies to provide advice and make politically aligned decisions. The growth in size of First Ministers' Departments (eg the Department of Premier and Cabinet ('DPC') in Victoria) is also said to promote centralised political control.

201. A parallel development is the increasing preference for advice from external consultancy firms and advocacy bodies. This can undermine the Westminster tradition by replacing information normally provided by the public sector, and can invite suspicion that ‘friendly’ or ‘welcome’ advice is being sought. Public sector expertise and self-confidence can be undermined in the process.

### **Unprofessional public sector behaviour**

202. Politicisation is a two-way street and can also result from public sector actions. Examples include undeclared political activity, public sector employees courting favour with ministers’ offices, and policy advice being voluntarily altered or withheld to suit a partisan government agenda.

### **Failure to promote and uphold public sector values and principles**

203. In its submission, the VPSC observed the ‘perception or occurrence of politicisation in the Victorian public sector puts a core concept of Westminster government at risk’. This was demonstrated in many other submissions making allegations of politicisation, some of which are discussed in Part B of this report.

204. The Public Administration Act recognises the importance of constantly reasserting the Westminster tradition by requiring agency heads to uphold and promote the public sector values, codes of conduct, employment principles and VPS Standards. Recognising this also, the VPSC conducts annual surveys inviting public sector employees to assess whether their colleagues are behaving appropriately.

205. Importantly, perceptions of politicisation can be hard to dislodge once they take root. This can damage morale and, potentially, lead to a self-defeating belief that politicisation is a reality either to be accepted or exploited.

Politicisation is a two-way street and can also result from public sector actions.

### **Is there a trend towards politicisation in Australia?**

206. As reflected in the earlier discussion of recent landmark reports, government actions at odds with the Westminster tradition have attracted strong criticism across Australia. The Robodebt Royal Commission found senior APS officials knowingly shielded ministers from unwelcome advice, the Coaldrake Review highlighted the reluctance of Queensland officials to provide frank advice, and the Head Review found a senior New South Wales executive appointment decision was not kept at arms-length from a minister.

207. Here in Victoria, the Coate Report found responsibility and reasons for a significant Government decision were opaque, and IBAC’s *Operation Daintree* criticised senior VPS staff for allowing ministerial staffers to interfere with advice and decisions (discussed later in this chapter).

208. Respected commentators have also highlighted these issues. Writing in the *Canberra Times*, former Australian Public Service Commissioner and Department Secretary Professor Andrew Podger AO observed that '[i]ncidences of politicisation have occurred since federation, but the extent today suggests a widespread culture fostered by the professionalisation of politics and an associated disrespect for institutions'. He argued responsiveness has been taken too far, leading to directly partisan behaviour and public servants crossing the line to please ministers.
209. Former Chair of the Productivity Commission and Dean of the Australia and New Zealand School of Government ('ANZSOG') Professor Gary Banks AO wrote in *The Australian* of a 'shift to a more "aligned", even partisan, leadership of the public sector', which appeared 'more acute in Victoria than elsewhere'. While recognising some positive features of this trend, he singled out for criticism:
- the heightened risks of senior officers being too aligned to provide balanced or objective advice; or subordinating policy to politics when the 'going gets tough'; or seeking to protect a minister or government politically, even when that requires acting in a way that may be unethical or contrary to the public interest.
210. Criticism of Victorian practice was repeated by former IBAC Commissioner Robert Redlich in his 2022 John Barry Memorial Lecture in Criminology. He identified four trends undermining responsible government and increasing the risk of corrupt behaviour:
- concentration of decision-making around the Premier
  - corresponding reduction in authority and responsibility of ministers
  - an increasing sphere of influence around ministerial staffers
  - the diminishing role and skills of departments when providing objective advice and responding to Government.
211. The impact of these trends was recently highlighted by IBAC's *Operation Daintree* report.

## **\$1.2 million training contract compromised by political pressure and ‘pliability’ of Department**

IBAC’s *Operation Daintree* highlighted a poor policy outcome after a Department allowed a Ministerial staffer to interfere with its processes and senior executives failed to provide frank and fearless advice to the Minister’s office.

The resulting April 2023 IBAC report – which built on investigative work by the Victorian Ombudsman – found the procurement and management of a \$1.2 million contract by the then Department of Health and Human Services (‘DHHS’) was compromised by the involvement of political staffers.

The contract was for a union-linked organisation, the Health Education Federation (‘HEF’), to train hundreds of health workers in how to handle workplace violence and aggression. A senior Ministerial staffer had helped a union shape the training proposal, and submitted it to DHHS for consideration in June 2018.

From the outset, some DHHS staff had serious reservations about the proposal and the capability of the provider. They considered there should be a competitive procurement process, but DHHS executives ultimately decided to award a contract to HEF without testing the market.

IBAC’s report noted DHHS staff repeatedly expressed concerns throughout the life of the contract, from idea to implementation:

The officers’ evidence ... painted a consistent and compelling picture of public servants attempting to conscientiously perform their duties but being thwarted by the persistent intervention and pressure applied by [a political staffer] and the willingness of their senior managers to find a way to comply with the perceived wishes of the government.

IBAC found a belief among senior staff that awarding the contract to HEF was ‘the minister’s and government’s preference’ and this belief affected DHHS’s processes ‘at all levels’.

The IBAC report observed a June 2018 brief to a senior executive seeking funding allocation did not include most of the risks identified by staff, prompting one officer to email a superior saying:

I have reviewed the attached brief. I note my previous suggestion to include risks (such as sustainability, costings based on estimates only, unknown ability of [HEF] to deliver, underdeveloped scope, limited background on HEF and governance relationships etc) and the way in which these will be mitigated ... have not been included.

One person IBAC interviewed gave evidence that the identified risks were not included in the funding brief because it may not have been signed off by the relevant executive if they had.

With funding allocated, the DHHS procurement team became involved. At one point a Ministerial staffer directly contacted a ‘surprised’ VPS-level procurement officer, who told IBAC they felt that the Minister’s Office was applying pressure to speed things up. After raising concerns with the staffer about the lack of a competitive process, the officer wondered whether they would get their ‘marching orders’.



DHHS officers drafted a brief to the Minister advising of two procurement options, either a competitive tender or a Ministerial grant. The draft brief explained some reasons for and against each option but did not make a recommendation.

When this draft reached a senior public servant, they consulted with a Ministerial staffer who, IBAC noted, had already indicated to another DHHS executive that the Minister would be 'unhappy' at being placed in a position of having to choose between the two options.

Rather than briefing the Minister, the senior public servant decided DHHS would approach a single provider, HEF, to tender for the contract. They told IBAC this decision was appropriate to their level of authority, and a more efficient path. IBAC noted the decision not to provide 'what might have been unwelcome advice' meant – based on the relevant Minister's evidence – the Minister was left unaware of the various risks of entering into a contract.

An amended brief was prepared for executive sign off which IBAC said misrepresented the view of the responsible DHHS teams. IBAC noted:

Of particular concern is the explanation [two executive officers] gave that they believed there was a culture within DHHS that departmental officers may be required to make a recommendation in order to meet the wishes of their superior, even though they do not believe such a recommendation should be made.

With the single-source procurement method decided, DHHS still needed to request a quote from HEF and evaluate whether to engage it.

IBAC found that DHHS staff felt unable to assess the proposal on its merits, and felt pressure from both the Minister's office and senior executives in DHHS to approve the bid:

Throughout the period [of tender submission and evaluation] the overriding perception, which completely undermined the processes of DHHS, was that it was the preferred outcome of the minister's office that HEF should be contracted, despite DHHS staff's enduring concerns about its capability and suitability.

One of the three DHHS team members to evaluate the bid told IBAC they felt overwhelming pressure to sign the evaluation report. They considered not signing, but feared being seen as a troublemaker and the career repercussions that might bring.

The resulting report recommended that HEF be awarded the contract. A senior public servant ultimately signed it on 30 October 2018 – just hours before the pre-election caretaker period, which began at 6pm the same day.

Once the training started, IBAC said, many of the risks specifically identified by DHHS staff came to fruition, resulting in delays and disputes. Though a Registered Training Organisation when it tendered for the contract, HEF's registration was later suspended by the Australian Skills Quality Authority, prompting 'serious concerns' within the Department. DHHS sought an independent review and legal advice about termination of the contract. The training was eventually suspended in March 2020 due to the COVID-19 pandemic, though IBAC found it was unlikely to be successfully delivered in any case.

### **\$1.2 million training contract compromised by political pressure and ‘pliability’ of Department (cont.)**

IBAC observed that various shortcomings compromised the contract procurement and management ‘to such an extent that the program failed to deliver its intended policy outcomes’. It found only 83 of a planned 575 staff were trained and the quality of the training was ‘poor’. It observed that safeguards to ensure fairness and integrity were bypassed, resulting in a ‘contract that should not have been entered into ... and an outcome which was not in the public interest’. In total, \$335,000 of the \$1.2 million contract was actually paid to HEF.

One senior DHHS executive involved commented to IBAC that a ‘responsiveness’ dilemma faced modern public servants. They observed that trying to ‘deliver on policy and the requirements of the minister, while also holding to public service values is a challenge in the public sector’. IBAC found fear of career damage was a ‘significant factor’ causing some public servants to give in to pressure from ministerial staffers.

The political staffers and the union involved maintained that they had respected the independence and role of the public service, and rejected findings of improper influence and interference.

Reflecting on the matter, another senior DHHS executive told IBAC:

For members of the public service to meet their obligations of responsiveness, integrity and impartiality, there needs to be a culture that encourages speaking up in relation to reservations about decisions.



# Chapter 3: Submissions and evidence to the investigation

212. This section summarises key themes raised in contributions following our Issues Paper, which invited discussion on four broad topics:
- potential politicisation of public sector appointments
  - impacts of politicisation, if any, on the VPS
  - impacts of politicisation, if any, on public administration and outcomes
  - reforms to address politicisation risks.
213. More than 400 people downloaded the Issues Paper from our website. Over several months, we received a total of 186 written and oral submissions. As the investigation progressed, we also conducted 45 voluntary and compulsory interviews to further explore some of the matters raised.
214. Current and former public sector employees from a variety of Departments and agencies featured prominently among contributors. These ranged from ‘rank and file’ VPS staff up to Department Secretaries and Deputy Secretaries. Many shared personal experiences and observations which they felt indicated politicisation or demonstrated its effects.
215. However, many others disputed any substantial erosion of the Westminster tradition in Victoria. In their capacity as a system steward, for example, the current DPC Secretary firmly maintained the apolitical nature of the VPS and assured it was impartial, objective and non-partisan.
216. Peak bodies such as the VPSC, the Community and Public Sector Union (‘CPSU’) and ANZSOG, along with academics and private citizens, were among others to offer an array of views, and suggestions for reform.
217. We thank all participants for their constructive and valuable input. While this chapter is intended to give a sense of the recurring sentiments we heard and does not exhaustively cover every view offered, all contributions were carefully considered and assessed by investigators.

**We thank all participants for their constructive and valuable input.**

## Reluctance to participate

One of the first callers to the investigation's dedicated submissions phone line stated people were generally 'shit scared' of upsetting the Government – a sentiment which surfaced often as the investigation unfolded.

It is impossible to know how many people with potentially useful contributions balked at providing them.

Very few individuals we engaged with were willing to be named 'on the record'. Many expressed fears assisting the investigation might damage their career.

One former Deputy Secretary said if their participation was commonly known, it would likely harm their chances of future public sector roles:

It would be the perception that you had spoken to me, that's all. I mean, I still want to work in the public service in Victoria and like it or not, they will form a view that I am untrustworthy because I spoke to you....

Another former executive expressed reservations about speaking freely even under affirmation and with a promise of anonymity, for fear of jeopardising their private employment:

I want to be as expansive as possible, but ... if I'm critical of governmental process or whatever, I think that would be the end of my career.

We were conscious of the potential for people to use confidentiality as a cloak to pursue personal or political grudges, and carefully weighed all available evidence. The overwhelming majority of people quoted in this report are current executives or those who departed the public sector on good terms.

Overall, we discerned a sense of public duty and a genuine desire to improve public administration motivated almost all submissions. One current executive stated:

I don't have an axe to grind, because I get paid a lot of money doing a job that's really great ... It's about the fact that this is not the way that you should run a public service.

## Potential politicisation of public sector appointments

### What we asked

The first section of the Issues Paper centred on the possible politicisation of public sector appointments. It posed the following questions:

- *Are there recent examples of impropriety in the way executive officers have been appointed in Victoria?*
- *Are there recent examples of proper steps not being followed within government in creating executive vacancies and making appointments to those vacant positions?*
- *Are there recent examples of inappropriate processes being followed, or criteria applied, to identify the most suitable person for an executive vacancy?*
- *Are there recent examples of appointees to executive vacancies being engaged on inappropriate terms or conditions of employment?*
- *Are there recent examples of different terms and conditions being set for appointees, and if so, is there a sound reason for that difference?*
- *Are there recent examples to the contrary, where a candidate's affiliations have been declared and appropriately managed?*

Figure 6: What we heard – potential politicisation in Victoria

- “  
*Those roles are just too important to have people wondering whether the right people are in [them] or not.*  
 – Former executive”
- “  
*I was so used to seeing people just get appointed to roles, you’re just kind of like, I can’t believe I’m still going through this and everybody else is just ringing up old mate and getting a job.*  
 – Current executive”
- “  
*One of my colleagues left and took a role somewhere else. She said, ‘There’s no point. What’s the point? Unless you’re “in”, what’s the point?’*  
 – Former executive”
- “  
*[I]t just seemed sort of a coincidence that the best applicants for ... the majority of roles were those from a central agency ... it did seem to be a bit lopsided.*  
 – Former executive”
- “  
*My understanding was that names were ‘tested’ with the Minister’s office ... it was deemed that I shouldn’t do an interview because I would not be selected by the Minister.*  
 – Former public servant”
- “  
*In terms of the comparison with [other states], my impression is there probably was greater representation of political operatives within the public service in Victoria.*  
 – Former Secretary”
- “  
*I was under zero political pressure for any of these appointments: zero.*  
 – Former Secretary”
- “  
*I feel like I put my best foot forward and was interviewed and that my appointment was justified ... you weren’t an automatic winner and there were no promises made.*  
 – Current Deputy Secretary”
- “  
*It would be biased to exclude someone from a merit-based process because they’d once worked in a Ministerial office.*  
 – Former executive”
- “  
*I was aware of the flow of DPC executive personnel to [other] Departments after the fact. They didn’t give me a list and say, ‘These are the folk who we’re interested in. What do you think?’*  
 – Former Secretary”
- “  
*I mean I’ve recruited a lot of people and never felt personally that I’ve been politically told to put an executive in place...*  
 – Current Deputy Secretary”
- “  
*I say this to young people all the time who think the way to get ahead in the public service is to go into a political party: actually, on balance, it slows your public service career down.*  
 – Former Secretary”

## What we heard

218. Perceptions of unfair recruitment or promotion of some executives dominated submissions. Some people recounted instances of executives apparently 'dropped in' to senior roles with no process. A few suggested this might have been to skew advice provided by the bureaucracy or to reward political loyalty, although we did not find direct evidence of this in the cases we investigated.
219. Other people outlined instances where although a recruitment process was seemingly followed, they believed suitable candidates were overlooked in favour of others with political ties. Descriptions of other possibly irregular hiring practices and apparent failures to manage political or personal affiliations also peppered responses.

### Erosion of merit selection

220. A particularly strong theme to emerge was the importance of merit-based employment decisions. The DPC Secretary's submission affirmed merit selection as integral to the VPS:
- The strong capability and professional culture in our public service is built upon a foundation of merit-based selection to support excellence in the provision of advice. We select the best people based on merit to provide the best policy advice to the government of the day.
221. However, many submissions also indicated an apparent erosion of this principle, potentially undermining public sector independence and professionalism. One early confidential email submission stated:
- [I]t appears to be mates giving jobs to mates, who don't seem to be that qualified for them.

222. Another submission suggested this erosion had occurred 'over decades':
- [A] loyal cadre has been put in place by networks of direct political patronage. These directly politicised appointments radiate out into wider and wider networks of patron-client relationships.
223. An array of executives and 'rank and file' staff told us they had felt a more recent cultural shift, especially following the 2018 Victorian election. Some of this commentary, though not all, related to 'bulk' executive hiring at two Departments (discussed further in chapter 5).
224. Comments suggesting an erosion of the merit selection principle often described an increasing trend in the use of direct appointments. Various people reported seeing executives 'parachuted' into roles that were not advertised, including a former executive who noted:
- People suddenly just appear. They're suddenly on an Org Chart or you get an email ... It's just simply not spoken about, almost as if that is not something that you need to discuss, justify or talk about in any way.
225. Some described feeling disadvantaged as peers climbed the career ladder using hidden rungs. One executive said:
- I was so used to seeing people just get appointed to roles, you're just kind of like, I can't believe I'm still going through this and everybody else is just ringing up old mate and getting a job.
226. Others we heard from – including those who had directly appointed candidates and others who landed new roles without contest – maintained pragmatic considerations, not political pressures, influenced such decisions. They said there would always be a 'time and place' for direct appointments, especially to meet pressing needs or secure standout candidates with rare skillsets.



### Employment of former ministerial staffers

227. The appointment of former ministerial staffers to public sector roles – be it directly or through a merit selection process – attracted significant discussion.
228. Some noted this trend was to be expected given steady growth in the number of ministerial staffers in Victoria and the likelihood of purpose-driven, policy-minded people feeling drawn toward government careers. Many noted this was an Australia-wide trend and not unique to Victoria.
229. Multiple submissions highlighted the potential benefits of public sector employees and ministerial staffers spending time in each other's roles to expand skills and knowledge. They emphasised political experience should not necessarily be considered evidence of politicisation or be used to unfairly exclude highly capable candidates.
230. Other submissions flagged a variety of potential risks. For example, former ministerial staffers who had made the switch told us they often felt their professionalism was questioned and reputation unfairly smeared by their employment history. In turn, some public servants expressed doubts about dealing with former political staffers, including a former Deputy Secretary who said:
- You do need to be very careful in the Victorian Government now, in terms of who you speak to, and, you know, [ask yourself] 'Where have they been before?'
231. We discuss these issues in more detail in chapter 4.

### Involvement of Ministers

232. Some submissions raised concerns about the level of political involvement – which some felt bordered on interference – in hiring and firing executives.
233. The Public Administration Act provides that VPS agency heads are 'not subject to direction in relation to the exercise of [their] employment powers ... in respect of any individual but must act independently'. Several people felt they had been eliminated from consideration for executive vacancies amid perceptions the relevant ministerial office or PPO would not want them in the role.
234. Many people interviewed for the investigation said a degree of political involvement in appointments could be appropriate in some circumstances. For example, a former executive said it was 'fairly standard' for some senior hires to be run past ministerial offices:
- These are ... very, very highly paid roles and they are roles that are critical to the business of government ... so of course, [the Minister will] have a real interest. Whoever is in that role needs to be ... somebody that they have the utmost confidence in.
235. Others expressed discomfort with this approach, contending there was 'no role' for ministers in public service appointments. One executive noted at interview:
- My Dep Sec felt compelled to talk to the Minister about my forthcoming appointment and my credentials. ... That's a little bit almost unbelievable for me that a Ministerial office or Minister would need to be catered to in that way for something that is not a public appointment. ... I think it happened in our area for a couple of appointments and [it] left my Dep Sec quite uncomfortable.

236. A former Deputy Secretary agreed it was not surprising that governments of all persuasions tended to want people they trusted in senior roles:

There is always going to be a degree of politicisation, I think, of senior roles, it's just that it's gotten a lot ... bigger. But it's always been there, and we'd be stupid to think that it's not. ... Both sides of Government do it.

237. Case study 3 in chapter 4 provides an example of an open and advertised recruitment process which appeared to have been influenced by ministerial feedback about a candidate.

#### The role of DPC

238. Suggestions that DPC had become politicised and was attempting to unduly increase control over other departments or agencies cropped up in multiple submissions. Some noted the Department's closeness to the political arm of Government (as central agency reporting to the Premier), suggesting it was acting as a conduit for politicisation.

239. A perceived influx of former DPC staff into executive roles at other departments, sometimes displacing others with operational experience or subject matter expertise, also attracted significant comment.

240. Some submissions claimed DPC was 'emptied out' as part of a co-ordinated 'takeover' of two Departments after the 2018 Victorian election, amid suggestions of policy disagreements or a lack of co-operation between the former leadership and the Government on some issues. One former executive noted at interview:

It just seemed sort of a coincidence that the best applicants for ... the majority of roles were those from a central agency. ... It did seem a bit lopsided.

241. Others, however, gave sworn evidence that there had not been any co-ordinated flooding of other departments. They suggested movement of DPC staff was simply a function of career mobility across the VPS, where it was accepted that people moved between line and central agencies as their careers progressed.

242. One former Secretary involved in hiring ex-DPC executives said the suggestion of a takeover was simply 'a convenient narrative' for disgruntled candidates who had failed to win executive roles during restructures. They said it was wrong to presuppose people who work in DPC 'just do the bidding of the Premier and the government of the day':

There is absolutely no problem with people working in DPC and coming into line agencies. It is a well-accepted part of our system, for people to come and go. We need much more of it to improve the ... quality and the pipeline of leaders longer term.

**'There is absolutely no problem with people working in DPC and coming into line agencies. It is a well-accepted part of our system, for people to come and go.'**

Former Secretary

## About the Department of Premier and Cabinet

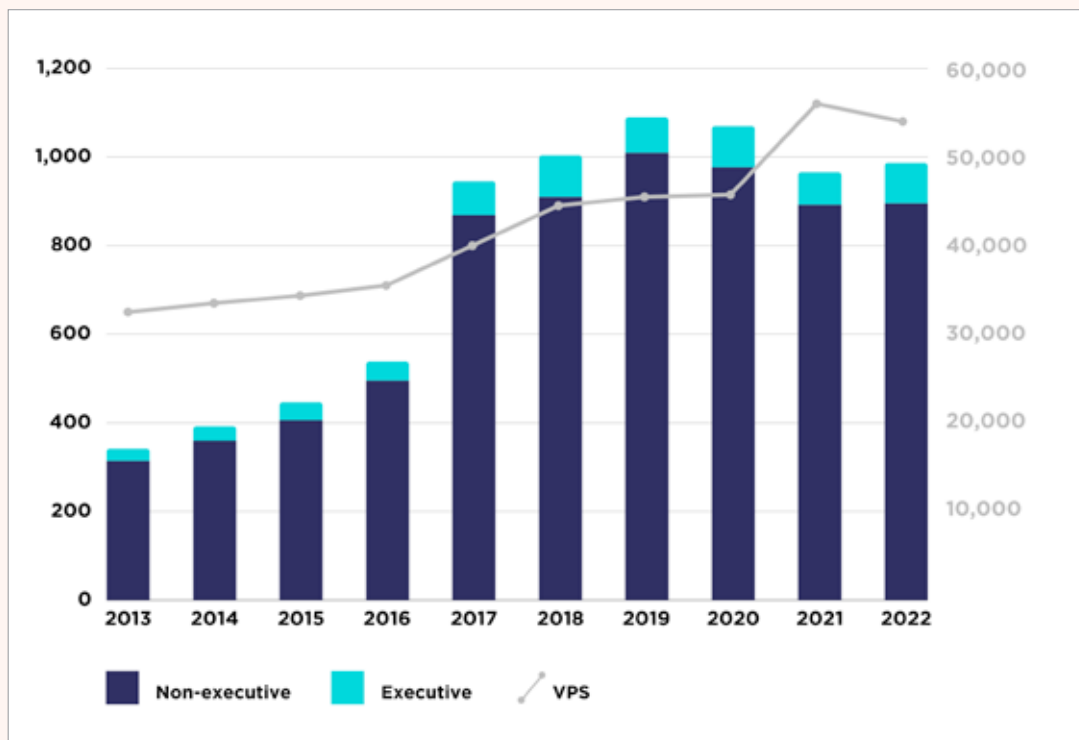
DPC is one of 10 VPS Departments. Alongside the Department of Treasury and Finance ('DTF'), it is sometimes described as a 'central agency' because it handles whole-of-government policy. This differs from so-called 'line Departments', which handle specific portfolios (for example the Department of Education).

As Victoria's 'First Minister's Department', DPC is responsible for advising and supporting the Premier. It provides apolitical advice to the Government of the day - contrasting with staff at the PPO, who provide advice in a political context. DPC's Secretary - sometimes described as Victoria's 'top bureaucrat' - chairs the Victorian Secretaries' Board, which is made up of all Department Secretaries, the Chief Commissioner of Victoria Police and the Victorian Public Sector Commissioner.

According to annual report data, DPC has almost tripled in size over the past 10 years. The growth in size of DPC during this period has significantly outpaced the rest of the VPS (189 per cent and 64 per cent, respectively). Some of this growth is connected to machinery of government changes ('MoG changes'), which assigned DPC new functions.

Figure 7 shows the number of executive and non-executive staff employed at DPC during this period, alongside the number of staff employed in the broader VPS.

Figure 7: Staff employed at DPC compared to broader VPS (FTE), 2013-2022



Source: Victorian Ombudsman, based on DPC and VPSC information

## Possible impacts of politicisation on the public service

### What we asked

The second section of the Issues Paper centred on the possible impacts of politicisation on the public service. It posed the following questions:

- *Are there recent examples where the Victorian public service has either suffered adversely or benefited from people with a political affiliation being appointed to executive positions?*
- *How important is it to preserve the conventional role of the public service in the Westminster model of government in providing independent decision-making and advice to government?*
- *Are there examples of the capacity of the public service to fulfil that conventional role being diminished by a new and different trend in executive appointments?*
- *If a change has occurred, is it an expected consequence of the evolving nature and style of executive government?*
- *Are there recent examples of the appointment of people with a political affiliation to executive positions having either a detrimental or beneficial effect on relations between the political and executive branches of government, including the interaction between senior officers and government ministers and advisers?*

Figure 8: What we heard – impacts of politicisation on the public service

- “  
*[I used to] be like ... ‘I’m really proud to be a public servant’. I don’t feel like that anymore.*  
—  
- Current executive
- “  
*The community needs a strong public service and it’s somewhat disturbing when you see the sort of changes that have happened irrespective of who is in power...*  
—  
- Former executive
- “  
*Frank and fearless was once the default position – it is now rarely part of the process in Victoria.*  
—  
- Former Secretary
- “  
*So now you’ve got public servants interacting on a daily basis at relatively junior levels of the public service with Ministerial advisers. And I think that’s kind of where it’s all gone so wrong ...*  
—  
- Current executive
- “  
*Responsiveness is a value but it’s not the only value and I wouldn’t be the only person to have commented on the fact that perhaps in recent years it has been given a higher priority to some of the others.*  
—  
- Former executive
- “  
*Consultants can play a really valuable role. But when they’re a substitute for the core business of the public service, that’s when it becomes problematic.*  
—  
- Former Secretary
- “  
*I am confident that Victorian public servants at all levels believe strongly in the requirement and intrinsic value of an apolitical public service.*  
—  
- Current Secretary
- “  
*The same standard of high-quality advice, backed by rigorous analysis and the best available evidence, is provided irrespective of which political party is in power.*  
—  
- Current Secretary
- “  
*I’ve never had an instance where if I provide frank and fearless advice that ... politicians are not open to that advice. They might not like it, but they’re always open. They’re always listening to that advice.*  
—  
- Former Secretary
- “  
*...[B]eing effective in public service means being able to recognise political interests without being consumed by them.*  
—  
- ANZSOG
- “  
*I think that’s a good thing, to be responsive to the elected Government’s priorities. Like, that’s actually our job...*  
—  
- Current Deputy Secretary
- “  
*I think the onus is much more on the public service ... to make sure that its advice is seen as trusted, and actually preferred over the other voices.*  
—  
- Former Secretary

## What we heard

243. Perceptions of a weakened public service due to a shift away from Westminster principles pervaded some individual submissions. Multiple people with long public sector careers, including former Secretaries and Deputy Secretaries, expressed discomfort at changes they had observed over time.
244. Submissions suggested central notions of the Westminster tradition – including the provision of ‘frank and fearless’ advice and the development of a ‘career service’ – were under threat, and that the VPS was at times overly responsive to the elected Government, possibly at the expense of impartiality, integrity and other responsibilities.

### Constrained advice

245. The current DPC Secretary was among those to highlight that a core role of the VPS is to serve the government of the day by providing professional and apolitical advice.
246. Multiple current and former senior leaders told us they believed the public sector was continuing its long history of delivering robust and impartial advice based on expertise and evidence. They emphasised that consistently providing this ‘frank and fearless’ advice was a strong protection for the public service against politicisation – essentially because good policy delivers good outcomes, upon which successful politicians depend.
247. However, we also heard from many people who indicated public sector employees increasingly felt constrained in expressing their professional opinions because they suspected the advice might be unwelcome.
248. Submissions variously suggested some people felt implicit pressure to align their advice to a political agenda, or to tone down dissenting views. Others spoke of either fearing or experiencing negative fallout for providing unwanted advice (see Case study 1).
249. Multiple senior Government figures, including one former Secretary, told us the implicit pressure to tailor advice meant it would be hard nowadays to find a briefing that was not completely endorsed by a minister – although other agency heads disputed this at interview.
250. We also heard suggestions of ministers choosing executives willing to brief and advise based on the Government’s policy intention, and of ministerial staffers acting as gatekeepers to filter or block impartial advice. One former executive said some staffers would pressure their Department to put a Minister’s preferred recommendation in a brief. Multiple Department Secretaries we interviewed recalled intervening on occasion to halt inappropriate contact between ministerial staffers and public servants.
251. Another former Secretary said governments ‘across all sides of politics’ pushed back against briefs containing advice they did not want to accept. They emphasised the importance of giving the advice anyway:

They will ask not to be briefed or they’ll suggest that, you know, they don’t need that advice or maybe that we can consider this context. That’s never stopped me providing advice.

252. The ability of former political staffers to adjust their mindset when switching to VPS roles was also specifically queried by some. A few submissions suggested some ex-staffers were offering partisan advice on controversial or costly issues confronting the Government. The risk of this happening was said to be heightened if the ex-staffer's VPS role involved the same subject matter as their former political position.
253. A further constraint on the provision of quality advice mentioned in submissions was a shift toward less specialised skillsets among public sector executives. One former public servant noted in an email submission:

Subject matter expertise includes understanding existing systems, policy settings, administrative arrangements, and the role of stakeholders and the interrelationship between stakeholders. Subject matter expertise provides a rich understanding of the potential consequences of policy choices ... [and] is therefore likely to be the source of full and frank advice. Without subject matter expertise, it is much easier to simply advise in accordance with what is expected/required.



## Case study 1: Deputy Secretary moved aside after providing unwelcome advice

One former Deputy Secretary ('Executive A') told the investigation they found themselves on the 'outside' of the public service after providing 'frank and fearless' advice about the financial implications for Government of delivering a costly election commitment.

Executive A was recruited to the VPS during a Coalition Government and served as a senior executive for several years. They told investigators they had a 'good relationship' with the Government of the time; observing their advice to ministers was generally well received and given fair consideration, if not always adopted. Executive A told us they briefed the incoming Australian Labor Party ('ALP') Government shortly after the 2014 Victorian election. Executive A recalled being asked for advice about implementation of a costly major election commitment which had been a central issue at the polls.

Executive A recalled the 'red book' prepared for the incoming government included advice about this issue. They told the investigation that, when specifically asked by the Government-elect about the possible financial costs associated with the election commitment, they and their colleagues indicated a cost that did not seem to be well received by the Government. Executive A contributed to a subsequent written briefing which reiterated the estimated cost. Executive A told the investigation that about six weeks later, they were informed by their Secretary they were 'no longer needed' as a Deputy Secretary. Executive A said they received no further information before being 'moved aside' to a 'special project' within another agency.

Executive A said they could not prove it, but believed their frank advice about the financial risks of the election commitment contributed to their enforced departure from the Department. They said they heard rumours the advice was not appreciated, and of a possible sentiment within the Government that, in post-election briefings, public servants had withheld key information about the project. They told the investigation that, if this sentiment existed, it was not correct. Subsequent events proved the estimated cost provided by Executive A was accurate.

Executive A told us their public service career effectively stalled after they were 'moved on' from the Deputy Secretary position, and that they left the public sector a few years later to work as a consultant. They said they were later told by a reliable source they would be allowed to do Government work as long as they remained 'on the outside' but would never have a job 'close to Government' again. Reflecting on this, Executive A commented: 'I was seen to be a high performing Deputy Secretary with good performance reviews, being groomed to be a Department Secretary, so it's a bit odd not to be able to get a job in the VPS'.

Executive A was one of several senior executives dismissed or moved aside soon after the 2014 election. Executive A told the investigation this had a 'chilling effect' on the VPS and left other executives less likely to provide advice that could adversely impact their careers. Executive A warned of the risks of the VPS becoming an 'echo chamber', and of Government believing that 'it's either their view, or the wrong view'.



## Marginalisation

254. Multiple submissions alluded to public servants feeling their influence had reduced as a key source of advice. ANZSOG observed that:

on one hand, we might welcome the increasing contestability and externalisation of policy advice as a win for democracy, on the grounds that more voices are being heard and the accountability of ministers for decision-making has been clarified, yet, on the other hand, we might wonder whether the present situation gives ministers the option to insulate themselves from voices they have not approved in advance...

255. This apparent marginalisation was raised in a variety of guises. Some noted increased Government reliance on consultants. Others detailed instances of ministers possibly seeking 'back-channel' briefings over formal advice processes.

256. Perceived growth in the influence of ministerial staffers appeared a strong contributor to some public servants feeling 'out of the loop'. A current executive noted at a voluntary interview:

It's all about reacting to directions and instructions coming directly from ministerial offices, so people are almost entirely just simply doing [retrospective] justifications for things that the Government wants to do.

257. Feelings of reduced autonomy were echoed by another executive who has held high-ranking roles at various agencies:

It's like things get done to you. You don't get consulted on them, things just get done to you and you get told about it afterwards, rather than treated as someone who might have a valuable input or a view on it.

258. However, a former Secretary who said they had witnessed the Government lose trust in advice coming out of a department felt some in the VPS wrongly believed they 'should just be listened to because we're the public service':

They had dealt themselves out of being the source of advice ... I think the onus is much more on the public service ... to make sure that its advice is seen as trusted, and actually preferenced over the other voices.

259. We heard recurring accounts of increasingly centralised decision-making in recent years, with DPC said to be involving itself more deeply in departmental matters, including at an operational level. A former executive at interview noted this had extended beyond the traditional understanding of a central agency:

[DPC] does involve itself where it feels it needs to and it probably does so at a level which is, you know, closer to the political imperatives than necessarily the service delivery imperatives.

**'I think the onus is much more on the public service ... to make sure that its advice is seen as trusted.'**

Former Secretary

## Role of the PPO

260. The expanding role of the PPO as a marginalising force also rated frequent mention among submissions and interviews. One former Secretary noted many public servants showed an unhealthy focus on PPO views and reactions, which were perhaps even put above those of their relevant minister's office. A former executive described a 'grim acceptance' across the VPS that the PPO were 'over-involved'. They said:

I think the problem has been the extent to which ministers have been diminished in their role through overreach of the PPO.

261. Among other things, this was said to have resulted in a 'huge volume' of requests to change or update budget proposals and briefings. One agency head observed the PPO had 'become quite a powerful entity' which increasingly required briefings in tandem with ministerial offices. Another executive said the PPO had become more 'hands-on' in its engagement with the VPS, reportedly 'wanting to get involved in every decision'.

262. Several people observed the COVID-19 emergency saw an increased volume and intensity of demands made of the VPS from 2020 onward. Some felt these elevated and perhaps unrealistic expectations from ministerial offices and the PPO to 'get things done' had not fully subsided post-pandemic:

I think during COVID they became accustomed to direct information, lots of briefings, re-cutting things all the time, responsiveness went from a week to an hour ... I just don't think [the PPO] could let go of that.

263. Other witnesses were less troubled by the perceived growth in the size and influence of the PPO – attributing this to the ALP's significant Parliamentary majority and previous Premier Daniel Andrews's ambitious policy agenda. A former Secretary noted the Government's 'bias to action' contributed to the 'authoritative' posture taken by the PPO and DPC:

There's no doubt that the Premier's Private Office exercises substantial control, but not to the point of being so self-defeating that they didn't have proper regard for advice and initiatives that came from the public service itself.

## About the Office of the Premier

The PPO is made up of ministerial staffers employed under the Public Administration Act and is responsible for assisting the Premier with their Parliamentary, ministerial, and party-political responsibilities. It is distinct from DPC, which is comprised of VPS employees.

The PPO employs a mixture of administrative staff, secretarial staff and advisers. Among other things, staffers provide political policy and strategic advice and help manage political issues and stakeholder relationships. PPO staff are not members of the VPS and do not have the authority to direct public sector employees in relation to the performance of their official duties.

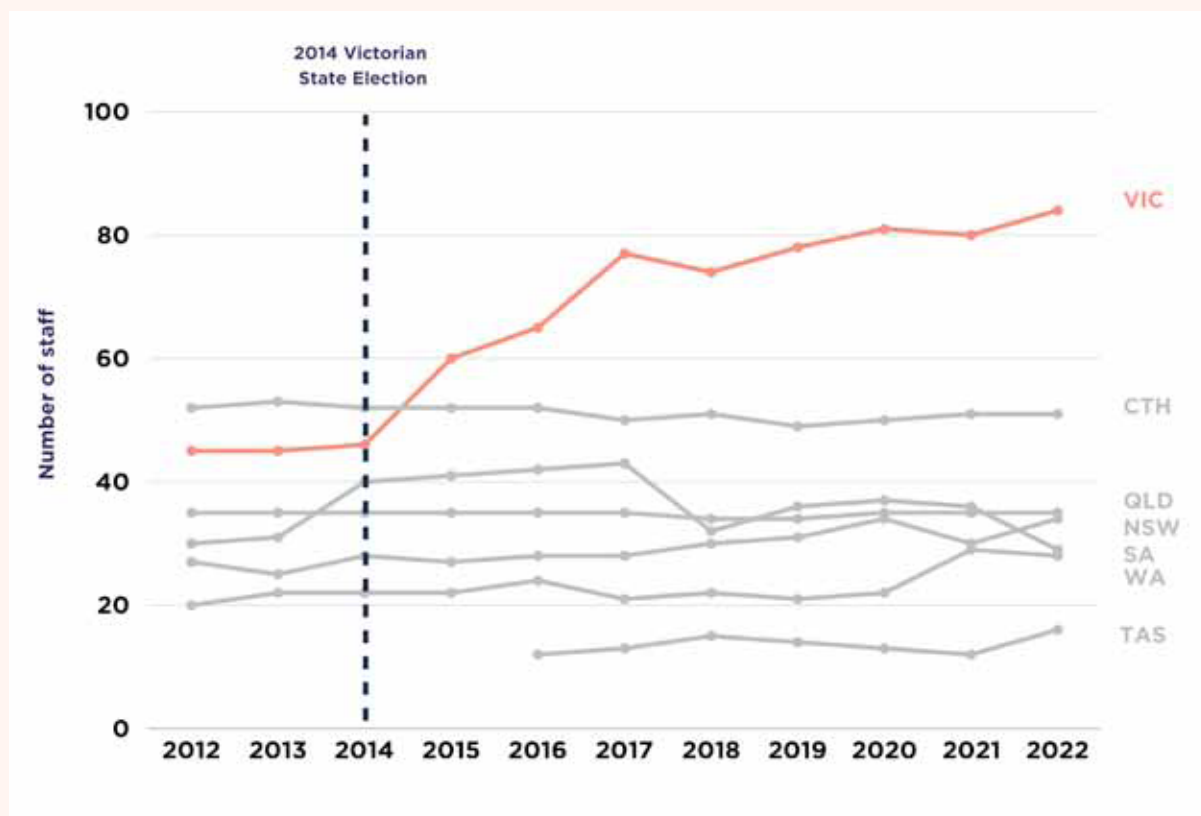
Although employed using public funds, the Victorian Government does not publish regular data identifying the number of people assigned to the PPO. This differs from the approach taken in all other Australian states. We had to source this information from the Department of Education, which handles payroll services for all ministerial staffers in Victoria.

Data we obtained shows the size of the PPO has generally increased each year and has almost doubled since November 2010 (when the Department of Education took over payroll responsibilities). This has coincided with similar growth in the overall number of ministerial staffers employed in Victoria. During this period, the size of the PPO has grown at roughly double the rate of the VPS (increasing by 91 per cent and 46 per cent respectively). The most significant increase in the size of the PPO occurred in 2015, coinciding with the first year of the ALP Government led by former Premier Daniel Andrews.

The growth in size of the PPO has significantly outpaced other Australian jurisdictions. By June 2022, the Victorian Premier was assigned almost as many staff as the New South Wales Premier and Australian Prime Minister combined. By comparison, the VPS is about three-quarters the size of the New South Wales public service and one-third the size of the APS.

Figure 9 compares the number of ministerial staff assigned to each Australian Premier and the Australian Prime Minister since 2012 (data relating to Tasmanian Ministerial staff was not routinely published before 2016).

Figure 9: Staff assigned to Premiers and Prime Minister (FTE), 2012-2022



Source: Victorian Ombudsman based on information from Department of Education (Victoria), Parliament of Australia, Department of the Premier and Cabinet (Queensland), South Australian Government Gazette, Department of Premier and Cabinet (New South Wales), Parliament of Western Australia, Department of Premier and Cabinet (Tasmania)

### Increased responsiveness

264. Nobody we heard from disputed the fundamental importance of being responsive to the elected Government's priorities. One current Deputy Secretary noted:

When Government asks you to do something, the expectation is you find a way to do it. That's just the nature of a public service role.

265. But there were mixed views on whether the current balance was right, with suggestions parts of the public sector verged on being 'overly responsive' to political considerations. One former executive compared their VPS experience with observations of colleagues in the APS:

Here, there's more a sense of, 'well, they want it, so we better get it to them' and a kind of a cultural tone that's nothing else but 'just get it done'.

**'When Government asks you to do something, the expectation is you find a way to do it. That's just the nature of a public service role.'**

Current Deputy Secretary

266. Some questioned whether 'responsiveness' was being elevated to the detriment of other public sector values, such as impartiality and integrity. One former VPS employee felt some people took 'responsiveness' to mean they had to act 'really quick' rather than responding 'in a considered and ethical way':

There's many ways of responding. I can say, 'Oh, we can do this quickly, do it the quick and dirty way, ... or we can do it the proper way'.

267. But we also heard reports of 'purist' public servants with deep expertise sometimes letting their personal opinions get in the way and resisting reasonable expectations to deliver what ministers wanted. A Deputy Secretary said while it was expected public servants would deliver frank and fearless advice, they also needed to accept and respond to the Government's final decision:

Ultimately, if that advice is on the table, and we get told, 'Do it,' you just have to knuckle down and do it ... within the bounds of lawful direction, we then get on with it and do our best to mitigate the risks.

### Career insecurity

268. The vulnerability some people felt about their VPS careers in the face of what they perceived as increased partisanship was another notable theme to emerge from submissions and interviews. This career insecurity took many shapes and forms.
269. A former senior executive noted in a voluntary interview an 'intense' culture of fear had developed in some pockets of the VPS: 'People really are very scared - scared of losing their jobs'. One former executive attributed the fear to 'at will' termination clauses in executive contracts, which left employees 'at the mercy of staying in the good books of those higher up than you'. They observed, 'Your next contract is only ... one wrong step away'.
270. We also heard feelings of loss and betrayal from career public servants removed from their executive jobs - in some cases for what they felt were political reasons.

271. The ripple effects of some high-profile departures were evident in other submissions, many of which conveyed unease at the way hiring and firing unfolded across multiple departments from 2018 onward.
272. A few people directly suggested ‘stooge’ appointments had been made at the cost of other, more capable candidates. Others felt their career advancement had been hindered because promotions and opportunities did not always seem to be based on merit and performance. A former VPS employee stated:
- I’m sitting next to you, and we’re doing the same job, and you get this promotion without process, and I’m sitting here thinking ‘what am I, chopped liver’, you know?
273. Some said they felt so deflated by what they saw as opaque processes and unequal treatment that they had either thought of leaving the VPS or had already left. A former Secretary said high-potential junior executives were re-thinking their future path, having seen such abrupt change among the higher ranks. Another executive said they had observed anger, disillusion, and low morale among staff:
- One of my colleagues left and took a role somewhere else. She said, ‘There’s no point. What’s the point? Unless you’re “in”, what’s the point?’.
274. Other submissions more broadly lamented a loss of experience and institutional knowledge across the VPS which they felt had diminished public service capability.

## Possible impacts of politicisation on public administration and outcomes

### What we asked

The third section of the Issues Paper centred on the possible impacts of politicisation on public administration. It posed the following questions:

- *Are there recent examples where Victorian government administration has been either detrimentally or beneficially affected as a consequence of people with a political affiliation being appointed to executive positions?*
- *Which areas of government decision-making are endangered when political considerations inappropriately overshadow public interest considerations? Such areas may include, but are not limited to, information release, procurement, resource allocation and land development.*
- *Are there recent examples of this occurring?*
- *Are there recent examples of the appointment of people with a political affiliation to executive positions weakening the commitment in government to observing administrative law principles in decision-making?*
- *Are there recent examples of inferior outcomes in policy development, procurement or service delivery that can be linked to the appointment to executive positions of people with a political affiliation?*
- *Are there recent examples of the work of executive oversight agencies being hampered by improper executive appointments? If so, how was this evident?*

Figure 10: What we heard – possible impacts of politicisation on public administration and outcomes

“  
*That’s where the problem partly lies is that public servants are more inclined to think about the political implications, or the Government implications of things that might be occurring.*  
 ————  
 - Former executive  
 ————”

“  
*Where advice that goes through to Ministers or is taken to Cabinet is not sufficiently informed by evidence and analysis and experience, then that can cause the quality of decision-making to deteriorate.*  
 ————  
 - Former Secretary  
 ————”

“  
*I think the current Government of Victoria gets impatient with bureaucratic processes and ... its focus is on delivering and getting things done and getting them done quickly.*  
 ————  
 - Former executive  
 ————”

“  
*The PPO kind of run the show.*  
 ————  
 - Former senior executive  
 ————”

“  
*To me, integrity isn’t everything but in the long run it’s almost everything.*  
 ————  
 - Former Secretary  
 ————”

“  
*If [the VPS] starts to rot from within and not hold itself up in all ways as being ... beyond blemish, then it’s lost its ability to be that guardian of democracy.*  
 ————  
 - Former executive  
 ————”

“  
*The implementation of government policy or decisions should not be misconstrued as political work.*  
 ————  
 - Current Secretary  
 ————”

“  
*If they make a decision ... I don’t get to second guess. My job is to implement their agenda in the best way for the best outcome for the community.*  
 ————  
 - Former Secretary  
 ————”

“  
*Policy success is not the same as using the public service for partisan political ends, and political astuteness is not the same as political partisanship.*  
 ————  
 - ANZSOG  
 ————”

“  
*There’s no doubt that the Premier’s Private Office exercises substantial control, but not to the point of being so self-defeating that they didn’t have proper regard for advice and initiatives that came from the public service itself.*  
 ————  
 - Former Secretary  
 ————”

“  
*I think there is a high level of integrity.*  
 ————  
 - Former executive  
 ————”

“  
*[T]he existing checks and balances, whether statutory or contractual, are robust and effective, and have proven their ability to identify and address instances of corruption, malfeasance, and politically driven appointments.*  
 ————  
 - CPSU  
 ————”

## What we heard

275. The contribution of politicisation to public administration successes or failures is, as one submission noted, 'difficult to disentangle from other causes'. This perhaps explains why only a small number of submissions attempted to explicitly identify direct effects, though many alluded to possible or future outcomes.
276. Contributors identified potentially detrimental effects under several broad themes: inferior or inefficient policy, procurement or service delivery decisions and outcomes; possible corruption risks; and reduced public trust.

### Potential for inferior decisions or outcomes

277. Multiple people expressed concern that marginalising the public sector or lowering regard for its advice and expertise could lead to 'sub-optimal' policies, procurement and service delivery. A former Secretary noted:
- The Government not wanting to be challenged leads it to make politically blinkered decisions which lead to potentially poor outcomes.
278. Ministers or staffers were said by some contributors to be seeking 'massaged' briefings or external consultant advice to meet predetermined short-term political objectives, rather than realistically considering options, risks and costs.

279. The present Government's preference for announcing ambitious, large-scale infrastructure projects was noted by several contributors. Some said the public sector was pressured to deliver these initiatives at the expense of much-needed community services that were less visible to the public – noting recent budget cuts to the latter in favour of the former. They said complex, integrated policies were being sidelined for flashy projects that were not always as thoroughly tested.
280. Contributors noted there was reluctance within the public sector to be seen as 'pushing back' on costly projects that were popular with the electorate. They said providing genuine advice was sometimes equated with attacking the elected Government. Others said career insecurity discouraged executives from being perceived as 'blockers' of the Government's agenda. They said this had the potential to lead to cost blowouts, failures to deliver promised public outcomes and other long-term problems.
281. Another factor raised as increasing the risk of poor outcomes was a perceived centralisation of power, especially around the PPO and other ministerial offices, and DPC. This was said to have created a disconnect between 'policy people' and 'operational' staff, diminishing the ability to identify practical or operational issues affecting policy implementation and service delivery. One Deputy Secretary asserted central agencies often took an overly simplistic view to solving problems:
- It's much more complicated than the centre appreciates ... There is something to be said for the fact that central agencies don't know everything.



282. Queries were also raised about whether public resources were sometimes being used to target certain voters for partisan purposes rather than achieving broader public benefit.

283. The diversion of public funds to cover the costs of recruiting, promoting or firing executives as a result of perceived political meddling also attracted comment. Submissions noted extra spending on an increased executive headcount came at a time of heavy budget pressure across the whole of government, and often did little to serve the community. One public servant observed:

Executive roles are costing an enormous amount of taxpayer money, yet they often do not have a clear workload or responsibilities [and] are not adding strategic or intellectual value...

284. Blurred lines of responsibility were also raised in submissions as making it difficult to identify and address failures or misconduct, a factor also observed in the Coate Report. One submitter stated:

The proliferation of executives ... and overlap between many of these positions in overseeing work, means that no one is held accountable for poor outcomes or policy failures, as no single decision can be traced back to a particular area or decision-maker.

### Integrity risks

285. The prospect that politicisation – perceived or actual – left the public sector vulnerable to a broad spectrum of improper conduct or integrity risks was another prevalent theme in submissions.

286. The VPSC observed that in the 2021 People Matter Survey, the composite score for questions reflecting integrity across the VPS was just 74 per cent – the second lowest score of the seven public sector values. Confidence in merit selection was among the lowest scoring individual metrics, averaging at just 52 per cent across departments (in the following year, an average of 61 per cent of participating department employees agreed that recruitment decisions in their organisation were ‘fair’).

‘[T]he existing checks and balances, whether statutory or contractual, are robust and effective ...’

CPSU

287. Several contributors maintained existing checks and balances provided sufficient protection against any integrity risks which might arise through politicisation. The CPSU noted poor governance and breaches of public sector employment principles would occur ‘regardless of who is in government’. The union provided multiple examples of IBAC’s recent work and impact:

[T]he existing checks and balances, whether statutory or contractual, are robust and effective, and have proven their ability to identify and address instances of corruption, malfeasance, and politically-driven appointments.

288. However, many submissions and interviews conveyed a sense that some people felt unable to express dissent or to challenge people in senior roles, bringing with it obvious potential to damage or stifle a culture of integrity.

289. Other contributors felt apparently partisan appointments and promotions, departures from standard recruitment processes and poor management of potential conflicts of interest posed significant integrity threats. One public servant questioned why some executive candidates seemingly had to jump through fewer hoops:

The recruitment process for junior VPS staff is thorough. We go through rigorous background and integrity checks. However one can question [if] it is the same when it comes to senior appointments.

290. A harmful lack of transparency was identified by some as another risk. They suggested political interventions were occurring by 'word of mouth', with steps taken to ensure no formal records of conversations to side-step proper oversight. A former senior executive said:

I think all the deals are done through phone calls, texts etcetera, and then the paper trail fits that.

291. One former Secretary said excessive secrecy and the apparently increasing use of confidentiality agreements, especially around major infrastructure projects, had the potential to create a 'disturbing' barrier to integrity:

What you're doing is compromising the integrity of people in fulfilling their roles ... I think that's quite damaging to the integrity and the trust of the public service amongst themselves.

292. Another former Secretary called for a 'total reinforcement of the importance of integrity' and the protection of the public interest, noting there was likely confusion in the VPS about what that meant. They observed public servants played a critical role in supporting the relationship between those who govern, and those who are governed:

No one else has that responsibility and if you have a decline in public trust, then you are fundamentally compromising that unique role. And to me, integrity lies at the heart of that.

#### Reduced trust

293. Public trust in government in Australia is low and worsening over time. According to the Organisation for Economic Co-Operation and Development, just 50 per cent of Australians trusted the Australian Government in 2022. This sentiment was evident in many submissions and interviews. One public servant felt the existence of the investigation was 'a sign of critical distress' for the VPS:

the loss of a professional public service ethos [has] led to a loss of confidence in the public service's ability and commitment to serve the whole community.

**'The campaign against the public service and the constant accusations of politicisation are tools used to undermine public confidence and trust in government.'**

CPSU

294. Several former Secretaries observed the reputation of the public sector had become tainted over recent years with some interstate and federal counterparts reportedly considering it the most politicised in the nation. One former Secretary disputed that assessment, but did describe a 'growing view' that Victorian public servants behaved differently to others:

New South Wales and Commonwealth bureaucrats kind of say to me ... 'Isn't [it a] fact that public servants are behaving in a really political way?'. They've almost got this perception ... that public servants are running party operations in departments. [But] I've never seen any evidence of that.

295. Ultimately, some observed, even this perception of politicisation had potential to undermine the vital role of the public sector as a 'pillar of consistency and continuity that will outlast political processes':

If it starts to rot from within and not hold itself up in all ways as being ... beyond blemish, then it's lost its ability to be that guardian of democracy.

296. The CPSU noted that allegations of politicisation when used cynically also had the potential to erode public trust:

The campaign against the public service and the constant accusations of politicisation are tools used to undermine public confidence and trust in government.

297. Contributors concerned with public trust largely focused on subtler aspects of politicisation said to be present or emerging in Victoria. One of the most damaging forms – outwardly partisan political hiring – was raised by relatively few people. Case study 2 outlines an allegation we were unable to substantiate.



## Case study 2: Consideration of a job applicant's political affiliations

During interviews we heard of an instance where senior VPS staff allegedly moved to prevent an executive's appointment due to the applicant's political leaning.

Some witnesses reported hesitation among staff to finalise hiring after being told the Department Secretary disapproved of the preferred candidate's membership of a particular political party.

The Secretary and another key witness emphatically denied this, and we did not find enough evidence to substantiate the claims. The person was ultimately hired.

People in Victoria have a right to participate in public affairs without discrimination. This includes equal access to the VPS and public office. Employers are prohibited from discriminating against job applicants due to their political beliefs or activities.

We took the allegation particularly seriously because, if true, it involved an attempt to unlawfully prevent a candidate's executive appointment due to overt party-political considerations. We obtained records under summons and took sworn evidence from senior officers familiar with the matter.

Records showed the applicant ('Candidate A') was shortlisted for a publicly advertised role. They performed well at interview and members of the Department's leadership team were enthusiastic about them joining. The Department checked references, approved the proposed remuneration and made a provisional offer – subject to satisfactory pre-employment checks.

At the time, the Department required would-be recruits to declare anything in their lifestyle or background that could be deemed a conflict of interest. Candidate A declared Liberal Party of Australia membership, but confirmed they were not involved in public campaigning or events and would not allow their membership to interfere with their conduct as a public servant.

Department emails showed a member of the People and Culture team drew this declaration to the attention of the hiring manager, stating they '[had] the contract ready to issue however, wanted to get your go ahead before doing so'. The officer told us they always flagged candidate declarations with the relevant hiring manager, and said they could not recall anything else about this particular declaration or the Department's response.

At interview, two other witnesses said they were aware of subsequent discussions about the membership declaration. Each witness independently recalled the Department seeking internal advice about whether it could lawfully withdraw the employment offer based on the political affiliation. Each remembered being informed at the time that the Secretary was opposed to hiring a Liberal Party member.

We located an email the hiring manager sent one day after the relevant declaration was received, stating '[a]dvice from [Department lawyer] is that we cannot discriminate, offer can proceed'. Candidate A was subsequently awarded a five-year executive contract.

We were unable to locate other records clarifying the context of the legal advice mentioned in the hiring manager's email. Under summons allowing them to disclose legally privileged information, the Department lawyer said they had no memory of providing advice about the matter or concerning any candidate's political affiliations more broadly. They observed such a request was 'the type of thing that would stick out in my memory' but given the passage of time, they could not 'definitively' say they did not provide advice about the matter.

Likewise, at interview the Secretary said they had no recollection of the appointment process or hearing about the person's political affiliation – describing the allegation as 'nonsense'. Shown a copy of the hiring manager's email, the Secretary said it was appropriate for the Department to seek advice about the political party membership declaration – observing the advice reflected in the email was consistent with the *Charter of Human Rights and Responsibilities Act 2006* (Vic).

A Deputy Secretary we interviewed – who one witness alleged participated in discussions about Candidate A's party membership – said they also could not remember anyone attempting to block the appointment. This witness said they were not informed of the declaration but were 'broadly aware' Candidate A had 'Liberal Party contacts'. They emphatically denied expressing any reservations about the appointment themselves, observing they subsequently brought the executive into their own leadership team.

We did not find any records indicating the Secretary or Deputy Secretary were informed of Candidate A's declaration, nor demonstrating either was involved in discussions about Candidate A's political affiliation. Ultimately, we did not substantiate the allegation that the Secretary – or any other senior leaders – attempted to block the appointment.

## Suggested reforms to address politicisation risks

### What we asked

The final section of the Issues Paper centred on possible reforms to reduce or manage the risk of politicisation. It posed the following questions:

- *Should changes be made to the process that is followed and the criteria that are applied in appointing people to executive positions?*
- *Are new arrangements required to ensure that any political affiliation of a person who is appointed to an executive position is properly managed to avoid this impacting their public service obligations?*
- *Do public service codes of conduct or guidance documents need revision to minimise or manage the risk of politicisation of the public service?*

Figure 11: What we heard – suggested reforms to address politicisation risks

“  
*There should be decisive changes to the law, process and practice of executive appointments.*  
—  
- Former public servant  
”

“  
*The idea that Secretaries are employed by the Premier doesn't quite sit right with me. If I could wave a magic wand, I would change that.*  
—  
- Current Deputy Secretary  
”

“  
*It is worth noting that the powers of the VPSC are the weakest in all jurisdictions of Australia.*  
—  
- CPSU  
”

“  
*Victoria should cease the mandatory use of term appointments for executives and introduce a quality control role for the Public Service Commissioner over appointments and terminations.*  
—  
- Academic  
”

“  
*I think the executive contracts need to be blown up. ... There needs to be a process where at-will terminations come at some risk to Secretaries, not just for the employees. ... There needs to be some other form of check and balance.*  
—  
- Former executive  
”

“  
*Opportunities exist to improve codes, employment standards and recruitment policies and processes to better manage the risks of politicisation occurring.*  
—  
- VPSC  
”

“  
*If there is ... evidence [of a politicisation] problem, I haven't seen it specifically defined in a way that would allow for clear changes or clear differences in the way things are currently done.*  
—  
- Former executive  
”

“  
*All Secretary appointments [should] be competitive and consider advice from an independent interview panel.*  
—  
- Former Secretary  
”

“  
*A more robust and structured VPSC with integrity and investigation functions and constructive influence in hiring decisions would be better.*  
—  
- Former Secretary  
”

“  
*I would keep five years contracts ... If you then made it 'public service appointed forever', I think that would just lead to stasis, and not enough change.*  
—  
- Current Deputy Secretary  
”

“  
*Every advertised position [should] be publicly able to be seen ... You [should] always be able to find it in a gazette.*  
—  
- Former executive  
”

“  
*This is not about 'let's have more guidelines, more processes, more training'. This is about leadership.*  
—  
- Former executive  
”

## What we heard

298. Some people and groups we engaged with put forward ideas for improvements to address politicisation risks. These suggestions centred around four main themes:

- changing how Department Secretaries are appointed and managed
- bolstering merit selection
- adjusting executive employment arrangements and conditions
- embracing 'open government'.

### Secretary appointments

299. Given their vital role as apolitical system stewards, it is perhaps unsurprising the process for appointing and dismissing Department Secretaries attracted considerable discussion.

300. Those who proposed reform consistently highlighted the benefits of the approach taken in New Zealand, where the Public Service Commissioner plays a much greater role than their Victorian equivalent.

301. The VPSC noted that, as an interested party, it did not wish to directly weigh in on whether Victoria should adopt the New Zealand model. Such a switch would require amendment of the Victorian Public Administration Act.

302. However, the VPSC's submission observed models which give a Public Sector Commissioner greater involvement in senior appointments and employment matters generally had the potential to:

- de-politicise Secretary appointments
- support Secretaries to provide frank and fearless advice
- support longer term reform agendas, beyond political cycles.

303. Multiple former Secretaries and senior public servants we interviewed also spoke of the benefits of the New Zealand model in safeguarding against politicisation. Prominent academic Professor Andrew Podger AO described the model as 'arguably the most merit-based one operating in Westminster jurisdictions'.

304. Professor Podger, along with the VPSC, also drew attention to the APS model. Both noted the recent Thodey Review had recommended strengthening current arrangements for the appointment, performance management and termination of APS Secretaries. The final report of the Thodey Review observed the APS:

will be (and will be seen to be) made more robust by the APS Commissioner, as an independent statutory office holder with responsibilities for the APS Values, having greater involvement.



## **How New Zealand's model differs from Victoria's**

New Zealand's Public Service Commissioner ('NZ Commissioner') is appointed by the Governor-General on the recommendation of the Prime Minister, after consultation with other political parties.

As 'Head of Service', the NZ Commissioner plays a direct role in recruiting, employing and removing public service chief executives (broadly equivalent to Department Secretaries or other agency heads). The NZ Commissioner (or a deputy) chairs selection panels for key vacancies and is able to review the performance of leaders and their agencies.

Though more independent, the New Zealand model still gives the elected government a say in the appointment process. Ministers can outline role requirements and give input into selection panel composition. In practice, Cabinet must approve the panel's preferred candidate before the Minister refers the recommendation to the Governor-General in Council. If accepted, the Commission appoints the person and publishes a notice. If the recommendation is declined, the Governor-General may direct the chair to appoint another person.

In Victoria, the Premier employs Secretaries and most other VPS agency heads, and the DPC Secretary is the nominal head of the public service. Unlike in New Zealand, the VPSC does not have a role in evaluating or recommending candidates.

The VPSC has some employment action and performance management power, but its role is essentially more system focused – it issues the Code of Conduct and VPS Standards, and monitors compliance with these, along with the public sector values and employment principles.

## Merit selection

305. Two key features of the APS model were remarked on by those we engaged with for their potential to uphold merit selection. One was the requirement that the APS Commissioner (or a representative) be on the selection panel for senior executive vacancies below Secretary level. APS executives we interviewed said this essentially provided a 'good assurance check'. The other feature of the APS mentioned by several people was the requirement to publicly gazette job advertisements, recruitment outcomes, promotions and certain terminations.
306. Multiple people and groups we engaged with called for other reforms to increase scrutiny, promote the merit selection principle, and maintain confidence in the integrity of employment decisions. This included calls to enhance the role of the VPSC on several fronts.
307. The CPSU, for example, noted the 'powers of the VPSC are the weakest in all jurisdictions of Australia'. It suggested expanding the Public Administration Act to give the VPSC own motion powers to investigate whether agencies are operating in accordance with the Act, the Code of Conduct and the VPS Standards.
308. The VPS Standards were last issued in 2017 but have not undergone a significant overhaul since 2006. We understand planned reviews of the VPS Standards and Code of Conduct are on hold due to current resource constraints. The VPSC indicated in its submission it was open to developing further options for monitoring and reporting on the compliance of public sector bodies with the public sector values, codes of conduct, employment principles, and VPS Standards.

## Executive employment conditions

309. Potential politicisation risks arising from the somewhat precarious nature of employment arrangements for Secretaries and senior executives was another topic mentioned by many of those we engaged with. For example, while noting it did not have a body of evidence demonstrating an actual problem in Victoria, the VPSC observed a lack of job security 'can contribute to conditions where a candidate's capacity to deliver frank and fearless advice is compromised'.
310. Contributors suggested various tweaks to employment terms and conditions to minimise such risks. One repeated suggestion – though not universally supported – was a shift away from fixed-term contracts toward tenure, to encourage a focus on longer term priorities.
311. Another common suggestion was that the current four-month notice period (or pay in lieu) for termination of executive contracts be increased. (The VPSC's 2016 review of the executive employment framework recommended the at-will termination notice period be extended to nine months, but this was not adopted.)

## Open government reforms

312. A need for 'open government' reforms aimed at reducing excessive secrecy and enhancing transparency was another topic mentioned by multiple people. One contributor noted:

Keeping public advice secret breeds a culture of courtiership, not a discipline of open inquiry into public concerns.

313. In Victoria, Cabinet information is usually kept secret from the public for at least 10 years. Other limits on transparency include exemption clauses in freedom of information legislation, public interest immunity restrictions on providing documents under summons, and statutory constraints on documents accessible to Ombudsman and IBAC investigations.
314. New Zealand's approach of proactively releasing Cabinet records with minimal redactions within 30 days of a final decision was said by some contributors to have several benefits: promoting accountability of public officials and decision-makers, encouraging public trust in government, and fostering democratic participation and debate. The release occurs under a [Cabinet Circular administered by the Department of Prime Minister and Cabinet](#).
315. The Queensland Government is preparing to implement a recommendation that it follow New Zealand's lead and adopt a similar policy, after the Coaldrake Review observed:
- The need for cabinet to maintain confidentiality around its deliberations, particularly in their developmental stages, is well understood and respected. However, it can mitigate against the openness that the Government espouses, and which is so necessary to maintaining public trust in the quality and impartiality of decision-making.
316. Some people we engaged with suggested improvements to freedom of information practices – also with the aim of strengthening dialogue between the public sector, parliamentarians and the public.

#### Other suggestions

317. We received a variety of other reform suggestions beyond the four themes identified above.
318. Notably, setting further boundaries around the activities of ministerial staffers was often recommended. Many suggested reforms echoed recommendations of IBAC's *Operation Daintree*, some of which are currently being implemented.
319. Another topic which attracted significant comment was the need for new processes to depoliticise public board and statutory appointments. As discussed earlier, this was beyond the scope of our investigation.
320. It is nevertheless worth acknowledging that policy thinktank the Grattan Institute made recommendations on this topic after its 2022 study found a 'creeping politicisation of public appointments [that] harms the health of our democracy'. We also note an independent *Review of Public Sector Board Appointments Processes* is underway at a national level, which is scheduled to report this year.



---

**Part B:**

Lines of investigation

---

# Chapter 4: Former ministerial staffers appointed to the public sector

## What we investigated

321. Central to the Legislative Council referral was the appointment of former ministerial staffers to senior public sector roles.
322. Ministerial staffers are employed by the Premier to provide support and advice – often with political context – to an assigned Minister. They are not public sector employees.
323. *The Age* article claimed to have identified ‘more than 30 senior public servants who served as advisers in the Andrews government’. The article expressed concern that the recruitment of people with ministerial staffer backgrounds was affecting the quality and independence of advice to Government.
324. We received 28 submissions about the appointment of former ministerial staffers to the public sector. They raised possible departures from the merit selection principle, perceptions of political patronage and favouritism, and in some cases expressed concern about the actions of public sector employees with known political affiliations.
325. This chapter looks at the appointment of 16 former ministerial staffers to senior public sector roles. We examined whether these people went through open and transparent merit selection processes, and whether such appointments were compromising objectivity and transparency, or increasing the risk of corruption.
326. These were not the only appointments involving Ministerial staffers we reviewed. Others are discussed later, in chapters 6, 7 and 8.

## Ministerial staffers

327. In Victoria, ministerial staffers are employed by the Premier under Part 6 of the Public Administration Act and assigned to ministerial offices or the PPO. They act as their Minister’s delegate or assistant and are generally responsible for providing political advice, supplementing apolitical advice from the public sector.
328. According to the VPSC’s *Guide for ministerial officers in the Victorian public sector*, they also assist Ministers to:
  - administer their portfolio and prepare government policy
  - communicate information to departments, stakeholders and the public
  - undertake Cabinet and Executive Council business
  - perform aspects of their Parliamentary role that relate to their Ministerial responsibilities (with other Parliamentary support provided by electorate officers).
329. Ministerial staffers do not have authority to direct Department Secretaries or other public sector employees in relation to the performance of their official duties. They are required to adhere to the *Ministerial Staff Code of Conduct* as a condition of their employment.

## Movement to the public sector

330. It is not unusual for people to move between ministerial staffer roles and public sector employment. A current Deputy Secretary observed a 'long history' of such moves, and noted 'sometimes it works extremely well and other times it doesn't':

In and of itself there's nothing wrong with people making that transition but it's a question of them having the right skills for the job and also being able to leave that world behind.

331. Public servants are commonly seconded to ministerial offices. This benefits both the VPS and ministers: public servants are directly exposed to the workings of ministerial offices and political processes; and ministers gain access to the knowledge and skills of public servants, ensuring their offices are not staffed exclusively with so-called 'political operatives'.

332. Experience in a ministerial office is often viewed as a desirable quality within the VPS and broader public sector. Employees with direct understanding of Government priorities and Ministerial decision-making processes may prepare more useful advice. They can be consulted by colleagues to 'sense check' a proposal or briefing, or for advice about the preferences of individual Ministers. For example, one former Ministerial staffer told us:

[It] allowed me a wider vista to see how things worked, how decisions were made, and I think that helped inform how to better navigate the bureaucracy and get things done when I was inside it.

333. Former ministerial staffers can bring other knowledge and experience. Some staffers become subject matter experts, developing knowledge that is highly valued in the public sector. Despite the party-political nature of some of their work, their values may be attuned to those of the public sector. Their experience in a ministerial office may be regarded as a professional development opportunity rather than a way to advance specific political aspirations.

**'My career is very purpose driven and I've done my best to make a positive contribution to the state and country. If you're interested in public policy, you're going to work for the public service.'**

Former Ministerial staffer

334. There are nevertheless risks that need to be carefully managed when appointing former ministerial staffers. Those with limited public sector experience may initially lack operational knowledge necessary to successfully implement government programs. Others may need extra supervision or support to ensure they understand the public sector values and their obligations under the Code of Conduct. At interview, one Department executive observed:

[It is necessary for] the public service to wrap around them a bit more, ... so that they understand what their role is. ... I've seen a tendency for somebody who's got good relationships with other ministers to go, 'I'll just pick up the phone to give them a call'. Well, actually, it's not your Minister. This is not their portfolio. You can't really do that as a public servant even if you [otherwise] can ... because of those contacts.

335. A former Department Secretary similarly noted it was 'very, very important' to speak with staff making the switch, especially at senior levels, about the division of responsibilities:

I put to them that they have to be more careful than the average public sector leader to demonstrate that they're apolitical, to demonstrate that they're not, you know, fettering advice or they're not colouring advice on the way through, and that they're certainly not seeking political advantage from their recent or distant friends.

336. The need for such conversations was reinforced by anecdotal accounts we received of some former ministerial staffers continuing to apply a political lens to their public sector duties. For example, one former Ministerial staffer said:

There are people [former ministerial staffers] who sort of think that a position in the public sector is, you know, carrying on the war on a different front. That is wrong.

337. We heard it is sometimes necessary to 'isolate' former ministerial staffers from politically sensitive duties to avoid perceptions of partisanship. One former Department Secretary told us of the steps they took to manage this risk:

My advice is always the same, ... 'You need to be more careful than everyone else about appearing apolitical. And I strongly advise,' - this is pre-employment - '...that you seek to exercise your public policy ambitions in an area far away from any kind of perceived political patronage'.

338. Another risk - which goes to the heart of the Legislative Council referral - is that the merit selection principle can be subverted to recruit or promote people affiliated with ministers. We heard that some agency heads may feel pressured to curry favour with ministers to advance or safeguard their own careers.

339. Consequently, some public sector employees view the appointment of former ministerial staffers with a level of cynicism. This was a pervasive sentiment in submissions we received, many of which highlighted staffers appointed without open and advertised recruitment processes. The impact on morale can be great. During interview, one executive commented:

Some of these appointments have been made for no particular reason other than to give an individual a place to be, and a career. And so they don't come in as career public servants with a particular broader objective. Many of them they come in as political appointments.

340. Another executive referred to a 'sense of ... slipperiness', where ministerial staffers sometimes expect that VPS roles will be handed to them directly:

Ex-staffers from offices have been pushed down into the Department, and [we've] been told, 'Find this person a job'. ... I've certainly seen that happen. ... Just because you've been in a ministerial office doesn't mean you [should] automatically get a position in the public service. ... There's a sense of this slipperiness that, obviously, new, younger staffers have seen happening. It's like, 'Well, I'll go and work for the Minister, and then I'll get a really plum job in the Department'.



341. The perception that merit selection processes are not followed can have broader consequences. Public sector employees can be cautious about engaging with people suspected of being affiliated with ministers. One witness noted ex-staffers ‘probably know how the ministers work, but then again they could be seen to be driving the Minister’s agenda’.

‘When I look at the sort of former advisers that I have worked with, people of different political backgrounds, we would be a poorer service if some of those people weren’t there. Former advisers are like any other cohort, there are some good ones, there’s some bad ones and there’s a lot of in-between.’

Former Ministerial staffer

342. Some risks from hiring former ministerial staffers can be mitigated with the passage of time. In Victoria, there is no required interval between employment in a ministerial office and appointment to the public sector, and many submissions we received indirectly raised this issue. Some international jurisdictions impose a paid ‘quarantine’ period before staffers enter or re-enter the civil service. There is a balance to be struck, and how this is done will be open to differing views.

343. The following examples, Case studies 3 and 4, describe two VPS appointments we examined based on submissions to the investigation. We found neither appointee was hired due to partisan political considerations. Yet both case studies demonstrate the level of suspicion that can arise when open and transparent selection processes are not strictly followed, to the detriment of the public sector and those appointed.



### **Case study 3: Selection report altered to provide misleading account of ‘sloppy’ recruitment process involving former Ministerial staffer**

We received a submission alleging Executive B’s appointment to a VPS agency was influenced by their former Ministerial staffer background. Although this was not substantiated, we identified significant irregularities surrounding the hiring process.

Executive B did not apply for the position when it was advertised. A merit selection process initially identified two other suitable candidates, including an existing agency employee (‘Executive C’). Evidence indicates that despite interviewing well, Executive C was not offered the position after the agency took into account ‘ministerial feedback’ about their prior performance. Executive B was subsequently appointed. Selection panel records were altered to create a misleading account of the process. Until interviewed by investigators, Executive B was unaware of irregularities surrounding their appointment. We make no criticism of their actions or suitability for the role. Given uncertainties surrounding the processes followed and the poor state of the recruitment file, we did not make any findings of misconduct in relation to any of the agency employees involved.

The agency advertised the executive position after the substantive occupant moved on, and received more than 50 applications. The selection panel comprised two senior agency executives (‘Panel Chair A’ and ‘Panel Member A’) and a subject matter expert from another organisation (‘Panel Member B’). The panel shortlisted seven people for interview, including Executive C, an internal candidate.

Email records show a draft selection report was prepared and submitted to Panel Chair A. This report, not yet signed by the selection panel, assessed Executive C and another applicant (‘Executive D’), as ‘above expectations’. The draft report recommended appointing Executive D and a covering email included Executive C among a list of unsuccessful applicants to notify. (Executive D ultimately opted for a different role at another agency.)

Despite the recommendation in the draft selection report, records we reviewed suggested Executive C was initially preferred over Executive D. Two days before Panel Chair A received the draft report, Panel Member A emailed them to discuss ‘next steps’. Panel Member A asked whether Panel Chair A would be prepared to ‘consider’ Executive D for the position, observing that Executive C would need to be ‘advised next week of the next steps and outcome’. In reply, Panel Chair A commented, ‘that’s a shame about [Executive C]; I presume that is from ministerial feedback’.

When interviewed about this exchange, Panel Chair A said they could not specifically recall why they referred to ‘ministerial feedback’ about Executive C, or what form this feedback took, although they acknowledged they ‘wouldn’t have jumped straight to that conclusion’ without a reason. They recalled there was a ‘view’ within the agency about Executive C’s standing with the Minister’s office. They said they could not recall which Minister Executive C had reportedly fallen out of favour with, or whether feedback from this Minister was solicited by the selection panel as part of the hiring process. The Panel Chair recalled that Executive C was ‘very well regarded’ within the agency.

During interview, Panel Member A also said they could not recall the email exchange, or being made aware of any ministerial feedback concerning Executive C. They observed the comments in the email were ‘concerning’ because they suggested the views of a Minister had influenced deliberations about a VPS appointment. (The Public Administration Act does not prohibit Ministers from providing performance feedback about VPS employees, and we do not suggest the unidentified Minister acted inappropriately.)

Shortly after the above email exchange, Executive B contacted the head of the agency to discuss their interest in the position. At the time, Executive B held a comparable position at another organisation, having already worked in the VPS for several years. Prior to this, they held a mix of senior roles within the public and private sector. This included periods as a staffer to ALP Ministers. During interview, Executive B gave evidence that they had been an ALP member for ‘a very brief time’, but their membership had lapsed, and they had no ongoing political affiliations upon joining the VPS.

At interview, Executive B explained they contacted the agency head after receiving an unsolicited call from Panel Member B, a professional colleague who was aware they were looking for a new role. Executive B said they were initially lukewarm about the position, having passed over it when publicly advertised. They said they approached the agency head at the encouragement of Panel Member B, who informed them the selection process had not delivered a suitable candidate. Executive B told investigators they were not given specifics about the panel’s deliberations, nor were they informed of any ministerial feedback about Executive C. We did not identify any evidence contradicting this.

Executive B told investigators they had several telephone conversations with the agency head about the role and were at some point invited to provide a resume. Executive B told investigators they could not recall submitting a formal application. They were not interviewed by the selection panel, but said of the phone calls:

[The agency head] teased out, you know, my background, my experience, and we discussed issues, and how we would handle certain things. ... It felt like every time I took a call, it was an interview.

Executive B recalled informing the agency head about their ministerial staffer experience when discussing their broader professional background. They were emphatic the subject did not feature prominently in the discussion, nor, as far as they were aware, in the agency head’s decision to appoint them, commenting, ‘to be honest, it would have probably set off alarm bells if it had’. We did not identify any evidence contradicting this. Several witnesses interviewed observed Executive B was already a highly regarded public servant when appointed to the agency.

Emails show that following conversations between Executive B and the agency head, a staff member contacted Panel Chair A to confirm that Executive B would be appointed to the position. Panel Chair A was informed that an ‘endorsed selection report’ was required to finalise the appointment, in which they would need to ‘indicate [Executive B] as a late applicant in the process and attach [their] resume’.

### **Case study 3: Selection report altered to provide misleading account of ‘sloppy’ recruitment process involving former Ministerial staffer (cont.)**

The following day, Panel Chair A emailed a revised selection report to the agency head’s staff. The revised report:

- inserted Executive B into the list of applicants
- lowered the interview scores assigned to Executive C and Executive D
- adjusted the overall assessment for Executive C and Executive D from ‘above expectations’ to ‘meets expectations’
- assigned Executive B an interview score higher than the other candidates and an overall assessment of ‘above expectations’.

We were unable to determine whether the revised selection report was ultimately endorsed by the selection panel. The agency told us it could not locate a finalised version in the recruitment file, and was unable to produce a briefing relating to the appointment.

During interview, Panel Chair A said they could not recall who altered the selection report, although acknowledged as head of the selection panel, they ‘would have obviously had to sign it off’. They observed that ‘from a process point of view’ the selection process ‘was a bit sloppy’. Panel Chair A and Panel Member A each confirmed that, despite the revised selection report implying so, Executive B was not interviewed by the selection panel. (We did not interview Panel Member B.)

When prompted to consider the requirement in the VPS Standards that employment records be ‘sufficiently clear and comprehensive to make decisions transparent and capable of effective review’, Panel Chair A acknowledged that, ‘based on the paperwork’, it would be difficult to obtain a ‘good assessment’ of the process resulting in Executive B’s appointment.

During interview, Panel Member A similarly acknowledged that the selection report inaccurately implied Executive B was interviewed by the panel and outperformed other candidates, and that the report would likely mislead an independent reviewer. They accepted the document also did not disclose that the selection panel’s assessment of Executive C was influenced by the views of a Minister.

At interview, the agency head gave evidence they spoke with Executive B after being notified the selection panel had not found a suitable candidate. They said they could not recall being informed of the Ministerial feedback, that Executive C was an ‘exceptional performer’, and that Executive B also proved to be an ‘outstanding’ employee.

In response to a draft extract of this report, the (now former) agency head said they were unable to comment further, noting they only approved the appointment and had since left the agency.



#### **Case study 4: Former Ministerial staffer directly appointed as an Executive Director after ‘trainwreck’ interview for lower level position**

A submission about the appointment of former Ministerial staffer Executive E as a senior executive at a Department expressed concern the role was not advertised.

We found the Department’s decision to employ Executive E was not influenced by inappropriate political considerations. The circumstances of the hire nevertheless created understandable perceptions of politicisation. This risked harming Executive E’s reputation as a committed public officer with a strong interest in advancing the Department’s policy and service-delivery priorities.

Executive E first joined the VPS early in their career and worked in various roles, including as a Departmental Liaison Officer. They left the VPS and over the next decade worked as a Ministerial staffer and electorate officer, with short periods in the private sector. During interview, Executive E said the sense of public impact from working directly with Ministers and Members of Parliament appealed, and, unlike some other Ministerial staffers, they had no interest in a political career. While a member of the ALP, they did not hold any official party positions.

Executive E resigned as a Ministerial staffer after a Ministerial reshuffle. They applied for several public sector roles and secured an interview for a non-executive role at the Department. Executive E told investigators the role matched their skillset and interests. They said they applied after seeing an advertisement online, and that no-one had alerted them to the position or encouraged them to apply. They said they had no recollection of discussing their application with their former Minister.

According to the recruitment file, Executive E scored poorly at the interview and was assessed as ‘not suitable’. When asked by investigators, Executive E described their interview performance as ‘like a trainwreck’. They explained while on their way there, they had stopped to help a woman who needed an ambulance:

Which meant by the time I got to the interview I was just a basket case. ... [I] recall not getting the questions, fumbling, yeah. ... I felt terrible about myself after that interview.

Days after the interview, the Chair of the selection panel (‘Panel Chair B’) began drafting an internal staff announcement about Executive E’s appointment to a different senior Department position. Panel Chair B told investigators they were unsure how Executive E came to be considered for this other role.

Executive E told investigators the Department’s Secretary – who was not on the selection panel – had phoned after the ‘trainwreck’ job interview about a more senior role elsewhere in the Department. They said they knew the Secretary through some professional dealings ‘for a very short period’ while a Ministerial staffer. Executive E said they could not recall specifics of the conversation. The Secretary subsequently emailed an offer for a five-year Executive Director contract, subject to completion of ‘formal paperwork’.

#### **Case study 4: Former Ministerial staffer directly appointed as an Executive Director after ‘trainwreck’ interview for lower level position (cont.)**

Executive E accepted there was likely a connection between the initial, unsuccessful job application and the subsequent offer, although emphasised the two roles sat in different reporting structures.

One day after the emailed offer, a senior People and Culture officer briefed the Secretary recommending they formally approve the creation of a new Executive Director position. The briefing, which did not specify the position duties, recommended Executive E be directly appointed for a five-year term because an open and advertised process would not deliver a better candidate. The Secretary approved the brief, and three days later a five-year executive employment contract was issued. Under ‘Duties’, it stated only: ‘As directed by the employer’.

A People and Culture team member told investigators they recalled receiving a phone call from the Secretary’s office requesting Executive E’s direct appointment. They also recalled that the relevant line manager – recently back from leave – ‘pretty much didn’t know [Executive E was] coming’. Recruitment and personnel files supplied by the Department did not include a business case or position description relating to the Executive Director position, and we did not identify any other records foreshadowing its creation.

At interview, the (now former) Secretary said they approved the briefing and offered the Executive Director position on the understanding Executive E had ‘cleared’ a merit selection process for an equivalent-level position. Presented with the selection report from Executive E’s unsuccessful interview, the Secretary said this was ‘not the process I thought [Executive E] went through’. We did not identify evidence that Executive E participated in any other Department recruitment processes during the relevant period.

The Secretary said the Executive Director position had been in development for some time. They were emphatic they did not discuss the employment offer with Executive E’s former Minister or Ministerial office, observing that the relevant Minister ‘never, ever crossed that line’. We did not identify any evidence contradicting this statement.

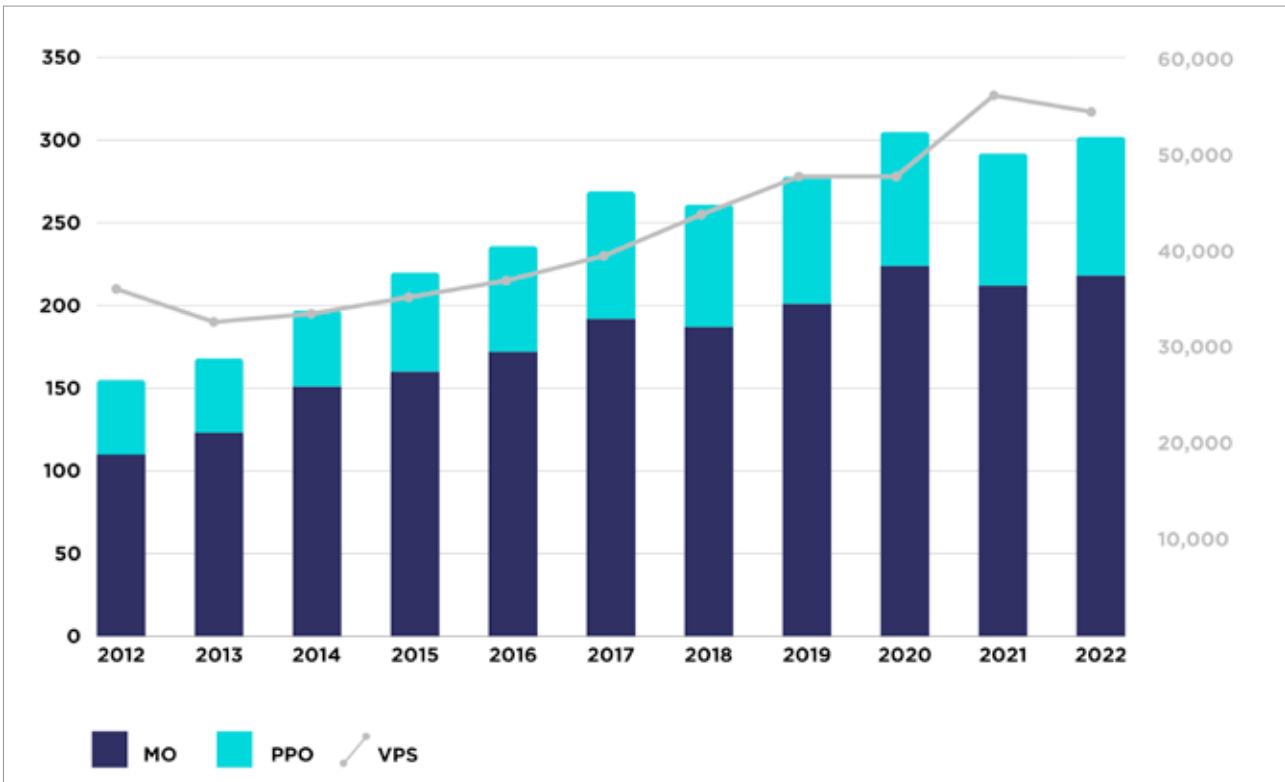
We received evidence that Executive E proved to be a trusted and capable VPS executive. During interview, their line manager acknowledged some ‘grumbings’ about the appointment, given their ‘connections’, but noted Executive E’s ‘quite deep respect and knowledge of the boundaries’ between the VPS and their former Ministerial office. They described Executive E as ‘someone who had a deep passion for [their role] and what we were trying to do’. We make no criticism of Executive E’s actions or suitability for the role.

In response to a draft extract of this report, the Secretary emphasised their (now former) Department employed former ministerial staffers associated with both major political parties – not just the ALP. This was also noted by Executive E at interview, along with other witnesses we spoke with.

## Victorian trends

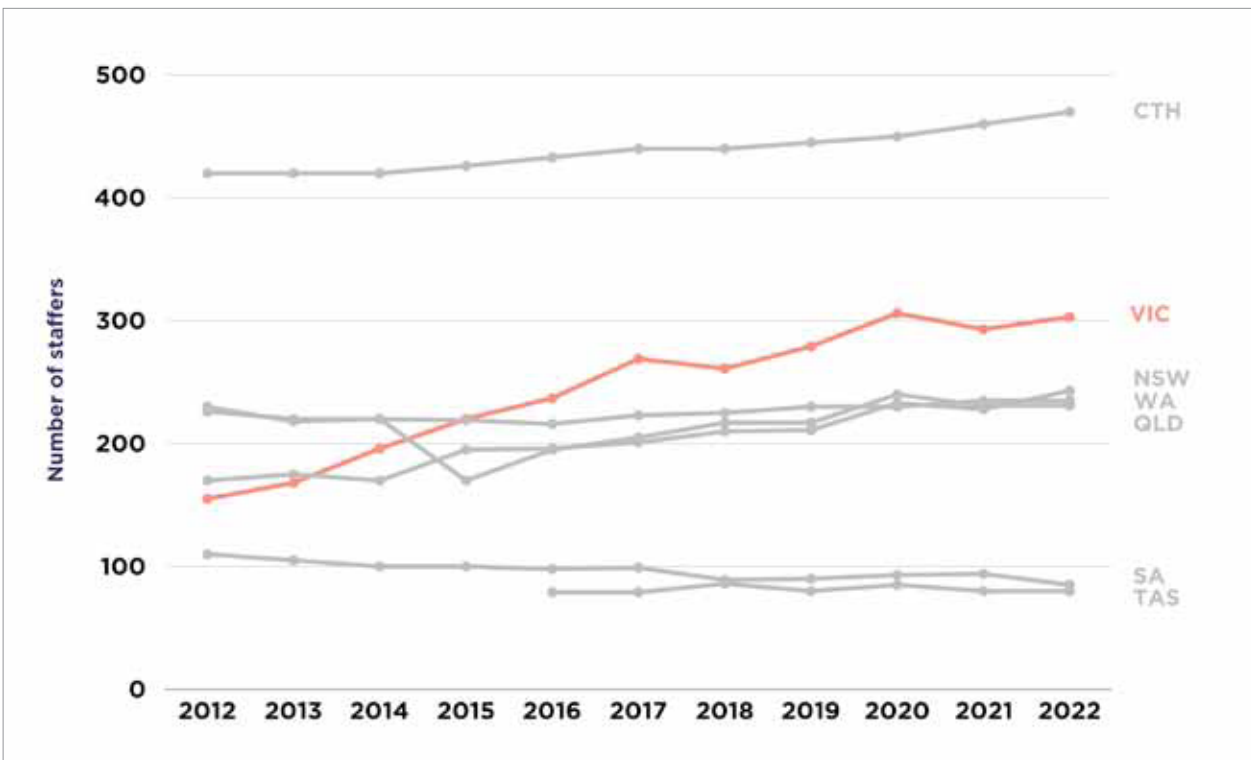
344. *The Age* article referred to the increasing number of ministerial staffers employed in Victoria, and the frequent movement of senior staffers between ministerial offices and the public sector.
345. IBAC's *Operation Daintree* report found the 'number and influence' of ministerial staffers in Victoria has increased significantly in recent years, linking this issue to the theme of politicisation:
- Around the world, commentators have observed a growing politicisation of public administration through the enlargement of political executives' roles, political appointments at senior administrative levels, partisanship in promotions and the increased use of ministerial advisers. In IBAC's view, Victoria has not been immune from this trend.
346. Unlike other Australian states, Victoria does not regularly publish the number of ministerial staffers employed by the Premier. IBAC's *Operation Daintree* recommended new legislation requiring DPC to include this information in its annual reports.
347. The Department of Education currently handles payroll services for ministerial staffers. According to its data, there were 307 ministerial staffers employed in Victoria on 1 June 2022, corresponding to about 303 FTE positions. Eighty-five of these individuals, or about one-quarter, were assigned to the PPO, with the rest assigned to ministerial offices.
348. The number of ministerial staffers employed in Victoria has generally increased each year and has more than doubled since November 2010. This has significantly outstripped growth of the VPS, which increased by 46 per cent during the same period. The proportion of staffers allocated between the PPO and ministerial offices has not substantially changed.
349. As with the PPO (see chapter 3), growth in the overall number of ministerial staffers employed in Victoria has significantly outpaced all other Australian states.
350. The following two figures depict these trends. Figure 12 shows the number of ministerial staffers employed in Victoria between 2012 and 2022, together with the comparative size of the VPS.
351. Figure 13 compares the number of ministerial staffers employed by the Australian Government and each Australian state during the same period (Tasmania began regularly publishing relevant data in 2016).

Figure 12: Number of ministerial staffers employed in Victoria compared to total VPS, 2012-2022



Source: Victorian Ombudsman based on Department of Education and VPSC information

Figure 13: Ministerial staffers employed in Australia, 2012-2022



Source: Victorian Ombudsman based on information from Department of Education (Victoria), Parliament of Australia, Department of the Premier and Cabinet (Queensland), South Australian Government Gazette, Department of Premier and Cabinet (New South Wales), Parliament of Western Australia, Department of Premier and Cabinet (Tasmania)



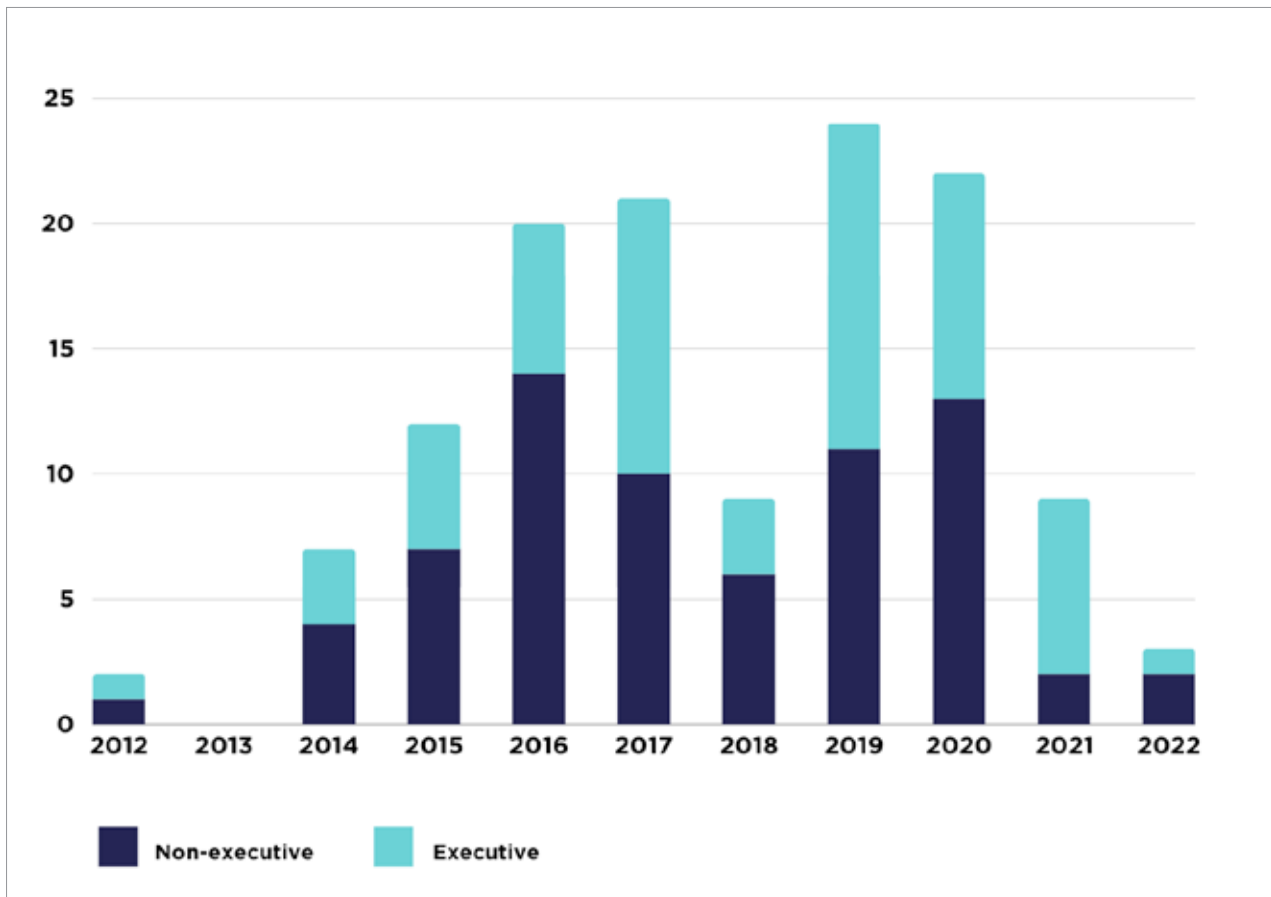
352. It is much harder to conclusively identify the number of former ministerial staffers appointed to the public sector during the same period. The Victorian Government does not collect centralised data about these movements.

353. Through a combination of records obtained under summons, interviews and open-source information, we identified 129 people appointed to the public sector between 2012-2022 with ministerial staffer backgrounds. We identified another 53 people appointed between 2001-2011, where available data was more limited.

354. Eighty-eight per cent were previously assigned to ALP Ministers or Members of Parliament (noting the ALP has held government in Victoria for all but four years since late 1999). One-quarter (25 per cent) previously worked in the PPO, where about one-quarter of all ministerial staffers are assigned.

355. Figure 14 shows the number of former ministerial staffers appointed to the public sector each year between 2012-2022 including the proportion of executives.

Figure 14: Former ministerial staffers appointed to the Victorian public sector, 2012-2022



Source: Victorian Ombudsman based on Department of Education, VPSC, public sector and open-source information; no 2013 appointments were identified, and available information was limited for 2022

Figure 15: Former staffers appointed to the Victorian public sector



Source: Victorian Ombudsman

## Appointments we examined

356. We examined in detail the appointment of 16 former Ministerial staffers to senior public sector roles. This involved reviewing hiring decisions at nine agencies, including five departments. We also examined the activities of some former staffers following their appointment to the public sector.
357. Most appointments we examined were the subject of submissions to the investigation. Others were selected based on media reports, interviews with witnesses and workforce data held by public sector agencies. They were for terms ranging from three months to five years, involving people with differing levels of political, public sector and private sector experience. Some appointees had existing public sector experience, and others had none.
358. Many appointments involved procedural irregularities. However, while the justification for some remained questionable, none appeared influenced by overt partisan political considerations.
359. Instead, we found the perceptions of politicisation shared with us were mostly attributable to the use of direct appointments to hire people without open and advertised selection processes, or to other departures from standard recruitment and human resources procedures.
360. These issues appeared more prevalent in hiring involving former ministerial staffers than for other candidates – suggesting public sector agencies may be taking greater liberties to recruit people who have worked with ministers. In many cases we reviewed, prioritisation of responsiveness – characterised in this case by the need to quickly appoint people familiar with Government policy to ‘get things done’ – appeared most responsible for the trend.

361. Some of the common themes we identified are set out below.

### Direct appointments

362. Public sector agency heads have broad discretion when hiring executives. Nevertheless, appointment processes must comply with the public sector employment principles and VPS Standards, which are binding on the VPS and most public sector agencies.
363. The VPS Standards require recruitment processes be ‘transparent and designed to identify a suitable field of qualified candidates’. They state:
- employees should only be appointed from a limited field of candidates ‘where candidates are identified based on objective criteria’
  - recruitment records should be ‘sufficiently clear and comprehensive to make decisions transparent and capable of effective review’.
364. Most public sector bodies require positions to be advertised internally and externally unless a specific exemption applies. Since 1 October 2019, VPS positions must also generally be advertised on the Victorian Government’s internal jobs website, the Jobs and Skills Exchange, before they can be made available to external applicants. The Victorian Government does not report the number of positions deemed exempt from advertisement each year.
365. Just five of the 16 appointments we reviewed resulted from open and advertised selection processes, and only two of nine eligible positions were advertised on the Jobs and Skills Exchange.
366. Case study 5 provides an example of a demonstrably open and transparent appointment, demonstrating best practice executive recruitment.



## Case study 5: Merit-based appointment of a former Ministerial staffer

Executive F, a former Ministerial staffer, was appointed to a Director position within a VPS agency for three years.

At the time, Executive F had more than a decade of executive level experience in the public and private sector. This included professional experience directly relevant to the role and the specific functions of the agency.

Before Executive F's appointment, the agency:

- prepared a business case, position description and request-to-hire form which was endorsed by the agency head
- advertised the role widely to attract a suitable field of applicants.

More than 40 applications were received and assessed. This included an application from Executive F which comprised a cover letter, resume and five-page statement addressing the key selection criteria.

The agency:

- shortlisted a selection of suitable candidates
- interviewed three candidates, including Executive F, asking competency-based questions
- ranked those interviewed against the key selection criteria
- prepared a selection report which identified solid reasons why Executive F was preferred
- retained copies of the selection panel's interview notes and candidate rankings in the recruitment file.

Executive F's appointment was subject to reference and probity checks, which included validation of their qualifications. They were required to sign an executive employment contract which specified their duties and key accountabilities. They were also issued a performance and development plan which identified clear performance goals for their first year.

We did not identify any evidence that Executive F was hired based on partisan political considerations.

367. In contrast, 11 of the 16 appointments we examined were facilitated by direct appointment of the former Ministerial staffer – in most cases, without internal or external advertisement of the position.
368. Directly appointing staff, unless properly explained and justified at the time, is unlikely to be compatible with the VPS Standards and the merit selection principle, which require hiring processes to be transparent and designed to identify suitably qualified candidates. Misuse of direct appointments can contribute to perceptions of nepotism and, if used to hire people associated with ministers or political parties, politicisation.

‘Some of them might be good operators, but they haven’t gotten their jobs on merit.’

Public sector executive

369. In most cases, records we examined did not provide clear or compelling justification for use of the direct appointment method. For example, one appointment brief under the prompt ‘Justification for not running a recruitment process’, asserted only that the appointee had ‘previously worked in [Minister]’s office, and comes highly regarded for this position’.
370. Records also did not often identify how the former Ministerial staffer was selected or evaluated against objective position criteria. When prompted to record why a candidate was selected, one appointment brief merely stated: ‘The candidate has been assessed against the role requirements and has been assessed as suitable.’

371. In many cases, specialist human resources staff were not involved in candidate selection or evaluation. During interview, one senior Department employee said the Office of the Secretary had requested the People and Culture team ‘put on’ former Ministerial staffers ‘straight away’. This witness said People and Culture ‘knew which ones to push back on and which ones were kind of a done deal’. A witness from another department described executive appointments of this nature as a ‘closed process’ from which human resources staff were excluded.

‘[The appointee] might not have been a politician, but you’re appointing someone out of a Minister’s Office, so it’s not a good look. ... I [would say], “It’s not hard to run [an open and advertised] process folks. Just do it.”’

People and Culture officer

### Contract terms

372. Some VPS bodies do not require short-term positions to be advertised. For example, one Department’s recruitment policy provides that vacancies of ‘6 months or less’ are exempt from advertisement.
373. Short-term contracts should not be used to circumvent the requirement to advertise a position to a wide pool of prospective applicants. In its publication, *Guidance for Integrity in Recruitment*, the VPSC cautions that taking shortcuts to ‘recruit someone quickly for a temporary assignment’ can mean the market is ‘not adequately tested’.

374. Human resources staff we interviewed generally agreed it was necessary to undertake an open and advertised selection process before re-appointing people to roles previously exempted from advertisement. However, this principle was not always observed in the cases we examined.
375. In many other cases, former ministerial staffers were directly appointed to lengthy contracts without advertisement of the position. More than half of the direct appointments we examined exceeded 12 months' duration. Several people were directly appointed to five-year contracts each valued at more than \$1 million.
376. The recorded justification for these appointments was particularly poor. One brief observed only that the former staffer's 'expertise' meant 'advertising the position would not yield a more suitable candidate'. This document referred to 'urgent staffing needs' to justify why the five-year contract was not advertised.
377. Case study 6 concerns a former Ministerial staffer who was directly appointed to a three-month position by a Department Secretary. Instead of being provided an opportunity to interview for an ongoing role, they were then given a series of further fixed-term contracts – collectively spanning almost seven years' duration and with a combined value of more than \$1.5 million – without undergoing an open and advertised selection process. We found this was attributable to inadequate human resources practices – noting a degree of disorganisation in how the Department managed the successive contracts.



## Case study 6: Successive contracts without an open and advertised selection process

Executive G, a former Ministerial staffer, was appointed to a three-month Director level position within a Department, after the Secretary asked them to enter the VPS ‘for a few months’ to assist a unit temporarily without a manager. In an email, the Secretary observed from there ‘opportunities may present’ to join the roll-out of another project within the unit.

At the time, the Department had recently undergone significant changes and did not yet have a specific policy relating to recruitment of executive staff. The Department’s policy for non-executive positions recommended (but did not require) internal advertisement of roles of less than 12 months’ duration. A briefing to the Secretary noted the manager of the unit was taking extended leave and recommended Executive G be directly appointed because their expertise and the short-term nature of the role meant an open and advertised process would not deliver a better candidate.

Executive G’s appointment was formalised by an executive employment contract. The contract did not identify any duties associated with the position, leaving this blank. The Department was unable to produce a position description for the role, although this was not unique to Executive G’s situation.

Two days before their contract expired, Executive G was offered an extension of three months. As before, the new contract did not specify any duties. Executive G told us that during this period they applied for a different ongoing role in the same Department but were unsuccessful. About two weeks before the second contract ended, the Department Secretary wrote to Executive G to offer a further eight-month contract, backfilling an Executive Director level vacancy in a different unit – a promotion and salary increase. This time, the contract specified Executive G’s duties. Their period in this role was extended twice to continue the backfill. This happened while the team was being restructured due to the COVID-19 pandemic, and one extension was made while Executive G was absent on parental leave. The extensions were also facilitated by direct appointment.

At the time of the second extension, Executive G’s line manager noted the position would need to be advertised in future via the Jobs and Skills Exchange. They nevertheless recommended Executive G’s contract be extended once more to ‘ensure ... continuity within the team’. We received evidence that a subsequent review of the position confirmed the need to advertise the role, although Executive G was not made aware of this.

When their term eventually expired, the Department continued to employ Executive G for a further three months without a contract in place. During this period, a delegate of the Secretary offered them a back-dated five-year contract in a newly created position. The position was not advertised, nor was it the subject of an approved business case – although absence of the latter was not uncommon in the Department at the time. A briefing for the role – which related to a Cabinet-approved project – noted the appointment would allow the team ‘to meet its key deliverables during a period of increased pressure to deliver several critical pieces of work’. As before, the briefing also noted the contract would ‘ensure continuity of leadership’ in the team.

### **Case study 6: Successive contracts without an open and advertised selection process (cont.)**

Executive G's new title and duties were not formalised until one month after the contract was executed, when they were asked by their manager to prepare a description of their responsibilities. This was incorporated into a revised employment contract. The Department was unable to produce a position description for the role.

Executive G's annual salary was progressively increased throughout their employment at the Department, at the endorsement of several different managers. By the time of the five-year contract, their pay had grown by 42 per cent compared to the initial three-month Director level position. The Department was unable to produce evidence of any reference checks conducted prior to Executive G's recruitment to the Department or in connection with any of the contract extensions.

In response to a draft extract of this report, Executive G recalled that exemptions from advertising temporary contracts were 'commonplace' in their Department at the time, and that other executives were also hired without finalised contractual duties. These observations were consistent with other records we reviewed.

At interview, the Department Secretary described Executive G as an 'exceptional public policy thinker'. The Secretary acknowledged discussing Executive G's career aspirations with them when they left their Ministerial staffer position, stating 'I said I would keep an eye out for any opportunities'. The Secretary said they subsequently contacted Executive G to offer them a job when a project suited to their circumstances and skillset began within the Department. The Secretary acknowledged the circumstances surrounding Executive G's successive contracts were unusual, and said they were surprised to learn at interview that the five-year contract approved by their delegate was not advertised on the Jobs and Skills Exchange. In response to a draft extract of this report, they noted Executive G was an 'excellent public servant' - emphasising the contract extensions and salary increases were provided for this reason.

We did not identify any evidence Executive G engaged in inappropriate politicised conduct while employed at the Department. Witnesses we interviewed told us Executive G proved to be a highly capable executive with a clear sense of integrity. One executive said Executive G was known by reputation to do 'fabulous work' and 'never seemed to draw on any of the benefits of the connection' to their former Ministerial office - distinguishing them from other former staffers the witness had encountered.

We found Executive G was offered successive contracts due to their specific skills and performance, rather than as part of a coordinated scheme to avoid an open and advertised recruitment process.

We did not identify any evidence that Executive G was hired based on partisan political considerations, and we make no criticism of their actions or suitability for their roles.



Figure 16: Executive employment contract without defined duties

<b>Schedule A</b>	
<b>Position, Duties and Location</b>	
(a)	Position: [REDACTED] at Band Executive Officer Level 3 (E03).
(b)	Duties:
(c)	Location of work: Melbourne

Source: VPS Department

### Creating new roles

378. Public sector bodies need to ensure employment decisions withstand scrutiny and demonstrate clear business value. This is particularly the case for the creation of new executive positions, where a five-year salary can sometimes exceed \$2.5 million.
379. The *VPS Executive Employment Handbook* ('VPS Executive Handbook') requires each department to have an Executive Remuneration Committee to 'ensure a consistent and rigorous approach is taken to setting and adjusting executive remuneration'. Some, but not all, departments require the creation of new executive positions to be approved by such a committee.
380. The overwhelming majority of appointments involving former ministerial staffers we examined involved newly created executive positions. Many were not accompanied by a formal business case. Briefings and recruitment files often made no attempt to justify the additional expenditure against the business needs of the agency or identify how the position would be funded. Just one position created by a Department was approved by an Executive Remuneration Committee.

381. Two-thirds of the direct appointments we reviewed lacked position descriptions, and five former Ministerial staffers were offered employment contracts without any defined duties. Figure 16 shows an excerpt from one such contract.
382. In some cases, positions appeared to have been created primarily to facilitate the recruitment of particular Ministerial staffers – rather than due to the business needs of the agency. These decisions were unlikely to be compatible with either the VPS Standards or the merit selection principle.

[The Secretary] went, "I've got this great person, the two of you are going to be great together." ... I went, "Oh, great." ... I think he was in [Minister]'s office. ... They [former Ministerial staffers] turn up at your doorstep as, you know, "Now they're running this thing".'

Public sector executive

383. In contrast, positions that were advertised to attract a wide pool of applicants were invariably accompanied by position descriptions and, in the case of newly created roles, approved business cases.
384. Case study 7 concerns a former Ministerial staffer appointed to an executive position which appeared to have been created primarily to facilitate their recruitment to the agency.



## Case study 7: Position created after unsolicited approach

Executive H, a former Ministerial staffer, was appointed to an executive position in a Department at the encouragement of a consultant.

At the time, Executive H had been working for about four years at a consultancy firm which regularly contracted with the Government. A senior representative of the firm emailed the Department Secretary (their former colleague) to recommend Executive H be offered a role in the VPS. The consultant described Executive H as a 'superstar' who was 'keen to get some government experience'. They said Executive H would be suitable for a position 'at the Director level' leading a 'special project'. At the time, Executive H had not previously worked in the VPS.

At the Secretary's request, the consultant provided further information about Executive H's salary expectations. These details were then provided to the Department's People and Culture team. About six weeks later, Executive H was offered a six-month executive contract in a newly created position.

At the time, the Department permitted direct appointment of executives in 'exceptional circumstances' only. Department policy required hiring managers to address:

- how the appointee was assessed against 'clear and objective selection criteria'
- whether the appointee had been subject to a competitive selection process within the previous 12 months
- whether the position required specialist skills or knowledge to fill a 'critical business need'
- whether there were no other employees of the Department who could meet the position requirements.

Under 'Justification for not advertising', the appointment brief stated only that Executive H would be appointed to a '6-month time-limited position requiring extremely sophisticated consulting, stakeholder management and conceptual abilities with specific availability dates'. When prompted to explain how Executive H was selected, the brief merely stated, 'The candidate has been assessed against the role requirements and [is considered] suitable'.

The brief did not explain:

- why it was necessary to create the position
- how Executive H was assessed as suitable for direct appointment
- why other Department employees were not considered for the opportunity.

Department policy required that a position description be developed before appointing to a new role. The Department was unable to produce a position description relating to Executive H's role.

Executive H was subsequently offered a five-year contract within another Department – also without being asked to undergo an open and advertised selection process. During interview, the Secretary of this Department said Executive H had a ‘real passion and flair for public policy’. They said they were surprised to later learn about Executive H’s past employment as a Ministerial staffer. They said Executive H was hurt by media reports labelling them as a ‘political operative’, noting their past work as a junior adviser was early in their career and, on their understanding, did not arise from specific party allegiance. The Secretary observed Executive H’s ‘identity as an independent ... and strategic policy thinker is really important to [them]’.

In response to a draft extract of this report, Executive H noted they worked only briefly as a Ministerial staffer, and not in Victoria. They also noted their former Minister had no connections to the Victorian ALP and had already left politics by the time they joined the VPS.

We did not identify any evidence Executive H was hired based on partisan political considerations, and we make no criticism of their actions or suitability for their roles.

### Pre-employment checks

385. Public sector bodies should always undertake reference checks before making an offer of employment. Some bodies require hiring managers to conduct at least two reference checks for external applicants and one reference check for existing employees.
386. Most appointments involving former Ministerial staffers we examined were not preceded by reference checks. Some former staffers received successive executive contracts and worked for many years without a reference check being undertaken.
387. IBAC has observed that validating credentials is a ‘fundamental and straightforward pre-employment screening step that should always be conducted’. While most appointments were preceded by a basic criminal history check, agencies frequently did not validate former Ministerial staffers’ qualifications and employment histories. (These issues were present in another line of investigation we examined – see chapter 5.)
388. Case study 8 concerns a former Ministerial staffer who was directly appointed to four executive positions without undergoing a single reference check.



## Case study 8: Multiple executive contracts without reference checks

Executive I was appointed to a six-month Director-level executive position in a Department shortly after leaving their role as a Ministerial staffer. The recruitment file did not record how Executive I was identified as a suitable candidate or whether any other people were considered for the role.

The Department undertook some pre-employment screening but was unable to produce evidence of any reference checks relating to Executive I's appointment. At the time, the Department did not have a specific policy about reference checks for executive recruitment. The Department's policy for non-executive positions required reference checks be undertaken when determining a preferred candidate's suitability for a role. The policy prohibited hiring managers from offering employment until all pre-employment checks, including references, were complete.

Executive I's appointment was formalised by an executive employment contract. This contract did not identify any defined duties relating to the role, stating only that these were '[t]o be developed'. More than two weeks after the contract concluded, the Department retrospectively varied it to appoint Executive I to a new role for a further 12 months. Paperwork formalising this was not completed until several days later, after Executive I had already started in the new role. A short description of their new duties was inserted into the new contract, although as before, the Department was unable to produce a position description for this second position or any evidence of reference checks.

About two months before the second contract expired, Executive I was offered another six-month contract in a third role. From there, they were offered a further two-year contract. Again, the Department was unable to produce a position description for the third position or evidence of reference checks.

A few months later, Executive I was offered a four-year executive contract in a fourth position. Records do not show how they were assessed as suitable for the role, or record any reference checks.

In total, Executive I was appointed to four executive positions over a period of three years, without any reference checks being undertaken. None of the appointments resulted from an open and advertised selection process. (In response to a draft extract of this report, Executive I made it clear they would have cooperated with reference checks, if requested by the Department.)

At interview, the Department Secretary observed Executive I's initial appointment resulted from an unexpected funding announcement associated with the COVID-19 pandemic. They said that at the time, specialists in Executive I's field were 'impossible to get'. They recalled having to convince Executive I to take the job: 'I remember ... saying, "Can you please do this? It's ... not a particularly attractive job to someone with [your] background, but I desperately need you".'

The Secretary said Executive I's second contract was also arranged in haste and related to another project with urgent staffing requirements. They commented, 'I feel guilty now looking at this [second appointment] because [Executive I] then got a tap on the shoulder saying, "We desperately need you for another short-term contract"'. The Secretary observed the second direct appointment 'probably did [Executive I] a disservice'.

We did not identify any evidence Executive I was hired based on partisan political considerations, and we make no criticism of their actions or suitability for their roles.

### Declaring political affiliations and activities

389. Public sector employees have the right to participate in public affairs without discrimination. This includes the right to stand for election to Victorian Parliament.

390. Under the Code of Conduct, they are nevertheless expected to avoid participating in political activities in the course of their work. They must also avoid – or failing this, declare and manage – any conflicts between their public duties and private interests.

391. Public sector employees who engage in political activities outside the course of their work may need to declare a conflict of interest. The VPSC's *Guide for Employees During Election Periods* provides advice to employees seeking to engage in political activities. Those who stand for election are expected to:

- disclose their candidacy to their manager and a senior executive
- discuss with their manager how this might intersect with or impact their public duties
- complete a conflict of interest declaration and management form.

392. The VPSC has observed that 'affiliations' between public sector employees and political organisations can increase the risk of a conflict of interest. Public sector agencies provide inconsistent guidance about whether employees are required to declare membership of a political party. During the period we examined, only one department had issued specific advice to employees – requiring declaration and management of this interest in limited circumstances.

'[They were] pushing, you know, obviously pushing for a different ... outcome. ... I talked to [a colleague] and said, "I'm really uncomfortable about being in a position where we're in these meetings and I'm fully aware that [the former Ministerial staffer is] the pre-selected [ALP] candidate ... and I just don't think it's appropriate..."'

Public sector executive

393. Public sector executives are required to complete a declaration and management of private interests ('DOPI') form upon appointment and annually thereafter. The standardised DOPI form does not specifically prompt executives to declare interests arising from political activities or involvement in political parties. Records we reviewed showed that within the 10 largest VPS agencies, just four executives disclosed membership of a political party in DOPI forms submitted during the 2020-21 financial year.

394. Several of the former Ministerial staffers whose appointments we examined were members of political parties or otherwise engaged in political activities outside of work. These individuals took different approaches to declaring their political affiliations and activities – demonstrating the risk of inconsistent practice across the public sector.

'I learned about the political affiliation of one of our staff when I saw him on a billboard.

... That afforded me the opportunity to say to this person, "Do you feel comfortable with, you know, how important it is that you demonstrate how apolitical you are in the public service?" And, "We will have to take mitigations to ensure that public confidence remains in the [Department's] work".'

Former Department Secretary

395. Case study 9 concerns two former Ministerial staffers who stood for election while employed in the public sector. Case study 10 concerns a former staffer who voluntarily disclosed their political party membership and later prepared a conflict of interest management plan following media enquiries about their background.



### **Case study 9: Former Ministerial staffers in public sector roles promptly declare lawful election campaigning**

While employed in the public sector, Executive F and Executive J were both preselected to represent the ALP in an upcoming election.

Executive F promptly informed their manager of their preselection. Their agency then prepared a management plan which, among other things:

- temporarily changed their duties to reduce the risk of perceived conflicts of interest
- restricted their ability to access sensitive organisational information, including Cabinet materials
- established clear boundaries around their ability to make public comment about the agency's activities
- prohibited them from campaigning during work hours without authorised leave.

Executive J also promptly informed their manager and Secretary of their preselection, which led to discussions about how to manage any perceived conflicts of interest between their public duties and their election activities. However, this was not formally documented on Executive J's personnel file.

Several weeks later, Executive J approached their employer's Integrity Unit for help amending their annual DOPI form, after a journalist asked the Department about a possible conflict of interest arising from their political campaign. The Integrity Unit helped Executive J prepare a formal management plan to ensure their political activities as an election candidate did not conflict with their public duties.

Both Executive F and Executive J acted appropriately in promptly declaring their intention to engage in political activities. We did not identify any evidence that either contravened the apolitical requirements of the Code of Conduct when election campaigning.



## Case study 10: Media enquiries prompt preparation of conflict of interest management plan

Executive K was appointed to a newly created Director-level executive position within a Department. The 13-month position was not advertised. At the time, Executive K had more than a decade of experience working as a Ministerial staffer and had only recently finished a role in a Ministerial office.

Department policy generally required hiring managers to use executive search firms to identify candidates for executive positions, though allowed for certain exceptions.

An executive recruitment request form stated the new role was to deliver significant initiatives 'that are a high priority for government'. The form recommended Executive K be directly appointed due to their 'unique experience in working across government to broker agreed outcomes on complex policy issues'. A position description and business case were prepared, and the position was approved by the Department's Executive Remuneration Committee.

The recruitment file nevertheless did not explain how Executive K was identified as a candidate for the position and what steps, if any, the Department took to assess their suitability. The Department was also unable to produce evidence of reference checks undertaken before the appointment. During interview, a Department executive indicated reference checks were not always done when a candidate was a 'known quantity'.

Executive K was later appointed to a different executive role in an acting capacity. They subsequently applied for the position when it was advertised. In contrast to their initial appointment, Executive K was interviewed, a selection report was prepared, and reference checks were undertaken. Executive K was identified as the preferred candidate and appointed for a five-year term.

As an executive, Executive K should have been asked to submit a DOPI form upon joining the Department and each year afterwards. The Department was unable to produce a DOPI form completed by Executive K at the time of their initial appointment, or evidence this was requested. Executive K later completed a DOPI form after being appointed to the five-year position. In this form they voluntarily disclosed they were a member of a political party. Their manager assessed the declaration and affirmed they were satisfied it did not identify any actual, potential or perceived conflicts of interest.

The following year, Executive K submitted a more detailed DOPI form and also completed a conflict of interest declaration and management plan, after a journalist contacted the Department to ask about their past work as a Ministerial staffer and perceived connections to the ALP.



In this document, which was subsequently endorsed by their supervisor, Executive K:

- declared they were a member of the ALP and had previously worked as a staffer to several Ministers
- affirmed they were not a party officeholder
- acknowledged that ‘stakeholder feedback’ to the Department Secretary had raised the possibility they had a perceived conflict of interest
- gave an undertaking not to be involved in the preparation of any Departmental materials relating to the upcoming Victorian election
- confirmed they would otherwise adhere to the Code of Conduct obligation to remain apolitical in the course of their work.

After the media enquiries, Executive K’s Deputy Secretary contacted them to express sympathy about the media attention. They reassured Executive K they had ‘no conversations with the MO [Minister’s office] or any politician in relation to your merit-based recruitment and appointment’. The Deputy Secretary said they had ‘not one second of regret about your appointment as your subject matter knowledge combined with policy expertise, excellent leadership and integrity has been unsurpassed’.

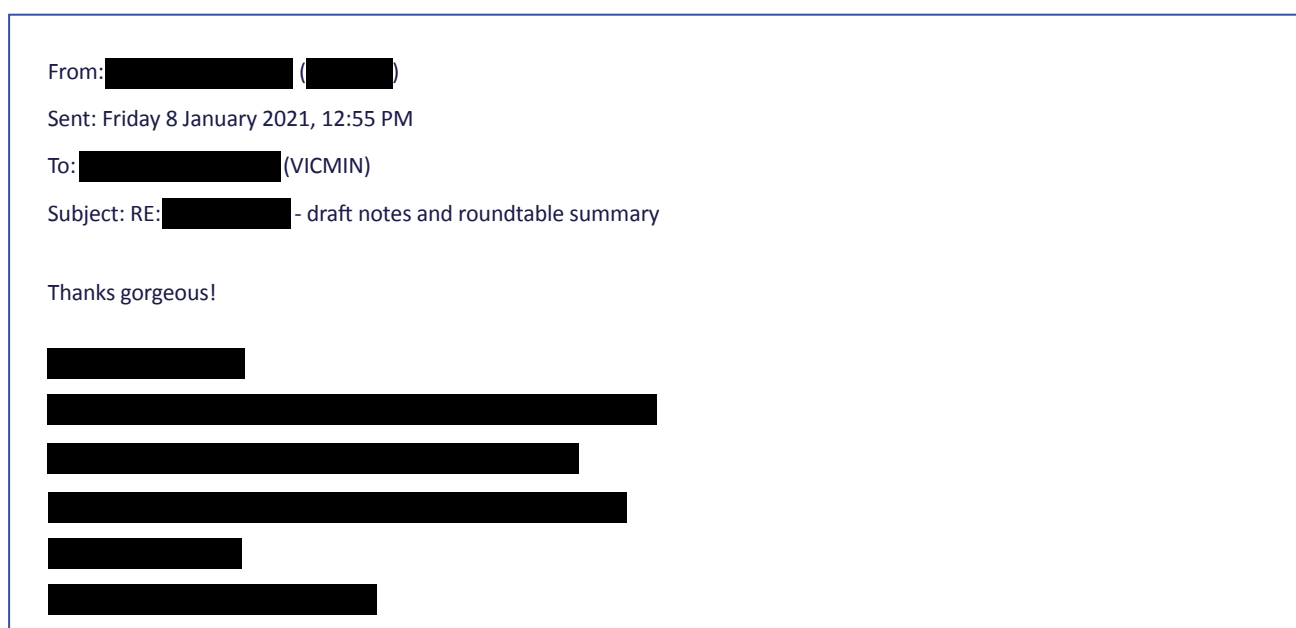
In response to a draft extract of this report, Executive K told us they originally declared their political party membership out of an abundance of caution – noting this went beyond Department policy at the time. They said they did not consider a conflict of interest actually existed, but felt the risk of a perceived conflict increased after media reports were published about their background. They said the media enquiries prompted them to re-evaluate their situation and consult with their manager about preparing a conflict of interest management plan.

We found Executive K’s actions were consistent with Department policy at the time. We also did not identify any evidence they were hired based on partisan political considerations, and we make no criticism of their actions or suitability for their roles.

## Moving between political and apolitical roles

396. Public sector employees and ministerial staffers are subject to substantially different standards of behaviour. Public sector employees are required to remain apolitical, in contrast to ministerial staffers who work in an openly political environment.
397. There are currently no formal protocols governing the movement of employees between ministerial offices and the public sector. We found that ministerial staffers who enter the public sector, although subject to the public sector values, are not always provided specific advice about the different behavioural expectations applying to their new role.
398. Some ministerial staffers can find it difficult to establish appropriate boundaries with Ministers. Figure 17 shows an email sent to a Minister by a former staffer using a VPS email account.
399. In some cases we reviewed, former Ministerial staffers were tasked with implementing policies they had previously assisted to develop when employed in a Ministerial office. Although not prohibited, interviews and submissions to the investigation indicated this practice contributes to perception of politicisation.
400. Several of the former staffers whose appointments we examined subsequently received approval to undertake further temporary employment in a Ministerial office. Public sector agencies did not always demonstrate a clear appreciation of the risks associated with these deployments. For example, one staffer continued to have access to a Departmental account while temporarily working for a Minister. (We did not identify any evidence the account was misused during this period.)
401. Case study 11 concerns a former Ministerial staffer who was appointed to a VPS agency they had previously helped establish while employed in the PPO.

Figure 17: Email from former Ministerial staffer to Victorian Government Minister



Source: VPS Department



## Case study 11: Former PPO staffer appointed to new VPS agency

Executive L was directly appointed to a senior position within a newly established VPS agency. Immediately before this, they worked in the PPO providing advice to the Premier. The recruitment brief observed as a staffer Executive L had been ‘intimately involved’ in policy development leading to the agency’s creation.

The recruitment brief noted Executive L had ‘exceptional stakeholder management skills’ and ‘unparalleled knowledge’ of the issues facing the new agency, and recommended they be offered a short-term contract until the position was ready for advertisement. While serving in that position, Executive L was responsible for further policy development and acted as project manager for a community investment strategy, advancing initiatives they had previously monitored in the PPO.

The position that Executive L was temporarily appointed to was externally advertised after several months. Executive L applied, was interviewed, and ultimately succeeded in obtaining a long-term contract. The selection report noted Executive L scored ‘in the excellent range’ for most selection criteria.

Some time later, Executive L was seconded to a newly created executive position within a Department, where they helped coordinate a major cost-of-living initiative. They were then directly appointed to a five-year executive position in a second Department. The recruitment brief noted Executive L’s ‘expertise’ and ‘urgent’ staffing needs to justify the lack of advertising. In an email concerning Executive L’s appointment, one Department executive observed they would speak with the Secretary about their ‘risk appetite for just doing direct appointments with no process’, observing this was ‘[n]ot a good look really’.

During interview, a former colleague said they believed Executive L was appointed to the VPS to advance a specific ALP policy objective. This was not substantiated by the investigation. At interview, Executive L’s former Secretary observed they were a ‘great value employee’ who made a conscious effort to avoid perceptions of political patronage by entering the public sector at a position well below their level of experience.

We did not identify any evidence Executive L was hired based on partisan political considerations, and we make no criticism of their actions or suitability for their roles.

## What we found

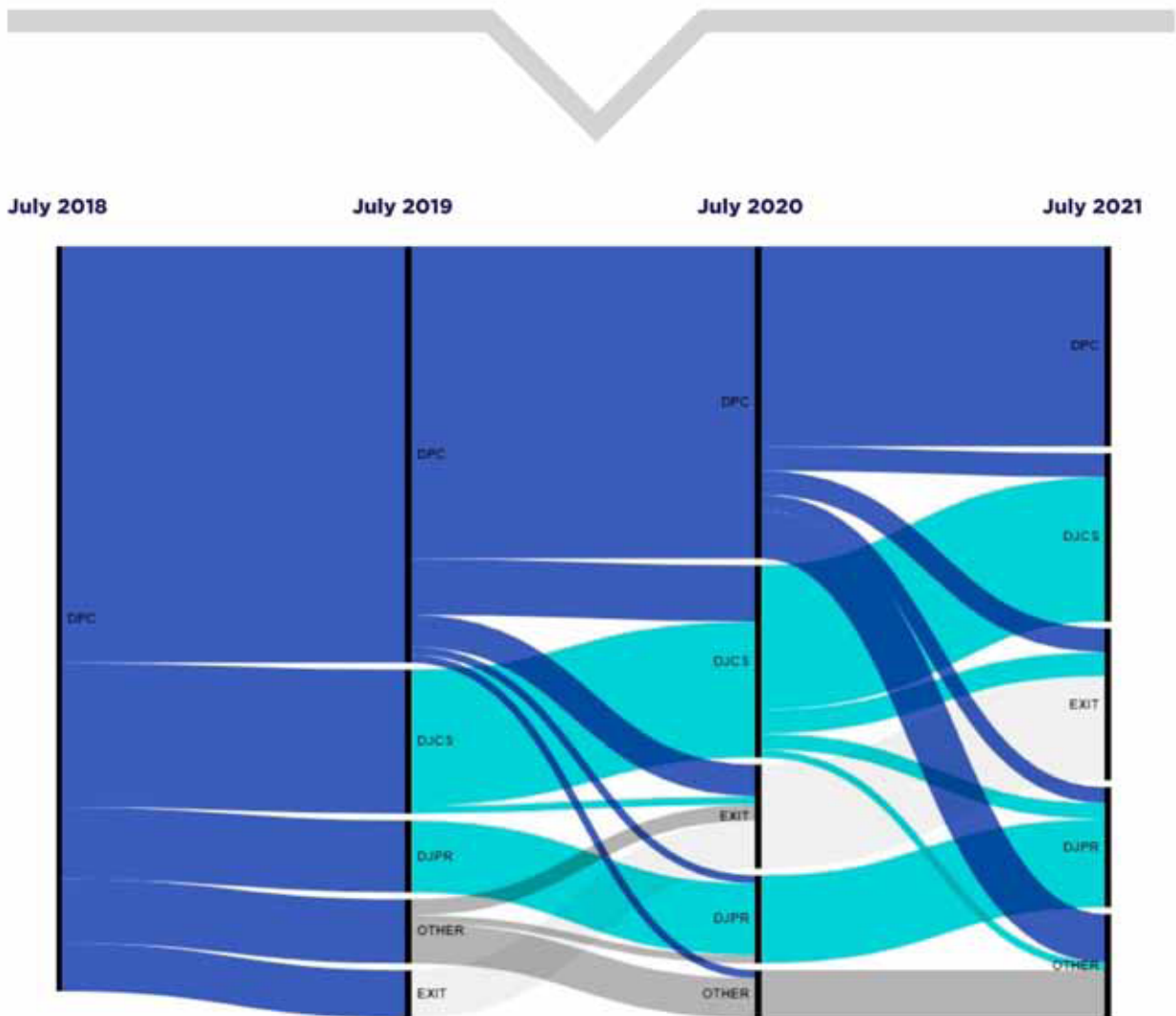
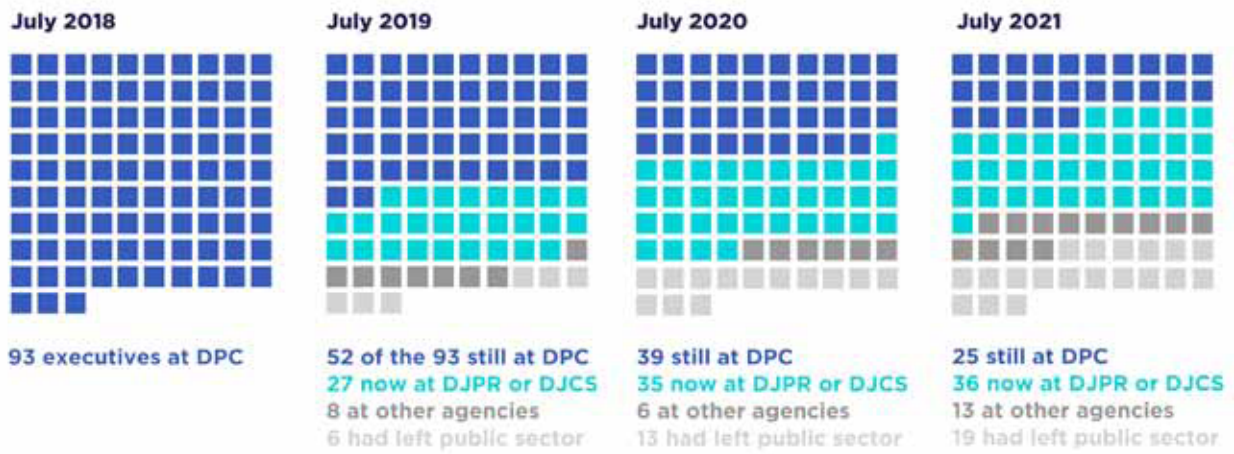
402. The appointment of former ministerial staffers to the public sector featured prominently in *The Age* article and submissions we received. It is clear this practice contributes to perceptions of political patronage. Those perceptions are heightened when appointment decisions are not demonstrably open and transparent.
403. Consistent with the theme of *The Age* article, the information we collected suggests there has been a marked increase in the appointment of former ministerial staffers to the VPS and broader public sector in recent years. This is likely partly attributable to the significant increase in the number of staffers employed in Victoria during the same period, as well as slower growth in size of the VPS.
404. Among appointments we examined, we did not find evidence of direct politicisation of the kind suggested in *The Age* article – that is, partisan hiring to inappropriately advance ALP objectives. While in some cases information was simply lacking, none showed evidence staffers were being appointed based on overt partisan political considerations.
405. However, lack of transparency surrounding appointments – and what appeared to be an increasing reluctance to undertake open and transparent merit selection processes – has understandably fuelled perceptions of patronage. This is detrimental to the integrity of the public sector, as well as the reputation of the people concerned.
406. Public sector employers have the discretion to directly appoint employees. Hiring decisions must nevertheless adhere to the Public Administration Act, including the VPS Standards. We found this discretion was not always being appropriately used, nor justified in official records.
407. Most appointments of former ministerial staffers we examined did not result from open and transparent merit selection processes. Some did not appear demonstrably compatible with the VPS Standards or the merit selection principle.
408. In a smaller number of cases we examined, VPS agencies appeared to have created positions for the predominant purpose of hiring a former ministerial staffer, without sufficient regard to business needs. This is potentially a mismanagement of public resources.
409. Many recruitment decisions were also so poorly documented that it was not possible to readily identify how or why someone was appointed. This was not unique to appointments involving former staffers, but nevertheless continues to leave the public sector open to allegations of political patronage.
410. Greater use of open and transparent merit selection processes should help address politicisation risks. But this is not a complete fix. Submissions pointed to the aggregate effect of importing so many former political staffers – possible erosion of Westminster traditions, compromised independence, and an unhealthy focus on supporting the Government’s political aims.

411. Many of the appointments we reviewed were justified by decision-makers on grounds of responsiveness – essentially, the need to quickly set up a new function, deliver a Government priority, or respond to some other pressing organisational demand. We heard it was necessary to quickly appoint people familiar with Government policy to ‘get things done’ and deliver much needed programs and services for the public.
412. Yet ‘over responsiveness’ – disregarding policies or conventions to meet the political aims of government – is a significant risk, as frequently noted by many observers. The risk is greater the longer a political party holds government. This theme was present in our other lines of investigation, and is further discussed in the next chapters of this report.
413. Safeguarding and upholding the public sector values is the responsibility of the VPSC and agency heads. As this chapter shows, their work must be supported by strong adherence to the merit selection principle in all appointments.

# Chapter 5: Executive hiring at DJCS and DJPR after the 2018 State election

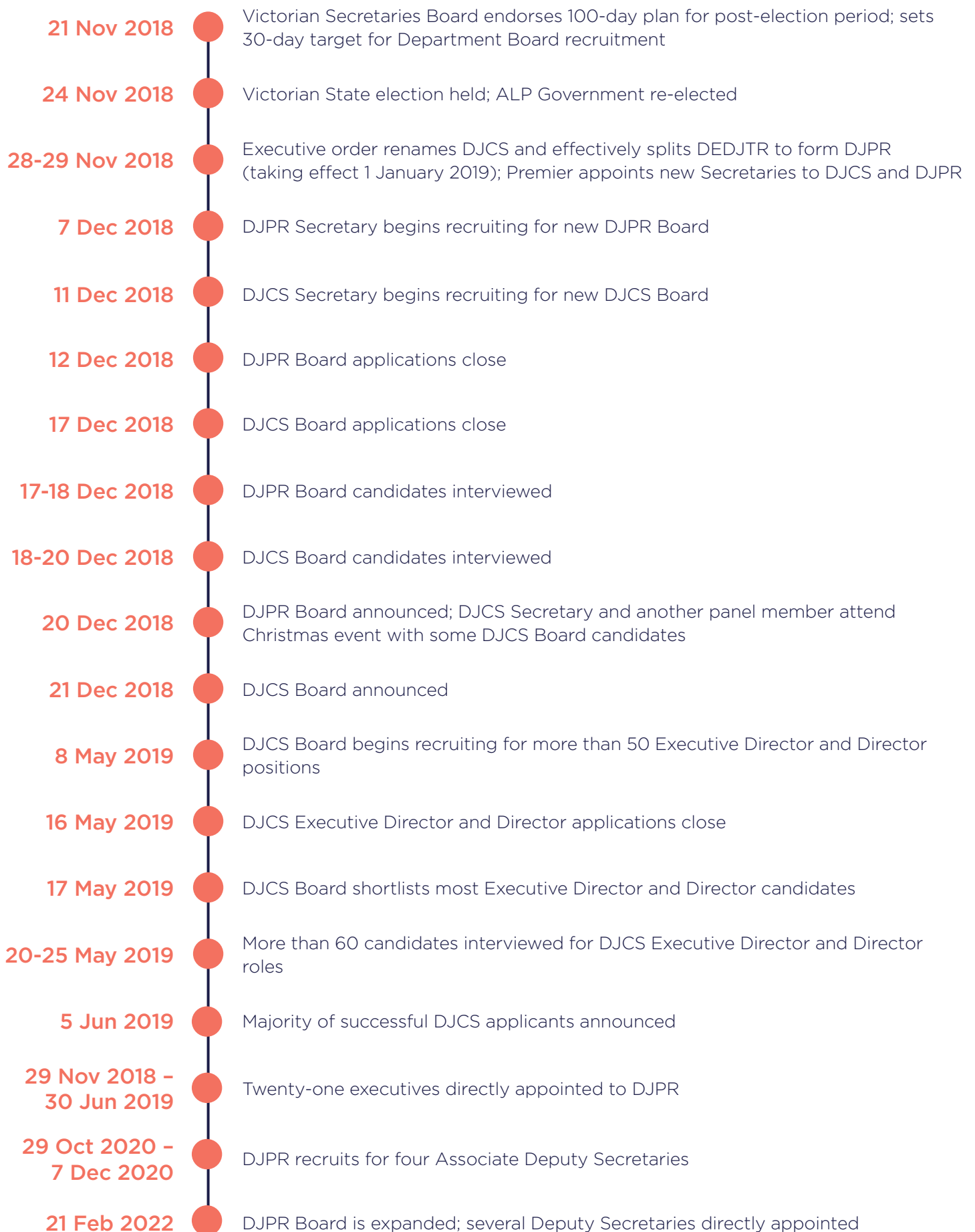
414. We investigated the appointment of dozens of senior staff to two Departments following the 2018 Victorian election:
- the Department of Justice and Community Safety ('DJCS')
  - the Department of Jobs, Precincts and Regions ('DJPR').
415. At the time, both were led by newly appointed Secretaries whom *The Age* article identified as among a small number of 'favoured' public servants with 'more direct access to [Premier Andrews] than many of his Ministers'.
416. Among the reasons we chose DJCS and DJPR for close study was the large number of submissions we received about senior hiring at both, especially about the mass intake of executives post-election.
417. We heard this recruitment activity collectively resulted in the appointment of a cohort of former DPC staff, fuelling perceptions of patronage and a central agency 'takeover' of the two line Departments. These concerns aligned with those raised in *The Age* article about DPC's expanding size and power, and closeness to the political arm of Government. Both new Secretaries had previously held senior positions in DPC, and one was among the so-called 'political operatives-turned-bureaucrats' listed in *The Age* article.
418. Information we reviewed highlighted a notable flow of executives to DJCS and DJPR across 2019 and 2020, as can be seen in Figure 18 which shows the movement of DPC's 2018 executive workforce in the years following the 2018 election.
419. Some submissions spoke of similarities between initial hiring at DJCS and DJPR: rapid recruitment of a new Board for each Department, use of a 'values-based' approach to assess candidates, and the shared professional background of the new Secretaries and many of those appointed.
420. In various differing ways, submissions also highlighted a potential erosion of merit-based hiring at both Departments, which contributors felt had political overtones. Some linked recruitment at DJCS and DJPR to an increasing emphasis on 'responsiveness' to Government – to a point which allegedly threatened traditional VPS independence.
421. We did not substantiate allegations of a coordinated 'DPC takeover' of DJCS or DJPR, nor did we identify evidence that either Secretary engaged in inappropriate partisan political decision-making. We found both were talented public servants, who dedicated themselves to quickly establishing or transforming their Departments to meet the demanding expectations of Government.
422. Yet we identified shortcomings with recruitment practices which, in our view, led or contributed to perceptions of politicised hiring. This included multiple instances of non-compliance with public sector standards intended to ensure merit selection takes place. The nature and extent of these shortcomings differed by Department, as the following sections of the report explain.

Figure 18: Movement over time of executives who were employed at DPC on 1 July 2018



Source: Victorian Ombudsman based on VPSC, DJCS, DJPR and open-source data

Figure 19: Timeline of events





# Executive hiring at the Department of Justice and Community Safety

## What we investigated

423. We received 36 submissions about senior hiring at DJCS, many of which referred to the mass replacement of executives following the 2018 Victorian election and the arrival of the new Secretary.
424. As noted above, this was said to have resulted in the appointment of a large number of former DPC staff to senior positions at DJCS, fuelling perceptions of patronage and a ‘DPC takeover’ with political overtones, as well as more generalised concern about merit-based hiring at the Department – a key protection against politicisation.
425. We focused on two significant hiring initiatives within DJCS during this period:
- the formation of DJCS’s inaugural Board of Management (‘DJCS Board’) in December 2018
  - the ‘spill and fill’ of more than 50 Executive Director and Director positions in mid-2019.
426. We gathered and reviewed recruitment files, emails, and phone records, and interviewed 19 witnesses, including a mix of current and former DJCS executives, People and Culture staff and members of DJCS’s inaugural Board.

## Who we interviewed

We interviewed a cross-section of witnesses familiar with the bulk hiring at DJCS:

- three senior People and Culture team members
- another eight executives or senior officers appointed to DJCS before the 2018 election
- six people appointed to DJCS during the events described in this chapter, including the then Secretary
- the then DPC Secretary.

During our investigation, the (now former) DJCS Secretary noted that many DJCS staff had their employment terminated during their period as Secretary, including some for serious misconduct, and they queried whether participants were engaging in good faith.

We critically assessed all witness evidence, and cross-checked information wherever possible with other sources. Just two witnesses were let go at DJCS during the period we examined – neither for misconduct.

Figure 20: DJCS bulk hiring, at a glance

**Our investigation**

**36** submissions about DJCS  
**395,648** records reviewed  
**19** witness interviews

**DJCS bulk hiring**

**60+** executive appointments:  
**20** former DPC colleagues of new DJCS Secretary



**9** business days to hire new DJCS Board:  
**5** business day advertising period  
**3** panel members, all current or former DPC officers  
**30**-minute interviews  
**0** records kept of shortlisting, interviews, candidate rankings, reference checks, and conflict of interest management

**9** Deputy Secretaries appointed to new DJCS Board, including:  
**5** former members of DPC group previously overseen by DJCS Secretary

**3** weeks to hire 40+ Executive Directors and Directors:  
**7** business day advertising period — **60+** people interviewed in one week  
**480+** applications screened by following day **1** conflict of interest declaration on file  
**30** -minute interviews **0** records kept of shortlisting, interviews, and candidate rankings

**42** Executive Directors and Directors appointed (excluding roles handled by external recruiters):

**Almost a third** former DPC colleagues of DJCS Secretary and some Board members

**\$83 million** in contracts awarded (full term)



Source: Victorian Ombudsman

## About DJCS

427. DJCS is one of 10 Victorian Government Departments. It is responsible for the delivery of justice and community safety services. It also manages the development and implementation of laws, regulations and policy across its portfolio areas.
428. Among other things, DJCS administers Victoria's prison and youth justice systems, victim support services and the regulation of liquor and gaming. The wide range of public sector bodies within DJCS's portfolio of responsibility includes Court Services Victoria, Victoria Police and Emergency Management Victoria.
429. Since January 2019, the DJCS Board has been responsible for coordinating the governance functions and work with portfolio agencies. Led by the Secretary, Board members typically include the Department's Deputy Secretaries and other senior leaders. During the period we examined, DJCS was accountable to four ministers across eight portfolios, including the Attorney-General.
430. Before 2019, DJCS was known as the Department of Justice and Regulation. For ease of reference, this report uses 'DJCS' to refer to the Department under its current and former names.

## New DJCS Secretary appointed

431. The 2018 Victorian election held on 24 November 2018 resulted in the re-election of the ALP led by Premier Daniel Andrews. The election campaign was characterised by a strong emphasis on crime prevention and community safety.
432. On 28 November 2018, following announcement of the election results, the Premier appointed a new DJCS Secretary, effective the following day.

433. Immediately before their appointment as DJCS Secretary, they were DPC's Deputy Secretary, Social Policy where, among other things, they were responsible for coordinating strategic policy advice to the Premier about justice and family violence issues. They previously held senior public service roles in New South Wales and Victoria, working under both ALP and Liberal Governments.
434. While completing their university studies they briefly interned as a research assistant to a Victorian ALP Minister. During interview, the (now former) Secretary gave evidence they were not a member of the ALP or any other political party and had no formal political affiliations. They expressed frustration at continued reference to their period as a Ministerial staffer in media articles, stating, 'It doesn't matter what I do for the next 20 years ... I did that work and that's still a question that comes up'.
435. Department Secretaries are chosen by the Premier, and it is not uncommon for new Secretaries to be appointed following a State election. Records we reviewed did not suggest any connection between the Secretary's appointment to DJCS and their work as a ministerial staffer decades earlier.
436. The Secretary's appointment coincided with the departure of DJCS's longstanding former Secretary. We heard this departure following the election was not unexpected, however was more abrupt than some DJCS staff anticipated.
437. It also coincided with broader MoG changes to DJCS. Witnesses we interviewed generally agreed these did not significantly impact the Department's core responsibilities and operations.

## Appointments we examined

438. After starting in their post, the new Secretary introduced several significant changes to the Department's executive structure.
439. These included:
- the appointment of a small cohort of former DPC colleagues to assist with the initial transition period
  - the formation of the inaugural DJCS Board, involving the 'spill' of all Deputy Secretary positions and a rapid 'bulk recruitment' process to select replacements
  - the subsequent 'spill' of Executive Director and Director positions in mid-2019, involving a second, much larger 'bulk recruitment' process.

### Policies and procedures we considered

In examining relevant appointments, we considered VPS-wide requirements and guidance relating to executive recruitment, including the VPS Executive Handbook.

We also considered internal DJCS policies and procedures, though had difficulty establishing which (if any) directly applied to executive recruitment during the relevant period. In response to a summons, DJCS initially produced a *Recruitment and Selection Guideline and Related Policy* ('DJCS Recruitment Policy'), which stated it did not apply to executive appointments. Through emails, we found a draft version of a *DJCS Executive Officer Recruitment Process* ('DJCS EO Recruitment Process'), which DJCS clarified was adopted before 2018 and applied to executive recruitment 'from 2019 until September 2020' alongside the DJCS Recruitment Policy and VPS Executive Handbook. Key witnesses gave evidence they were unfamiliar with the DJCS EO Recruitment Process and uncertain about its status when the hiring activities we examined took place.

Due to this ambiguity, we made no findings about whether the bulk recruitment activities examined in this report complied with DJCS's recruitment policies. We nevertheless considered the DJCS Recruitment Policy and DJCS EO Recruitment Process, together with the VPS Executive Handbook, as indicators of conventionally accepted recruitment procedures during the relevant period.

In response to a draft extract of this report, the (now former) Secretary noted the VPS Executive Handbook was non-binding. They submitted that any departures from its recommended processes were 'immaterial' and did not 'in and of themselves, represent any breach of the legislative requirements or VPS Standards'. Noting the uncertainty about the status of the DJCS EO Recruitment Process and DJCS Recruitment Policy, the Secretary submitted that alleged departures from them 'should be treated with caution'. They also submitted that departures from conventionally accepted recruitment practices did 'not mean that ... appointment decisions were not merit-based, lacking in transparency or unfair'.

### Initial transfer of DPC staff

440. On starting at DJCS, the new Secretary facilitated the appointment of several DPC employees to DJCS to assist with the initial transition period. Three individuals were directly appointed to executive roles in the Office of the Secretary.
441. Two other executives were seconded to DJCS from DPC as Acting Deputy Secretaries and were subsequently appointed to ongoing Deputy Secretary positions in the bulk recruitment process, discussed below. The Secretary told us that one filled a vacant Deputy Secretary role which 'required immediate replacement', and the other was brought across at the request of DPC's Secretary to continue leading a project slated for transfer to DJCS.
442. All five executives worked at DPC during the Secretary's period there, and three were previously direct or indirect reports. At interview, the Secretary gave evidence they did not have a social or personal relationship with any of the five.
443. It is not unusual for a new Secretary to 'bring across' a small cohort of staff to assist with the transition. However, witnesses we interviewed said the volume and nature of these initial appointments was nevertheless remarked upon within DJCS. For example, one executive observed:
- Quite often, a Secretary will bring at least an EA, and maybe an Adviser of some sort with them from outside ... because they've got a trusted relationship with them, so that's fairly normal. Probably the extent of people that [the new Secretary] brought over was more than I've ever seen previously.
444. Similarly, a then senior DJCS People and Culture team member said a new Secretary would usually 'come in and get a lay of the land before you bring the whole contingent with you', adding that in their view, 'this stuff had been pre-organised' because the new appointees 'definitely hit the ground running'.
445. In response to a draft extract of this report, the Secretary denied the appointments were pre-organised. While evidence did not suggest they were (beyond what would ordinarily be expected), the scale and pace of the initial transfers caused some existing DJCS personnel to suspect significant changes were about to be rolled out.

## Direct appointments

The VPS Standards require that employment processes be fair and transparent. According to the Standards, employees should only be appointed or promoted from a limited field of candidates where 'identified based on objective criteria'.

Three executives who moved from DPC to DJCS to assist the Secretary with the transition were engaged via direct appointment. Rather than being transferred, these individuals signed new, five-year executive contracts. In some cases this brought a more sizeable remuneration package; for example, one appointee's increased by more than \$100,000 per year. (In response to a draft extract of this report, the Secretary said the salary offered to this executive 'was likely similar to other executives in such roles and would have had regard to the size of the role and the size of the Department').

In response to a summons, DJCS was unable to produce an appointment brief or any other records explaining why these individuals were appointed or how their salary increases were determined. In each case, recruitment files maintained by DJCS contained only a copy of the letter of offer and employment contract.

While use of the direct appointment method can be justified in cases of rapid organisational change, the available records relating to these appointments did not appear to satisfy the VPS Standard that employment documentation be sufficiently clear and comprehensive to make decisions transparent and capable of effective review.

During interview, a senior member of DJCS's People and Culture team criticised the process behind the appointments, stating it was 'completely not transparent' and 'lacked any semblance of regularity'. Evidence from a number of witnesses suggested this perceived lack of transparency contributed to speculation among staff about the Secretary's intentions for the Department.

### 'Spill' of Deputy Secretaries

446. Around the same time as the initial transfers, the Secretary began planning to restructure the Department and change its executive workforce.
447. One of the first changes – planned just three days after they started as Secretary – was to recruit a senior leadership team to form a new DJCS Board. This involved a 'spill and fill' of all existing Deputy Secretary positions. Eight positions were externally advertised, although nine people were ultimately appointed to the Board.
448. Many of the shortlisted candidates and successful applicants for DJCS Board positions had worked at DPC alongside selection panel members.
449. Five appointees had held senior positions within DPC's Social Policy Group, previously overseen by the new DJCS Secretary. A sixth Deputy Secretary was appointed from DPC's Governance Policy and Coordination group. Three appointees were existing DJCS Deputy Secretaries, and another was a DJCS Executive Director. The total amount payable under the full term of employment contracts awarded exceeded \$16 million. (This was consistent with standard VPS executive remuneration levels).

450. The spill of Deputy Secretary positions drew strong comment from existing DJCS executives and senior personnel we interviewed. There was broad consensus it represented a ‘clean out’ of DJCS’s former leadership team. This was said to have been motivated by perceptions the Department had become ‘old fashioned’ and insufficiently responsive to Government priorities.

451. It is not unusual for new Department Secretaries to initiate changes at the senior executive level. However, in this case, several factors appeared to contribute to perceptions of a ‘DPC takeover’ of DJCS, with overtones of politicisation. This included the immediacy and speed at which senior executives were replaced, perceived irregularities in the recruitment process, and the common professional background of many successful applicants.

452. Although we did not substantiate allegations of a coordinated ‘DPC takeover’, we identified shortcomings in the level of rigour surrounding the DJCS Board recruitment process. These included:

- departures from conventionally accepted recruitment practices
- poor management of possible conflicts of interest, including evidence of undeclared socialisation between applicants and selection panel members while the recruitment process was underway
- poor documentation of the selection process, which diminished transparency and the capacity for effective review of appointment decisions.

453. Recruitment for the DJCS Board occurred in parallel with Board recruitment activity at DJPR, also led by a new Secretary appointed from DPC after the 2018 State election. The processes followed in both Departments had clear superficial similarities and we identified evidence of some limited operational coordination between DJCS and DJPR staff.

**‘A new appointment would be announced, and people would say, “Well surprise, surprise: It’s someone else from DPC”.’**

Former DJCS executive

454. Witnesses commented on the parallels between the two processes and, in some cases, perceived this as evidence that DPC had sought to exert greater influence over the two line Departments. However, we did not identify evidence of direct coordination between the two Secretaries, nor evidence that DPC inappropriately influenced the parallel Board recruitment processes within DJCS and DJPR.

#### Rationale

455. During interview, the Secretary told investigators recruiting the DJCS Board was one of their immediate priorities as incoming Secretary, based on known ‘underperformance’ of the Department, including ‘significant issues’ with the existing senior leadership team. They described a Department in disarray, plagued by administrative inefficiencies and a ‘deeply toxic’ workplace culture.

456. They said they were given ‘very clear instructions’ upon their appointment ‘in terms of going in and changing [DJCS] culturally’ – recalling they discussed this with DPC’s Secretary at the time. They told investigators they ‘went into [DJCS] very clear-eyed about the need to reform and transform the culture quickly’, adding:

I had a job in front of me to transform the Department, to make sure it was a values-based Department that was collaborating with other departments, that had the confidence of all the [Department’s] Ministers, that the Department would deliver upon the government of the day’s agenda.

457. In response to a draft extract of this report, DJCS’s previous Secretary contested this characterisation of the Department. The previous Secretary described the Department’s leadership team at the time as ‘incredibly collegiate, hardworking, responsive, and [having] shared a values-driven culture’. They also recounted senior leaders working with other departments on a number of cross-portfolio reforms, including those arising from Royal Commissions and parliamentary inquiries, and strong relationships at a regional level maintained ‘through various multi-agency arrangements’.

458. While the former DPC Secretary did not provide evidence about the extent of any cultural or performance issues within DJCS, they said at interview they were aware of concerns held by the elected Government about the ‘responsiveness’ of DJCS prior to the election.

459. Most DJCS executives we interviewed agreed opportunities existed to improve the Department’s performance after the 2018 State election. They noted organisational ‘silos’ had sometimes resulted in inconsistent advice to Ministers, and recalled incidents where the Department failed to address clear administrative problems to the evident dissatisfaction of the elected Government.

460. However, these witnesses tended to express a more nuanced appraisal of the Department’s overall performance and culture. For example, one DJCS Board member appointed by the new Secretary acknowledged the Department was previously seen as ‘pretty old school’ and ‘not setting the world on fire’ but said they nevertheless would have described it as a ‘solid performer’.

461. Other witnesses acknowledged there was scope to improve practices but described being unaware of any significant performance issues that warranted the scale of changes initiated by the new Secretary, including the ‘spill’ of Deputy Secretary positions. For example, one executive said DJCS ‘was not in poor shape, in my opinion’, adding:

[The Secretary] had a view that [they were] there to clean up the Department and get it back on track. And I think a number of us went, ‘Hmm. Yeah, there’s always improvement, but I don’t know that [level of] clean-up was required’.

462. In response to a draft extract of this report, the previous Secretary acknowledged that, like any department, ‘there were opportunities for improvement and instances where things could have been done differently with the benefit of hindsight’. Regarding references to the Department’s organisational ‘silos’, they explained that under their leadership, Ministers had ‘a direct line of sight to particular Deputy Secretaries’, which they believed ‘assisted with responsiveness and direct accountability’. The previous Secretary said they were not aware of inconsistent advice being given and described their approach as ensuring the Department provided ‘tailored’ advice that considered Ministers’ respective portfolio responsibilities, rather than ‘relying solely on a “one size fits all” single piece of advice for all Ministers’.



463. The previous Secretary also referred to the many achievements during their period as Secretary, telling the investigation these were ‘an indication of the responsiveness of the Department to the reform agendas and the election commitments of successive governments’ they worked under between 2013 and 2018. They recalled that most, if not all, of the 2014 election commitments were implemented by the time of their departure.

#### Bulk recruitment process

464. Methods used to select and appoint the new DJCS Board diverged from conventionally accepted recruitment practices, including those set out in the DJCS EO Recruitment Process and DJCS Recruitment Policy for non-executive positions, as well as the generic executive recruitment process identified in the VPS Executive Handbook. Most relevantly, the departures included:

- the relatively short period of time in which positions were advertised and filled
- the use of a ‘values-based’ approach to candidate assessment and interviews
- the absence of contemporaneous records of reference checks, criminal history checks and other pre-employment screening processes for successful candidates.

#### *Recruitment timeframe*

465. The DJCS Board bulk recruitment process began on 11 December 2018 and concluded eight business days later, on 21 December. This was much faster than would normally be expected for the recruitment of executives within the VPS. For example, the DJCS EO Recruitment Process envisaged a six-to-eight-week timeframe for recruiting a single executive employee.

466. Each stage of the process was compressed – for example, positions were advertised for only five business days from Tuesday 11 December to Monday 17 December 2018. This differed from the two-week advertising period recommended in the DJCS EO Recruitment Process but was consistent with the DJCS Recruitment Policy for non-executive positions. The selection panel began interviews the next day, and outcomes were announced a day after interviews concluded.

467. DJPR commenced a similar rapid bulk recruitment process for its new Board around the same time, with applications opening on 7 December 2018 and appointments finalised nine business days later on 20 December.

Figure 21: Advertisement text – DJCS Board positions

**About us**

The Department of Justice and Community Safety (DJCS) is establishing a new Board of Management that will have oversight of functions including: Victim Support, Justice Services, Aboriginal Justice, Family Violence, Justice Operations, Regional Service Network, Corrections, Youth Justice, Emergency Management, Police and Crime Prevention, Regulation, Corporate Services, Justice Coordination, and Workplace Safety Policy.

**About the role**

DJCS will be led by a Board of Management, comprised of the Secretary and eight Deputy Secretaries. Each Deputy Secretary will oversee and lead the work of a group, ensuring the provision of strong expert advice to government on policy and program issues and the development of strategic approaches to ensure the delivery of the justice and community safety portfolio.

The Board of Management will have an opportunity to:

- continue to deliver exemplary services
- place community needs at the heart of decision making processes
- create, shape and cultivate a contemporary values based workplace culture and champion behaviours such as collaboration, transformation and integrity.

Source: DJCS

468. Expediting the DJCS Board recruitment process was reasonably necessary to minimise disruption to the Department's operations. This was consistent with a VPS-wide post-election transition plan developed by DPC and endorsed by the Victorian Secretaries Board on 21 November 2018, which set a three-week target for finalising the composition of Department Boards.

469. However, the rushed pace of the DJCS Board recruitment process contributed to perceptions that it was a 'box-ticking exercise' intended to deliver a predetermined outcome. For example, a senior People and Culture team member commented on the 'haste' and stated: 'You're not going to find anybody in the market in six days unless you've already found them'.

470. At interview, the Secretary emphatically denied the DJCS Board recruitment process was conducted too quickly. They said the timeframe was influenced by their strong desire to reform the Department and deliver outcomes for Government, observing:

I had so much reform I had to have in place that I had to deliver for Ministers that I didn't have time to be wasting [getting] a senior leadership team in place. ... Our legislative agenda, our reform agenda was massive and so having the right team in place quickly is actually from my perspective a virtue.

[I needed to send] a clear message around the culture I wanted for the Department ... I don't think the public generally appreciates, you know, ... drawing processes out – taking as long as possible around [employment] processes.

471. The Secretary suggested concerns later articulated in the media about the pace of the recruitment were attributable to the 'entrenched terrible values' within DJCS at the time, commenting:

I was very clear that it might seem like a very quick process, but I'd argue that that's also because public service processes are highly inefficient. ... When you are trying to change culture, the culture always strikes back particularly when you have such entrenched terrible values, terrible behaviours going on. There will always be disgruntled people ... Those people had proper processes if they were unhappy with the outcomes of recruitment that they could've gone through.

472. In response to a draft extract of this report, the Secretary submitted the recruitment timeframe was a 'crude method' to determine whether appointments were merit-based, transparent and fair. They disputed that Board recruitment was rushed, maintaining it was necessary to run a 'fast and efficient' process, 'particularly given Victoria was headed into a fire season, establishing a Royal Commission and [the Department was facing] a range of pressing operational challenges'.

#### *Candidate assessment*

473. Within the VPS, candidates for employment are usually assessed against key selection criteria identified in a position description prepared before the job is advertised. According to the VPSC's *Best Practice Recruitment Selection Methodology and Tools*, these criteria should be developed based on the knowledge, skills and attributes required to perform the role. In addition, VPS bodies may also choose to assess a candidate's values as a means of determining their 'organisational fit'.

474. The VPS Executive Handbook observes executive recruitment processes should 'demonstrate a fair and consistent approach', meaning that 'proper thought, planning, and a rigorous assessment should be undertaken, balanced against the public sector Employment Principles'.

475. Candidates for the DJCS Board positions were assessed using a 'values-based' methodology. Shortlisted applicants were interviewed for up to 30 minutes and asked approximately four questions oriented around nominated values such as 'responsiveness' and 'collaboration'.

476. Specific position descriptions were not prepared despite the widely varying focus and responsibilities of the roles, which ranged from overseeing Victoria's emergency management system, to coordinating the delivery of correctional services, to supporting legislative and policy reforms in the areas of family violence, mental health and workplace safety. Instead, candidates were invited to address key selection criteria relating to a generic Deputy Secretary position largely focused on leadership, strategy and stakeholder management skills. Records within DJCS's recruitment file did not clarify how candidate scores and rankings were ultimately determined.

477. At interview, the Secretary said their focus on candidate values was consistent with the objects and requirements of the Public Administration Act. They observed functional skills were 'non-negotiable' at senior levels of the public service, and identifying exceptional candidates for executive positions 'is much more about leadership experience ... the values you embody and the culture you bring to the agency'. They also linked the use of 'values-based' selection with their desire to transform DJCS's organisational culture, commenting:
- I think that having a stronger focus on values was particularly important at the time because, you know, having a safe work environment was very important to me, particularly at a time when the Department was leading work on industrial manslaughter reforms and being really clear about what was unacceptable and what was acceptable workplace practice. ... Given the range of what I think are fairly toxic behaviours [within DJCS that were] allowed to go un-responded to, it was important to me that leaders came in with a very clear sense of ... what kind of culture we would be building.
478. Witnesses we interviewed, including experienced People and Culture staff, generally agreed it was an unconventional approach to candidate assessment within the VPS. Some candidates asserted the use of a 'values-based' approach, together with the relatively brief interviews, demonstrated a general lack of rigour within the selection process.
479. For example, one executive commented it was the 'most bizarre process' they had experienced in their long public service career, asserting that their interview only went for about 15 minutes. Describing it, they remarked:
- There were four questions, none of which related to any of the work that I'd ever done, or the Department in any way that I could determine. They were very values-based I suppose.
480. Another executive described the process as 'odd' and reflected:
- I think maybe three or four questions were asked. That's not a lot. Like, these are really senior roles, right? Dep Sec roles are really important roles. It just felt like it wasn't robust, that it wasn't really about teasing out the skills of the candidate. ... I had gone for other exec roles through exec search firms and that process is gruelling. ... They're long robust processes. It didn't feel like that.
481. In contrast, another candidate we interviewed observed that, although 'unusual', the values-based approach likely reflected the Secretary's desire to rapidly identify candidates they could 'work with'.
482. We did not find the values-based process was used as a 'cover' for predetermined outcomes. Nor did we find that successful candidates were unsuitable or unqualified for appointment to the DJCS Board. Yet the unconventional approach appeared to contribute to perceptions that processes were less than fair or transparent.

### *Pre-employment screening*

483. Reference checks are an integral feature of best practice candidate recruitment and selection. Both the DJCS EO Recruitment Process and DJCS Recruitment Policy for non-executive positions recommended at least two reference checks be conducted for preferred candidates.
484. We were unable to identify any records demonstrating reference checks were conducted for the DJCS Board appointees. Completed reference check forms were not located in DJCS's recruitment file, and records we reviewed did not indicate they were conducted.

**'We weren't asked for advice.  
No one asked us what good  
recruitment practice looked like.'**

People and Culture officer

485. At interview, an executive involved in the recruitment process said they recalled checking references for two candidates: an incumbent and an external candidate. The witness said they could not recall conducting checks for any of the other candidates - mostly individuals who had previously worked within DPC's Social Policy Group last overseen by the new DJCS Secretary. (One DJCS Board member told us they believed their referees were contacted; however, we were unable to find any records confirming this).

486. At interview, the Secretary said they could not specifically recall the reference check process. They said such checks would 'always' be conducted by the People and Culture team, 'unless there was a specific candidate we had significant concerns about'. However, senior DJCS People and Culture team members told us they were not substantially involved in the DJCS Board recruitment. For example, one commented:

Our involvement was probably not normal, wasn't the usual sort of HR support. That was happening in the Secretary's Office ... and people from HR were being pulled in and out to provide that sort of transactional - you know, the paperwork. We weren't asked for advice. No one asked us what good recruitment practice looked like.

487. IBAC has observed that pre-employment screening is 'an important step to validate a candidate's qualifications and previous work experience, check for conflicts of interest and, where appropriate, review criminal records and/or disciplinary history'. The VPSC's *VPS Executive Pre-Employment Screening Policy*, first issued in October 2018, ('VPS Pre-Employment Screening Policy') requires that VPS bodies ensure candidates complete a statutory declaration about their misconduct history as part of the recruitment process.
488. We were unable to locate any contemporaneous records demonstrating pre-employment criminal history checks were conducted for successful DJCS Board candidates. At interview, a senior People and Culture officer observed such checks were not always conducted for executives at the time - indicating the Board recruitment process was not, in this sense, unique.

489. In response to a summons, DJCS produced a system-generated spreadsheet representing that criminal history checks were undertaken for seven of nine Board members. The Department was unable to provide contemporaneous records of these checks, and they were not located in the recruitment or personnel files we reviewed. DJCS acknowledged that previous staff members may not have saved the relevant documents in the Department's record management system and that, in some cases, criminal history checks were possibly not undertaken.

490. We were also unable to identify any evidence that preferred candidates were required to complete a statutory declaration in accordance with the VPS Pre-Employment Screening Policy.

491. In response to a draft extract of this report, the Secretary said it was not necessary to seek advice on 'good recruitment practice' from DJCS's People and Culture team. They submitted 'the fact that no records were produced does not provide positive evidence that no reference checks were completed' – noting one candidate we interviewed believed their referees were contacted. They said they inherited 'record keeping problems' at DJCS and noted they were no longer employed in the VPS, so 'had no ability to direct efforts at locating documents for the investigation'.

492. The Secretary agreed reference checks were an 'integral feature of best practice candidate recruitment and selection' but drew an exception for candidates already employed within the VPS who had previously been subject to checks. They noted that many of the Board candidates would have undergone screening in other VPS roles. However, this allowance is not made in the VPS Pre-Employment Screening Policy, and IBAC has observed that 'recycling' VPS employees with questionable conduct histories is a key integrity risk – pointing to the need to always obtain information from past employers.

493. The Secretary submitted that they 'spoke to each of the previous Secretaries who employed Board of Management members to enquire about the candidate's values, work performance and whether there were any performance issues which needed to be addressed'. However, we could not locate any record of this in DJCS's recruitment file.

#### Conflict of interest management

494. We found insufficient consideration was given to the need to declare and manage conflicts of interest during the DJCS Board recruitment process.

495. We were unable to identify evidence that selection panel members completed conflict of interest declarations, despite evidence of socialisation between some panel members and shortlisted applicants while recruitment was underway (see Case study 12). We were also unable to locate records demonstrating panel members turned their mind to possible conflicts that could arise.

496. At interview, the Secretary – who was also the selection panel chair – said they could not recall any discussion among panel members about the possible need to complete conflict of interest declarations or canvassing the sort of interests requiring declaration. In response to a draft extract of this report, they said this did not necessarily mean the need to declare conflicts of interest was not discussed. They submitted that the absence of conflict of interest declarations also did not prove possible conflicts were not considered or declared.



### **Case study 12: Panel members and applicants socialise while recruitment underway**

We found evidence of some panel members socialising with candidates while DJCS Board applications were still being considered.

On 20 December 2018, coinciding with the final day of scheduled interviews, the Secretary and another selection panel member attended a Christmas lunch with some of their former DPC colleagues. The event was organised by the Secretary and invitees included three of the shortlisted candidates. Email records show that at the time of the event, appointments were not yet finalised. During interview, the Secretary told us the event was a ‘Christmas lunch to say thank you to all of those staff’. They said there ‘would not have been any kind of suggestion of any conversation about recruitment or processes’ among those present. They said ‘I’m very clear at ... being able to manage myself in terms of what’s appropriate and what’s not’.

Similarly, the other panel member told investigators they did not consider their attendance inappropriate, stating ‘I didn’t take that lens because it was a Christmas catch-up’. However, they acknowledged in hindsight ‘potentially the timing ... may not have been a good judgement call’ – noting it was ‘just a Christmas lunch’ which they did not organise.

We found the Secretary and the other panel member should have declared a perceived conflict of interest due to their socialisation with Board candidates at the lunch. Having regard to all the surrounding circumstances, an independent observer could reasonably have perceived their relationship with the candidates had the potential to influence their decisions as panel members.

Declaring a perceived conflict of interest would have been consistent with DJCS’s *Conflict of Interest Guideline: Recruitment* (‘DJCS COI Recruitment Guideline’), which required that employees engaging in recruitment activities avoid or declare a conflict of interest ‘when an applicant is ... a friend, associate or a work colleague who[m] you socialise with outside work’. Another option was to delay the event until the recruitment process had formally concluded.

In response to a draft extract of this report, the Secretary said any finding that they should have declared a perceived conflict of interest was ‘unsubstantiated by the evidence and goes well beyond the scope of the Parliamentary referral’. They contended the ‘Christmas lunch was clearly a work function to thank staff for their work over the previous 12 months’. They also said there was no evidence their decisions as a panel member were influenced by their attendance at the event. However, this is not relevant to whether a perceived conflict of interest existed.

*Existing professional relationships*

- 497. As noted above, many of the shortlisted candidates and successful applicants for DJCS Board positions had worked at DPC alongside selection panel members.
- 498. Of the shortlisted candidates, more than half worked at DPC during the same period as the Secretary (see Figures 22 and 23). This included six of the nine successful applicants. Five of these six had previously worked together in DPC's Social Policy Group, reporting to the Secretary (a DPC Deputy Secretary at the time). The other two selection panel members also held senior roles at DPC during the same period.
- 499. Senior public servants often have shared professional backgrounds and will commonly spend time working in a central agency such as DPC at some point in their career. Not all past working relationships give rise to a conflict of interest requiring declaration and management.
- 500. Nevertheless, the shared professional background of successful applicants and selection panel members clearly contributed to perceptions the DJCS Board recruitment process was not fair and transparent.

501. For example, one DJCS executive whose role was not impacted observed:

There was ... a joke around the Department that ... it was all DPC people coming across. ... There's a fine line ... with appointing people that you're comfortable with. ... But I guess it was the scale of it. ... I'm sure that the concern was that it was just sort of a patronage system, where people that [the Secretary had] known or worked with were coming across.

502. The perceived connection between many of the successful candidates and DPC also fuelled speculation about a coordinated 'DPC takeover' of DJCS. For example, at interview, one impacted executive commented:

I presume that DPC felt that they weren't maybe as in control of what was happening as what they wanted to be. So, one way of fixing that is you appoint a new Secretary, ... who's close to DPC, and then they then go and remove everybody in a leadership position and put only people in there who are loyal to them. So ... it just turned out that nearly everybody who got a role in the purge was from DPC, or had some link to DPC in some way, shape or form.

Figure 22: DJCS Board candidates previously employed at DPC anytime between 23 February 2015 and 28 November 2018

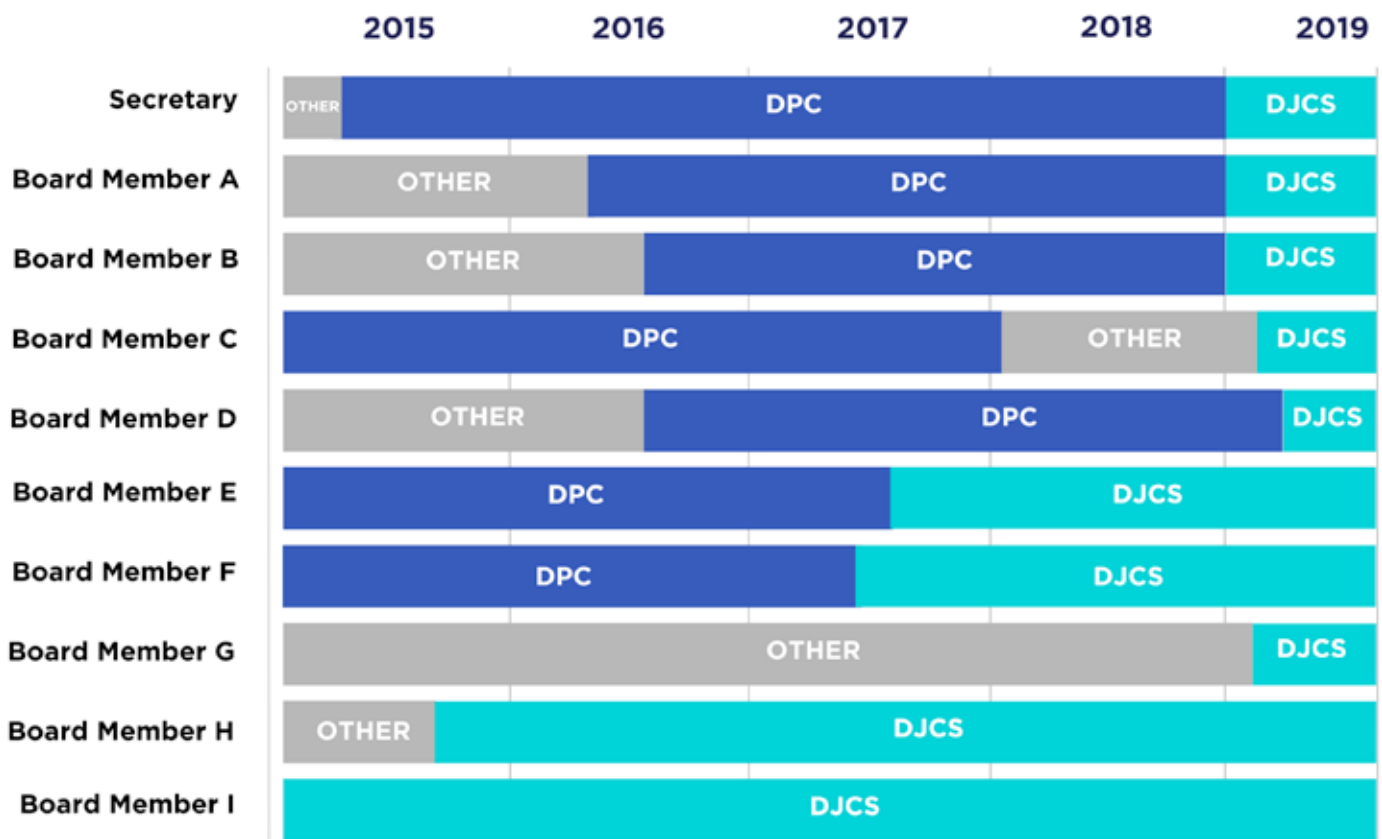
	Candidates (Total)	# Candidates (current or former DPC)	% Candidates (current or former DPC)
<b>Applied</b>	27	9	33%
<b>Shortlisted</b>	15	8	53%
<b>Appointed</b>	9	6	67%

Source: Victorian Ombudsman based on DJCS records



503. At the time, DJCS's policy framework was unclear about whether professional relationships between selection panel members and candidates required declaration and management. DJCS's *Conflict of Interest Policy* ('DJCS COI Policy') recommended a conflict of interest declaration be completed '[w]here you are on a selection panel and interview someone you know'. This was broadly consistent with the DJCS EO Recruitment Process, which required panel members to declare a 'professional or personal relationship' with a candidate.
504. In contrast, the DJCS COI Recruitment Guideline recommended panel members declare when a candidate was an 'associate or a work colleague who[m] you socialise with outside work'. It also noted 'recent and close working relationship[s]' could constitute a conflict of interest.
505. At the time, DJCS's policy framework also did not require panel members to confirm the absence of a conflict of interest by completing a routine declaration. In contrast, the VPSC's non-binding *Model Conflict of Interest Policy* ('VPSC Model COI Policy') recommends a declaration be completed during recruitment activities 'regardless of whether a conflict of interest is identified'. Both the DJCS COI Policy and the VPSC Model COI Policy acknowledge that recruitment is a 'high risk' area requiring increased vigilance.
506. Having regard to the ambiguity within DJCS's internal policies, we did not find that panel members were required to declare professional relationships with candidates during the DJCS Board recruitment process. However, completing a routine conflict of interest declaration would have been consistent with best practice – as reflected in the VPSC Model COI Policy – and would have promoted greater transparency.
507. During interview, the Secretary said their usual practice was to inform other selection panel members of any past professional association with a candidate. They observed that panel members' existing knowledge of the DJCS Board candidates 'would've been discussed in a fair amount of detail'. Of the possible need to declare professional relationships, the Secretary observed within the public service, 'everyone has worked with one another generally over the years' and it 'would be hard to know when that [requirement] starts or stops'.
508. In response to a draft extract of this report, the Secretary noted DPC employed about 1,000 public servants, adding that they (the Secretary) 'worked across various projects and in various roles' during their time there. They also said 'priority was given to continuity and experience', referring to the existing DJCS executives who were also appointed to the Board.

Figure 23: Employment timeline – inaugural DJCS Board



Source: Victorian Ombudsman based on DJCS, VPSC and open-source information. Note 2019 data depicts January to June only.

## Poor documentation

509. The VPS Standards, which are binding on all public sector bodies, require employment documentation to be 'sufficiently clear and comprehensive to make decisions transparent and capable of effective review'.
510. DJCS did not keep clear and comprehensive records of its Board selection process. In response to a summons for the relevant recruitment file, the Department was able to produce only:
- the recruitment advertisement and associated generic Deputy Secretary position description
  - copies of applications received
  - letters of offer and contracts issued to successful candidates.
511. DJCS was unable to produce any records relating to the candidate assessment process, for example, showing:
- which candidates were shortlisted, or how and when this process was conducted
  - the composition of the selection panel
  - which candidates were interviewed, and how and when interviews were conducted – including interview guides and selection panel notes demonstrating how candidates were assessed against the key selection criteria
  - evidence of reference checks undertaken as part of the selection process
  - how candidate rankings were determined, including the methodology followed and which candidates were ultimately recommended for appointment.
512. DJCS was also unable to produce any records showing how salaries were determined for successful applicants.
513. In the case of just one appointment, DJCS was able to produce an associated brief to the Secretary; however, this document did not include any rationale for the appointment or discussion of the appointee's performance during the selection process.
514. The absence of clear and comprehensive records of the selection process significantly impeded our investigation. For example, it was necessary to obtain and review staff email accounts to determine which candidates were shortlisted, by whom, and when interviews took place.
515. Within the VPS, it is customary for the hiring manager or chair of the selection panel to ensure that a selection report is prepared, explaining the process, including how shortlisted candidates were identified and assessed against the key selection criteria. Both the DJCS Recruitment Policy for non-executive appointments and DJCS EO Recruitment Process recommended preparing such a document for the People and Culture team.

516. Email records show a draft selection report was created by one of the selection panel members on 31 December 2018, more than a week after the composition of the new DJCS Board was announced. This document assigned each shortlisted applicant a ranking out of 10, and an attached candidate summary briefly assessed each candidate's interview performance without reference to any key selection criteria. The draft selection report was not signed by selection panel members, and we could not locate a finalised copy within DJCS's recruitment file or emails. As Case study 13 shows, the document and attached candidate summary also contained significant inaccuracies.
517. At interview, the Secretary said they were 'shocked' at the brevity of the draft selection report. They gave evidence it was their customary practice to take 'copious notes' of the selection process.
518. We found the DJCS recruitment file relating to the Board recruitment process did not comply with the VPS Standard that employment records be 'sufficiently clear and comprehensive to make decisions transparent and capable of effective review'.
519. In response to a draft extract of this report, the Secretary said this finding was 'made in the absence of evidence', asserting it was:
- illogical that a positive finding can be made that recruitment files and processes did not comply with the [VPS Standard], on the balance of probabilities, based on the absence of evidence.
520. The Secretary contended that the records provided to our investigation had to be incomplete, observing the 'fact that documents were created is a different fact to whether those documents can be located so long after the events'. However, we also could not locate these records within contemporaneous emails. In any case, compliance with the VPS Standard requires employment documentation to be retained and available for review, not just created.



### Case study 13: Misleading records about one executive appointment

Executive M was appointed to an executive position at DJCS around the same time as the Board recruitment process.

In response to a summons for Executive M's recruitment file, DJCS produced a copy of a letter of offer and contract, together with the list of DJCS Board applicants. The list did not include an application from Executive M. Email records indicate Executive M provided their resume to DJCS several days after their appointment had already been confirmed. Within minutes, a staff member in the Secretary's office emailed the People and Culture team a copy, stating:

I forgot to send this on to you. This was an application lodged directly with me for a [Board] role. [Executive M] was appointed to an alternative position. Can you please load on the backend of the e-rec system[?]

Executive M was subsequently added to a draft selection report relating to the DJCS Board recruitment process, where they were assigned an 'interview assessment' score. The attached candidate summary also purported to describe their performance at interview – representing that they were interviewed by the Secretary and another selection panel member.

Despite this, we were unable to locate evidence confirming Executive M was interviewed. Giving evidence, both the Secretary and the other panel member said they could not recall doing so. The Secretary explained Executive M was drawn to their attention by another Department Secretary. They told investigators they subsequently met with Executive M to discuss the latter's career aspirations and professional experience, before determining to directly appoint them to a role at DJCS.

Department Secretaries have the option to directly appoint executives without advertising the position. Hiring decisions must nevertheless comply with the public sector employment principles and VPS Standards. In this case, we were unable to locate a direct appointment form or associated Secretary briefing relating to the appointment. Neither the Secretary nor the other panel member were able to explain why the draft selection report represented that Executive M had been interviewed and assessed as part of the Board recruitment process. The other panel member said they also could not explain why the email to People and Culture represented that Executive M had applied for a Board role.

The draft selection report was not ultimately saved in DJCS's recruitment file, and we therefore did not conclude that records of the appointment were deliberately falsified. In response to a draft extract of this report, the Secretary 'strenuously denied' any suggestion they 'took part in any ... falsification of records'. They said there was insufficient evidence to conclude Executive M was not interviewed, and that they 'appropriately and reasonably relied on the People and Culture [team] to follow proper paperwork and procedures'.

We did not identify any evidence that Executive M was hired based on inappropriate partisan political considerations. We also did not identify any evidence Executive M was aware of the procedural issues relating to their appointment, and make no criticism of their actions or suitability for the role.

## **‘Spill’ of Executive Directors and Directors**

521. Following the recruitment of the new DJCS Board, the Secretary initiated a broader review of the Department’s executive structure, which led to the creation or revision of many roles.
522. Again, a ‘values-based’ bulk recruitment process was used. This time more than 50 DJCS vacancies were filled – collectively worth more than \$67 million over the full term of the contracts. A notable proportion of roles went to current or former DPC employees. This May 2019 recruitment process was overseen by the DJCS Board which, as noted earlier, largely comprised ex-DPC executives.
523. As in the case of the previous ‘spill’ of Deputy Secretary roles, this second bulk recruitment process saw many longstanding DJCS executives depart – either due to their roles being declared vacant, or due to termination of their contracts.
524. While it is a new Secretary’s prerogative to change their Department, including the executive leadership team, we heard the scale of change at DJCS across the two bulk recruitment processes was unprecedented. One witness described it as ‘seismic’, and another categorised it as ‘a complete shift of administration’, akin to ‘US-style, move them out and move the new ones in’.
525. The way these changes were made, combined with a continuing ‘trend’ of ex-DPC executives filling roles, further fuelled perceptions of a ‘DPC takeover’. As in the case of the DJCS Board recruitment process, we did not substantiate allegations of a coordinated ‘takeover’. However, we identified many of the same concerns about how the second bulk recruitment process was conducted as we did with the earlier Board process.

## **Rationale**

526. Following the establishment of its new Board, DJCS began a range of work to support the new Secretary’s reform agenda. This included the development of a Statement of Direction centred on a vision for a ‘justice and community safety system that works together to build a safer, fairer and stronger Victoria’.
527. Each DJCS Board member was tasked with reviewing their group’s executive structure, which led to the creation of new roles. The restructure also affected existing roles – ending some, and significantly changing others.
528. The Secretary explained at interview:
- All the Deputy Secretaries, they all went away and did audits, and tried to understand kind of what the needs were of each of their groups, what the talent mix was, what the gaps were in the skillsets, where we needed to have more resources depending on kind of what the Government’s priorities were. ... [They] went through really thorough work in relation to their structures, they consulted with all of their teams about their structures, they looked at issues of duplication, they looked at where areas needed more, for example, co-design work, or where they needed more consultation work, or where they needed more legislative skills given the body of work that might be happening in that branch.
529. Again, the Secretary pointed to ‘significant underperformances’ in the Department at the time, many of which they noted past Ombudsman investigations had highlighted – including in relation to Corrections, Youth Justice, Fines Victoria, Regulation and the Department’s relationship with the courts – adding, ‘we had gaps all over the place’.

530. A senior staff member involved in the recruitment explained at interview that because 'wholesale' change was required, a bulk process was seen as 'the best way to be able to move forward and ... settle the organisation as quickly as possible'.

531. DJCS Board members were conscious of the Secretary's desire to implement change at pace. One DJCS Board member recalled:

The Secretary wanted everyone to have their structures in place as quickly as possible to get the work underway. So it was, 'Okay, you're on board. Let's get going. Let's get your people in place. We've got a big agenda. This is our opportunity to make change, so get going', was basically the message.

532. The same witness recounted the proposed approach was 'presented to us Deputies as, "This is the process we're following and are you ... on board with the change?"'. The Board member noted they and other members were recent appointees and said they felt 'it was a matter for the leader to work out how quickly you can push an organisation to drive a change agenda'.

533. Another DJCS Board member we interviewed characterised the approach as a 'fairly bold way of dealing with some structural issues or some changes that the Secretary and the Board wanted to make'.

### Bulk recruitment process

534. As before, the recruitment process used to fill the new and changed executive roles diverged from conventionally accepted recruitment practices, including those set out in relevant DJCS policies and VPSC guidance.

### *Recruitment timeframe*

535. Recruitment for most of more than 50 Executive Director and Director positions was substantially completed within about three weeks, from advertisement of the vacancies to job offers being made. This contrasted with the DJCS EO Recruitment Process, which envisaged a six-to-eight-week timeframe for recruiting a single executive employee.

536. A senior People and Culture team member told investigators discussions about the process centred on 'how quickly [it] could be done with the least number of people involved'.

Figure 24: Advertisement text – DJCS multiple key leadership positions

### About the roles

DJCS is now recruiting senior leaders who will work together to deliver on key priorities of the Victorian Government and ministers. Together we will work towards a vision of a connected justice and community safety system, where we're working to build a safer, fairer and stronger Victoria.

We want leaders who possess strong change management capabilities to deliver on our transformation agenda, that achieves outcomes that benefit the community. You will create, shape and cultivate a contemporary and values-based workplace culture and champion behaviours such as collaboration, respect and integrity.

You will play a lead role within a business area to ensure the delivery of the justice and community safety portfolio. You will provide visible leadership to ensure positive service outcomes. We are recruiting to the areas in:

- **Communications**
- **Youth Justice Operations**
- **Corrections** (operations leadership, system planning and commercial services)
- **Innovation**
- **Aboriginal Affairs** (policy and strategy reform, governance, and innovation)
- **Regulation** (service delivery, policy design and policy implementation)
- **Corporate Services** (technology solutions, procurement, compliance, risk, assurance, change management, and human resources)
- **Governance** (governance, systems, design and public administration)
- **Legal** (legal advice, legislation development, governance)
- **Policy and Strategy** (policy implementation, policy development, strategy development, evaluation, data)
- **Regional Services** (policy and service delivery)
- **Infrastructure** (development, delivery and commercial)

### About you

We want leaders who have a comprehensive understanding of government and a proven track record in senior management.

You should also highly regard values such as Transparency and Engagement, Respect, Integrity, Collaboration, and Wellbeing.

Source: DJCS



537. Each stage of the recruitment process was condensed, including advertising of the roles, with applications open for just seven business days, from 8-16 May 2019.

538. DJCS received about 480 applications by the closing date. Members of the People and Culture team finished rapidly screening them that night, with some working into the early hours to complete the task, reportedly because 'the Secretary wanted the list by 7am the next morning'. DJCS Board members determined shortlists the next day, on 17 May, and began interviewing candidates the business day following. Several selection panels interviewed more than 60 candidates in a single week.

**'It just moved so quickly. And the ... [interviews] were short and sharp, quicker than we've ever seen, like 30 minutes. It was almost speed dating'.**

Selection panel member

539. Preferred candidates were matched to priority roles at a DJCS Board meeting on 27 May 2019, with some job offers going out that afternoon. An internal recruitment spreadsheet shows by the following day, 27 appointments had progressed to the 'offer' stage. Interviews for a small number of non-priority roles were conducted later in June, including for some vacancies assigned to external executive search firms.

540. At interview, the Secretary defended the pace of the process:

I wasn't on any panels for these processes. If an assertion has been made that things were done too quickly in the Department of Justice and Community Safety, I'll happily accept that. I would never want to be a public servant who is considered a ditherer, who didn't get things done, who didn't deliver. So absolutely, for anyone who is not used to running efficient processes, probably, that seems very short. But for people that do run good processes, it seems like best practice to me.

541. The Secretary added that in their experience, taking 'a long time to run processes' did not necessarily deliver better outcomes, observing:

We want to run efficient, fair, impartial processes. But I'm a long-term critic of public service practice which has allowed processes to go for far too long, that haven't delivered for the community. So my people, absolutely, would be in no doubt that I want things done well and quickly. But there does seem to be an inference constantly that getting things done efficiently and well and quickly is a problem.

#### *Candidate assessment*

542. As in the case of the DJCS Board recruitment, the process for Executive Director and Director positions used a relatively unconventional 'values-based' approach.

543. Candidates were not invited to apply for specific positions but were instead requested to nominate several preferred functional areas (for example, Policy and Strategy). They were not informed of key selection criteria, and many roles lacked position descriptions when advertised. Records show in some cases key accountabilities were not finalised by the time job offers were made.

544. Interviews lasted about 30 minutes and involved answering about four values-oriented questions. Records within DJCS's recruitment file did not clarify how candidate scores or rankings were determined.
545. At interview, a senior staff member involved in the recruitment acknowledged finalised position descriptions 'would be one option to sort of ensure everything's done in a particular way', but said 'in this instance, seeking interest for a range of suitable executives for the roles, based on the structures, is just a different approach'.
546. In contrast, other witnesses tended to put the absence of position descriptions and specific key selection criteria down to the short timeframe nominated by the DJCS Board. For example, a Board member noted the recruitment process was running 'while the design [was] still happening'. A senior People and Culture team member similarly described 'retrofitting' position descriptions 'along the way' and 'kind of building the plane as we were flying it'.
547. The focus on values at the perceived expense of subject matter knowledge or technical competencies elicited strong comment from many witnesses – including candidates, senior People and Culture officers and even selection panel members we interviewed.
548. For example, a senior People and Culture team member observed:
- My cynical response at the time was, well, we don't want them to have any technical understanding. We actually want them to come and talk about values, which was my cynicism about whether we were genuinely looking for the best operator, or someone who could spin the best line.
549. A selection panel member likewise said:
- I remember conversations ... where I just said, 'You've got to have capability or technical expertise, otherwise we're recruiting nice people, but not people who are a good fit for roles'.
550. In response to a draft extract of this report, the Secretary said they could not recall anyone raising these concerns with them at the time. We also noted their evidence (reflected earlier in this chapter) about the increased importance of leadership experience and candidate values when recruiting VPS executives. This view was endorsed by some other witnesses we interviewed. For example, one executive who obtained a role via a 'bulk' process commented:
- My view is that you don't necessarily need the executive to have the technical capability of a subject matter expert because [that] should live in the team. It's a 'nice to have' ... [But] for me, the suite of tools and skills that you need as an executive are different to the suite of tools and skills that you need as a technical expert providing deep technical advice.
- What you expect of your executives is the ability to put the technical advice in context. And probably most critically then ensure that the technical advice has enough context, both in its own environment and then across Government's broader landscape, to present a persuasive view to Government.
- Pre-employment screening*
551. As noted earlier in this report, reference checks are an integral feature of best practice candidate recruitment and selection. Both the DJCS EO Recruitment Process and DJCS Recruitment Policy for non-executive positions recommended at least two reference checks for preferred candidates.

Figure 25: Candidates for Executive Director and Director positions previously employed at DPC anytime between 23 February 2015 and 28 November 2018.

	Candidates (Total)	# Candidates (current or former DPC)	% Candidates (current or former DPC)
<b>Applied</b>	486	43	9%
<b>Shortlisted</b>	84	22	26%
<b>Appointed</b>	42	13	31%

Source: Victorian Ombudsman based on DJCS records. Excludes roles shortlisted by external recruitment firms

552. Records show DJCS conducted one reference check for each of the preferred candidates identified through the 2019 bulk recruitment process. Although an improvement on the preceding DJCS Board recruitment process, this was nevertheless short of best practice. A senior officer involved in the recruitment process acknowledged undertaking one reference check was not 'normal practice', observing, 'it was an abridged version to get to a timeline'.

553. Pre-employment statutory declarations were obtained for most successful candidates. However, we were unable to locate contemporaneous evidence that pre-employment criminal history checks were undertaken.

554. In response to a summons, DJCS produced a system-generated spreadsheet indicating criminal history checks were undertaken for about half of appointees. The Department noted that 'for some of those who did not have a police check, this was because they were current DJCS staff'. However, the Department's spreadsheet identified a mix of new and existing DJCS staff who reportedly lacked criminal history checks.

555. As with the earlier DJCS Board recruitment, the Department provided further possible explanations for why it was unable to locate some records, suggesting that former staff members may not have saved relevant documents on the DJCS record management system or that, in some cases, 'appropriate checks may not have been undertaken'.

#### Conflict of interest management

556. Many of the shortlisted and preferred candidates for Executive Director and Director positions had previously worked at DPC at the same time as DJCS Board members and other individuals who sat on selection panels (see Figure 25).

557. DJCS's recruitment file for the 2019 bulk recruitment process - spanning more than 80 candidate interviews - included just one conflict of interest declaration by a selection panel member. Through email records, we identified one other declaration.

558. Selection panel members we interviewed generally said they could not recall submitting conflict of interest declarations or what formal arrangements, if any, were put in place to document and manage professional relationships with candidates.
559. Witnesses differed on the requirement to submit conflict of interest declarations. For example, a senior officer familiar with hiring processes said panel members should 'declare conflicts of interest if they're interviewing someone that they know', even if this was just a 'working relationship':
- If you have a relationship, even ... a working relationship with an individual you should declare it ... whether you've just met once or whatever, you need to be up front, but that's quite difficult in the VPS [because] a lot of people know each other.
560. In contrast, a panel member said they would only complete a conflict of interest declaration where they had a friendship with a candidate, as opposed to a 'colleague relationship'. However, the panel member reflected that in hindsight, 'in terms of those final outcomes' of the bulk recruitment process, 'you can see the perceived conflict of interest'. At interview, the panel member queried whether consideration of potential conflicts was sufficiently embedded in the bulk recruitment process, noting the 'increased difficulty' of running 'so many panels'. They added it was 'something to reflect on' and 'certainly something [they] would take away' for future recruitment.
561. As in the case of the DJCS Board recruitment process, evidence we obtained indicated the shared professional background of some panel members and candidates contributed to perceptions the recruitment process was not fair and transparent. For example, one DJCS executive involved in the interview process remarked to investigators:
- If you're going to market for executives, go to market, do it properly. Don't just gloss over it, and then all of a sudden you find yourself having people that you go, 'Hang on, you've all worked with [the Secretary] in some way', or 'There's some relationship there'. So it felt deceptive. It felt like a process [that wouldn't deliver] the best outcome for the Department.
562. As noted earlier in this chapter, not all professional relationships give rise to a conflict of interest requiring declaration and management. Owing to unclear expectations within DJCS's policy framework, we did not find that panel members were required to declare professional relationships with candidates.
563. Nevertheless, completing a routine conflict of interest declaration would have been consistent with best practice – as reflected in the VPSC Model COI Policy – and would have promoted greater transparency.

## Poor documentation

564. We found DJCS did not keep clear and comprehensive records of the 2019 bulk executive recruitment process. In response to a summons for the relevant recruitment file, DJCS produced:

- PowerPoint slides detailing the proposed process before it began
- the recruitment advertisement and copies of applications received
- a list of dates and times for the first week of proposed interviews – without details of which candidates were shortlisted
- ‘batch’ briefs to the Secretary recommending the appointment of successful candidates, together with letters of offer and signed employment contracts. Each batch brief was accompanied by a spreadsheet identifying the proposed appointments, remuneration packages and contract start dates
- completed reference check forms and pre-employment statutory declarations for most successful candidates.

565. However, as in the case of the preceding Board process, DJCS was unable to produce any records relating to the assessment of applicants, for example, showing:

- which candidates were shortlisted, or how and when this process was conducted
- which candidates were interviewed, and how and when interviews were conducted – including interview guides and notes of the selection panel demonstrating how candidates were assessed against the key selection criteria

- how candidate rankings were determined, including the methodology followed and why specific candidates were ultimately recommended for appointment.

566. DJCS was also unable to produce any records showing how remuneration was determined for successful applicants.

567. As in the case of the DJCS Board process, we found it necessary to obtain and review staff email accounts to piece together details of the recruitment process, including who was interviewed.

568. Within emails, we located copies of internal recruitment spreadsheets which appeared to be working documents used by the People and Culture and Transformation teams to track progress. These spreadsheets included details of candidates interviewed and an overall assessment score, but nothing further about how candidates were recommended for particular roles. In some cases, the spreadsheets appeared to anticipate the outcome of appointment deliberations before all relevant candidates had been interviewed. Case study 14 provides one example.



## Case study 14: Executive identified as 'likely' appointee before other interviews completed

Executive N was appointed to an executive role in mid-2019 through the bulk recruitment process. Before this, they worked in DPC's Social Policy Group, previously headed by the new DJCS Secretary. In text messages exchanged one week before roles were advertised, the Secretary and a member of their office discussed plans to 'bring [Executive N] across' from DPC. In one message, the team member asked, '[s]hould this be through bulk recruitment?'. The Secretary responded, '[the] point was [Executive N] to come and act while recruitment happens'. Separate emails we obtained showed that days before applications opened, Executive N was already foreshadowing their departure from DPC. We did not identify any records indicating Executive N was ultimately appointed to DJCS in an acting capacity before the bulk recruitment process began. Instead, records indicated they applied for an executive position from DPC when roles were advertised.

Emails indicate Executive N was then interviewed by a selection panel. Less than an hour later, a member of the Secretary's office emailed the People and Culture team a spreadsheet identifying Executive N as the 'likely outcome' for the position they ultimately got. At the time, most other candidates shortlisted by the selection panel for roles in this category were yet to be interviewed. In a different internal working spreadsheet circulated three days later, Executive N was ranked fourth in the order of merit. Of the three higher-ranked candidates, two were offered comparable positions through the bulk recruitment process and the third was offered a different position in another part of the Department.

At interview, the Secretary said there was a pressing need to appoint somebody with Executive N's skillset to lead a team within DJCS. They recalled speaking with DPC's Secretary about the possibility of Executive N joining DJCS in an acting capacity but had 'no memory of what happened'. They said they were unable to comment on the internal working document identifying Executive N as the 'likely outcome' for the position, noting they were not involved in preparing it and had never seen it before. At interview, another executive involved in the recruitment process remembered the internal working document, which they believed was prepared by DJCS's People and Culture team. The witness noted the 'likely outcome' field was not intended to reflect a 'final decision' - describing the document as 'potentially someone's working notes'. They nevertheless acknowledged based on all of the documents, Executive N's appointment appeared somewhat predetermined, stating: 'You know, I understand why you can draw that conclusion'.

In response to a draft extract of this report, the Secretary said they objected to the 'assertion that the spreadsheets ... are evidence of final determinations of appointments prior to all interviews being included'. They said the spreadsheet identifying Executive N as the 'likely outcome' was a 'working document, being regularly updated as interviews progressed' and contended that the evidence did not demonstrate the appointment was effectively predetermined.

We did not identify any evidence that Executive N was hired based on inappropriate partisan political considerations. We also did not identify any evidence Executive N was aware of the procedural issues relating to their appointment, and make no criticism of their actions or suitability for the role.

569. We were unable to locate any evidence that selection reports were prepared for any of the 50-plus executive appointments resulting from the bulk recruitment process. At interview, a senior officer involved in the recruitment said these documents 'should have been' prepared, stating People and Culture were 'working hand in glove with the executives on it'.
570. The Secretary gave evidence they were not aware of the lack of documentation regarding appointment deliberations, but said as Secretary, they 'would expect to be both given a selection report, and the [candidate] background, and the CVs'. They queried whether it was a 'records management issue', suggesting the documents perhaps existed but could not be located.
571. We found that DJCS's recruitment file relating to the 2019 bulk hiring was not compliant with the VPS Standard that employment records be 'sufficiently clear and comprehensive to make decisions transparent and capable of effective review'. Case study 15 illustrates the difficulty we had in understanding why some appointments were made.
572. In response to a draft extract of this report, the Secretary said they were 'unable to comment' on this issue, noting the passage of time and their own role in the process, 'usually being to sign off on recommended appointments'. They submitted:
- the absence of documentary evidence, in circumstances where witnesses gave oral evidence that they believed documentary evidence would have existed, is not evidence that there [were], in fact, no proper records being kept by DJCS.



## Case study 15: Insufficient record of why Executive Director got job after ranking last of several interviewees

Executive O was appointed to an Executive Director position through the bulk recruitment process. Before this, they worked at DPC within the Social Policy Group, previously headed by the new DJCS Secretary.

DJCS's recruitment file included a copy of Executive O's application, one reference check form and a pre-employment statutory declaration, but did not include any documents evidencing how and why they were assessed as suitable for an Executive Director position.

Through email records, we clarified a selection panel interviewed Executive O. Three days later, their name was included in a candidate summary emailed to DJCS Board members. Within this document Executive O was ranked last in order of merit among the candidates interviewed for Executive Director positions in a particular area, with a score of 60 per cent. They were assigned a score of 80 per cent for a less senior Director position.

A few days later, Executive O's name was included in an internal working document, tagged with a prompt to consider if there was a suitable position for them. The following week, DJCS obtained a positive reference about Executive O and their name was subsequently included in a 'batch' brief to the Secretary recommending their appointment to the Executive Director position. The brief did not explain how their suitability for the position was assessed.

Records we reviewed showed several people involved in the bulk recruitment process were familiar with Executive O from past employment at DPC. For example, in an email about upcoming panel interviews, a DJCS Deputy Secretary said they were 'keen to interview' Executive O for an Executive Director position within their group 'noting that [another DJCS Deputy Secretary] and I both know [them] so we might need to mix up the panel'. In reply, a senior DJCS People and Culture team member observed, '[the Secretary] confirmed today that [they] would like [Executive O] interviewed tomorrow'. (The Secretary was not on the selection panel which interviewed Executive O).

We did not identify any evidence that Executive O was hired based on inappropriate partisan political considerations. We also did not identify any evidence Executive O was aware of the procedural issues relating to their appointment, and make no criticism of their actions or suitability for the role.



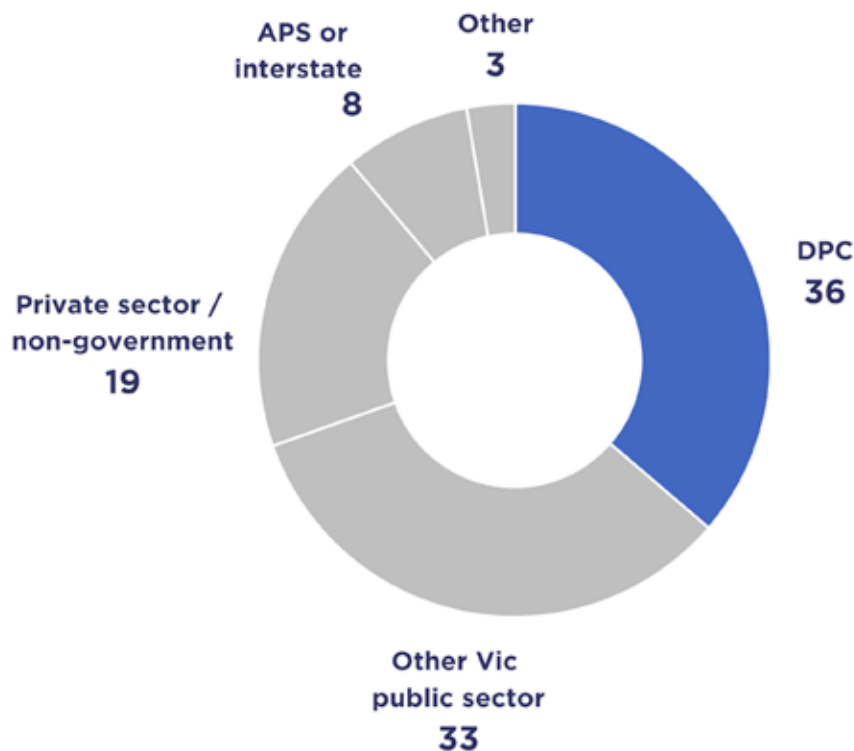
## Why did some people perceive politicisation at DJCS?

573. The two bulk recruitment processes initiated by the Secretary significantly changed DJCS's executive leadership team. More than 60 executives were appointed through these processes, with about 30 departing DJCS during the same period – more than half of these because their contracts were terminated.
574. The Secretary's evidence was these changes were essential to their transformation plans to address the 'litany' of longstanding performance and cultural issues at the Department.
575. Most other executives we interviewed recognised there was room for improvement at the Department, with one observing DJCS was 'getting a reputation for one too many problems'.
576. Noting this, witnesses said some change at the executive level following the arrival of a new Secretary was 'not surprising'. However, the way the changes occurred, including their scale and speed, evidently led to some unintended consequences.
577. Of most relevance was the resulting perception of a 'DPC takeover' of DJCS, with overtones of politicisation. We did not substantiate allegations of a coordinated 'takeover'. However, witness evidence demonstrated a level of concern about how the bulk recruitment activities undertaken following the 2018 State election may have impacted the Department's independence.
578. Witnesses also expressed concern about:
- a damaged organisational culture, which many said was characterised by fear and a reluctance to speak up
  - reduced confidence in merit selection.

## Perceived DPC 'takeover'

579. Many witnesses we interviewed commented on the volume of executives appointed to DJCS from DPC in the period following the 2018 State election.
580. Some witnesses said this high proportion of DPC appointees was not entirely surprising or problematic, noting the common inclination of VPS employees to follow if their leader moved elsewhere. For example, one witness described the Secretary as a 'big reformer' and a 'visionary focused on the community', observing, 'that's what got people wanting to work for [them], including me'.
581. Others highlighted the invaluable experience derived from working in DPC that could be beneficial to other Departments, with one witness describing it as 'the learning ground if you're wanting to become an executive'.
582. Yet several witnesses characterised the volume of DPC staff who transitioned across to DJCS over a relatively short period as 'unprecedented'. One senior executive referred to a 'diaspora from DPC', attributing this to an 'apparent lack of process' in recruitment decisions. They said this was 'widely ... and openly talked about' at the time.
583. We heard DPC staff would commonly move to other public sector bodies to assist with the implementation of MoG changes. Yet the volume of DPC staff who moved to DJCS following the 2018 election was particularly notable.

Figure 26: Number of new executives appointed to DJCS from 29 November 2018 to 30 June 2021, by source agency



Source: Victorian Ombudsman based on DJCS, VPSC and open-source information

584. The consecutive bulk recruitment processes resulted in the appointment of 20 individuals to executive positions at DJCS who had previously worked at DPC at various stages between February 2015 and late November 2018, when the new DJCS Secretary was there. More than a third (42 per cent) of all new executives who joined DJCS were sourced directly from DPC.

585. More broadly, executive employment data reported to the VPSC indicates 36 of 99 new executives who joined DJCS between 29 November 2018 and 30 June 2021 were sourced directly from DPC – more than from all other Victorian public sector bodies combined. Figure 26 shows the source of new executives appointed during this period.

586. We heard the high proportion of ex-DPC staff appointed to executive roles at DJCS was a key contributor to perceptions DPC was exerting greater control over an important line Department. One former DJCS executive we interviewed spoke about the perceived prioritisation of ‘trusted’ candidates who had worked at DPC:

Where they could appoint someone from DPC, I think they would, but if they didn't have anybody, then they would look externally, and see if they could get the best skillset probably. But that wasn't the first consideration. The first consideration was, ‘Have you worked in DPC? Do I know you? Do I trust you?’ And that was the feeling amongst the staff, that that was ... happening, it was a DPC takeover of Justice, and they wanted to have that control over what the Department was doing, I presume.

587. We heard the proximity of the bulk recruitment activities to the 2018 State election also contributed to these perceptions. Some witnesses said they were aware of a sentiment before the election – whether accurate or otherwise – that DJCS was viewed as insufficiently responsive to its Ministerial stakeholders and broader Government priorities.
588. It was also apparent the rationale for the successive ‘spills’ of executive positions was not initially clear to senior staff within the Department – even among those responsible for implementing the new structure. This in turn appeared to fuel speculation about the motivations underpinning the changes to DJCS’s leadership team, including the reasons for ‘exiting’ some executives who held ‘deep’ operational knowledge in their specialty areas. For example, one executive speculated that ‘a view [had] been formed at possibly Government level’ that DJCS ‘needed to be shaken out’.
589. One DJCS Board member we interviewed acknowledged that, while the rationale for reform was clear to the Board, messaging around these changes became ‘diluted’ as it dispersed through DJCS. They conceded this contributed to negative perceptions:
- I think it [the rationale] would have been [clear] for [the Board]. I think the further away you get from that, the message might have been diluted which is why some people would have then [had] a perception that it’s a DPC takeover or it’s, you know, ‘jobs for mates’. ... I think that’s the challenge too with a really complex big Department.
590. At interview, the Secretary dismissed the suggestion that the large-scale recruitment of DPC officers to DJCS executive positions was planned before the 2018 election. They noted their appointment as DJCS Secretary was, to them, unanticipated. They also dismissed any inference that DJCS’s independence was compromised by ex-DPC staff, describing this as a ‘convenient narrative for people [who] were not performing’. They cautioned against assumptions that ‘people who work in DPC are people that just do the bidding of the Premier and the government of the day’, adding:
- I think again, the narrative goes to the very point of the problem of the culture in the Department at the time, is that they didn’t see it as their role to be attuned to the government of the day, to deliver the government’s agenda. That is our role in the public service.
591. One Board member observed that people were appointed to executive roles at DJCS based on the ‘reform directions’ and ‘the types of skills needed’, which were commonly held by senior staff at DPC. The witness said they could understand why the appointments were perceived as a ‘DPC takeover’ but said they did not believe there was ‘any central direction’ to ‘recruit people from the centre’, adding ‘I don’t think that’s what was intended’.
592. This aligned with the former DPC Secretary’s evidence at interview. They said there was ‘no deliberate attempt’ to filter DPC executives into key line Departments such as DJCS following the election. They told us they only learnt of the ‘flow of DPC executive personnel’ to DJCS and DJPR after the fact, adding that they had ‘limited visibility’ over the restructures within these Departments. They said with hindsight they should have taken a ‘greater interest’ in the bulk recruitment processes, acknowledging the ‘bias towards action’ at both Departments had potential consequences for morale and integrity.

## Willingness to provide frank and fearless advice

593. We heard the restructure and associated executive ‘spills’ damaged DJCS’s organisational culture in the eyes of some. Many witnesses described a pervading ‘culture of fear’ during this period, in which several well-regarded, longstanding executives were ‘exited’ – in some cases, very abruptly.

594. Several witnesses said this arose from the ‘brutality’ of the ‘spills’, which one former executive described as ‘traumatic’ for staff. Another executive recalled a colleague describing the environment as one where ‘people just disappear overnight and you don’t even know what happened to them’.

595. A number of witnesses gave evidence the mass departures tested staff members’ willingness to give frank and impartial internal advice. For example, one executive said, ‘you got out of the lift with some level of trepidation’, commenting:

It creates an environment of fear in the senior ranks ... without being too flippant ... in the senior ranks of the organisation and in the middle management ranks, there was an apprehension around the place that if you weren’t part of the new breed, then either your cards were marked, or you weren’t going anywhere in a hurry.

596. Referring to the organisational climate after the DJCS Board recruitment process, another former executive told investigators:

I think people were quite shocked, and then quite fearful about if it could happen to them ... I think there was that, and like a general sadness. A lot of these people [who departed] were pretty well respected ... I think that really impacted culture, where people became very fearful of speaking up, they became very nervous about who they could trust, and not trust.

...

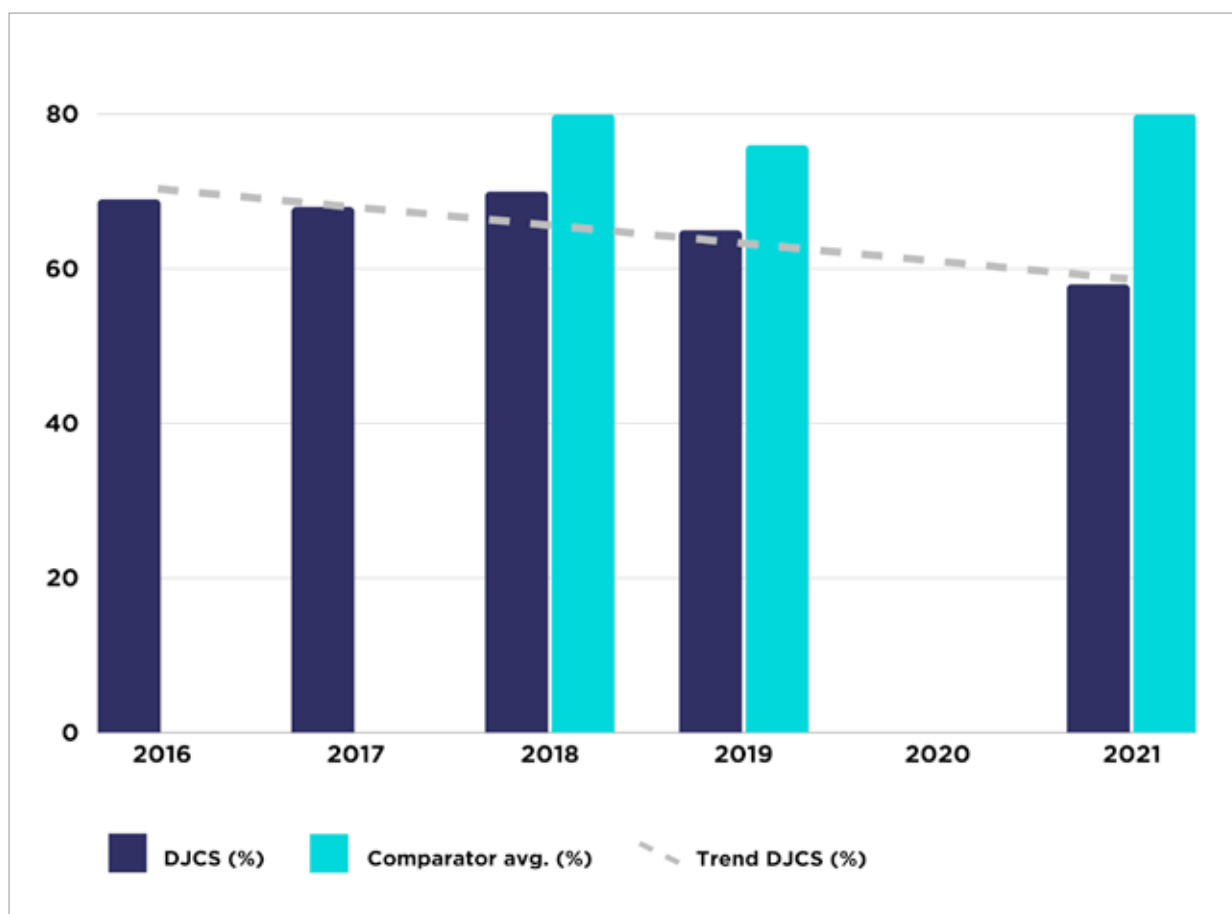
It was a culture of fear, people were scared, and nervous, and not sure what was going to happen. And they had in their own mind, you know, made their reasons for why these executives were exited, they’d also heard a lot from people. And I think most people felt it was because they had spoken up, and therefore, they wouldn’t, because they ... might be next, and that’s how people felt generally.

597. We heard this reluctance to speak up was even felt within the DJCS Board. At interview, one Board member remarked that while the new Secretary was ‘very good at giving frank advice to Ministers’, it was ‘hard to give [the Secretary] advice’, adding, ‘[if they] didn’t like hearing some things, [they’d] tell you pretty quickly’. The Board member said they did not think this ‘necessarily developed a culture where it was easy to [report] when things were going wrong’, explaining that the Secretary sometimes ‘didn’t want to hear that, so you just had to try and fix it’.

598. Results from the VPSC’s annual People Matter Survey are consistent with these anecdotal accounts. They show a general decline in key metrics during the period following the 2018 State election. For the most part, this trend did not appear to be reflected within comparator organisations (typically other departments).

599. For example, Figure 27 shows in 2021 just 58 per cent of participating DJCS employees felt people in their workgroup were ‘honest, open and transparent in their dealings’, down from 70 per cent in mid-2018.

Figure 27: DJCS People Matter Survey respondents who agreed with the proposition, 'People in my workgroup are honest, open and transparent in their dealings'



Source: Victorian Ombudsman based on VPSC data. (Note comparators were not available prior to 2018 and DJCS did not participate in the 2020 survey. Linear trendline excludes 2020.)

600. At interview, the Secretary acknowledged it was 'human nature when you see that kind of change happening within a department ... [to] think about what the implications are for you', but described concerns raised with us about a 'culture of fear' and reluctance to provide frank and impartial advice as a 'convenient theory and narrative for people to have'. They expressed doubt about whether the Department was providing frank advice before their appointment as Secretary, asserting there was 'no evidence to support that'.

601. This evidence was contested by the Department's previous Secretary. In response to a draft extract of this report, they recalled there was 'an abundance of evidence that the Department provided frank and fearless advice' under their leadership, citing the advice it gave successive Governments on the impacts of proposed criminal justice reforms on the corrections system as an example.

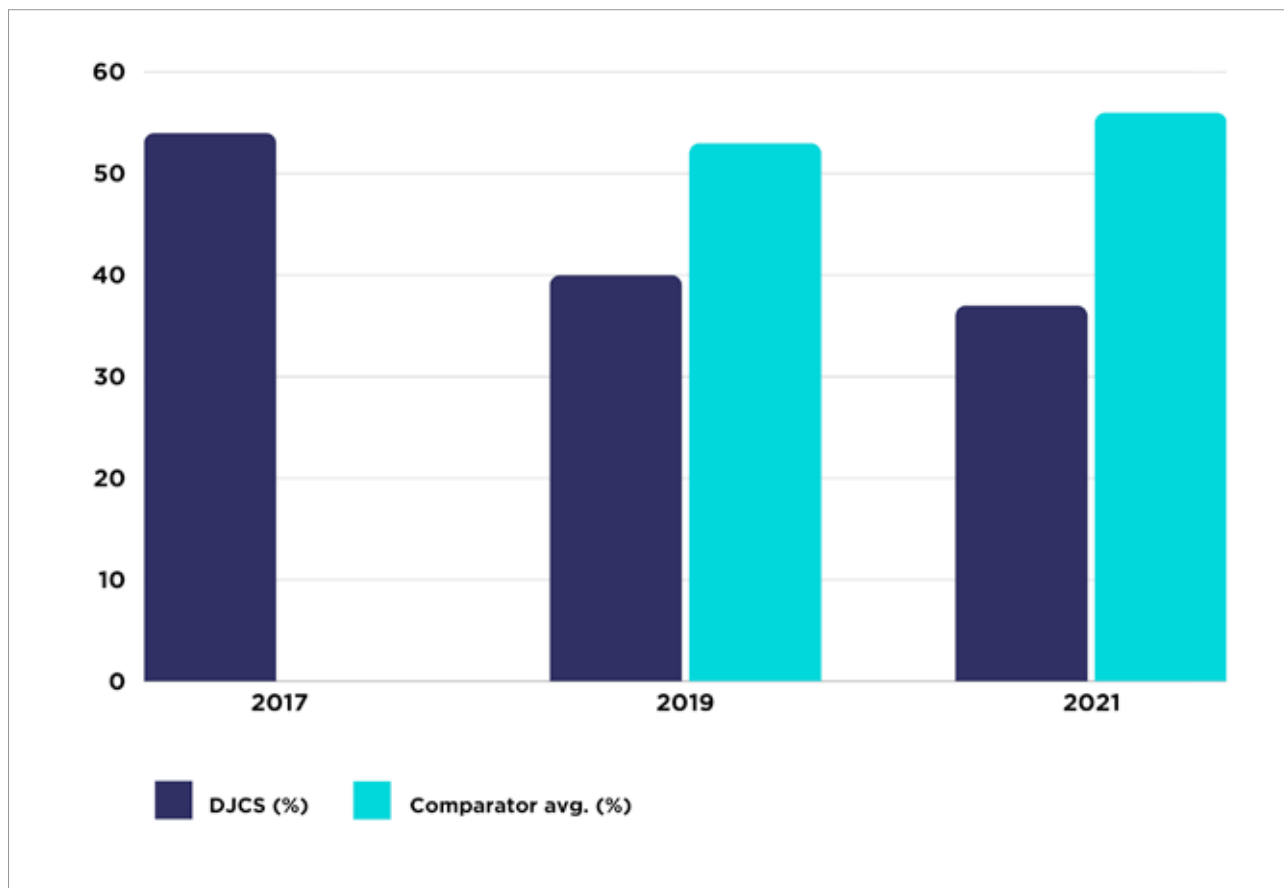
602. Contrary to some witnesses' views, the new DJCS Secretary referred to the 'frankness' and 'candour' they believed they always received from their direct reports, adding that none were 'wallflowers', and that this was 'testament to the quality of the Deputy Secretaries' they appointed.

603. In response to a draft extract of this report, the Secretary maintained there was not a 'culture of fear' within DJCS during their period there. They said any link between the People Matter Survey results and the evidence we received from witnesses was 'tenuous at best'.
604. The Secretary spoke of the calibre of candidates appointed under their leadership and pointed to the significant support DJCS provided to the Government during the COVID-19 pandemic. This view was echoed by another Board member we interviewed, who observed 'without the capability that a lot of those people had brought into the organisation, we would have found it harder to be as responsive as we were'.

### Reduced confidence in merit selection

605. As outlined earlier in this chapter, we identified a lack of rigour surrounding the two bulk executive recruitment processes.
606. Many witnesses we interviewed doubted their fundamental fairness, as well as their broader adherence to the public sector employment principles identified in the Public Administration Act.
607. At interview, three senior People and Culture team members involved in the processes independently expressed the view they were not merit-based or transparent. For example, one witness described the approach to the 2019 bulk recruitment process as 'not objective', 'not fair', 'not transparent' and 'not in line with the VPS [employment] principles in reality', adding that while one could 'argue there was definitely a process that was run', they did not 'think you could call it best practice'.
608. We heard that the 'apparent lack of process' for the bulk executive appointments triggered discussion across the VPS at the time, with one witness observing:
- I had colleagues ... who were just sort of saying that, 'Aren't we better than this?', ... 'Shouldn't there be a proper process?', and other people that I'd sort of bump into at meetings or things like that, [who] would just basically say, 'I can't believe this is going on'.
609. Some witnesses even said the perceived lack of transparency and departure from conventional recruitment practices led them to conclude some outcomes were predetermined. For example, one DJCS executive told us there was 'no way' their interview 'played any role at all' in the candidate assessment process. The witness described the interview as 'for [the sake of] appearance', commenting:
- I suspect that the process was set up to engineer an outcome, which was a complete change of people who [the Secretary] wanted in those roles. ... The interview didn't matter; it was all a 'fait accompli' who they wanted in the particular roles ... And that was to effect change, I suppose, in terms of the culture of the organisation, and that's what they wanted to do.
610. Similarly, a senior People and Culture team member spoke of their perception that DJCS Board recruitment was conducted 'for the illusion that it was a proper process because there were existing people in the jobs', describing it as 'a bit of frosting on top', because it was 'less likely for a grievance to be lodged if everyone got the chance to at least put their hat in the ring'.

Figure 28: DJCS People Matter Survey respondents who agreed with the proposition, 'In my organisation, employees are recruited on the basis of merit' (2017) / 'My organisation makes fair recruitment and promotion decisions, based on merit' (2019-21)



Source: Victorian Ombudsman based on VPSC data; participants were not asked about merit selection in the 2018 survey, comparators were not available prior to 2018 and DJCS did not participate in the 2020 survey. (Note change in question and unavailability of 2018 and 2020 data.)

611. The bulk recruitment activities appear to have coincided with a broader loss of confidence in merit selection processes within DJCS. In 2021, just 37 per cent of DJCS employees who responded to the VPSC's People Matter Survey agreed the Department made 'fair recruitment and promotion decisions, based on merit'. In contrast, 54 per cent of DJCS employees who participated in the 2017 survey agreed that staff were 'recruited on the basis of merit'. Figure 28 shows DJCS's performance against these similar metrics between 2017 and 2021. (Notably, the 2019 survey period directly coincided with the second bulk recruitment process).
612. At interview, the Secretary defended the bulk executive recruitment processes, maintaining they were transparent and merit-based, and broadly consistent with the Public Administration Act and relevant DJCS policy.
613. DJCS Board members we interviewed generally shared this sentiment, while acknowledging potential 'lessons' and opportunities for improvement based on the way the second bulk recruitment process was conducted.

## What we found

614. We did not find evidence of a coordinated 'DPC takeover' of DJCS. Nor did we identify evidence that appointments were influenced by inappropriate political considerations.
615. There was nevertheless a high level of concern about hiring and firing at DJCS following the 2018 Victorian State election. Many current and former staff we spoke with – mostly senior executives and human resources specialists – speculated about possible partisan motivations underpinning this 'cleanout'.
616. Perceptions of politicisation are highly corrosive to the independence of the public service. We heard the rapid transformation of DJCS's executive workforce caused some staff to reconsider the risks of providing frank and impartial advice to Government. Even senior People and Culture staff told us they no longer trusted that positions were being awarded on merit – a key tenet of a career public service.
617. We sought to identify why some insiders came to view the successive executive 'spills' at DJCS as politicised. The (now former) Secretary was dismissive of these concerns, describing them as a 'convenient narrative for people [who] ... were not performing their roles'. But in our view, fear of politicisation was a predictable reaction to the way the large-scale leadership changes were rolled out: in the wake of a State election, rapidly, and without sufficient regard for conventional VPS recruitment and selection procedures.
618. Departures from best practice recruitment undermined confidence in the fairness and transparency of hiring decisions. This, together with poor record-keeping, naturally contributed to speculation and distrust. Furthering this was the clear preference for central agency experience – with its perceived closeness to the political arm of Government – and the unceremonious departure of longstanding staff with deep corporate knowledge.
619. Recruitment of DJCS's new Board appeared to represent 'process for the sake of process'. Positions were advertised and filled within just nine business days. Five successful candidates had worked in DPC's Social Policy Group, previously overseen by the new DJCS Secretary, who was also the panel chair. Records were not kept of the shortlisting, interview or candidate selection processes. Two members of the selection panel – itself comprised entirely of current and former DPC executives – attended an undeclared Christmas event with some candidates while recruitment was underway. No selection report was ever finalised, and for reasons that nobody could satisfactorily explain, the only draft described an interview that apparently never took place.
620. Although in some respects more robust, the later 2019 'spill and fill' of executives shared many of the same shortcomings. We considered a fair-minded observer would justifiably question the fairness and transparency of both processes.



621. Perceptions of unfair recruitment are damaging and enduring – both to the public service and those appointed. We do not doubt the integrity and commitment of the many people appointed to DJCS through the recruitment we examined. But the concerns we identified reinforce the importance of following robust and transparent merit selection procedures.
622. Commitment to merit selection is more challenging when, as in this case, there are obvious flaws in organisational policy. People involved in the recruitment were themselves unsure of which policies applied at the time, resulting in processes that fell distinctly short of acceptable practice.
623. The VPS Standards, which are binding on all Departments, state that employment records must be ‘sufficiently clear and comprehensive to make decisions transparent and capable of effective review’. We found DJCS also did not have appropriate procedures in place to meet this requirement.
624. A key rationale for the ‘spill and fill’ of DJCS executives was the perceived need for the Department to become more responsive to the priorities of the political arm of Government. This is widely recognised as a desirable quality, and ‘responsiveness’ is first among the Victorian public sector values.
625. Yet in the Westminster tradition, responsiveness must be balanced against the public service’s requirement to remain independent and apolitical – and be seen as such. How to balance these principles can be open to different views. Evidence suggests there was a well-grounded fear within some areas of DJCS that the balance, in this case, was not appropriately struck.

## **The Secretary's response**

In their response to a draft extract of this report, the (now former) Secretary disputed many of the shortcomings we identified in DJCS's executive hiring practices.

They also contended these issues were not relevant to the matter referred by the Legislative Council or within our power to investigate – because they related to employment decisions that were not politicised.

We disagreed with this position. In examining whether hiring was politicised, we found it necessary to compare the processes at DJCS with conventionally accepted public service recruitment procedures. Our report explains how we did this, and what we found. This is consistent with the Ombudsman's function to promote improved public sector administration – in this case, by demonstrating how damaging perceptions of politicisation can emerge, and how they can possibly be avoided.

In their response, the Secretary emphasised there was no politicisation at DJCS during their time there, and consequently no reforms were needed to hiring practices. They expressed concern that perceptions shared with us were not provided in good faith, and observed it was challenging to rebut evidence from deidentified sources. They noted some DJCS executives were terminated for good reason, and questioned the credibility of witnesses who did not seek external review of employment decisions at the time. (Two of 19 witnesses interviewed were let go during the bulk recruitment activities, and data we obtained from the VPSC indicates executives almost never seek external review of employment decisions.)

The Secretary submitted that values-based recruitment was used to address the 'significant cultural problems' at DJCS, and did not mean candidates were not selected based on merit. They also said it was 'appropriate and regular' to directly appoint senior staff within the VPS. They strongly objected to the suggestion that staff at DJCS were reluctant to provide frank advice after the bulk recruitment activities.

The Secretary also expressed concern that elevating negative perceptions of the bulk recruitment activities overshadowed the many achievements secured during their period there – which they attributed to their transformation of DJCS's culture, and the talented people they appointed. These included significant Youth Justice, Corrections and Fines reforms, protecting prisoners from COVID-19, significantly improved FOI responsiveness and delivering a statewide strategy to reduce prison populations and reoffending. They said negative perceptions did not prove there were problems with the hiring processes.

During the investigation, the Secretary requested that the Ombudsman and Deputy Ombudsman recuse themselves from examining their conduct and actions due to alleged apprehended bias. The Ombudsman declined this request, and the Secretary reiterated their concerns about apprehended bias in their response to a draft extract of this report.

## **DJCS's response**

In response to a draft extract of this report, DJCS said it took the matters discussed in this chapter very seriously.

While noting the overall finding that appointments were not politicised, the Department expressed concern about the possibility of reputational harm to its staff arising from publication of this report. DJCS noted the 'extraordinary commitment' of these people, as well as their 'dedication to improving outcomes for the Victorian community'.

DJCS's current Secretary said they were continuing to build a supportive and constructive internal culture, and were 'promoting the highest levels of accountability and transparency in the public sector during this further period of change'.

# Executive hiring at the Department of Jobs, Precincts and Regions

## What we investigated

626. We received 12 submissions about senior hiring at DJPR following the 2018 Victorian election, querying perceived shortcomings in recruitment for key executive roles when the Department was first formed, and as it evolved.
627. Submissions claimed many opportunities went to a select 'inner circle', and were not in keeping with the public sector employment principles. As in the case of DJCS (see the previous section of this chapter), an overlapping concern was the appointment of multiple former DPC staff to senior positions – allegedly leading to perceptions of a central agency 'takeover'.
628. It was further suggested DJPR executives and staff with DPC or ministerial office backgrounds or other political connections might be receiving favourable treatment – directly hired or rapidly promoted for roles without going through an open and advertised process.
629. We focused on four aspects of executive hiring at DJPR:
- formation of DJPR's first Executive Board ('DJPR Board') in late 2018, after the former Department of Economic Development, Jobs, Transport and Resources ('DEDJTR') was split
  - creation of DJPR Associate Deputy Secretary roles in October 2020
  - expansion of the DJPR Board in around February 2022
  - use of direct appointments for key roles.
630. We gathered and reviewed recruitment files, emails, and phone records, and interviewed 17 witnesses including a mix of current and former DJPR executives, People and Culture staff and members of DJPR's inaugural Board.

## Who we interviewed

We interviewed a cross-section of witnesses familiar with the senior hiring at DJPR:

- three senior People and Culture team members
- another seven executives or senior officers appointed to DEDJTR before it was split to form DJPR
- six people appointed to DJPR during the events described in this chapter, including the then Secretary
- the former DPC Secretary

Figure 29: DJPR senior hiring, at a glance

**Our investigation**

- 12** submissions about DJPR
- 1.1 million** records reviewed
- 17** witness interviews

**DJPR senior hiring**

- 45** executives appointed in first seven months:
  - 21** roles not advertised
  - 17** from DPC, including 4 automatic transfers

**10** business days to hire inaugural DJPR Board:

- 4** business day advertising period
- 30** minute interviews

**21** direct appointments:

- 5** with no briefs
- 3** with no recorded rationale
- 6** with same generic reason

**\$44+ million** in contracts awarded (full term)

**8** Deputy Secretaries appointed to DJPR Board, including:

- 3** previous transfers from DPC



Source: Victorian Ombudsman

## About DJPR

631. DJPR was a new department created as part of MoG changes to the Victorian public sector and ministerial portfolios after the 2018 election.
632. The changes saw DEDJTR effectively split into two new departments – the Department of Transport, and DJPR.
633. DJPR picked up many of the responsibilities of DEDJTR – except transport – along with some extras including sports, recreation and precincts-related functions from other Departments.
634. Though DJPR's creation was announced on 29 November 2018, the changes did not formally take effect until 1 January 2019. (For ease of reference, this report sometimes uses 'DJPR' when referring to activities at DEDJTR during this transition phase.)
635. DJPR's central focus was growing the state economy by helping to create and maintain jobs. During the periods most relevant to this investigation, DJPR was accountable to as many as 11 separate Ministers spanning up to 17 portfolios.
636. The Department was a primary response agency during the 2020 bushfires and the COVID-19 pandemic, responsible for establishing and delivering grants programs to support affected businesses and workers. This saw its workload and budget significantly increase.
637. Following the 2022 State election, DJPR was renamed the Department of Jobs, Skills, Industry and Regions.

## DJPR's Secretary

638. On 29 November 2018 a new Acting Secretary was appointed to DEDJTR pending the MoG changes taking effect. They then became DJPR's inaugural Secretary on 1 January 2019.
639. Immediately before their promotion, they were DPC's Deputy Secretary, Economic Policy and State Productivity where, among other things, they were responsible for coordinating strategic policy advice to the Premier on economic development, infrastructure, and the resources sector.

## Appointments we examined

640. The DJPR Secretary played an important role in shaping the new Department's executive structure. We examined:
  - the appointment of a small cohort of former DPC colleagues to assist with the initial transition from DEDJTR
  - the formation of a DJPR Board involving a rapid 'bulk recruitment' process
  - the direct appointment of 21 executives, including nine from DPC and two from ministerial offices
  - the creation of Associate Deputy Secretary positions to help with extra work DJPR undertook in response to the COVID-19 pandemic
  - further Deputy Secretary appointments to an expanded DJPR Board in early 2022.

## Policies and procedures we considered

In examining relevant appointments, we considered VPS-wide requirements and guidance relating to executive recruitment, including the VPS Executive Handbook. We also considered internal DJPR policies and procedures.

In response to a summons, DJPR was unable to produce a dedicated executive recruitment policy in place before January 2021. (In response to a draft extract of this report, the then DJPR Secretary noted DJPR was a new Department, and that it took time to develop its policies and frameworks.) We therefore made no findings about whether recruitment activities in 2019 and 2020 complied with DJPR policy. Instead, we assessed them against the VPS Standards.

In early 2021 DJPR developed a *Recruitment and Selection Policy* ('DJPR Recruitment Policy'). We assessed executive appointments after January 2021 against its requirements.

### Initial transfer of DPC staff

641. Soon after their appointment, the new Secretary facilitated the transfer and appointment of some executives to assist with the transition from DEDJTR and the establishment of DJPR.

642. Three early executive appointees to the new DJPR Office of the Secretary came directly from DPC, where they had previously reported to the new DJPR Secretary. (One of these would likely have transferred to DJPR in any case, as part of MoG changes.) A fourth executive who transferred across from another Department had also previously worked for the new DJPR Secretary at DPC.

643. As occurred at DJCS, the new Secretary's initial staff selections at DJPR drew comment. Witnesses we interviewed said these appointments seeded early fears of a possible 'DPC takeover'. For example, one witness observed 'it wasn't just the Secretary who came from DPC, it was [their] entire office'.

'They [former DPC staff] kind of came over as a job lot.'

Former executive

644. We heard these perceptions – which carried overtones of politicisation because of the perceived proximity of DPC to the political arm of Government – grew with subsequent recruitment activity. One executive recalled sensing a 'general anxiety around it being a takeover by DPC', and another said DPC staff had seemed to come over 'as a job lot'. Some witnesses speculated staff were transferred from DPC to allow them to apply for DJPR Board roles, which were only open to internal candidates.

645. As noted earlier, it is not unusual for a new Secretary to 'bring across' a small cohort of staff. The (now former) Secretary gave evidence their predecessor's office had 'basically been dissolved' and on being appointed as Acting Secretary to DEDJTR, they had asked to 'loan' three DPC staff to help them establish DJPR.

## Establishment of DJPR Board

646. Within about a week of being appointed, the Secretary initiated a DJPR Board recruitment process to form the new Department's leadership team.
647. This ran somewhat in parallel with the DJCS Board recruitment discussed earlier in this chapter. As noted there, while some clear similarities existed between these processes, we did not identify evidence of direct coordination between the two Secretaries. DJPR's Secretary emphatically denied any co-ordination with DJCS before starting in the role, noting they had 'no idea' they were to be appointed or that DJPR would even be created, and adding that while DJCS was in the same building, they 'genuinely didn't know what [DJCS] were up to'.
648. Unlike the 'spill and fill' of Deputy Secretaries at DJCS, DJPR's status as a new Department meant its Board was incomplete when the new Secretary arrived - with some senior DEDJTR executives having departed before the election, and others moving to the newly formed Department of Transport as part of the split.
649. An external consultancy firm run by individuals with interstate public service experience was engaged to assist with selecting the DJPR Board. The Secretary explained this was because they wanted an experienced outside perspective 'completely free of Victorian politics and personalities', and to avoid a situation where those running the recruitment might also be potential applicants.

## Recruitment timeframe

650. On Friday 7 December 2018, the Secretary announced an Expression of Interest ('EOI') process for the DJPR Board, telling staff they were committed to starting 2019 with 'key leadership roles in place, so we'll be moving quickly on this'.
651. Applications closed three business days later, at noon Wednesday 12 December. From 26 applicants, 11 were selected for interview. The consultants began reference checks for shortlisted and some non-shortlisted candidates ahead of interviews on 17 and 18 December.
652. By 20 December, eight people had been appointed as substantive Deputy Secretaries or to equivalent positions - including three of the initial Office of the Secretary hires with DPC backgrounds.
653. As in the case of the DJCS Board, the tight timeline was needed to minimise disruption and was in line with a VPS-wide post-election transition plan endorsed by the Victorian Secretaries Board. It was nevertheless much faster than ordinary VPS executive recruitment.
654. At interview, the Secretary explained their rationale for speed was to offer people some certainty:
- I wanted to move so people could have comfort ahead of Christmas. And I know it was ambitious but I thought that was the lesser of two evils.
655. The pace of recruitment was evident in records we reviewed. For example, seven minutes after applications technically closed, the person tasked with receiving them was asked for four specific candidate packs 'ASAP'. Witnesses were unable to account for why these four applications were specifically and urgently requested. The four candidates were subsequently interviewed and appointed to DJPR Board positions.



656. Another example involved the rushed transfer of an executive from another Department in time to qualify for the DJPR Board process, which was only open to internal applicants. A former DEDJTR officer recalled being told to finalise transfer paperwork before the EOI process began. Emails between other staff showed efforts to get the individual 'included in the EOI process ... as a matter of urgency'. Once transferred, the individual was permitted to submit a late application, interviewed and also appointed to the Board. (In response to a draft extract of this report, the Secretary emphasised this individual was hired based on relevant experience relating to DJPR's platforms and portfolios).
657. At interview, the Secretary was adamant the make-up of the DJPR Board was not predetermined:
- Did I have in my head musings all the way through from the moment I was appointed? Yes. ... So had I scratched people's names around? Yep. Did it look anything like the final list? Not really.
658. The Secretary said they remembered 'some names being on the shortlist that really surprised me that I didn't think would express interest', and had felt 'really, really torn about a few of the people on it'. They noted 'that could only have happened after the shortlist closed because I didn't know that these people were applying'.

#### Candidate assessment

659. Announcing the EOI process, the Secretary indicated they were applying a 'values-lens' to Board composition. As with the DJCS Board process, key selection criteria and specific position descriptions were not provided, and applicants effectively applied for a generic DJPR Deputy Secretary-level position.

660. Candidates were required to submit a resume and a two-page cover letter demonstrating achievements against VPS values and leadership, and to complete online psychometric testing.
661. Those shortlisted were interviewed for about 20-30 minutes by a panel comprising two Director-level staff and a consultant. A former DJPR officer observed it was 'absolutely unprecedented' to involve subordinate officers on a selection panel for a Deputy Secretary.
662. As happened at DJCS, the unconventional values-based approach caused some at DJPR to question whether the assessment and selection of appointees was independent and rigorous. Some at DJPR also queried whether the process was being used as a 'cover' for predetermined outcomes.
663. Specific position descriptions were not prepared despite the widely varying focus and responsibilities of the roles, which ranged from running the Department's Corporate Services group, to coordinating strategic planning for precincts and suburbs, or to strengthening the State's tourism and events economy. This left some wondering how candidates could be 'credibly' recruited. For example, one executive said it was a fundamental aspect of public sector employment to have position descriptions which articulated particular skills and generic competencies:

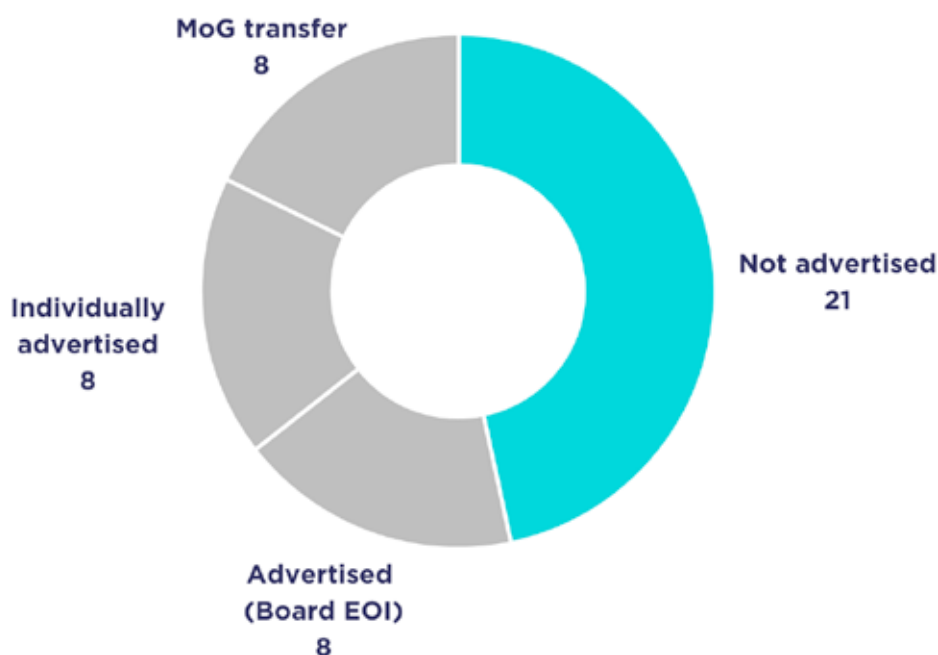
How can you possibly ensure that you're aligning those resources to the area of priority in terms of the delivery of a government service or program if you aren't recruiting people who have got the skills to run that service or program?

664. In response to a draft extract of this report, the Secretary noted DJPR was a new Department and submitted it was 'not possible' for position descriptions to have been created in such limited time.
665. At interview, the Secretary said 'values and behaviours' were critical to them when assessing candidates but clarified they were not the sole focus:
- You were not going to be on my Executive Board unless you could exhibit the values and behaviours that I wanted, but you needed expertise to be able to manage a portfolio area.
666. A DJPR Board selection report prepared following interviews indicated candidates were also assessed against capabilities and expertise expected of a Deputy Secretary. The selection report, prepared by the three interview panel members, included commentary on each candidate's leadership and senior experience, values and personal qualities, and vision for the DJPR Board.
667. Reference checks were conducted, including for several unsuccessful candidates, as well as some pre-employment screening checks, although we could not locate evidence that preferred candidates were required to complete statutory declarations in line with the VPS Pre-Employment Screening Policy.
668. The available evidence does not indicate that the values-based process was used as a 'cover' for predetermined outcomes. Nor does it support a conclusion that successful candidates were either unsuitable or otherwise not qualified for appointment to the DJPR Board. Yet like at DJCS, it appeared to contribute to perceptions that processes were less than fair or transparent.

## Direct appointments

669. One of the ways in which hiring at DJPR after the 2018 election differed from DJCS was the significant use of direct appointments.
670. DJPR was a new Department, and although it inherited many staff and responsibilities from DEDJTR, there was a clear need to recruit – sometimes rapidly – to fill vacancies arising from the MoG changes. While some executive roles were advertised, many were not.
671. Twenty-one – or almost half – of executive appointments at DJPR during the period covering the wind-down of DEDJTR and the first six months of DJPR were not advertised (see Figure 30). Instead, candidates were directly appointed to roles, sometimes with minimal paperwork.
672. The significant use of direct appointments during this period attracted comment in submissions and during interviews. Some executives told us they felt not enough regard was paid to the merit selection principle – given roles in the VPS should usually be advertised to a wide pool of applicants. One witness recalled they 'pretty much got a phone call to say, "You need to get a contract. Employ this person".'
673. Another witness elaborated:
- Especially during the transition period, we often received calls from the Office of the Secretary advising to prepare a brief appointing someone with not much detail and required to onboard them fast. These briefs were generally very short with generic details outlining the machinery of government change announcement and the urgent need to appoint to support the Government's priorities.

Figure 30: Number of DJPR executive appointments advertised between 29 November 2018 and 30 June 2019



Source: Victorian Ombudsman based on DJPR records

674. In response to a draft extract of this report, the Secretary submitted these observations were incorrect and unverified. However, we considered they were consistent with recruitment files and emails we reviewed.

675. Multiple witnesses commented on the shared background of many of those directly appointed. Nine came from central agency DPC or a related portfolio entity, and another two had most recently worked as ministerial staffers.

676. One former executive recalled that former DPC staff were given desks and positions after they arrived. At interview, another former executive – themselves an arrival from DPC – recalled there were ‘a lot of faces from DPC’. At one stage they expressed concern in an email about directly appointing an ex-DPC staffer because they were uncomfortable at an emerging perception ‘that there’s no one from DEDJTR in the Secretary’s office’.

#### Rationale

677. Department Secretaries have discretion to directly appoint executives. Recognising this, many VPS bodies have adopted policies allowing use of direct appointments in exceptional circumstances, including during rapid organisational change or to secure specialised skills.

678. However, if over-used or not properly explained and justified at the time, direct appointments can also lead to an erosion of the merit selection principle and contribute to perceptions of favouritism or patronage. For this reason it is important they comply with the VPS Standards, which require that all employment processes be fair and transparent, and properly documented.

679. At interview, the Secretary said they used direct appointments 'sparingly' and would only directly appoint if it was a case of 'the barn's on fire and we need an extra fireman to put it out'. They elaborated:

Every single one of them has a completely different set of context and rationale for why I did what I did in the context of four and a half thousand staff and a couple of hundred Executive Officers and a turnover of about 15 per cent at that EO level.

680. They explained they used the method to recruit highly talented people with particular skillsets, and referred to several direct hires as 'exceptional'. They said it was their ordinary expectation that 'if somebody came in on a short-term appointment, they had to then go through a longer-term process' to remain in the role.

681. A senior DJPR executive agreed with the suggestion that some of the direct appointees were known quantities and reflected that '[the Secretary] tends to pick high performers if [they] can, [they'll] take people with really great skills and experience'. The same executive considered the Secretary's desire for DJPR to be 'up and running on 1 January' drove the use of direct appointments.

**'[The Secretary] tends to pick high performers if [they] can, [they'll] take people with really great skills and experience.'**

Senior DJPR executive

682. Another former executive explained their understanding of the rationale as:

Getting on with working on the things that [the Secretary] thought was important - bringing people in to get on with the priorities.

683. We accepted the need to quickly get DJPR up and running meant it was not always practical to advertise some roles. But contrary to the Secretary's recollection, we found many of the people directly appointed were given long-term contracts from the outset, or subsequently received further contracts without undergoing an open and advertised process. For example, seven of the nine people who arrived from DPC were immediately given four- or five-year terms.

#### Poor documentation

684. Documents we examined relating to the 21 direct appointments were not always sufficiently clear and comprehensive. For example:

- in five cases, DJPR was unable to find any associated appointment briefs
- in three cases, the briefs existed but did not explain the appointment rationale
- in six cases, the briefs used a variation of the same generic reason to justify the appointment: 'Given [candidate]'s experience it is considered advertising the position would not yield a more suitable candidate'.

685. Case studies 16 and 17 provide contrasting examples of processes followed for individuals initially directly appointed to a position at DJPR.
686. We did not identify evidence indicating the direct appointments we reviewed were influenced by inappropriate partisan political considerations. Nor did we identify evidence showing the direct appointees were not capable of performing their roles.
687. However, the documentary and witness evidence obtained indicated a lack of transparency and rigour in many cases. In total, we found about a dozen recruitment files lacked enough detail to comply with the VPS Standard that employment records be ‘sufficiently clear and comprehensive to make decisions capable of effective review’.



### **Case study 16: Direct appointee has to compete to obtain further roles**

Shortly after DJPR was established, Executive P was directly appointed to an Executive Director level role for six months. They had previously worked at DPC for several years, and had more than a decade of public sector experience.

The relevant brief to the Secretary included a clear justification for the direct appointment: the scope of the role was being reviewed following the MoG changes, and somebody was needed to fill it for several months until this was complete. The briefing also included a detailed breakdown of Executive P’s senior public service experience, linking their skills to those required for the role. Records were kept of the appointment process, including a position description, criminal history checks, probity forms and a contract including specified duties.

Later, Executive P’s contract was extended six months. Shortly after this, the role was advertised, and they applied. Interviews were conducted and reference checks completed. Executive P was the successful candidate and, like before, the resulting contract included a detailed list of duties.

Executive P was eventually assigned higher duties to assist with DJPR’s COVID-19 response. After several months, the higher duties role was advertised. Again, Executive P was required to interview, performed well, and was reappointed. References were checked once more, and the contract was amended to reflect their new role.



### **Case study 17: Direct appointee obtains multiple contracts – including as Deputy Secretary – without an open and advertised process**

One submission we received referred to Executive Q’s direct appointment to a DJPR Deputy Secretary position.

Executive Q began at DJPR in mid-2019 via direct appointment to a five-year senior executive role. The brief requesting Secretary authorisation comprised only a cover page and did not explain why a direct appointment was necessary or appropriate. At interview, the Secretary told investigators Executive Q was hired to work on a highly sensitive project, and records were not detailed because of this.

Executive Q subsequently left DJPR for a consultancy role, before rejoining the Department as a Deputy Secretary on a new, five-year contract valued at over \$1 million. (This was consistent with the standard Deputy Secretary salary level.) Under ‘Duties’, their contract said only ‘TBC’. DJPR was unable to find a brief explaining Executive Q’s reappointment from the private sector, or why the Deputy Secretary position was not advertised. At interview, the Secretary explained Executive Q had been ‘lost to the public service’ and they had recruited them ‘back in’.

Executive Q was later offered a different Deputy Secretary role, again on a five-year contract valued at over \$1 million. We did not identify any records indicating this role was advertised either.

In all, we found no evidence indicating Executive Q was required to undergo an open and advertised recruitment process for any of the senior roles they held at DJPR.

In response to a draft extract of this report, Executive Q said they participated in an open and advertised selection process for a senior role at another Department shortly before they first joined DJPR. They explained that although unsuccessful, they were nevertheless assessed as suitable for the position, and that they were then asked to work on the DJPR project at an equivalent level. They noted their re-appointment to DJPR came at the height of the Department’s significant COVID-19 response, which ‘dictated a range of decisions and arrangements needing to be made rapidly to support the community’.

We did not identify any evidence indicating Executive Q was hired based on inappropriate partisan political considerations, and we make no criticism of their actions or suitability for their roles. At interview, the Secretary described them as ‘an excellent public servant’ and, in response to a draft extract of this report, emphasised their performance was ‘outstanding’ and deserving of their remuneration. Other witnesses similarly reflected that Executive Q was likely hired for their strong capabilities, noting they brought ‘useful’ central agency experience.

## Associate Deputy Secretary appointments

688. A further set of appointments to DJPR also attracted commentary in submissions and from witnesses. This involved the promotion of several people to Associate Deputy Secretary roles in late 2020.

### Rationale

689. The COVID-19 pandemic substantially disrupted the ordinary operations of DJPR, significantly increasing its workload and budget. It was one of the primary agencies coordinating the Victorian Government's response, including administering various COVID-19 support funds and grant programs for pandemic-affected businesses.

690. To manage this additional work while providing business-as-usual services and administration, the Government implemented Associate Secretary and Associate Deputy Secretary designations.

691. One Associate Secretary took on the responsibilities at DJPR from April 2020. In late October 2020, the Secretary announced six Associate Deputy Secretary positions would also be created at DJPR. Two were filled immediately, without an open and advertised process. This was described as necessary to address 'the significant increase in ministerial priorities' in those areas. Both direct appointees had been at DJPR for some time and participated in competitive processes to obtain their existing positions.

### Selection process

692. The remaining four Associate Deputy Secretary positions were to be filled by an EOI process, with applications closing 12 November 2020. Four DJPR executives were appointed to act in the relevant roles pending that recruitment process.

693. The four Associate Deputy Secretary positions advertised were for specific areas at DJPR spanning quite different subjects. As with the DJPR Board roles, separate position descriptions were not prepared and applicants were not asked to apply for a specific area, with successful candidates to be assigned to one of the four roles 'based on individual skills, experiences and qualities'.

694. Fifteen people applied, with seven shortlisted for interview – the four acting incumbents, two other DJPR officers and one external VPS officer.

695. On 13 November, the panel chair and members of DJPR's Executive Services team discussed interview questions directed at five key selection criteria for the roles and inviting applicants to explain which Associate Deputy Secretary position interested them.

696. Interviews with the DJPR candidates were completed on 16 and 17 November. The external candidate was interviewed on 20 November. Contracts were awarded to successful candidates over February and March 2021. The appointments did not involve a substantive promotion, but included a salary loading for higher duties.

697. The four successful candidates were the same executives already acting in the corresponding roles. All joined DJPR in the months after the new Secretary started – three via direct appointment.

## Poor documentation

698. The selection report format differed from the usual DJPR template, which typically includes a matrix recording each interviewee's score out of five against each key selection criteria. In this case, each candidate received a score out of 20. No explanation was given about how these scores were derived, or why the maximum was 20 when interview preparations indicated candidates would be asked five questions (ie for a maximum 25 points). The report included a short commentary about the four successful candidates and no discussion of others. DJPR was unable to find appointment briefs relating to the contracts awarded.
699. At interview, the panel chair acknowledged the apparent 'irregularity' in the selection report. They said some documents appeared to have been left out of the recruitment file, including interview notes and the usual scoring matrix, and noted the recruitment took place during the emergency management phase of the COVID-19 pandemic:
- In the middle of a State crisis and a State-declared disaster and having an extraordinary workload ... it may be that some records were not kept as perfectly as they should be.
700. We did not identify evidence indicating the appointment of the Associate Deputy Secretaries was influenced by inappropriate partisan political considerations, or that the outcomes were a foregone conclusion. The EOI process was completed quickly, in circumstances where DJPR had a pressing need to make the appointments.
701. However, records regarding this recruitment round invited questions about how the selection panel arrived at its decisions. The selection report was a marked departure from the template used in other DJPR recruitment processes we examined – although we accepted this did not mean interview scores were manufactured or that candidates were not assessed based on individual merit.
702. We found the DJPR recruitment file relating to the Associate Deputy Secretary appointments did not comply with the VPS Standard that employment records be 'sufficiently clear and comprehensive to make decisions transparent and capable of effective review'.
703. In response to a draft extract of this report, the panel chair submitted the absence of usual records did not mean they were never created, and emphatically denied that interview scores were based on anything other than the usual scoring approach. They also contended there was insufficient basis to conclude the VPS Standard was not met.
704. Also responding to a draft extract of this report, the Secretary noted the Associate Deputy Secretary positions were awarded at-level, and that the process was checked-off by senior People and Culture staff.



## Further DJPR Board appointments

705. Suggestions of a favoured cohort also featured in submissions we received about an expansion of the DJPR Board, involving the appointment of six new Deputy Secretaries. Most were unveiled to DJPR staff in February 2022 without the roles ever having been advertised, nor an open and advertised process undertaken. (A seventh role was previously added to DJPR's Board in October 2021, but was filled through an open and advertised process.)
706. We did not identify evidence of politicisation in relation to these appointments. However, as with appointments discussed in preceding pages, the surrounding circumstances and how appointments were communicated generated concerns among some DJPR staff, and for investigators.

### Rationale

707. The Secretary began discussing a possible restructure of the DJPR Board in about August 2021.
708. At interview, the Secretary explained they considered DJPR needed a 'reset' as Victoria transitioned out of the emergency management phase of the COVID-19 pandemic:

We'd been destabilised since COVID. So COVID changed priorities obviously and it changed the shape of roles. Some portfolios had increased in prominence, some had diminished. Employment, for example, had gone from a \$5 million portfolio to a \$500 million portfolio. It was very clear to me once we moved out of that crisis phase of leadership that we needed a reset, and I didn't want to do small resets.

709. Other witnesses agreed on the need to rebalance DJPR following the COVID-19 pandemic, but also nominated the Secretary's strong focus on the delivery of business-as-usual functions and election commitments ahead of the forthcoming November 2022 State election as a possible driver for the changes.
710. One executive recalled feeling:
- a sense of the imperative of what [the Secretary] wanted to deliver in the final year ahead of an election brought [them] to make that decision that [they] just wanted to put trusted people into those roles and get on with it as opposed to [running a longer] process.

### Use of direct appointments

711. During this period, the DJPR Recruitment Policy applied to recruitment and selection processes in relation to ongoing, fixed term and casual employment for both VPS-level staff and executives.
712. The policy required all vacancies longer than six months (including for executive roles) to be advertised via the VPS Jobs and Skills Exchange, with some exceptions. In the case of a restructure, candidates could be sourced from internal job matching and EOI processes limited to the affected groups.
713. We found the six Deputy Secretary direct appointments did not comply with the DJPR Recruitment Policy because:
- they were not advertised on the Jobs and Skills Exchange
  - they did not otherwise result from job matching or an internal EOI process.

714. The announcement of the extra Deputy Secretaries came amid a career consultation process for other DJPR executives (see Case study 18), and against a backdrop of broader DJPR workforce reductions, which fed into existing perceptions of favouritism among some DJPR staff. One executive reflected that the combination of these events felt:
- almost as if there was an attempt to have the veneer of opportunity and transparency, then behind the scenes, basically everybody just got selected regardless, with private conversations.
715. Several of the elevated staff had been directly appointed to DJPR after the new Secretary started, and some had also received Associate Deputy Secretary roles through the recruitment round described earlier in this chapter (see Case study 19).



## Case study 18: Career consultation forms ‘cover’ for new Board reveal

Records show the Secretary spent time considering how the DJPR Board would be reorganised, and who would likely be appointed.

We obtained a draft organisation chart they hand-sketched adding new Deputy Secretary positions, with staff initials earmarked against each. This draft chart was emailed to the Department’s Communications team on 1 February 2022 with the subject line ‘[the Secretary’s] new draft org structure’. The email noted ‘[the Secretary will] probably play around with it over the next couple of days’.

That same day, the Secretary sent an email to senior Corporate and Communications staff outlining a proposed ‘career conversation’ process, in which DJPR’s Executive Directors and Directors would be invited to ‘discuss their aspirations for the future’. The Secretary noted the Department’s People and Culture team would need to review the process, and that they wanted staff to ‘feel valued’ throughout.

Towards the end of the email, the Secretary observed: ‘I would like this process to run over two weeks and form cover for the reveal of a new Board structure on 12 Feb.’

Three weeks later, while the career conversations were underway, the Secretary formally announced the Board ‘reset’, including five of the six new Deputy Secretary appointments. All but two of the people whose initials were listed in the hand-sketched diagram were included at Deputy Secretary level in the finalised organisation structure. (The remaining two left the Department in the intervening period.) As with the Associate Deputy Secretary recruitment round, most of the elevated people originally joined DJPR via direct appointment – although some had since undergone an open and advertised process for other roles.

At interview, the Secretary said it was ‘clumsy language’ when they used the phrase ‘form cover’ to describe the purpose of the career conversation process:

I should’ve said, ‘I would like to run a process to underpin the generation of the Board structure on 12th of February’.

They said the career conversations were not supposed to be limited to prospective Board appointees:

It was about engaging [DJPR’s Executive Directors and Directors] and me understanding them better. ... I could’ve done better in drafting that email, clearly.

Shown the hand-sketched diagram, they said it was just one of many iterations they produced over time, observing: ‘I produced I think 20 or 30 versions of that in various stages’. (We did not locate any other versions of the chart.)

In response to a draft extract of this report, the Secretary submitted the hand-sketched diagram did not demonstrate appointments to the expanded DJPR Board were pre-determined.



## Case study 19: Executive directly appointed to four out of five DJPR roles

One submission we received expressed concern about Executive R's direct appointment to a Deputy Secretary position in early 2022.

Executive R joined DJPR in 2019, directly appointed to a Director-level role for six months. Before this, they had variously worked in the non-government and private sectors, and at DPC.

At interview, the Secretary explained the initial appointment was based on Executive R's specific experience and credentials, observing they had 'performed some pretty important roles' and would bring a much-needed mindset to the Department. They insisted they never gave any assurance to Executive R 'of an ongoing job', and recalled telling them, 'It's a six-month contract but I'd love you to come in and embed [your way of thinking]'.

When the initial six-month contract ended, Executive R was directly appointed to a newly created Director-level role on the same remuneration for a three-year term. The appointment form said their expertise justified not running a recruitment process and 'advertising the position would not yield a more suitable candidate'.

Six months later, Executive R was offered an Executive Director role. Their contract was amended to reflect the new title and increased pay. DJPR was unable to provide any documentation indicating the role was advertised or otherwise open to a competitive process.

In November 2020, Executive R was appointed to act in a newly created Associate Deputy Secretary position pending the EOI process discussed earlier in this chapter. Of seven people interviewed, they were one of four successful applicants. They performed the new duties on top of their substantive role.

In February 2022, Executive R was directly appointed to a newly created Deputy Secretary role on a nearly four-year contract. This promotion meant within three years, Executive R was elevated from Director to Deputy Secretary – directly appointed to four roles and participating in an open and advertised recruitment process for just one. In response to a draft extract of this report, the Secretary said Executive R was an 'exceptional' employee who drove significant reform while at the Department.

We did not identify any evidence indicating Executive R was hired or promoted based on inappropriate partisan political considerations, and we make no criticism of their actions or suitability for their roles.

## Why did some people perceive politicisation at DJPR?

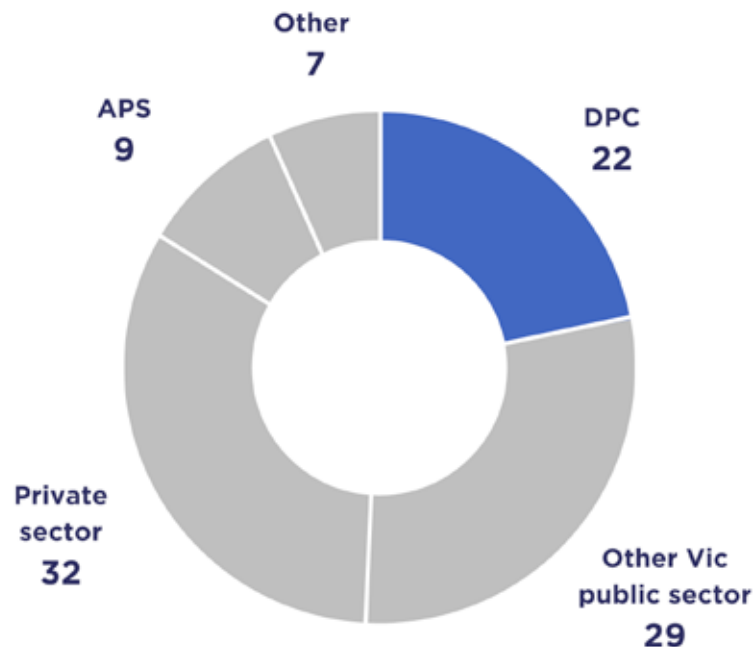
716. As outlined in preceding sections of this chapter, the Secretary initiated several processes to shape the DJPR executive team when it was formed and as the Department evolved under their leadership. Their evidence was this was to build a strong, values-led Department.
717. However, the way these changes unfolded fuelled concern about DJPR's adherence to the merit selection principle. Witnesses we interviewed commented on the speed and perceived lack of transparency surrounding appointments, and the shared professional backgrounds of many appointed.
718. Some felt reduced confidence in DJPR's adherence to the merit selection principle opened the Department to more subtle politicisation risks. Others queried whether reduced emphasis on open and advertised recruitment at senior levels risked hiring or promoting people without enough subject matter expertise to provide quality advice, and enough delivery expertise to acquit what was asked of the Department.

### Perceived DPC 'takeover'

719. As with the DJCS recruitment activity discussed earlier in this chapter, many witnesses we interviewed about DJPR appointments commented on the volume of executives to arrive from DPC following the 2018 State election.

720. Parallel recruitment activity at DJCS intensified suspicions, although as noted earlier, we did not find evidence of inappropriate influence by DPC on recruitment at either Department. One witness observed the 'wave' of people coming out of DPC to other Departments 'definitely seemed to be co-ordinated':
- I think our Department and Justice were the main ones affected by that MoG at that time. And there seemed to be a wave of DPC people going across to Justice as well.
721. Echoing what we heard in the case of DJCS, some witnesses noted the common inclination of employees to follow their previous leader to another Department, and highlighted DPC's role as an executive training ground. For example, the Secretary noted they had 'been in DPC five times' across their career, and said they thought it was 'really healthy that people come in and out of' the central agency.
722. Some of the DPC staff to arrive at DJPR did so as a direct result of MoG changes. Yet even accounting for the transfer of functions between Departments, the volume of DPC staff who arrived at DJPR was particularly notable.
723. Executive employment data reported to the VPSC indicates 22 of 99 new executives recruited to DJPR between 29 November 2018 and 30 June 2021 were sourced directly from DPC - compared with 29 from all other Victorian public sector bodies combined (see Figure 31).
724. As noted earlier in this chapter (see Figure 18), appointments to DJCS and DJPR from DPC significantly exceeded those made to other departments for this period.

Figure 31: Number of new executives appointed to DEDJTR/DJPR from 29 November 2018 to 30 June 2021, by source agency



Source: Victorian Ombudsman based on VPSC, DJPR and open-source information

725. As with DJCS, we heard the high proportion of ex-DPC staff appointed to executive roles at DJPR was a key factor contributing to growing staff perceptions that DPC was attempting to exert greater control over an important line Department.

726. One executive noted the appointment of former DPC executives as Department Secretaries and Deputy Secretaries had happened ‘for decades’, but this did not normally result in a ‘complete overhaul’ of the Department’s senior executive workforce. They said the scale of top-level change had given rise to perceptions that:

It was about control ... of the Department, and maybe, you know, a view that somehow the Department [DEDJTR] previously had not ... aligned itself sufficiently with directions or interests. So there was that view that it was actually about extending centralised control.

727. We heard staff changes in other departments in the wake of the 2018 State election further fuelled these perceptions of a planned or co-ordinated attempt by DPC to exert central control. For example, one DJPR witness observed a post-election ‘flurry of baby Secretaries from DPC who were put out to departments’ prompted them to think changes were ‘pre-empted, sort of long-planned’.

728. Those who suggested coordination by DPC in part linked this to a desire for increased responsiveness from key departments. For example, one executive recounted hearing ‘chatter’ that ‘this was about getting stuff done’ and ‘having individuals ... that had a clear understanding of what the Premier wanted’.

729. The Secretary dismissed any inference that DJPR's independence was compromised by the appointment of DPC staff to executive positions. They said they were 'really put out by the narrative that I've just brought DPC across to DJPR, because it disrespected the DJPR staff', and emphasised in response to a draft extract of this report they were 'seeking to recruit high performing public servants'. They said at interview:

I completely get you shouldn't bring the entire centre in and drop them in a line agency just like you shouldn't do it the other way around. ... I was not recruiting, you know, political figures out of DPC.

### Reduced confidence in merit selection

730. As previously noted, merit selection is an important safeguard against politicisation, both perceived and actual.

731. As outlined earlier, we identified some concerns about the level of rigour surrounding DJPR recruitment activity, especially around direct appointments.

**'I was not recruiting, you know, political figures out of DPC.'**

Former DJPR Secretary

732. At interview, the Secretary maintained processes were transparent and merit-based, and broadly consistent with the Public Administration Act and relevant DJPR recruitment and selection guidelines.

733. However, many witnesses we interviewed doubted the fundamental fairness of recruitment and promotion processes at DJPR, as well as the broader adherence to the public sector employment principles.

734. The perceived lack of transparency and departures from conventional recruitment practices also left some wondering whether some appointment outcomes were 'predetermined'. Some staff, across a range of portfolios, felt that in some cases where a process was run, it seemed to be 'process for the sake of process'. For example, one witness noted of the EOI process for the inaugural DJPR Board:

I think, what they wanted to do is make sure that they ran a process but actually get the people they wanted in the jobs. ... I mean, why else would you do it.

735. Others perceived direct appointments and rapid promotions of particular individuals as nothing more than recognising and elevating talented staff. For example, one executive commented:

I don't think the decisions the Secretary made were based on anything other than the abilities [and] skills of the person, and their ability to do the job.

736. All executives interviewed acknowledged that circumstances can sometimes warrant making direct appointments, especially when setting up a new Department or to meet additional delivery pressures such as those DJPR took on during the COVID-19 response effort. The Secretary said their default was 'always for merit-based processes', but in instances where 'you're going to want someone to come in and really contribute quickly and you need them tomorrow' they preferred short-term direct appointments over using consultancy firms. Another witness observed:

It was a really unusual time and correspondingly ... we saw a lot more positions being recruited apparently without a normal process around them that you would normally expect ... given, I guess, the attendant circumstances, I could see why that happened.

737. However, the volume of direct appointments as DJPR took shape in 2018 and 2019 – before the pandemic – saw perceptions grow among some staff of a ‘fairly small inner circle’ who had greater access to opportunities. Executive feedback from a ‘career conversations’ session held in February 2022 – after the pandemic emergency phase subsided – included one participant’s observation that ‘unless you are in line of sight you are overlooked’. Another observation in feedback was:

Opportunities are often not made known – inherent bias in who is selected for opportunities. It is difficult for people who don’t have a profile – there is a cadre of capable people, particularly in operational areas, that senior leaders don’t have exposure to.

**‘Opportunities are often not made known – [there is] inherent bias in who is selected..’**

DJPR executive feedback

738. The handling of these ‘career conversations’ in and of itself contributed to perceptions among some staff of unfair treatment. On 15 February 2022, the Secretary had emailed senior DJPR executives to explain the intent:

These conversations are about honing-in on what inspires you and what you might be interested in if the opportunity presented itself. We can’t guarantee to tick every box, but if we don’t know what lights you up, we can’t support you with your professional development. And if you don’t know, then opportunities – which come up every day – might pass you by.

739. The conversations with executives were underway but not complete when the Secretary unveiled a revamped and expanded DJPR Board in February 2022. This prompted some to query how genuine the consultation process was. One executive who gave written feedback after the event noted:

it seemed very odd to ask people what they might want to do or what their career aspirations are when a whole series of decisions on new senior appointments and restructures have already been made. A better, more transparent process would be to have these discussions, get people thinking, then advertise the new senior roles so people have some agency over their future.

740. Contrasting with these observations, results from the VPSC’s annual People Matter Survey showed for the selected metrics we reviewed, DJPR generally improved or remained stable when compared to the DEDJTR era (noting changes to questions somewhat complicate time-based comparisons).

741. The 2022 survey results showed DJPR staff were more likely than most other Departments’ officers to agree people in their workgroup were politically impartial in their work. The Department was also on par with the average score of comparator organisations identified by the VPSC for the main merit selection metric, with almost two-thirds of those surveyed agreeing that ‘recruitment processes in my organisation are fair’.



742. At interview, speaking specifically about the distribution of executive opportunities during the COVID-19 pandemic, the Secretary rejected the notion there was 'inherent bias', and said the executive appointments were 'spread across the Department':

I don't know how I could've done better when I had 24 hours to stand some things up. I would constantly call the Deputy [and] say, 'Who's available in your group? ... I don't need to know this person. Ideally I've never met them before [because] I'd love to see some fresh blood in'.

743. The Secretary also reflected on the direct appointments they initiated and said they felt 'humbled' about the lack of paperwork relating to a subset of nine that they were specifically questioned about, noting those appointments were 'in a sea of thousands of recruitment processes ... over the course of floods, fires, COVID emergencies, pressure from Lord knows where else'.

744. The Secretary also said they wished they had been more diligent in providing a rationale and explaining their decisions to staff:

But I stand by each of those decisions because we had to get a whole lot done, a lot done in the interest of Victorians and we did it. And I know the end shouldn't justify the means...but they were extraordinary exceptional circumstances which is why our rules permit extraordinary exceptional, that's why we have exceptions. That's why we can make direct appointments because there are from time-to-time exceptional circumstances. I would've had more fulsome briefings in those instances and I would've spoken up louder, and I have an opportunity to do that now, to public servants to say, 'aim for zero. If you can't achieve that,' - and I couldn't - 'if you can't achieve it, please document it when the time comes and there's an opportunity to do so'.

745. Asked to reflect broadly on whether they considered the VPS had become politicised, the Secretary said they considered the notion 'dramatically unfair to the thousands and thousands of public servants and the hundreds of political staffers'. They recounted working for four Premiers and 'lots of' ministers in a public service career spanning 1998 to 2022:

I didn't feel I was politically pressured in my role in 2022. I felt the same amount of political pressure in 2022 as the amount I felt walking into 1 Treasury Place in 1998. I felt the same political pressure as a public servant when I was in Canberra in 2008 as I did when I returned in 2009 to Victoria. And [the] Victorian public service ... are still having discussions about how we can remain apolitical, how we play by the rules ... and how we can remain frank and fearless ... and that makes me optimistic.

**'I didn't feel I was politically pressured in my role in 2022. I felt the same amount of political pressure in 2022 as the amount I felt walking into 1 Treasury Place in 1998.'**

Former DJPR Secretary

## What we found

746. As with DJCS, we did not find evidence of a coordinated 'DPC takeover' of DJPR. Nor did we find evidence that appointments were influenced by inappropriate partisan political considerations.
747. Again, we were left to work out why a relatively large volume of submissions, as well as some current and former DJPR staff we spoke with, expressed well-meaning concern about possible politicised hiring.
748. We found this largely stemmed from opaque recruitment patterns and a bias towards recruiting 'known quantities', as the new Department was established and as it adapted to challenges including the COVID-19 pandemic. In some cases, the recruitment included departures from best practice that undermined confidence in merit selection – a key protection against actual and perceived politicisation.
749. Some, though not all, of these shortcomings echoed the concerns we found when we examined hiring at DJCS. As at DJCS, the volume of former DPC employees appointed to senior DJPR roles contributed to suspicions – ultimately unsubstantiated – that the central agency might be attempting to exert influence over a key line Department.
750. One key point of difference from DJCS was DJPR's tendency towards use of direct appointments. Setting up a new Department and responding to emergencies sometimes required expedited hiring, and we did not consider use of this method to fill urgent vacancies was incompatible with the merit selection principle, where properly justified and documented. But many appointments we reviewed lacked sufficient recorded justification, as well as position descriptions and documented reporting lines.
751. In some cases, those appointments were for short-term roles and a competitive process ultimately followed. In others, there was a succession of direct appointments, contributing to perceptions of a favoured 'inner circle' surrounding the new Secretary. Addressing these concerns, the Secretary noted the challenges involved in setting up a new Department, as well as DJPR's central role in responding to successive emergencies such as the 2019-20 bushfires and COVID-19 pandemic. However, we identified an over-reliance on the practice even outside of these periods.
752. Department records that should have articulated the basis for recruitment decisions frequently lacked adequate detail. Briefs offered scant justifications, sometimes including the circular reasoning that it was unnecessary to advertise generalist positions because this was unlikely to identify more suitable candidates.

753. We heard the combined effect of these factors was an erosion of confidence among some senior DJPR staff in the legitimacy and fairness of appointment processes. The relative lack of transparency around internal opportunities and the continued rise of some executives – sometimes without open and advertised recruitment – readily supported perceptions that proper processes were not being followed.
754. Somewhat unfairly, the political or DPC backgrounds and connections of some in the apparently favoured cohort provided a ready explanation for anyone aggrieved or concerned about these events. Public servants often lack a say in how or why they are appointed, and we do not question the integrity or commitment of the many executives hired or promoted during the period we examined.
755. Concerns about hiring also caused some to question whether the Department was becoming too responsive – focusing on the appointment of ‘known quantities’ able to deliver results quickly in accordance with Government priorities and demands, but possibly less disposed to provide frank and impartial advice on such issues.
756. We did not identify any evidence the work of DJPR took on inappropriate political dimensions during the period we examined. Yet the existence of this perception is itself concerning – because of its clear potential to encourage ‘over responsive’ behaviour at odds with the apolitical Westminster tradition.

## **The Secretary's response**

In their response to a draft extract of this report, the (now former) Secretary disputed many of the shortcomings we identified in DJPR's executive hiring practices.

They emphasised that concerns about politicisation at DJPR were unfounded, pointing to our conclusion that politicised hiring did not occur during their period as Secretary. They said their recruitment decisions complied with DJPR policy and highlighted our finding they were not intended to increase DPC control of the Department. They said they were not personally responsible for or involved in all hiring decisions, and that it was challenging to rebut evidence from deidentified sources.

The Secretary emphasised much of the hiring we examined took place in exceptional circumstances – initially, in the context of setting up a new, very large Department with many new Ministers and without existing frameworks and processes, and later, when DJPR played a central role in responding to successive emergencies including the COVID-19 pandemic. They noted they successfully set up the DJPR Board in accordance with a timeline determined by the Victorian Secretaries Board, and said there was 'no issue' with taking a values-based approach to recruiting senior VPS personnel.

They noted Department Secretaries have the discretion to make direct appointments in exceptional circumstances, such as those faced by DJPR. They emphasised the high calibre of those appointed and observed that executives often compete in many recruitment processes over their careers.

The Secretary observed DJPR's annual People Matter Survey results generally improved year-on-year and outperformed other Departments. They said the survey results told a broader story than the anecdotal submissions and witness evidence we received, and showed DJPR staff felt confident providing feedback about the Department's direction under their leadership.

### **DJSIR's response**

In its response to a draft extract of this report, the renamed Department of Jobs, Skills, Industry and Regions ('DJSIR') acknowledged the conclusions set out in this chapter. DJSIR's new Secretary said they were committed to ensuring the Department adhered to the public sector employment principles, VPS Standards and internal recruitment policies.

# Chapter 6: Alleged politicisation of key transport infrastructure project

## What we investigated

757. Politicised hiring undermines the political neutrality of the public sector, and can sometimes lead to partisan decision-making. The Legislative Council referral required us to investigate whether the hiring of politically aligned people compromised objectivity and professionalism, and increased corruption risks.
758. We examined the appointment of a former Ministerial staffer, Executive S, to a key infrastructure agency, Places Victoria (later merged into Development Victoria), and how this influenced the early development of Victoria's flagship transport infrastructure project, the Suburban Rail Loop ('SRL').
759. We received 10 submissions about SRL decision-making. Several referred to the role Executive S allegedly played in conceiving the project, and in advancing it through the public sector. Some noted the SRL was kept unusually secret before its public announcement as an ALP election commitment, and was even concealed from major stakeholders such as Victoria's top transport bureaucrat.
760. We heard this meant early development of the SRL did not take into account important research promoting a coordinated approach to transport planning, and could not be factored into Victoria's integrated transport plan. Independent reviews by the Victorian Auditor-General's Office ('VAGO') and the Parliamentary Budget Office ('PBO') have since queried key assumptions underpinning the SRL, suggesting its cost will be much greater than originally estimated.
761. We examined:
- how the SRL was conceived and developed, and whether this involved departures from traditional public sector neutrality
  - whether any shortcomings resulted from politicised hiring of the kind identified in the Legislative Council referral.
762. We gathered and reviewed recruitment files, project records and email accounts, and took sworn evidence from eight witnesses – including a mixture of former Development Victoria, DPC and infrastructure officials.

Figure 32: The SRL, at a glance

### Our investigation

**10** submissions received about the SRL

**129,180** records reviewed

**8** witnesses interviewed

### The SRL

**17** months kept secret

**11** public sector employees signed confidentiality deeds

**3** months between announcement and election

**\$38-63 billion**

2018 cost estimate in strategic assessment for SRL East, North and Airport sections

**\$125 billion**

2022 cost estimate by PBO for SRL East and North only (asset works, to 2084)



Source: Victorian Ombudsman

Figure 33: Timeline of events

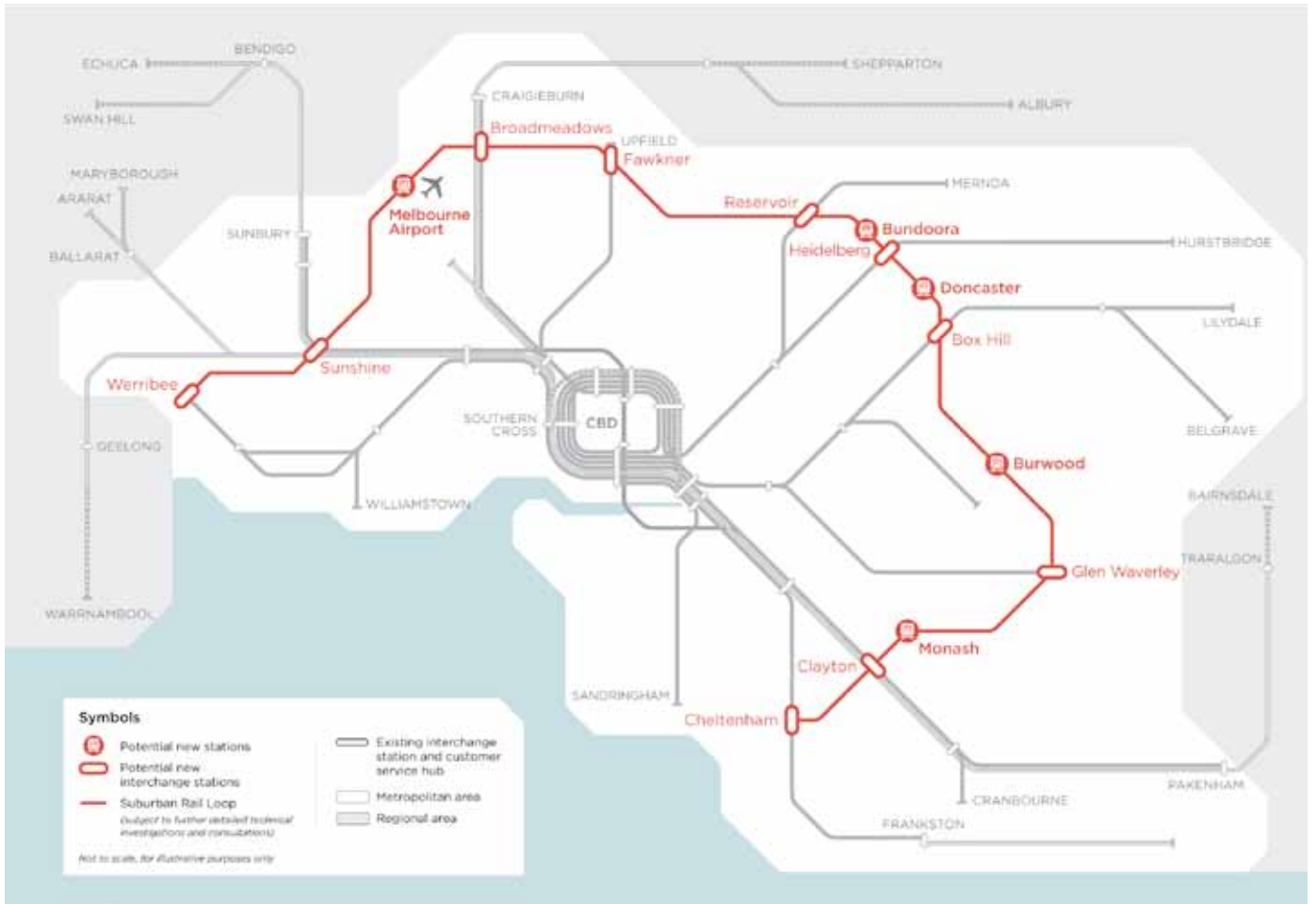




## About the Suburban Rail Loop

763. On 28 August 2018 the SRL was publicly announced by then Premier Daniel Andrews.
764. Described as the ‘biggest transformation of public transport in Australian history’, it involves the construction of a new orbital rail line connecting Melbourne’s major train lines, enabling some regional and suburban passengers to complete a journey without transferring through the city.
765. It also involves construction of new underground train stations and three ‘super-hubs’ catering to regional passengers at Clayton, Broadmeadows and Sunshine. Figure 34 shows the announced SRL route.
766. Construction of the SRL was directly tied to the ALP’s electoral prospects at the upcoming 2018 Victorian election – to be held less than three months after the announcement. The then Premier promised a re-elected ALP would ‘start work’ on the project by putting \$300 million towards a ‘full business case, design, and pre-construction works’.
767. The ALP later won the election, with media articles crediting the SRL announcement for swings towards the party in some electorates where new train stations were promised.
768. Although announced in August 2018, the SRL concept was previously developed in secret for more than a year at Development Victoria, a public entity which, among other things, handles and advises on property development and capital works projects at the general direction and control of ministers, and in accordance with commercial disciplines.
769. Development Victoria was required to have regard to the decision-making principles identified in the *Transport Integration Act 2010* (Vic) when making decisions under its Act likely to have a significant impact on the transport system. These include integrated decision-making, transparency, stakeholder engagement and community participation. Development Victoria was free to determine the weight it gave to each decision-making principle.
770. The way the SRL was initially developed was at odds with core aspects of the Westminster tradition. Most work on it was handled by private consultants, and it was kept completely secret from people in the VPS and broader public sector normally responsible for advising upon major transport infrastructure projects.

Figure 34: SRL illustrative map, August 2018



Source: Victorian Government

## What have other independent reviews said about the SRL?

VAGO reviewed elements of the SRL's development as part of its audit report, *Quality of Major Transport Infrastructure Project Business Cases*, released in September 2022.

Documents examined by VAGO included an initial 2018 *Orbital Metro Strategic Business Case* ('2018 Strategic Business Case') handled by Development Victoria, and a 2021 *SRL Business and Investment Case* (released after the events considered in this chapter). VAGO also had access to Cabinet documents unavailable to our investigation.

VAGO described early development of the SRL as 'atypical', observing it did not follow the standard investment development process. It noted planning for the State's largest-ever transport infrastructure project did not include transport agencies or DTF, and that Victoria's 30-year infrastructure strategy of 2016 did not signal a need for orbital rail, nor did publicly available transport, rail and infrastructure plans in 2017 and 2018.

VAGO said the 2018 Strategic Business Case lacked a robust assessment of alternative options, did not have sufficient supporting evidence, and may not have identified the best way to address problems or deliver benefits. Given the limited number of options covered in both the 2018 and 2021 business cases, VAGO said there was a risk the Government was not provided advice that maximised value for money.

VAGO was critical that neither DTF nor DPC could provide it with any evidence they reviewed the 2018 Strategic Business Case or advised Government on its merits and comprehensiveness in meeting DTF guidelines for 'high value high risk' projects. VAGO found some 'significant issues and departures' from the guidance.

In response, DPC, DTF, the Department of Transport ('DoT') and the Suburban Rail Loop Authority (established after the events in this chapter) told VAGO that because the SRL is not a typical transport project and includes a multi-generational program of integrated transport and precinct development works, it required a more tailored approach to project development and delivery. They said to compare the project against DTF's standard business case development process and guidance was 'inappropriate and misleading'.

Separate advice from the PBO in August 2022 estimated that building and operating two of three SRL segments would cost more than \$200 billion by mid-2084. The PBO concluded continued investment in these segments would likely result in a 'net social cost' to the State.

## How was the SRL conceived and developed?

771. In April 2017 Development Victoria was created through the merger of two previous authorities: Places Victoria (also known as the Urban Renewal Authority Victoria) and Major Projects Victoria.
772. In the lead-up to this, the Government announced several appointments to the Places Victoria Board, including a new Chair ('the Chair').
773. The Chair had held other public board roles under both Liberal and ALP Governments, and was involved in costing recent ALP State and federal election policy commitments. Though a long-standing ALP member, they told us they were no longer involved in branch meetings, and had not attended one for a 'very long time'.

### Former Ministerial staffer joins Development Victoria and conceives SRL

774. The Chair was formally appointed to the Board of Places Victoria in December 2016, before the merger. Within a fortnight of starting, they 'headhunted' Executive S to Places Victoria to take up a newly created \$300,000 a year corporate strategy role.
775. Executive S had recently finished work as a senior Ministerial staffer. They had substantial public policy development experience, including from stints working for an ALP Minister, the Treasurer, and the then Opposition leader (and subsequent Premier) Daniel Andrews. Before this, they worked for about four years in the APS and as a contractor to the United Kingdom Civil Service. Though a member of the ALP, they told us they were not an officeholder within the party, and had only been to about one branch meeting in the past 10 years.

776. At interview, Executive S told us they started looking for a new role in mid-2016 after a 'fairly intense' process of implementing the Government's agenda in the Treasurer's Office. They said they spoke with several contacts and recruitment agencies, including the Chair - whom they described as a 'key person'. They had previously engaged with the Chair through the Chair's involvement on government boards, and as one of the financial auditors of the ALP's policy platform.
777. At interview, the former CEO of Places Victoria recalled the Chair approaching them to request the corporate strategy role be created for Executive S. Describing it as a 'Chairman's appointment per se', they told us it was the only such appointment they could recall the Chair suggesting to them in their years as CEO. (In response to a draft extract of this report, the Chair said this was incorrect, and that they suggested another person who was hired to Development Victoria from the private sector).
778. Asked to expand on the reasons for the appointment, the CEO said they thought the Chair viewed Executive S's 'political nous and understanding about how that works' as a useful supplement to the CEO's own private-sector background. 'Political nous' was among several needed attributes in the position description created for Executive S's new role, where it was defined as 'appreciation of complex often competing priorities and the sensitivities associated in working with the government and within the development industry'.

779. In response to a draft extract of this report, the Chair emphasised they did not arrange to recruit Executive S for their understanding of electoral politics. Instead, they said Executive S was hired due to their deep economic policy skills, and their direct knowledge of the process resulting in Development Victoria's creation. (Executive S made a similar submission when responding to a draft extract of this report).
780. After receiving the Chair's request, the CEO arranged for the corporate strategy role to be created, and directly appointed Executive S to it. The position was not advertised, and Executive S was not formally interviewed by a selection panel.
781. As noted earlier in this report (see chapter 4), use of direct appointments can contribute to perceptions of special treatment, particularly for people seen to have political connections. That said, some aspects of the appointment accorded with conventional best practice hiring principles: an approved business case justified the position based on a business need, a position description was created, and reference checks were conducted.
782. After their appointment, Executive S initially focused on preparing Development Victoria's inaugural corporate plan. They told us this included broad, ongoing discussions with the then CEO about how the proceeds of State-led property development could help fund large-scale infrastructure to accommodate strong population growth.
783. Executive S gave evidence the SRL concept 'evolved' through these 'ideation' conversations with the CEO. They described the concept as 'essentially a connection of the precincts' identified in *Plan Melbourne 2017-2050* ('Plan Melbourne'), the Government's long-term metropolitan planning strategy, and as a 'land development proposition', rather than a transport project.
784. Executive S was emphatic the SRL concept was not originally suggested to them by the Chair or anyone else. They said they were not put into Development Victoria to usher the SRL through the public sector, and rejected any suggestion their experience as a Ministerial staffer developing the ALP's 2014 transport policy fed into the concept. They also branded 'wrong' any suggestion the SRL route was chosen to align with specific electorates, stating locations were a direct response to Plan Melbourne's precincts.
785. Instead, Executive S recalled their thinking on the concept broadly taking shape until it reached a point where they could put the idea down on paper. They were unable to say exactly when this happened, though noted it was not a 'Newton's apple falling out of the tree' moment, and that 'these things are a process, not an event'.
786. Executive S nominated a 'Value Capture in Infrastructure' conference they attended with the CEO as an important input: 'It was one of those ... points in time where you get new information on a problem you're currently working on'. Held on 15 March 2017 and sponsored by consultancy firm PwC, the conference included a session on setting up 'entrepreneur-based rail projects'.

## How the project progressed

787. Executive S told us they next put together a 'few pages' of early SRL thinking and presented them to the CEO. At interview, the CEO described the concept presented to them as a 'thought bubble rather than necessarily a commitment that was being pushed', and said they recognised it required further work to see whether 'it was potentially a good idea or not'.
788. Executive S and the CEO both recalled the next step was to present the idea to the Chair, though their recollections differed slightly about whose idea this was. Neither recalled exactly when the conversation took place, and available records did not pinpoint a date.
789. Both Executive S and the CEO recalled the Chair felt the SRL idea had potential, and was keen to keep it confidential as the project moved forward.
790. After speaking with the Chair, Executive S in early April 2017 briefed consultants PwC to undertake a 'high level' Preliminary Assessment of the SRL concept, which by this stage was known by the codename 'Project Halo'.
791. At interview, Executive S described the Preliminary Assessment as a 'test piece' to see whether the SRL concept was 'worth looking at any further'. They told us they initially met with PwC's head of real estate, whose team had pulled together the value capture conference. Executive S told us other consultants were not considered for the work – mainly because after the conference, PwC was considered to have 'niche' experience and it was 'best just to go to them direct'.
792. After the meeting, on 5 April, PwC emailed Executive S a draft letter of engagement setting out its understanding of the proposed brief from Development Victoria (see Figure 35).

Figure 35: Letter from PwC to Development Victoria



Source: Development Victoria

793. Under 'Audience', PwC's draft engagement letter nominated the Chair as the recipient of the proposed deliverable, and stated:

The document will be to 'prove up' the concept of Project Halo so that you are able to obtain approval to proceed to the next step in the process.

794. In confirming the brief, Executive S asked PwC to remove the 'Audience' section of the proposed letter of engagement, thus deleting the phrase 'prove up' and the reference to the Chair. At interview, Executive S said they could not recall why they requested this. They said 'prove up' did not mean getting ready for a decision:

You're not going to be ... proving up the feasibility of something like this on a small piece of work that this has been commissioning.

795. PwC provided Development Victoria with its 74-page Preliminary Assessment about three weeks later, on 29 April 2017. This document provided high-level costings for an underground orbital rail loop, with lower, middle and upper initial estimates of \$40.8, \$58.3 and \$93.3 billion respectively. It noted the SRL concept required 'further definition' and laid out a 'future program of work' before concluding:

Project Halo has the potential to be a significant city-shaping project for Melbourne.

### **Elected Government and DPC briefed**

796. The next step was to brief the elected Government about the SRL concept.

797. At interview, neither Development Victoria's CEO nor Executive S could recall exactly when this occurred, or which Ministers were informed of the SRL concept at this stage. However, Executive S accepted a briefing most likely went to the Minister for Major Projects, to whom Development Victoria reported. (Records we reviewed did not clarify this, and section 19(1) of the Ombudsman Act prevented us from looking further into Ministerial decision-making about the SRL.)

798. Executive S told us DPC was then identified as a client to 'sort of take [the SRL] forward from a whole of government point of view'.

799. At interview, DPC's then Secretary remembered hearing the elected Government was interested in the SRL concept and needed a department to commission Development Victoria - which worked on a fee-for-service model - to continue work on it. They recalled the then Premier had 'direct interest' in the proposal, and believed this was why DPC (the central Department reporting to the Premier) was chosen to have 'visibility' over it.

800. Once informed of the SRL concept, DPC's Secretary approached DPC's Deputy Secretary, Economic and State Productivity ('the Deputy Secretary') to review and advise on the proposal. This person was among the senior public servants responsible for setting up Development Victoria.

801. At interview, the Deputy Secretary recalled being referred to Executive S and Development Victoria's Chair for further information:
- [DPC's Secretary] said, 'Here's a concept, I want your views, it can only be you. And if you need more detail,'- because of course my first reaction was, 'What else can I get my hands on?' - [they] said, 'You can speak to these two, they have the next level of detail'.
802. Like Executive S, the Deputy Secretary said they viewed the SRL as 'a land development and people project ... not a transport project'. They said they reviewed the details and decided the concept warranted further exploration, though they recalled 'in the beginning we all thought politicians probably aren't going to like this'.
803. The Deputy Secretary told us they recommended the SRL concept be progressed further via Development Victoria, which as the State's 'primary development agency' was 'tailor made' for such a project, rather than transport or planning Departments such as DEDJTR. (Responding to a draft version of this report, DEDJTR's former Secretary disagreed, asserting the SRL was 'far too complex and costly' to be progressed this way.)
804. On 11 October 2017, DPC formally commissioned Development Victoria to prepare the 2018 Strategic Business Case for the SRL at a maximum budget of \$1.5 million, with the deliverable due by 31 January 2018. At interview, DPC's then Secretary noted this seemed 'a short timeframe', and said they assumed a fair amount of pre-work had already been done to make the due date feasible. They observed the proposed work and timing would:
- enable the release of enough information ahead of the election for it to be seen as being something more than totally fanciful that hadn't yet been worked up.
805. With DPC as a client and a \$1.5 million budget, Executive S again engaged PwC on behalf of Development Victoria. They said other consultants were not considered at this point as PwC had already demonstrated it had the required expertise, and because of project secrecy. (Some of the technical work was later sub-contracted to another firm).
806. Executive S said the State's dedicated transport Department, DEDJTR, was not engaged to do the technical work because it would have just outsourced it to consultants anyway. They said Development Victoria's role was 'effectively procurement project management', observing this was 'essentially what everyone in Government who's involved in infrastructure does'. (Responding to a draft extract of this report, DEDJTR's former Secretary said their Department would have used a 'combination of in-house expertise and external advice', and would not have outsourced 'all work' to consultants.)
807. When asked whether PwC would be motivated to advise against the project, Executive S and the Deputy Secretary both denied the 2018 Strategic Business Case outcome was a foregone conclusion. The Deputy Secretary said:
- To be frank, DV were responding to my commission so that was to land on my desk, and it was my job to call BS if something wasn't right or we were being sold a pup, you know, through a consultancy chasing after work.



## Engaging consultants

Development of the 2018 Strategic Business Case was outsourced, without a competitive process, to consultants at PwC – the firm that had already provided the April 2017 ‘rapid’ Preliminary Assessment of the SRL’s feasibility.

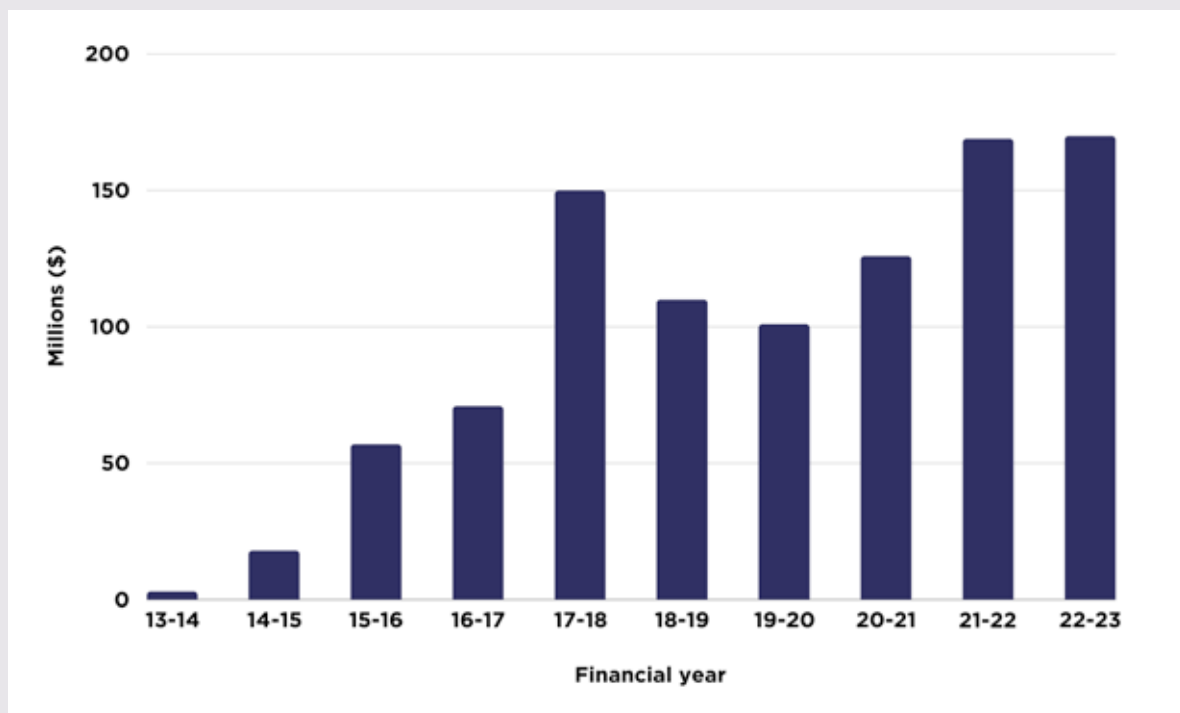
Witnesses gave evidence PwC effectively won the work because senior Development Victoria staff had attended a PwC-hosted conference which promoted the firm’s expertise in ‘value capture’ and wanted to adopt that approach. The SRL concept was itself informed by presentations made at this conference.

Outsourcing the 2018 Strategic Business Case was a path open for Government to take. Governments and ministers take advice from a broad spectrum of sources. The Thodey Review recently observed:

*Ministers now access advice from think tanks, consultants, academics, lobbyists, interest groups and the media. This means that some ministers no longer regard the [public service] as their primary or even preferred source of advice.*

Victorian Government departments now engage consultants substantially more than 10 years ago, as shown in Figure 36.

Figure 36: Consultancy expenditure by Victorian Government departments for financial years 2013-14 to 2022-23



Source: Victorian Ombudsman, based on Department information. Note the definition of ‘consultancy’ was expanded in FY2013-14 to include all work which is outsourced

808. Records we reviewed did not clarify when the 2018 Strategic Business Case was completed, though publicly available information indicated it was likely presented to Cabinet in April 2018. (VAGO's 2022 audit of SRL decision-making found DPC had no record of its decision to commission the 2018 Strategic Business Case, nor of its review of the document before it was provided to Cabinet.)

809. Due to section 19(1) of the Ombudsman Act, we could not review the information presented to Cabinet, and had limited ability to examine events and actions surrounding this meeting. However, it is clear work to progress the SRL continued after the 2018 Strategic Business Case was received, leading toward a public announcement in August 2018.

810. A small cohort of public servants was informed of the SRL during this period: public servants in the Office of the Coordinator-General ('OCG') in about May 2018, and DEDJTR's Secretary and the CEO of Rail Projects Victoria in the days leading up to the announcement.

811. Executive S told us the OCG was informed of the SRL 'upon completion' of the 2018 Strategic Business Case. Responsible for overseeing DEDJTR's Major Transport Infrastructure Program, the Coordinator-General reviewed the project documents and prepared a 29-page summary for public release.

812. At interview, the Deputy Secretary said this included testing some of the assumptions underpinning the SRL proposal. However, available evidence does not suggest it involved a full review of the 2018 Strategic Business Case, which DEDJTR's former Secretary told us would likely have taken three years for their Department to complete in ordinary circumstances:

It's a very big piece of work and the costs are so substantial that you'd want to spend a fair deal of time validating those as best you can and checking them with a variety of advisers. ... This is the sort of thing that would necessitate – could even justify – a couple of competing costing exercises, a lot of work on benefits, ... on alternatives, all of that, and engagement with stakeholders and the public at large.

**'It's a very big piece of work and the costs are so substantial that you'd want to spend a fair deal of time validating those as best you can and checking them with a variety of advisers.'**

Former DEDJTR Secretary

### **SRL announced publicly**

813. Given the level of secrecy surrounding the project's development, the August 2018 public announcement of the SRL came as a surprise to many Victorians. Some commentators welcomed it as a 'game changer', and others speculated it was an attempt to boost the ALP's performance at the November 2018 Victorian election.

## Why was the SRL kept secret, and what were the consequences?

814. The way in which the SRL was conceived and initially developed was at odds with core aspects of the Westminster tradition.

815. Departures included the level of secrecy attached to the project, which was kept on a strict 'need to know' basis until announced, and the heavy reliance on consultants to assess the benefits of a major project with far-reaching consequences for the State's infrastructure pipeline.

816. Both practices meant key stakeholders, including some expert public servants, were effectively excluded from providing advice about the SRL's merits and impact before it was presented to the electorate for democratic endorsement.

817. We heard some public servants, especially those working within transport and infrastructure agencies, were shocked to learn of the project, and left questioning how and why it was conceived. For example, one senior executive we interviewed described the sentiment in the State's dedicated transport Department, DEDJTR:

[Transport planning] was the core business of the Department and had an awful lot of emphasis going into it. It was well organised, and [staff] were all over it. And then, for this thing [SRL] to come out of nowhere which takes like 10 times the Transport budget to appropriate [and] was outside of the long-term plan ... [It was] just unbelievable.

818. The executive said they had observed a 'sense of betrayal' among some of the people they had dealt with. Others they spoke with reportedly felt 'gutted' because they had prepared budget submissions for other initiatives now likely to go unfunded:

They kind of wanted government to support these priorities because it was the next logical thing to happen. And they're like, 'Well what, what happens now? Because we don't understand the Suburban Rail Loop or where all the money is going to go'.

819. Also taken by surprise was Infrastructure Victoria, the independent infrastructure advisory agency established by the Government to 'take short term politics out of infrastructure planning'. A senior official told us the agency's staff were 'blindsided' by the SRL announcement, and left questioning their purpose:

We were blindsided, and realised that a lot of people were blindsided. ... At no point in time have I had any inkling of this being prepared or undertaken, until it was publicly announced. To say that it was a shock is an understatement - yeah, I'll be candid about that - to the extent that we really went through a phase of 'What are we here for?'

820. We examined why the project was handled in this manner and, ultimately, whether this was attributable to Executive S's appointment to Development Victoria.

## Who knew what, when?

821. As noted earlier, during its early development the SRL project was known only to select people at Development Victoria, DPC, PwC and its subcontractor, and within some Ministers' offices.
822. Staff from the OCG were brought into the loop in mid-2018, in preparation for the SRL's release, and senior public servants at DEDJTR and Rail Projects Victoria were notified as a courtesy shortly before the August 2018 public announcement.
823. At interview, Development Victoria's CEO confirmed members of Development Victoria's Board (other than the Chair) were not informed of the SRL when it was first conceived. The CEO could not recall if the full Board was eventually briefed by the time they left Development Victoria, before it was announced to the public. Development Victoria's invoices to DPC avoided mentioning the nature of the project, which the Deputy Secretary explained was necessary 'given the secrecy'.
824. At DPC, details of the project were concealed in the commissioning letter to Development Victoria, where it was described as 'exploring integrated transport and land use options within Melbourne'. Funding for the project came from the Premier's Jobs and Investment Fund, with payment authorised by the then Premier on 14 May 2018. Details of the project were not disclosed to the DPC finance officer responsible for allocating the funds, with the Deputy Secretary instead personally confirming the necessary deliverables had been met.
825. Highlighting the unusual degree of secrecy, an internal DPC handover briefing of 4 May 2018 instructed one executive to speak to Executive S and 'no-one else' if approaching Development Victoria about the 'super secret' project (see Figure 37).

Figure 37: Excerpt from DPC handover briefing

**Project Halo**

Issue

- Another super secret project. [The Deputy Secretary] is the contact. Don't talk to anyone else about it. Not even [REDACTED]
- Development Vic did a project on transport for us. [Executive S] is the contact there – you can talk to [them]. But no-one else at DV.
- We owe them \$1.5m or thereabouts, but we haven't got an invoice yet.
- The money to pay for it is coming out of PJIF. [REDACTED] is the PJIF contact in DPC. [They know] the project exists, and the amount, but that's all.

Key contact

- [The Deputy Secretary]
- [REDACTED]

Source: DPC

## How was the SRL kept secret?

826. One significant way the SRL was kept secret, even within the VPS, was through use of confidentiality deeds. Those working on the project at DPC, Development Victoria and elsewhere were required to sign these documents, which effectively required 'all information' about the SRL to be kept secret before it was officially announced, and warned of possible court action by Development Victoria if breached.

827. We heard the confidentiality deeds were imposed from 'day one' of the project. At interview, Executive S and Development Victoria's then CEO both independently recalled the Chair asking them to sign one as soon as they presented the SRL concept plan. Executive S said the use of confidentiality deeds in this manner was 'commercial practice', and recalled:

[The Chair was] quite clear about, 'Okay, well, yes, it seems to strategically fit within what we're supposed to be looking at and doing here. But we need to be really clear of the risks here in terms of information security, et cetera, because of the way the development market may respond if the information is not handled appropriately'.

828. Likewise, the Deputy Secretary told us they were asked to sign a confidentiality deed by DPC's then Secretary when first tasked to review and advise on the SRL concept. (While not disputing this, the former Secretary gave evidence they could not recall asking the Deputy Secretary to sign an agreement. They also said they could not recall signing one themselves, and likely would have refused to do so if asked. We did not find a confidentiality deed signed by the former Secretary.)

829. In all, we identified about 60 confidentiality deeds prepared for the SRL project before its announcement. Of these, 11 were signed by public sector employees, with the rest signed by consultants and private contractors.

830. At the time, Development Victoria had no policies, procedures, or guidelines about when confidentiality deeds could appropriately be used. Executive S told us they were not standard practice at Development Victoria but were project specific. (We identified a small number of Development Victoria projects unrelated to the SRL where VPS staff were required to sign similar deeds).

## What were the consequences?

831. The confidentiality protocols adopted in relation to the SRL, including the use of confidentiality deeds, meant the project was kept secret even from other government bodies and senior public servants.

832. This included DEDJTR's then Secretary, who told us they were first informed of the SRL 'a matter of days or a week, not much more' before it was publicly announced. As head of the dedicated transport Department, they oversaw management and delivery of the Government's \$38 billion major transport and technology projects and \$10 billion of upgrades to rail, road and port infrastructure.

833. DEDJTR's former Secretary told us their Department had previously examined the possibility of funding large scale infrastructure via State-led property development, and was originally set up, among other things, to join the State's economic development and transport functions in one Department. They said DEDJTR's Economic Development group had 'substantial expertise' in land value capture methods. The former Secretary said their individual advice was 'not sought on any aspect of the [SRL] proposal' and they were not told about it until after 'the decision to proceed was made'. They described as 'unprecedented' the decision to announce such a major project without testing it through Departmental advice.
834. DEDJTR's former Secretary observed 'cutting out' Secretaries and senior public servants from decisions such as the SRL and preventing them from giving frank and fearless advice 'weakened' the public sector. They noted the more the ability to provide coherent, authoritative advice on such important matters was reduced, 'the more politicised it has effectively become'.
835. As DEDJTR Secretary, they were required to develop and update Victoria's integrated transport plan ('Transport Plan') in accordance with section 63 of the Transport Integration Act. Among other things, the Transport Plan needed to set out the strategic policy context for the State's transport system, including 'medium to long term strategic directions, priorities and actions', and demonstrate an integrated approach to transport and land use planning.
836. When asked how early development of the SRL concept impacted their ability to meet these requirements, DEDJTR's former Secretary said it was 'simply impossible' to maintain an integrated Transport Plan 'if Government was, as we now know, developing a plan that would have fundamental implications for everything done on the network'.
837. Asked whether the Transport Plan had previously considered orbital rail like the SRL, they observed:
- If it was, it was rejected pretty early on. ... I suspect because it was thought of as extremely high cost in a low-density city that would favour only a very small proportion of the cross-town trips that needed to be serviced compared to what could be done with an improved bus service.
838. The SRL was bigger than all other Victorian transport infrastructure projects combined. We found that keeping it secret from DEDJTR's then Secretary for much of its early development meant the Secretary was prevented from fully acquitting their duties under section 63 of the Transport Integration Act.
839. Another consequence of secrecy was that Infrastructure Victoria could not advise on the SRL's potential impacts on other projects already in Victoria's infrastructure pipeline until after it had been announced and taken to an election. This agency published a comprehensive 30-year infrastructure strategy for Victoria only months before the SRL project commenced, which made no mention of a need for orbital rail (see Figure 38).
840. At interview, one former Infrastructure Victoria executive noted the risk of the SRL 'crowding out' other major projects in the State's pipeline, observing, 'in the current fiscal environment that we're seeing now, I would say that that risk is going to be on steroids'. This view was endorsed by DEDJTR's former Secretary, who in response to a draft extract of this report noted the scale of the SRL meant it would likely impact funding to all types of government programs, not just those relating to infrastructure.

841. In contrast, when they were asked about the possible impacts of the SRL on DEDJTR and Infrastructure Victoria's long-term planning abilities, the Deputy Secretary said the VPS needed to adopt a more responsive and agile approach to planning matters, taking into account the political cycle. They observed:

[DEDJTR and Infrastructure Victoria are] going to be very frustrated every four years if their view is they need perfect information to form a plan. Because every four years the political parties come up with different infrastructure that hasn't been cooked out of the Department. ...

Any plan we prepare in the public service needs to be prepared for shocks, and needs to be prepared for election commitments that don't go through these processes.

842. The counter view is the SRL was distinct from the circumstances identified by the Deputy Secretary – because it was a project conceived within the public sector, rather than by the political arm of Government. Under the Westminster tradition, it should have been developed separate from partisan politics and the electoral cycle.

843. In our view, keeping the SRL secret limited the effective coordination of public resources and activities – essentially because the VPS was denied a complete understanding of the Government's policy agenda and timelines. We considered this was inconsistent with aspects of the Westminster tradition, which expect that significant proposals will be informed by the full expertise of the non-political arm of Government.

844. Reinforcing this conclusion, DEDJTR's former Secretary observed in their response to a draft extract of this report that:

The extraordinary secrecy applied to this project was not only a breach of convention and public trust, it also comes at a high cost to public value, and specifically the best, optimal use of State finances. ...

A project of this scale and complexity necessarily competes with many other claims on public funds – in all portfolios, not only transport. That the opportunity costs of the SRL were not able to be tested by DEDJTR and DTF creates a high risk that better uses of funds have been crowded out.

It is not possible to run such thorough tests without collaboration and information exchange across portfolios and with experts outside government.

Some witnesses commented that the unique nature of this project required a different approach to its development, implying that this justified the secrecy. The opposite conclusion makes more sense: a highly complex and costly project requires broader engagement and scrutiny than is typical. However, ... the SRL's development prevented this.

845. They added:

To be clear, I would have had no interest in being informed simply to be in the tent. Indeed, I was grateful not to have known given the way the proposal was developed, and said so when advised of it.

**'Any plan we prepare in the public service needs to be prepared for shocks, and needs to be prepared for election commitments.'**

Former DPC Deputy Secretary

Figure 38: Infrastructure Victoria 30-year strategy and SRL cost estimates

## INFRASTRUCTURE VICTORIA 30-YEAR STRATEGY



**280+** options assessed

**137** recommendations

**\$100 billion**

estimated capital spend over 30 years to implement \*

The first ever statewide infrastructure strategy outlined projects and reforms across nine core sectors to meet Victoria's infrastructure needs until 2046. It did not suggest an orbital rail link. Projects and reforms among the 137 recommendations included:



\*Described by Infrastructure Victoria as 'a very rough figure' based on multiple assumptions.



## SUBURBAN RAIL LOOP COST ESTIMATES

We found no single authoritative assessment of how much the SRL will cost. Each of the various reports and evaluations we examined used different methods, routes and timeframes for estimates.\*



\* The Government has outlined two options for delivery of SRL North (Options A and B). This graphic includes values only for Option A as economic appraisals indicate it has the higher benefit to cost ratio.

\*\* Real values. Includes rail capital costs but excludes precinct and recurrent costs.

\*\*\* Discounted capital and recurrent costs

\*\*\*\* Total Estimated Investment for asset works, excludes operating, maintenance and finance costs

Source: Victorian Ombudsman

## Consequences of using confidentiality deeds

Public sector employees are subject to general secrecy and confidentiality obligations. These take into account their duty to provide frank, impartial and timely advice, and to adhere to the public sector values such as integrity, transparency and accountability. Secrecy requirements generally restrict the public disclosure of information unless in the performance of official duties, required by law, or authorised by the employer.

For example, Development Victoria's legislation generally required staff and contractors to keep all confidential information about their work secret, except when carrying out official duties or with the consent of the Minister.

In contrast, confidentiality deeds imposed for the SRL's early development prevented staff from disclosing any information about the project before its announcement – even potentially to other government agencies and employees. The deeds did not make an exception for official duties, going beyond the already strict confidentiality obligations in Development Victoria's legislation.

One DEDJTR executive we interviewed branded as 'unprecedented and entirely inappropriate' the imposition of these confidentiality deeds, noting they even prevented some Department staff from informing the Secretary what they were working on. In response to a draft extract of this report, DEDJTR's former Secretary was equally critical of the practice.

Likewise, at interview DPC's former Secretary said it would be 'egregious' to deliberately impose such a requirement on a public servant. Their view was that confidentiality agreements were only appropriate for private sector contractors. They said:

It's particularly problematic if it's a device to conceal the project from the Secretary, who similarly should always be trusted to respect confidentiality in the normal course of business of being a Secretary and a public servant.

In our view, imposing confidentiality deeds on public sector employees engaged to work on the SRL was inappropriate because it had the potential to substantially impair the proper functioning of the public sector in keeping with the Westminster tradition.

Project confidentiality could have been more appropriately reinforced by requiring staff to sign a statement acknowledging their existing confidentiality obligations applied to their work on the SRL – as is common practice already within the public sector, and as reflected in Development Victoria's general approach to onboarding employees.

In response to a draft extract of this report, Executive S and the Chair each submitted the SRL confidentiality deeds were consistent with Development Victoria's legislation, which required it to carry out its functions 'using commercial disciplines'. Executive S said they could not recall anyone at DPC raising concerns about the confidentiality deeds when the Department engaged Development Victoria to progress the SRL concept.

## Why the level of secrecy?

846. Most witnesses we interviewed said it was necessary to keep the SRL secret until its public announcement to prevent speculators from buying land along the proposed route. At interview, the Deputy Secretary gave the example of the Fishermans Bend redevelopment, where the Government made changes that affected land prices without considering the flow-on consequences for services and amenity.
847. Development Victoria did not acquire any land for the SRL before it was announced. Although relevant to a project of the SRL's scale, we were unable to determine what, if any, steps were taken to diminish the risk of property speculation before secrecy was lifted. (In response to a draft extract of this report, the Chair said they were concerned about people profiting from insider knowledge of the SRL, rather than the Government losing the opportunity to purchase necessary land.)
848. Another reason publicly given for keeping the SRL highly secret was the need to respect Cabinet confidentiality. However, this does not satisfactorily explain the tight restrictions placed on knowledge of the SRL within the public sector, where senior employees routinely advise on and implement Cabinet decisions.
849. At interview, DPC's former Secretary described an 'obsessive need for secrecy' surrounding the SRL. Although the project was conceived by a public sector agency, they observed 'the high degree of secrecy would also have supported an intention to announce the SRL as a centrepiece of a re-election platform'.
850. They emphasised this was something they inferred with the benefit of hindsight, rather than what they were told, saying it was 'never articulated to me in those terms'. They also acknowledged that proposals from public sector agencies can 'readily and legitimately' be incorporated into an election platform. Responding to a draft extract of this report, they said they did not intend to suggest the degree of secrecy was 'designed to protect the pre-election announcement' – only that it had the effect of doing so.
851. DEDJTR's former Secretary also observed that, with hindsight, whether the secrecy of the project and the timing of its announcement were meant to maximise electoral impact was 'a pretty legitimate question that any voter would ask'.
852. In response to a draft extract of this report, Executive S and the Chair each strongly rejected suggestions that confidentiality surrounding the SRL's early development had anything to do with electoral politics. They emphasised the reason for secrecy was the risk of land speculation, and noted Development Victoria's legislation required it to work according to 'commercial disciplines', subject to strict secrecy.

## What we found

853. The announcement of the SRL in August 2018 took many by surprise, and fuelled much public speculation.
854. Given its development in secret by people perceived as having strong ALP ties, without input from some expert bureaucrats, and then its direct attachment to the political cycle, it is unsurprising some queried the project's purpose and genesis.
855. Subsequent independent reviews have also questioned key early assumptions, and pointed to possible shortcomings in how the SRL progressed from being pitched within a public sector agency and 'proved up' by consultants, to announced as an ALP election commitment.
856. Examining this, we found the way in which the SRL was initially developed at odds with core aspects of the Westminster tradition. The high level of secrecy and primary reliance on consultants meant key parts of the VPS and broader public sector were unable to perform their customary role of providing frank, impartial and timely advice about a policy with significant and far-reaching consequences for Victoria's infrastructure pipeline and future State budgets.

**Given its development in secret by people perceived as having strong ALP ties, without input from some expert bureaucrats, and then its direct attachment to the political cycle, it is unsurprising some queried the project's purpose and genesis.**

857. Notably, we heard the State's transport and economic development Secretary was not informed of the proposal until days before its public announcement. They told us the lack of consultation effectively prevented them from adequately managing Victoria's integrated Transport Plan, and that the SRL's scale and complexity meant there should have been extensive consultation with key government stakeholders familiar with Victoria's highly interconnected transport system.
858. Infrastructure Victoria was also 'blindsided' by the SRL announcement, despite having been established by Government only a few years previously to 'take short term politics out of infrastructure planning'.
859. We heard in the ordinary course, thorough testing of a transport infrastructure proposal like the SRL could take expert bureaucrats several years to complete, and that the State's then-transport and economic development Department, DEDJTR, would have been unlikely to endorse such a high-cost solution for low-density Melbourne.
860. Instead, strategic assessment work was outsourced by DPC to Development Victoria, and in turn to consultants – indirectly excluding elements of the VPS and broader public sector, and furthering a broader trend in Government towards relying on external sources of advice.
861. Those involved in initially developing the SRL noted the project was subject to wider VPS testing after the State election, when a bespoke administrative office was established to plan and deliver it. But by this stage, the proposal had been adopted by the political arm of Government, presented to the electorate, endorsed, and allowed to develop a premature momentum of its own.

862. With these considerations in mind, we examined, but did not substantiate, allegations that the unusual features of the SRL's early development resulted from compromised objectivity driven by the appointment of a former Ministerial staffer, Executive S, to Development Victoria.
863. Though Executive S – having been hired, in part, for their 'political nous' (essentially, an understanding of government and industry priorities) – originated the SRL concept and was central to its early development, we found they were not appointed to advance the SRL through the public sector. Nor did we find they discharged their responsibilities in an inappropriate partisan political way, or in a manner influenced by their ALP affiliation.
864. Regardless of how it was conceived, the SRL became politicised – officially attached to partisan politics, taken to an election without input from key stakeholders, and given a semblance of independent scrutiny due to its association with Development Victoria, a public sector agency operating at the general direction and control of Ministers.
865. With no ability to review information presented to Cabinet, we accepted the timing of the SRL announcement was not decided by Development Victoria. Its surprise reveal as a 'centrepiece' ALP election commitment was, however, made easier by the unusually high level of secrecy applied from 'day one' – something that was independently noted and commented upon by both DPC and DEDJTR's former Secretaries.
866. Those involved told us the idea to keep the SRL highly secret – including the unusual use of confidentiality deeds to bind some public sector employees – was first pitched by the Development Victoria Chair, implemented by Executive S, and later adopted without challenge by commissioning agency DPC.
867. They also told us the secrecy was initially driven by a conservative approach to project hygiene, founded in concerns about land speculation, and informed by Development Victoria's legislation. Yet this did not adequately explain why secrecy was maintained as the SRL progressed from a concept, to a fleshed out proposal, to Government policy. Nor did it explain why authoritative, apolitical stakeholders such as DEDJTR's Secretary and Infrastructure Victoria were excluded from input. It is difficult to see how any of the reasons put forward for secrecy could possibly have justified keeping the head of the relevant Department in the dark.
868. Also unclear was why concerns about land speculation seemed to evaporate as the project geared towards pre-election announcement. No land was secured by Development Victoria before secrecy was lifted, and it was therefore difficult to see how this risk was appropriately mitigated.
869. Also troubling was that no one apparently considered the public administration risks of keeping knowledge of the project so tightly restricted within the apolitical arm of Government. We found no evidence anybody at Development Victoria or DPC voiced concerns about this, nor questioned why, as the project progressed, commercial considerations should continue to take precedence over the need for truly coordinated planning, among other basic features of responsible government.

870. As Executive S and the Chair observed, Development Victoria operated in a commercial context placing it in some ways at odds with the Westminster tradition. Both noted DPC, as the central agency instructed to commission Development Victoria, was better placed to steer project consultation within the VPS. Yet even its nominated contract manager was required to sign a confidentiality deed, placing any disclosure of SRL information at the 'absolute and unfettered' discretion of Development Victoria.
871. Though not driven by partisan hiring, aspects of the SRL's early development were nevertheless relevant to the broader politicisation theme raised by the Legislative Council referral. 'Obsessive' project secrecy and heavy reliance upon consultants meant the State's largest-ever transport infrastructure project was developed in isolation from areas of the public sector with strong portfolio interest, statutory responsibilities, and relevant expertise. We were particularly disturbed to hear that even DEDJTR's Secretary viewed this as evidence of inappropriate politicisation, 'not by planting people [but] by cutting [important people] out of the advisory loop'.
872. When excluded in this way, public sector employees can be pushed towards 'over responsiveness' – by promoting or not properly scrutinising the elected government's preferred policy agenda to avoid further marginalisation. This in turn deprives the government of the 'frank and fearless' advice that is regarded as a hallmark of the Westminster tradition.

## Executive S's response

In their response to a draft extract of this report, Executive S disputed some of the shortcomings we identified with how the SRL was initially developed.

They also contended these issues were not relevant to the matter referred by the Legislative Council: first, because the referral was limited to whether 'ALP activists are "stacked" into the public service'; and second, because their appointment to the public sector was not an example of this practice. They noted, in particular, our conclusion that they were not appointed to advance the SRL through the public sector, and that aspects of their appointment to Development Victoria accorded with best practice hiring principles. They said this effectively meant there was 'no further inquiry for the Ombudsman to undertake'.

We disagreed with Executive S's interpretation of the referral. It required us to investigate whether potentially politicised hiring practices were 'compromising objectivity and professionalism and increasing the risk of corruption'. In the present case, this involved investigating whether early development of the SRL involved departures from traditional public sector political neutrality, and whether any such departures were attributable to Executive S's appointment. Our report explains how we did this, and what we found.

We also considered Executive S's appointment to the public sector was within scope of the Legislative Council referral (see 'Giving meaning to the referral' and 'Public service or public sector?' in Scope and Methodology).

In their response, Executive S emphasised they were hired to Places Victoria (as it was then known) for their skills in public administration, and not for political reasons. They noted they had broad policy development experience at the time, encompassing urban development, economics, and transport infrastructure project development.

They repeated their evidence that they did not conceive or plan the SRL based on electoral politics. They emphasised the 2018 Strategic Business Case was an 'extremely detailed document', involving economic, design and engineering appraisals. They said this represented the 'very first stage' in the SRL's development – noting a full *SRL Business and Investment Case* was later prepared (after the 2018 election and the events considered in this chapter). They said the 2018 Strategic Business Case was outsourced to consultants because, unlike DEDJTR, they had the necessary skills to complete it.

Executive S rejected any assertion SRL secrecy was influenced by political considerations. They noted the confidentiality protocols were initially determined by the Chair, not them. They said it was reasonable to rely upon the Chair's considerable experience in commercial matters. They noted Development Victoria's legislation imposed strict secrecy over its work, and required the agency to operate 'using commercial disciplines' – which extended to adopting confidentiality deeds for projects like the SRL.

They noted Development Victoria operated in a unique legislative context, and said it was fundamentally DPC's responsibility as client to determine whether the SRL should have been subject to broader consultation or advice, and what form this would take. They said that, despite the confidentiality deeds, DPC 'always had control over the information about the SRL, and how [it] was to be treated'.

## **The Chair's response**

In their response to a draft extract of this report, the Chair made many of the same observations as Executive S: that SRL decision-making was not relevant to the Legislative Council referral, that the use of confidentiality deeds was consistent with Development Victoria's legislation, and that it was DPC's responsibility to determine the level of consultation necessary before the project was announced.

The Chair emphasised Executive S was appointed so Places Victoria (as it then was) could draw on their considerable economic and public policy expertise. They emphasised the decision had nothing to do with electoral politics, nor was it heavily influenced by Executive S's prior roles as a Ministerial staffer. In any case, they said Executive S's recent role at the Treasurer's office gave them considerable insight into the State's major projects pipeline. They said the hiring decision was discussed by the rest of the Board, and supported by a senior DEDJTR stakeholder.

The Chair expressly denied Executive S was hired to shepherd the SRL through the public sector, and recalled they first heard of the orbital rail concept when briefed in or about early 2017. They said the SRL followed a standard project development cycle, that the 2018 Strategic Business Case involved extensive technical analysis, and that considerable further work went into assessing the concept after the 2018 election.

The Chair said they genuinely believed strict secrecy over the SRL was needed to prevent land speculation, and this was based on their considerable experience working in the property and development sectors. They said they were concerned about people profiting from insider knowledge, rather than the Government losing the opportunity to purchase land. They said the fact no land was purchased by the Government before the SRL was announced was consistent with this explanation. Addressing the use of consultants, they said the public sector was not the only body with the necessary skills to develop complex major projects. They said engaging consultants for such work was commonly done, and consistent with broader trends in government.

The Chair said it was their recollection that senior staff at DPC shared the concern about land speculation risks, and supported their approach to project secrecy. They noted that relatively few public sector employees were made to sign confidentiality deeds, and only at a late stage. They denied the use of confidentiality deeds effectively facilitated the surprise election announcement. They said Development Victoria did not progress work on the SRL with the election in mind, nor did it have any say in when the project was announced. They said every step taken by Development Victoria to develop the SRL before the election was for the purpose of assessing its merits.

The Chair emphasised they did not approach their public duties in a partisan manner, and had always acted in the best interests of Development Victoria.





# Chapter 7: Alleged politicisation of Commonwealth Games delivery

## What we investigated

873. We investigated allegations of politicised hiring to key roles associated with delivery of the (now aborted) 2026 Victorian Commonwealth Games.
874. Before Victoria abandoned the event, we had received six submissions about senior public service appointments relating to the Commonwealth Games – chiefly within DJPR, the Department initially responsible for event planning and coordination.
875. The Government had in April 2022 announced Victoria would host the Games, with events to be held across multiple regional locations. DJPR set up new teams to plan and deliver the event, and the Government allocated \$2.6 billion in the 2022-23 State Budget towards hosting.
876. Submissions alleged that politically aligned people were appointed to key Commonwealth Games roles without open and advertised processes, and that the merit selection principle had been sidelined. They noted an apparent bias towards politically responsive candidates, at the expense of others with expertise in delivering major sporting events. One submission notably alleged the relative inexperience of appointees would result in ‘embarrassment’ for Victoria.
877. We decided to examine 31 executive hiring decisions at DJPR relating to Commonwealth Games delivery. While the investigation was underway the Government suddenly withdrew from the hosting agreement, pointing to unexpected cost blowouts. Subsequent media articles linked the decision to allegations that aspects of Commonwealth Games planning were influenced by ALP partisan political objectives.
878. We therefore also attempted to establish whether the decision to cancel the hosting agreement was linked to the broad theme of politicised hiring identified in the Legislative Council referral.
879. We gathered and reviewed recruitment records, planning documents, and email accounts, and took sworn evidence from 10 witnesses – all current or former senior DJPR officers. Most witnesses were interviewed before the hosting agreement collapsed, with a few further interviews conducted after the announcement.

## What we did not investigate

The decision to cancel the Commonwealth Games hosting agreement was announced on 18 July 2023, when we had almost completed evidence gathering.

Three inquiries have since examined, or will examine, Commonwealth Games decision-making:

- a performance audit by VAGO, *Withdrawal from Commonwealth Games 2026*, which is looking into the costs of ‘securing, planning for and exiting from’ the Commonwealth Games, as well as the quality of advice provided to Government
- a [Victorian Legislative Council Select Committee](#) established to look into the decision to withdraw from the hosting agreement, including ‘the potential of undue influence by the executive on the independence of the public service’
- an [Australian Senate Standing Committee](#), which was already looking into Australia’s preparedness to host major sporting events, including the Commonwealth Games.

Having regard to these other inquiries, and noting the terms of the Legislative Council referral to the Ombudsman, we did not examine the merits of the Government’s decision to host the Commonwealth Games, the accuracy of event costings, or the decision to cancel the hosting agreement.

Instead, we focused on the comparatively narrower issues of whether Commonwealth Games hiring was politicised, and if so, whether this contributed to collapse of the hosting arrangement.

Figure 39: Commonwealth Games hiring, at a glance

**Our investigation**

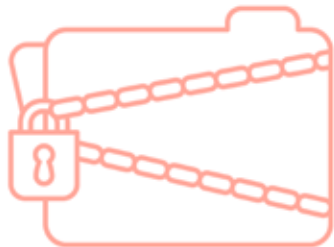
**6** submissions received about Games hiring

**40,073** records reviewed

**10** witnesses interviewed



**2026 Commonwealth Games**



**4** months of secret negotiations to host event

**7** years usual preparation time for host cities

**4** years available to Victorian Government

**31** executives appointed to two DJPR teams planning the event:

**5** roles advertised

**\$2.6 billion** allocated in 2022-23 State Budget for hosting

**\$380 million** compensation paid by Government for cancelling

Source: Victorian Ombudsman

Figure 40: Timeline of events



## Securing the Commonwealth Games

880. The Commonwealth Games is an international sporting event held every four years for athletes from Commonwealth member states. The Commonwealth Games Federation ('CGF') oversees the event and grants hosting rights based on bids from interested cities.
881. Victoria's approach to hosting the 2026 event was unusual for two reasons. First, while the Commonwealth Games is normally held in a single host city, the Government's submission proposed a world-first, multi-city approach, centred around 'regional hubs' in Geelong, Bendigo, Ballarat and Gippsland, with scope to expand to other places in Victoria. This required significant public investment in housing and sporting infrastructure.
882. Second, while cities hosting the Commonwealth Games usually have about seven years to prepare, Victoria had much less time. Organisers had been struggling to find a suitable 2026 host, and Victoria stepped in at relatively short notice, in early 2022. This allowed only about four years' preparation.
883. Owing to this time pressure, the Government's submission to host the Commonwealth Games was prepared swiftly, over about four months.
884. Negotiations to land the event were conducted in secret, with the process referred to as 'Project C' within the public sector. This mainly involved two bodies: DJPR and Visit Victoria – a State-owned company responsible for attracting major events – with assistance from some DPC and DTF officials. Several consultancy firms also helped cost the hosting proposal.
885. Negotiations started in late 2021. That December, Visit Victoria held 'preliminary discussions' with the CGF and another body, Commonwealth Games Australia ('CGA') about Victoria's concept for the 2026 event.
886. Due to the tight timeframe, a typical bidding process was not followed. Instead, Visit Victoria secured an 'exclusivity agreement' with the CGF, meaning no other city could make an offer before 31 January 2022.
887. At interview, DJPR's then Secretary gave evidence they were 'activated' by a call from Visit Victoria's Chair, following a discussion with the Minister for Tourism, Sport and Major Events:
- The Minister [spoke] to me earlier to say, 'Speak to the Chair of Visit Victoria'. ... The Chair of Visit Victoria gives me a bit of context to understand what I'm going to need to prepare for, albeit very tightly bound, [and the] Minister says, 'I want you to tell me if this is worth doing or not'. I wasn't told, 'Make a case for this to happen'.
888. The Government set up a project Steering Committee of at first just two people: DJPR's Secretary and Visit Victoria's Chair. Membership was later expanded to include a small number of others from DJPR and Visit Victoria. A working group was also set up to report to the Steering Committee, made up of staff from Visit Victoria, Sport and Recreation Victoria (a team within DJPR) and three consultancy firms.

## Business Case prepared in secret

889. We heard that DJPR, Visit Victoria and the consultancy firms worked ‘furiously’ to prepare a Business Case given to the Government in late January 2022 to help guide decisions. This document included upper and lower preliminary cost estimates.
890. The Business Case noted the ‘high-level’ approach used for cost estimates, which were based on benchmarking of other Games delivered in Australia, with only ‘limited consultation and limited ability to undertake venue site visits within this short period of time’. It acknowledged the proposed regional model would cost more than the 2018 Gold Coast Commonwealth Games, emphasising it required ‘careful planning’ and people with ‘demonstrable track record at delivering mega events’ to be successful.

‘I thought, “I don’t think I’ve ever been in this situation in the public service before”.’

Witness

891. The Business Case was largely prepared by a consultancy firm, with input from DJPR, Visit Victoria, DTF and two other consultancies. A fourth consultancy firm was later engaged by the Government to peer review the cost estimates and provide further economic analysis.

892. Strict project confidentiality meant discussions about the Business Case were limited to a core project team and did not involve other stakeholders such as sporting organisations, venue operators or the Australian Government. Save for a small number of DPC and DTF officials, existence of the hosting proposal was also kept secret from other public sector agencies.

893. We heard that staff preparing the submission were ‘all told not to speak to anybody’. One witness we interviewed recalled being asked to provide information to support the negotiations:

My [manager] said, ... ‘I need this [information].’ And I said, ‘What’s it for?’ [They said] ‘I can’t tell you.’ And I said, ‘Well I can’t guarantee that the advice I give you is appropriate, unless you tell me.’ ... I thought, ‘I don’t think I’ve ever been in this situation in the public service before.’

## Hosting agreement announced

894. Public documents show the Business Case was submitted to and approved by Cabinet’s Expenditure Review Committee, before a ‘pre-emptive’ offer was made to the CGF. The Government’s final submission in mid-March 2022 resulted in the agreement for Victoria to host the 2026 event.
895. Victoria’s selection was formally announced by then Premier Daniel Andrews on 12 April 2022. In the months before this, DJPR began quickly setting up new teams to oversee planning. This was based on earlier work by consultants, referred to in the public sector as ‘Project G’.
896. We understand a dedicated Ministerial taskforce and a Cabinet committee were also established to oversee aspects of Commonwealth Games planning. Section 19(1) of the Ombudsman Act prevented us from looking at the actions of these bodies.

## Commonwealth Games hiring

897. Two new structures were set up within DJPR to plan and deliver the 2026 Commonwealth Games:

- the Office of the Commonwealth Games ('CG Office')
- the Commonwealth Games Organising Committee ('CG Committee').

898. The CG Office was to oversee whole-of-government planning and coordination for the Commonwealth Games. It was primarily responsible for policy and strategy, infrastructure, and the event's legacy.

899. The CG Committee was to oversee primary delivery of the Commonwealth Games. This included things like event staffing, commercial arrangements, and marketing. (Though initially set up as a business unit in DJPR it later turned into 'Victoria 2026', a State-owned company.)

900. Hiring began in February 2022, around the time it became clear Victoria was likely to secure the event. Up to the end of August 2022, there were about 31 executives appointed to Commonwealth Games roles in DJPR:

- 14 to the CG Office
- 17 to the CG Committee.

### Most early roles not advertised

901. The overwhelming majority of positions were filled by directly appointing existing DJPR staff, without internal or external advertisement. Just five roles were advertised to other applicants.

902. Asked about this, DJPR's then Secretary referred to the 'breakneck speed' at which the Department needed to plan and deliver the Commonwealth Games. They told investigators these were always intended as short-term appointments – describing them as 'start-up resources' – made 'on the understanding that people would be put through a proper process once [a] proper process could be established'.

903. The Secretary acknowledged some concern emerged at DJPR when roles were not initially advertised, which they described as 'fair enough', but emphasised the message to staff was:

If you want to get involved in the Comm Games, there's about to be a flood of EOs and [competitive] processes. Don't be distracted by these short-term appointments. They are merely to start the thing up and get the lights turned on.

904. This was consistent with records we reviewed, which showed most Commonwealth Games roles started being advertised from late-June 2022. Other DJPR executives we interviewed confirmed the initial hires were always understood to be temporary. Interviewed before the withdrawal, one commented the direct appointees were 'mostly gone now, which is what you'd expect':

It's a startup operation: get everything up and running, and then once the CEOs are appointed ... they come and bring their own team in and recruit themselves.

905. This witness also observed, 'It was a ridiculous and ambitious schedule, so it didn't surprise me that [the Secretary] just threw loads of good people at it'.



‘It was a ridiculous and ambitious schedule, so it didn’t surprise me that [the Secretary] just threw loads of good people at it’.

DJPR executive

906. Unlike other hiring we examined (see eg chapter 4), we found DJPR’s use of direct appointments in this case was appropriate and demonstrably compatible with the merit selection principle. The DJPR Recruitment Policy at the time exempted short-term roles from advertising ‘when standing up new teams in times of urgency and when the ongoing composition ... is still being determined’, and staff were generally appointed at-level, without salary increases. Although some at the CG Committee were issued long-term contracts, we accepted this was necessary to ensure they were not worse off when the team was separated from DJPR.

### Former staffers appointed

907. An article published by the *Herald Sun* on 29 April 2022 alleged there were a ‘number of Labor-aligned appointments to the Games’.

908. Four of the people hired to Commonwealth Games roles previously worked as staffers to ALP Ministers or the Premier. Another two former staffers were initially slated for roles, although were not ultimately appointed.

909. With one exception, all were already DJPR employees at the time – most having left their political roles years earlier. The one exception was hired through an open and advertised selection process handled by an external recruitment firm. All appointments were made after negotiations to secure the Commonwealth Games were substantially complete.

910. We did not identify any evidence indicating these appointments were influenced by partisan political considerations. Witnesses we interviewed who were involved in the CG Office and CG Committee also said they did not observe any inappropriate ‘politicised’ behaviour by those appointed.

911. We also examined the appointment of two former interstate public servants to co-lead the CG Office while it was being set up. We did not identify any evidence the appointment of these people to the CG Office roles was influenced by partisan political considerations.

912. Although one witness gave evidence there was ‘more PPO involvement’ in setting up the Commonwealth Games than they had previously experienced, we did not identify any evidence that the then Premier or Ministers inappropriately influenced staffing decisions.

## Cancellation of the hosting agreement

913. The Government announced its decision to withdraw from hosting the 2026 Commonwealth Games by media release on 18 July 2023.
914. The Government attributed the decision to cost blowouts. It said ‘significant planning work and extensive market soundings’ demonstrated the true cost of the event would likely exceed \$6 billion, reportedly double the estimated economic benefits. Following mediation, it agreed to pay \$380 million in compensation to the CGF, CGA and other affected parties for withdrawing.
915. Observers have identified a variety of factors which potentially contributed to the reversal. We did not explore this issue in detail for the reasons set out earlier in this chapter. We did, however, consider whether the appointment of former ministerial staffers was a factor contributing to collapse of the hosting agreement. We did not find any evidence this was the case.
916. Some submissions alleged candidates with experience delivering past Games were overlooked. But we found DJPR hired a suitable mix of people with experience delivering major sporting events – noting that most initial hiring decisions were temporary.

Witnesses we interviewed said they did not perceive any inappropriate political intrusion into their work.

917. Witnesses also confirmed DJPR engaged extensively with key staff involved in hosting past Commonwealth Games – including the 2006 Melbourne and the 2022 Birmingham teams. We heard that as part of the hosting arrangement, the Government also agreed to second about 16 event delivery experts ‘who travel the world working on Games’. One witness gave evidence these people played a ‘critical’ role in planning done by the CG Committee.
918. Witnesses we interviewed said they did not perceive any inappropriate political intrusion into their work.
919. That said, we did identify two issues relating to Commonwealth Games planning which were relevant to the broader theme of politicisation identified in the Legislative Council referral. These were the impact of project secrecy on Government processes, and the use of consultants to prepare initial costings.

### Project secrecy

920. Some media reports suggested the high level of secrecy surrounding preparation of the Government’s initial proposal to host the Games possibly contributed to cost blowouts.
921. Many key stakeholders, including public sector departments and agencies, received little notice of the Government’s ambitions to host, and had little or no opportunity to provide advice about the Business Case underpinning the decision to secure the event.

922. Some restrictions on information flow were not unusual in the circumstances. One executive with knowledge of the hosting submission told us although the rationale for secrecy was never directly explained to them, it was ‘commonplace’ when negotiating events ‘to do so confidentially ... for commercial purposes’.
923. Unlike for the SRL (see chapter 6), we heard public servants were not required to sign additional confidentiality agreements relating to their work on the hosting submission. (External consultants involved in preparing the Business Case were required to sign deeds ‘as per normal’).
924. Yet the level of secrecy clearly limited the Government’s ability to accurately cost the event. At a Senate Committee hearing in August 2023, a key consultant involved in preparing the Business Case noted commercial confidentiality concerns had limited their firm’s ability to engage with stakeholders. Witnesses involved in the process told us they understood and respected the desire to keep the negotiations secret, but also acknowledged the impact this had on the accuracy of early cost estimates, particularly for operational items.
925. For example, the original Business Case projected transport and security costs would reach \$311 million in the worst-case scenario, whereas costings from July 2023 released by the Government put these at close to \$800 million – almost \$500 million more than originally estimated.
926. At interview, one witness recalled having early discussions about how using venues spread across regional areas would present operational challenges. They said efforts were made to test initial business case assumptions ‘in a confidential way, as best we could’ with other Government agencies – including Victoria Police and transport officials – ‘to at least try to provide a sense check’ within the time permitted.
927. Another witness said it was ‘always intended’ that more detailed cost analysis would occur once secrecy lifted. They acknowledged broader engagement could have identified expertise from elsewhere in the public sector ‘that may have led to different numbers being put forward to Government earlier than they were’:
- I think that was the rationale back then, it was, ‘Well, we know we don’t have to budget 100 per cent right. It will be revisited over time ... Keep it tight now. When we bring in other parties and have more time, then we will revisit the budget’.
928. The degree of secrecy surrounding the Government’s proposal to host the Commonwealth Games inevitably meant some public servants with relevant expertise were excluded from providing advice for decision-makers to consider before signing the State up to a substantial financial commitment.
929. As in the case of the early development of the SRL, this had the potential to frustrate the public sector’s customary role of providing frank, impartial and timely advice to Government.

## Use of consultants

930. Another factor linked to the issue of public sector marginalisation is the increasing reliance on consultants to provide advice, as occurred during the Government's Commonwealth Games preparations.
931. DJPR engaged consultants to prepare the Business Case for the hosting proposal. Some of this work was sub-contracted out to other firms with sporting events expertise. Consultants also peer reviewed economic modelling, provided advice on governance structures, and developed a preliminary roadmap for delivering the Commonwealth Games.
932. We heard the use of consultants to assist with the preparation of business cases was not unusual. One witness told us DJPR staff had some capability to prepare them internally but 'invariably' sought outside help for large capital projects requiring engineering, architectural or other technical support. This witness said their team met daily with the consultants and were critically appraising the quality and validity of the work delivered.
933. Another executive noted the CG Committee largely took advice from consultants and Visit Victoria and then, on behalf of DJPR, advised the relevant Minister who would take recommendations to a Cabinet committee for approval. They observed the CG Committee operated 'at arms-length' from Government, and said they were confident advice to Ministers and Cabinet was thoroughly vetted by DJPR.

934. We found the involvement of consultants in Commonwealth Games preparation was largely attributable to the need to rapidly develop the Business Case and set up operating structures, both of which required specialist skills perceived as unavailable within the public sector.
935. This is consistent with the general trend towards Government use of consultants in Victoria and throughout Australia. As noted elsewhere in this report, the trend risks further diminishing the capacity of the public sector. It also increases politicisation risks by selectively limiting the information on which decisions are based, and potentially pushing the public sector towards 'over responsiveness' to avoid being further marginalised.

## What we found

936. We did not identify evidence hiring to Commonwealth Games positions at DJPR was influenced by inappropriate partisan political considerations.
937. Given the other formal inquiries into the matter, we did not examine why the hosting agreement collapsed. However, two possible contributory factors appeared relevant to the broader theme of politicisation: excessive secrecy and primary reliance on consultants to assess the value of a strategically significant project.
938. Both practices potentially contribute to marginalisation of the public sector by frustrating its ability to provide frank, impartial and timely advice, and were also present in the early development of the SRL project.

### **Former Secretary's response**

In response to a draft extract of this report, DJPR's former Secretary objected to our findings about the level of secrecy and use of consultants for Commonwealth Games preparation. They said these findings undermined our conclusion that hiring was not politicised, and that both practices were outside the scope of the Legislative Council referral to the Ombudsman in any case.

We disagreed with this position. The issues highlighted in this chapter were identified during our investigation of allegedly politicised hiring. They were relevant to the broader theme of politicisation, and their inclusion is consistent with the Ombudsman's function to promote improved public sector administration.

# Chapter 8: Alleged political intrusion in senior V/Line hiring

## What we investigated

939. Politicisation can take many forms. One clear example is improper political interference in what should be arms-length public sector hiring decisions.
940. We received seven submissions about senior hiring at V/Line Corporation ('V/Line'), Victoria's regional rail operator. We heard that in mid-2021, a CEO candidate selected and heavily vetted by V/Line's former Board missed out when a Minister instead directly appointed a former ALP Ministerial staffer to the role. Some submissions suggested this was part of an attempt to inappropriately politicise V/Line's operations. We did not substantiate this.

941. Similar allegations were the subject of an article published in the *Herald Sun* newspaper on 22 February 2022 titled, *Ex-Labor candidate landed top V/Line job with no industry experience* ('*Herald Sun* article'). V/Line hiring was also referenced in *The Age* article identified in the Legislative Council referral.
942. We examined the circumstances behind the appointment of V/Line's new CEO, and related changes to the agency's structure and executive workforce. We also examined how V/Line responded to Government infrastructure priorities after the restructure.
943. We gathered and reviewed recruitment files, restructuring records and email accounts, and took sworn evidence from five witnesses – a mixture of current and former V/Line and VPS officials.

Figure 41: V/Line senior hiring, at a glance



Source: Victorian Ombudsman

Figure 42: Timeline of events



## IBAC investigations involving V/Line

IBAC's *Operation Lansdowne* investigated alleged serious corruption involving several public entities, including V/Line.

Its December 2017 report found 'evidence of a V/Line culture that placed undue emphasis on relationships and who people knew, and disregarded the requirement to declare and manage conflicts of interest'. IBAC also referred to 'unfettered cronyism' flourishing at senior levels of V/Line. V/Line's then-CEO resigned during IBAC's investigation, and a replacement was appointed before it concluded.

This new CEO was in turn terminated due to a second IBAC investigation into alleged serious corruption at V/Line, *Operation Esperance*, which began public hearings in late 2020.

## Public entity agency heads

The Victorian public sector is made up of the VPS, public entities and special bodies.

Public entities are government agencies that sit outside the VPS, such as statutory authorities. They often operate at arms-length from Ministers and are overseen by an agency head – usually a CEO.

Different public entities have different processes for appointing agency heads, and the independence of this process from the political arm of Government also varies. Some – like V/Line before 1 July 2021 – are required to obtain Ministerial approval to appoint a CEO, allowing Government a say in who is appointed. The VPSC has issued a guide to help public entities identify high-quality leaders, *Recruiting a CEO*.

Once appointed, agency heads usually have the power to hire other staff. Under the Public Administration Act, they must establish employment practices consistent with the public sector employment principles.



## V/Line Board recruits for a new CEO

944. V/Line is a statutory corporation responsible for providing rail and coach services to regional Victorians. It operates under the Transport Integration Act and reports to the Minister for Public Transport and the Treasurer.
945. Before 1 July 2021, V/Line was a State business corporation with a Board of Directors. Although a public sector agency, it was required to operate in line with commercial principles. It sat outside the VPS but within the broader transport portfolio, overseen by DoT.
946. V/Line's Board was responsible for managing its affairs, and among its functions was to appoint a CEO. The Transport Integration Act required the Board to obtain approval from the Minister for Public Transport (after consultation with the Treasurer) before appointing a candidate.
947. The hunt for a new CEO began in December 2020, when the Board resolved to engage an executive search firm following termination of the previous CEO's employment due to IBAC's *Operation Esperance*.
948. Over several months, V/Line's Board consulted with DoT and the Minister for Public Transport, advertised the CEO position, and assessed more than 180 applications. In mid-March 2021, a Board-appointed selection panel interviewed five candidates and identified one 'clear standout' – a senior public servant with interstate transport sector experience ('Candidate B').
949. V/Line informed Candidate B of their preferred status and undertook extensive reference and probity checks. At V/Line's invitation, Candidate B met with DoT's Secretary and the Minister for Public Transport, receiving positive feedback afterwards.
950. On 16 April 2021, Candidate B accepted a provisional salary and relocation package offered by V/Line. They told V/Line they had notified their employer of their impending resignation and were 'excited about the move to Melbourne'. Three days later, the selection panel formally recommended the Board seek Ministerial approval to appoint Candidate B as CEO on a five-year contract.
951. V/Line was preparing a Board resolution when, on 28 April 2021, DoT's Secretary phoned the Board's Chair to request V/Line suspend the CEO recruitment process. According to notes made by the Chair, DoT's Secretary advised that 'no Ministerial approval for any appointment [would] be given at this time'.
952. The Board suspended the recruitment process. Some weeks later, on 28 May 2021, the Government notified V/Line it was preparing to restructure the agency. Under the arrangements, V/Line's Board would be abolished, with the CEO instead reporting directly to DoT's Secretary.
953. The changes to V/Line were announced by media release on 16 June 2021. V/Line's Board was abolished by a Transport Restructuring Order on 1 July 2021.

## Transport Restructuring Orders

The Transport Integration Act allows the Governor in Council, on the recommendation of the responsible Minister, to issue a Transport Restructuring Order changing the name, structure or other features of a 'sector transport agency'.

Section 65 of the Transport Integration Act explains that Transport Restructuring Orders are intended to be 'a flexible mechanism for responding to changing priorities and circumstances and facilitating the delivery of better integrated and connected transport services'. In mid-2019, before V/Line's restructure, similar orders were used to integrate VicRoads and Public Transport Victoria into DoT.

954. Under this order, power to appoint V/Line's CEO was vested in the Minister for Public Transport (subject to consultation with the Treasurer) – effectively converting the role to a Ministerial appointment. V/Line's status as a State business corporation was revoked by a separate order made the same day, allowing further integration into DoT's structure.
955. The Minister for Public Transport then appointed a new CEO to take over running V/Line from 12 July 2021. This person was not among the candidates previously considered by the V/Line Board's selection panel.
956. Although unknown to those at V/Line, we found the Government began planning to restructure the transport agency in mid-2020, well before the Board began recruiting for a new CEO.
957. Several witnesses we interviewed said it was broadly felt a new funding model was needed to improve V/Line's performance. At the time, most of V/Line's revenue came from Government – yet the agency was subject to a one-year funding cycle, limiting its ability to plan ahead and effectively manage Victoria's regional rail network. Successive IBAC investigations into V/Line also pointed to a need to overhaul its governance.
958. The 2019-20 State Budget allocated \$27 million to DoT to improve Victoria's regional rail sustainability. Of this, \$14 million went towards reviewing V/Line efficiency, to help identify a longer-term, seven-year funding model. This review finished in around June 2020. Information we received indicated the outcome was presented to Cabinet, although restrictions on accessing Cabinet information prevented us from confirming what decisions, if any, were made about V/Line at this point.

## Why was V/Line restructured?

959. Records we reviewed show DoT requested advice in around July 2020 about possible options for abolishing V/Line's Board. At interview, a former senior DoT executive explained the Government was intending to 'lock in' additional funding for V/Line, and in return wanted 'more control' to ensure higher performance standards were met.
960. This witness confirmed the plans to restructure V/Line had nothing to do with the agency's efforts to find a new CEO, observing: 'The weight of the conversation was clearly leading towards the TRO [Transport Restructuring Order], irrespective of the CEO process'.
961. A natural consequence of abolishing V/Line's Board was the need to change how future CEOs would be appointed. DoT considered several options before deciding to give this power directly to the Minister. This ensured V/Line remained subject to the governance principles in Part 5 of the Public Administration Act.

**A natural consequence of abolishing V/Line's Board was the need to change how future CEOs would be appointed.**

962. In August 2020, DoT started to prepare a Transport Restructuring Order and related instruments. These efforts were suspended between about November 2020 and mid-April 2021 - we inferred due to ongoing Cabinet deliberations - before V/Line was ultimately restructured in July 2021.

## The Government-chosen CEO

963. The new CEO's appointment was announced in mid-June 2021, alongside the Government's decision to restructure V/Line.
964. At the time, this person was CEO of another public entity, State Trustees. Before this, they were a Deputy Secretary at DEDJTR. They held other senior public service roles between 2009 and 2018.
965. The new CEO was involved in the ALP before they joined the VPS. Between 1999 and 2006, they worked in several roles with ALP politicians - as an electorate officer to several Members of Parliament and as a staffer to two Ministers. They were active in student politics and, in March 2006, sought ALP preselection for a Federal Parliament seat.
966. At interview, the CEO gave evidence the preselection tilt marked the peak of their association with the ALP, observing they were 'pretty burnt out by the process'. They told investigators they progressively reduced their involvement in the party over the next few years, ultimately resigning from it when they were appointed to an EO-1 (senior executive) level role in the VPS. They said they were 'very conscious that the higher up you go, the more important ... [public] perception was'.
967. Though the subject of much speculation in submissions and the *Herald Sun* article, we did not find any evidence the CEO's appointment to V/Line was connected to their historic ALP ties. Current and former DoT executives directly involved in facilitating the appointment gave sworn evidence that although they could no longer remember exactly who first put the CEO's name forward, there was absolutely no mention of their previous ALP involvement. We did not identify any evidence contradicting this.

968. These witnesses explained that while Candidate B appeared highly qualified to lead a transport agency, the impending restructure and recent IBAC investigations meant DoT favoured a different type of CEO – someone familiar with the VPS and skilled at delivering organisational change. They independently recalled the CEO’s recent work overseeing a similar organisational transformation at State Trustees influenced the decision to recommend them to the Minister, with one former senior executive observing:

There wasn’t considered to be another [suitable] candidate through the open [Board-led recruitment process], and we needed somebody quickly, so therefore [we said], ‘Let’s borrow somebody from somewhere within Government...’. [The CEO’s] name would have been on everybody’s first list because [they’ve] done a similar job within State Trustees.

969. This executive, who later contacted the CEO to gauge their interest in the role, told us they were surprised to see the subsequent media article about the CEO’s past ALP ties because they had ‘only ever known them as a public servant’. They observed:

I didn’t see [the CEO] as a political appointment whatsoever, to cut to the chase. ... [They were] a competent public servant – a good leader who’d done a similar task [at State Trustees]. ... The only thing that was relevant was [the CEO’s] history with State Trustees and having come in under a similar set of circumstances where there was an organisation in freefall that needed some really good leadership skills. Political affiliations I can honestly say were not a consideration in [the CEO’s] appointment.

970. For their part, the CEO gave evidence they first heard of the V/Line vacancy when a staffer to the Minister for Public Transport asked them for help identifying possible candidates. They told investigators they were then contacted a second time by DoT to discuss their own possible interest. They said they were initially ‘lukewarm’ to the proposal – which carried significant risk – but ‘warmed up’ when made aware of the governance reforms they would be tasked with leading. Their recollection of the Government’s priorities matched the evidence we received from witnesses at DoT:

Probably one of the key points you’re interested in is, ‘Well, why me?’. Given I’m not from a transport background. I mean, that is the question I asked of [the DoT executive who contacted me] and then the Minister and [DoT’s Secretary] directly, and they were quite overt about it that, given where they were in the process, they actually didn’t want somebody with transport experience, what they wanted was somebody with experience in terms of organisational reform, cultural uplift and improved governance. They cited State Trustees as being what they were looking for: like, a similar reform journey.

971. The CEO told us they were later ‘devastated’ by the *Herald Sun* article, which linked their appointment at V/Line to their past ALP work:

I am post-partisan as a public servant, and ... I’ve been, you know, recognised as such. When I was appointed to those positions and worked in the Industry Department under Liberal-National Ministers, [I was] quite open about my background. ... It wasn’t a secret. It was a point of pride for me that they had taken the view that I was a public servant first and that I did my job appropriately and well, and that I had not acted and do not act in a partisan way, and that meant a lot to me.

972. They said they were concerned about the article's impact on their reputation and V/Line staff morale:

I was conscious of the fact that it [the article] effectively soiled my reputation. ... I was [also] conscious of the fact that from a V/Line point of view, after everything that organisation had been through, the way this sort of presents itself is that, 'Oh basically you've got [a] shonk CEO'. I would be lying if I told you it was just water off a duck's back. It wasn't.

**'I can honestly say [political affiliations] were not a consideration in [the CEO's] appointment.'**

Former DoT executive

973. The Transport Integration Act directly authorises the Minister to restructure transport agencies such as V/Line. This includes changing the way in which agency heads are appointed – effectively allowing Government to take direct responsibility for choosing CEOs. We found nothing irregular about the way V/Line was restructured, nor in the Government's decision to appoint as CEO a seasoned VPS executive with demonstrated skills in delivering organisational change.

## Other issues we investigated

974. Submissions and the *Herald Sun* article alleged the new CEO's appointment coincided with politicisation of V/Line's functions. We did not substantiate this.

### Recruitment of former Ministerial staffer

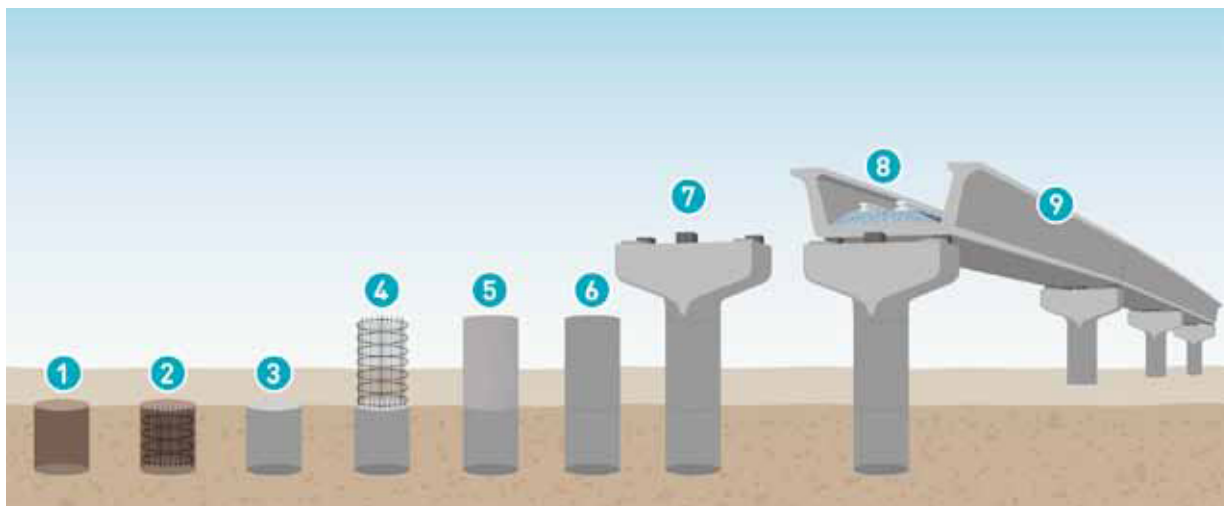
975. One example provided was the CEO's decision to hire a new staff member to run their office ('Executive T'). Like the CEO, Executive T previously worked as an ALP Ministerial staffer, though they had most recently worked at a private sector transport body.
976. At interview, the CEO gave evidence they first met Executive T through their work in the VPS, and knew they had a 'good reputation' for corporate and governance affairs in the transport sector. The CEO confirmed it was their own decision to approach Executive T about the role, that Executive T was 'not a friend [nor] political associate', and that the two never encountered each other when previously involved in the ALP. We did not identify any evidence contradicting this.
977. Executive T was directly appointed to a short-term executive contract starting in August 2021. They subsequently secured a five-year contract in the same position after the role was advertised in November 2021.
978. We reviewed recruitment files relating to Executive T and interviewed staff involved. We found Executive T's initial appointment to V/Line was compatible with its Recruitment and Selection Procedure, which allowed direct appointments during periods of 'major reorganisation'.

979. Records we reviewed showed:
- an approved business case underpinned the creation of the role
  - a selection panel interviewed Executive T ahead of the direct appointment
  - the CEO's past professional association with Executive T was formally declared and appropriately managed.
980. We found Executive T was hired based on their specific skillset and subject matter expertise, rather than partisan-political considerations. Witnesses observed their direct appointment was not unusual and 'made sense' in the context of V/Line's closer alignment to DoT and the organisational change ahead.
981. We also found Executive T's five-year appointment was fair, transparent, and demonstrably merit-based. At interview, one selection panel member told us Executive T 'was incredibly impressive, and I didn't know [them] from a bar of soap'.
984. Use of U-troughs in the regional network was favoured by key Government stakeholders such as the Level Crossing Removal Authority and DoT, but opposed by some V/Line engineers on safety grounds.
985. We found the CEO's decision to approve their use was in keeping with advice from V/Line's Change Control Board and the findings of an independent review. At interview, the CEO confirmed the issue was not discussed during their appointment to V/Line. We did not find any evidence contradicting this, nor suggesting the decision was influenced by partisan political considerations.

### **U-trough decision-making**

982. Another issue we examined was the CEO's decision to approve the use of U-troughs in Victoria's regional rail network, resolving a stalemate that predated their appointment to V/Line.
983. U-troughs are rail bridge sections where L-shaped beams are connected with concrete to form a U-shape (see Figure 43). They are used throughout Melbourne's metropolitan train network, but had not been installed within the regional network operated by V/Line. At the time, V/Line was considering a proposal to use them to replace a level crossing at Deer Park.

Figure 43: Construction of rail bridge with U-trough sections



Source: Victorian Government

## What we found

986. We did not substantiate allegations that senior appointments to V/Line were politicised. While the sequence of events resulting in the appointment of a new CEO – including the seemingly abrupt termination of an open and advertised selection process, and the new appointee’s historic ALP ties – caused some to suspect politicisation, this conclusion was not supported by the facts.

987. Changes to V/Line’s structure were brewing before the Board started recruiting for a new CEO, in response to largely unrelated governance and funding issues. We did not identify any evidence the structural changes were intended to circumvent the Board-led recruitment process, nor to appoint somebody with ALP connections.

988. This was also not an example of inappropriate political intrusion into public sector decision-making. The Transport Integration Act allowed the political arm of Government to opt for a greater say in choosing transport agency heads – distinguishing V/Line from most other public sector agencies. We found no evidence V/Line’s restructuring or the new CEO’s appointment were intended to inappropriately drive a partisan political outcome.

989. Though we found no fault with the Government’s approach, it unintentionally provoked allegations of political favouritism – unfairly damaging the reputation of a dedicated public servant.





---

**Part C:**

Findings, observations and recommendations

---

## What we found

990. The Legislative Council referral required us to investigate the alleged hiring of ALP-aligned people to senior roles in the VPS and broader public sector, and explore related impacts on traditional notions of public administration.
991. In response, we conducted one of the more intensive investigations in the Ombudsman's 50-year history. We took 186 public submissions, issued more than 50 summonses, interviewed 45 highly placed public officials and reviewed millions of individual records across more than a dozen agencies.
992. While as thorough as possible, our investigation could not turn over every rock. Yet as best we can tell, there is no widespread partisan 'stacking' of 'ALP activists' happening within the public sector, which was the headline allegation in the referral. This finding is, as the current Department of Premier and Cabinet ('DPC') Secretary said in response to a draft of our report, heartening. But it is not all we found, and it would be a mistake to dismiss our conclusions as 'nothing to see here'.
993. When interviewed, DPC's former Secretary astutely noted *The Age* article mentioned in the referral grouped four alleged practices under the topic of politicisation – the hiring of so-called 'political operatives' being just one. Others were the creation of agencies that bypass traditional bureaucratic structures; concentration of decision-making in the Office of the Premier ('PPO') and central agency DPC; and the emergence of a culture of withholding advice Ministers 'don't want to hear'.
994. Though some may disagree about whether and to what extent each of these practices demonstrates politicisation, our in-depth examination of executive hiring encountered them all. They were among a host of broader threats we observed to the public sector's adherence to three principles forming part of the referral: objectivity, professionalism, and integrity. These principles in turn reflect key elements of the public sector values that are essential to maintaining a capable, impartial, and fundamentally apolitical bureaucracy.
995. We uncovered rushed and shoddy recruitment practices, and an over-use of direct appointments often involving former ministerial staffers – and usually explained as necessary to 'get things done'. We identified career insecurity is at such levels some public servants are questioning their willingness to provide 'frank and fearless' advice. And we found other public officials being marginalised, with excessive secrecy around keynote projects getting in the way of good public administration, sometimes with profound consequences.
996. Equally worrying are the harmful perceptions of partisan hiring and promotion we found festering high and low across the public sector. Many people we engaged with expressed deep reservations about possible ripple effects resulting from people with strong connections to the ALP or individual Ministers being directly appointed to senior apolitical roles. In response to drafts of this report, some people tried to downplay the importance of these sentiments. But in our view, they are a red flag that should not be ignored.

997. Perceptions of politicisation are highly corrosive to integrity and trust. Even if misinformed, they can deeply affect the behaviour and actions of public officials, sometimes in unseen ways. They can stoke insecurity and fear, create division, suppress debate, and ultimately distort outcomes. When our public sector is diminished, so too, are the services and infrastructure we all rely on.
998. It should be of profound concern to all Victorians that, based on the evidence, we could so clearly understand why a common perception of politicisation had formed in the minds of so many senior officials. Witnesses cited examples of employment decisions and practices that had raised eyebrows and shaken confidence in the public sector's apolitical character.
999. Perceptions do not always align with the facts, and close examination of the examples raised with us often revealed a less disturbing picture than first painted. We understood why many of the senior officials asked about partisan hiring were bemused at the suggestion or upset at having their integrity questioned, and it is with a degree of unfairness that the bureaucracy's reputation for strict political neutrality is routinely questioned by some commentators. Still, it was worrying that this deeper analysis – using all the powers available to the Ombudsman – was needed to dispel the suggestion coming from within the public sector.
1000. Responding to the Legislative Council referral was a complex task for many reasons, not least that current restrictions on accessing Cabinet documents limited our ability to review some relevant material. Poor record keeping by departments and agencies was a hindrance too.
1001. Yet perhaps the most significant barrier encountered was the fear expressed by many senior officials about 'speaking out'. We found it troubling that so many witnesses we spoke with – voluntarily or under summons – anxiously worried about speaking candidly, sometimes even when offered complete anonymity. When persuaded to talk, these witnesses often seemed relieved at the opportunity to finally unburden themselves about broad trends observed in recent years. Their perspectives are reflected in the opening chapters of this report, and they deserve to be heard.
1002. Politicisation can take many forms. It is not just the hiring of people with political affiliations, but extends to actions that more broadly compromise the political neutrality of the public sector. Politicisation can be as subtle as the closing down of critical voices and the prioritisation of those deemed most responsive to government political objectives.
1003. Like elsewhere, the weight of the evidence shows cracks are forming in Victoria in the pillars upholding the Westminster tradition of responsible government. Within senior levels of the public sector, there is widespread concern that the merit selection principle is sidelined when responsiveness to Government is at stake. Senior public officials with little job security are feeling more pressured to align their advice to the apparent political imperatives of Government.

**The weight of the evidence shows cracks are forming in Victoria in the pillars upholding the Westminster tradition of responsible government.**

1004. Marginalisation of the public sector also looms large, and may prove even more corrosive to public administration. Excessive secrecy when forming policy and a reliance on buying external advice from consultancy firms threaten to diminish the bureaucracy. The result is that significant, far-reaching policies are taken to the electorate without input from key public servants.
1005. As one former Secretary told us, the more the public sector is weakened in its ability to provide coherent senior advice, the more politicised it effectively becomes: 'It's not by planting people, it's simply by cutting [important people] out of the advisory loop'. While we cannot quantify the impact of marginalisation on either the public interest or the public purse, it is a destabilising trend.
1006. Striking was the number of witnesses who, having recognised these trends, told us they had either left, or considered leaving government for the comparatively greener pastures of the major consultancy firms. Striking too, was the number of committed public officials who said they despaired over the capacity of the public sector to rebuild itself in the face of a loss of talent.
1007. This pessimism was not universally shared. We spoke with senior bureaucrats who were comparatively more hopeful about the public sector's ability to face down external pressures. Others explained away these changes as a new style of government – one focused on securing immediate outcomes, but not necessarily at the expense of proper process.

1008. One remarkable thing linking all witnesses was their firm commitment to the notion of 'public service' itself – governing with integrity and professionalism in the broader public interest. We thank all contributors for candidly sharing their experiences with us, often under great pressure.
1009. The following observations reflect the key themes emerging from submissions, witness evidence, and our various lines of investigation.

### **Loss of confidence in merit selection**

1010. The merit selection principle – that hiring decisions and promotions are based on relative merit – is fundamental to the Westminster tradition, and a key defence against politicisation.
1011. Within the public sector, there is a high level of concern that senior appointments do not always reflect this principle. This sentiment is significant because it threatens to undermine adherence to key public sector values such as responsiveness, integrity, and impartiality, and to damage efforts to foster a career public service.
1012. Public sector agency heads have broad discretion when recruiting and are often under significant pressure to secure talented staff at short notice. Those we interviewed emphasised that direct appointments – occurring without an open and advertised selection process – have a legitimate place in government. However, the evidence indicates this hiring method is used too frequently within some agencies, and that its justification is often not properly recorded or explained by decision-makers.

1013. It was not easy to square the common practice of making direct appointments with the requirements of the Public Administration Act. To be lawful, hiring decisions and promotions must be fair, transparent, and merit based, and must be seen as such for the public to retain trust in the bureaucracy. Direct hiring decisions which may appear individually justifiable nevertheless have an aggregate effect on the culture of public administration which should not be ignored.

1014. We found direct appointments are frequently used to appoint former ministerial staffers. These appointments do not appear to be partisan motivated and, when probed, were often explained by a pressing need to quickly hire someone familiar with Government policy to 'get things done'. That glib explanation does not always square with the merit selection principle, and the frequency with which it was invoked – especially when not documented – did not inspire confidence.

1015. People have a right to political association, and time spent in a ministerial office does not make one a political 'activist'. Indeed, an understanding of ministerial decision-making often brings value to public administration. Yet employees notice when senior roles are handed without advertisement to people linked with politicians, with some perceiving this as clear evidence of partisan hiring. This perception is a significant politicisation risk in itself, because if left uncorrected, it can undermine confidence in the strict neutrality of the public sector – not to mention the unfair harm it can cause to professional reputations.

To be lawful, hiring decisions and promotions must be fair, transparent, and merit based, and must be seen as such for the public to retain trust in the bureaucracy.

1016. Yet some agencies do not seem to have a clear appreciation of these risks. The weight of the evidence shows there is a need to rebuild confidence within the public sector that senior employment decisions are based on merit.

#### **Blurred lines and increased pressure**

1017. 'Over-responsiveness' where decision-making is overtly or subtly influenced by inappropriate political considerations – is a key indicator of politicisation. Frank, impartial and timely advice is critical to the Westminster tradition.

1018. Many people have noted a growing pressure to tailor official advice to the preferences of the government of the day. While witnesses differed about whether the situation is worse in Victoria than elsewhere, there can be little doubt it risks undermining the quality and candour of advice upon which important decisions are made.

1019. Career insecurity is acting as a barrier to completely frank, impartial and timely advice. Fixed-term employment and at-will termination clauses – standard features of executive contracts – discourage some from speaking up. So, too, can a mass turnover of executives, particularly following an election, instil a 'culture of fear' within the bureaucracy.

1020. Right or wrong, there is a widely held perception that speaking up comes at a personal cost. This was best demonstrated by the many senior witnesses we engaged with who, until reassured of anonymity, said they felt unsafe speaking their minds, even to a public sector integrity body. That this included multiple former Department Secretaries should be of substantial concern to all. Some witnesses were reluctant to speak to us on any terms, effectively preventing exploration of clear lines of inquiry.

1021. The size and influence of DPC has increased in recent years. This growth has considerably outpaced the rest of the VPS. Central agency experience is invaluable to public servants, but there is criticism by some – not backed by evidence we reviewed – that the central Department reporting to the Premier has become over intrusive in the affairs of specialist line agencies.

1022. Perceptions of over-intrusiveness have in part stemmed from the large-scale movement of senior DPC personnel across the bureaucracy. This has stoked concern that responsiveness is being favoured over expertise, and that hiring decisions are not always separated from political imperatives. Though we did not substantiate this, the fairness and transparency of hiring processes was in some cases highly questionable.

1023. Corresponding to these perceptions about DPC has been the growth in number and influence of ministerial staffers, particularly within the PPO. The Victorian Premier is now assigned roughly as many staffers as the Australian Prime Minister and New South Wales Premier combined.

1024. Growth in size of the PPO has significantly outstripped the VPS, and the effects are not lost on senior public servants. The PPO is perceived as having become more ‘hands-on’ in its engagement with the bureaucracy, said to be increasingly requiring briefings in tandem with responsible Ministers. This expansion has the potential to further diminish the influence of the VPS and broader public sector on government decision-making.

1025. Increased reliance upon political advisers was identified by the Independent Broad-based Anti-corruption Commission (‘IBAC’)s *Operation Daintree* investigation as a key politicisation risk. Victoria is the only Australian state which does not regularly publish the number of ministerial staffers employed through public funds. We endorse IBAC’s recommendation for new legislation addressing this.

### **Marginalisation of traditional voices**

1026. Ministers and some agency heads are increasingly seeking advice from a broad range of sources. This is not unique to Victoria, but part of a broader trend in which influence over decision-making has expanded beyond the public sector towards consultants, lobbyists, special interest groups, and political networks.

1027. Cynics will say this reflects a tendency to seek confirmatory – rather than contestable – advice, and causes decisions to be made in ‘echo chambers’. It may also indicate a loss of confidence by Government in the public sector’s capacity to provide astute advice. This belief threatens another core pillar of the Westminster tradition – that major policies should be informed by the full expertise of the bureaucracy.

1028. The traditional advisory and support role of the public sector is also diminished by excessive confidentiality in policy-making processes. Keeping major proposals secret from expert bureaucrats can lead to perceptions of selective engagement – where key stakeholders are deliberately excluded to avoid unwelcome information. This, in turn, lends itself to accusations of politicisation.
1029. Government should seek information from a wide variety of sources. The public sector does not have a monopoly on good advice, yet major policy must be adequately and apolitically tested. Good governance depends on sound processes, and senior bureaucrats are often best placed to provide frank, impartial and timely advice on significant proposals. Excluding their input may result in public funds being committed to flashy but ill-advised purposes, at the expense of much needed community services that are less visible to the public.
1030. The tendency within some departments to appoint generalist policy staff at the expense of content specialists, and the loss of corporate knowledge resulting from large-scale post-election restructures – described by some as ‘purges’ – also have the potential to damage the VPS’s reputation for high-quality and timely advice, and to prompt further outsourcing of core government work. The sudden or widespread termination of executives following elections also discourages people from speaking out, undermining efforts to build a public sector based on integrity.

## Integrity risks and key reform areas

1031. As for many institutions, public trust in government is falling. With a degree of unfairness, the public sector’s reputation for strict political neutrality has been particularly called into question in Victoria – by media commentators, Parliament, and most concerningly, some senior public bureaucrats.

**The public sector does not have a monopoly on good advice, yet major policy must be adequately and apolitically tested.**

1032. Some hiring decisions are being met with clear cynicism. Rushed and shoddy recruitment practices do not go unnoticed, and poor record keeping and opaque selection methods make it difficult for senior leaders to explain why some staff have been chosen over others. If left unchecked, the public sector’s ability to attract and retain capable leaders will be at risk.
1033. The cost of this will be felt by all Victorians. Expensive, risky and ill-advised policies will become the norm. Integrated policy development will suffer, frontline jobs will be further cut, and public funds increasingly funnelled to private sector consultants.
1034. Politicisation – actual and perceived – is a problem undermining public administration in Victoria. Reversing or addressing the trends highlighted in this report will take significant time and investment – by political leaders, agency heads and the upcoming generation of public sector leaders. Though much of this work will need to take place behind the scenes, it would be made easier by reform targeting four key areas.

1035. First, the introduction of greater political independence in the appointment of Department Secretaries and other agency heads. The New Zealand model – where the impartial public service Head evaluates and recommends candidates to the elected Government – provides a ‘best practice’ alternative to Victoria’s appointment framework, and was recommended by multiple former Secretaries we spoke with.
1036. Second, enhancements to better promote merit selection at senior levels. Like in the Australian Public Service, the new public service Head should be empowered and resourced to participate in selection processes for executive vacancies. To act as a merit selection safeguard, they should also be empowered to review hiring processes and decisions on their own initiative. The VPSC should comprehensively review the VPS Standards and help bring a halt to the overuse of direct appointments.
1037. Third, improved job security for senior public servants. Fixed term executive employment contracts and at-will termination clauses allow government greater flexibility, but discourage frankness and candour. Consideration should be given to overhauling the employment framework for executives to provide greater career stability. This, together with changes to how Secretaries are appointed, would help address concerns about post-election purges and what some see as a current and worrying shift towards the Washington model of public appointments, without the same safeguards.
1038. Fourth, the need to review the sanctity of Cabinet confidentiality. Many jurisdictions are already taking a fresh look at how this is embedded in government processes. One reform path is a more proactive release of Cabinet documents, as is already done in New Zealand. Another is to narrow the breadth of the Cabinet exemption in freedom of information legislation, as recommended by the Royal Commission into the Robodebt Scheme. Regardless of the approach taken, the Ombudsman’s investigation powers – along with those of IBAC – should be adjusted to allow access to Cabinet information in the same way as is already available to the Victorian Auditor-General’s Office.
1039. We again thank all those who assisted the investigation, and urge relevant decision-makers to consider the tabling of this report as an opportunity to rebuild and strengthen the public sector, and improve Government decision-making for all Victorians.



## Recommendations

### The need for change

1040. Politicisation is corrosive to good public administration. Submissions and contributions we received – particularly from current and former Department Secretaries and other executives – reveal that many Victorian officials feel under increasing political pressure when going about their work. There is a growing sense that this is weakening adherence to fundamental principles essential to maintaining a capable and apolitical public sector.
1041. Partisan hiring is just one example of politicisation, and efforts to target this risk alone will not address the many other politicisation concerns we uncovered. Central among these is that the merit selection principle is being sidelined, especially when responsiveness to government and ministers is emphasised. This has led to broader allegations of politicised hiring, weakened employment conditions, suppression of frank advice and the imposition of excessive secrecy upon major policy development.
1042. Many current and former Department Secretaries, public sector executives, and academics helpfully contributed their expertise and insights to this investigation. These stakeholders saw a need for major changes to restore and protect the apolitical tradition underpinning Victorian government, and the following recommendations are tailored to specific issues we examined.

### Bringing further independence to executive employment

1043. Our investigation received several examples of senior executives being ‘moved on’ after providing unwelcome advice, and eligible candidates missing out on jobs due to the perceived or apparent preferences of Ministers. This has led to concerns of inappropriate political influence. The perception of politicisation, much like perceived conflicts of interest, can be damaging to morale and to a culture of integrity in government.
1044. Good government relies upon healthy internal debate drawing on the expertise of senior career officials. The current executive employment framework – where the Premier chooses Department Secretaries and administrative office heads who in turn select their own executives – fosters perceptions that ‘top down’ political imperatives are influencing senior public service appointments. Together with the possibility of ‘at will’ termination, executives can be inhibited or discouraged from providing frank and timely advice.
1045. The current arrangement in Victoria is that the Secretary to the Department of Premier and Cabinet acts as nominal head of the public service. An alternative we recommend is that Parliament establish a formal, independent public service Head, to be appointed with the approval of a suitable Joint House Committee. This person would play a direct role in evaluating, recommending and employing agency heads – an approach already adopted in New Zealand, and supported by many contributors to our investigation with significant credentials in public administration.

1046. Contributors also compared the occasional participation of the Victorian Public Sector Commissioner in the selection of public service executives, and the more routine involvement of the Australian Public Service ('APS') Commissioner in recruitment processes. Officials with experience of APS practice said it brought more independence to hiring decisions, and promoted adherence to legislated employment principles and standards. We therefore recommend the new public service Head be given the power to sit on selection panels for executive vacancies at their discretion.
1047. Other recommended changes are also made to rebuild and strengthen the apolitical tradition in Victorian government. One is that 'at will' termination of executives be ruled out in legislation – and, in the meantime, that the Government agree to extend the termination notice period as previously recommended by the Victorian Public Sector Commission ('VPSC').
1048. Our investigation also identified a disturbing number of rushed, shoddy and poorly documented recruitment activities. The procedures and safeguards in place to ensure merit selection are clearly not working properly. This leaves the public sector exposed to risks of perceived and actual politicised hiring. We propose the new public service Head be given an own-initiative power to review employment decisions involving public service executives, expanding on the VPSC's current role.
1049. We also recommend the VPSC, as the existing responsible body, take steps to clarify the minimum steps necessary to meet legislated record keeping obligations for employment decisions.

*To uphold the apolitical public sector tradition, ensure merit selection in the appointment of executives to the public service, provide greater career security for senior public servants, and improve adherence to legislated standards*

**It is recommended that the Victorian Government and the Premier:**

### **Recommendation 1**

Review the *Public Administration Act 2004* (Vic) and introduce amendments to:

- 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.

### **Recommendation 2**

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 *Review of Victoria's Executive Officer Employment and Remuneration Framework*.

**It is recommended that the Victorian Public Sector Commission:**

### **Recommendation 3**

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 *Standards for Application of the Public Sector Employment Principles 2017*, that employment documentation be sufficiently clear and comprehensive so that decisions are transparent and capable of effective review.

## Stemming the tide of direct appointments

1050. Some agencies are making frequent use of the direct appointment method to hire executives.
1051. This hiring method sidesteps the need for an open and advertised selection process, and is not easy to reconcile with the requirements of the Public Administration Act. It is also frequently being used to appoint former Ministerial staffers – often justified by the need to hire someone familiar with Government policy to ‘get things done’. Both the practice and the justification raise perceptions of politicised hiring.
1052. We recommend the VPSC review the legislated standards and make it clearer when, if at all, use of the direct appointment method will be compatible with the public sector employment principles laid down in the Public Administration Act.
1053. In the meantime, and to discourage agency heads from sidestepping merit selection requirements, we recommend the VPSC require agencies to regularly report on their use of direct appointments, and that it publish this information annually.

*To uphold the merit selection principles in the Public Administration Act 2004 (Vic) and constrain the practice of filling senior public sector vacancies via direct appointment*

**It is recommended that the Victorian Public Sector Commission:**

### **Recommendation 4**

Review the *Standards for Application of the Public Sector Employment Principles 2017* to clearly set out the circumstances, if any, in which public sector appointments may be made without an open and advertised selection process.

### **Recommendation 5**

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.

### **Recommendation 6**

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.

## Eliminating excessive secrecy

1054. Transparency in government processes is widely seen as essential for high quality decision-making and democratic scrutiny. Excessive secrecy breeds distrust and – as our investigation found – leads to concerns in and outside government that the integrity and apolitical quality of public administration is impaired.
1055. Contemporary support for greater transparency has led to a re-examination of secrecy in all government processes. Cabinet confidentiality – a cherished tradition – is not immune from this appraisal. Other jurisdictions in Australia and abroad have adopted (or are considering) greater proactive disclosure of Cabinet material, while still allowing a degree of confidentiality over Cabinet deliberations.
1056. We endorse that trend by recommending that, as a matter of policy, most Cabinet records are proactively disclosed within 30 days of a decision, subject to reasonable exceptions.
1057. Cabinet confidentiality is also a feature of the Ombudsman Act. This, too, requires re-examination. Our investigation frequently ran up against prohibitions preventing disclosure of Cabinet information to the Ombudsman. This impeded our understanding of the necessary facts, and in some cases disadvantaged witnesses who were left unable to explain certain decisions. The Victorian Auditor-General's Office does not face these restrictions, and nor should the Ombudsman.

*To ensure greater transparency and democratic scrutiny of public sector processes, particularly in the provision of advice to Government*

**It is recommended that the Department of Premier and Cabinet and the Premier:**

### Recommendation 7

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.

**It is recommended that the Victorian Government and the Attorney-General:**

### Recommendation 8

Review the *Ombudsman Act 1973* (Vic) and introduce amendments to sections 19, 19A and 25A(1)(b) to:

- 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.

Consideration should also be given to similar amendments to the *Independent Broad-based Anti-corruption Commission Act 2011* (Vic).

# Appendix A

## The Age article

**INSIGHT**  
SATURDAY, AUGUST 14, 2021

PAGE 34  
**The carbon plan**  
Nick O'Malley and Peter Hannam on fixing our climate crisis in three steps.

PAGE 40  
**Naked City**  
With Chopper returning to cinemas, John Silvester remembers the man himself.

**WORKING THE NETWORK**

Since Daniel Andrews' re-election in 2018, Victoria's public service has seen an influx of high-level ALP advisers. Now it is affecting the way the state is governed, **Chip Le Grand** and **Paul Sakkal** report.

No.1 Treasury Place is a blockish building on the edge of Melbourne's CBD and, in normal times, the nerve centre of public administration in Victoria. Today, in the middle of another long COVID winter, the second-floor corner office of [REDACTED] is one of the few where the lights are on. [REDACTED], the secretary of the Department of Premier and Cabinet, Victoria's top bureaucrat, motions to a couple of empty

couches. Dressed in an open-necked shirt and face mask, he is like the captain of a ghost ship. Experienced career bureaucrats question how this man - a 46-year-old communications and strategy specialist - was given command of the bridge. He hadn't ever run a government department or overseen a government budget process. The former basketball coach earned the trust of Premier Daniel Andrews' key staff members when he helped develop the government's communications strategy during the Andrews government's first term. Now [REDACTED] is responsible for leading the entire Victorian public service and safeguarding the political neutrality of an institution essential to good government.

**Continued Page 32**

Source: The Age. Some information redacted to avoid unreasonable damage to the reputation and privacy of persons identified.

# Working the network

From Page 29

█ appointment, confirmed in the space of five days last year after long-serving secretary █ resigned for inadvertently misleading the Coate inquiry into hotel quarantine, is cited by critics – both academic and from within the public service – as emblematic of a bigger issue: the erosion of one of the key notions of the Westminster system, that the public service is independent of the government and gives frank and fearless policy advice. Instead, there has been a concentration of power in the hands of the Premier, the staffers in his private office and a select group of political operatives-turned-bureaucrats.

“It has gotten markedly more political and more blatantly so over the last eight to 10 years,” said a career Victorian public servant speaking anonymously because they are not authorised to comment. “You have got people in key public service positions that are meant to be the protectors of Westminster who are strongly politically aligned to current ministers.”

█ agrees his appointment was unorthodox. But in an interview with *The Age*, he denies there has been any erosion of independence. According to him, there remains a clear line between the apolitical, considered policy advice provided by his public servants and the political advice that staffers provide to assist ministers in making decisions.

“A minister or a premier, regardless of how many people provide them advice, is ultimately making a decision that is a blend of their political skills and the advice that is brought to them by the public service,” he said. “That balance is always part of the Westminster system.”

**Charges of politicising the public service** are not new. Nor are they confined to Victoria. In Canberra, the Prime Minister appointed his chief of staff to head the public service. And since the Whitlam government there has been a uniquely Australian tradition of career public servants also spending some time working for a minister as part of their private staff.

*‘It has gotten markedly more political and more blatantly so over the last eight to 10 years.’*

A career Victorian public servant, speaking anonymously

The current situation in Victoria is something different. Over the past several months *The Age* has examined how power is wielded in this state. For anyone who values Westminster notions of how government decisions should be made, the findings are confronting.

In nearly every department and within key government agencies, political operatives who have dedicated much of their professional lives to advancing the interests of Labor politicians are employed in executive public service positions. At the centre of this power structure is the Premier’s Private Office

(PPO). Sitting outside the public service, unaccountable to Parliament and not required to respond to freedom of information requests, this group of 87 people – who outnumber Labor’s MPs – is the most influential and least transparent organ of government in the state.

Everyone who works for the PPO, along with 287 staff of ministers and MPs, is employed by the Premier’s chief of staff, █. This provides Andrews with a small army of nearly 400 people paid to further his political interests and those of his government.

When the Coate inquiry examined the quarantine failures which seeded the devastating second wave epidemic, no witnesses were called from the PPO, even though text messages tendered as evidence showed its staffers communicating with Department of Premier and Cabinet officials about security arrangements hours before a decision was announced on one of the central mysteries of the inquiry: why private security guards were appointed to patrol hotels.

Dr Colleen Lewis, an honorary professor with the ANU Australian Studies Institute and associate of the Centre for Public Integrity, says there is a push among government integrity experts to subject ministerial and political advisers to the same accountability as public servants.

“Why are they carved out and made to be special when it is the taxpayer who is paying their salary?” she asks.

Bureaucrats speaking off the record because they are not authorised to make public statements, as well as multiple government insiders, say the PPO has subsumed policy development work previously done by the public service.

The next cog out from the PPO in the bureaucratic machine, the Department of Premier and Cabinet, has nearly tripled in size since the Andrews government was first elected. This is █ bailiwick. In June 2014 it employed 393 people. In June 2020 its headcount was 1070. The result is a concentration of administrative power at the expense of specialist departments such as health, transport and education.

The Premier’s private office and the public service led by the Department of Premier and Cabinet should operate in tandem to advise on policy. In reality, it is increasingly difficult to discern the two. At the height of the pandemic, the Premier’s three most senior political operatives regularly attended meetings of departmental secretaries to decide what advice would be provided to the Crisis Committee of Cabinet.

“The public servants have a strategic policy advice role and the advisers are there to weigh political options,” says Terry Moran, former head of the Victorian and Australian public services. “If you put everyone in the one room the system doesn’t work reliably and get the best results.”

**On Sunday, November 30, 2014,** his first morning as Premier, Andrews sent a clear message to the Victorian public service when he called the state’s most senior bureaucrat, █ into his Treasury Place office and told him he was not required to come to work on Monday. It is not unusual for a newly elected premier to choose a new



Department of Premier and Cabinet secretary, but normally the state’s most senior bureaucrat would stay on to assist in the transition.

█ had only been in the job for 18 months when he was dismissed. He was replaced by █ who had previously served as top bureaucrat for Liberal NSW premier Barry O’Farrell and Labor’s Mike Rann in South Australia. The ruthlessness with which █ was treated shocked senior public servants. He is now back working in Canberra.

Current and former senior Victorian public servants who raised their concerns with *The Age* in confidence say that since 2018 and Andrews’ thumping re-election, there has been a marked shift in the number of political operatives installed in senior bureaucratic jobs.

An example cited by multiple sources is the replacement two weeks after the 2018 election of █ a well-regarded career public servant who has worked for Labor and Coalition governments in Victoria and Canberra, with ALP political operative █. █ was told he was being shifted out of Treasury and Finance into the education department. No concerns were raised about his performance.

█ is an economist who previously worked for Deloitte and, according to those who work with him, is qualified, intelligent and capable. He has also spent much of his working life promoting the political interests of Labor leaders: John Brumby in Victoria and ACT Chief Minister Andrew Barr. In his new job as Deputy Secretary of the Budget and Finance Division of the Treasury Department, he became the most senior bureaucrat with direct line responsibility for how taxpayer money is spent.

The 2018 election saw an exodus of senior public servants. Long-serving departmental secretary █ left government, Department of Justice secretary █ retired from his executive role and Department of Education and Training boss █ was told she wouldn’t be keeping hers.

Apart from █ two other experienced political operatives occupy senior roles within the Department of Treasury and Finance. In the Department of Jobs, Precincts and Regions, three current deputy secretaries all worked as senior advisers or chiefs of staff to federal or state Labor MPs.

The Department of Premier and Cabinet’s executive director █ helped run Bill Shorten’s 2019 election campaign and █ a Labor staffer for 10 years, was given an executive-level job within the Major Transport Infrastructure Authority before he rejoined the political fray as West Australian ALP state secretary.

These are not career public servants seconded for a period into a minister’s office but career political operatives and Labor loyalists inserted into the public service in decision-making jobs.

*The Age* has identified more than 30 senior public servants who served as advisers in the Andrews government. As one experienced departmental secretary noted: “When you see that transition happening backwards and forwards at really senior levels it is clearly politically motivated; it can’t be anything else.” █ himself has been accused of being a political appointment. While acknowledging his unusual pathway to this position via “the comms stream ... rather than the purist policy or legal streams”, he says he is no “yes man”.



"I'd suggest the reason I am here is quite the opposite. The discussions I have had, prior to this role, with the Premier's office have always been around a contest of ideas. It is being able to have those conversations with a political office, in a constructive way, that advances the views of the public service."

Of the other former political operatives appointed to senior jobs within the public service, ██████ describes each example cited by *The Age* as a highly talented person appointed on merit.

In response to questions from *The Age*, a Department of Premier and Cabinet spokesperson said: "All DPC employees are bound by the code of conduct for Victorian Public Sector Employees, including the requirement to be impartial, and make decisions and provide advice free of prejudice or favouritism, and based on sound judgment."

**Don Russell, a former adviser to Paul Keating**, writes in his book *Leadership of the Australian tradition of public servants being seconded to the private staff of government ministers*. At the time of Russell's book, nine of 14 departmental secretaries had worked in a minister's office.

"It is clearly helpful for public servants to have spent time in a minister's office if they are expecting or end up as the head of a department," Russell told *The Age*. "It provides people with a first-hand experience of how ministers think and operate. That is invaluable."

Mike Keating, a former head of the Australian public service, agrees.

The problem arises when public servants start thinking like political operatives. "If you are looking for red flags, it's a diminished capacity for the

public service to perform its traditional and appropriate role, which is providing considered, full range of options and advice," Russell said.

In a state like Victoria, where the Labor Party has been in government for all but four years this century and the Andrews government has a strong social policy agenda on issues such as violence against women, voluntary assisted dying and gender identity, it is unsurprising that people with progressive politics are attracted to a career in the state's public service. It also follows that any public servant who has worked as a political adviser in Victoria is more likely to have served a Labor MP than a Liberal one.

There are a handful of prominent former Liberal Party operatives who hold senior positions in the state's public service.

But former Labor minister Andre Haermeyer believes the balance has shifted. Describing the young, self-assured class of political operatives who work in the Premier's office, he said: "It has got to the stage where the staff in the Premier's office need to be reminded that we have a Westminster model, not a West Wing model."

**Former and current ministers** and some MPs, all speaking on condition of anonymity to preserve their positions, say decision-making in the Andrews government is largely confined to an inner circle of ministers and political advisers. There are 21 ministers in the Victorian cabinet but of these, only four are said to have genuine influence over government strategy: Deputy Premier James Merlino, Treasurer Tim Pallas, Andrews' preferred successor Jacinta Allan and Lisa Neville, who is currently on extended sick leave.

This group works closely with the two most senior members of the Premier's personal staff, chief of staff ██████ and her deputy ██████. ██████ was also a trusted member of this exclusive club.

The effect is twofold, say the ministers and MPs: the marginalisation of those ministers outside the circle and the broader Labor caucus, and a further blurring of where the political class ends and the public service begins.

"Bracks was a stickler for cabinet process, so was Brumby," a former minister says. "Daniel does not operate like that, he operates how he wants and gets the decision he wants."

"We used to be involved in how this government runs and get briefings on announcements before they happened," says another government MP. "Now we get emails after policies are announced in press conferences."

Within Andrews' office, there is also a group of relatively junior political advisers known as the caucus liaison unit who are tasked with briefing and listening to the concerns of backbenchers. Under the Bracks government, this was a job that the Premier did personally. "These guys are f—ing 20-year-olds. Some of them treat MPs like shit, and they're dictating to us what we should put on Facebook and how we should run our offices," one MP says. "We're pretty much salespeople for [the Premier's office]."

In this system, favoured departmental secretaries such as Jobs Department secretary ██████, Justice secretary ██████ (a former political staffer in the Bracks-Brumby era) and ██████ have more direct access to the Premier than many of his ministers.

**Victoria's initial response to the COVID-19 pandemic** showed how far things have shifted. At the height of the crisis the public service was reorganised into a series of missions, each responsible for elements of the COVID response. At the top of each mission was the head of the relevant department.

In a normal Westminster regime, the departmental secretary is accountable to their minister. On April 3, Andrews wrote to each of the mission leads making new rules clear. "You are accountable to me," he said.

Health department secretary ██████, who had also worked in Premier and Cabinet and was being groomed by ██████ to take over his job, was one of these mission heads. The Coate inquiry exposed a pronounced lack of communication between ██████ and the health minister she nominally reported to, ██████, on key decisions taken and not taken in the hotel quarantine program. It also found that ██████ did not brief his minister, Martin Pakula, about contracting private security guards to work in quarantine hotels. As a consequence of their evidence to the inquiry, both ██████ and ██████ lost their jobs. In her findings, Jennifer Coate recommended the Public Service Commissioner examine this apparent breakdown in Westminster accountability.

At the top of the "mission" system was a newly created peak forum for bureaucrats, the Missions Coordination Committee. Chaired by ██████, it included the departmental secretaries in charge of the missions and additional senior personnel from Premier and Cabinet, including ██████.

Minutes of committee meetings released to the opposition under FOI show this committee was also stacked with political operatives: ██████, Pallas' former chief of staff ██████ and two other political advisers from

PPO whose names were redacted. *The Age* has since established the two advisers were ██████ and policy adviser ██████. All four advisers were permanent members of the committee but their names were blanked out from documents tendered as evidence to the Coate inquiry.

These minutes reveal that ██████ alongside ██████ played a key role in setting the committee's agenda. ██████, then a newly appointed Department of Premier and Cabinet executive, was put in charge of a "Mission Coordination Unit" to support the committee.

█████, who chaired some committee meetings in ██████ absence, said the decision to put senior bureaucrats and political advisers in the same room was a pragmatic response to a fast-moving crisis. Once the second wave of infections was brought under control and the road map out of lockdown planned, the committee was disbanded.

But Don Russell says any decision to merge the public service and political streams is fraught.

"There is a separation between the minister's office and the public service and a recognition that the role of and responsibilities of the public service is different," he said. "If what you are talking about is blurring the two, that undermines the whole purpose of having the ministerial office."

So where does this leave the Victorian public service?

A public servant explained to *The Age* he felt torn between his employment security and generous wages offered by the public service and the political partisanship openly displayed within the bureaucracy. "A lot of us feel uneasy about it," he said. "You also feel

## 'Staff in the Premier's office need to be reminded we have a Westminster model, not a West Wing model.'

Former Labor minister Andre Haermeyer

ungrateful to complain because this government has doubled our executive ranks. There is money coming out of everyone's ears in the public sector at the moment."

Opposition Leader Michael O'Brien flagged a clean-out if the Coalition forms government after next year's election. "We have to see a reinstatement of the traditional role of the public service, which is to provide fearless, frank and independent advice to the government of the day," he says. "When you have got a government that has inserted its political operatives into the public service then obviously it has to be dealt with."

The problem with O'Brien's proposed remedy is that a purge of the public service coinciding with a new government will only reinforce the impression that the politicisation of the public service is endemic. This is already a view held inside the public service.

Inside No. 1 Treasury Place, the bureaucrats who work for the Department of Premier and Cabinet and the political operatives who work for the Premier's Private Office are physically separated by a layer of concrete and steel. The private office is on the first floor, the department one floor above.

There is a running joke among public servants that under the Andrews government, a mezzanine level has been installed.

NATJAGE A033





# Appendix B

## Issues paper



## Politicisation of the Public Service Issues Paper and Request for Submissions

In February this year the Legislative Council passed a motion requiring the Ombudsman to investigate some matters, including issues relating to the alleged politicisation of the public service.

This paper summarises the public policy issues raised by the Referral and calls for individuals and organisations to provide information to assist the investigation.

### Contents

The Parliamentary Referral	2
The Ombudsman's role	2
Scope of this investigation	3
Some relevant context	5
Have your say - making a submission	9
Appendix 1	11

### To make a submission:

You can call us to discuss confidentiality obligations and related issues.

We will accept submissions until 15 July 2022.

[Click here for more information on how to have your say.](#)

(May 2022)

## The Parliamentary Referral

The Legislative Council referred six matters to the Ombudsman on 9 February 2022 under section 16 of the *Ombudsman Act 1973* (Vic) (**Appendix 1**).

This Issues Paper relates to Item (d) of the Referral, requiring investigation of –

... the allegations in the 14 August 2021 article published in *The Age* titled '*The Chosen Few: How Much is Victoria really Governed*', that ALP activists are 'stacked' into the public service thus compromising objectivity and professionalism and increasing the risk of corruption ...

The article alleged recent Government appointments of senior officers had caused or accentuated a politicisation of the Victorian public service. It said there was a 'marked shift in the number of political operatives installed in senior bureaucratic jobs'. This has the potential to erode a key notion of the Westminster system of government, that the public service is independent of government and gives frank and impartial policy advice.

## The Ombudsman's role

The Ombudsman Act provides that the Ombudsman shall 'forthwith investigate' a matter referred by a House of the Parliament and report back to that House.

It is important that the Ombudsman, as an independent officer of the Parliament using public resources, conduct investigations in a manner that is appropriate, practicable and proportionate. The Ombudsman has discretion both in framing and conducting an investigation.

The Ombudsman has started an investigation and has appointed Professor John McMillan AO to assist and lead the investigation team. Professor McMillan was the Commonwealth Ombudsman, NSW Ombudsman (Acting), Australian Information Commissioner, and the Integrity Commissioner (Acting) leading the Australian Commission for Law Enforcement Integrity. He is an Emeritus Professor in the College of Law at the Australian National University. He has not worked for or in any Victorian Government agency.

# Scope of this investigation

The investigation will consider the implications of an allegation that there is an emerging trend of people with a political affiliation being appointed to executive positions in the Victorian public service (ie agency heads or other 'executive' roles within the meaning of the *Public Administration Act 2004 (Vic)*).

The investigation will examine four key questions. They are cast broadly to show the dimension of this investigation and to underscore that the Ombudsman brings an open mind to the matters raised.

## 1. Concern has been expressed about the politicisation of public sector appointments. Are there recent examples of impropriety in the way executive officers have been appointed in Victoria?

This embraces other questions, such as –

- Are there recent examples of proper steps not being followed within government in creating executive vacancies and making appointments to those vacant positions?
- Are there recent examples of inappropriate processes being followed, or criteria applied, to identify the most suitable person for an executive vacancy?
- Are there recent examples of appointees to executive vacancies being engaged on inappropriate terms or conditions of employment?
- Are there recent examples of different terms and conditions being set for appointees, and if so, is there a sound reason for that difference?
- Are there recent examples to the contrary, where a candidate's affiliations have been declared and appropriately managed?

## 2. Are there recent examples where the Victorian public service has either suffered adversely or benefited from people with a political affiliation being appointed to executive positions?

This embraces other questions, such as –

- How important is it to preserve the conventional role of the public service in the Westminster model of government in providing independent decision-making and advice to government?
- Are there examples of the capacity of the public service to fulfil that conventional role being diminished by a new and different trend in executive appointments?
- If a change has occurred, is it an expected consequence of the evolving nature and style of executive government?
- Are there recent examples of the appointment of people with a political affiliation to executive positions having either a detrimental or beneficial effect on relations between the political and executive branches of government, including the interaction between senior officers and government ministers and advisers?

3. Are there recent examples where Victorian government administration has been either detrimentally or beneficially affected as a consequence of people with a political affiliation being appointed to executive positions?

This embraces other questions, such as –

- Which areas of government decision-making are endangered when political considerations inappropriately overshadow public interest considerations? Such areas may include, but are not limited to, information release, procurement, resource allocation and land development.
- Are there recent examples of this occurring?
- Are there recent examples of the appointment of people with a political affiliation to executive positions weakening the commitment in government to observing administrative law principles in decision-making?
- Are there recent examples of inferior outcomes in policy development, procurement or service delivery that can be linked to the appointment to executive positions of people with a political affiliation?
- Are there recent examples of the work of executive oversight agencies being hampered by improper executive appointments? If so, how was this evident?

4. Is any reform required to the way that executive officers are appointed by the Victorian government and undertake government service?

This embraces other questions, such as –

- Should changes be made to the process that is followed and the criteria that are applied in appointing people to executive positions?
- Are new arrangements required to ensure that any political affiliation of a person who is appointed to an executive position is properly managed to avoid this impacting their public service obligations?
- Do public service codes of conduct or guidance documents need revision to minimise or manage the risk of politicisation of the public service?

## Some relevant context

This section is to assist those providing information to the investigation to understand three relevant aspects of the Victorian government system. They are:

- the traditional role of the public service in a Westminster system of government
- how that role is anchored in the *Public Administration Act 2004 (Vic)*
- the evolving character of the public service in a refashioned Westminster model.

### The Westminster model of government

'Westminster government', 'responsible government' and 'Cabinet government' are all terms for the system of government adopted in Australia. The essence of the model is that the government – or ministry – is chosen by and is accountable to the legislature, which is appointed by the people. The role of the public service is to carry out the will of the ministry, and if a new ministry is chosen, to carry out its will as faithfully.

The public service – also called the executive branch of government – has a large degree of functional independence from the legislative branch of government. The public service must be politically neutral so that it can serve any ministry or government with equal loyalty and efficiency and not become embroiled in partisan controversies.

Every government must trust that it can rely on the public service to implement legislation and government programs, however different they may be to those of a former government. Equally, the public service must make decisions without regard for political considerations and must provide independent advice to government in a 'frank and impartial' manner.

Westminster precepts are reinforced by many individual practices of government. One is that public officers are appointed on merit and can be removed only by due process and not without cause. The values and professionalism of the service are monitored by an independent public sector commission.

The Westminster model has many distinct benefits. It sustains democracy by reassuring the community that the elected government will be properly and ethically supported by the public service. It supports high-quality policy formulation and administration by ensuring that advice to government is impartial and plain-spoken, and that decision-making is principled and evidence-based. And it builds a superior public service that can attract and retain high-grade applicants who can be reassured of a secure, professional and rewarding public service career.

The importance of respecting and adhering to Westminster foundations is repeatedly stressed in publications on Australian governmental practice and in independent reviews of Australian government.

In September 2021, the Victorian Public Sector Commission issued an advisory circular *Informing and advising ministers: guidance to Secretaries about their responsibilities*. The circular explains that its purpose is to 'support our system in Victoria of responsible government and ministerial accountability'. The circular discusses the role of the public service in remaining professional and apolitical and the legal obligation of departmental secretaries to provide frank and impartial advice to ministers. Under the heading 'Providing apolitical advice', the circular notes:

[A] Secretary should be aware of, but not influenced by, political or electoral considerations that exist separate to policy advice. The purpose of policy advice should not be to advance a particular party's political interests. Secretaries should be aware of the political context; however, they should always ensure they are providing frank and impartial policy advice separate to the policy context.

There was a similar strong endorsement of Westminster principles in the 2019 report of the independent review of the Australian Public Service conducted by an expert panel chaired by David Thodey AO:

The modern Westminster principles of government remain essential: an apolitical, merit-based, and open public service, underpinned by integrity, serving the Government, Parliament and the people of Australia. These principles must be reinforced and supported. ...

[T]he review strongly reaffirms the Westminster tradition as the system to base the APS's foundations today and into the foreseeable future. The review rejects any move towards a partisan 'Washminster' model, whereby agency heads change when governments change and senior public servants have clear political allegiances.<sup>1</sup>

### Public Administration Act

The *Public Administration Act 2004* (Vic) embeds the Westminster principles and traditions in Victorian government.

**Objects:** The Act pronounces eleven objects. Those directly relevant to this investigation are:

- to ensure the maintenance of an apolitical public sector
- to foster a public sector that ... responds to government priorities in a manner that is consistent with public sector values
- to ensure that employment decisions in the public sector are based on merit.

**Public sector values:** The Act pronounces seven public sector values and describes how public officials should demonstrate them. They are: responsiveness; integrity; impartiality; accountability; respect; leadership; and human rights.

All are potentially relevant to this investigation, but four are in particular:

- **Responsiveness** – public officials should demonstrate responsiveness by ... providing frank, impartial and timely advice to the Government.
- **Integrity** – public officials should demonstrate integrity by –
  - avoiding any real or apparent conflicts of interest ...
  - striving to earn and sustain public trust of a high level.
- **Impartiality** – public officials should demonstrate impartiality by –
  - making decisions and providing advice on merit without bias, caprice, favouritism or self-interest
  - acting fairly by objectively considering all relevant facts and criteria
  - implementing Government policies and programs equitably.
- **Leadership** – public officials should demonstrate leadership by actively implementing, promoting and supporting these values.

**Public sector employment principles:** The Act requires the heads of public sector agencies to establish employment processes that ensure six principles are met. Two of those principles are that:

- employment decisions are based on merit
- in the case of public service bodies, the development of a career public service is fostered.

<sup>1</sup> Department of the Prime Minister and Cabinet, *Our Public Service Our Future. Independent Review of the Australian Public Service* (Final Report, December 2019) pages 8, 89.

**Agency heads:** There are two categories of agency head – a Department Head (i.e. Secretary) and an Administrative Office Head. Both are ‘executive’ positions within the meaning of the Act.

All agency heads are appointed by the Premier, on behalf of the Crown. The agency head is to enter into a written contract of employment with the Premier, for a duration of no more than five years. The person’s employment may be terminated earlier by the Premier for a reason consistent with the terms and conditions of employment. The Governor in Council may also remove an agency head from office at any time.

The remuneration bands for agency heads are set by the Victorian Independent Remuneration Tribunal but can be exceeded if the Tribunal’s advice is first sought and considered. The Premier must approve the remuneration payable to an agency head. The Premier’s approval is also required for an agency head to engage in other work.

Department heads are responsible to a minister for the general conduct and effective, efficient and economical management of the functions and activities of their department and any related administrative offices. An administrative office head is responsible in the same way to the department head. An agency head is also to discharge his or her functions in accordance with the public sector values and employment principles.

**Other executives:** In most cases, other executives are employed by agency heads, who are required to observe the public sector values and employment principles when acting as employer, including the principle that employment decisions are based on merit.

Executive appointments are governed by a written contract and subject to similar conditions as agency heads. As at June 2021, there were 1,759 executives employed in the public service.

**Victorian Public Sector Commission:** The Act establishes the Victorian Public Sector Commission, headed by the Commissioner. The Commission originated in the 1800s with a goal of establishing a merit-based career public service and ending patronage appointments.<sup>2</sup>

The twin objectives of the Commission are:

- to strengthen the efficiency, effectiveness and capability of the public sector in order to meet existing and emerging needs and deliver high quality services
- to maintain, and advocate for, public sector professionalism and integrity.

The Commission’s functions include:

- advocating for an apolitical and professional public sector
- adopting codes of conduct and standards, and reporting to agency heads on compliance with them.

The Commission is not subject to ministerial direction or control in performing these functions.

The Commission has published an extensive range of codes, standards and guidance circulars, including the *Code of Conduct for Victorian Public Sector Employees*, *Standards for Application of the Victorian Public Sector Employment Principles*, and *Informing and advising ministers: guidance to Secretaries about their responsibilities*.

---

<sup>2</sup> *Public Service Act 1883* (Vic).



### Westminster refashioned

The central role of the public service is to support the elected government to implement its agenda and policies. It is inherent in that role that the public service will change over time, both in structure and method.

This evolution is intensified by the greater pressure that elected governments now face to respond to a multitude of economic, social, environmental and international challenges. Equally, governments expect the public service to be flexible and responsive to their demands and direction.

This has refashioned the classic model and principles of Westminster government. One change has been that department heads and other executives no longer have ongoing or permanent tenure. They are contracted for a fixed term, and it is now common that some at least will be replaced when there is a change of government or even a change of minister.

Ministers have used this opportunity to appoint agency heads who are thought to understand the government's policy direction and who can develop a constructive and harmonious working relationship with the minister. Not infrequently, the chosen person will have worked in a minister's office or have other political experience.

A related change is that governments may not rely solely – or on occasions primarily – on the public service to provide policy advice and options. Ministers frequently nurture and use an advisory network of professional colleagues, consultants, researchers, representative bodies and interest groups.

Another source of alternative advice and support is ministerial advisers, who are employed directly by the Premier and work directly to the minister in their office. Ministerial advisers are not public service employees. There has been steady growth in the number and influence of ministerial advisers providing political support, analysis and advice to ministers. These advisers are relied upon heavily to liaise with senior agency executives. This is reported anecdotally to be a source of occasional tension and even conflict, with advisers reportedly imposing pressure to revise or tailor departmental advice to a minister. It may equally be testing in a highly interactive or fast-paced setting to draw a sharp line between the political lens of the adviser and the apolitical lens of the public servant.

Another recalibration of the Westminster system regards the personal anonymity of senior public servants. Many maintain a high public profile in parliamentary hearings and other forums in explaining agency programs, responding to criticisms and appearing jointly with ministers in media briefings and other platforms. Freedom of information laws, transparency practices and administrative law processes have also contributed to a lessening of the perceived neutrality of the public service.

# Appendix C

## Public sector employment in Victoria

The VPS is part of the Victorian public sector, which also includes public entities such as statutory authorities and 'special bodies' like IBAC and the Victorian Ombudsman.

The VPS is made up of public servants employed under Part 3 of the Public Administration Act – mostly employees of Departments and administrative offices. Public entities and special bodies may employ staff under other legislation.

VPS bodies are generally made up of:

- an agency head (eg Secretary) employed by the Premier
- executives employed by the agency head
- non-executive employees employed by the Crown.

VPS agency heads, including Department Secretaries, have a duty to act independently in employment matters and are not subject to direction when exercising their employment powers. When making employment decisions, they must comply with:

- the public sector values and public sector employment principles identified in the Public Administration Act
- the *Code of Conduct for Victorian Public Sector Employees* issued by the VPSC
- binding standards issued by the VPSC
- other relevant provisions of the Public Administration Act and subordinate regulations.

### Executive employment

VPS executives are employed under Part 3 of the Public Administration Act. Other public sector bodies may also employ executives.

Executives can be appointed for a fixed term period of up to five years' duration. Their employment is usually formalised via a standard executive employment contract issued by the VPSC, which allows for 'without cause' termination with four months' notice or payment in lieu. They are usually paid in accordance with a remuneration band determined by the Victorian Independent Remuneration Tribunal:

Figure 1: VPS executive remuneration bands, 1 July 2023

Standard title	Classification	TRP (per annum)
Director	SES-1 (formerly EO3)	\$216,376 – \$279,238
Executive Director	SES-2 (formerly EO2)	\$279,239 – \$401,017
Deputy Secretary	SES-3 (formerly EO1)	\$401,018 – \$533,431

Source: Victorian Independent Remuneration Tribunal

The *VPS Executive Recruitment Handbook* provides a whole of government policy framework for employing VPS executives.

## Public sector values

The public sector values are set out in section 7(1) of the Public Administration Act. They include:

- **responsiveness**, demonstrated by:
  - providing frank, impartial and timely advice to the Government
  - providing high quality services to the Victorian community
  - identifying and promoting best practice
- **integrity**, demonstrated by:
  - being honest, open and transparent in all dealings
  - using powers responsibly
  - reporting improper conduct
  - avoiding any real or apparent conflicts of interest
  - striving to earn and sustain public trust of a high level
- **impartiality**, demonstrated by:
  - making decisions and providing advice on merit and without bias, caprice, favouritism or self-interest
  - acting fairly by objectively considering all relevant facts and fair criteria
  - implementing Government policies and programs equitably
- **accountability**, demonstrated by:
  - working to clear objectives in a transparent manner
  - accepting responsibility for decisions and actions
  - seeking to achieve the best use of resources
  - submitting to appropriate scrutiny
- **leadership**, demonstrated by actively implementing, promoting and supporting the public sector values.

Public sector agency heads must promote the public sector values to their employees.

## Code of Conduct

The *Code of Conduct for Victorian Public Sector Employees* identifies ethical behaviours intended to promote adherence to the public sector values. It is issued by the VPSC and applies to all public sector employees – including VPS agency heads and executives – other than employees of ‘special bodies’.

The Code of Conduct is organised around the public sector values. It recognises that public sector employees serve the government of the day and should provide the same standard of advice regardless of the political party holding power.

It also recognises that public sector employees should provide advice to Government that is ‘frank, impartial and timely’ and which takes into account the Government’s broader policy direction. It provides that public sector employees should behave in an apolitical manner and avoid engaging in party politics in the course of their work. Under the Code of Conduct, public sector employees proposing to stand for election are expected to discuss this with their manager to identify any conflict with their public duties.

## Public sector employment principles and VPS Standards

The public sector employment principles are set out in section 8 of the Public Administration Act. Public sector agency heads must establish employment processes that ensure, among other things:

- employment decisions are based on merit
- employees are treated fairly and reasonably
- equal employment opportunity is provided
- employees have a reasonable avenue of redress against unfair or unreasonable treatment
- in the case of the VPS, the development of a career public service is fostered.

The VPS Standards are issued under section 62 of the Public Administration Act and apply to all public sector bodies and employees unless excluded by specific declaration. They identify the 'essential concepts' that must be incorporated into employment processes to ensure the public sector employment principles are followed.

The VPS Standards provide that employment decisions will be based on merit when, among other things:

- people's work-related qualities, abilities and potential are assessed against genuine requirements
- employees are appointed or promoted based on relative ability
- processes are transparent and designed to identify a suitable field of qualified candidates
- employees are only appointed or promoted from a limited field of candidates when these are identified based on objective criteria.

Employees will be treated fairly and reasonably when, among other things:

- processes are fair, clear and applied consistently in comparable circumstances
- criteria are relevant, objective and readily available
- decisions and actions are free of bias and unlawful discrimination
- documentation is sufficiently clear and comprehensive to make decisions transparent and capable of effective review.

For VPS bodies, the development of a career public service will be fostered when, among other things:

- career information is readily accessible and relevant
- performance management conversations are used to develop employees' career-management skills
- there is a focus on 'life-long learning and sustained employability'.



# Appendix D

## Persons who are not the subject of adverse comment or opinion

The introductory and concluding passages of this report refer to various people and entities who are or may be identifiable. These persons are not the subject of any adverse comment or opinion by the Ombudsman in relation to the matters described in:

- Scope and methodology
- Part A: Sustaining an apolitical public sector.
- Part C: Findings, observations and recommendations.

The following table lists people and entities who are or may be identifiable from information in Part B of this report.

These persons are not the subject of any adverse comment or opinion by the Ombudsman in relation to the matters described.

<b>Chapter 4: Former ministerial staffers appointed to the public sector</b>
<b>Case study 3</b>
The agency head
Executive B
Executive C
Executive D
Panel Chair A
Panel Member A
Panel Member B
<b>Case study 4</b>
Executive E
Panel Chair B
The Secretary
<b>Case study 5</b>
Executive F
<b>Case study 6</b>
Executive G
The Secretary
The Secretary's delegate

<b>Case study 7</b>
Executive H
The first Secretary
The second Secretary
<b>Case study 8</b>
Executive I
The Secretary
<b>Case study 9</b>
Executive F
Executive J
<b>Case study 10</b>
The Deputy Secretary
Executive K
<b>Case study 11</b>
Executive L
The Secretary
<b>Chapter 5: Executive hiring at DJCS and DJPR after the 2018 State election</b>
The current DJCS Secretary
The current DJSIR Secretary
The former DPC Secretary
The previous DJCS Secretary
Persons appointed to DJCS Executive Director and Director roles
Persons appointed to DJPR Associate Deputy Secretary positions
Persons appointed to expanded DJPR Board
Persons appointed to inaugural DJCS Board
Persons appointed to inaugural DJPR Board
Persons directly appointed to DJPR executive positions
Persons initially transferred from DPC to DJCS

<b>Chapter 5: Executive hiring at DJCS and DJPR after the 2018 State election (cont.)</b>
<b>Case study 12</b>
Candidates who attended Christmas lunch
<b>Case study 13</b>
Executive M
<b>Case study 14</b>
Executive N
<b>Case study 15</b>
Executive O
<b>Case study 16</b>
Executive P
<b>Case study 17</b>
Executive Q
<b>Case study 19</b>
Executive R
<b>Chapter 6: Alleged politicisation of key transport infrastructure project</b>
CEO of Rail Projects Victoria
The Chair
Coordinator-General
The Deputy Secretary
Executive S
The former CEO of Places Victoria / Development Victoria
The former DEDJTR Secretary
The former DPC Secretary
The Hon Daniel Andrews
Minister for Major Projects
PwC



<b>Chapter 7: Alleged politicisation of Commonwealth Games delivery</b>
Chair of Visit Victoria
Commonwealth Games Australia
Commonwealth Games Federation
DJPR Secretary
Four consultancy firms
The Hon Daniel Andrews
Persons appointed to CG Office and CG Committee positions
Victoria 2026
<b>Chapter 8: Alleged political intrusion in senior V/Line hiring</b>
Candidate B
DoT Secretary
Executive T
Minister for Public Transport
State Trustees
Two former V/Line CEOs
V/Line Board Chair
V/Line CEO

# Appendix E

## DPC response



Department of  
Premier and Cabinet

1 Treasury Place  
Melbourne, Victoria 3002 Australia  
Telephone: 03 9651 5111  
dpc.vic.gov.au

BSEC-231001048

Deborah Glass OBE  
Victorian Ombudsman  
Level 2, 570 Bourke Street  
MELBOURNE VIC 3000

Dear Ombudsman

Thank you for your letter of 1 November 2023, inviting my response to the draft report of the Investigation of matter referred by Legislative Council (the Report) concerning partisan political hiring in the Victorian public sector.

I welcome the outcome that after “one of the most intensive investigations in the Ombudsman’s 50-year history” (paragraph 891) you did not find even one example of partisan political hiring in the Victorian public sector in the last twenty years, a period in which well over half a million people have commenced roles in the sector. I am pleased and not surprised by this conclusion.

### Introduction

The Report states that it responds to item (d) of the 9 February 2022 referral by the Legislative Council (the Referral), which required you to investigate:

*the allegations in the 14 August 2021 article published in The Age titled ‘The Chosen Few: How Much [sic] is Victoria really Governed’, that ALP activists are ‘stacked’ into the public service thus compromising objectivity and professionalism and increasing the risk of corruption.*

Your findings are very clear. At paragraph 333 you say:

*Among appointments we examined, we did not find evidence of direct politicisation of the kind suggested in The Age article – that is, partisan hiring to inappropriately advance ALP objectives. None of the cases we examined showed evidence staffers were being appointed based on overt partisan political considerations.*

Similarly, at paragraph 287 of the Report you state that whilst many appointments involved procedural irregularities:

*... on investigation, none appeared influenced by overt partisan political considerations.*

These are clearly the answers to the allegations in the 14 August 2021 article in The Age (the Article) to which you refer, and which animated the referral of this matter to you by the Legislative Council.

Your details will be dealt with in accordance with the *Public Records Act 1973* and the *Privacy and Data Protection Act 2014*. Should you have any queries or wish to gain access to your personal information held by this department please contact our Privacy Officer at the above address.



### **Dangers of politicisation**

The Report outlines the risks to good public administration and good outcomes for the State if the Victorian Public Service (VPS) and the Victorian public sector (the Sector) were to become politicised. You treat them under the headings of:

- Inferior or inefficient policy
- Procurement or service delivery decisions and outcomes
- Possible corruption risks, and
- Reduced public trust.

I can only say I agree that these are some of the risks that could crystallise were the Sector to become politicised.

Given the serious risks that would arise from the partisan politicisation of appointments to the Sector and the efforts that I and other Sector leaders make to prevent it, it was heartening to read that you were able to find no evidence of it.

### **Former ministerial staff**

Your review was comprehensive, covering both the VPS and the Sector since 2001. You describe how you received 186 submissions, conducted 45 interviews, consulted with 61 senior public officers and examined 5.4 million records including emails, covering a period of more than twenty years. You examined 545 public sector appointments; in the end you were able to identify the appointment of 182 former ministerial advisers (who had served in governments across the country, not just Victoria, presumably of different political persuasions) to positions in the VPS and the broader Sector. Of these 182, only 16 warranted detailed examination, and you found that, “on investigation, none appeared influenced by overt partisan political considerations” (paragraph 287).

There is important context to those numbers. In the last twenty years, the Sector has been constituted by somewhere between 200,000 and 350,000 people each year, with the VPS making up as many as 60,000 of those. In the same period, each year somewhere between 25,000 and 50,000 people have commenced roles in Sector organisations. Figures are not entirely comparable year to year given changes in counting methodologies, but they are at least a proximate and conservative indicator of the size of the Sector and how many appointments have been made to and within the Sector in the period you examined.

In the period in question therefore, somewhere in the order of 600,000 to 700,000 people have commenced roles in Sector organisations; you were able to identify only 182 who had previously served in ministerial offices. Indeed, given these numbers, it is unhelpful to state at paragraph 332: “the information we collected suggests there has been a marked increase in the appointment of former Ministerial staffers to the VPS and broader public sector in recent years.” Even if there had been an increase in raw numbers, the numbers are so small that to suggest there has been “a marked increase ... in recent years” is a misleading description of the true situation.



(In the same way that the workforce data is not one hundred percent reliable, I readily accept the disclaimers made in the introduction to the Report that the number of former ministerial advisers employed in the Sector may have been a little higher than you were able to identify. Nevertheless, given the exhaustive steps you took to identify potentially relevant appointments, it seems unlikely (and you certainly do not suggest) that the number of former ministerial advisers appointed to the Sector in the relevant period is significantly higher than the number you identified.)

### **DPC, DJCS and DJPR**

You devote a significant portion of the Report to staffing changes in the Department of Justice and Community Safety (DJCS) and the then Department of Jobs, Precincts and Regions (DJPR) following the 2018 Victorian election. In particular, for reasons that are wholly unrelated to the Referral, you examine in great detail the recruitment of former staff of the Department of Premier and Cabinet (DPC) into those two departments.

I note the responses to your findings provided by the former secretaries of those two departments, [REDACTED] and [REDACTED]. It is unnecessary for me to comment in detail on the minutiae of those sections, other than to say that in general terms I endorse the responses provided to you by [REDACTED] and [REDACTED]. I note in particular that the bulk hiring processes described in those sections involved merit-based processes, notwithstanding the very significant pressures of time and expectation under which those two secretaries were operating. The fact that reasonable minds might differ, or some people might have been disaffected, about how those processes were conducted, does not in itself mean appointments were not made on merit, and it certainly does not mean that any of the appointments were made for partisan political reasons. Indeed, you found no evidence that they were.

DPC proudly attracts some of the best and brightest public servants. Many seek to pursue a career in a central agency, but a greater proportion seek central agency experience with a view to working in a portfolio department. This is fostered by DPC and strengthens the performance of the Service overall; indeed, it is an important part of satisfying the statutory obligation under the *Public Administration Act 2004 (Vic)* to foster a career public service. The narrative that is present in your Report through its own words and the selective quotes from witnesses implies, without finding, that people who work at DPC are somehow tainted. I reject that notion and defend the integrity and capability of DPC staff wholeheartedly.

It is worth adding that, since the creation of central agencies in Westminster democracies, there has always been a tension between central agencies and other departments. This is, for the most part, a healthy tension leading to better and more coherent advice and to lively policy contests. In any structure like the VPS, where there are two agencies who have overarching, whole of government responsibilities (namely, DPC and the Department of Treasury and Finance) and other agencies responsible for discrete areas of policy and delivery, there will always be tensions. This is not new, and these tensions should not be



relied upon as somehow evidencing a politicisation of those central agencies or the talented and diligent people who come out of them.

### **Major Projects**

For reasons only tenuously linked to the Referral, you devote a significant portion of the Report to the Commonwealth Games, V/Line and the Suburban Rail Loop (SRL).

#### *Commonwealth Games*

I welcome your conclusion in paragraph 810 that you “did not identify any evidence indicating [Commonwealth Games appointments] were influenced by partisan political considerations” and that witnesses “said they did not observe any inappropriate ‘politicised’ behaviour by those appointed.”

I note further in paragraph 815 you state that you considered “whether the appointment of former Ministerial staffers was a factor contributing to collapse of the hosting agreement” and that you “did not find any evidence this was the case”. For the sake of completeness, I would add that the hosting agreement did not “collapse”. Although it is less dramatic or emotive to describe it as such, in light of an extraordinary escalation in costs the Victorian Government made a decision to withdraw from hosting the 2026 Commonwealth Games and instead invest \$2 billion dollars through a package of regional initiatives, rather than spend between \$6 and \$7 billion on hosting the Games.

At paragraph 836 you state that you “did not identify evidence hiring to Commonwealth Games positions at DJPR was influenced by inappropriate partisan political considerations.” It is troubling however that you go on to say at paragraph 838 that what you describe as “excessive secrecy” and “primary reliance on consultants” potentially contribute to marginalisation of the VPS. In this instance the project was led by the appropriate Sector agency in conjunction with the responsible Department and led by the responsible Minister. Consultants were engaged to undertake modelling work, which was again entirely appropriate. It was also a process that in the early stages was subject to exclusivity and confidentiality provisions that are often part of the procurement of major events. Government considered and decided to enter into the agreement having considered advice provided by DPC, DTF and the responsible department.

#### *V/Line*

I welcome your exonerative findings in relation to both the appointment and conduct of [REDACTED] as CEO of V/Line, and in turn his appointment of someone to run his office. In particular I note your conclusion that it was entirely appropriate for the government and the minister to handle the appointment of the CEO in the manner they did, and secondly that any historic connections [REDACTED] might have had with the Australian Labor Party were irrelevant to his appointment. The public maligning of this dedicated public servant brings shame on all those who participated in it and I welcome your defence of him, his appointment and his conduct.



### **Suburban Rail Loop**

Regarding the Suburban Rail Loop and the hiring of Executive S, I note, as in every other case in the Report, your conclusion that Executive S was not hired for partisan political reasons and that, once hired, they behaved appropriately and in accordance with their obligations as a Sector employee (paragraphs 762 and 763). The Report therefore focuses tangentially on the way the SRL was initiated and announced.

Simply because a decision or process was conducted in a manner that some may regard as novel does not mean that there has been a departure from the Westminster system, and it most certainly does not then lead to the conclusion, as the Report does, that the Sector has been or might be politicised or indeed compromised in any way.

It is entirely a matter for the government of the day to decide from where it obtains its advice, with whom to consult about decisions and when, and which policy objectives to prioritise. I submit the Westminster tradition has nothing to say on the subject of with whom or when the elected government might choose to share its intentions, which parts of the Sector are engaged nor the extent to which the government engages external consultants. The fact that the government chose to develop, announce and implement the SRL in the manner that it did (which I note was led by an appropriate Sector agency) was its prerogative. That course of action does not point to a breakdown of the Westminster system nor to the politicisation of the Sector.

Indeed, most large-scale policy and project announcements are actually made as election commitments without any input from the VPS. It then becomes the role of the VPS to advise whomever is elected as the government on those projects, and then to implement them.

[REDACTED]

Given that you were unable to make any adverse findings about the appointment or conduct of Executive S, even on the lower standard of balance of probabilities, it is disappointing that you would have thought it appropriate to include the material about the SRL in the Report.

### **The Westminster System**

In relation to the SRL, you say at paragraph 761:

*Those involved in initially developing the SRL noted the project was subject to wider VPS testing after the State election, when a bespoke administrative office was*



*established to plan and deliver it. But by this stage, the proposal had been presented to the electorate, endorsed, and allowed to develop a premature momentum of its own.*

This criticism is a good example of how the Report repeatedly mischaracterises the operation of the Westminster system. I feel compelled to add that referring to the electorate's endorsement of the project as having given it a "premature momentum" is highly patronising of the Victorian polity and dismissive of Victoria's electoral and democratic system. The Government during its term in office announced its decision to implement an infrastructure project. It then took that proposition to an election as part of its policy platform and they were elected. That is not a description of the Westminster system failing; it is a description of it at work. Further, at paragraph 184 you quote an executive as saying:

*It's like things get done to you. You don't get consulted on them, things just get done to you and you get told about it afterwards, rather than treated as someone who might have a valuable input or a view on it.*

At paragraph 206, you state:

*The present Government's preference for announcing ambitious, large-scale infrastructure projects was noted by several contributors. Some said the public sector was pressured to deliver these initiatives at the expense of much-needed community services that were less visible to the public – noting recent budget cuts to the latter in favour of the former.*

Similarly, at paragraph 717 you quote someone saying:

*And then, for this thing [SRL] to come out of nowhere which takes like 10 times the Transport budget to appropriate [and] was outside of the long-term plan ... [It was] just unbelievable.*

What your contributors are describing is the operation of the Westminster system. Governments are elected by the people to govern and the Sector is in place to advise and to give effect to government decisions. Some people, including, it seems, some of your contributors, might like to have been consulted on certain decisions, they may have views about the wisdom of particular policy priorities or the prudence of particular processes. However, these are all matters for an elected government, responsible to the Parliament and ultimately to the people at the ballot box. Views may differ on how policy positions are developed and indeed whether they are sufficiently meritorious, but once a position is decided by the government of the day, it becomes part of government business, no matter how controversial it may be perceived to be. Indeed, in your report at paragraphs 110 and 111 you say:

*Effective government also requires that policies and programs, once settled, **are dutifully implemented by the public sector, acting without self-interest*** (emphasis added)

It is open to all Victorians, including your contributors, who disagree with the policy priorities of the government of the day to stand for Parliament in order to try to give effect to alternative policy visions. The inclusion in the Report of the three quotes above serve only to reinforce a distorted view of how the executive within a Westminster parliamentary democracy is meant to operate.

### **Recruitment processes**

The VPS and the Sector must always ensure that recruitment and promotion processes are as transparent and well documented as they can be.

Section 8 of the Public Administration Act 2004 (Vic) sets out the public sector employment principles. Sub-section (a) requires that Public Sector Body Heads establish processes to ensure that employment decisions are based on merit, an obligation I take very seriously in my leadership role in DPC, the VPS and the broader Sector.

The most common way the merit principle is manifested not only in the Sector but across the economy is through the application of a competitive processes for hiring and promotion. It is important however not to equate the two in the way the Report frequently does. Simply because someone was appointed or promoted through a process other than a conventional competitive process does not mean they were not appointed on merit. Neither can one assume that they were appointed in that manner precisely in order to avoid the merit principle and, by implication, to appoint someone less meritorious than another. In the comparatively small number of cases where Sector appointments are made other than following a public competitive process, there will invariably be a rationale for why the appointment was made in that way. Reasonable minds can and will differ as to whether the rationale in each case was sufficiently persuasive, but Public Sector Body Heads are required to make complex decisions like that every day. It is, however, not open to conclude or imply without any evidence that in any case the lack of a competitive process equates to a lack of merit in the appointee and that they therefore must have been appointed for other (including partisan political) reasons.

As you note, one of the risks of insufficient transparency in recruitment and promotion and inadequate record keeping is that it leaves open to misinterpretation the reasons for which a person was appointed or promoted, even if there is actually no basis for impugning the employment decision. People may infer that a person was appointed for reasons of political alignment, previous professional relationships or a myriad of reasons other than merit.

The VPS and the Sector can do better in relation to the transparency and documentation attaching to our recruitment and promotion processes. Concerns by staff in departments about recruitment transparency at all levels is evident to varying degrees in most People Matters Survey results and this is a perennial problem across Australian public sectors. I will be taking these matters up anew with the Victorian Public Sector Commissioner following the publication of the Report.





## Other matters

The report implies that there is something nefarious about the size and influence of DPC. I have addressed earlier the healthy tension that exists between DPC and other departments and would add that DPC, in supporting the Premier of the day together with the entire Cabinet, is the preeminent government department.

In paragraph 127 the Report says:

*The growth in size of First Ministers' Departments (eg the Department of Premier and Cabinet ('DPC') in Victoria) is also said to promote centralised political control.*

Your report makes no findings to this effect, but you have chosen to include that observation and a chart that shows the number of DPC employees over time in an effort to give weight to that observation.

First, DPC does not 'promote centralised political control'. The government of the day is governing and while there can be great variations from time to time in how centralised or decentralised that model of governing is, the role of DPC remains the same: DPC provides advice on and oversight of the implementation of the government's agenda. Matters may be contested or controversial, but implementing the agenda of the government is not political; it is a fundamental role of the Sector in our democracy.

Secondly, it is simplistic and misplaced to imply that the size of DPC is problematic, however the chart and commentary on page 38 of the report does just that. Your Report states that 'some' growth is connected to machinery of government and function changes, when it is in fact the case that almost all growth is related to machinery changes or new functions assigned to DPC, rather than growth that, as implied, inappropriately centralises power and control in the Department and, by implication, the Premier of the day. The fact is that DPC's growth is because it has assumed or been assigned new functions, rather than because of a growth in the core policy functions that directly support the Premier. These have included supporting the establishment of and implementing recommendations from the Family Violence Royal Commission; supporting the establishment of the Mental Health Royal Commission; the fostering of a Fairer Victoria group (later transferred to DFFH); the establishment and growth of Digital Victoria (later transferred to DGS); the transfer in to DPC of Industrial Relations Victoria; and the significant growth of the First Peoples-State Relations group as the government has pursued a truth, treaty and justice policy agenda. Finally, for completeness, DPC's headcount at 30 June 2023 as reported in its annual report is 560. This is entirely a result of MOG changes and bears no relationship to the manner in which Victoria is governed.

## Conclusion

Paragraph (d) of the Referral, to which the Report responds, did not ask you to investigate the manner or quality of government decision making, nor whether certain government decisions could have been made in different ways or other policy objectives should have



been prioritised in government decision making. These are properly matters for government, for the Parliament and, every four years, for the electorate.

Rather, you were asked to investigate whether “ALP activists are ‘stacked’ into the public service thus compromising objectivity and professionalism and increasing the risk of corruption.” Given the seriousness of the allegations made in the Article and in the Legislative Council, I commend you on conducting such a thorough forensic investigation and I welcome your conclusion that these serious allegations are unfounded.

All your inquiries were conducted using only the balance of probabilities standard of evidence; that is to say, you only had to establish that it was more likely than not that alleged conduct had occurred. I note that applying even that lower standard of evidence, in relation to:

- the hiring of former ministerial advisers in to the Victorian Public Sector, you found none appeared influenced by overt partisan political considerations (287);
- the hiring of former DPC staff into the Department of Justice and Community Safety and the former Department of Jobs, Precincts and Regions, you found no evidence that appointments were influenced by inappropriate political considerations (536 and 668);
- the hiring at Development Victoria of an executive who had previously worked in a minister’s office, you did not substantiate allegations that the “unusual features” of the Suburban Rail Loop’s early development resulted from their appointment (762) and further, that you found no evidence they were appointed to advance the SRL through the public sector nor that they performed their role in an inappropriate partisan manner (763);
- the hiring of executives for the delivery of the 2026 Commonwealth Games, you found no evidence of appointments being influenced by partisan political considerations (810) and further, no evidence that the appointment of former ministerial officers was a factor contributing to the cancellation of the Games (815); and
- the hiring of executives at V/Line, you found no evidence that [REDACTED] appointment as CEO was connected to historic ALP ties (867) but rather that he was a seasoned VPS executive with demonstrated skills in delivering organisational change (873), and further, that the director of [REDACTED] office was hired based on their specific skillset and subject matter expertise, rather than partisan-political considerations (880).

Returning to paragraph (d) of the Legislative Council’s referral, you did not only find that ALP activists had not been ‘stacked’ into the public sector. Moreover, in relation to the proportionally few former ministerial staff appointed to the Victorian public sector in the last twenty years, you also found no evidence of any of them having acted inappropriately or contrary to the Code of Conduct for Victorian Public Sector Employees, thereby contradicting the allegation in the Referral that their appointment had compromised objectivity and professionalism or increased the risk of corruption.

I am disappointed that the structure, content and tenor of the Report gives insufficient prominence to these clear answers to the Legislative Council referral. I am also disappointed that, other than when I sought to meet with you shortly after the Referral (a meeting which



took place on 5 April 2022) and a subsequent meeting with Professor McMillan on 27 June 2022 after you had engaged his services, there were no further discussions with me on these important issues, in my capacity as head of the VPS. Nevertheless, I welcome your conclusions. I hope that the thoroughness of your independent inquiries will now bring to an end unfounded and unfair criticisms of the staff of the Victorian public sector, criticisms which impugn the integrity of Victoria's skilled and dedicated public sector workforce and weaken public trust in Victoria's institutions of government.

Yours sincerely



**Jeremi Moule**  
Secretary

15 / 11 / 2023

# GLOSSARY

2018 Strategic Business Case	<i>2018 Orbital Metro Strategic Business Case</i> – business case prepared by consultants engaged by Development Victoria for SRL concept
Agency head	Person responsible for leading a public sector body – eg Department Secretary or CEO
ALP	Australian Labor Party – the political party holding Government in Victoria since 4 December 2014
ANZSOG	Australia and New Zealand School of Government – not for-profit established by Australian and New Zealand (Aotearoa) Governments to promote public sector leadership
APS	Australian Public Service – Australian Government public servants employed under the <i>Public Service Act 1999</i> (Cth)
Central agency	Department with whole of government responsibilities; in Victoria, DPC and DTF
CEO	Chief Executive Officer – common title for non-VPS agency head
CG Committee	Victoria 2026 Commonwealth Games Organising Committee – business unit within DJPR responsible for leading organisation of the 2026 Victorian Commonwealth Games; later changed to a State-owned company
CG Office	Office of the Commonwealth Games – business unit within DJPR responsible for planning and coordination of the 2026 Victorian Commonwealth Games
CGA	Commonwealth Games Australia – not-for-profit made up of Australian sporting organisations responsible for promoting and organising Commonwealth Games participation in Australia
CGF	Commonwealth Games Federation – international body responsible for direction and control of the Commonwealth Games and Commonwealth Youth Games events
Coaldrake Review	Review of culture and accountability in the Queensland public sector completed in 2022
Coate Report	Report of the COVID-19 Hotel Quarantine Inquiry chaired by the Hon Jennifer Coate – examined failures in Victoria’s COVID-19 Hotel Quarantine Program
Code of Conduct	<i>Code of Conduct for Victorian Public Sector Employees</i> – document issued by the VPSC identifying behaviours exemplifying the public sector values; binding on most Victorian public sector employees

Coombs Report	Report of the 1976 Royal Commission on Australian Government Administration
CPSU	Community and Public Sector Union Victoria – union representing VPS and Victorian public sector employees
DEDJTR	Department of Economic Development, Jobs, Transport and Resources – former VPS Department responsible for economic development, transport and job creation; effectively split on 1 January 2019 to form DJPR and DoT
Development Victoria	Statutory authority established on 1 April 2017 to carry out, manage and coordinate property development and economic and capital works projects; replaced Places Victoria and Major Projects Victoria
DHHS	Department of Health and Human Services – former VPS Department featured in IBAC’s <i>Operation Daintree</i> report
Direct appointment	Public sector hiring method where a candidate is appointed without an open and advertised selection process
DJCS	Department of Justice and Community Safety – VPS Department responsible for justice and community safety services; known as the Department of Justice and Regulation before 1 January 2019
DJCS Board	Senior leadership team responsible for overseeing DJCS; led by the DJCS Secretary and comprised of Deputy Secretaries and other senior leaders
DJCS COI Policy	<i>Conflict of Interest Policy</i> – internal DJCS policy issued in February 2018 and in effect throughout 2019; sets out approach for identifying and managing conflicts of interest
DJCS COI Recruitment Guideline	<i>Conflict of Interest Guideline: Recruitment</i> – internal DJCS guideline issued in February 2018 and in effect throughout 2019; sets out advice for identifying and managing conflicts of interest during recruitment activities
DJCS EO Recruitment Process	<i>Executive Officer Recruitment Process</i> – internal DJCS procedure issued in 2018 and in effect from approximately January 2019 to September 2020; sets out recruitment and selection process for executives
DJCS Recruitment Policy	<i>Recruitment and Selection Guideline and Related Policy</i> – internal DJCS guideline and policy updated 2 October 2018 and in effect throughout 2019; sets out recruitment and selection process for non-executive employees

DJPR	Department of Jobs, Precincts and Regions – former VPS Department responsible for economic development and job creation; established on 1 January 2019 when transport functions were separated from DEDJTR
DJPR Board	Senior leadership team responsible for overseeing DJPR; led by the DJPR Secretary and comprised of Deputy Secretaries and other senior leaders
DJPR Recruitment Policy	<i>Recruitment and Selection Policy</i> – internal DJPR policy issued in January 2021 and in effect throughout 2022; sets out recruitment and selection process for executives and non-executive employees
DOPI	Declaration of Private Interests – yearly process where senior public sector employees declare private interests and relevant conduct history
DoT	Department of Transport – former VPS Department responsible for Victoria’s transport system; formed on 1 January 2019 when transport functions were separated from DEDJTR and renamed the Department of Transport and Planning on 1 January 2023
DPC	Department of Premier and Cabinet – VPS Department reporting directly to the Premier and responsible for leading whole-of-government policy and performance
DTF	Department of Treasury and Finance – VPS Department reporting directly to the Treasurer and responsible for financial, economic and resource management
EOI	Expression of interest – selection process sometimes used in the VPS to identify and appoint internal candidates to vacant positions
Executive	Senior employees; in the VPS, Department Secretaries and administrative office heads, as well as people appointed as executives under Part 3 of the Public Administration Act (eg Deputy Secretaries, Executive Directors and Directors)
Head Review	Appointment of a Senior Trade and Investment Commissioner to the Americas – 2022 review into New South Wales executive appointment process
HEF	Health Education Federation – union-linked organisation featured in IBAC’s <i>Operation Daintree</i> report
<i>Herald Sun</i> article	Article published by the Herald Sun newspaper on 22 February 2022 titled, <i>Ex-Labor candidate landed top V/Line job with no industry experience</i>

IBAC	Independent Broad-based Anti-corruption Commission – special body responsible for identifying, exposing and investigating corrupt conduct and police personnel misconduct in Victoria
Infrastructure Victoria	Statutory authority established on 1 October 2015 to 'take short term politics out of infrastructure planning'; responsible for Victoria's 30-year infrastructure strategy
Key selection criteria	Criteria used within the VPS to assess employment candidates, based on the knowledge, skills and attributes required for the position
Line Department	Department responsible for portfolio-specific policy, planning and services; for example, DJCS
Merit selection	Principle underpinning all public sector appointments, where employees are appointed and promoted based on their relative ability, through hiring processes that are transparent and designed to identify a suitable field of qualified candidates
Ministerial staffer	Personal staff of the Premier or Ministers employed under Part 6 of the Public Administration Act; formally known as 'Ministerial officers'
MoG changes	Machinery of government changes – where functions, resources or staff are transferred between VPS Departments and other public sector bodies
OCG	Office of the Coordinator-General – former business unit of DEDJTR led by the Coordinator-General; responsible for overseeing significant transport projects delivered by four administrative offices throughout 2017-2018
Operation Daintree	IBAC investigation into a VPS contract awarded to a company established by an ALP affiliated union
Operation Esperance	IBAC investigation into contracts awarded by V/Line and Metro Trains
Operation Lansdowne	IBAC investigation into serious corruption involving the Victorian vocational education and training, and transport sectors; included examination of senior recruitment at V/Line
PBO	Parliamentary Budget Office – Victorian Parliamentary Department responsible for independent costing of proposals and budget analysis
PID Act	<i>Public Interest Disclosures Act 2012 (Vic)</i> – Victorian legislation providing protections to people making disclosures about corrupt conduct, improper conduct and detrimental action involving public officers and public bodies
Plan Melbourne	<i>Plan Melbourne 2017-2050</i> – the Victorian Government's 35-year metropolitan planning strategy first issued in May 2014 and updated in March 2017

Politicisation	Breaches of the boundary between the political and non-political arms of executive government which compromise the independence and political neutrality of the public sector (see chapter 2)
Position description	Document setting out the accountabilities, key selection criteria and organisational information for a position; in the VPS, usually prepared or revised before a job is advertised
PPO	Office of the Premier – political office comprised of Ministerial staffers who assist the Premier to discharge their Parliamentary, Ministerial and party-political responsibilities; sometimes referred to as the ‘Premier’s Private Office’
Public Administration Act	<i>Public Administration Act 2004 (Vic)</i> – Victorian legislation under which public servants and Ministerial staffers are employed; provides a framework for good governance and public administration, including maintenance of an apolitical public sector
Public sector	Sector responsible for administering the functions of Government; in Victoria, comprised of the VPS, public entities and special bodies
Public sector employment principles	Principles set out in the Public Administration Act establishing how public sector employees should be treated
Public sector values	Values set out in the Public Administration Act establishing how Victorian public sector employees should behave
Secretary	Person appointed by the Premier to lead a VPS Department
SRL	Suburban Rail Loop – flagship infrastructure project announced in August 2018 involving construction of a new orbital rail line to connect all of Melbourne’s major train lines
<i>The Age</i> article	Online article published by <i>The Age</i> newspaper on 14 August 2021 titled, <i>The chosen few: How Victoria is really governed</i> ; published in print as <i>Working the Network</i>
Thodey Review	2018-19 Independent Review of the Australian Public Service chaired by David Thodey AO
Transport Integration Act	<i>Transport Integration Act 2010 (Vic)</i> – legislation providing a framework for Victoria’s integrated transport system
Transport Plan	Plan required by section 63 of the Transport Integration Act setting out Victoria’s transport planning framework, strategic directions and priorities
Transport Restructuring Order	Order made under the Transport Integration Act changing the name, structure or other features of a transport agency



V/Line	V/Line Corporation – Victorian statutory authority responsible for operating regional rail and bus services
VAGO	Victorian Auditor-General's Office – special body responsible for conducting financial and performance audits of state and local government public sector bodies
VPS	Victorian public service – people employed under Part 3 of the Public Administration Act, including employees of Departments and administrative offices
VPS Executive Handbook	Document published by the VPSC providing non-binding advice for recruiting, selecting and employing VPS executives
VPS Pre-Employment Screening Policy	<i>Victorian Public Service Pre-employment Screening Policy</i> – whole-of-government policy issued by the VPSC in August 2018 requiring VPS bodies to ensure employment candidates declare their conduct history
VPS Standards	Binding legislative instrument issued by the VPSC identifying the concepts required to comply with the public sector employment principles
VPSC	Victorian Public Sector Commission – agency responsible for strengthening the Victorian public sector and promoting professionalism and integrity
VPSC Model COI Policy	<i>Model Conflict of Interest Policy</i> – model policy published by the VPSC to help public sector bodies develop internal conflict of interest policies
Westminster tradition	System of government adopted in Australia where the non-political arm of the executive branch of government is independent from but accountable to the political arm chosen by Parliament

# Victorian Ombudsman's Parliamentary Reports tabled since April 2014

## 2023

---

Investigation into a Building Permit complaint  
November 2023

Investigation into the Department of Transport and Planning's implementation of the zero and low emission vehicle charge  
September 2023

Joint investigation with IBAC  
Operation Watts Progress report  
September 2023

Misconduct in public organisations: A casebook  
August 2023

WorkSafe 3: Investigation into Victorian self-insurers' claims management and WorkSafe oversight  
June 2023

Complaint handling casebook: Resolving issues informally  
May 2023

Councils and complaints: Glen Eira City Council's approach to contractor work  
April 2023

Good Practice Guide: Complaint handling in a crisis  
February 2023

## 2022

---

Ombudsman's recommendations - fourth report  
September 2022

Investigation into a former youth worker's unauthorised access to private information about children  
September 2022

Investigation of a matter referred from the Legislative Council on 9 February 2022 Part 1  
July 2022

Joint investigation with IBAC  
Operation Watts, a joint investigation into allegations of serious corrupt conduct involving Victorian public officers, including Members of Parliament  
July 2022

Investigation into complaint handling in the Victorian social housing sector  
July 2022

Report on investigations into the use of force at the Metropolitan Remand Centre and the Melbourne Assessment Prison  
June 2022

Investigation into Environment Protection Authority decisions on West Gate Tunnel Project spoil disposal  
May 2022

## 2021

---

Investigation into decision-making under the Victorian Border Crossing Permit Directions  
December 2021

Investigation into allegations of collusion with property developers at Kingston City Council  
October 2021

The Ombudsman for Human Rights: A Casebook  
August 2021

Councils and complaints - A good practice guide 2nd edition  
July 2021

Investigation into good practice when conducting prison disciplinary hearing  
July 2021

Investigation into Melton City Council's engagement of IT company, MK Datanet Pty Ltd  
June 2021

---

Investigation into how local councils respond to ratepayers in financial hardship

May 2021

Investigation into the Department of Jobs, Precincts and Regions' administration of the Business Support Fund

April 2021

Outsourcing of parking fine internal reviews – a follow-up report

March 2021

Investigation of protected disclosure complaints regarding the former Principal of a Victorian public school

February 2021

## 2020

---

Investigation into the detention and treatment of public housing residents arising from a COVID-19 'hard lockdown' in July 2020

December 2020

Investigation into complaints about assaults of five children living in Child Protection residential care units.

October 2020

Investigation into corporate credit card misuse at Warrnambool City Council

October 2020

Investigation into review of parking fines by the City of Melbourne.

September 2020

Investigation into the planning and delivery of the Western Highway duplication project

July 2020

Ombudsman's recommendations – third report

June 2020

Investigations into allegations of nepotism in government schools

May 2020

---

Investigation of alleged improper conduct by Executive Officers at Ballarat City Council

May 2020

Investigation into three councils' outsourcing of parking fine internal reviews

February 2020

## 2019

---

Investigation of matters referred from the Legislative Assembly on 8 August 2018

December 2019

WorkSafe 2: Follow-up investigation into the management of complex workers compensation claims

December 2019

Investigation into improper conduct by a Council employee at the Mildura Cemetery Trust

November 2019

Revisiting councils and complaints

October 2019

OPCAT in Victoria: A thematic investigation of practices related to solitary confinement of children and young people

September 2019

Investigation into Wellington Shire Council's handling of Ninety Mile Beach subdivisions

August 2019

Investigation into State Trustees

June 2019

Investigation of a complaint about Ambulance Victoria

May 2019

Fines Victoria complaints

April 2019

VicRoads complaints

February 2019

# Victorian Ombudsman's Parliamentary Reports tabled since April 2014

## 2018

---

Investigation into the imprisonment of a woman found unfit to stand trial

October 2018

Investigation into allegations of improper conduct by officers at Goulburn Murray Water

October 2018

Investigation of three protected disclosure complaints regarding Bendigo South East College

September 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

## 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

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

## 2014

---

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

---

Victorian Ombudsman  
Level 2, 570 Bourke Street  
Melbourne VIC 3000

Phone 1800 806 314  
Email [complaints@ombudsman.vic.gov.au](mailto:complaints@ombudsman.vic.gov.au)  
Web [www.ombudsman.vic.gov.au](http://www.ombudsman.vic.gov.au)

---