

**Submission to the Public Accounts and Estimates Committee  
On the Inquiry into Victoria's Audit Act 1994.**

**Professor Kerry Jacobs (The Australian National University)**

These comments are submitted on my own behalf and do not necessarily reflect the position of the Australian National University. Just as point of record – I have recently been invited to join the Audit Committee of the VAGO and in February this year attended my first meeting.

Dear PAEC

The issue of the role and operation of Auditors General and PAC type parliamentary oversight committees has been my major research focus for the last six years and I have published extensively in this area. While my comments here will be brief it is based on extensive analysis of these entities in Australia and internationally.

First, the committee is to be commended for the discussion paper which provides an excellent introduction to many of the key issues. In addition I would strongly endorse the centrality of the independence of the Auditor General which must be maintained (and preferably enhanced) by any changes. To undermine this is to undermine the institution of the Auditor General. However, if it is taken seriously it has implications for a number of the changes proposed.

**Audit of Parliament**

This has historically been a sensitive and controversial issue in many jurisdictions and any formalisation of this arrangement needs to make it clear that the mandate relates only to the administrative activities. However, good governance would imply that some form of review would be beneficial. The argument of a principal / agent relationship preventing this kind of work is not a good argument as the notion of an independent auditor general is not consistent with a principal-agent relationship.

In response – financial audits from the Auditor General seem to be good practice and unproblematic. Good financial audit practice also tends to include a confidential management letter which will highlight control weaknesses which need to be addressed. I can not see any merit in using an alternative external auditor as they are likely to have less understanding of the nature of parliamentary activity than an Auditor General. Issues of performance audits have tended to be politically sensitive, particularly in relation to Parliament. However, the argument for this work is that the Auditor General should be able to follow the public sector dollar including how it is spent in the functioning of parliament.

*My recommendation is that the Auditor General conducts financial audits of the Victorian Parliament, that they are entitled to conduct other work under their mandate, but they are precluded from commenting on the merits or otherwise of the functioning of parliament.*

**Frequency of performance audit**

Performance audit of the Auditor General is not universal in Australia. In the past it has been used as a political weapon against the Auditor General. However, it does have some merit. It is also needs to be noted that performance audit practice outside of the Auditors General is not well developed.

*The proposal that it be conducted once every four years is reasonable and has merit. I would not recommend the 'within' option as this could easily be subject to political abuse. However, it is always within the mandate of the PAEC to conduct an inquiry into the operation of the VAGO.*

#### Acting Auditor General

In some countries the acting Auditor General provisions have been subject to abuse and to undermining the role of the Auditor General.

I do not have a specific preference on whether the Deputy AG be deemed acting with full powers or another appointment be made. However, it needs to be clear and there needs to be a clearly defined timeframe. I suspect that 6 months might be a bit short in a difficult situation and I would suggest a maximum of a year with no possibility for renewal of the acting role.

#### Independence of Auditor General

I agree with the committee's view that the current constitutional independence of the Auditor General is clear and well established. The parliament should not (via the PAEC or any other aspect) direct the Auditor General on operational matters.

One issue which needs further work is the relationship between the oversight role of the PAEC and corporate governance bodies such as the Audit Committee of the VAGO which should consider internal operational matters such risk management, internal control adequacy and reporting practices.

I would not suggest that you limit the power of Parliament or of any house or committee of Parliament to submit requests to the Auditor General. However, some statement that these would normally come through the PAEC would be reasonable.

#### Performance Audit of Officers of Parliament

I would not support a set frequency of performance audits of officers of parliament. If these officers of parliament are low risk it is a waste of resource which could be devoted to more meritorious targets and if they are high risk then it would be too infrequent. However, if you are not careful you could have your parliamentary officers chasing each other like a dog chasing its tail. In the end each of these bodies answers to parliament and if one is made to answer to another then there will be problems.

#### Auditor General's Budget

This is a perennial and controversial issue. There is evidence from Australia and internationally the budget restriction is used as a political tool to restrict the activity of Auditors General. There is potential for abuse where the budget is established and approved by the executive. The Victorian model is better. Perhaps the best option is if the VAGO budget was reviewed and proposed by an independent body. It could then fall to the PAEC to accept or amend the proposed budget giving clear reasons for any amendment. This is the best way I can see to ensure the capacity necessary for an independent Auditor General. An alternative is that the budget of the Auditor General be based on some underlying factor – such as a set percentage of the total state expenditure.

#### Consultation on performance audit specifications.

The tension here is between consultation and independence. I would like to see the removal of this clause as it is unlikely that members of the PAEC would have particular experience and

insight into performance audit specifications. It is more important that the focus of performance audits and the associated terms of reference be discussed with the PAEC. Perhaps rephrase this as 'consultation into the terms of reference for proposed performance audit in the context of the annual plan'.

#### Employment of ex Auditors General

Yes – this is a bit of an issue across the commonwealth – particularly where an Auditor General is not 'that old'. Most Auditors General self impose something without clear guidance. One example is the debate over whether an ex-Auditor General can take a place within a university in the same state. I would oppose a blanket ban on employment in Victoria as these people have valuable skills and talents and it would be a great shame if they had to leave Victoria to share their talents. Also if there is an effective ban on employment then there is a moral obligation to provide a pension or this might constitute an illegal restraint of trade.

I would suggest something like:

*The Auditor General should not within 5 years of retirement take a position which represented a conflict of interest because of their knowledge and experience as an Auditor General.*

#### Production of documents by the Auditor-General to the Committee

I would strongly and categorically oppose the proposal that an Auditor General be required to present audit working documents to any parliamentary committee including the PAEC. This is a fundamental breach of the independence of the Auditor General and must be resisted at all costs. It would constitute interference in the activities of the Auditor General at a level which would be intolerable and could be open to political mischief of the highest order.

Audit working papers and documents represent the process of decision making and reflection on the part of the Auditor General and therefore are analogous to policy advice given to the minister or the working notes from a police investigation. If the members of one party or another were given access to these documents the political damage to Parliament as an institution would be considerable and the damage to the reputation and the ability of the Auditor General to go about their business would be considerable. If the act was abused in this way the Victorian Parliament would be justly subject to international condemnation.

However, it might be appropriate to request key documents or information to facilitate PAEC follow-up and oversight. This would place the onus on the Auditor General to deliver these documents or to explain why she/he did not wish to make them available. However, the PAEC could easily request most documents (other than audit working-papers) from the department or agency. Therefore it is hard to see a situation where any well functioning PAC would request the Auditors General's working papers unless there were intentions of political mischief or personal vendettas.

***I would strongly support the Auditor General's proposed change relating to this section.***

#### Audit of Ministerial Salaries or Ministers' Officers

I understand the argument for the need to have complete and full review of public sector spending and therefore can see some merit in the proposal to audit ministerial salaries and ministerial offices. However, this proposal has massive potential for political embarrassment and open conflict between the Auditor General and the Executive. I can not see how this could be

done in such a way as not to provoke this conflict and therefore would not recommend this initiative.

#### Tabling of Audit Reports

It is important that the Auditor General is not prevented from releasing her/his reports because of political management of tabling time. There are cases in Australia where the control over parliamentary timing has been abused to gag an 'unpopular' Auditor General's report. Therefore the Auditor-General must either have the option to release without tabling (less ideal) or be entitled to table whenever they choose and the parliament must accommodate that request (preferred). The Auditor General should have the power to table reports when Parliament is not sitting so there is no opportunity to provide obstruction or restriction to their work.

#### Audit of non-judicial functions within Victoria's courts

I would oppose any attempt to restrict or limit the powers of the Auditor General to conduct their work. The danger is that what appears to be good practice guidelines in this case if incorporated into the act could constitute the basis to control or limit the Auditor General's mandate. As long as it is clear that the mandate relates to the non-judicial functions then I see no conflict. However, I agree that this issue is both complex and sensitive.

#### Operational powers and responsibilities of the Auditor General

I strongly support the notion that the Auditor General has open access to the records and staff of entities who receive public funds. I agree that this is critical as governments enter into partnerships with a range of private providers and claims of commercial in confidence should carry no weight. Not to have this access will fundamentally undermine the processes of public accountability. This should hold true for both financial audit and performance audit as it would be impossible to determine questions of efficiency and effectiveness if such access is not available. I deem that it is both appropriate and necessary that these powers be allowed to the Auditor General and the issues of granting these powers to other officers of parliament would need to be considered on a case-by-case basis.

The fundamental issue is that public funds are provided by the tax-payers and therefore those who receive it must account for how they used it. If they accept these accountability obligations when they accept public funds, it difficult to see how they can complain that their rights have been abused or infringed.

The extension of this argument to public money and public property is reasonable. There is historical precedent on the issue of public money and in an 'accrual' environment where assets are fully recognised and accounted for, investigation of public assets are a necessary to address issues of efficiency and effectiveness.

#### Questioning merits of policy

While the practice of efficiency and effectiveness review may have the effect of challenging policy it is not normal that the Auditor General in the Westminster model has the power to examine policy. However, this is not necessarily true in all jurisdictions and some do give the Auditor General (or their equivalent) the power to directly criticise policy.

This positions the Auditor General in a very different role and often times in direct conflict with the executive and therefore I would advise against it and most Auditors General would shy away from this area even with the mandate powers. Any uncertainty in this area should be removed.

It is good to give the Auditor General the scope to provide other services and I would not specify this further. Most have difficulty meeting the existing demands but this flexibility would provide the capacity for change and evolution if new technologies and approaches emerge in future. It was not so long ago that performance audit was a new technology and mandates needed to change to accommodate this.

Clarification of the Auditor General's powers and reduction of ambiguity is a very good thing. However, this should not be used to restrict these powers and the most generous interpretation should be give.

The danger of legal privilege is that it can be used to avoid accountability. Therefore I would repeat my recommendations in relation to the operational powers of the Auditor General that those who receive public funds consent to provide access to the Auditor General.

#### Performance Indicators

In order to be meaningful performance indicators need to be relevant and reliable. Unfortunately that is not always the case and indicators can be changed to undermine review and comparison. Therefore it is good if performance indicators are reviewed by the Auditor General. However, whether such a review is practically possible is a technical question for the Auditor General.

#### Disclosure

The disclosure requirements and obligations on the Auditor General in relation to criminal and fraudulent activity need to be clearly stated with no ambiguity.

#### Audit fees

It is fair and reasonable the Auditor General should be able to charge fees to the relevant agencies. This is quite clear for financial audits – particularly given that many of these audits are contracted out that the VAGO face a corresponding bill from private sector auditors. There is a public policy argument that performance audit should be funded from appropriation however the danger is that a fixed budget can have the effect of limiting the scope of Audit work which should be expanded because some key concern is identified. I can't see a neat and easy solution to this issue.

#### State Companies

This is an interesting question which revolves around the nature and function of the state company. Where a significant (more than 25%) of its revenue is from state appropriations the Auditor General must be the auditor, where its revenue is not derived from state appropriation but it has a significant impact on public welfare or has an important role in the mission of the state then there is a strong case that it be audited by the Auditor General. Where it is effectively an investment and there is no funding or strategic link it does not have to be audited by the Auditor General (but it could be). I believe that most of the examples in the last category have already been partially or fully privatised and therefore most of the state corporation holdings fall into the first two. Therefore I would suggest an even simpler approach

*The entity is required to be audited by the Auditor-General where that state has majority control or where it is significantly funded from state appropriation (more than 25%). Where the state*

*does not have majority control and it is not significantly funded by state appropriation the choice of the auditor rests with the company's Board.*

Incorporation of comments from Audited Agencies in tabled reports

This is good practice and to be encouraged. It also provides a good basis for follow up by the PAEC against the statements made by the agencies.

Again – in line with the principle of Auditor General independence I support the proposal that assigns discretionary power to the Auditor General on whom she/he reports sensitive material to. In addition a strong immunity clause and protection against civil and criminal case is reasonable. However, the good faith clause should be retained.

Issues of continuous improvement and risk management are important and vital. The work of a good Auditor General should contribute to these processes through their performance audit work. However, responsibility for improvement and risk management rests with the executive not the Auditor General. Care needs to be taken not to confuse the oversight role with the management role.

Direct legislative engagement or indirect involvement of the PAEC (or Treasury) in the continuous improvement and risk management processes of the VAGO would constitute interference. However, the PAEC should recommend that these things be addressed by the Auditor General – particular through the work of groups such as an independent Audit Committee.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Kerry Jacobs', with a stylized flourish at the end.

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Canberra  
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