



PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

FIFTY SEVENTH REPORT TO PARLIAMENT

Report on the Appointment of Persons to conduct Financial and Performance Audits of the Victorian Auditor-General's Office

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Public Accounts and Estimates Committee Membership - 55th Parliament

Hon. C Campbell, MP (Chair)

Hon. B Forwood, MLC (Deputy Chair)

Hon. B Baxter, MLC

Mr R Clark, MP

Mr L Donnellan, MP

Ms D Green, MP

Mr J Merlino, MP

Hon. G Rich-Phillips, MLC

Ms G Romanes, MLC

Membership of the Sub-Committee on the Selection of Persons to undertake Financial and Performance Audits of the Victorian Auditor-General's Office:

Hon. C Campbell, MP (Chair)

Hon. B Forwood, MLC

Hon. B Baxter, MLC

Mr J Merlino, MP

Ms G Romanes, MLC

Public Accounts and Estimates Committee

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Duties of the Committee

The Public Accounts and Estimates Committee is a joint parliamentary committee constituted under the *Parliamentary Committees Act 1968*, as amended.

The Committee comprises nine Members of Parliament drawn from both Houses of Parliament and all political parties.

The Committee carries out investigations and reports to Parliament on matters associated with State financial management. Its functions under the Act are to inquire into, consider and report to the Parliament on:

- (a) any proposal, matter or thing connected with public administration or public sector finances;
- (b) the annual estimates or receipts and payments and other budget papers and supplementary estimates of receipts and payments presented to the Assembly and the Council.

In consultation with the Auditor-General, the Committee also has a consultative role in determining the objectives of performance audits and identifying any particular issues that need to be addressed during these audits.

Public Accounts and Estimates Committee

Chapter 1: Introduction

1.1 Legislative requirements

Pursuant to sections 17 to 19 of the *Audit Act* 1994, as amended, the Public Accounts and Estimates Committee is required to recommend to the Parliament the appointment of independent persons to conduct:

- an annual financial audit of the Victorian Auditor-General's Office; and
- a performance audit of the Victorian Auditor-General at least once every three years.

The relevant sections of the Audit Act are attached as Appendix 1.

1.2 Selection process

On 23 April 2004, the Committee sought submissions by tender by advertising in *The Financial Review* and, on 24 April 2004, in *The Age* and *The Australian* newspapers. The Committee also wrote to various major accounting and consulting firms, inviting tenders.

On 3 May 2004, the Committee appointed the following Members to a Sub-Committee to review the tender proposals:

- Hon. C Campbell, MP
(Chair of the Committee and Chair of the Sub-Committee)
- Hon. B Forwood, MLC
(Deputy Chair of the Committee)
- Hon. B Baxter, MLC
- Mr J Merlino, MP
- Ms G Romanes, MLC

Public Accounts and Estimates Committee

The Committee received three tenders for the financial audit and four tenders for the performance audit. The Committee was impressed with the quality of the submissions.

Mr Wood, a former senior executive from the Victorian Auditor-General's Office, and a consultant to the Committee, assisted with the analysis of the tenders received. After evaluation by Members of the Sub-Committee, it was decided that all tenderers would be interviewed.

On 18 May 2004, the Sub-Committee interviewed representatives of the four firms submitting tenders for the performance audit; and three firms submitting tenders for the financial audit.

Chapter 2: Financial Audit

2.1 Background

Section 17 of the *Audit Act 1994*, as amended, provides in part that:

- (1) *A person may be appointed by resolution of the Legislative Council and the Legislative Assembly, on the recommendation of the Parliamentary Committee of the Parliament¹, as an independent auditor of the Victorian Auditor-General's Office.*
- (2) *An appointment –*
 - (a) *must not be made for a period exceeding 3 years, but may be renewed; and*
 - (b) *may provide for the payment of remuneration.*
- (3) *Remuneration payable under the appointment shall be paid out of the Consolidated Fund which is to the necessary extent appropriated accordingly.*
- (4) *The function of the independent auditor is to carry out audits of the Victorian Auditor-General's Office in accordance with this Part.*

Sections 17 and 18 do not explicitly state what the audit comprises. The *Audit Act 1994* defines an audit as including an examination and inspection. The audit is intended to comprise an audit of the financial statements of the Victorian Auditor-General's Office and this is the basis on which the Committee has made a recommendation.

¹ In Section 3 of the *Audit Act* "Parliamentary Committee" is defined as the Public Accounts and Estimates Committee

2.2 Previous arrangements

Since 2001, Mr Graeme Ross, a Partner of Day Neilson, has undertaken the financial audit of the Victorian Auditor-General's Office. In early April 2004, Mr Ross advised the Committee he was no longer available to conduct the audit. The Committee resolved to call tenders for the financial audit for the next three years commencing from 2003-04.

2.3 Financial Auditor's role

The independent auditor's role will be to:

- conduct an audit of the Victorian Auditor-General's financial statements for the year ended 30 June 2004;
- form an opinion as to whether the financial statements of the Victorian Auditor-General's Office present fairly the financial position of the Office as at 30 June 2004 and the results of its operations and its cash flows for the financial year ended on that date in accordance with accounting standards and other mandatory professional reporting requirements and comply with the requirements of the *Financial Management Act 1994*, as amended; and
- conduct the audit in compliance with the *Audit Act 1994*, as amended, Australian auditing standards and professional reporting requirements.

2.4 Selection criteria

In seeking to appoint the auditor, the Committee considered the following selection criteria. The auditor should:

- be a member of a leading Australian or international organisation in the field of auditing;
- have an appreciation of the role of the Victorian Auditor-General's Office;
- have a general knowledge and understanding of the Victorian public sector's system of financial administration; and

- have sufficiently skilled and experienced staff to assist with the audit.

2.5 Recommended appointment

After assessing each proposal against the selection criteria and clarifying with the tenderers their audit methodology and approach, the Committee resolved to recommend the appointment of Mr Terry Benfold, a Partner with Pitcher Partners, on the basis that he is highly qualified and experienced in undertaking audits and management reviews in both the private and public sectors.

The Committee further recommends that Mr Benfold be appointed for three years, subject to negotiation with the Public Accounts and Estimates Committee on a suitable level of remuneration for future financial audits.

2.6 Recommendation

Accordingly, the Committee recommends that:

- Recommendation 2.1:** **In accordance with Section 17 of the *Audit Act 1994*, as amended:**
- (a) the Legislative Council and the Legislative Assembly appoint Mr Terry Benfold of Pitcher Partners, in accordance with Appendix 2, to conduct the financial audit of the Victorian Auditor-General's Office for the 2003-2004 financial year;**
 - (b) the level of remuneration for the financial audit be \$26,400 inclusive of GST; and**

- (c) Mr Benfold be appointed for three years, subject to negotiation with the Public Accounts and Estimates Committee, of a suitable level of remuneration for future financial audits.**

Chapter 3: Performance Audit

3.1 Background

The Audit Act requires that a performance audit of the Auditor-General be conducted at least once every three years. Under the Act, the Public Accounts and Estimates Committee is responsible for recommending the appointment of a suitably qualified person to undertake the performance audit.

Section 19 of the *Audit Act 1994* as amended, states in part that:

- (1) *An audit shall be conducted under this section at least once every 3 years to determine whether the Auditor-General and the Victorian Auditor-General's Office are achieving their objectives effectively and doing so economically and efficiently and in compliance with this Act.*
- (2) *An audit under this section shall be conducted by a suitably qualified person appointed by resolution of the Legislative Council and the Legislative Assembly, on the recommendation of the Parliamentary Committee.*

3.2 Selection criteria

In seeking to appoint a suitably qualified person, the Committee considered the following selection criteria. The person should:

- be a member of a leading Australian or international organisation in the fields of auditing and/or consulting (with an emphasis on performance evaluation);
- have an appreciation of the role of the Auditor-General's Office;
- have knowledge and experience in the application of large-scale performance reviews;
- have knowledge and experience in the use of modern performance audit methodologies and evaluation techniques;

- have a general knowledge and understanding of the nature of public sector organisations and the Victorian public sector's system of financial administration;
- have the ability to allocate sufficiently skilled and experienced staff to undertake the audit;
- not be involved during the course of the performance audit with an audit examination or consultancy in a department or agency in respect of which the Auditor-General has a statutory responsibility so as to avoid a possible conflict of interest with the performance audit functions; and
- not be the independent auditor that undertakes the financial audit of the Victorian Auditor-General's Office.

3.3 Scope of the performance audit and recommended terms and conditions of the appointment

Section 19 of the *Audit Act* 1994 as amended, states in part that:

- (3) *A person appointed under this section -*
 - (a) *shall be appointed on such terms and conditions and is entitled to such remuneration as are determined by the Parliamentary Committee; and*
 - (b) *in conducting the audit, must comply with directions as to the audit given by that Committee.*
- (4) *The remuneration payable to a person appointed under this section shall be paid from money appropriated to the Parliament.*

Previous performance audits undertaken in 1992 and 1995 were wide-ranging and have retrospectively reviewed all aspects of the Auditor-General's operations over a three year period. The focus of the performance audit undertaken in 1998 was very limited in scope as the Victorian Auditor-General's Office was preparing to operate in a contestable audit services regime.

However, the focus of the last performance audit in 2001 was also limited in scope because it was conducted in the environment of having a new Auditor-General seeking to establish his mandate in conjunction with the integration of Audit Victoria back into the Victorian Auditor-General's Office. The Committee used this performance audit to add value during this new phase of operations.

The Committee considered that since the last performance audit in 2001, the Auditor-General had established himself and reorganised his Office to meet its legislative responsibilities. As a consequence, the Committee considered it was now opportune to again undertake a more comprehensive performance audit of the Auditor-General's Office to confirm the effectiveness of the strategies implemented by the Auditor-General.

3.4 Directions

The Committee has directed the person to conduct the performance audit as follows:

The appointed person should determine whether the Victorian Auditor-General's Office is achieving its objectives effectively, economically and efficiently and in compliance with the *Audit Act* 1994, as amended. In this context and without limiting the scope of the audit, the following matters should be addressed:

1. Assess the appropriateness of the purpose and objectives set by the Auditor-General in his Annual Plan and determine the extent to which they are being achieved.
2. Review key management issues, including:
 - (a) the adequacy and effectiveness of the annual planning process; having regard to risk factors and governance arrangements within agencies;
 - (b) the adequacy and effectiveness of internal systems, including Information Technology systems, to measure and improve productivity;

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- (c) the adequacy of the existing time recording and costing systems to ensure all recoverable costs are collected for Government and that there is no cross-subsidisation between chargeable and non-chargeable functions of the Office; or between performance and financial audits, and special reviews;
 - (d) the adequacy and appropriateness of all audit methodologies, practices and procedures;
 - (e) the culture of management and its effect on performance;
 - (f) the effectiveness of the relationship between the Office and its clients (particularly the Public Accounts and Estimates Committee and the Parliament) and any factors influencing that relationship;
 - (g) the extent to which best practice in public sector management and auditing has been adopted in the Office;
 - (h) the appropriateness of performance measures and benchmarks against which the Auditor-General's Office measures its performance both internally and externally;
 - (i) whether the Victorian Auditor-General's Office complies with Australian auditing standards, including the quality control process associated with contracted audits; and
 - (j) whether audits are supported by adequate plans and work papers, appropriate audit evidence and appropriate quality control procedures.
3. Review the efficiency and effectiveness of the management and conduct of performance audits and special reviews undertaken by the Victorian Auditor-General's Office, with particular attention to:
- (a) the extent to which the selection criteria for performance audits ensures key risk areas and major programs within the public sector receive adequate coverage;
 - (b) the adequacy of the rationale supporting the selection of potential performance audit topics;

- (c) the effectiveness of the planning and management of performance audits;
 - (d) the adequacy of the investigative process and quality control procedures to support conclusions arising from the performance audits;
 - (e) whether significant issues that arise during the course of a performance audit that were not identified in audit plans, are addressed;
 - (f) whether the existing practice of tabling a considerable number of performance audit reports should be varied to include large performance audit projects addressing significant issues of public interest;
 - (g) compliance with statutory requirements for the conduct and reporting of performance audits;
 - (h) the appropriateness of the mix between specialist expertise, contractors and suitably qualified in-house staff in undertaking particular performance audits; and
 - (i) the appropriateness of criteria against which the efficiency and effectiveness of performance audits and special reviews conducted by the Office are measured.
4. Determine whether there is value for the Auditor-General to actively assist public sector agencies through publication of good practice guides.
 5. Survey a representative example of users of the Auditor-General's reports to the Parliament (Members of Parliament, Public Accounts and Estimates Committee, representatives of Executive Government and selected others) including key interest groups to determine whether the Auditor-General is meeting his objectives, particularly delivering value-added recommendations to agencies and providing value for money to the Parliament and the Victorian community.
 6. Determine the adequacy of existing strategies within the Auditor-General's Office to recruit, train, adequately remunerate and retain suitably qualified and skilled staff to achieve its objectives.

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7. Ascertain whether the existing processes for evaluating tenders from private audit contractors and consultancies are conducted with due regard to probity.
8. Determine the scope, quality and effectiveness of the internal audit function within the Auditor-General's Office.
9. Identify clear recommendations capable of implementation to affect improvement in the Auditor-General's Office where deemed possible/desirable.

The Committee further directs the person to:

- (a) conduct the audit in compliance with the *Audit Act 1994*, as amended; and
- (b) conduct the audit in compliance with Statement of Auditing Practice AUP 33 'Performance Auditing', and other relevant Auditing Standards and professional statements.

The report of the performance audit should:

- (a) specify the performance measures and benchmarks (both qualitative and quantitative) against which the Victorian Auditor-General's Office was measured and assessed;
- (b) provide an opinion on the Victorian Auditor-General's Office's compliance with Australian auditing and accounting standards;
- (c) detail conclusions and include clear recommendations capable of implementation to affect improvement where considered necessary; and
- (d) provide an overall opinion as to whether the Victorian Auditor-General's Office is achieving its objectives effectively, economically and efficiently and in compliance with the *Audit Act 1994*, as amended.

3.5 Timing of the report

The person appointed shall make his report in accordance with the Act by, or before the commencement of the 2004 spring sitting of Parliament, or such later date as the Committee may direct, and within seven sitting days after making the report, must transmit the report to the Legislative Assembly and the Legislative Council.

3.6 Level of remuneration

The Committee has determined that the remuneration for the performance audit will be \$204,675, inclusive of GST, and out of pocket expenses up to a maximum of \$7,500.

3.7 Recommended appointment

After reviewing all proposals received and conducting interviews, the Committee resolved to recommend the appointment of Mr John Phillips of Acumen Alliance to conduct the performance audit of the Victorian Auditor-General's Office.

3.8 Recommendations

Accordingly, the Committee recommends that:

Recommendation 3.1: **In accordance with section 19 of the *Audit Act 1994*, as amended, the Legislative Council and the Legislative Assembly appoint Mr John Phillips of Acumen Alliance, in accordance with Appendix 3, to conduct the performance audit of the Victorian Auditor-General's Office.**

Recommendation 3.2: **The level of remuneration for the performance audit be \$204,675, inclusive of GST, and out of pocket expenses up to a maximum of \$7,500.**

Appendix 1: Extract from the *Audit Act* 1994, as amended

17. Independent auditor to audit Victorian Auditor-General's Office

- (1) A person may be appointed by resolution of the Legislative Council and Legislative Assembly, on the recommendation of the Parliamentary Committee², as an independent auditor of the Victorian Auditor-General's Office.
- (2) An appointment -
 - (a) must not be made for a period exceeding 3 years, but may be renewed; and
 - (b) may provide for the payment of remuneration.
- (3) Remuneration payable under the appointment shall be paid out of the Consolidated Fund which is to the necessary extent appropriated accordingly.
- (4) The function of the independent auditor is to carry out audits of the Victorian Auditor-General's Office in accordance with this Part.
- (5) Subject to any directions given by the Parliamentary Committee, sections 11, 12, and 14 apply in relation to the independent auditor as if references in those sections to the Auditor-General were references to the independent auditor.

18. Report of independent auditor

- (1) The independent auditor may make a report on an audit carried out under section 17.
- (2) A report under sub-section (1) may include such information and such recommendations as the independent auditor thinks fit for the more effective, efficient and economic operation of the Victorian Auditor-General's Office.
- (3) The independent auditor must not make a report of an audit under this section unless -

² In Section 3 "Parliamentary Committee" is defined as the Public Accounts and Estimates Committee

- (a) at least 10 business days before making the report, the independent auditor -
 - (i) has given the Auditor-General a copy of the report or a summary of the findings and proposed recommendations; and
 - (ii) has, in writing, asked the Auditor-General for submissions or comments before a specified date, being at least 5 business days after the report is given to the Auditor-General;
- (b) has included in the report any submissions or comment received, before the specified date, from the Auditor-General or a summary, in an agreed form, of any such submissions or comment.
- (4) The independent auditor must, within 7 sitting days after making the report, transmit the report to each House of Parliament.

19. Performance audit of the Victorian Auditor-General's Office

- (1) An audit shall be conducted under this section at least once every 3 years to determine whether the Auditor-General and the Victorian Auditor-General's Office are achieving their objectives effectively and doing so economically and efficiently and in compliance with this Act.
- (2) An audit under this section shall be conducted by a suitably qualified person appointed by resolution of the Legislative Council and the Legislative Assembly, on the recommendation of the Parliamentary Committee.
- (2a) None of the following can be appointed to conduct an audit under this section -
 - (a) a person engaged by the Auditor-General under section 7F;
 - (b) a person who holds a delegation from the Auditor-General under section 7G;
 - (c) the independent auditor.
- (3) A person appointed under this section -
 - (a) shall be appointed on such terms and conditions and is entitled to such remuneration as are determined by the Parliamentary Committee; and

- (b) in conducting the audit, must comply with directions as to the audit given by that Committee.
- (4) The remuneration payable to a person appointed under this section shall be paid from money appropriated to the Parliament.
- (5) Subject to any directions given by the Parliamentary Committee, sections 11, 12 and 14 apply in relation to a person appointed under this section as if references in those sections to the Auditor-General were references to the person appointed under this section.
- (6) A person appointed under this section must not make a report of an audit under this section unless –
 - (a) at least 20 business days before making the report, the person has given the Auditor-General a summary of findings and proposed recommendations in relation to the audit; and
 - (b) has, in writing, asked the Auditor-General for submissions or comment before a specified date, being at least 10 business days after the report is given to the Auditor-General.
- (7) The person must include in the report of an audit under this section any submissions or comment received, before the report is made, from the Auditor-General or a summary, in an agreed form, of any such submissions or comment.
- (8) The person, in a report of an audit under this section –
 - (a) may include such information as he or she thinks desirable in relation to matters that are the subject of the audit; and
 - (b) must set out the reasons for opinions expressed in the report; and
 - (c) may include any recommendations arising out of the audit as he or she thinks fit to make.
- (9) The person must cause a copy of the report to be transmitted to each House of Parliament within 7 sitting days of that House after making the report.

Appendix 2: Appointment and Remuneration of an Auditor Pursuant to Section 17 of the *Audit Act 1994*, as amended, as recommended by the Public Accounts and Estimates Committee

WHEREAS

- A. An independent auditor shall carry out audits of the Victorian Auditor-General's Office in accordance with sections 17 and 18 of the *Audit Act 1994*, as amended.
- B. Mr Terry Benfold of Pitcher Partners is appointed by resolution of the Legislative Council and the Legislative Assembly, on the recommendation of the Public Accounts and Estimates Committee of the Parliament, to conduct the audit.

DEFINITIONS

- 1. In this document unless otherwise specified or unless the context otherwise requires:
 - 1.1 "Act" means the *Audit Act 1994*, as amended.
 - 1.2 "Committee" means the Public Accounts and Estimates Committee.
 - 1.3 "Liaison Officer" means the Executive Officer of the Committee.
 - 1.4 "Auditor" means Mr Terry Benfold.
 - 1.5 "Audit" means an audit as described in sections 17 and 18 of the *Audit Act 1994*, as amended.
 - 1.6 "Office" means the Victorian Auditor-General's Office.

APPOINTMENT

2. The Auditor shall:
 - 2.1 conduct an independent audit of the Office, being an audit of the Office's financial statements, for the years ended 30 June 2004, 2005 and 2006;
 - 2.2 form an opinion as to whether the financial statements of the Office present fairly the financial position of the Office as at 30 June 2004, 2005 and 2006 and the results of its operations and its cash flows for the financial years ended on those dates in accordance with applicable accounting standards and other mandatory professional reporting requirements and comply with the requirements of the *Financial Management Act 1994*, as amended;
 - 2.3 furnish his opinion (refer part 2.2) to the Committee for inclusion with the Office's annual report to the Parliament under the provisions of the *Financial Management Act 1994*, as amended;
 - 2.4 conduct the audit in compliance with the *Audit Act 1994*, as amended; and
 - 2.5 conduct the audit in compliance with relevant Australian Auditing Standards and professional statements.
3. Section 18 of the Act provides that the Auditor may make a report. The Auditor must, within seven sitting days after making a report in accordance with the Act, transmit the report to the Legislative Assembly and the Legislative Council.
4. The Auditor shall liaise with the Liaison Officer as reasonably required by the Liaison Officer during the period of the audit.
5. All documents (other than working papers) prepared pursuant to the audit and all documents supplied to the Auditor for the purpose of the audit (excluding those documents returned to the originating source) shall be and remain the property of the Victorian Parliament and shall be delivered by the Auditor to the Committee upon the completion of the audit. The Committee will keep the documents delivered by the Auditor to the Committee for a period of at least seven years and provide the Auditor, or his representative, with access to such documents as is appropriate.

All working papers are to be made available to future Auditors.

The documents supplied to the Auditor pursuant to the audit shall not without the prior approval of the Committee be used, copied or reproduced for any purpose other than for the execution of the work contained in the audit.

6. The Auditor shall not without the prior written approval of the Committee disclose to any person any material obtained or produced during the course of the audit.
7. The Auditor warrants that, at the date of this document, no conflict of interest exists or is likely to arise in the performance of his obligations under the audit. If, during the term of the audit, a conflict or risk of conflict of interest arises, the Auditor undertakes to notify the Committee immediately in writing of that conflict or risk.
8. Pursuant to section 17 of the Act, sections 11, 12, and 14 of the Act apply to the Auditor as if references in those sections to the Auditor-General were references to the Auditor.
9. Copyright of all documents developed or produced by the Auditor pursuant to the audit shall vest in the Crown in right of the State of Victoria.
10. The Auditor is an independent contractor and the personnel employed or engaged by him shall not by virtue of this document become or be deemed to have become employed by or in the service of the State for the purpose of the Income Tax or Income Tax Assessment Acts and the Accident Compensation Act or for any other purpose.
11. The Auditor releases and shall indemnify the State, its officers and employees from and against liability for or in respect of any physical injury to persons (including death) or damage to property in so far as the injury or damage is attributable to any negligent or unlawful action of the Auditor in the course of carrying out the audit.
12. If either the Committee or the Auditor is rendered unable to carry out the whole or any part of this audit by any reason beyond its control including, but not limited to, acts of God, acts of governments or governmental authorities, strikes or riots and any other causes of like nature, then the performance of such obligations as are effected by such cause, shall be excused during the continuance or any inability, so caused. Save that this part shall not excuse the State from its obligations to pay fees to the Auditor as they become due.

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13. If any provision of this document is held invalid, unenforceable, or illegal for any reason, this document remains otherwise in full force, apart from such provision which is deemed deleted.
14. By resolution of the Legislative Council and the Legislative Assembly, on the recommendation of the Committee, the Legislative Council and the Legislative Assembly at any time giving written notice to the Auditor of its intention so to do may abrogate or constrict this audit or any part of or further part thereof and upon such notice being given the Auditor shall cease or reduce work according to the notice and shall forthwith do everything possible to mitigate the losses consequent thereto.

In the event the Auditor may submit a claim for compensation for such sums as are fair and reasonable in respect of the loss or damage sustained by the Auditor in unavoidable circumstances provided always the Auditor shall not be entitled for the loss of prospective profits.

REMUNERATION

15. The amount to be paid to the Auditor for all work done in undertaking the 2003-2004 audit shall be \$26,400, inclusive of GST. This amount shall be paid on transmission of the financial statements of the Office for the year ended 30 June 2004, including a report of the Auditor detailing his opinion on those financial statements, to the Legislative Assembly and the Legislative Council or, if earlier, on transmission of the Auditor's report to the Legislative Assembly and the Legislative Council.
The Auditor warrants to meet all expenses incurred during the audit without any further recourse to the Parliament of Victoria.
16. The level of remuneration for the financial audits undertaken for 2004-2005 and 2005-2006 shall be negotiated with the Committee.

Appendix 3: Terms and Conditions, and Remuneration, of a person Appointed Pursuant to Section 19 of the *Audit Act* 1994, as amended, as recommended by the Public Accounts and Estimates Committee

WHEREAS

- A. An audit shall be conducted to determine whether the Auditor-General is achieving his objectives effectively and doing so economically and efficiently and in compliance with the *Audit Act* 1994, as amended.
- B. Mr John Phillips of Acumen Alliance is appointed by resolution of the Legislative Council and the Legislative Assembly, on the recommendation of the Public Accounts and Estimates Committee of the Parliament, to conduct the performance audit.

DEFINITIONS

- 1. In this document unless otherwise specified or unless the context otherwise requires:
 - 1.1 “Act” means the *Audit Act* 1994, as amended.
 - 1.2 “Committee” means the Public Accounts and Estimates Committee.
 - 1.3 “Liaison Officer” means the Executive Officer of the Committee.
 - 1.4 “Person” means Mr John Phillips.
 - 1.5 “Audit” means a performance audit as described in section 19 of the *Audit Act* 1994, as amended.
 - 1.6 “Office” means the Victorian Auditor-General’s Office.

TERMS AND CONDITIONS

4. The person is appointed on the following terms and conditions:

4.1 Timetable for Reports

The person shall deliver to the Chair of the Committee –

- a proposed audit plan by the last week of June 2004; and
- a progress statement by 31 August 2004.

This statement shall exclude any findings or proposed recommendations in relation to the audit.

The person shall present and review the preliminary report with the Auditor-General and the Public Accounts and Estimates Committee as soon as practical upon completion.

The person shall present his report in accordance with the Act by, or before the commencement of the spring sitting of Parliament, or such later date as the Committee may direct, and within seven sitting days after making the report, must transmit the report to the Legislative Assembly and the Legislative Council.

The person shall be available to provide advice to the Committee on the report, after the report has been transmitted to the Legislative Assembly and the Legislative Council.

4.2 Liaison

The person shall liaise with the Liaison Officer as reasonably required by the Liaison Officer during the period of the audit. The Liaison Officer shall make themselves available as reasonably required by the person during the period of the audit.

4.3 Documents

All documents (other than working papers) prepared pursuant to the audit and all documents supplied to the person for the purpose of the audit (excluding those documents returned to the originating source) shall be and remain the property of the Victorian Parliament and shall be delivered by the person to the Committee on the completion of the audit.

All working papers are to be made available to future persons appointed under the *Audit Act* 1994.

The documents supplied to the person pursuant to the audit shall not without the prior approval of the Committee be used, copied or reproduced for any purpose other than for the execution of the work contained in the audit.

4.4 Disclosure of information

The person shall not without the prior written approval of the Committee disclose to any person any material obtained or produced during the course of the audit.

4.5 Compliance with Acts

The person shall ensure that in carrying out the audit he shall comply with the requirements of the provisions of all Acts of Parliament of the Commonwealth and with the requirements of the provisions of all Acts of the Parliament of Victoria and with the requirements of all ordinances, regulations, by-laws, orders and proclamations made or issued under any such Acts or Ordinances and with the lawful requirements of public and other authorities in any way affecting or applicable to the audit.

4.6 Conflict of Interest

The person warrants that, at the date of this document, no conflict of interest exists or is likely to arise in the performance of his obligations under the audit. If, during the term of the audit, a conflict or risk of conflict of interest arises, the person undertakes to notify the Committee immediately in writing of that conflict or risk.

4.7 Resourcing

The person warrants that he will personally perform no less than 15 workdays on the audit. The person will be assisted by Mr Craig Geddes, Mr Robert Buker and other such support staff as required, to a total of 140 workdays. The Committee may direct changes to the team assisting the person, or the extent of involvement of team members in the audit.

4.8 Application of Act

Pursuant to section 19 of the Act, sections 11, 12, and 14 of the Act apply to the person as if references in those sections to the Auditor-General were references to the person.

4.9 Copyright

Copyright of all documents developed or produced by the person pursuant to the audit shall vest in the Crown in right of the State of Victoria.

4.10 Independent Contractor

The person is an independent contractor and the personnel employed or engaged by him shall not by virtue of this document become or be deemed to have become employed by or in the service of the State for the purpose of the Income Tax or Income Tax Assessment Acts and the Accident Compensation Act or for any other purpose.

4.11 Release and Indemnity

The person releases and shall indemnify the State, its officers and employees from and against liability for or in respect of any physical injury to persons (including death) or damage to property in so far as the injury or damage is attributable to any negligent or unlawful action of the person in the course of carrying out the audit.

4.12 Force Majeure

If either the Committee or the person is rendered unable to carry out the whole or any part of this audit by any reason beyond its control including, but not limited to, acts of God, acts of governments or governmental authorities, strikes or riots and any other causes of like nature, then the performance of such obligations as are effected by such cause, shall be excused during the continuance or any inability so caused. Save that this part shall not excuse the State from its obligations to pay fees to the person as they become due.

4.13 Severability

If any provision of this document is held invalid, unenforceable, or illegal for any reason, this document remains otherwise in full force, apart from such provision which is deemed deleted.

4.14 Termination

By resolution of the Legislative Council and the Legislative Assembly, on the recommendation of the Committee, the Legislative Council and Legislative Assembly at any time giving written notice to the person of its intention so to do may abrogate or constrict this audit or any part of or further part thereof and upon such notice being given the person shall cease or reduce work according to the notice and shall forthwith do everything possible to mitigate the losses consequent thereto.

In the event the person may submit a claim for compensation for such sums as are fair and reasonable in respect of the loss or damage sustained by the person in unavoidable circumstances provided always the person shall not be entitled for the loss of prospective profits.

REMUNERATION

5. The amount to be paid to the person for all work done in undertaking the audit shall be \$204,675, inclusive of GST, and out of pocket expenses up to a maximum of \$7,500, which shall be paid in the following manner:
 - 5.1 30 per cent on submission of the audit plan;
 - 5.2 30 per cent on completion of all audit field work and delivery of a satisfactory progress statement to the Chair of the Committee;
 - 5.3 30 per cent on submission of a draft report to the Auditor-General and to the Committee by 31 August 2004;
 - 5.4 10 per cent on transmission of the person's report to the Legislative Assembly and the Legislative Council.

The person warrants to meet all expenses incurred during the audit without any further recourse to the Parliament of Victoria.

Appendix 4: Organisations submitting proposals for Financial Audit

PKF Chartered Accountants

Pitcher Partners

Hall Chadwick

Appendix 5: Organisations submitting proposals for Performance Audit

Acumen Alliance

Ernst & Young

PricewaterhouseCoopers

Whitehorse Strategic Group