

Operation Daintree

Operation Daintree was an investigation by the Independent Broad-based Anti-corruption Commission (IBAC) highlighting how improper influence compromised the procurement process for a \$1.2 million contract awarded to a union-established training group, and compromised the management of the contract.

Recommendations



The investigation revealed a range of conduct and omissions in breach of the public duties and ethical obligations of ministers, ministerial advisors, and senior public servants.

As a result of Operation Daintree, IBAC has made 17 recommendations to address the integrity risks identified by the investigation related to the conduct of ministerial advisors, public servants and affiliated unions.

Recommendation 1

That the Victorian Government ensures that lobbying activities by employee and employer associations are included in any reforms arising from [IBAC's Special report on corruption risks associated with donations and lobbying](#).

Recommendation 2

That the Victorian Parliament request the Parliamentary Ethics Committee (when established) to prepare guidance about the current scope of the convention on ministerial accountability and its application to Victorian Government ministers.

Recommendation 3

That the Premier ensures that:

- a) the Ministerial Code of Conduct is amended to be consistent with any guidance issued by the Parliamentary Ethics Committee in implementing Recommendation 2
- (b) the Ministerial Code of Conduct is amended to require all ministers to:
 - observe the relevant protocols and conventions in providing instructions to, and communicating with, departments
 - ensure that their offices have effective arrangements for the supervision and accountability of staff, escalation of issues and clear lines of communication
 - ensure that their staff observe the relevant protocols and conventions in communicating with departments
 - complete a mandatory induction program
 - undertake mandatory refresher training on the Ministerial Code of Conduct
 - be fully aware of their obligations under the Ministerial Code of Conduct and their staff's obligations under the Ministerial Staff Code of Conduct
 - ensure the scope of all advisors' authority is clearly defined, and the manner in which they may discharge their functions is consistent with the Ministerial Staff Code of Conduct and the protocols about interactions with public servants.

Recommendation 4

In line with other Australian jurisdictions, that the Victorian Government develop and introduce legislation to clarify and formalise the employment arrangements for ministerial staff to strengthen transparency and accountability. Options to consider include:

- (a) clarifying employment responsibilities, such as:
 - designating the minister to whom the staff are assigned to be their employer, or alternatively, vesting employer responsibilities in the minister to whom staff are assigned once they have been employed by the Premier,
 - providing for the accountability and supervisory arrangements for ministerial staff

- (b) articulating the values and employment principles that apply to ministerial staff

- (c) providing for the making of codes of conduct by the Premier to be observed by staff in performing their functions, including:
 - providing that a breach of the *Ministerial Staff Code of Conduct* may constitute misconduct
 - requiring the *Ministerial Staff Code of Conduct* to be published and reviewed at regular intervals

- (d) articulating the principles for ministerial staff to follow when dealing with portfolio departments and agencies, including a specific prohibition on directing public sector employees.

Recommendation 5

That the Victorian Government introduce legislation to require the Secretary to the Department of Premier and Cabinet or the Victorian Public Service Commission to include information in their annual report about the number of ministerial advisors and other staff who were employed in each ministerial office as of 30 June each year, and the total cost of employing ministerial advisors and staff during each financial year.

Recommendation 6

Subject to any legislation drafted pursuant to Recommendation 4, that the Premier, the Department of Premier and Cabinet and the Victorian Public Service Commission collaborate to ensure that the *Ministerial Code of Conduct*, the *Ministerial Staff Code of Conduct*, and the VPSC guidance to ministerial staff, and department secretaries, executive officers and non-executive officers are comprehensive, consistent and emphasise:

- (a) role clarity and the need for ministerial staff and public servants to understand and act in accordance with the scope of their roles

- (b) mutual respect in relations between ministerial offices and public servants

- (c) greater awareness of potential conflicts of interest and the need for additional caution to be exercised in managing conflicts of interest, and

- (d) the operation of the conventions on ministerial responsibility.

Recommendation 7

- (a) That the Victorian Government, in consultation with the Victorian Public Sector Commission, provide a mandatory induction program for new ministerial staff that covers their obligations under the *Ministerial Staff Code of Conduct* and other guidance.
- (b) All ministerial staff members and public service employees who regularly engage with ministerial offices undertake training in the relevant guidance governing relations between ministers, their offices and public sector departments and agencies and the principles underpinning the guidance at least once every two years.
- (c) The Department of Premier and Cabinet or the Victorian Public Sector Commission publish annual statements that detail the number of staff and advisors who attended training sessions in the previous financial year, broken down by individual portfolios.

Recommendation 8

That the Parliamentary Integrity Commissioner be responsible for:

- (a) receiving and investigating complaints about possible, non-criminal breaches of the *Ministerial Staff Code of Conduct* and other misconduct
- (b) referring prima facie allegations of criminal or corrupt conduct to Victoria Police or IBAC
- (c) referring minor breaches to the Premier for investigation and resolution, in the Commissioner's discretion and subject to the Premier advising the Commissioner of the outcome of the investigation
- (d) where the Parliamentary Integrity Commissioner is satisfied a ministerial staff member engaged in conduct that is in breach of the *Ministerial Staff Code of Conduct*, recommending further action to the employer of the ministerial staff member, including on potential sanctions
- (e) promoting the revised *Ministerial Staff Code of Conduct* and providing regular education on it
- (f) monitoring and reporting on compliance with the *Ministerial Staff Code of Conduct* and potential measures to improve it
- (g) revising the Ministerial Staff Misconduct Policy and Procedure to align with this report's recommendations
- (h) reporting annually on the performance of their functions with respect to ministerial staff (or on specific cases if warranted) to the Parliament.

Recommendation 9

When developing the legislation to establish the ministerial staff complaints regime, that the Victorian Government ensure that the legislation includes a requirement for ministerial staff to cooperate with an investigation of a complaint against them (or another ministerial staff member) with:

- (a) safeguards against the use of such information in other criminal or civil proceedings (other than for unfair dismissal or providing false or misleading information)
- (b) a failure to cooperate with the Parliamentary Integrity Commissioner constituting misconduct enabling the Commissioner to recommend appropriate action to the employer of the ministerial staff member for that misconduct.

Recommendation 10

When developing the proposed complaints regime in relation to ministerial staff, that the Victorian Government:

- (a) require the Premier (or minister to whom a ministerial staff member is assigned if they have employment responsibilities) to:
 - i) accept the recommendations of the proposed Parliamentary Integrity Commissioner in relation to a ministerial staff member from an investigation into their conduct; or
 - ii) report to the Commissioner on their reasons for not accepting the recommendations and any alternative action they have taken or have determined should be taken.
- (b) provide that the Commissioner publish a report each year on the nature and number of recommendations made, accepted, and not accepted.

Recommendation 11

- (a) That the Victorian Government develop and introduce amendments to the *Parliamentary Committees Act 2003* to empower relevant Committees to compel ministerial staff members to appear before them and answer questions in limited and defined circumstances, such as where a minister claims to be unaware of the staff member's conduct in a matter relevant to the minister's portfolio into which the committee is inquiring.
- (b) The Standing Orders Committee of each House (or such other committee as may be appropriate) develops guidance material for parliamentary committees and ministerial advisors called before such committees on, among other things:
 - (i) what does or does not constitute permissible questions to put to an advisor
 - (ii) what an advisor's obligations are to answer questions
 - (iii) the consequences of an advisor failing to answer a legitimate question.

Recommendation 12

That the Victorian Government and parliament develop and introduce amendments to all relevant codes of conduct to provide that a breach of the relevant code includes conduct that:

- (a) directly or indirectly intimidates or victimises a person who has reported conduct (or proposes to report conduct) of a ministerial staff member or made a complaint (or proposes to complain) about a ministerial staff member
- (b) directly or indirectly interferes with any investigation or inquiry into the conduct of a ministerial staff member that is the subject of a complaint or a report for the purpose of influencing the outcome or findings.

Recommendation 13

That the Victorian Government ensure persons making legitimate or reasonable allegations of misconduct about a ministerial staff member are protected from detrimental action by:

- (a) consulting with IBAC on the expansion of the Parliamentary Integrity Commissioner's remit to ensure that the office holder can engage effectively with the provisions of the *Public Interest Disclosures Act 2012*
- (b) establishing procedures to provide protection for persons who are not otherwise eligible for protection under the Public Interest Disclosures Act, such as by developing and introducing amendments to the *Public Administration Act 2004*.

Recommendation 14

That the Victorian Public Sector Commission amend the *Code of Conduct for Victorian Public Sector Employees* and the Victorian Government amend the *Ministerial Staff Code of Conduct* to provide that the making of a frivolous, vexatious, or malicious allegation to the independent complaints process may constitute a breach of the relevant code with appropriate sanctions available to respond to such conduct.

Recommendation 15

That the Victorian Public Sector Commission and Secretaries Board review their current programs and initiatives with a view to strengthening and supplementing them with specific training and materials directed to the challenges of ensuring a greater commitment in the Victorian Public Service to preventing and responding effectively to improper political interference.

Recommendation 16

That the Department of Health reviews, and where necessary, strengthens its procurement policies, systems, and practices to address the corruption vulnerabilities identified by IBAC in this report, including:

- (a) the assessment and management of unsolicited proposals to supply goods or services, regardless of how a proposal is conveyed to it
- (b) its conflicts of interest framework so employees and contractors understand their obligations to identify, declare and manage such conflicts and avoid them where possible
- (c) that suppliers are sourced in a way that complies with competition requirements in legislation and/or procurement policy and procedures.

Recommendation 17

That the Victorian Government:

- (a) consult with IBAC on the preparation of legislative changes arising from the implementation of recommendations in this report; and
- (b) provide to parliament:
 - (i) a progress report on the action taken in response to the recommendations in this report by 31 October 2023
 - (ii) a further report on those actions (with a focus on the recommended complaints regime) by 30 June 2024, noting that IBAC may further publicly report on the adequacy or otherwise of those responses.

Responses

Responses to our investigations are published on IBAC's website to inform the community about actions agencies advise they are taking, and to share learnings that may help other agencies improve their systems and practices to prevent corruption and misconduct.

Level 1, North Tower
459 Collins Street,
Melbourne VIC 3000
GPO Box 24234,
Melbourne, VIC 3001

T 1300 735 135

E info@ibac.vic.gov.au

Feb 2023

IBAC is Victoria's anti-corruption agency responsible for preventing and exposing public sector corruption and police misconduct. We do this by:

- investigating serious corruption and police misconduct
- informing the public sector, police and the community about the risks and impacts of corruption and police misconduct, and ways in which it can be prevented.

To report corruption now, visit www.ibac.vic.gov.au or call **1300 735 135**.

If you need help with translation, call Translating and Interpreting Service on **13 14 50** or visit www.ibac.vic.gov.au/mylanguage