

**VICTORIAN GOVERNMENT RESPONSE TO PUBLIC
ACCOUNTS AND ESTIMATES COMMITTEE REPORT
ON A LEGISLATIVE FRAMEWORK FOR
INDEPENDENT OFFICERS OF PARLIAMENT**



DEPARTMENT OF PREMIER AND CABINET
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PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE REPORT ON A LEGISLATIVE FRAMEWORK FOR INDEPENDENT OFFICERS OF PARLIAMENT

Introduction

1. The Public Accounts and Estimates Committee (PAEC) is established under section 14 of the *Parliamentary Committees Act 2003* and is empowered to consider and report on any proposal, matter or thing concerned with public administration or public sector finances.
2. As a result of representations from the Auditor-General, the Committee undertook an Inquiry into the need for an appropriate legislative framework for Victorian officers of Parliament.
3. The Committee's Report, entitled "*Report on a Legislative Framework for Independent Officers of Parliament*" was tabled in the Legislative Assembly and Legislative Council on 8 February 2006.

Recommendation 1

The legislation relating to each officer of Parliament be amended to provide that both Houses of the Victorian Parliament pass a resolution appointing the Auditor-General, the Ombudsman and the Electoral Commissioner, based on the recommendation of the appropriate parliamentary committee.

4. The report notes that politically partisan appointments in these areas have not arisen in this context in Victoria.
5. In relation to the Auditor-General, the Government believes that the PAEC has sufficient input into the appointment process of the Auditor-General to ensure a bi-partisan approach.
6. In relation to the Ombudsman and the Electoral Commissioner, the Government will give further consideration to how an appropriate Parliamentary Committee could have input into the selection process for these officers.
7. The Electoral Matters Committee established under section 9A of the *Parliamentary Committees Act 2003* would appear to be the most appropriate committee to be involved with the appointment of the Electoral Commissioner.
8. In the case of the Ombudsman, there is no clear existing Committee which might be involved in the selection process.
9. Given these factors, the Government proposes to give further consideration to how appropriate Parliamentary Committee input into the selection process for the Ombudsman and Electoral Commissioner can be achieved, and what form that input should take.

Recommendation 2

The legislation relating to each officer of Parliament be amended to provide that the appropriate parliamentary committee be responsible for reviewing and recommending the remuneration and allowances of independent officers of Parliament. The process should be transparent, with the relevant committee reporting to Parliament on the outcomes of its deliberations.

10. The Government will consider the recommendation for further investigation.

Recommendation 3

The enabling legislation relating to the Ombudsman and the Electoral Commissioner be amended to provide that these officers of Parliament be appointed for an initial period of eight years, with the option of Parliament, or its delegate, extending the appointment if practicable into the middle of the next election cycle.

11. The Government supports the recommendation in part.
12. The Government acknowledges the difficulty in changing the tenure for the Auditor-General and agrees that the tenure of the Ombudsman and the Electoral Commissioner should be consistent, so far as is possible.
13. Accordingly, the Government proposes to amend the terms for both the Ombudsman and the Electoral Commissioner to eight years, following expiration of the terms of the current incumbents.
14. The Government does not believe that an option for extension of the term should lie with Parliament.

Recommendation 4

The recruitment and appointment process for officers of Parliament should be finalised well in advance of the state election and, as close to the middle of the election cycle, as practicable.

15. The Government supports the recommendation. The Government will aim to ensure that timing of appointments is as recommended in so far as is reasonably possible in each instance.

Recommendation 5

No officers of Parliament should be eligible to take up a position within the Victorian public sector until after a period of at least two years from the completion of their appointment as an officer of Parliament.

16. The Government supports the recommendation in so far as an independent officer of Parliament should not be permitted to take up another position within the

Victorian public sector within a period of two years from completion of their appointment as an officer of Parliament. The Government does not believe however that an independent officer should be prevented from taking up another independent office during that period. The Government proposes to amend the relevant legislation.

Recommendation 6

(a) The legislation relating to the Ombudsman and the Electoral Commissioner be amended to provide consistency with the procedures for removing or dismissing these officers of Parliament and for consultation with the relevant parliamentary committee before any action is taken.

(b) The procedures be based on the arrangements applying to the Auditor-General.

17. In the case of the Auditor-General, changes to the provisions relating to removal of the Auditor-General would require a constitutional referendum to approve any of these changes.
18. The removal provisions relating to the Ombudsman and the Electoral Commissioner would also require a constitutional referendum.
19. It is also worth noting that in respect of the Electoral Commissioner, there are existing stringent procedures in the *Electoral Act 2002* which are similar to those currently existing for the Auditor-General. In this respect the changes suggested are unnecessary.
20. The Government does not believe the case is adequately made to justify the need for referenda and therefore does not support this recommendation.

Recommendation 7

The legislation relating to each officer of Parliament be amended to provide that:

(a) the Public Accounts and Estimates Committee, as the delegate of the Parliament, has the principal responsibility for ensuring the independence and accountability of the Auditor-General and his/her office;

(b) the Public Accounts and Estimates Committee, or another designated Committee, as the delegate of the Parliament, has the principal responsibility for ensuring the independence and accountability of the Ombudsman and his/her office; and

(c) the Electoral Matters Committee, as the delegate of the Parliament, has the principal responsibility for ensuring the independence and accountability of the Electoral Commissioner and his/her office.

21. The Government will give the matter further consideration.

22. In considering this recommendation, the Government will also bear in mind the potential risk for Parliamentary Committee involvement in oversight of the Electoral Commissioner may reduce the independence of the office.
23. The Government fully supports a closer relationship between Parliament and its independent statutory officers. Such a relationship is best established through protocols and existing reporting arrangements, rather than providing for such arrangements in legislation as the recommendation suggests. It is unclear exactly how such a relationship could be enshrined and mandated in the legislation. The Government believes existing processes, including appointment and selection, and reporting are sufficient.

Recommendation 8

The legislation governing the operations of officers of Parliament explicitly state that Parliament and its parliamentary committees cannot direct these officers of Parliament on operational matters but can request them to undertake specific investigations.

24. The Government supports this recommendation in relation to the Auditor-General and the Ombudsman and proposes to amend the relevant legislation.
25. In the case of the Electoral Commissioner, the Government supports the recommendation but not insofar as it would allow the Electoral Commissioner to be directed to undertake specific investigations. In contrast with the other two offices, the Electoral Commissioner does not have investigatory type functions. Any potential investigation would be carried out by other authorities. Accordingly, requests to undertake investigations are inappropriate for this office.
26. The Government proposes to amend the relevant legislation as indicated accordingly.

Recommendation 9

The Ombudsman's and the Electoral Commissioner's enabling legislation be amended to provide that both officers and their agencies are subject to an independent external performance review every four years and that Parliament, on the recommendation of the appropriate parliamentary committee, appoint an appropriate person to undertake the review and determine the terms and conditions of the appointment.

27. The Government will give this recommendation further consideration.

Recommendation 10

The Audit Act 1994 be amended to provide that the independent performance audit of the Victorian Auditor-General's Office be undertaken every four years, consistent with the provisions recommended for the Ombudsman and the Electoral Commissioner.

28. As referred to in the response to recommendation 9, the Government will give this recommendation further consideration.

Recommendation 11

The costs involved in undertaking performance reviews of the three officers of Parliament be appropriated from the budget of Parliament and reimbursed from the Consolidated Fund.

29. The Government supports the recommendation.

Recommendation 12

The legislation relating to each officer of Parliament be amended to provide:

- (a) that the appropriate parliamentary committee has a role in reviewing and advising Parliament of the budget estimates for particular officers of Parliament; and*
(b) the appropriate parliamentary committee table in Parliament its report on the forthcoming appropriation for the relevant officers of Parliament and forward a copy to the Treasurer.

30. The Government does not support the recommendation. As the report acknowledges, there has been no evidence of concern, and ultimately, the Government remains responsible for the expenditure of taxpayers' funds.

Recommendation 13

The appropriate parliamentary committees be given legislative authority to exempt, if necessary, the Ombudsman and the Electoral Commissioner from any administrative requirement specified in the Public Administration Act.

31. The Government will refer this issue to the State Services Authority for further consideration.

Recommendation 14

The legislation relating to each officer of Parliament be amended to provide that the appropriate parliamentary committee be involved in recommending long term acting officers of Parliament.

32. The Government will consider this recommendation further.

33. The Government also considers that, where an officer is absent due to illness or incapacity for a period of around one year, then this period would constitute a sufficient time for the purposes of determining what constitutes a “long term” acting officer.

Recommendation 15

(a)The Constitution Act 1975 specify the independent officers of Parliament and outline the core principles that underpin their operations.

(b)The enabling legislation for each officer of Parliament detail arrangements for their remuneration, appointment and dismissal, the selection of acting officers of Parliament, staffing and the officer’s relationship with Parliament and appropriate parliamentary committees.

34. The Government will consider this recommendation further.

Recommendation 16

The Parliament, or the appropriate parliamentary committees, should be consulted before any legislation to create any further officers of Parliament is introduced in Parliament. This will ensure the legislative framework governing the appointment and removal of such officers, their financing and resourcing, and their accountability arrangements and relationship with Parliament are consistent with the expectations of the core criteria for officers of Parliament.

35. The Government believes that consultation already occurs through a number of processes, including the normal Parliamentary process by which legislation is enacted, references to Parliamentary Committees and informal consultation. No further changes are required.

Recommendation 17

The following principles be adopted for the creation of new officers of Parliament:

(a)an officer of Parliament must be created only to provide a check on the executive’s use of power;

(b)an officer of Parliament must discharge only those functions that the Victorian Parliament, if it so wished, might carry out;

(c)Parliament should consider creating an officer of Parliament only on rare occasions; and

(d)Parliament should from time to time review the appropriateness of each officer of Parliament’s status.

36. In regard to paragraph (a) of the recommendation, officers of Parliament may be created for a range of reasons, one of which might be as a check on Executive power. The Government does not support the adoption of paragraph (a) as a principle as it assumes that independent officers are only ever set up as a check on executive power when this clearly is not the case.

37. In regard to paragraph (b) of the recommendation, it is not clear exactly what this principle means. In establishing any independent officer, legislation will specify the relevant functions of the position. That legislation is the will of the Parliament and any person appointed to that position must stay within the legal boundaries established by the legislation. The Government does not support the adoption of paragraph (b) as a principle since in its current form, its meaning is unclear.
38. The Government supports the principles espoused in paragraphs (c) and (d).