

Budget independence for Victoria's Independent Officers of Parliament

18 October 2022



Foreword

The Government's process of having the Executive rather than the Parliament decide the funding of Victoria's integrity agencies has been a hot topic for many years; in the last year it has grown even hotter. The Ombudsman and IBAC Commissioner have commented in previous annual reports and publicly about the challenges associated with the independence of the process.

While reforms to the Ombudsman and IBAC's budget processes were introduced in 2019 to be broadly in line with the Auditor-General, in the view of all three offices these do not go far enough. Nor have they stopped the continuing public debate about whether the offices are appropriately funded.

This paper sets out a case to further strengthen the perceived and actual independence of these three officers of Parliament.

Our intention is to remove the politics from the debate, so that governments of whatever stripe cannot be accused, fairly or otherwise, of interfering with the independence of those agencies whose job it is to hold them to account.

While there are many dimensions to independence, this paper deals only with the issue of how our respective offices are funded. This matter has recently become an 'issue de jour' in the federal context of a proposed integrity commission, and in both New South Wales and, most recently, in Queensland. We judge it timely therefore to add to this growing national debate, so that Victoria stays aligned with contemporary thinking and approaches.

It is also timely to consider the issue in light of the Government's acceptance of IBAC and the Ombudsman's recommendations in Operations Watts, to improve Parliamentary integrity. Our key recommendation is that consideration of our funding be the responsibility of a new independent statutory commission/tribunal, similar to the current Victorian Independent Remuneration Tribunal. All evidence, reasoning and recommendations would be tabled in Parliament to promote full transparency.

In presenting this paper we make no implied or express criticism of our current funding levels. Rather we are seeking to establish a transparent and robust process which is apolitical, and in doing so, to provide the parliament and the community with assurance that our respective offices have the resources they need to do their jobs well. We believe it is in the best interests of all who aspire to government to promote these reforms. This is an opportune time to seek a commitment from all parties to a reform that must be profoundly in the public interest.



Andrew Greaves
Auditor-General



Deborah Glass OBE
Ombudsman



Robert Redlich AM KC
Commissioner

The role of Independent Officers of Parliament

Independent Officers of the Parliament

Because government is such a large and complex business, parliaments throughout the world have created a range of independent statutory office holders and integrity agencies tasked with scrutinising the activities of the government of the day. In most cases, these officers and agencies report their findings directly to Parliament, which may use the information to help it hold the Executive to account.

Increasingly, these officers are described as—and given the status of—'Independent Officers of the Parliament', emphasising their association with the Parliament.

Victoria's Independent Officers

Victoria has six Independent Officers of Parliament: these include the Victorian Electoral Commissioner, the Victorian Inspector and the Parliamentary Budget Officer. Three Independent Officers of the Parliament (and their supporting offices) fulfil integrity and accountability roles with respect to Government and public administration:

- the Independent Broad-based Anti-corruption Commissioner (IBAC)
- the Victorian Auditor-General (VAGO)
- the Victorian Ombudsman (VO).

Our paper focuses on these three because of our unique role in holding the Government to account.

Legislative position

Each of these three Independent Officers is responsible to Parliament, not the Executive. Our roles are created and governed by specific legislation, and we are duty bound to discharge our functions independently, reporting our findings directly to Parliament.

In addition, the status of the Auditor-General and the Ombudsman as Independent Officers of the Parliament is enshrined in *The Constitution Act 1975 (Vic)*.¹

The importance of public trust

Public trust in a system of government and its public institutions is a fundamental building block of a healthy and vibrant democracy. This is true for every democratic state, including Victoria.

Many factors contribute to public trust, including:

- fairness
- legality and transparency of processes
- results achieved
- accountability regimes for both processes and results.

The three Independent Officers play a critical role in this.

¹ Sections 94B(1) and 94E(1) of *The Constitution Act 1975 (Vic)*

Confidence in our Independent Officers

It is essential that Victoria's Independent Officers have the confidence of both the Parliament and the public. We must be, and be *seen* to be, truly independent. This means being:

- free of political affiliation or other partisan views
 - appointed on their merits
 - independent of the government of the day.
-

Resourcing the three Independent Officers

To ensure our capability and credibility, all three Independent Officers need access to sufficient and appropriate resources, including reasonable certainty about current and future resource levels. This ensures that we can:

- gather, analyse and interpret the information needed to make findings, form conclusions and make recommendations
- plan and schedule our work programs, including embedding flexibility to meet unexpected developments
- conduct our work independently.

Budget processes and funding allocations may impact the three Independent Officers' financial independence—or public perception of independence. For example, leaving budgeting and allocations entirely in the hands of the Executive could enable a government of the day to limit resources given to an Independent Officer, thereby rendering us ineffective.

The current approach

The matter of how integrity agencies are funded has been the subject of both parliamentary and executive government inquiries in many jurisdictions over an extended period.

Of note, most recently:

| In... | The... | Observed that... |
|-------|---|--|
| NSW | Auditor-General in an October 2020 Special Report on <i>'The effectiveness of the financial arrangements and management practices in four integrity agencies'</i> | '...while the government of the day is responsible for the prudent and responsible management of the state's finances, there are...threats to the independence of the integrity agencies that may arise from the involvement of the Executive Government in the decision making about funding. |
| NSW | Public Accountability Committee of the Legislative Council in its two reports on the <i>'Budget process for independent oversight bodies and the Parliament of New South Wales'</i> (Report No. 5 March 2020 and of No. 7 of February 2021) | '...the way in which that principle [of government responsibility for the budget] is currently applied conflicts with the fact that the independent oversight bodies are responsible to Parliament, not the government, and require independence from the government to carry out their functions. The committee also found that the current process has led to instances of underfunding of these bodies. |
| QLD | Reviewer, Peter Coaldrake AO, in his June 2022 report to the government <i>'Review of culture and accountability in the Queensland public sector'</i> | The independence of integrity bodies in Queensland [should] be enhanced by aligning responsibility for financial arrangements and management practices with the Speaker of Parliament and the appropriate parliamentary committee, rather than the executive government. |

In Victoria, in 2006, the joint Public Accounts and Estimates Committee (PAEC) of the Victorian Parliament observed that "there is always the potential for these 'watchdogs' to be under-funded, particularly after an adverse report on the operations of the government".

PAEC then recommended that legislation be amended to provide that the appropriate Parliamentary committee has a role in reviewing and advising Parliament of the budget estimates for particular Officers of Parliament.

This recommendation was given some effect in 2019 through amendments to legislation.

2019 amendments

In 2019, an *Integrity and Accountability Legislation Amendment Act (2019 Amendment Act)* introduced new budgetary and annual planning obligations for the IBAC and VO. These obligations were effective from July 2020.

Consistent with VAGO, the IBAC and VO now appear as separate line items in Schedule 1 to the annual *Appropriation (Parliament) Act*.

All three Independent Officers must also prepare a draft annual plan each financial year describing a proposed work program and:

- seek feedback from their oversight committee of Parliament
- table the plan in Parliament as soon as practicable after the passage of the annual *Appropriation Act* for the financial year.

The 2019 *Amendment Act* also introduced provisions to the effect that the IBAC and VO's "budget for each financial year is to be determined in consultation with the Parliamentary Committee concurrently with the annual plan". However, this does not occur in practice.

The IBAC and VO's Integrity and Oversight Committee (IOC) has no power or input when it comes to budget decisions. Instead, the IBAC and VO's funding is considered as part of the Government's broader budget deliberations.

This means these two Independent Officers must rely on constructive relationships with the Department of Treasury and Finance (DTF) and the Treasurer.

This has been the case also for VAGO with respect to the PAEC.

Risks

The 2019 amendments notwithstanding, there remain significant potential risks to the perceived and/ or actual independence of the three Independent Officers.

| Currently ... | As a result, there is ... |
|--|---|
| the Executive is involved in decisions about what funding the three Independent Officers receive, even though those Officers are responsible for the independent scrutiny of the Executive, including of individual ministers and senior public servants | a risk that a government of the day could be influenced in its funding decisions by the negative impacts of an Independent Officer’s work (either in the past, in progress or planned) |
| there are no formal mechanisms for the three Independent Officers to question or challenge funding decisions | a risk of the public losing confidence in the independence of the Officers due to a lack of transparency |
| if an Independent Officer wants additional funding it can make a bid to the Executive—for example, by submitting a bid to Cabinet’s Expenditure Review Committee (ERC) | a risk that an Independent Officer may need to seek additional funding from a government minister or department it is investigating, influencing the Officer to be unduly cautious in their work and reporting |
| the government of the day can introduce cost saving measures that impact funding, although the current Treasurer has given an undertaking that this will not occur | |
| although Ministers and the Parliament have some power to direct an Independent Officer to undertake specific work, additional funding is not automatically granted | a risk that an Independent Officer may be under-resourced, impacting their planned and/or additional work. |
| the current appropriation process does not provide certainty (no constitutional safeguards to ensure passage of the Parliament Appropriation Bill within a specified period of time) | |

We examine these characteristics and associated risks in more detail below.

Executive involvement in funding decisions

The current budget system principally exists to enable funding decisions for government departments and agencies. These departments and agencies are created by the Executive and Ministers oversee them directly.

The role of the three Independent Officers includes providing independent scrutiny of the Executive. This work can potentially have a negative impact on the Executive, including on individual ministers and senior public servants. As a result, there is a risk that the Officers’ work (previous, in-progress or planned) could influence decisions made about their funding.

Executive determination of appropriation

All three Independent Officers now receive their funding under the annual Parliamentary Appropriation Acts. However, it is not Parliament that determines or provides their funding, as the Bill is developed and finalised by the Treasurer with support from DTF. The government of the day makes the final determination on the budget amount, presenting this to Parliament as *Parliament's Appropriation Bill*.

Under Westminster appropriation processes, it is usual for the Executive to be accountable for the budget and budget outcomes. There is an argument, therefore, that the Executive should determine the budget's overall makeup and composition.

In this context, in response to a 2021 PAEC report on funding of the Parliamentary Budget Office, the Government stated that the *Constitution Act 1975 (Vic)* provides that all Appropriation Bills have to be introduced by the Government, given a requirement that such Bills must be preceded by a Governor's Message and only the Government has the formal authority to advise the Governor on such matters.

However, it is important to recognise that funding all three Independent Officers accounted for just 0.11 per cent of total State of Victoria operating expenses for 2020-21. As such, there is no conceivable resourcing decision that would have a significant impact on the overall budget and its outcomes.

Lack of certainty

The current budget approach does not, in general, give the three Independent Officers sufficient certainty about resources for the current or upcoming years.

Unlike the General Appropriation Bill, there are no constitutional safeguards to ensure passage of the Parliament Appropriation Bill within a specified period of time. Further, in a situation where Parliament wanted to amend the three Independent Officers' appropriations, but the Government did not agree, Parliament would have only limited ability to change the funding amounts.

Impact of cost-saving measures

All three Independent Officers recognise the need for constraint with public money and appreciate the necessity of a government introducing 'efficiency dividends' and other savings measures from time to time.

While all three officers have undertakings from the current Treasurer that a reduction in our base and/or flexible funding will not occur, this could change over time and is another potential threat to our independence.

Lack of funding transparency

Decisions about funding are not transparent and there are no formal mechanisms for the three Independent Officers to question or challenge decisions made.

| The ... | But ... |
|---|--|
| Parliament reviews appropriation legislation | it does not see the budget proposals submitted by the Officers during the budget development process |
| Independent Officers can report to their respective Parliamentary committee | these committees do not have a role in funding decisions. |

Conflicts in bids for additional funding

The practice of an Independent Officer seeking additional funding from a government department creates a potential conflict of interest, as the department may be the subject of an in-progress or planned investigation.

Government Ministers and the Parliament also have the power to direct an Independent Officer to undertake unplanned work in some circumstances. Currently, Officers generally have an arrangement with DTF whereby referrals of this sort attract additional funding. However, these arrangements are not legislated or otherwise guaranteed.

For example, any House or Committee of the Parliament can refer any matter to the Ombudsman, who in turn must “forthwith investigate that matter and report thereon”.

| The ... | However ... |
|---|---|
| VO has an arrangement with DTF where each Parliamentary referral is considered additional work and: <ul style="list-style-type: none"> • it attracts additional funding • direct costs are recovered on an annual basis through a Treasurer’s Advance | this arrangement is not legislated or otherwise guaranteed so does not give the VO certainty or true independence |
| NSW Auditor-General’s legislation provides that the costs and expenses for such additional work are “out of funds available for the expenditure of Parliament or of the Minister” | ultimate discretion lies with the NSW Treasurer, which again impacts the true independence of the Officer. |

Learning from other jurisdictions and approaches

Protective mechanisms in use

A significant number of jurisdictions have enshrined mechanisms to address the risk of the Executive limiting resources to integrity bodies. Specifically, they have:

- included some form of Parliamentary input into the process of establishing integrity officers' budgets
- increased the transparency of the financial resource allocation process.

Under this scenario, legislation may enable a committee, or the Parliament itself, to recommend the annual integrity officers' budget allocations or it may mandate consultation with a committee.

INTOSAI's view

The International Organization of Supreme Audit Institutions (INTOSAI) has recognised managerial autonomy and resourcing as one of the core principles essential for proper public sector auditing.

INTOSAI has focussed on the availability of appropriate human, material, and monetary resources and identifies that:

- the Parliament or one of its commissions should be responsible for ensuring that audit institutions have the proper resources to fulfil their mandate
- audit institutions have the right of direct appeal to the Parliament if the resources provided are insufficient to allow them to fulfil their mandate
- the Executive should not control or direct the access to these resources—rather, the audit institution should manage their own budget and allocate it appropriately.

The Venice Principles

In December 2020 the United Nations General Assembly adopted a resolution on the role of the Ombudsman in promoting and protecting human rights, good governance and the rule of law. It provided strong endorsement of the Venice Principles that establish global standards for the Ombudsman institution.²

Article 21 of the Venice Principles states:

Sufficient and independent budgetary resources shall be secured to the Ombudsman institution. The law shall provide that the budgetary allocation of funds to the Ombudsman institution must be adequate to the need to ensure full, independent and effective discharge of its responsibilities and functions. The Ombudsman shall be consulted and shall be asked to present a draft budget for the coming financial year. The adopted budget for the institution shall not be reduced during the financial year, unless the reduction generally applies to other State institutions. The independent financial audit of the Ombudsman's budget shall take into account only the legality of financial proceedings and not the choice of priorities in the execution of the mandate.³

² *The role of Ombudsman and mediator institutions in the promotion and protection of human rights, good governance and the rule of law*, GA Res 75/186, UN Doc A/RES/75/186 (28 December 2020, adopted 16 December 2020).

³ *Principles on the Protection and Promotion of the Ombudsman Institution ('The Venice Principles')*, Adopted by the Venice Commission at its 118th Plenary Session (Venice, 15-16 March 2019), Article 21.

The UK's approach

As a result of reforms introduced in 1983, in the United Kingdom, the Comptroller and Auditor General presents the National Audit Office budget to the Public Accounts Commission. This is a committee of Members of Parliament.

The Treasury can make submissions to the Commission about the National Audit Office's budget, but it is the Commission that then makes a recommendation to the House of Commons on whether to accept the budget.

New Zealand's approach

New Zealand also provides strong protection for financial resources to its Officers of Parliament. Under its model, the Speaker of the House is the 'Vote Minister', and the Administering Department is the Officer. Their budgets are considered and recommended by the Officers of Parliament Committee through a public and transparent process.

As in the UK, the New Zealand Treasury may make submissions to the Committee about integrity bodies proposed budgets, but it is the Committee which recommends the budgets to the Parliament.

The ACT's approach

In the ACT the Public Accounts Committee (through the Speaker) recommends financial appropriation for the Officers of the Parliament. If the Appropriation Bill is less than the recommended appropriation the Treasurer must present a statement to the Assembly on the reasons.

The Committee may also recommend additional amounts if the Auditor-General is of the opinion that the appropriated funds are insufficient to enable certain audits to be undertaken promptly.

Options for strengthening independence in Victoria

Purpose and overview

This section presents options that would strengthen the financial independence of the three Victorian Independent Officers. These encompass identifying suitable parties to take the central role (other than the Executive) and consider resourcing processes.

To enhance financial independence, any option should:

- acknowledge and preserve independence from Executive Government
- apply evidence-based approaches to ensuring the adequacy of funding
- apply to funding determinations the underlying principles of:
 - certainty (for both the current year and years ahead)
 - flexibility
 - transparency
 - accountability
- ensure appropriate information and expertise to inform decisions about the resourcing of the Officers.

Budget processes to consider

There are many features of the resourcing processes that can impact the independence of an Officer of Parliament.

| If an Officer's... | Then ... | | | | |
|---|--|----------|--------------------------------|---|--|
| budget is part of the Parliament's appropriation or a separate appropriation | a much higher level of independence from the Executive is demonstrated than if it is part of the general appropriation or forms part of the budget for a minister's portfolio: | | | | |
| <table border="1" style="width: 100%;"> <thead> <tr> <th style="text-align: left;">If ...</th> <th style="text-align: left;">Then ...</th> </tr> </thead> <tbody> <tr> <td style="vertical-align: top;">appropriation is to a Minister</td> <td style="vertical-align: top;">constraints could be imposed on the expenditure of appropriated funds</td> </tr> </tbody> </table> | If ... | Then ... | appropriation is to a Minister | constraints could be imposed on the expenditure of appropriated funds | |
| If ... | Then ... | | | | |
| appropriation is to a Minister | constraints could be imposed on the expenditure of appropriated funds | | | | |

Drawing rights on appropriations for Auditors General have been protected by statute in some jurisdictions to reduce the risk of Executive intervention. These jurisdictions include the Australian Commonwealth and New Zealand.⁴

In Victoria the Auditor-General is empowered by legislation to incur any expenditure or obligations necessary for the performance of functions, subject to the annual appropriation. There is no equivalent provision in the *Ombudsman Act* or IBAC legislation.

⁴ *Independence of Auditors General, A 2020 update of a survey of Australian and New Zealand legislation*, Dr Gordon Robertson. PhD, PSM, Commissioned by The Australasian Council of Auditors General (March 2020)

Resource-use processes to consider

| If an Officer's ... | Then ... |
|--|--|
| use of resources is subject to government administrative controls and/or other government policy direction | the Officer's independence may be compromised, whether the control is: <ul style="list-style-type: none">• specifically through the Minister and/or Department responsible for public sector management• applicable more globally (such as the public sector-wide Premier's Circulars under the <i>Public Sector Management Act</i>). |

The *Victorian Audit Act* enables the PAEC to vary by resolution obligations imposed on the Auditor-General, or their office, by the *Financial Management Act* or the *Public Administration Act*.

There is no equivalent provision in the *Ombudsman Act* or IBAC legislation.

Three central role options to consider

An assessment of the current resourcing arrangements for the three Independent Officers suggests three options that should be considered. These involve assigning the central role to:

Option 1: one or more parliamentary committees

Option 2: the presiding officer(s) of Parliament

Option 3: a statutory commission or tribunal.

Option 1:
Parliamentary
committee(s)

Assigning a consultative function to a relevant oversight committee is one safeguard Parliament can employ against the risk of an elected government restricting an Officer’s functions through:

- unreasonable budget reductions
- delaying access to funds
- not providing additional funds within a budget year.

| Currently ... | With ... |
|--|---|
| the PAEC’s role in relation to VAGO is strictly consultative | its views on the budget for the ensuing year are able to be conveyed to the Executive whenever deemed necessary and having regard to: <ul style="list-style-type: none"> • the contents of the draft Annual Plan for that year • the results of the Committee’s prior consultation on that plan |
| the IOC has no equivalent role in relation to the IBAC | the Parliament reviewing appropriation legislation, but not involved in the process of developing the annual budget—it does not see budget proposals made by the Officers during the budget development process. |
| the IOC has no equivalent role in relation to the VO. | |

Committee composition and benefits

Whether a role for the Parliament and/or its committees is beneficial would depend on the circumstances at the time, including whether the Government had the majority in both Houses and on the committee, and even whether the chair of the committee was a member of the Government.

The resourcing of Officers can be influenced by their relationships with the Parliament as a whole, the presiding officers, Parliamentary committees, individual committee members, individual members of Parliament and Parliamentary officers such as the Clerk.

Regarding the chairing of committees, it has been observed that Public Accounts Committees having an Opposition member as chair is likely to engender greater confidence in the decisions made.

Considerations

Concerns expressed about the role of a Parliamentary committee are worthy of consideration. These include concerns expressed by the NSW ICAC that the relevant committee “... would inevitably include members of the Government, may be faced with a difficult, if not impossible burden if it received submissions from Government calling for the Commission to receive an amount of funding less than that sought by the Commission. Government members of the committee might find it difficult to support funding above the amount identified in the Government submission”.

More generally it indicated that MPs face potential conflicts of interest if involved in setting the budget while having an interest in the outcome of an investigation.

In summary

There is merit in giving the primary role regarding the resourcing of the three Independent Officers to one or more Parliamentary committees. It would be a matter for

the Parliament to decide at any time which committees should have particular roles, but for this option to be workable it would be important to ensure that:

- the committees were, as far as possible, non-partisan
- the processes were fully transparent so that the committees could be held accountable.

As the work done by the three Officers can potentially have a negative impact on Members of Parliament, full transparency would be vital to counterbalance committee members' role in influencing decisions about the Officers' resourcing.

Option 2: Presiding officer(s) of Parliament

Both New Zealand and the ACT give significant roles to the Speaker, an approach that has merit as the position is largely seen as above partisan politics. In New Zealand the Speaker chairs the Committee ex officio.

As the Parliaments in both these jurisdictions are unicameral—that is, have only a single House—this option would need to be explored further before being applied to a bicameral (2 House) Parliament, as is the case in Victoria.

Options would include the Speaker and President having shared or joint roles or assigning the role to one or other.

Option 3: Statutory Commission or Tribunal

Establishing a dedicated body through legislation (along the lines of the United Kingdom's Public Accounts Commission), would potentially increase confidence that decisions were not influenced by partisan politics.

Commission/Tribunal composition and benefits

Under the United Kingdom model, a statutory Commission would be made up of Members of Parliament. However, consideration could be given to:

- a mixed membership of MPs and subject matter experts
- membership made up entirely of subject matter experts
- membership made up of subject matter experts but with key roles given to a single Commissioner, potentially an independent person with Officer of Parliament status.

The last two options would avoid the potential for conflicts of interest associated with Members of Parliament and senior public servants being able to influence resourcing decisions.

Example case study: The Victorian Independent Remuneration Tribunal

The Victorian Independent Remuneration Tribunal was established under legislation to support transparent, accountable and evidence-based decision-making in relation to the remuneration of Victorian Members of Parliament, public sector executives and elected local government officials.

Among other things, the Act requires the Tribunal to inquire into and make determinations on salaries, allowances and executive remuneration bands.

In performing its functions, the Tribunal must act independently and impartially and is not subject to the control or direction of any person, including the responsible Minister.

Members of the Tribunal are appointed by the Governor in Council and are required to have extensive or specialist knowledge, expertise or experience in areas such as government, economics, industrial relations, law and public administration.

A similar independent Tribunal comprised of subject matter experts with the ability to interrogate budgets and performance could be established to make binding determinations on the resourcing arrangements for the three Independent Officers.

Example case study: NSW ICAC Budget Assessor

The NSW ICAC has proposed that an independent eminent and qualified person be appointed to assess its funding requirements. The eminent person would also have the role of approving the need for any additional funding during the course of the financial year to cover unexpected demands. For the purposes of this paper, we have referred to this role as the ICAC budget assessor.

| Under this model ... | The ... |
|--|---|
| to achieve the principle of certainty in funding | ICAC Budget Assessor will establish the ICAC's core annual budget funding needs for delivery of baseline activities, including: <ul style="list-style-type: none"> • costs associated with a fixed optimum staffing level • conduct of compulsory examinations and public inquiries |
| to achieve the principle of flexibility | ICAC will have the ability to seek a determination by the Budget Assessor for additional funding to cover unforeseen costs, particularly those associated with: <ul style="list-style-type: none"> • investigations and public inquiries • the acquisition of new technical equipment to ensure it is able to continue to effectively investigate matters within the relevant financial year. |

The ICAC budget assessor would necessarily be someone with appropriate standing in the community and the financial and budgetary expertise to enable effective assessment of the Commission's budgetary needs. The position could be an independent officer of the Parliament appointed by the Presiding Officers of the Parliament.

Considerations

A key consideration is whether decisions by a single person would provide balanced and respected advice and decisions. The appointment process could be crucial to the durability of basing the role on a single person.

In the Federal context, The Centre for Public Integrity has identified that there should be an Independent Funding Tribunal which determines funding. It has suggested modelling this on the existing Remuneration Tribunal, which has three members appointed by the Governor-General and sets the remuneration for most public office holders.

The Centre for Public Integrity proposes that an Independent Funding Tribunal has members nominated by an all-party Parliamentary committee, with a requirement that it has bipartisan support and:

- has sufficient powers
- provides written reasons if its determination is inconsistent with the draft estimates prepared by an agency

- ensures its funding determinations include triennial baseline funding that increases annually in line with CPI and are reviewed annually to determine whether circumstances necessitate supplementation
- makes its inquiry reports and determinations public.

Issue affecting all options: Funding levels

A challenge under all three options is how to set funding levels. Both advisory and decision-making roles should make determinations based on:

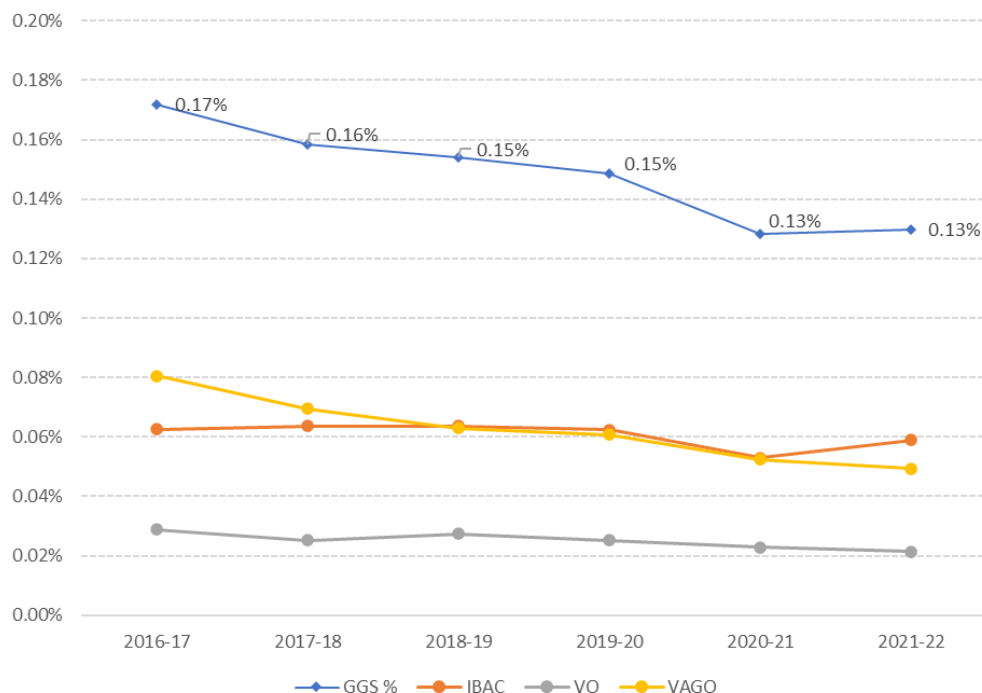
- relevant evidence about work priorities and resource requirements
- an understanding of public administration and political contexts.

This indicates that, to be able to set funding levels, advisors and decision-makers need to be able to link data on performance and resourcing, underpinning this with an understanding of the context.

One indicator of funding levels is the funding as a proportion of public expenditure. This metric as used by Transparency International Australia (TIA), in its November 2020 paper on Australia’s National Integrity System. In that paper TIA called for sustainable budgets for all core public integrity agencies at federal, state and territory level to be not less than 0.15 per cent of public expenditure (combined). It has also called for funding based on four-year, direct budget allocations by Parliament.

The following chart shows the relative contribution of each independent office's annual expenditure, and their total combined expenditure, as a proportion of the annual operating expenditure of the general government sector (GGS). Until 2019-20 the ratio in Victoria compared favourably with the benchmark suggested above.

However, when the total spend by the State of Victoria is considered it has been below that target; at 0.13 per cent for 2019–20 and 0.11 per cent for 2020–21 and 2021–22.



In any model adopted in Victoria, DTF and the Treasurer must be given the opportunity to provide advice on funding, all advice should be made public. Their advice on the overall fiscal position of the State may also be relevant when setting budgets for the oversight bodies.

Issue affecting all
options:
Accountability

In moving to a new funding model for the three Independent Officers, it is essential that there is increased transparency about the process. This encompasses ensuring accountability for the process and decisions made.

Accountability should be based on the following principles:

- Independent Officers are required to demonstrate their accountability as prudent managers of their financial resources
- Parliament's role in the budget process should be expanded
- There is transparency about the decisions made
- There is structured oversight by Parliament of the performance and financial management of the Officers.

In Victoria, measures to determine and demonstrate Independent Officers' accountability are already in place. These include being subject to annual financial audits, the requirement to prepare and table an annual report, quadrennial performance audits, and oversight by a Parliamentary committee.

Proposed approach

Why this is important

With work now underway on the Government's sweeping integrity reforms, it is timely to step back and consider the potential for strengthening the independence of Officers by making substantial changes to the way they are resourced.

Context

The three Independent Officers—the Auditor-General, Independent Broad-based Anti-corruption Commissioner and Victorian Ombudsman—have carefully considered the options presented in this paper in the context of Victoria's current integrity and public trust issues.

In releasing this position paper, we intend that the Parliament and Government will take steps to strengthen our financial independence. It should be recognised that what is being sought is not absolute independence or autonomy in setting resourcing levels. Rather, the recommendations in this paper are designed to transfer resource decision-making to other parties, including agreeing on processes that will ensure an effective, transparent and accountable regime that advances the effectiveness of Victoria's integrity system.

Recommendations

We recommend that the Victorian Government, in parallel with its commitment to work with the Parliament to establish a joint Parliamentary Ethics Committee, undertakes work to establish an Independent Commission/Tribunal (IC/T) under legislation to support transparent, accountable and evidence-based decision-making in relation to the resourcing arrangements for the three Independent Officers.

We further recommend that in conducting this work and establishing the IC/T, and associated legislation, the Government:

- considers measures to ensure maximum independence, transparency and accountability of the IC/T, such as legislative requirements that:
 - the IC/T act independently and impartially in performing its functions and exercising its powers
 - the IC/T and members are not, in the performance of their functions and the exercise of their powers, subject to the direction or control of any person, including any Minister
 - only persons with extensive or specialist knowledge, expertise or experience in a relevant field may be appointed as a Commission/Tribunal member and they must not be (or nominated to be) an elected official, or employed by a body within the three Independent Officers jurisdiction
 - the Treasurer incorporate the IC/T's resourcing recommendations in a Parliamentary Appropriations Bill
 - the Treasurer make a detailed statement to the Parliament on any variations made to the resourcing recommendations at the time the Bill is tabled
 - ensure the IC/T is non-partisan and retains the trust of the Parliament and the community in fulfilling its roles, including timely release of all resourcing-related documents to help to ensure transparency and accountability of all the parties involved
 - identify and manage all perceived or actual conflicts of interest, including the responsibility of Parliament itself to oversight the work and non-partisanship of the committee in fulfilling its roles
-

Proposed structure and role

An Independent Commission/Tribunal for the three Independent Officers could operate on a similar basis to the Tribunal established under the Victorian Independent Remuneration Tribunal and Improving Parliamentary Standards Act 2019 (Vic), with additional functions.

The Independent Officers IC/T would:

- recommend people for appointment
 - be adequately resourced and having access to relevant expertise
 - receive and consider submissions from the Treasurer and Treasury
 - recommend budgets to the Parliament through a public and transparent process
 - consider proposals for additional Officers of Parliament.
-

Proposed legislation

To the extent it is not already provided in full, legislation should require that:

- the IC/T invites and considers submissions from the Treasurer and DTF whenever it is considering making resourcing recommendations
 - the Independent Officers' resourcing submissions to IC/T be disclosed by the committee on its website on their receipt
 - the IC/T's evidence, reasoning and recommendations to the Treasurer are immediately tabled in Parliament in time for consideration as part of the of Parliamentary Appropriation Bill or at any other time the committee sees fit, and that these reports are immediately made public after tabling
 - funds provided to each Independent Officer in a Parliamentary Appropriation Bill are quarantined for use by that Officer and cannot be transferred for other purposes
 - there is certainty of baseline funding on a four-year rolling basis to support the Independent Officers' forward planning and related commitments along with the continuation of existing work on an orderly basis
 - the Executive cannot apply efficiency dividends and similar savings measures it has determined to the Independent Officers without their consent
 - there is a Constitutional specified period of time required for the passage of Parliamentary Appropriation Bills equivalent to those that apply to general Appropriation Bills
 - the Independent Officers have unfettered access to appropriated funds, including the ability to draw down these funds as they see fit
 - the Parliament Appropriation Bill includes legal authority for the Independent Officers to spend over their appropriation amount, to ensure flexibility of resourcing when requested to undertake additional unplanned work
 - there are consistent and robust accountability provisions for the Independent Officers regarding their use of resources and the results achieved.
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Implementing the recommendations

It is proposed that the reasoning and recommendations presented in this paper be considered by the Government and Parliament over coming months as an integral component of the Government commitment to work with the Parliament to introduce extensive reform of the oversight regime.