



## ART Submission - Reforms to Role of Auditor-General

### A. Introduction

You will recall we submit that the guiding legal and ethical principle applicable the reform of the auditing of government and its spending of public funds is, as it is for all decisions by government and parliamentarians, the 'public trust principle' – that those we entrust with power to exercise on our behalf will always prioritise the public interest over their own or others', private interests. This includes the judiciary, the public service and Auditors-General as they discharge their respective responsibilities. Critical to ensuring that the principle is applied is a high degree of operational transparency, independently assured by an appropriately empowered Auditor-General.

A clear foundation for the principle to operate is the existence of a contemporary, comprehensive external audit mandate covering the entirety of public sector operations. To achieve this, the current mandate for the Auditor-General as set out in the *Audit Act* 1994 must be broadened beyond the current focus on public sector entities. This is necessary to enable audit coverage of all publicly funded programs and operations. In addition there are a number of restrictions and impediments to the efficient operation of the Victorian Auditor-General's Office that need to be addressed.

Appropriately empowering the Auditor-General to undertake independent audits in accordance with transparent standards across the entire public sector, would be consistent with the principles established by the International Organization of Supreme Audit Institutions (INTOSAI), and would enhance the integrity of public sector operations in Victoria. This in turn would engender a much higher level of public trust in the sector. The opportunity for improper and corrupt conduct would also be reduced in consequence of a more transparent and cohesive sector-wide approach.

Currently, Victoria lacks an effective Whistleblower protection scheme and an adequately empowered anti-corruption body. There are no transparent processes in relation to lobbyists and political funding and this is despite there being an obvious arms race for political donations. In addition, there has been secrecy in recent years surrounding major projects and planning decisions. Despite the disturbing lack of effective processes to ensure the public interest is prioritised over private interests, some highly disturbing examples of corruption have come to light.

(<http://www.accountabilityrt.org/?s=toothless+tiger> ; <http://www.accountabilityrt.org/is-the-high-court-helping-to-fight-corruption/> ; <http://www.accountabilityrt.org/do-we-have-a-corruption-problem-in-victoria/> ).

The risk of serious corruption in Victoria is very high. When it periodically becomes evident, it causes out of proportion damage to the public's trust in government. All reasonable measures to minimise the opportunity for corruption to occur are warranted, both in principle and in resource management terms. The absence of best practice measures and a failure to act to introduce best practice will send a message to the community that its public trustees do not take the risk of corruption seriously.

### **There is much to be done in Victoria**

**We set out in the following attachments what we see as the total package of reforms that are required to bring the Victorian Auditor-General system to a best practice level.**

## **Attachment 1 - Phase 1; Immediate Revisions to *Audit Act 1994***

Phase 1 is recommended to focus on the delivery of the Government's election commitments to give the Auditor-General effective 'follow the dollar' powers unfettered by Executive Government and the Parliament, the power to undertake collaborative audits with other integrity bodies, greater discretion as to what may be included in Reports to Parliament and to simplify the requirements for consultation with the Parliament and Executive Government.

### **1.1 'Follow the dollar' powers**

There is an overdue need to recognise contemporary approaches to public sector program delivery to re-establish the standards of accountability which have previously existed. The present 'entity' based principle established in the *Audit Act 1994* has been rendered redundant by reforms to the means of delivering programs, principally via outsourcing to and partnering with the private and not for profit sectors. The underlying principle of accountability for stewardship and application of public resources has not changed. Accordingly the power to audit any matter relating to public money, and to provide associated access powers to premises, information systems and assets relevant to program delivery needs to be addressed.

The Australian Capital Territory, Commonwealth, Queensland, Tasmania and Western Australia all have amended their audit legislation in recent years to enable auditing of money or property used on behalf of the Government. A better practice example is the *WA Auditor General Act 2006* - Section 18 (c), 'investigating any matter relating to public money, other money or statutory authority money or to public property or other property'.

### **1.2 Collaborative audits and investigations**

#### **1.2.1 Information sharing**

The Auditor-General should have complete discretion to effectively engage with and participate in the Victorian integrity system in serving the public interest. There is also the need to be able to participate with other audit offices to be able to fully exercise the Constitution Act Section 94B (6) provision that the Auditor-General have complete discretion in the performance or exercise of his or her functions. This is now needed recognizing contemporary approaches to Commonwealth/State funding arrangements. The current secrecy provisions of the *Audit Act 1994* unduly restrict the Auditor-General. There is an obvious need to provide the Auditor-General with adequate discretion so he or she is able to operate within the broader bounds of professional confidentiality, rather than being constrained by the poorly targeted and restrictive secrecy provisions of the *Audit Act 1994*. Audit legislation in Queensland, the Australian Capital Territory and Tasmania provide examples of such provisions which are working effectively. More specifically Section 53 of the Queensland *Auditor-General Act 2009* provides a better practice example of this provision.

#### **1.2.2 Persons with Special Interest**

There is a need for more discretion for the Auditor-General to engage as he or she sees fit with any person in relation to an audit. This is because increasingly public sector program

delivery is being undertaken using the private and not for profit sectors. Consistent with established audit practice, discussion with operational personnel is often required to enable understanding of context and documentation. There are already adequate safeguards in place to both guide and oversee the Auditor-General in doing this. To be able to adequately serve the public interest, the Auditor-General needs improved operational discretion to engage with those contributing to public sector program delivery and these people need to be required to adhere to public sector accountability and confidentiality standards. There is precedent in Victoria for appropriate legislative provisions, most specifically the Victorian *Taxation Administration Act 1997* which apply in comparable circumstances.

### **1.3 Simplify requirements for consultation**

The current *Audit Act 1994* requirement for consultation with the Public Accounts and Estimates Committee on individual Audit Specifications should be dispensed with as it represents an unnecessary operational step which is not consistent with the Committee's broad oversight and consultation role. The Act already provides for the appropriate level of consultation with the Committee as part of the preparation of each Annual Plan.

## **1.4 Reform Victoria's integrity system to ensure the effectiveness and independence of the Auditor-General.**

### **1.4.1 Oversight Arrangements**

The inclusion of the Victorian Inspectorate in the oversight mechanism for the Auditor-General represents a level of duplication and outweighs the arrangements for other integrity bodies in Victoria and audit oversight in other jurisdictions. The Auditor-General and the Office are already subject to a triennial performance audit commissioned by the Public Accounts and Estimates Committee. A review of the design integrity for the Integrity System in Victoria is required to address the current ad hoc approach to oversight which does not appear to have an underlying cohesion or clarity of purpose. In fact PAEC oversight arrangements over VAGO far outweigh those of the other, more newly formed oversight committees for Ombudsman and IBAC.

## **1.5 Greater discretion in content of Reports to Parliament**

The Auditor-General should be provided with reasonable operational and professional discretion. An evident aspect is to allow the tabling of reports when Parliament is in recess. This warrants amendment of the Audit Act to enable exercise of this reporting discretion. Another dimension of contemporary practice warranting attention is the need to provide for electronic versions of reports to be tabled. The Commonwealth and Queensland provisions are currently regarded as better practice and consistent with INTOSAI principles. A similar reasonable and professional discretion should be applied to agency responses to proposed audit reports. The Auditor-General should be able to "have regard" to agency responses.

## Attachment 2 - Phase 2; Systematic Revision of the Audit Act 1994

A more systematic revision of the *Audit Act 1994* is recommended over the next two years with the objective of re-establishing a sound, contemporary and comprehensive financial and performance audit framework in Victoria. This would reliably underpin and demonstrate the existence and practice of the public trust principle. Victoria would once again be able to claim its position as an exemplar jurisdiction.

There are a range of reforms, additional to those reforms set out in Attachment 1, to be addressed as follows.

### 2.1 Extend the mandate

**2.1.1 *The other branches of government.*** Victoria is an outlier jurisdiction in that the audit mandate does not extend to the administration of the Parliament as generally applies in other jurisdictions. Consistent with the concept of public sector accountability it is not evident why this administration should not be subject to audit in a manner consistent with the rest of the public sector, now including the administration of the judiciary, as they use public resources and have the obligation to routinely demonstrate regularity and prudence in the application of public resources. The creation of Court Services Victoria (CSV), a statutory body that the courts manage themselves independently of the Executive, has enabled audits to occur of this body. There may be a gap, however, as administration occurs within the courts themselves, not just in CSV. It is noted the administration of Funds in Court is not subject to Section 3A (2) of the *Audit Act 1994* meaning in undertaking this audit the Auditor-General's mandate does not extend to consideration of wastage, probity and financial prudence as is provided for otherwise across the public sector. Further the audit of Funds in Court is a request audit, not a legislatively required audit. In consequence a Special Purpose Financial Report is prepared based on Accounting Standards determined by the preparer. Normally for external accountability purposes a General Purpose Financial Report approach is used which requires all relevant accounting Standards to be observed. Therefore, recognising the recent developments with the establishment of CSV, a review of the operation of the enhanced audit and accountability arrangements is recommended after an initial period of operation.

**2.1.2 *Government controlled entities.*** Another area for attention is to provide for the Auditor-General to be appointed auditor of all government controlled entities including companies and administrative offices. INTOSAI principles, Section 22 and 23 of the Lima Declaration of Guidelines on Auditing Precepts, prescribe that public audit should extend to enterprises established under private law if the government has a 'substantial participation' in them, and to 'subsidised institutions' where the SAI 'should be empowered to audit the use of subsidies granted from public funds. This principle would remove the discretion from agencies (e.g. Universities) to decide who to appoint as the external auditor of subsidiary bodies. The *WA Auditor General Act 2006* Section 17 provides a better practice example of such a provision. This particular provision has evolved from a post WA Inc Royal Commission recommendation where public entities which had been exempted from audit by the Auditor General had not respected public sector accountability and probity standards, ultimately at significant expense to the taxpayer.

## 2.2 Eliminate Over-ride by Other Legislation

The Auditor-General as Parliament's auditor should be appointed auditor of all public sector sponsored and funded entities. This reinforces the obligation of all publicly sponsored or funded entities to demonstrate responsible use of the public trust and resources they receive. Better practice is for *Audit Act* provisions to be afforded precedence over other legislation as it establishes the standard of probity and accountability across the sector. In Victoria however there are instances where other legislative provisions, e.g. the *Public Health and Wellbeing Act 2008*, have removed the application of the *Audit Act* in certain areas and circumstances. This is contrary to INTOSAI principles and indicates inconsistent, if not flawed, logic and erodes the overall standard of accountability across the sector. Specifically INTOSAI Principle 3 provides for a 'sufficiently broad mandate and full discretion in the discharge of' the audit function.

## 2.3 Adequacy of Controls

Public sector entities have a responsibility 'not only to do the right thing but also to be seen to do the right thing'. This requires demonstration of responsible use of public resources. This can be challenging when recognising that generally public sector entities operate in a non-competitive environment and therefore there is a need for them to otherwise demonstrate regularity, probity and prudence in their operations and in their use of public resources. Better practice accountability standard is to require an opinion on the adequacy of controls as a complement to the annual opinion on the financial statements of public sector entities. Western Australia has established an explicit legislative requirement for accountable officers to establish reliable control systems and for the Auditor-General to annually issue an opinion on the operation of these controls.

## 2.4 Performance Statements

A further better practice approach which recognises the particular nature of public sector operations and which serves to assist entities better focus their policy implementation and program delivery approaches, is to require entities to parallel the preparation of annual financial statements with the preparation of performance statements providing key performance indicators of their efficiency and effectiveness in program delivery, and for the Auditor-General to issue an opinion on the relevance and appropriateness, and as to whether these indicators fairly represent, the entity's performance. This regime has been established in Western Australia and should in the longer term result in more 'performance audits' being of an assurance nature similar to financial statement audits where management prepares the report and the auditor issues an opinion on the reasonableness of the performance being reported. This promises a less challenging approach than the current reliance on direct reporting by the auditor.

## 2.5 Environment

International and the Australian Capital Territory jurisdictions are increasingly adding a fourth 'e' to the Auditor-Generals 'economy, efficiency and effectiveness' mandates reflecting the growing importance of sustainability considerations. Consideration of the desirability of extending the Auditor-General's mandate to embrace environmental sustainability is recommended.

## **2.6 Education Function**

There would be merit in explicitly empowering the Auditor-General undertaking a broader education function to promote better practice approaches. There are a range of areas including fraud prevention/detection, better practice internal controls and resource management which are not currently being actively promoted across the sector.

Accountability Round Table

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