

*Trends in public sector audit legislation:  
from Federation to follow-the-dollar*

Australasian Study of Parliament Group

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25 May 2011

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# 1. Background: Auditors-General and democratic accountability

## What is accountability?

*‘Reporting back to those who charged you with a responsibility’*

(Pat Barrett, former Australian Auditor-General)

Important in both private **and** public sectors

- Private → Reporting to governing body (boards, trustees) and shareholders
- Public → Government reports to the public, via Parliament

Why make the public sector accountable?

- Probity/integrity → taxpayer funds are extracted by coercion
- Performance management
- Democracy → inform Parliament and citizens so they can exercise their powers – ‘no taxation without representation’

Scholars have suggested there are three kinds of democratic accountability:

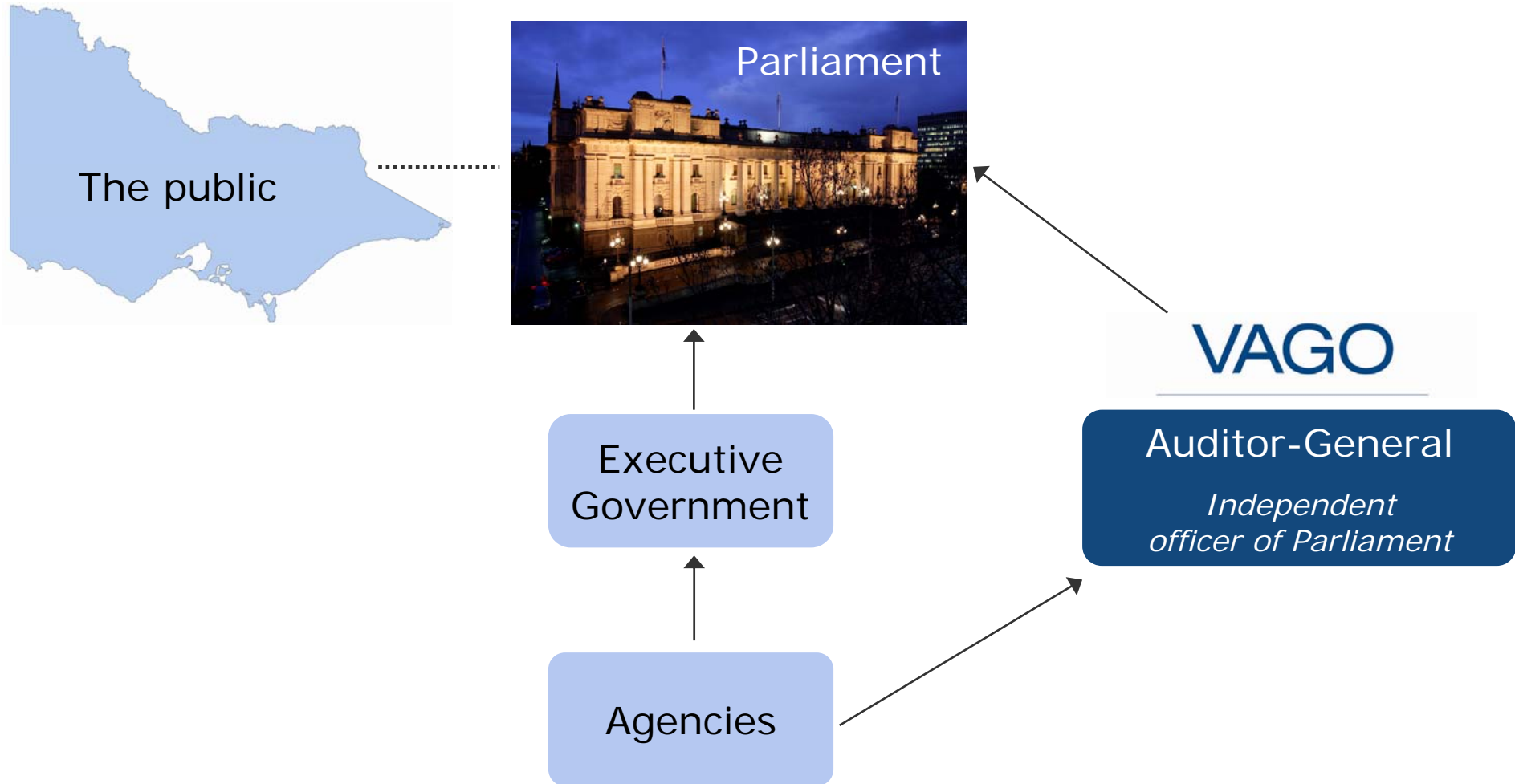
- **Vertical:**  
Agency → Minister → Parliament
- **Horizontal:**  
Citizens and media → Agencies
- **Diagonal:**  
Agency → External independent  
accountability bodies → Parliament

Auditors General are one of longest established forms of **diagonal accountability**

*(Professor Mark Bovens, 2005)*

# Auditor-General: diagonal accountability

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*Auditing in the Public Interest*

What are 'independent' accountability bodies?

What characteristics must they have to fulfil their role in a democracy?

International standards suggest the following key elements:

1. Independence guaranteed by law
2. Broad mandate and functions
3. Unrestricted access to information
4. Report freely on their work to the public and Parliament
5. Follow up mechanisms are in place
6. Office has managerial/financial autonomy

*(INTOSAI Independence Principles, 2007)*

In Victoria, applying these criteria:

- include Ombudsman, Auditor-General, Electoral Commissioner
  - less so for roles like Public Sector Standards Commissioner, Victorian Commission for Gambling Regulation

- Auditing in the public interest since 1851
- Constitutional safeguard to serve the interests of Parliament
- Accountable to Parliament via the Public Accounts and Estimates Committee (PAEC)
- A key link in the accountability process
- Audits one of Australia's largest business (Victorian government)
- Key legislation: *Audit Act 1994* and *Constitution Act 1975*

So... what key changes and phases has the legislation passed through before the current model was adopted?

2. Then:  
the ages and stages  
of audit legislation

1851 The Auditor-General position is created, then replaced by a group of three commissioners across the colony

## **Phase 1: 1901–1958 Creation of institutional audit role**

1901 **Federation:** creation of single Auditor-General for Victoria, tenured and reporting to Parliament

1958 The *Audit Act 1958* introduces discretion for the Auditor-General to determine the ‘extent of check’ i.e. scope of audit

- Attest audit of **transactions**
- Year-round
- Often based in agencies

1980s Controversially, Auditor-General began to do ‘value for money’ audits, using s.48 of the *Audit Act 1958*

## Phase 2: 1980s and 1990s Performance auditing

1990 Amendments to the *Audit Act 1958* gave ‘economic, efficiency and effectiveness’ mandate, and broader powers to access information

1994 New *Audit Act 1994* confirms the broader mandate

- Financial audit of **systems** (1970s and 1980s)
- Offset broader powers with new accountability provisions e.g. performance audits of the Auditor-General’s office

1990s Government review of Auditor-General's office under national competition policy → privatisation of audits. Public outcry over 'loss of independence' for key Parliamentary watchdog

## Phase 3: 1990s and 2000s Strengthening Independence

1999 Amendments to the *Constitution Act 1975* protected independence and restored discretionary power to carry out audits – any changes require resolution of both Houses and approval at referendum

1999 Amendments to the *Audit Act 1994* strengthened relationship with Parliament and increased the role for PAEC

- Moved financial audits to **risk-based** approach (1990s)

# 3. Now: Victorian public sector audit legislation

Now we will focus on present day legislative framework for public sector audit.

In particular, how can the international principles for effective independent accountability bodies, previously discussed, help us understand our current arrangements?

How does Victoria's Auditor-General 'stack up' against this best practice?

A quick survey...

# 1. Independence guaranteed by law

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The Auditor-General has *'complete discretion in the performance or exercise of his or her functions or powers and, in particular, is not subject to direction from anyone'*. (Constitution Act 1975, s.94B)

This means freedom to:

- select topics and audits
- determine timing and priority.

Cannot be overridden by:

- other Acts, e.g. 'writing in' or 'writing out' audit responsibilities
- contracts, e.g. Commonwealth or State agreements 'writing in' audit responsibilities.

Balanced by:

- accountability provisions: external audits, professional reviews
- consultation provisions: via PAEC, must 'have regard to any audit priorities' (s.7D), as well as natural justice provisions for audit clients.

## 2. Broad mandate and functions

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VAGO now has a broad functional mandate

### Financial Audit

‘Determine whether financial statements present fairly the financial position and financial results’ of State and entities (s.3A)

- Review financial statements of more than 560 agencies and controlled entities each year
  - Still many ‘escape the net’, e.g. management committees, associations, companies, joint ventures
- Report on the State’s Estimated Financial Statements and Annual Financial Report
- May also undertake assurance audits of performance indicators in agency ‘reports on operations’ – relevant, appropriate, fairly represent (s.8(3))

## 2. Broad mandate and functions

Performance audit determines whether

‘authorities are achieving their objectives efficiently and effectively and in compliance with all relevant Acts’

‘financial benefits given by the State to non government bodies are being applied economically, efficiently and effectively and for the purposes for which they were given’ (s.3A)

- Must ‘have regard for wastage’, ‘probity’ and ‘prudence’ in management
- Not question merits of policy objectives
- Not to second guess reasonable management judgements

However:

- Does **not** apply to all use of public funds, or all entities created by Acts of Parliament or all entities controlled by government bodies
- Does **not** apply to administration of courts or Parliament

### 3. Unrestricted access to information

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VAGO has broad powers to access information

‘No obligation to maintain secrecy... applies to the disclosure of information required by the Auditor-General’ (s.12)

- Overrides ‘any enactment of rule of law’, ‘Cabinet confidentiality’
- Includes search and seizure powers
- Can compel individuals to provide evidence (s.11)

Balanced by:

- strict confidentiality provisions for audit information and penalties for divulging improperly (s.20A)
- protections for collected information, e.g exemption from FOI (s.20B).

However:

- **cannot** access information held by private sector parties performing public functions – rely on voluntary disclosure
- specific provisions can still override access to information in public entities, e.g. *Public Health and Wellbeing Act 2008*.

## 4. Report freely to public and Parliament

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A recent paper by Dr Gordon Robertson found reporting powers in Victoria's legislation were strong compared to other Westminster democracies.

- e.g. some other jurisdictions only allow Auditors General to report once a year or transmit audit reports through a Minister

Victoria's Auditor-General:

- reports directly to Parliament (transmission through the Speaker)
- has discretion on the timing and contents of these reports: '**may** make a report on any one or more audits' (s.16(1) and 16(2))
- must give a copy of the proposed report to any authority with a 'special interest' and ask them for submissions (s.16(3)).

However:

- the Auditor-General **must** include agency submissions in the report – this weakens the discretion of the Auditor-General regarding his report.

## 5. Follow up mechanisms are in place

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The *Audit Act 1994* does **not** require the Auditor-General to follow up the implementation to audit recommendations

- This is **positive** – in professional terms, this would confuse (overstep) the role of external auditor

Victorian Government and Parliament follow-ups:

- PAEC follow up inquiries – robust program
- Previous Minister for Finance/DTF issued annual reports on department's action against audit recommendations

VAGO can be exposed to Executive control through office management and finances.

- VAGO is subject to much administrative legislation of the public sector, as employees are public servants
- Budget is determined by Executive

Some protections

- Budget determined 'in consultation' with PAEC (s.7D)
- PAEC can exempt VAGO from obligations in *Financial Management Act 1994* or *Public Administration Act 2004* (s.7C)

4. Next:  
keeping up with  
new kinds of government

To finish: I will highlight three key trends in modern government that:

- challenge (or ‘erode’) traditional accountability models and Victoria’s audit mandate
- suggest a need for legislative reform.

These are:

1. arm’s length service delivery
2. increased community expectations of public sector performance and accountability
3. joined up government – ‘new Federalism’

Increasing use of private sector to deliver public service

*e.g. contracting out, Public Private Partnerships, alliances*

The *Audit Act 1994* defines audit access via **legal status** of entity, not source of funds

Currently → limited audit access via contracts

- Not compulsory
- Too narrow
- Relies on voluntary participation by private sector partners

**Contractual solutions are not sufficient**

## 2. Performance and accountability

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Increasingly high **community/stakeholder expectations** of being able to monitor the performance of their government.

→ Performance reporting is becoming more and more common

→ Agency annual reports often contain performance measures and other information

However:

- legislation requires annual assurance audits of ***financial*** reports only – not performance
- assurance audits of ***performance*** statements have been mandatory in some other jurisdictions for decades.

### 3. Joined up government

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Public services now delivered:

- not just by mixture of public and private but
- often through partnerships between different governments  
e.g. State/State, State/Commonwealth

Victoria's audit legislation does **not** allow for VAGO to undertake joint audits across Australian jurisdictions (e.g. Canadian model)

- New inquiry by JCPAA into national funding agreements is investigating legislative reforms
- Recent flood assistance funding agreements propose 'complementary audit plans' between Commonwealth and State Auditors-General

So why raise these issues now?

These issues (and more) were considered last year as part of PAEC's broad ranging inquiry into the *Audit Act 1994*.

The Government response (April 2011) supports:

- extending audit mandate to administration of Parliament, courts, gov't-controlled companies and overseas entities
- adding powers to access information held by private sector parties delivering government services (as a 'last resort')
- introducing the capacity to disclose audit information to enable joint audits.

*continued*

Government did **not** support PAEC recommendations to:

- introduce annual assurance audits of performance statements and controls.

Neither PAEC nor Government supported VAGO proposals to:

- remove requirement to include agency comments in reports
- remove the need to consult with PAEC on every individual audit plan (retaining consultation on the Annual Plan)
- exempt VAGO from special reviews by the State Services Authority

This is a time of great change for key accountability legislation in Victoria.

- After creation of a legislative auditor, introduction of performance audit, strengthening independence...
- The next wave of reforms in this century is likely to try and find ways to address new ways of governing and help Parliament meet new kinds of community expectations

Questions?

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More information

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