

# Summary

## Why we investigated

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.

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

The allegation referred to us was very broad, and required one of the more intensive investigations conducted in the Ombudsman's 50-year history.

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.

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.

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.

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

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.

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.

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.

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.

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.

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.

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.

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

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

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.

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.

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.

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.

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.

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.

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

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’).

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.

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.

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.

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.

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**

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.

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.

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.

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.

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.

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**

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.

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.

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.

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

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.

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.

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

Our extensive investigation, conducted across multiple fronts, found no direct evidence of widespread partisan hiring of the kind suggested in the Legislative Council referral.

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.

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.

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.

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.

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.

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.

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.

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**

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.

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.

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.

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**

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.

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.

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.

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.

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.

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.

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**

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.

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.

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.

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

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.

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.

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.

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.

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.

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

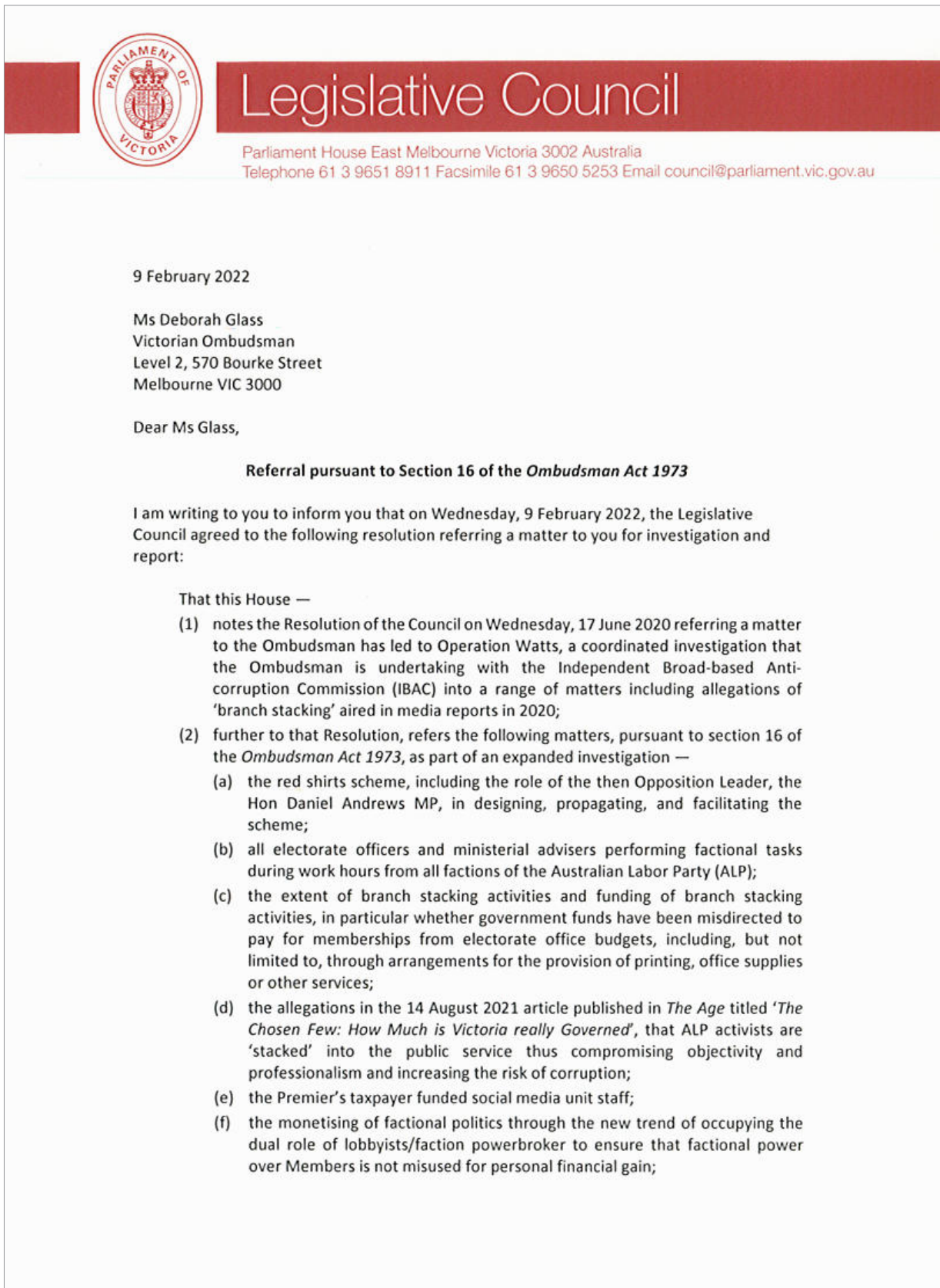
- ✓ Entry of former Ministerial staffers into the public sector
- ✓ Political intrusion into 'arms-length' public sector recruitment
- ✓ VPS hiring and firing after State elections
- ✓ Influence of former Ministerial staffers on key Government projects

### 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,



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