



PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

SIXTY THIRD REPORT TO THE PARLIAMENT

REPORT ON THE INQUIRY INTO CORPORATE GOVERNANCE IN THE VICTORIAN PUBLIC SECTOR

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PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE

Address: Level 8
35 Spring Street
Melbourne Victoria 3000

Telephone: (03) 9651 3556

Facsimile: (03) 9651 3552

Email: paec@parliament.vic.gov.au

Internet: <http://www.parliament.vic.gov.au/paec>

Parliament of Victoria

Public Accounts and Estimates Committee

Report on Corporate Governance in the Victorian public sector

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PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE MEMBERSHIP – 55TH PARLIAMENT¹

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

This inquiry was undertaken by a Sub-Committee consisting of the following members:

Ms G Romanes, MLC (Chair)
Hon. C Campbell, MP
Hon. B Forwood, MLC
Ms D Green, MP
Hon. G Rich-Phillips, MLC

For this inquiry, the Committee was supported by a secretariat comprising:

Executive Officer: Ms M Cornwell

Principal Research
Officer for the inquiry: Mr K Swoboda (*from January 2005 to 17 May 2005*)

Research Officers: Mr P Stoppa (*from 10 February to 17 May 2005*)
Mr M Holloway (*from February 2002 to May 2002*)

Office Manager: Ms K Taylor

¹ Members were appointed to the Committee on 27 March 2003

PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE MEMBERSHIP – 54TH PARLIAMENT²

Mr P Loney, MP (Chair)

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Mr R Clark, MP

Ms S Davies, MP

Hon. D. Davis, MLC

Hon. R Hallam, MLC (Deputy Chair)

Mr T Holding, MP

Mrs J Maddigan, MP

Hon. G Rich-Phillips, MLC

Hon. T Theophanous, MLC

² The 54th Parliament was prorogued on 5 November 2002

DUTIES OF THE COMMITTEE

The Public Accounts and Estimates Committee is a joint parliamentary committee constituted under the *Parliamentary Committees Act 2003*.

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 the financial management of the state. Its functions under the Act are to inquire into, consider and report to the Parliament on:

- any proposal, matter or thing concerned with public administration or public sector finances; and
- the annual estimates or receipts and payments and other Budget Papers and any supplementary estimates of receipts or payments presented to the Assembly and the Council.

The Committee also has a number of statutory responsibilities in relation to the Office of the Auditor-General. The Committee is required to:

- recommend the appointment of the Auditor-General and the independent performance and financial auditors to review the Victorian Auditor-General's Office;
- consider the budget estimates for the Victorian Auditor-General's Office;
- review the Auditor-General's draft annual plan and, if necessary, provide comments on the plan to the Auditor-General prior to its finalisation and tabling in Parliament;
- have a consultative role in determining the objectives and scope of performance audits by the Auditor-General and identifying any other particular issues that need to be addressed;
- have a consultative role in determining performance audit priorities; and
- exempt, if ever deemed necessary, the Auditor-General from legislative requirements applicable to government agencies on staff employment conditions and financial reporting practices.

CHAIR'S INTRODUCTION

Virtually everyone in Victoria has an interest in how well the public sector performs, in how well it achieves value for money outputs, and in how accountable it is to the public and the taxpayer, in particular. When one also considers that the public sector has a presence in some way in the life of every Victorian, it becomes even more important that it is able not only to adapt to change and improve performance over time, but that it drives change when necessary. Citizens expect the public sector to have exemplary governance principles and practices.

Public sector governance covers a very wide spectrum. It covers how an organisation is managed, its corporate and other structures, including its culture, policies and strategies, and the way it deals with various stakeholders. The concepts of accountability, responsibility, transparency, ethics and probity are core issues that underpin the governance framework in the public sector.

The Committee's report includes 52 recommendations that encourage improvement in key areas of Victorian Government governance and administrative practices. Some of the major areas that the report focuses on include:

- monitoring and reporting;
- control structures;
- risk management;
- the application of governance principles; and
- board issues.

In compiling this report, the Committee has drawn heavily on the material and views presented by those individuals and organisations who made a written submission to the inquiry, appeared at public hearings or attended meetings interstate. Over 96 people generously shared their information and insights with the Committee. The Committee is grateful for the advice provided by Mr Pat Barrett, research fellow at the Australian National University, and the briefing provided by Mr Peter Moloney, a Partner from Ernst & Young.

I thank my colleagues on the Sub-Committee for their efforts in undertaking this complex inquiry and the significant contribution made by Ms Glenyys Romanes as Chairperson of the Sub-Committee.

I also wish to acknowledge the Public Accounts and Estimates Committee's secretariat for the high quality of its administrative and research support throughout the inquiry and, in particular, the outstanding assistance provided by Mr Kai Swoboda. The Committee also records its appreciation to Mr Peter Stoppa, who was also involved with the preparation of the report, and Mr Mark Holloway who provided research support during many of the earlier hearings.

I commend the report to the Parliament.



Hon. Christine Campbell, MP
Chair

EXECUTIVE SUMMARY

Chapter 1: Introduction

During the past two decades the Victorian public sector has undergone significant reform to improve the efficiency, effectiveness, responsiveness and accountability of public services. While these changes are not unique to the Victorian public sector, they have significantly altered the way it works and have had implications for governance.

With the collapse of high profile corporations both in Australia and overseas, much recent debate has revolved around how best to achieve effective and accountable governance in the private sector. The challenges faced by the Victorian Government in relation to corporate governance are no less significant. In fact, it can be argued that they are even greater than those confronted by the private sector because the public sector is more complex.

Victoria has been a leader in many areas of public sector reform, including the introduction of accrual accounting for all public sector agencies (1994); requirements to publicly disclose major contracts (1999); and a reinvigoration of a values based employment framework for public sector agency staff (2004). While many of the reforms have strengthened the corporate governance and financial accountability for public sector agencies, other reforms (most notably those contracting government services to the private sector or transferring responsibility for services to the private or not-for-profit sectors) have created particular governance problems.

Since the Public Accounts and Estimates Committee commenced this inquiry in 2002, the government has undertaken a number of sector specific reviews of corporate governance arrangements in the Victorian public sector, covering arts agencies; universities; TAFE colleges; public hospitals and non-departmental public entities. The government has implemented many of the recommendations included in the published reviews, improving aspects of corporate governance arrangements in these sectors.

Chapter 2: Victorian public sector corporate governance arrangements

More than 400 agencies are included in the Committee's broad definition of the Victorian public sector. They cover a wide range of activities including service delivery on a commercial and non-commercial basis; agencies and bodies with a regulatory or registration role; those with a quasi-judicial, complaints or appeal role; and a range of agencies and committees whose main role is providing specialist advice.

Corporate governance arrangements in the Victorian public sector are complex. Agencies are required to comply with a range of requirements that may be set out in their establishing legislation; financial management arrangements developed by the Department of Treasury and Finance; and other policies issued by departments.

Some key elements of corporate governance for agencies include:

- objectives and functions of agencies, which are usually included in their establishing legislation. In some cases the objectives set for agencies can be conflicting, and there may be opportunities for Ministers to direct agencies to perform, or not perform, some activities; and
- membership requirements for the governing bodies of agencies are usually included in their establishing legislation.

The management of agencies must often comply with the requirements of a wide range of government policies and practices. A significant challenge for the agencies is to fulfil these requirements, while ensuring sufficient focus on performance.

Agencies are subject to significant external scrutiny, including regular detailed monitoring by central agencies such as the Department of Treasury and Finance. External scrutiny is also strengthened by requirements that the Auditor-General audit agencies' financial statements. This provides Parliament and the community with assurance that an agency's financial affairs are being managed appropriately, and that internal control structures are in place.

The Auditor-General also provides external scrutiny annually to a limited range of areas, through a performance audit program. This program aims to determine whether some aspects of an agency's activities are being performed effectively, economically and efficiently, and comply with all relevant legislation. More recently, the Auditor-General has been given a mandate to provide assurance on performance measures reported by agencies. This mandate has been exercised only in relation to performance measures used by regional water authorities and local government.

External scrutiny of agencies by Parliament is usually limited to the presentation of an annual report, although smaller agencies are exempt from this requirement. Parliament's ability to examine the performance of agencies is further limited by the large number of annual reports presented, and the timing of presentation, which usually takes place late in the parliamentary session.

Regular reporting of key performance outcomes is a feature of governance arrangements for a number of agencies. Although much of this reporting is not based on legislation, it provides regular public reports of the performance of agencies in key areas, for example, hospital waiting times. In relation to hospital waiting lists, the Committee noted that the government has recently enhanced reporting of hospital performance in a number of areas, providing more detailed information to patients and their doctors on services offered by hospitals.

The *Public Administration Act* 2004 seeks to re-position the public sector to serve in the public interest, replacing a values based framework that sought to position the public sector closer to the private sector (by emphasising financial efficiency). The values set out in the Act are responsiveness; integrity; impartiality; accountability; respect; and leadership.

Although the Act retains many features of the *Public Management and Employment Act* 1998 that it replaced, the values based conduct principles are more expansive, providing detailed guidance on how public officials can demonstrate the application of these values. The requirements for merit based appointment processes are also reinforced through a requirement that agency heads foster the development of a career public service.

Chapter 3: *Developments with corporate governance in other jurisdictions*

The Committee reviewed other Australian states and territories, and several other countries, to determine whether corporate governance arrangements in Victoria have kept pace with developments in other jurisdictions. The Committee found that most jurisdictions had substantially reviewed their public governance arrangements in the past few years.

Several strong themes emerged from the reviews, including the importance of clarifying the roles of agencies and the expectations of governments, as well as establishing the appropriate legal and management structure for an agency. The Committee considers that some of the mechanisms proposed by these governance reviews have relevance to governance in the Victorian public sector.

The Committee noted that some jurisdictions have implemented arrangements that are more robust, including:

- a broader regime for auditing performance measures in Western Australia. The Auditor-General must issue an opinion on whether performance reported by agencies is ‘relevant and appropriate, having regard to their purpose, and fairly represents indicated performance’;
- more timely public release of agency annual reports. In Queensland, for example, agencies can release reports when Parliament is not sitting. In the Australian Capital Territory, public sector agency annual reports must be forwarded to members of Parliament within three months of the end of the reporting period. These requirements are in line with major companies (listed on the Australian Stock Exchange), which are required to release their annual reports within three months;
- a broader application of a whole of government reporting framework to cover the breadth of agencies that comprise the Victorian public sector, and align their objectives more closely with government objectives. Performance

reporting against whole of government objectives in Canada and the United Kingdom appears to be comprehensive and accessible;

- greater understanding of agency performance through the tabling in Parliament of corporate plans for agencies with a commercial focus. This requirement applies to agencies with a commercial focus in New South Wales, the Commonwealth, New Zealand and Canada; and
- a broader application of requirements to publish details of contracts entered into by agencies, and stronger requirements to explain where material deemed to be ‘commercial in confidence’ is not publicly released. Statutory time limits on the publication of contracts and a review by the Auditor-General (or a parliamentary committee) on whether an agency’s reasons for material to be ‘commercial in confidence’ are appropriate, enhance this arrangement.

The Committee examined several jurisdictions that have a significant number of agencies operating at arms length from government, with a board of directors overseeing the agency’s operations. The Committee observed that some jurisdictions use mechanisms that enhance the transparency of the board appointments process and provide assurance that selections are based on merit.

Some of these mechanisms are new. In Canada, for example, there is potential for a Canadian parliamentary committee to review a candidate for a board position with a Crown corporation, recommended by the Minister, while in the United Kingdom, independent scrutiny by the Commissioner for Public Appointments (to ensure that merit is the overriding factor in appointing individuals to agency boards) has been a feature of corporate governance arrangements for almost ten years.

Chapter 4: State Owned Enterprises and partnership arrangements

State owned enterprises take a number of forms. They can be a state body (a fully government owned entity established by an Order-in-Council), a state business corporation (a transitional vehicle for existing authorities to become more commercially oriented) and a state owned company (an ordinary company fully owned by the state).

The Committee questions whether the application of the Commonwealth *Corporations Act* 2001 to state owned companies (such as South East Water) is appropriate given there is no intention to privatise these entities. The Committee considers that the Department of Treasury and Finance should examine whether the corporatisation framework strengthens corporate governance, or whether other types of organisations such as state business corporations (which typically involve more ministerial and central agency oversight), may be more appropriate. If the department determines that current arrangements are satisfactory, it should also examine other entities that may benefit from such governance arrangements.

The Committee also questions whether the governance framework that applies to some state bodies (such as the Victorian Competition and Efficiency Commission) that operate on a non-commercial basis is appropriate.

The Committee is concerned that entities established recently under the *State Owned Enterprises Act 1992* can avoid parliamentary scrutiny of corporate governance arrangements when they are established. This includes the organisation's objectives, functions, means of conducting business and external reporting arrangements. In the Committee's view, the use of this legislation should be limited to entities with a limited and finite duration. Where appropriate, the Committee considers that new statutory bodies should be established under a separate act of Parliament.

There are corporate governance implications associated with the public sector forming partnerships with the private sector, in relation to longer-term contractual arrangements. The Committee noted that the transparency of public sector agency contracting arrangements was strengthened in 2000. Agencies were required to publish details of contracts valued at more than \$10 million and headline details of contracts valued at more than \$100,000. This applied to public sector departments and selected agencies such as Victoria Police. Other agencies not included in the government's policy statement were encouraged to comply.

The Committee found that reporting by other agencies was widespread, but that not all agencies published details of their major contracts. The Committee supports the extension of the policy on disclosure of contracts to all public sector agencies. In addition, the results of the 2004 organisational self-assessment survey, coordinated by the Office of Public Employment, disclosed concern over probity and transparency of their procurement and contracting arrangements. This situation merits review by public sector agencies.

The Committee noted that a number of formal agreements have been implemented, such as the three year partnership agreement between the Department of Human Services and the health, housing and community funded sectors. Non-government service providers have been generally supportive of the need for formal partnership agreements. The Committee considers that these agreements strengthen corporate governance by outlining a shared vision and values and that the benefits and costs of these types of agreements should be more widely explored.

Chapter 5: *Monitoring and reporting on selected corporate governance arrangements*

The Committee's third term of reference required it to review the effectiveness of the arrangements for reporting corporate governance issues in the Victorian public sector, particularly in terms of:

- public reporting on the performance of government entities;
- information available to the community on government services; and

- avenues for complaints available to members of Parliament and the general public.

The Committee found that there is no across-the-board reporting by government entities on achieving the full range of key government outcomes. In this respect, Victoria lags behind other jurisdictions such as the United Kingdom and Canada, where whole of government outcomes are identified, and the activities of all public sector agencies are linked to these outcomes and progress on achieving outcomes is regularly monitored and measured.

The Auditor-General, in his April 2003 progress report on performance monitoring and reporting, found little significant improvement since his initial report in November 2001. The Committee's view is that Victoria's whole of government performance reporting framework needs to be re-examined to ensure it represents better practice. The Department of Premier and Cabinet, as the agency responsible for the Growing Victoria Together strategy, is best placed to undertake this task.

In terms of cross-agency reporting, agencies are required to report on their performance in four key areas: cultural diversity, women, youth and Indigenous affairs. The Committee found that improvements in departmental reporting were needed in reporting outcomes, monitoring the achievement of milestones and tracking performance over time.

The *Audit Act* 1994 was amended in 1999, providing the Auditor-General with a discretionary mandate to audit performance indicators in an agency's annual report. While local councils and water authorities must present performance information for audit by the Auditor-General as part of their annual reporting, there is no similar requirement for the Victorian public sector.

The Auditor-General has commented that the absence of an adequate agency performance management and reporting framework has precluded him from discharging this mandate across the wider Victorian public sector. In conjunction with improvements in this area, the Committee supports the amendment of financial reporting directions to require all public sector agencies to provide performance information in their report of operations, as part of their annual reporting for 2006-07.

The Committee considers that reducing the length of time agencies have to table reports will improve their accountability to Parliament and the community. Ministers are required to table public sector agency annual reports within four months of the end of the financial year, but the Committee has recommended this period be reduced to three months. The Committee considers this is achievable, based on comparisons with other jurisdictions.

This inquiry also examined the complaint handling mechanisms available to the general community. The Committee examined three industry sectors that have a strong customer service orientation (public hospitals, metropolitan water retailers and the private sector metropolitan train operator) in terms of their complaints handling mechanisms as detailed on their websites. The Committee concluded that the water

retailers have highly developed systems, but the complaints handling processes in other organisations (such as public hospitals) should be amended to ensure they reflect best practice.

Chapter 6: *Improving Victorian public sector corporate governance arrangements*

The Committee examined the potential to introduce improvements to current governance arrangements in the Victorian public sector in terms of five principles: accountability; transparency and openness; integrity; stewardship; and leadership. These principles are contained in a better practice guide developed by the Australian National Audit Office.

In terms of improving accountability, the Committee noted that there is a lack of clarity about the extent to which public entities are covered by the provisions of the Public Administration Act. The Committee supports the development of a centrally administered database with relevant details of each agency, and noted that a similar database was recently launched in the United Kingdom.

In some instances, the Committee found that the relevant legislation fails to define the role of the board and the chief executive officer, such as in the *Rural Finance Act 1988*.

The Committee is aware that the relationship between the Minister and the board of a public sector agency can vary, and that it is important that the Minister's responsibilities are clearly spelt out. The Committee would like to see a ministerial statement of expectations (to which the public sector agency responds with a statement of intent) introduced into establishing legislation. This arrangement is in place in New Zealand and a similar scheme is proposed for Commonwealth Government agencies. These statements, and the agency's corporate plan, should be made public. The Committee further considers that Minister's directions to public sector agencies should be in writing. This will provide greater accountability by specifying what agencies are required to do and by applying a single standard over their issue and promulgation.

While the previous comments focus on a single agency, joined-up government arrangements pose particular accountability challenges from a corporate governance perspective, particularly in terms of ministerial accountability. The Committee considers there is a role for a central agency, such as the State Services Commission, to clarify ministerial responsibilities and accountabilities where appropriate.

The Committee noted in some cases that documents integral to the management and operations of public sector agencies are not available to Parliament or the general community. The State Revenue Office, for example, has a framework agreement with the Department of Treasury and Finance covering its aims and objectives; the preparation of strategic and annual business plans; reporting responsibilities; and financial and staffing arrangements. The Committee understands that the State

Revenue Office regards the framework as commercial-in-confidence. The Committee considers that in the interests of transparency, key documents associated with the management and operations of agencies should be available for parliamentary and community scrutiny. Disclosure of such information may be limited where commercial or other interests outweigh public interest considerations, such as in the case of commercially sensitive information that may be included in agency business plans.

The Committee is aware that the Ombudsman is undertaking a broad review of the administration of freedom of information requests by public sector agencies. The Committee understands that some other jurisdictions, such as South Australia, provide a report on timeliness of processing FOI requests and costs of processing applications. The Committee supports amendments to freedom of information legislation to require Victorian public sector agencies to provide similar performance information to the Attorney-General for whole of government reporting purposes.

The value 'integrity' is contained within prescribed public sector values outlined in s.7 of the Public Administration Act. While values are prescribed, the Commissioner for Public Employment commented that there was room to improve the application of these values. The Committee noted that the Public Sector Standards Commissioner, under the Public Administration Act, has no power to independently inquire into the degree of adherence by agencies with prescribed values, principles and codes of conduct. This is in contrast to bodies with similar functions in other jurisdictions, such as the Australian Public Service Commission.

The *Whistleblowers Protection Act 2001* provides protection to whistleblowers that make disclosures in accordance with the Act. The Committee supports the preparation of a whole of government report on action taken under this legislation, similar to the *Freedom of Information Act 1982*. The Committee also noted that, based on surveys conducted by the Commissioner for Public Employment, the level of knowledge among public sector employees of whistleblower processes is not high. The Committee recommends that agencies give greater priority to developing training programs, including relevant information in induction programs.

In terms of stewardship, an effective internal audit function plays an important role in identifying control weaknesses and risk exposures. Internal audit should also examine the effectiveness, efficiency and economy of significant programs and activities, but there is limited evidence that the internal audit function within Victorian public sector agencies has adopted this role across the board. The Committee supports a formal internal audit rotation program where staff with the necessary skills are provided with appropriate supervision and training.

The Committee was surprised to learn that there were instances where private sector organisations, contracted by agencies to undertake the internal audit role, also undertook consultancy services. While these arrangements are not necessarily detrimental to good governance, potential conflicts of interest need to be mitigated

and managed. The Committee supports the disclosure of these consultancies in an agency's annual report, including the steps taken to manage any conflicts of interest.

Boards of management of public sector agencies also play a critical role in terms of an organisation's stewardship. The Committee noted that, unlike jurisdictions such as Queensland, there is no publicly available database on members of public sector boards. The Committee would support the Department of Premier and Cabinet playing the lead role in developing and maintaining such a database.

The Committee also identified other areas in which the effectiveness of agency boards could be improved, such as:

- reporting the level of representation of women on differing types of boards and their level of skills and responsibilities;
- re-examining possible inflexibilities in board membership (for example, the specification of membership of a particular organisation) and the operation of the board (for example, limitations on the size of the board) that may hinder the appointment of the most suitably qualified candidates;
- monitoring all appointments to Victorian public sector boards (particularly regarding the robustness of the appointments process) by the State Services Authority; and
- enhancing the performance of boards through improving induction and board member training, and amending the Public Administration Act to allow existing boards to have appropriate strategies in place to assess the performance of directors and deal with under-performance.

Finally, leadership in governance is crucial to establishing and reinforcing a corporate culture where values, principles and codes of conduct contained in legislation are embedded into the behaviour of all levels of agency staff. The 2003–04 Commissioner for Public Employment's annual report would suggest there is room for improvement in this regard, and the Committee has identified a range of possible strategies to address this issue, such as senior managers personally signing up to upholding and supporting the application of good governance values and principles.

RECOMMENDATIONS

The Committee recommends that:

Chapter 1: Introduction

Recommendation 1: **The government make publicly available the governance reviews of arts agencies and non-departmental public entities.**

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Chapter 4: State Owned Enterprises and partnership arrangements

Recommendation 2: **The Department of Treasury and Finance review the corporatisation framework applying to entities operating as state owned companies, to determine the most appropriate models for Victoria and whether there is a case for abolishing this class of State Owned Enterprise.**

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Recommendation 3: **Entities established under the *State Owned Enterprises Act 1992* be limited to those providing goods or services on a commercial basis.**

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Recommendation 4: **The creation of new entities as state bodies under s.14 of the *State Owned Enterprises Act 1992* be limited to situations in which entities operate for only a limited (specified) time.**

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Recommendation 5: **Legislative provisions relating to the payment of dividends by State Owned Enterprises and other agencies be amended to:**

- (a) place a maximum limit on the value of dividends that an agency is required to pay, consistent with the requirements imposed by the *Corporations Act 2001* (Cwlth); and**

- (b) provide greater transparency for the payment of dividends where the value of dividends exceeds after-tax profit and retained earnings by providing for a 'special dividend'. These provisions could be modelled on the *Tasmanian Government Business Enterprises Act 1985*.

Page 127

Recommendation 6: Public sector agencies implement appropriate procurement and contracting arrangements to ensure effective management of potential conflicts of interest and other probity issues in accordance with guidance issued by the Public Sector Standards Commissioner.

Page 130

Recommendation 7: The Department of Human Services and the Department for Victorian Communities work together to develop a standard form agreement and processes to guide the development of partnership agreements between public sector agencies and non-government service providers.

Page 134

Chapter 5: *Monitoring and reporting on selected corporate governance arrangements*

Recommendation 8: The government develop a measurable set of major government policy outcomes that can form the basis of a whole of government performance management and reporting framework. Such assessments could be complemented by clearly articulated assessments of outcomes achieved.

Page 139

- Recommendation 9:** The Victorian Government develop a framework for performance reporting that reflects better practice used in Canada and the United Kingdom, including as a minimum clear linkages between a statement of government outcomes and departmental and agency objectives/ outcomes supported by measures of progress and measurable performance information.
Page 139
- Recommendation 10:** The Department of Premier and Cabinet strengthen the reporting template in the Premier’s Circular 2003 /3 covering cultural diversity, women, youth and indigenous affairs to have a greater focus on departments’ performance reporting of program outcomes, progress against milestones and performance tracked over time.
Page 140
- Recommendation 11:** The Department of Treasury and Finance amend the financial reporting directions to require all public sector agencies to provide performance information and indicators in their annual reports commencing from the 2006-07 reporting period.
Page 143
- Recommendation 12:** The Department of Treasury and Finance amend Financial Reporting Direction 27 to require nominated agencies to include the statement of certification and audit opinion in their annual reports.
Page 143
- Recommendation 13:** The Department of Treasury and Finance examine the extent to which current deadlines under the *Financial Management Act 1994* for the presentation of draft financial statements to the Auditor-General can be reduced to enable earlier tabling of annual reports.
Page 149

- Recommendation 14:** **The *Financial Management Act 1994* be amended to:**
- (a) bring forward the release date for the annual financial report to mid-September, in line with the aims of the Department of Treasury and Finance;**
 - (b) require the relevant Minister to table in Parliament an agency’s report of operations and audited financial statements within three months of the end of the reporting period; and**
 - (c) provide for out-of-session tabling of annual reports up to three months after the end of the reporting period, modelled on the provisions applying to reports by the Auditor-General and parliamentary committees.**

Page 150

- Recommendation 15:** **The *Financial Management Act 1994* be amended to require that:**
- (a) one copy of a small agency’s annual report be tabled in Parliament and a copy be forwarded to the Public Accounts and Estimates Committee; and**
 - (b) each small agency publish a copy of its annual report on its website or where the agency does not have its own website, on the relevant portfolio department’s website.**

Page 152

- Recommendation 16:** **The government amend the establishing legislation of agencies required to table non-financial annual reports to:**
- (a) require the forwarding of annual reports to the relevant Minister within eight weeks of the end of the reporting period; and**
 - (b) require Ministers to table annual reports in Parliament within four weeks of receiving it or the next sitting day.**

Page 154

Recommendation 17: **The Department of Human Services, in consultation with public hospitals, institute best practice complaints handling procedures within public hospitals.**

Page 158

Recommendation 18: **Agencies benchmark their complaint handling processes against the model established for Victorian water retailers and monitor the effectiveness of their complaint handling processes on a regular basis.**

Page 159

Chapter 6: *Improving Victorian public sector corporate governance arrangements*

Recommendation 19: **The State Services Authority develop and maintain a publicly accessible database covering all public sector agencies in Victoria. As a minimum, the database should include information on:**

- (a) legislation applying to the agency;**
- (b) contact details for the agency; and**
- (c) links to performance reports published by the agency.**

Page 163

Recommendation 20: **The Government:**

- (a) identify agencies where a clearer specification of the roles of boards, management (the chief executive officer) and Ministers can be made; and**
- (b) develop a program of legislative amendments for future years to formalise the clarification of the role of boards, chief executive officers and the responsible Minister/s in legislation.**

Page 167

- Recommendation 21:** **The government amend agencies’ establishing legislation to provide for:**
- (a) a single standard requiring all directions made to an entity governed by a board of management to be in writing; and**
 - (b) a single standard requiring public disclosure of written directions made to boards of management to be tabled in Parliament within five sitting days of being given to an agency, as well as being included in the agency’s annual report.**
- Page 169*
-
- Recommendation 22:** **The State Services Authority conduct a review of ‘independent’ public sector agencies to examine whether the current legislation, as well as policies and practices developed over time, allow these agencies to operate with the degree of independence envisaged at the time they were created, while being fully accountable to the Parliament.**
- Page 174*
-
- Recommendation 23:** **The government consider the New Zealand model where responsible Ministers develop a ‘statement of expectations’ and management of a public sector agency respond with a statement of intent.**
- Page 175*
-
- Recommendation 24:** **The establishing legislation for public sector agencies be amended to require that a statement of expectations and a statement of intent be prepared and reviewed annually and included in annual reports.**
- Page 175*

- Recommendation 25:** **The government adopt a clear set of rules for making agency planning and accountability documents publicly available by requiring that they be tabled, along with any amendments, in Parliament within five sitting days of the start of the reporting period to which they relate.**
Page 177
- Recommendation 26:** **All Victorian public sector agencies make publicly available copies of all planning and accountability documents, as well as any amendments, on their website.**
Page 177
- Recommendation 27:** **The Public Administration Act be amended to require the State Services Authority to conduct a review of each public sector agency every ten years to assess:**
- (a) the appropriateness of current corporate governance arrangements; and**
 - (b) opportunities for the services provided by the agency to be delivered by other means, including by other existing agencies and/or the creation of a new agency/agencies.**
Page 178
- Recommendation 28:** **The State Services Authority:**
- (a) in conjunction with agencies, undertake the lead role in facilitating sound public governance practices in government agencies; and**
 - (b) assist agencies with clarifying responsibilities and accountability arrangements at ministerial level for major multi-agency initiatives involving the shared delivery of services.**
Page 182

Recommendation 29: **The State Services Authority replace arrangements that restrict public availability of information relating to the governance arrangements applying to public sector agencies, so that a higher standard of public disclosure is applied to what an agency is expected to do, how it is managed and the manner in which it reports on its progress.**

Page 184

Recommendation 30: **The Attorney-General strengthen reporting requirements for public sector agencies under the Freedom of Information Act based on better practice in other jurisdictions such as South Australia.**

Page 185

Recommendation 31: **The Financial Management Act be amended to require agencies to publish the details of major contracts on the Victorian Government Purchasing Board’s contracts publishing website.**

Page 186

Recommendation 32: **The requirement to publish the details of major contracts on the Victorian Government Purchasing Board’s contracts website in Financial Reporting Direction No. 12 be amended to apply to all entities defined as a public body under the *Financial Management Act 1994*.**

Page 187

Recommendation 33: **The *Financial Management Act 1994* be amended to require contracts (or sections in contracts) considered by agencies to be commercial-in-confidence to be forwarded to the Auditor-General for review within 21 days of signing the contract and provide 3 months for the Auditor-General to review the relevant documents.**

Page 187

Recommendation 34: The threshold for the disclosure of major contract details be lowered from \$10 million to \$5 million in Financial Reporting Direction No. 12 and the relevant Victorian Government Purchasing Board policy.

Page 188

Recommendation 35: The powers of the State Services Authority under the *Public Administration Act 2004* be expanded to provide for:

- (a) issuing of standards regarding the adherence by public officials to public service values;
- (b) conducting independent inquiries into the adherence by agencies with public sector values and employment principles and the degree of compliance with standards and relevant code of conduct; and
- (c) the State Services Authority issue a standard requiring agencies to incorporate in their annual report key strategies for ensuring adherence with public sector values and employment principles, as well as compliance with other standards and relevant codes of conduct.

Page 190

Recommendation 36: The *Whistleblowers Protection Act 2001* be amended to require the Attorney-General to table in Parliament an annual report on the operation of the Whistleblowers Protection Act, modelled on the requirements included in s.64(1) and s.64(2) of the Freedom of Information Act.

Page 192

Recommendation 37: The content of the recommended whole of government report on the operations of the *Whistleblowers Protection Act 2001* include:

- (a) details of the numbers and types of disclosures made to public bodies during the year;

- (b) the number and types of disclosures referred to the Ombudsman for determination of whether they are public interest disclosures;
- (c) the number and types of disclosed matters that agencies declined to investigate;
- (d) the number and types of disclosed matters that were substantiated on investigation, and the action taken on completion of the investigation; and
- (e) the nature of disclosures, such as allegations of bribery or fraudulent use of public funds.

Page 192

Recommendation 38:

The Public Service Commissioner and agencies subject to the *Whistleblowers Protection Act 2001*:

- (a) review, as a matter of urgency, why there is not a strong awareness of whistleblower processes in the Victorian public sector; and
- (b) develop effective and appropriate whistleblower training activities (including details in induction programs for new employees) to promote awareness of the Whistleblowers Protection Act.

Page 194

Recommendation 39:

Departments conduct periodic audits of the membership of portfolio agency audit committees to ensure the committees satisfy the guidelines on the appointment of ‘independent’ people.

Page 195

Recommendation 40:

Agencies upgrade their audit charter, where necessary, to provide for a more strategic focus on major issues of effectiveness, efficiency and economy including acting as a strategic partner to senior management.

Page 196

- Recommendation 41:** Agencies develop strategies to effect a more strategic approach to the conduct of their internal audit committees.
Page 196
- Recommendation 42:** The Financial Reporting Directions under the *Financial Management Act 1994* be amended to require agencies to disclose the nature and extent of consultancies undertaken by the outsourced internal audit provider and how any conflicts of interest are managed and mitigated.
Page 197
- Recommendation 43:** The Financial Reporting Directions under the *Financial Management Act 1994* be amended to require agencies to provide in their annual report a summary of the activities of their internal audit program.
Page 197
- Recommendation 44:** The Department of Premier and Cabinet develop and maintain a publicly available register of appointees to public sector agency boards that includes:
- (a) the agency/agencies to which the person is appointed;
 - (b) the term of appointment for each agency to which the person is appointed; and
 - (c) the position held on each board (chair, deputy chair, etc).
- Page 199*
- Recommendation 45:** The State Services Authority have a watching brief to ensure that establishing legislation does not limit the effectiveness of the board's operation.
Page 203

- Recommendation 46:** **The Department of Premier and Cabinet make publicly available its guidelines for the appointment and remuneration of part-time non-executive directors of State Government boards and members of statutory bodies and advisory committees.**
- Page 203*
- Recommendation 47:** **The *Public Administration Act 2004* be amended to provide for the State Services Authority to monitor the process for all appointments to Victorian public sector boards of management, along the lines of the model of the UK Commissioner for Public Appointments.**
- Page 204*
- Recommendation 48:** **The governance principles in the *Public Administration Act 2004* be extended to appropriate agencies after review on a case-by-case basis.**
- Page 206*
- Recommendation 49:** **The *Public Administration Act 2004* requirement that the boards of new public agencies establish adequate procedures to assess the performance of individual directors be extended to appropriate existing agencies after review on a case-by-case basis.**
- Page 209*
- Recommendation 50:** **The State Services Authority (or an appropriate government agency) review whether the procedures used by boards to assess director performance are adequate.**
- Page 209*
- Recommendation 51:** **The government review the appropriateness of some public sector agencies not paying fees to board members.**
- Page 212*

Recommendation 52: **The State Services Authority, in close consultation with agencies, develop strategies to encourage and provide greater leadership in agencies to drive improved governance standards.**

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CHAPTER 1: INTRODUCTION

*The Victorian Government is committed to improving and enhancing the corporate governance regimes both within specific public bodies and at a whole of government level. The Government is continually monitoring the governance framework as it applies to public bodies, and will continue to develop policy and where necessary legislation which improves the accountability, efficiency and operation of public bodies.*³

For this inquiry, the Public Accounts and Estimates Committee has adopted a definition of corporate governance that refers to the processes by which organisations are directed, controlled and held to account. This encompasses organisational authority, accountability, stewardship, leadership, direction, control and performance.

Corporate governance is not simply an internal matter concerning the province of only a board of directors or a governing body, but also affects an organisation as a whole including the organisation's purpose, values, culture, stakeholders (including employees) and mode of operation. The definition also extends to the institutional arrangements that have been established for public sector agencies.

1.1 Why is the Committee looking at corporate governance?

During the past two decades the Victorian public sector has undergone significant reform in the interests of improving the efficiency, effectiveness, responsiveness and accountability of public services. These changes are not unique to the Victorian public sector but have drastically altered the way in which it works and have significant implications for governance.

With the collapse of high profile corporations both in Australia and overseas, much of the recent debate has revolved around the best means of achieving effective and accountable governance in the private sector. However, the challenges faced by the Victorian Government in relation to corporate governance are no less significant. In fact, it can be argued that they are even greater than those confronted by the private sector because the public sector is more complex than the private sector for a number of reasons, including:

- agencies can have multiple objectives and responsibilities, in addition to program and financial considerations;
- agencies can have different ownership arrangements;
- different arrangements for boards of management, with some being mainly or solely advisory and others operating with a degree of autonomy with a number of different formal and informal arrangements for appointments;

³ Hon. S. Bracks, MP, Premier of Victoria, submission no. 53, p.19

- agencies can have different accountability requirements; and
- agencies can have different reporting requirements.

Good corporate governance arrangements are an essential precondition not only for accountability and performance but also for public confidence in the integrity of government.

The Committee is aware that since it commenced this inquiry there have been a number of sector specific reviews of corporate governance arrangements in the Victorian public sector, including:⁴

- school councils (2005);
- non-departmental public entities (2003-04);
- TAFEs (2003);
- universities (2002);
- public hospitals (2003); and
- arts agencies (2001-02).

The review of school councils is currently in progress. Except for the reviews of the arts agencies and non-departmental public entities, completed governance reviews have been publicly available. The recommendations of these reviews have also been largely implemented by the government, improving the corporate governance arrangements of the relevant agencies. The Committee considers that the findings of other governance reviews should be publicly available to further improve understanding of corporate governance issues impacting on public sector agencies.

The Committee recommends that:

Recommendation 1: **The government make publicly available the governance reviews of arts agencies and non-departmental public entities.**

⁴ Department of Education and Training Office of Strategy and Review, *Review of School Governance in Victorian Government Schools Discussion Paper*, March 2005; Department of Premier and Cabinet, *Annual Report 2002-03*, p.37; Office of Training and Tertiary Education, *TAFE Governance Review*, May 2003; Department of Education and Training, *Review of University Governance*, May 2002; Department of Human Services, *Victorian Public Hospital Governance Reform Panel Report*, August 2003; Department and Premier and Cabinet, *Annual Report 2001-02*, p.53

1.2 Terms of reference

The Committee adopted the following terms of reference:

- assess the existing corporate governance arrangements in the Victorian public sector and determine whether they are appropriate and effective in view of the significant reforms that have transformed the Victorian public sector, particularly in the use of alternative service delivery mechanisms;
- review the effectiveness of the present corporate governance and accountability arrangements for:
 - state owned enterprises and determine whether any improvements are required; and
 - partnership arrangements between the Victorian public sector and:
 - ... the private sector; and
 - ... not-for-profit organisations
- review the effectiveness of arrangements for monitoring and reporting on corporate governance issues in the Victorian public sector, particularly in terms of:
 - the information that is publicly available on the performance of government entities and the mechanisms available to allow the Parliament, consumers and the community to gain access to this information;
 - the information available on what services are offered to the community; and
 - the complaint mechanisms available to Members of Parliament, consumers and the community.
- review and seek advice on developments in corporate governance in other jurisdictions; and
- determine what improvements, if any, need to be made to current corporate governance frameworks in the Victorian public sector.

1.3 Approach taken by the Committee

This inquiry commenced during the life of the 54th Parliament, when a Sub-Committee was appointed to conduct the inquiry.

In April 2002, the Committee released Issues Paper No. 5, *Corporate Governance in the Victorian public sector*, which canvassed the major issues contained in the inquiry

terms of reference. Comments were sought on a number of matters including the following:⁵

- has the role of central agencies been adequate in promoting and guiding the implementation of effective corporate governance processes and frameworks in agencies? If not, what initiatives should central agencies adopt to improve this role?
- what should be the appropriate accountability and governance arrangements between state owned enterprises, Ministers and Parliament?
- should public sector officers appointed to governing bodies report board information to their department? Have any government protocols been developed in this regard?
- what measures has the governing body of an agency adopted to build a corporate culture? How does the governing body ensure corporate behaviour is in accordance with the highest standards? Are these measures effective? and
- what parties are responsible for the selection and appointment of governing body members in an agency? What criteria are used to select governing body members?

The then Public Accounts and Estimates Committee received 53 written submissions. In October 2002, a whole of government submission was received from the Premier, which responded on behalf of most government agencies. The Committee would have also found it more helpful and instructive if individual agencies had provided evidence to the Committee. Appendix 2 lists those organisations or persons that made a submission. One public hearing was held in Melbourne on 1 May 2002.

The Committee was dissolved following the end of the 54th Parliament in October 2002.

In April 2003, the newly-appointed Committee resolved to complete the inquiry. The following Sub-Committee was formed to conduct the inquiry:

- Ms Glenyys Romanes, MLC (Chair of this inquiry);
- Hon. Christine Campbell, MP;
- Hon. Bill Forwood, MLC;
- Ms Danielle Green, MP;
- Hon. Gordon Rich-Phillips, MLC.

The Department of Premier and Cabinet and the Department of Treasury and Finance provided the Sub-Committee with an update on developments in corporate governance

⁵ Public Accounts and Estimates Committee, *Corporate Governance in the Victorian Public Sector*, Issues Paper No. 5, April 2002, pp.22–35

in the Victorian public sector at a hearing in Melbourne in April 2004. The Sub-Committee also conducted additional public hearings in Sydney, Canberra and Melbourne. A list of witnesses appears at appendix 3.

The Committee thanks all those who participated in the inquiry by appearing as witnesses, providing written submissions and assisting with the arrangements for meetings and public hearings. In preparing this report, the Committee has drawn heavily on the material and views presented in submissions and public hearings. The Committee is grateful for this valuable input.

The cost of this inquiry was approximately \$103,000.

CHAPTER 2: VICTORIAN PUBLIC SECTOR CORPORATE GOVERNANCE ARRANGEMENTS

Key Findings of the Committee:

- 2.1 Governance arrangements for agencies are often complex and require compliance with a wide range of legislation, policies and procedures.**
- 2.2 Where an agency is established by legislation, its functions and objectives are usually defined, although in some cases an agency may need to balance multiple and/or conflicting objectives. The Minister responsible for an agency occasionally has discretion to alter the agency's objectives and functions.**
- 2.3 The processes for appointing Victorian public sector boards of management are based on a number of formal requirements. These are usually contained in an agency's establishing legislation, as well as in departmental policies and practices.**
- 2.4 The Department of Treasury and Finance recently introduced a compliance based approach to strengthen the internal audit function and processes across agencies.**
- 2.5 Public scrutiny of the performance of an agency is primarily achieved through the tabling in Parliament of an annual report. Other mechanisms include performance audits conducted by the Auditor-General; review by the Parliament's Public Accounts and Estimates Committee; as well as performance information periodically released directly by agencies.**

This chapter partly covers the first term of reference, which involves assessing the existing corporate governance arrangements in the Victorian public sector.

2.1 The Victorian public sector

The Committee has adopted a broad definition of the Victorian public sector for this inquiry, including bodies and agencies operating across a spectrum of government involvement in their operations, from government departments to bodies or agencies that operate with defined 'independence' or with some practical operational autonomy from government.

Throughout this report the Committee uses the terms 'body' and 'agency' in a general way rather than to imply a specific legal or governance framework. These terms (or

derivations of these terms) may have a specific meaning under some legislation. A public sector body or agency may be required to comply with a range of governance arrangements if, for example, it meets the definitions of a ‘public body’ (Financial Management Act), ‘public entity’ (Public Administration Act), ‘prescribed authority’ (Freedom of Information Act) or ‘public statutory body’ (Whistleblowers Protection Act).

Corporate governance arrangements in the Victorian public sector can be complex. An agency or body may be subject to legislation that has broad coverage across the public sector, although in specific instances it may be made exempt from requirements that may otherwise apply. An example of how some public sector agencies and bodies are covered by specific legislation is set out in exhibit 2.1.

Throughout this report, the term ‘agencies’ generally refers to a department, or a public body as defined in the *Public Administration Act 2004* and the *State Owned Enterprises Act 1992*.

**Exhibit 2.1 Legislation applying to selected
Victorian public sector entities**

Agency/body	PSME Act	FM Act	Audit Act	FOI Act
Department of Premier and Cabinet	Yes	Yes	Yes	Yes
National Gallery of Victoria	Yes	Yes	Yes	Yes
Victorian Urban Development Authority	Yes	Yes	Yes	Yes
Monash University	Yes	Yes	Yes	Yes
Monash University International Pty Ltd	No	(a) Yes	Yes	No
South East Water Limited	No	Yes	Yes	Yes
Rural Finance Corporation	Yes	Yes	Yes	No
VicForests	No	Yes	Yes	Yes
State Trustees Limited	No	Yes	Yes	No
Port of Melbourne Corporation	Yes	Yes	Yes	Yes
Adult Multicultural Education Services	Yes	Yes	Yes	Yes
Austin Health	Yes	Yes	Yes	Yes
Emergency Communications Victoria	Yes	Yes	Yes	Yes

Exhibit 2.1 – *continued*

Agency/body	PSME Act	FM Act	Audit Act	FOI Act
Transport Ticketing Authority	No	Yes	Yes	Yes
Federation Square Management Pty Ltd	No	(a) Yes	Yes	No
Australian Grand Prix Corporation	Yes	Yes	Yes	Yes
Victorian Major Events Company Ltd	No	(a) Yes	(b) No	No

Notes: PSME Act (*Public Sector Management and Employment Act 1998, Replaced by the Public Administration Act 2004*); FM Act (*Financial Management Act 1994*); Audit Act (*Audit Act 1994*); FOI Act (*Freedom of Information Act 1982*)

(a) *Part 7 (Accountability and Reporting) only*

(b) *The Auditor-General will assume responsibility for auditing the financial statements when the contract term of the private sector auditor expires, following amendments to the Audit Act in 2003*

The corporate governance arrangements for agencies are also related to provisions that may be covered in the establishing legislation. These usually relate to the management processes and business structures. Over time, these processes and practices can become outdated. Amendments to legislation to reflect current practice and changes in an agency's functions and service delivery methods can also contribute to significant differences in the governance arrangements between agencies.

The Committee is aware the Department of Treasury and Finance maintains a database on more than 400 agencies that have a reporting relationship with the department. In its database the Department of Treasury and Finance identified ten separate public body classifications for agencies created by State Government legislation:⁶

- department – a structure established pursuant to the *Public Sector Management and Employment Act 1998* No. 45 (section 10);
- department administrative office – a structure established pursuant to the *Public Sector Management and Employment Act 1998* No. 45 (section 11);
- statutory body corporate – a body corporate established by or under an Act of Parliament with perpetual succession which may sue or be sued. Examples are TAFE colleges and the Victorian WorkCover Authority;
- statutory unincorporated body – an unincorporated body established by or under an Act of Parliament, whose members are appointed by the Governor-in-Council, Minister or other body. Examples are the Motor Car Traders Guarantee Fund Claims Committee and the Victorian Broiler Industry Negotiation Committee;

⁶ Department of Treasury and Finance, Victorian Government Organisations Database, *Public Body classifications*, www.agencies.vic.gov.au

- local purpose body – a body that may or may not be a body corporate, has a community purpose or public responsibility, and is characterised by local application such as over an asset, land or a school. Examples are a committee of management and a school council;
- body politic – a body established by an Act of Parliament that has powers of self governance including the power to elect members of its governing body. An example is a university;
- company/trust – a body incorporated under the Corporations Law, or a Trust, that is government controlled;
- state owned enterprises body – a body created pursuant to the *State Owned Enterprise Act 1992*, being one of the following:
 - state owned company;
 - state business corporation;
 - state body;
 - reorganising body.
- judicial/quasi judicial body – a court or tribunal; and
- correctional institution – a prison or community correctional centre.

The Department of Treasury and Finance also identifies agencies that are not created by State Government legislation but have reporting obligations to the department. These included unincorporated associations such as the Animal Welfare Advisory Committee and the Public Transport Access Committee. Several agencies are classified separately, having unique characteristics such as the Parliament of Victoria, the University of Ballarat TAFE Division and the Murray Darling Basin Commission.

While the legal form of each agency has some implications for corporate governance arrangements, the functions of an agency also has implications in some cases. Melbourne Health (a metropolitan health service established under the *Health Services Act 1988*) and the Victorian Commission for Gambling Regulation (which regulates gaming activities and is established under the *Gambling Regulation Act 2003*), for example, are both considered to be a statutory body, but they have significantly different corporate governance arrangements, which can primarily be attributed to their different functions.

The Committee has developed a broad function based typology of Victorian public sector bodies and agencies covering:

- trading – government-owned agencies engaged mainly in commercial activities;
- service delivery – agencies engaged in the provision of goods and services, primarily on a non-commercial basis;

- policy/review/specialist – a range of agencies and committees whose main role is to provide specialist advice (rather than advice from representative groups);
- regulatory/registration/appeal – agencies and bodies with a regulatory or registration role as well as those with a quasi-judicial, complaints or appeal role;
- trustees – agencies and bodies which manage public trusts; and
- advisory – advisory or consultative bodies that are representational in nature.

In some cases, the distinction between each type of public sector body and agency is not clear. For example, the Department of Human Services provides some disability services directly to members of the community and also acts as a regulator, with the department's drug and poisons unit overseeing the administration of controls on the manufacture, sale and supply of drugs and poisons.

The name of an agency usually indicates its functions and may also provide some insight into its corporate governance arrangements. Care should be taken, however, not to infer too much from the name given to an agency and its relationship with government and Parliament. For example, the Equal Opportunity Commission, Victorian Competition and Efficiency Commission and the Victorian Schools Innovation Commission differ significantly in their legal form and their financial management and reporting arrangements.

2.1.1 Trading agencies

Many agencies have been established with the primary objective of supplying goods and services to the community primarily on a commercial basis. In some cases, non-commercial services are provided by trading agencies under contractual agreements with other agencies. For example, State Trustees Limited provides services to certain represented persons under a community service obligation contract with the Department of Human Services.⁷ Funds received by State Trustees under the contract accounted in 2003-04 for \$9.9 million (or around 23 per cent of its total revenue).⁸

2.1.2 Service delivery

A large number of agencies have responsibility for the provision of goods and services to the community. In some cases, the community receives these services directly (such as public housing provided by the Office of Housing); in other cases, the community benefits from services indirectly as a result of services provided to other parties, such as the jobs and opportunities that flow to the community as a result of the Victorian Major Events Company Limited facilitating major events in Victoria.

⁷ Mr T. Fitzgerald, Managing Director, State Trustees Limited, transcript of evidence, 21 June 2004, p.15

⁸ State Trustees Limited, *Annual Report 2003-04*, p.42

Agencies are sometimes established at ‘arms length’ from the government, managed with some autonomy by a board of directors responsible to a Minister. For service delivery agencies, other sources of ‘independence’ from government may include:

- responsibility for the financial management and allocation of resources, whereby agencies are required to report as a separate entity for financial reporting purposes;
- limits on the capacity of Ministers to remove directors; and
- accountability to Parliament through the tabling of a separate annual report.

2.1.3 Policy/review/specialist

Policy/review/specialist advisory bodies are established to provide specialist advice to a Minister or agency on a specific issue or to facilitate discussion between a Minister or agency and stakeholders. The Committee has differentiated between these types of advisory committees and those established to provide feedback from stakeholders on particular issues (section 2.1.6).

This category includes those with a policy or coordination role, those with a review role and those with a specialist, scientific or research role in providing expert advice.

In some cases, policy/review/specialist advisory bodies are established as agencies in their own right; others are part of, and resourced by, other agencies. The Committee noted that specialist advisory bodies are usually established by legislation. For example, the Regional Development Advisory Committee, established under the *Regional Development Victoria Act 2002* (s.11), consists of the Chief Executive Officer of Regional Development Victoria and up to six other members appointed by the Governor-in-Council to:

- advise the Minister generally on matters relating to economic and community development in rural and regional Victoria and on any particular matters referred to the Committee by the Minister; and
- support the Minister in promoting rural and regional Victoria as a place in which to invest, work and live.

2.1.4 Regulatory/registration/appeal

A recent review of business regulators by the Victorian Competition and Efficiency Commission identified 69 regulators whose activities affect Victorian businesses, other private sector agencies (such as private schools and hospitals) and occupations.⁹ The Commission noted that some other organisations also perform regulatory

⁹ Victorian Competition and Efficiency Commission, *The Victorian Regulatory System*, January 2005, p.7

functions affecting businesses, including Victoria's local councils and water authorities.¹⁰

Some regulators are characterised as separate agencies, such as the Environment Protection Authority and Essential Services Commission, while other regulators operate as part of an agency, such as the Bureau of Animal Welfare (an internal unit of the Department of Primary Industries) and the Environmental Health Unit (an internal unit of the Department of Human Services).¹¹

In addition to these regulatory agencies, a number of agencies have a role in hearing appeals/complaints and/or making determinations on specific issues. These include the teachers' Merit Protection Board, the Adult Parole Board and agencies that hear complaints from members of the community such as the Office of the Victorian Privacy Commissioner and the Equal Opportunity Commission.

The corporate governance framework for regulatory/registration/appeal agencies can have a significant impact on their activities, with their degree of independence (or perceptions of their independence) from the government, service providers and other stakeholders forming an important part of how they undertake their work and how they are accountable for their actions.

2.1.5 Trustees

The Committee noted that a number of Victorian public sector agencies include the word 'trust' as part of their name, including more than ten cemetery trusts, the State Sports Centre Trust, the Melbourne and Olympic Parks Trust and the Victorian Arts Centre Trust. While some of these agencies meet a stricter definition of a trustee that relates to the management of an asset to preserve its original condition or for its intended purpose, many have the characteristics of a service delivery agency because they are also involved in the development of existing assets and the delivery of services.

Examples of agencies that act in a manner similar to that of a more strictly defined trustee include:

- the Shrine of Remembrance Trustees, which are responsible for the care, management, maintenance and preservation of the Shrine of Remembrance and improvement of the Reserve land;¹² and
- the Yarra Bend Park Trust, which manages, controls and makes improvements to the park at its discretion.¹³

¹⁰ *ibid.*

¹¹ *ibid.*, pp.24–200

¹² *Shrine of Remembrance Act 1978*, s.1

¹³ *Kew and Heidelberg Lands Act 1933*, s.7C

2.1.6 Advisory

A large number of agencies have the primary aim of providing feedback and advice on the impact of public sector agency activities. Some are established under legislation, in which case they generally have to meet governance requirements regarding membership and conduct.

Some advisory bodies are established as a result of an administrative decision and do not have a legal form. The Public Transport Access Committee, for example, comprises representatives from disability organisations and the Department of Human Services and advises the Minister for Transport and the Department of Infrastructure on issues concerning access to public transport for people with disabilities. It does not have any legal status, being formed by the Minister and supported by a secretariat in the Department of Infrastructure.

2.2 Stewardship of agencies and bodies

The arrangements that delegate authority and responsibility for the operation of agencies can be complex, involving an agency's establishing legislation (if applicable), the application of sector-wide legislation on financial management, central agency policies and practices and relationships between key parties.

This section examines some of the key arrangements that determine how agencies are managed, how governments set objectives and expectations for agencies and how those charged with the responsibility of managing an agency discharge some of these responsibilities.

2.2.1 Assigning responsibility to manage an agency or body

There are a number of different models used in the Victorian public sector to establish the management model for agencies. Each form has implications as to how those charged with the responsibility of managing agencies are accountable to Ministers, Parliament and the community. Victorian public sector agencies are generally managed in either of two ways:

- by a group of people charged with the responsibility for overseeing the management of an organisation. Day-to-day running is delegated to a chief executive officer; or
- by a single person acting as the chief executive.

Responsibility for an agency's financial management is generally allocated by the Financial Management Act to the agency's chief executive or, in the presence of a

governing board – the ‘Responsible Body’.¹⁴ The responsibility for the preparation of an agency’s financial statements is assigned to the ‘accountable officer’, which in practice is allocated to the Chief Executive Officer, the Chief Finance and Accounting Officer and a member of the Responsible Body (where relevant).¹⁵

The Committee noted some instances where the presence of a ‘board’ can give the impression that there is a board of management for an agency, when in fact a single person (usually referred to as a chief executive officer) is actually responsible for running an organisation. For example, the management of the Building Commission is assigned to a single person (the Building Commissioner) although there are four ‘boards’ that are established under legislation to regulate or advise on different aspects of the building industry (Building Appeals Board, Practitioners Advisory Board, Buildings Regulatory Advisory Committee and the Building Advisory Council).

The establishment of statutory authorities with boards of management is intended to provide for an ‘arms length’ relationship with the government, giving operational autonomy to the board to provide services or outcomes as agreed with Ministers. To varying degrees, individual members of boards have a responsibility to act in the interests of the agency and in accordance with specified duties, such as a duty to exercise reasonable care and skill.

Arrangements for the appointment of boards and chief executives of agencies usually include a role for Ministers and central agencies. The involvement of Ministers and departmental secretaries is often specified in the establishing legislation of a number of agencies, which may provide for the board to appoint a CEO ‘with the approval of the Minister’ or provide for the CEO’s terms and conditions to be ‘approved by the Secretary’. The Committee also noted instances where the position of CEO is not included in establishing legislation and, as a result, it is not clear what arrangements are in place.¹⁶ The chair of a board is usually appointed by the Minister (or Governor-in-Council).

In appointing the chief executive officer of an agency, the Ministers and central agencies have varying roles. For example:

- the board of the Metropolitan Fire and Emergency Services Board appoints the CEO with the approval of the Minister for Emergency Services;¹⁷
- the board of the Public Transport Ticketing Authority appoints the CEO with the approval of the Treasurer *and* the Minister of Transport;¹⁸

¹⁴ Department of Treasury and Finance, *Standing Directions of the Minister for Finance under the Financial Management Act 1994*, July 2003, p.10

¹⁵ *ibid.*, p.55

¹⁶ For example, the *Rail Corporations Act 1996* does not include provisions relating to the CEO for several organisations that are created under the Act including VicTrack and the Spencer Street Station Authority. A similar situation exists under the *Water Act 1989*, which establishes regional water authorities

¹⁷ *Metropolitan Fire Brigades Act 1958*, s.28

- the board of a public health service appoints the CEO and, subject to the approval of the Secretary of the Department of Human Services, determines the CEO's remuneration and terms and conditions of employment. There is no mention of involvement by the Minister for Health;¹⁹ and
- the board of City West Water appoints the CEO. There is no mention of involvement by the Treasurer or other Ministers.²⁰

2.2.2 Objectives and functions

The objectives and functions of an agency are usually specified in establishing legislation. In some cases these may be clearly specified. Where this is the case, accountability is strengthened as there is a common understanding of what the objective of an agency is and how the agency should be managed to achieve its objectives. However, in other instances, the Committee considers that the objectives and functions assigned to agencies can be conflicting, and therefore require some interpretation or definition by the agency or the government.

The Committee has noted several instances where agencies may be faced with balancing multiple, and possibly conflicting, objectives:

- the Port of Melbourne Corporation board is required to 'manage and develop the port of Melbourne in an economically, socially and environmentally sustainable manner' as well as 'to facilitate, in cooperation with other relevant responsible bodies, the sustainable growth of trade through the Port of Melbourne';²¹
- the board of the Metropolitan Ambulance Service is required to have regard to 'the need to ensure that the ambulance service uses its resources in an effective and efficient manner' whilst at the same time having an objective to respond rapidly to requests for help in a medical emergency;²² and
- a function of the Melbourne Market Authority board is to promote the use of the facilities at the Melbourne wholesale fruit and vegetable market, a function that may need to be balanced against the objective of optimising returns on land and assets controlled and managed by the Authority.²³

The Committee noted that functions and objectives of public sector agencies can, in many cases, be varied under provisions that allow Ministers to give directions to the board (or where there is no board, the CEO). In some cases the power to issue a direction may relate to all matters or relate to specific issues, such as the payment of

¹⁸ Victoria Government Gazette, State Owned Enterprises Act 1992 S14 - State Owned Enterprises (State Body - Public Transport Ticketing Body) Order 2003, No. S199, 17 June 2003, p.3

¹⁹ *Health Services Act* 1988, s.65XA

²⁰ City West Water, Memorandum of Understanding, s.69

²¹ *Port Services Act* 1995, s.12

²² *Ambulance Services Act* 1986, ss.15,18

²³ *Melbourne Market Authority Act* 1977, ss.5,6

dividends or the variation of corporate planning documents. In other cases, there are restrictions that limit the power of Ministers to issue directions. Some examples include:

- Victorian Funds Management Corporation – direction cannot be made in relation to an investment decision, dealing with property or the exercise of a voting right;²⁴
- Rural Ambulance Victoria and Metropolitan Ambulance Service – a direction issued by the Minister must not: refer to the service provided or proposed to be provided by an ambulance service to a particular person; refer to the employment or engagement of a particular person by an ambulance service; and require the supply of goods or services to an ambulance service by any particular person or organisation;²⁵
- Emergency Communications Victoria – must pay a dividend, at such times and in such manner, as is determined by the Treasurer after consultation with the board and the relevant Minister;²⁶
- Small Business Commissioner –written directions may be given to the Commissioner about the performance of the functions of the Commissioner except those functions under this, or any other, Act that are expressed to be not subject to the Minister’s directions and control;²⁷ and
- VicHealth – shall perform its functions and exercise its powers subject to any guidelines or directions on any matter or class of matters declared by the Governor-in-Council on the recommendation of the Minister after consultation with the Minister for Sport by notice published in the Government Gazette to be guidelines or directions.²⁸

Even when there is a requirement to make directions in writing, in most cases there appear to be no arrangements to make directions public. Where provisions are included in an agency’s establishing legislation there are a number of different ways that such directions are required to be made public including:

- the Minister must cause copies to be made available to members of the public on request;²⁹
- providing notice in the Government Gazette;³⁰

²⁴ *Victorian Funds Management Corporation Act 1994*, s.10

²⁵ *Ambulance Services Act 1985*, s.34B

²⁶ *State Owned Enterprises Act 1992*, s.16C

²⁷ *Small Business Commissioner Act 2003*, s.13

²⁸ *Tobacco Act 1987*, s.20

²⁹ *Health Services Act 1988*, s.40B

³⁰ see for example *Port Services Act 1995*, s.30 (Port of Melbourne Corporation, Victorian Regional Channels Authority); *Film Act 2001*, s.9 (Film Victoria) and *Emergency Communications Victoria Order-in-Council*, s.13 (Emergency Communications Victoria)

- publishing a direction in the annual report;³¹ and
- tabling in Parliament.³²

2.2.3 *Expectations and intent – corporate planning*

The process for establishing the strategic directions and functions of agencies is usually tied to the corporate planning processes, which normally requires agencies to develop an outline of future activities and details of financial forecasts for the Minister or Treasurer. The terminology used for such documents varies, but includes the content of documents referred to as ‘corporate plans’, ‘statements of corporate intent’ and ‘statements of priorities’ and ‘statements of obligations’.

The requirement to prepare such documents is usually specified in an agency’s establishing legislation, but may also be required under directions issued by the Minister. These documents provide an important source of accountability to the government and the community, which is strengthened for some boards where they are required by their establishing legislation to ‘act in accordance’ with such a statement.³³

Where corporate planning documents are required to be developed, a negotiation process is usually developed that requires the agency to provide the responsible Minister/s with a ‘draft’ plan within an agreed time period.³⁴ The responsible Minister/s is then provided with an opportunity to respond to the corporate plan. In some cases, amendments to the plan are made after ‘consultation’ between the board and responsible Minister/s³⁵ and in other cases changes may be made unilaterally by direction of the responsible Minister/s.³⁶

There is usually no requirement for corporate planning documents to be made publicly available, although the Committee has noted instances where such statements must be made available within specified limits. For example:

- public health services – statement of priorities and any variation to the statement must be made available to the public on request;³⁷

³¹ see for example *Film Act 2001*, s.9 (Film Victoria); *Victorian Funds Management Corporation Act 1994*, s.10 (Victorian Funds Management Corporation)

³² *Melbourne Water Corporation Act 1992*, s.45 (Melbourne Water Corporation); *Commissioner for Environmental Sustainability Act 2003*, s.10 (Commissioner for Environmental Sustainability)

³³ see for example, *Electricity Safety Act 1988*, s.21; *Queen Victoria Women’s Centre Act 1994*, s.19; *Melbourne Convention and Exhibition Trust Act 1996*, s.25

³⁴ see for example, *State Owned Enterprises Act 1992*, s.41 (for State Business Corporations); *Melbourne Water Corporation Act 1992*, ss.34–41; *Zoological Parks and Gardens Act 1985*, s.18

³⁵ see for example, *Port Services Act 1995*, s.33; *Rail Corporations Act 1996*, s.27; *State Sports Centres Act 1994*, s.30

³⁶ See for example, *Zoological Parks and Gardens Act 1985*, s.18; *Ambulance Services Act 1985*, s.22E; *Victorian Managed Insurance Agency Act 1996*, s.19

³⁷ *Health Services Act 1988*, s.65ZFA

- regional water authorities – an up to date corporate plan must be available at the Authority’s office during business hours for inspection on request,³⁸ and
- port corporations – the corporate plan, or any part of the plan, must not be published or made available without the prior approval of the board, Minister and the Treasurer.³⁹

2.2.4 Management performance

The Committee has identified more than 160 boards of management in the Victorian public sector that are legally charged with the responsibility for the operation of an agency – as opposed to boards fulfilling an ‘advisory’ or ‘regulatory’ role. These boards of management are responsible for the operation of a range of agencies, covering services delivered by a grouping of public hospitals and health services to the commercial activities associated with the delivery of water, gas and transport services.

The Committee is unaware of any information on the direct cost to the public sector as a whole of individuals serving on public sector boards. The Committee noted that the cost is likely to vary substantially depending on the size and complexity of the agency. An examination of selected agencies’ 2003-04 annual reports revealed the direct costs associated with different types of boards including:

- metropolitan water supplier – annual fees per director of around \$30,000, Chair - \$75,000, total board payments around \$285,000;⁴⁰
- metropolitan ambulance service – annual fees per director of around \$15,000, Chair - \$30,000, total board payments around \$110,000;⁴¹
- regional water authority – annual fees per director of around \$25,000, Chair - \$45,000, total board payments around \$180,000;⁴² and
- metropolitan health service – annual fees per director of around \$15,000, Chair - \$25,000, total board remuneration \$135,000.⁴³

The Committee also noted instances where members of governing boards are not paid, such as in the National Gallery of Victoria,⁴⁴ the Robinvale District Health Service⁴⁵ and Museum Victoria.⁴⁶

³⁸ *Water Act 1989*, s.249

³⁹ *Port Services Act 1995*, s.33

⁴⁰ South East Water Limited, *Annual Report 2003-04*, p.56; Commissioner for Public Employment, *Annual Report 2003-04*, p.82

⁴¹ Metropolitan Ambulance Service, *Annual Report 2003-04*, p.86

⁴² Coliban Water, *Annual Report 2003-04*, p.69

⁴³ Austin Health, *Annual Report 2003-04 Financial Statements*, p.33

⁴⁴ Council of the Trustees of the National Gallery of Victoria, *Annual Report 2003-04*, p.148

⁴⁵ Robinvale District Health Services, *Annual Report 2003-04*, p.78

⁴⁶ Museum Victoria, *Annual Report 2003-04 Financial Statements*, p.10

(a) *Appointments to boards of management*

The processes used to make appointments to Victorian public sector agency boards of management are based on a number of formal requirements and practices that have evolved over time in different departments.

The power to appoint people to an agency board is usually specified in an agency's enabling legislation. The power to make appointments is usually allocated to a Minister, although in many instances appointments may be made jointly or with the approval of the Governor-in-Council (exhibit 2.2).

**Exhibit 2.2: Appointments to a board of management
– selected Victorian public sector agencies**

Agency	No. of members	Appointed by
Rural Finance Corporation	Not less than 5 and not more than 7	Governor-in-Council
Metropolitan Fire Brigade	Up to 7	Governor-in-Council
Country Fire Authority	12	Governor-in-Council
Melbourne Water Corporation	Not less than 3 (specifies Chair, deputy chair and managing director) and not more than 6 others	Minister (for Water)
Rural Ambulance Victoria	Not less than 4 and not more than 12	Governor-in-Council on the recommendation of the Minister
Public hospitals	Not less than 6 and not more than 12	Minister (for Health)
Emergency Communications Victoria	Not less than 2 (including Chair) and not more than 6 others	Governor-in-Council on recommendation of the Treasurer and relevant Minister (Emergency Services?)
VicForests	Not less than 4 and not more than 9	Governor-in-Council on the recommendation of the Treasurer
Museums Board of Victoria	Not less than 7 and not more than 11	Governor-in-Council
Victorian Health Promotion Foundation (VicHealth)	14	Minister (for Health)
Adult Multicultural Education Services	Not less than 9 and not more than 15	Minister (for Education) appoints not less than one half of the board

Sources: Rural Finance Act 1988, s.8; Metropolitan Fire Brigades Act 1958, s.9; Country Fire Authority Act 1958, s.7; Melbourne Water Corporation Act 1992, s.19, The managing director is appointed by the board but appointment must be approved by the Minister; Ambulance Services Act 1985, s.17; Health Services Act 1988, s.33; State Owned Enterprises (State Body – Emergency Communications Victoria) Order 2002, s.5; State Owned Enterprises (State Body – VicForests) Order 2003, s.4; Museums Act 1983, s.11; Tobacco Act 1987, s.21; Adult, Community and Further Education Act 1991, s.49

In many cases, an agency's enabling legislation also specifies requirements or attributes that an individual, or group of individuals making up the board, is required to meet. These requirements are usually based around relevant skills and experience. In some cases, appointment to a board of management requires membership of a specific organisation or as an elected representative of stakeholders in an organisation (exhibit 2.3).

Exhibit 2.3: Specific requirements for appointment to a board of management – selected Victorian public sector agencies

Agency	Requirements specified in establishing legislation
Melbourne Water Corporation	The Minister must ensure that, as far as possible, the board members have qualifications and experience relevant to the operations of the Corporation.
Emergency Communications Victoria	Appointments must have regard to the expertise necessary for Emergency Communications Victoria to achieve its functions and objectives.
VicForests	Appointments must have regard to the expertise necessary for VicForests to achieve its functions and objectives.
Museums Board of Victoria (d)	<p>Half of the board shall be chosen from persons:</p> <ul style="list-style-type: none"> • holding senior academic office at a University in Victoria in a discipline appropriate to the functions of the Board; • who, in the opinion of the Minister (for the Arts), are experienced in business administration and finance; and • who, in the opinion of the Minister, are distinguished in education, science, the history of human society or another field appropriate to the functions of the board. <p>A person who has been a member of the board for nine consecutive years ceases to hold office and is not eligible for re-appointment unless the person is, or immediately before the expiry of the ninth consecutive year the person was, the President; or a period of three years or more has elapsed since the person was last a member of the board.</p>
Rural Finance Corporation	One of the members appointed by the Governor-in-Council must be appointed on the recommendation of the Treasurer.
Country Fire Authority	<p>Two members selected from a panel of not fewer than four names submitted by the Minister for the Environment.</p> <p>Two members selected from a panel of not fewer than four names submitted by the governing body of the Country Fire Authority.</p> <p>Two members selected from a panel of not fewer than four names submitted by the governing body of the Metropolitan Fire Brigade.</p> <p>Two members selected from a panel of not fewer than four names submitted by the Insurance Council of Australia.</p> <p>One member selected from a panel of not fewer than two names each of whom is a councillor of a municipal council who represents a ward in an urban area submitted by the Municipal Association of Victoria.</p> <p>One member selected from a panel of not fewer than two names each of whom is a councillor of a municipal council who represents a ward in a rural area submitted by the Municipal Association of Victoria.</p>

Exhibit 2.3 – *continued*

Agency	Requirements specified in establishing legislation
Rural Ambulance Victoria	In making a recommendation to the Governor-in-Council for appointment, the Minister must ensure that women and men are adequately represented.
Victorian Health Promotion Foundation (VicHealth)	<p>The board is required to consist of:</p> <ul style="list-style-type: none"> • three persons with expertise in health and illness prevention, one of whom shall be chosen by the Minister from a panel of three names submitted by the Anti-Cancer Council; • four persons with expertise in sport or sports administration, one of whom shall be chosen by the Minister from a panel of three names submitted by the Sports Federation of Victoria or, if that body ceases to exist, another body representing amateur sport in Victoria and nominated by the Minister and one of whom shall be nominated by the Minister as representing country sport; • two persons with expertise in business, management, communications or law; • one person with expertise in the arts or arts administration; • one person with expertise in advertising; and • three persons who are members of the Legislative Council or the Legislative Assembly elected by the Legislative Council and Legislative Assembly jointly
Adult Multicultural Education Services	<p>The board is required to consist of:</p> <ul style="list-style-type: none"> • one must be a staff member of the institution elected by staff of the institution; • one must be a student of the institution elected by students of the institution; • one must be the director of the institution; • the remaining members must be persons with knowledge of or experience in the community or any industry served by the institution or in adult, community and further education or with special skills or knowledge relevant to the governing board appointed by the governing board by co-option. <p>A member of Parliament must not be appointed or elected to be a member of a governing board.</p>

Sources: *Melbourne Water Corporation Act 1992, s.20; State Owned Enterprises (State Body – Emergency Communications Victoria) Order 2002, s.5; State Owned Enterprises (State Body – VicForests) Order 2003, s.4; Museums Act 1983, s.11; Rural Finance Act 1988, s.10; Country Fire Authority Act 1958, s.7; Ambulance Services Act 1985, s.17; Tobacco Act 1987, s.21; Adult, Community and Further Education Act 1991, s.49*

In relation to the promotion of groups traditionally underrepresented on boards, the Committee noted that recent amendments to the *Ambulance Services Act 1988* by the Victorian Parliament included a requirement that in making recommendations for

appointment, the Minister must ensure that women and men are ‘adequately’ represented.⁴⁷

The Committee understands that in practice, where a board vacancy occurs, the department that oversees the agency assumes the responsibility for preparing advice for the Minister which then forms the basis of a Cabinet submission.

There are overarching guidelines prepared by the Department of Premier and Cabinet that provide direction to departments in filling board vacancies.⁴⁸ Although the guidelines include a mix of approaches that can be used to attract a cross section of interested and suitable candidates, they do not mandate a specific approach that must be used in making nominations for appointments. However, the guidelines do state that:⁴⁹

due process and the principles of merit selection are to be observed in the appointment process.

The Committee is aware that departments use a range of methods to identify potential candidates including advertising vacant positions, seeking advice from existing board members on the skills and potential candidates for positions, obtaining advice from the Office of Women’s Policy on suitable candidates identified on a register of women expressing an interest in serving on government boards, and using recruitment agencies to identify suitable candidates. The Committee also noted that some individual departments maintain registers of people that have specialist skills in specific areas.⁵⁰

In addition to the Department of Premier and Cabinet guidelines, the Committee is aware that several departments have prepared guidelines and processes that apply to specific types of agencies including:

- Community Health Centres – Guidelines for the governance, election and appointment of boards of declared community health centres (Department of Human Services, May 2004);
- Arts agencies – *Arts Portfolio Governance Handbook* (Arts Victoria, November 2003);
- Metropolitan Health Services – Expressions of interest for appointment to a board of directors of a Metropolitan Health Service Guidelines and information for applicants (Department of Human Services, September 2004); and

⁴⁷ *Ambulance Services (Amendment) Act 2004*, s.11

⁴⁸ Department of Premier and Cabinet, *Guidelines for the appointment and remuneration of part-time non-executive directors of state government boards and members of statutory bodies and advisory committees*, January 2003 revision

⁴⁹ *ibid.*, p.5

⁵⁰ Mr A. Hawkes, Director, Commercial and Financial Risk Management Group, Department of Treasury and Finance, transcript of evidence, 5 April 2004, p.18

- Universities – Guidelines for the appointment and remuneration of part-time non-executive directors of state government boards and members of statutory bodies and advisory committees: A reference guide for universities (2001);

(b) Board performance

The effective operation of a board is likely to be largely due to the competence of individual board members and their capacity to work together as a group.

Although the regulation of board meetings is sometimes included in the establishing legislation of an agency, the operation of the board (such as the timing and conduct of meetings) is usually the responsibility for the board. In some cases this responsibility is explicitly assigned to the board (exhibit 2.4).

Exhibit 2.4: Specific requirements regulating the conduct of board activities – selected agencies

Agency	Requirements specified in establishing legislation
Rural Ambulance Victoria	The procedure of the board is at the discretion of the board.
Rural Finance Corporation	Establishing legislation includes detailed requirements including the number of members required for a quorum, the conduct of voting, requirements for minute taking and the making of resolutions without meetings.
Country Fire Authority	Establishing legislation includes detailed requirements including the number of members required for a quorum, the number of meetings (12 per year), notice required for meetings, the conduct of voting and requirements for minute taking.
Metropolitan Fire Brigade	Meetings shall be held at the times and places determined by the board. Other matters specified by the establishing legislation include the number of members constituting a quorum (four out of 7), the keeping of minutes, the participation in meetings by telephone and the making of resolutions without meetings.
Museums Board of Victoria	Meetings to be held at times and places as fixed by the President and shall hold at least six meetings in each year. Other matters specified by the establishing legislation include the number of members constituting a quorum (majority) and the making of resolutions without meetings.
Adult Multicultural Education Services	The board may regulate its own proceedings. The governing board may permit members to participate in a particular meeting, or all meetings, by telephone, closed circuit television or other means of communication.

Exhibit 2.4 – *continued*

Agency	Requirements specified in establishing legislation
VicForests	Meetings of the board shall be held at such times and places as the board determines. Other matters specified include the chairman may at any time convene a meeting but must do so when directly requested by another board member, the number of members required for a quorum (majority), the keeping of minutes and the making of resolutions without meetings.
Melbourne Water Corporation	Meetings of the board shall be held at such times and places as the board determines. The Chair may at any time convene a meeting but must do so when requested by at least four board members. Other matters specified include the keeping of minutes, the number of members required for a quorum (majority), participation by telephone and the making of resolutions without meetings.

Sources: *Ambulance Services Act 1985, s.19; Rural Finance Act 1988, ss.13–13A; Country Fire Authority Act 1958, ss.10–11, 12; Metropolitan Fire Brigades Act 1958, ss.18–20; Museums Act 1983, s.12–12A; Adult, Community and Further Education Act 1991, s.49D; State Owned Enterprises Act 1992, ss.32–33; Melbourne Water Corporation Act 1992, ss.31–32*

In many instances, the conduct of board members is regulated in an agency's establishing legislation through provisions relating to the disclosure of interests and duties. These duties are largely modelled on those applying through common law or specified in the Corporations Act.

The duties specified in the establishing legislation for existing entities can be added to by a set of standard provisions introduced by the *Public Administration Act 2004*. The Act specifies that:⁵¹

A director of a public entity must at all times in the exercise of the functions of his or her office act:

- *honestly; and*
- *in good faith in the best interests of the public entity; and*
- *with integrity; and*
- *in a financially responsible manner; and*
- *with a reasonable degree of care, diligence and skill; and*
- *in compliance with the Act or subordinate instrument or other document under which the public entity is established.*

⁵¹ *Public Administration Act 2004, s.79*

These duties can be made applicable to existing entities through an order of the Governor-in-Council published in the Government Gazette.⁵² The Committee is aware that the Act includes a provision that gives priority to these requirements unless a more stringent condition is included in an agency's establishing legislation.⁵³

The Committee noted that the Public Administration Act also includes provisions relating to the improper use of position or information to gain an advantage or cause detriment, and a requirement to notify the board if a member decides to stand for election to local, state or federal governments than can be applied to existing agencies.⁵⁴

2.2.5 Financial management

The Financial Management Act provides for the Minister for Finance to issue directions to departments and public bodies in relation to processes and standards that must be adhered to by the 'accountable officer' of an agency.⁵⁵ The directions issued by the Minister for Finance specifies a number of matters including:⁵⁶

- implementing and maintaining appropriate financial management practices; and
- achieving a consistent standard of accountability and financial reporting.

The directions also cover a range of matters that agencies are generally required to implement including:⁵⁷

- financial management governance and oversight – includes financial code of practice, audit committee, appropriate enterprise-wide risk management processes, delegations of authority, internal audit and external audit;
- financial management structure, systems, policies and procedures – such as appropriate systems of internal control, information technology management, and appropriate education and training for financial management staff; and
- financial management reporting – includes timely, accurate, appropriate and effective internal financial management reporting, annual reporting requirements, identifying other external reporting requirements and developing appropriate financial management performance indicators to monitor performance.

⁵² *ibid.*, s.75

⁵³ *ibid.*, s.76

⁵⁴ *ibid.*, s.79

⁵⁵ *Financial Management Act* 1994, s.8

⁵⁶ Department of Treasury and Finance, *Standing Directions of the Minister for Finance under the Financial Management Act*, July 2003

⁵⁷ *ibid.*, p.1

The Department of Treasury and Finance developed and issued a Financial Management Package in 1994 consisting of the *Financial Management Act 1994*, *Audit Act 1994*, Financial Management Regulations, Standing Directions of the Minister for Finance and Financial Reporting Directions.

The Minister of Finance issued an update of the Standing Directions which took effect from 1 July 2003. These directions complement the legislation by outlining obligations and procedures that must be met by agencies that meet the definitions of 'department' or 'public body' under the Act. The Committee noted that the revised directions took into account the principles espoused in the Australian Stock Exchange's *Corporate Governance Council Principles of Good Corporate Governance and Best Practice Recommendations* released in March 2003.⁵⁸

Within the financial management governance and oversight component of the directions, there is mandatory compliance by agencies in terms of the operations of the audit committee and the internal audit group.

In terms of the audit committee, some of the major mandatory requirements include:⁵⁹

- the appointment of an audit committee to oversee and advise the agency on matters of accountability and internal control unless an exemption is obtained;
- the appointment of at least two independent members to the Committee, one of which must be chairperson, and these must be identified in the annual report;
- the establishment of a charter which must be approved by the responsible body and reviewed at least every three years;
- the adequate resourcing of the audit committee in terms of size, expertise, and independence;
- the holding of meetings at least four times a year and conducting an annual review of the audit committee's performance; and
- the holding of qualifications by audit committee members in basic financial literacy as well as members possessing a reasonable knowledge of the agency's risks and controls and personal qualities such as integrity.

In terms of the internal audit function, some of the mandatory requirements include:⁶⁰

- the establishment of an adequately resourced and independent internal audit function with appropriate access to personnel and records;
- the approval of the audit charter by the responsible body; and

⁵⁸ Department of Treasury and Finance, *Whole of Government Financial Management Compliance Framework: Explanatory framework document*, July 2003, p.8

⁵⁹ Department of Treasury and Finance, *Standing Directions of the Minister for Finance under the Financial Management Act 1994*, July 2003, pp.21–22

⁶⁰ *ibid.*, p.21

- the development of an internal audit plan approved by the audit committee to address relevant aspects of the agency's risk profile.

The Committee noted that the revised directions included the introduction of a *Financial Management Compliance Framework*, which aims to assist public sector agencies meet their obligations and effectively monitor and review their overall performance in financial management.⁶¹ The framework applies to more than 300 agencies that are included in the whole of government consolidated Annual Financial Report for the State of Victoria, although agencies incorporated under the *State Owned Enterprises Act 1992* are encouraged to apply the reporting requirements on a voluntary basis.⁶²

Agencies subject to the Financial Management Compliance Framework are required to annually certify that they comply, partially comply, or are not compliant, with the Minister for Finance Directions.⁶³ Each agency is then required to provide an annual certification letter to the department, which is then required to forward a summary report of agencies falling within its portfolio to the Minister for Finance.⁶⁴

2.3 External scrutiny

Public sector agencies are subject to external scrutiny in several ways. For many agencies, one of the most important avenues of scrutiny is regular reporting and communication with central agencies.

2.3.1 Central agencies and departments

Central agencies/departments usually have a role in monitoring the activities of agencies and bodies. In some cases, a formal role is established for an agency or body in its establishing legislation. For example, the *Health Services Act 1988* assigns a number of roles to the Secretary of the Department of Human Services including developing policies and plans with respect to health services provided by health care agencies; developing criteria or measures that enable comparisons to be made between the performance of health care agencies providing similar services; and advising the Minister for Health on the operation of the Act.⁶⁵

The formal role of central agencies/departments in the ongoing monitoring of agencies is also established under policies issued by departments. For example, some agencies are required to report financial information monthly to the Department of Treasury and Finance.⁶⁶ The establishing legislation of some agencies/bodies sometimes

⁶¹ Department of Treasury and Finance, *Whole of Government Financial Management Compliance Framework: Explanatory framework document*, July 2003, p.2

⁶² *ibid.*, p.7

⁶³ *ibid.*, p.19

⁶⁴ *ibid.*, p.18

⁶⁵ *Health Services Act 1988*, s.11A

⁶⁶ Department of Treasury and Finance, *Monthly Financial Report Process Guide*, undated

requires agencies to provide information to a department/Minister on a regular or an ad hoc basis. For example, many agencies are required to immediately notify the relevant Minister and Treasurer of events significantly affecting the achievement of the objectives or targets of the corporation and its subsidiaries under the corporate plan.⁶⁷

The Committee noted a form of monitoring that applied to three financial agencies, which are required to provide a copy of the minutes of each meeting to the Minister and the Treasurer within three days after the meeting at which they are so signed.⁶⁸ This formal monitoring appears to be rare, with the Committee unable to identify any other agencies which had similar requirements.

As discussed, the Financial Management Compliance Framework allocates responsibility to a department to collect certification statements from its portfolio agencies and report on an exception-based format to the Department of Treasury and Finance on:⁶⁹

- entities not providing certification (and why);
- summary of key portfolio risks/issues identified and action taken (with details to be provided in an appendix); and
- summary of training/knowledge management activity undertaken and planned.

The Public Administration Act also potentially strengthens the monitoring role of central agencies by including provisions that apply to all newly created agencies (and retrospectively to existing agencies by order of the Governor-in-Council) for the provision of financial and non-financial information in a time and manner specified.⁷⁰

2.3.2 Auditor-General

The Auditor-General performs a key accountability role in the Victorian public sector. A primary responsibility of the Auditor-General is the financial audit of departments and public bodies. Other roles performed by the Auditor-General relate to undertaking performance audits and, more recently, providing assurance on performance information reported in selected agencies' annual reports.

⁶⁷ See for example, *State Owned Enterprises Act 1992*, s.54; *Dandenong Development Board Act 2003*, s.25; *Rail Corporations Act 1996*, s.31; *Zoological Parks and Gardens Act 1985*, s.20

⁶⁸ *Rural Finance Act 1988*, s.13; *Treasury Corporation of Victoria Act 1992*, s.19; *Victorian Managed Insurance Agency Act 1996*, s.15

⁶⁹ Department of Treasury and Finance, *Whole of Government Financial Management Compliance Framework: Explanatory framework document*, July 2003, p.12

⁷⁰ *Public Administration Act 2004*, ss.93–94

(a) Financial audit

The Auditor-General undertakes annual financial audits of around 600 entities, which have annual revenues and expenses of around \$40 billion and hold over \$47 billion in assets.⁷¹ The Committee noted that around 64 per cent of audits are performed by contractors.⁷² The Auditor-General also audits the Annual Financial Report (a consolidated financial report of the State) and reviews the Estimated Financial Statements included in the State Budget.⁷³

As part of the financial audit process, the Auditor-General's review of financial statements includes assessments of an agency's internal control structures such as those relating to procedures and systems.

(b) Performance audit

Under s.16 of the *Audit Act* 1994, the Auditor-General is able to conduct any audit he considers necessary to determine whether:

- an authority is achieving its objectives effectively and doing so economically and efficiently and in compliance with all relevant Acts; or
- whether the operations or activities of the whole or any part of the Victorian public sector (whether or not those operations or activities are being performed by an authority or authorities) are being performed effectively, economically and efficiently and in compliance with all relevant Acts.

In recent years, the Auditor-General has carried out around ten large-scale performance audits per year across a range of public sector activities.⁷⁴ In some cases, performance audits have been concentrated on the activities of a specific agency and, in other cases, the audits have covered issues that involve the activities of a number of agencies.

Performance audits provide an independent assurance to Parliament and the community that funds appropriated for particular activities are spent appropriately and in accordance with Parliament's expectations. Furthermore, performance audits reinforce the accountability of Ministers and public sector managers for their performance, as well as recognising and advising Parliament of management initiatives and achievements.⁷⁵

⁷¹ Victorian Auditor-General's Office, *Annual Report 2003-04*, p.27

⁷² *ibid.*

⁷³ *ibid.*

⁷⁴ Victorian Auditor-General's Office, *Annual Report 2003-04*, p.10; *Annual Report 2002-03*, p.12

⁷⁵ Victorian Auditor-General's Office, *Performance auditing explained*, www.audit.vic.gov.au/abt_performance_auditing.html, accessed 1 May 2005

(c) Assurance on performance assessments

The Audit Act was amended in 1999 to provide a discretionary mandate for the Auditor-General to audit any performance indicators in the report of operations of an agency to determine whether they:⁷⁶

- are relevant to any stated objectives of the authority;
- are appropriate for the assessment of the authority's actual performance; and
- fairly represent the authority's actual performance.

The former Public Accounts and Estimates Committee indicated in its 1999 report on annual reporting in the Victorian public sector that providing assurance on performance reports will be of assistance to users of the performance information as well as helping to contribute to improvements in the quality of the information reported in future.⁷⁷ By auditing performance information, any systemic shortcomings identified by the auditors will likely be corrected so that the agency in question will get a clear opinion.⁷⁸ As a result, external auditing by the Auditor-General is expected to have a direct impact on the quality of reported information.

In May 2004, Financial Reporting Direction no. 27 was issued by the Department of Treasury and Finance requiring water authorities to present and report performance information in an audited statement of performance as part of their report of operations. The direction applied to performance reporting for 2003-04.

Under the *Local Government Act* 1989, the Auditor-General is required to provide an opinion covering key strategic activities and associated performance targets and measures for Victoria's 79 local councils. Performance reporting by water authorities and local councils commenced for the 2003-04 reporting period.

There are, however, no requirements for similar performance reporting to occur for other areas of the Victorian public sector.

2.3.3 Ombudsman

Although the Ombudsman has specific powers in relation to several matters including the administration of the Freedom of Information Act and the conduct of police, the Ombudsman provides a more general oversight function in relation to public sector agencies.

⁷⁶ *Audit (Amendment) Act* 1999, s.11

⁷⁷ Public Accounts and Estimates Committee, *Annual Reporting in the Victorian Public Sector*, May 1999, p.63

⁷⁸ Mayne, J. and Wilkins, P., 'Believe it or not?: The emergence of performance information auditing', in Schwartz, R. and Mayne, J. (eds), *Quality matters: Seeking confidence in evaluation, auditing and performance reporting*, 2004

The Premier advised the Committee that the Ombudsman's principal function is to investigate administrative action taken by any department or public statutory agency, excluding certain types of actions, such as actions relevant to terms and conditions of employment.⁷⁹ Administrative action is defined by the Ombudsman Act to mean 'any action relating to a matter of administration, and includes:⁸⁰

- a decision and an act;
- the refusal or failure to take a decision or to perform an act;
- the formulation of a proposal or intention; and
- the making of a recommendation (including a recommendation made to a Minister);

Although the Ombudsman has no power of enforcement, he may conduct an investigation into such matters and on conclusion of the investigation, can make recommendations to a relevant authority, which might be for example a department.⁸¹

The jurisdiction of the Ombudsman extends to departments and 'public statutory bodies', defined by the Ombudsman Act as 'a body of persons, whether corporate or unincorporate, constituted or established under an Act for a public purpose, in respect of which the Governor-in-Council or a Minister has a right to appoint all or some of its members and includes State Trustees'.⁸²

The Premier advised the Committee that the jurisdiction of the Ombudsman was fairly narrow, partly because there exist a range of other remedies applicable to administrative action including legal action in courts and tribunals.⁸³

The Committee noted the views of the Ombudsman in relation to the benefits provided by reviews of administrative actions:⁸⁴

- *Improved State and local government administration creates confidence in the effectiveness and efficiency of that administration. It is also of benefit to the government to have an independent body to ensure that aggrieved citizens, including those who are institutionalised, have their grievances objectively considered in a speedy and inexpensive way and to... have citizens... grievances... addressed. Government also benefits in having a single body to which citizens can directly and inexpensively approach to seek quick advice and assistance.*

⁷⁹ Hon. S. Bracks, MP, Premier of Victoria, submission no. 53, p.15

⁸⁰ *Ombudsman Act 1973*, s.2

⁸¹ Hon. S. Bracks, MP, Premier of Victoria, submission no. 53, p.15

⁸² *Ombudsman Act 1973*, s.2

⁸³ Hon. S. Bracks, MP, Premier of Victoria, submission no. 53, p.15

⁸⁴ Ombudsman Victoria, *Twenty five years of serving Parliament and the Community*, p.xxxi

- *Parliament, by way of the Annual and Special Reports tabled by the Ombudsman, has been informed about important issues arising from complaints about government administration and about a whole range of issues dealt with by the Ombudsman which have been raised publicly and have been of public concern. Moreover, individual members of Parliament have succeeded in gaining redress for their constituents by referring complaints to the Office or to have their own concerns about government administration addressed and fully reported on.*

2.3.4 Parliament

The main way that the Victorian Parliament scrutinises public sector agency performance is through agencies tabling annual reports. In 2004, the annual reports of more than 420 agencies/bodies were presented to Parliament or the Minister notified Parliament that an annual report has been presented to a Minister.⁸⁵ The Department of Treasury and Finance lists around 390 agencies that are required to prepare annual reports under the Financial Management Act.⁸⁶

The Committee is aware that parliamentary scrutiny of annual reports is limited because of the volume of reports tabled and the constricted timing of tabling.

While Parliaments in other jurisdictions have delegated responsibility to Committees established for the specific purpose of examining annual reports, this function is carried out primarily by this Committee through its review of the budget outcomes, which involves a detailed examination of the annual reports of ten departments and some of the major agencies, such as Victoria Police.

2.3.5 Public

Information on the performance of agencies is available to the public primarily through annual reports. In addition, performance information is included in the Budget Papers to assess the quantity, quality and timeliness of outputs.

In some cases, performance information about agencies is also publicly available in selected areas such as:

⁸⁵ Parliament of Victoria, Legislative Assembly, Votes and Proceedings 2004

⁸⁶ Department of Treasury and Finance, Victorian Government Organisations Database, (www.agencies.vic.gov.au). The difference between the number of reports tabled and entities required to table annual reports (or provide reports to a Minister who then is required to inform Parliament that the report has been received) is mainly due to some reports being carried over from previous years, reports being tabled without a formal legislative requirement (for example the Health Services Commissioner) and reports relating to entities jointly controlled with other governments (for example the Murray Darling Basin Commission and Snowy Hydro Ltd)

- hospital waiting times – published approximately quarterly by the Department of Human Services in the *Hospital Services Report*;⁸⁷
- serious adverse events in public health services – published annually by the Department of Human Services in the *Sentinel event program: Annual report 2003-04*;⁸⁸
- public housing waiting lists – published approximately quarterly by the Office of Housing (a division of the Department of Human Services) in the *Office of Housing Waiting List Information*;⁸⁹ and
- Public transport operator performance – published approximately monthly and quarterly by the Department of Infrastructure in *Track Record*.⁹⁰

The Minister for Health recently announced changes to the way hospital performance was reported, with web-based reporting that would allow patients and their doctors to compare hospitals' waiting times for different procedures, as well as reporting on waiting times for dental services.⁹¹ The Committee welcomes this development, and considers that it provides more accessible and useful information than was previously available.

The availability of such information is not specifically mandated in legislation, and relies on policy decisions taken by government. Other information periodically released by the government has included information on waiting lists for disability services,⁹² six-monthly information on crime statistics⁹³ and annual comparative information on metropolitan water and sewerage supply services.⁹⁴

Performance information on Victorian agencies may also be available from agencies external to the Victorian public sector. The Committee noted several sources from which performance information was available including:

- comparative information on the provision of a wide range of social services is published on an annual basis by the Productivity Commission;⁹⁵ and
- the implementation of the Commonwealth–State/Territory health, aged care, housing and disability agreements by the Australian Institute of Health and Welfare.⁹⁶

⁸⁷ Department of Human Services, www.health.vic.gov.au/hsr/, Hospital Services Report website

⁸⁸ Department of Human Services, *Sentinel event program: Annual report 2003-04*, November 2004

⁸⁹ Department of Human Services, Office of Housing Waiting List information, <http://hnb.dhs.vic.gov.au/ooh/oohninte.nsf/frameset/Ooh?Opendocument>

⁹⁰ Department of Infrastructure, Track Record, www.doi.vic.gov.au

⁹¹ Hon. B. Pike, MP, Minister for Health, media release, *New website gives patients a priority pick for surgery*, 15 April 2005

⁹² Victorian Parliamentary Debates, Legislative Council, questions on notice, 16 December, p.2296

⁹³ Victoria Police, Victoria Police Crime Statistics, www.police.vic.gov.au

⁹⁴ Essential Services Commission, Industry Performance Reports, www.esc.vic.gov.au

⁹⁵ Productivity Commission, *Report on Government Services*, February 2004

Other mechanisms include the Freedom of Information Act and public reporting on contracts entered into by departments and selected agencies. These are discussed in more detail below.

(a) Freedom of information

Victoria was the first Australian state to implement freedom of information legislation following the introduction of legislation at a Commonwealth level in 1982. Introducing the legislation into Parliament, the then Premier (Hon. J. Cain, MP) stated:⁹⁷

The Bill is based on three major premises relating to democratic society, namely:

- *The individual has a right to know what information is contained in Government records about him or herself.*
- *A Government that is open to public scrutiny is more accountable to the people who elect it.*
- *Where people are informed about Government policies, they are more likely to become involved in policy making and in Government itself.*

The Act promotes public accountability by requiring agencies to publish and make available specified information and by providing rights of access to documents in the possession of Ministers and agencies. It also enhances personal privacy by providing rights to amend personal records.

The Act applies to departments and ‘prescribed authorities’, which is defined broadly in the Act.⁹⁸ The Committee noted that in 2003-04 the Act applied to 335 agencies (including local government and community health centres).⁹⁹ Agencies not covered by the Freedom of Information Act include State Trustees Limited, Federation Square Management Pty Ltd and the Victorian Major Events Company Limited.

An important feature of the Act is universal right of access to documentary information in the possession of departments and agencies (including local government). This right is subject to a number of exemption provisions including:¹⁰⁰

⁹⁶ See for example, Australian Institute of Health and Welfare, *Homeless People in SAAP: SAAP National Data Collection Annual Report 2003-04*, March 2005; *Mental Health Services in Australia 2002-03*, February 2005; *General Practice Activity in Australia 2003-04*, December 2004

⁹⁷ Victorian Parliamentary Debates, Legislative Assembly, 14 October 1982, Vol. 367, p.1061

⁹⁸ *Freedom of Information Act 1982*, s.5

⁹⁹ Department of Justice, *Freedom of Information 2004*, October 2004, pp.15–26

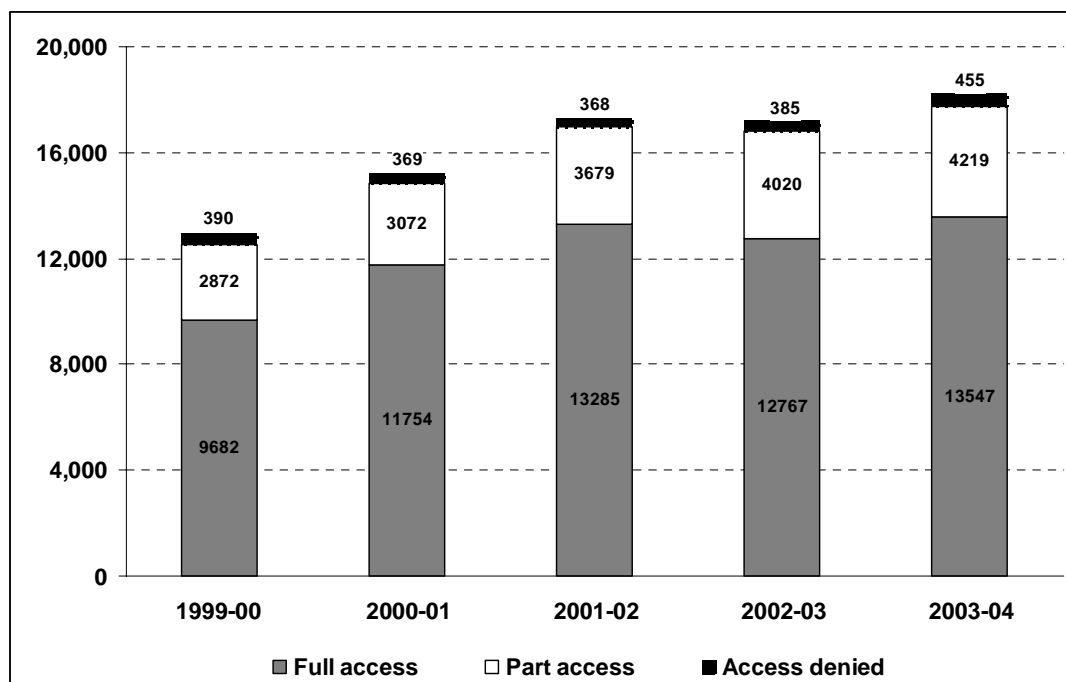
¹⁰⁰ *Freedom of Information Act 1982*, ss.28–38A

- cabinet documents (subject to a ten year period after which the document came into existence);
- documents affecting national security, defence or international relations;
- internal working documents; and
- law enforcement documents.

Decisions on requests must be made as soon as practicable, but, in any case, within 45 days.¹⁰¹ The time limit may be extended in cases where the agency is required to consult third parties before deciding about access. Applicants are required to pay an application fee (\$20.50) and additional fees for time spent in search of retrieval, compilation of information, computer use and photocopying.¹⁰²

The Committee noted that there had been an increase in the number of applications under the Freedom of Information Act, with the number of applications in 2003-04 being 6,636 (47 per cent) more than in 1999-2000. Of those applications decided on in each year since 1999-00, an average of 75.5 per cent of applications were granted access in full, 22 per cent were granted part access and access was denied to around 2.5 per cent of applications (exhibit 2.5).

Exhibit 2.5 Freedom of Information – access decisions on requests



Sources: Department of Justice, *Freedom of Information 2004: Annual report by the Attorney-General of Victoria*, p.7 and previous issues

¹⁰¹ *ibid.*, s.21

¹⁰² *ibid.*, ss.17 and 22; Freedom of Information Regulations (Access Charges) Regulations 2004

Under the Freedom of Information Act, the responsible Minister (in this case the Attorney-General) is required to prepare a report annually to the Parliament on the operation of the Act.¹⁰³ Information specified to be part of the report includes:¹⁰⁴

- the number of requests made to each agency and to each Minister;
- the number of decisions that an applicant was not entitled to access to a document pursuant to a request, the provisions of this Act under which these decisions were made and the number of times each provision was invoked;
- particulars of any disciplinary action taken against any officer in respect of the administration of this Act;
- particulars of any difficulties encountered in the administration of this Act in relation to matters of staffing and costs; and
- any other facts which indicate an effort by the agency or Minister to administer and implement the spirit and intention of this Act.

(b) Contract disclosure

The transparency of public sector agency contracting activity was strengthened in 2000 through the introduction of measures to improve the probity of contracting arrangements, including the publication of contracts valued at more than \$10 million with the headline details of contracts valued at more than \$100,000 also required to be published.¹⁰⁵ Apart from departments, other agencies subject to this policy include Victoria Police, the Essential Services Commission and the Office of the Privacy Commissioner.¹⁰⁶

The technical requirements for departments and the selected agencies to meet the objective of maximum disclosure of contracts is established by a financial reporting direction issued by the Minister for Finance and a requirement for these agencies to comply with the policies of the Victorian Government Purchasing Board.¹⁰⁷

2.4 Reporting on performance

Performance reporting addresses the issue of how well public funds were spent as well as the traditional audit opinion on financial statements that covers whether the funds were used and brought to account according to legal and other requirements. Performance reporting by agencies to Parliament and the community on the effective,

¹⁰³ *Freedom of Information Act 1982*, ss.64 and 65AA

¹⁰⁴ *ibid.*, s.64

¹⁰⁵ Hon. S Bracks, MP, Premier of Victoria, *Ensuring openness and probity in Victorian Government contracts: A policy statement*, 11 October 2000

¹⁰⁶ Agencies other than departments subject to the policy are those that meet the definition of a 'department' under s.3 of the *Financial Management Act 1994*

¹⁰⁷ Department of Treasury and Finance, *Financial Reporting Direction No. 12, Reporting of major contracts*; Victorian Government Purchasing Board, *Procurement Policies 2002* (as at February 2005), pp.1, 44

efficient and economical use of public funds is therefore a crucial element in ensuring appropriate standards of accountability by the Executive Government.

2.4.1 Annual reporting by agencies and bodies

The obligation for agencies to prepare an annual report is a requirement of the Financial Management Act. Where an agency does not have financial management responsibilities an obligation to table an annual report it is likely to be a requirement of its establishing legislation.

(a) Financial Management Act requirements

The Financial Management Act requires a ‘department’ or ‘public body’ to prepare a report of the operations of the entity and financial statements following the end of the financial year.¹⁰⁸

Some specific guidance on content is included in financial reporting directions made by the Minister for Finance, covering issues such as the disclosure of information relating to consultancies,¹⁰⁹ standard disclosures¹¹⁰ and the reporting of office based environmental impacts by departments.¹¹¹ The report of operations should include:¹¹²

qualitative and quantitative information on the operations of the Public Sector Agency and should be prepared on the basis consistent with the financial statements prepared by the Public Sector Agency pursuant to the Financial Management Act. This report should provide users with general information about the entity and its activities, operational highlights for the reporting period, future initiatives and other relevant information not included in the financial statements.

Ministers are generally required to table annual reports of agencies in Parliament within four months of the end of the financial year. For agencies with a reporting period ending 30 June (which applies to the majority of agencies with the exception of agencies mainly in the education sector), the deadline for the tabling of annual reports is therefore 31 October. If this deadline is not met, reports may be tabled on the next sitting day.¹¹³

¹⁰⁸ *Financial Management Act 1994*, s.45

¹⁰⁹ Department of Treasury and Finance, Financial Reporting Direction No. 12, Reporting of major contracts

¹¹⁰ Department of Treasury and Finance, Financial Reporting Direction No. 22, Standard disclosures in the report of operations

¹¹¹ Department of Treasury and Finance, Financial Reporting Direction No. 24, Reporting of office based environmental impacts by departments

¹¹² Department of Treasury and Finance, *Standing directions of the Minister for Finance under the Financial Management Act 1994*, June 2003, p.56

¹¹³ *Financial Management Act 1994*, s.46

Where the expenses and obligations of a department or public body do not exceed \$5 million, annual reports are not required to be tabled, although the relevant Minister must report to each House of Parliament that the annual report has been received. If a member of either House of Parliament requests, the Minister must table a copy of the report within 14 sitting days of the request.¹¹⁴

The Committee noted that in 2004, Parliament was advised by the relevant Ministers that they had received the annual reports of 65 agencies, which were exempt from direct tabling of annual reports in Parliament.¹¹⁵

(b) Other annual reporting arrangements

There are a number of agencies that are required to table annual reports in Parliament that are separate to those under the Financial Management Act. Some examples are specified below:

- Consumer Affairs Victoria – a business division of the Department of Justice, Consumer Affairs is required to table an annual report in Parliament under the *Fair Trading Act 1999* and the *Credit (Administration) Act 1984*;¹¹⁶
- Adult Parole Board – is required to table an annual report in Parliament under the *Corrections Act 1986*;¹¹⁷
- Community Visitors Board (Intellectually disabled persons)– required to prepare an annual report for tabling by the Minister under the *Intellectually Disabled Persons’ Act 1986*;¹¹⁸
- Community Visitors (Psychiatric Services) Board – required to prepare an annual report for tabling in Parliament by the Minister under the *Mental Health Act 1986*;¹¹⁹
- Office of the Small Business Commissioner – required to prepare an annual report for tabling in the Parliament by the Minister under the *Small Business Commissioner Act 2001*; and
- Victorian Environmental Assessment Council – required to prepare an annual report for tabling in Parliament by the Minister under the *Victorian Environmental Council Act 2001*.¹²⁰

Some of the issues relating to the tabling of annual reports in Parliament are discussed in chapter 5.

¹¹⁴ *ibid.*

¹¹⁵ Parliament of Victoria, Legislative Assembly, Votes and proceedings, Spring 2004, Autumn 2004

¹¹⁶ s.102 and s.16 respectively

¹¹⁷ s.72

¹¹⁸ s.62

¹¹⁹ s.116A

¹²⁰ s.14

(c) **Whole of government reporting**

In November 2001, the government released *Growing Victoria Together* (GVT) which identified the government's broad vision and priorities over the next ten years.¹²¹ It identified 11 issues of most importance to Victoria (for example, valuing and investing in lifelong education), a series of priority actions and how progress would be demonstrated. The Committee noted that GVT does not cover the desired outcomes from all government programs and only covers departments and not all agencies.

Progress on *Growing Victoria Together* is reported in the Budget Papers.¹²² The Department of Premier and Cabinet has recently reviewed the *Growing Victoria Together* framework and a new revised framework was issued in March 2005. Changes to the framework are discussed in chapter 5.

2.5 Public sector employee values and employment principles

The conduct of employees has been identified as a key factor in the operational success of an organisation. Reforms to employment arrangements in the Victorian public sector have been consistent with approaches adopted in other jurisdictions, with the replacement of a hierarchical rules based approach to regulating workplace conduct with a values based approach in 1992. Recent changes introduced by the Public Administration Act further entrench a values based framework.

2.5.1 Values and employment principles

The *Public Administration Act* 2004, which supersedes the *Public Sector Management and Employment Act* 1998, contains public sector values and employment principles. In introducing the Public Administration Bill, the Premier stated that:¹²³

- *The principles of impartiality of advice and employment on merit are crucial to the integrity of the system and the continued provision of high-quality services to the public.*
- *This bill preserves these principles and articulates a new set of enduring values for the public sector in Victoria ... repositions Victoria at the forefront of public sector reform... and ensures that public entities adhere to the highest standards of corporate governance.*
- *The [previous Act] sought to position the public sector on a closer footing to the private sector by giving overriding emphasis to financial efficiency ... This government does not share that view.*

¹²¹ Department of Premier and Cabinet, *Growing Victoria Together*, November 2001

¹²² Budget Paper No. 3, *2004-05 Budget Estimates*, pp.311–331

¹²³ Victorian Parliamentary Debates, Legislative Assembly, 16 November 2004, p.1550

Although financial efficiency remains an important goal, this government recognises that the fundamental role of the public sector is to serve in the public interest.

Under the Public Administration Act, the heads of agencies must establish employment processes that will ensure that:¹²⁴

- employment decisions are based on merit; and
- public sector employees are treated fairly and reasonably; and
- equal employment opportunity is provided; and
- public sector employees have a reasonable avenue of redress against unfair or unreasonable treatment; and
- in the case of public service bodies, the development of a career public service is fostered.

The Committee noted that the employment principles are largely unchanged from the *Public Sector Management and Employment Act 1998*, except the additional requirement for the heads of public sector bodies to foster the development of a career public service.¹²⁵

The public sector values set out in the Public Administration Act are:¹²⁶

- responsiveness;
- integrity;
- impartiality;
- accountability;
- respect; and
- leadership.

These values are more expansive than the conduct principles contained in the Public Sector Management and Employment Act, therefore providing more detailed guidance on how public officials can demonstrate the application of these values.¹²⁷

The promotion of the employment principles and public sector values is the responsibility of the Public Sector Standards Commissioner who:¹²⁸

¹²⁴ *Public Administration Act 2004*, s.8

¹²⁵ *Public Sector Management and Employment Act 1998*, s.7

¹²⁶ *Public Administration Act 2004*, s.7

¹²⁷ *ibid.*

¹²⁸ *ibid.*, ss.27,66

- can issue codes of conduct based on public sector values;
- must promote public sector values, public sector employment principles, codes of conduct and standards; and
- may issue standards concerning application of public sector employment principles.

2.5.2 Whistleblowers Protection Act

An important check on the conduct of employees and management of public sector agencies is provided by the *Whistleblowers Protection Act* 2001, which provides protection to whistleblowers who make disclosures in accordance with the Act, and establishes a system for the matters disclosed to be investigated and for rectifying action to be taken.¹²⁹

The Whistleblowers Protection Act applies to ‘public bodies’ and ‘public officers’, which are defined in broad terms.¹³⁰ Specific exclusions from the Act include courts, judges, the Auditor-General, officers of Parliament and the Ombudsman.¹³¹

Introducing the Whistleblowers Protection Bill, the Attorney-General stated that:¹³²

Whistleblowers are persons (often employees) who make an allegation or divulge information about wrongdoing on the part of another person or organisation. Whistleblowers generally come forward out of a highly developed sense of public duty and personal ethical standards... They can play an important role in protecting the public interest by exposing serious public sector wrongdoing. Ensuring the accountability of public organisations and officials for their actions leads to higher standards and performance, and increases public confidence in the public sector.

The Committee noted that there have been relatively few disclosures made to departments in the past two years. Many departments have yet to experience a disclosure (exhibit 2.6).

¹²⁹ Victorian Ombudsman’s Office, *Whistleblowers Protection Act 2001: Ombudsman’s Guidelines*, November 2001, p.5

¹³⁰ Whistleblowers Protection Act 2001, s.3

¹³¹ *ibid.*

¹³² Victorian Parliamentary Debates, Legislative Assembly, 31 August 2000, p.384

Exhibit 2.6: Whistleblower complaints for departments and selected agencies, 2002-03 and 2003-04

Department/Agency	2003-04		2002-03	
	Total disclosures made to Department (a)	Disclosures that, on investigation were substantiated with resultant action	Total disclosures made to Department	Disclosures that, on investigation were substantiated with resultant action
Human Services	10	(b) 1	38	1
Primary Industries	Nil	Nil	Nil	Nil
Education and Training	(c) 2	Nil	(d) 1	Nil
Infrastructure	Nil	Nil	Nil	Nil
Sustainability and Environment	1	Nil	Nil	Nil
Premier and Cabinet	Nil	Nil	Nil	Nil
Victorian Communities	Nil	Nil	Nil	Nil
Treasury and Finance	1	Nil	Nil	Nil
Justice	(d) 1	Nil	4	Nil
Innovation, Industry and Regional Development	Nil	Nil	Nil	Nil
Victoria Police	Nil	Nil	(e) 4	Nil

- Notes:
- (a) Includes matters referred to the department by the Ombudsman
 - (b) Two matters were awaiting substantiation when the annual report was printed
 - (c) Of the two matters lodged, one referred to Ombudsman and subsequently was assessed not to be a protected disclosure and the other was accepted as a protected disclosure but was still being resolved when the annual report was printed
 - (d) Referred to Ombudsman
 - (e) An additional two matters were made directly to the Ombudsman

Sources: Departmental and agency annual reports

The Act provides for agencies to include in their annual reports details on the number and types of disclosures received.¹³³ In 2001 the Ombudsman developed guidelines to assist agencies to implement the Whistleblowers Protection Act. The Ombudsman's guidelines include a provision not covered in the Act that agencies also describe the *nature* of a disclosure, such as an allegation of bribery or fraudulent use of public funds.¹³⁴ The Committee's review of 2003-04 and 2002-03 departmental annual reports revealed that no departments had adopted this broader reporting suggestion. This may reflect concerns that whistleblowers may be identified if such information were made available.

¹³³ Victorian Ombudsman's Office, *Whistleblowers Protection Act 2001 Ombudsman's Guidelines*, November 2001, p.15

¹³⁴ *ibid.*

CHAPTER 3: DEVELOPMENTS WITH CORPORATE GOVERNANCE IN OTHER JURISDICTIONS

Key Findings of the Committee:

- 3.1 Governments in several overseas jurisdictions have recently conducted broad reviews of public sector governance, and implemented improvements to strengthen their governance arrangements.**
- 3.2 The Canadian and U.K. governments have implemented high level reporting arrangements on government performance. The reporting arrangements are linked to the performance of individual agencies.**
- 3.3 Annual reporting arrangements in the Australian Capital Territory, South Australia and Queensland make it possible for the earlier release of information about an agency's performance.**
- 3.4 Government business enterprises in several jurisdictions are required to provide information to Parliament and the community about their future activities and expected performance.**
- 3.5 Several jurisdictions have adopted transparent processes to ensure that merit is the overriding factor when appointments are made to public sector boards.**
- 3.6 Most Australian and overseas jurisdictions examined by the Committee have a values based framework that applies to the employees of public sector agencies and a statutory body responsible for promoting or monitoring the implementation of agency values.**

This chapter addresses the fourth term of reference which required the Committee to review and seek advice on developments with corporate governance in other jurisdictions.

The Committee has examined these developments with reference to five governance 'principles' developed by the Australian National Audit Office:¹³⁵

- accountability, whereby public sector organisations, and the individuals within them, are responsible for their decisions and actions ... and submit themselves to appropriate external scrutiny;

¹³⁵ Australian National Audit Office, *Public Sector Governance Better Practice Guide: Framework, Processes and Practices*, July 2003, p.8

- transparency/openness, which is required to ensure stakeholders can have confidence in the decision making processes and actions of public sector organisations;
- integrity, which comprises both straightforward dealing and completeness. It is based on honesty and objectivity, and high standards of propriety and probity in the stewardship of public funds and resources, and the management of an agency's affairs;
- stewardship, which involves governing agencies in a way that maintains and improves their capacity to serve government and the public interest. This includes financial sustainability and the efficient and effective management of resources, as well as less tangible factors, such as maintaining the trust placed in the organisation and/or the government as a whole; and
- leadership which sets the 'tone at the top', and is critical to achieving an organisation-wide commitment to good governance.

3.1 Accountability

The principle of accountability is primarily concerned with the process whereby organisations, and the individuals within them, are responsible for their decisions and actions, and with how they submit themselves to appropriate external scrutiny. This section discusses factors that may contribute to improving the accountability of agencies, and those responsible for them, to Parliament and the community.

3.1.1 Agency structure and management

The Committee noted several recent reviews of governance arrangements for different types of public sector agencies in several jurisdictions, including Commonwealth Government statutory authorities and office holders, selected statutory authorities in the ACT, government business enterprises in NSW, Crown Corporations and departments in New Zealand and also Crown Corporations in Canada.¹³⁶

While these governance reviews covered a number of issues, a key theme was the importance of implementing an appropriate organisational and management structure for an agency. Key issues to be addressed in formulating an appropriate structure include:

¹³⁶ J. Uhrig, *Review of the Corporate Governance of Statutory Authorities and Office Holders*, June 2003; ACT Auditor-General, *Governance Arrangements of Selected Statutory Authorities*, June 2002; NSW Auditor-General, *Corporate Governance*, June 1997; State Services Commission, *Review of the Centre - Paper Three - Improving Alignment: Crown Entities*, December 2002; State Services Commission, *Review of the Centre Paper Four - Departmental accountability and reporting*, December 2002; Treasury Board of Canada Secretariat, *Review of the Governance Framework for Canada's Crown Corporations - Meeting the Expectations of Canadians*, February 2005

- the nature of the functions performed by the agency;
- the level and type of oversight of the agency's operations by government and Parliament;
- the extent to which formal and documented corporate governance arrangements are affected by informal arrangements and practices that have developed over time; and
- changing expectations of the responsiveness of bodies and agencies to community concerns, managerial autonomy and government objectives.

The Committee considers that the following issues addressed and solutions proposed by governance reviews in other jurisdictions are relevant to guide corporate governance arrangements in the Victorian public sector:

- the role and authority delegated to boards with responsibility for the oversight of some agencies. The review of Commonwealth Government statutory authorities and office holders proposed that a 'board template' be adopted where the government takes the decision to delegate full powers to act to a board, or where the Commonwealth itself does not fully own the assets or equity of a statutory authority (that is, where there are multiple accountabilities). In other circumstances an 'executive management template' would be applied;¹³⁷
- a closer alignment of government objectives with those of agencies across the range of organisations in the public sector. The New Zealand State Services Commission proposed provisions to allow Ministers to issue 'whole of government' directions, or to allow new bodies to be created within existing departments with some specified freedom or independence from ministerial directions;¹³⁸ and
- board responsibility for the oversight of a public sector agency. The Treasury Board of Canada Secretariat proposed splitting the positions of board chair and chief executive officer.¹³⁹

¹³⁷ Department of Finance and Administration (Commonwealth), *Review of the corporate governance of statutory authorities and office holders*, August 2004, p.10

¹³⁸ State Services Commission, *Review of the Centre – Paper Three – Improving Alignment: Crown Entities*, December 2002, p.5

¹³⁹ Treasury Board of Canada Secretariat, *Review of the Governance Framework for Canada's Crown Corporations*, February 2005, p.45

3.1.2 Clarifying roles and responsibilities

The Committee noted that the recent governance reviews included suggestions that the roles and responsibilities of agencies and Ministers be clarified through the preparation of a formal document between the parties.¹⁴⁰ The governance review of Commonwealth Government agencies found that the government may use a range of mechanisms to clarify the objectives for statutory authorities, but that these means could be improved.¹⁴¹

A new mechanism suggested for Commonwealth Government agencies was the development of a statement of expectations from the Minister and a response from the agency, outlining the commitment to the Minister's expectations:¹⁴²

A Statement of Expectations would enable a Minister to provide greater clarity about government policies and objectives relevant to a statutory authority, including the policies and priorities it is expected to observe in conducting its operations. A statement would not, however, seek to impinge on the level of independence or objectivity provided to an authority under legislation, and accordingly would need to be consistent with the power provided to a Minister under the legislative framework of the relevant authority.

In order to demonstrate understanding and commitment to the expectations of a Minister, a statutory authority would be required to respond to the statement. The response, a statement of intent, would outline how the authority intends to undertake its operations, and how its approach to operations will be consistent with the statement of expectations. Within the powers available, the Minister could seek a modification of the statement of intent if it did not address expectations sufficiently.

It was suggested that such statements should be subject to review annually and more regularly, if deemed appropriate, such as if a new Minister were appointed, new board members were appointed or government took a different approach in the relevant area.¹⁴³ The review noted that the statements should be made public, 'allowing the Parliament and the community to be aware of the government's expectations and the responses by statutory authorities'.¹⁴⁴

¹⁴⁰ Better Regulation Taskforce, *Independent Regulators*, October 2003, p.20; Treasury Board of Canada, *Review of the Governance Framework for Canada's Crown Corporations*, February 2005, p.18

¹⁴¹ J. Uhrig, *Review of the Corporate Governance of Statutory Authorities and Office Holders*, June 2003, p.40

¹⁴² *ibid.*, p.60

¹⁴³ *ibid.*

¹⁴⁴ *ibid.*, p.8

3.1.3 Auditing performance measures

Auditing of performance measures – where the Auditor-General provides an opinion on non-financial performance information is part of the auditing framework in several interstate and overseas jurisdictions, including Western Australia, New Zealand, Sweden and some agencies in Canada.¹⁴⁵ The Committee noted that the mandate of Auditors-General varies for performance measure auditing, from validating the adequacy of controls over the information systems providing numeric performance information, to a broader role examining efficiency, appropriateness and whether the information provides a fair representation of an agency's performance.¹⁴⁶

The Western Australian public sector agency financial management framework requires agencies to report indicators of their efficiency and effectiveness to Parliament through their annual reports.¹⁴⁷ Under the *Financial Administration and Audit Act 1985* (WA), the Auditor-General is required to issue an opinion on whether the performances reported are 'relevant and appropriate having regard to their purpose and fairly represent indicated performance'.¹⁴⁸

The Canadian Auditor-General was provided with a mandate in the late 1990s to audit the fairness and reliability of performance information against corporate objectives for a number of agencies.¹⁴⁹ These agencies, included a 'management statement of responsibility' signed by their chief executive officer stating that 'in my view, the information is the best available and, represents a comprehensive, balanced, and transparent picture of the performance of [the organisation]'.¹⁵⁰

In New Zealand, the Auditor-General has been assigned responsibility for auditing local councils' Long-Term Council Community Plans (LTCCPs), a responsibility that comes into effect for LTCCPs adopted in 2006.¹⁵¹ This responsibility applies to the LTCCP statement of proposal and the final LTCCP, as well as any amendments that a council makes to its LTCCP. The Auditor-General is required to report on:¹⁵²

- the extent to which the local authority has complied with requirements;
- the quality of the information and assumptions underlying the forecast information provided in the LTCCP; and

¹⁴⁵ J. Mayne and P. Wilkins, 'Believe it or not: The Emergence of Performance Information Auditing', in *Quality Matters: Seeking confidence in evaluation, auditing and performance reporting*, 2004, pp.359–389
¹⁴⁶ *ibid.*

¹⁴⁷ Auditor-General WA, *Getting better all the time: Health sector performance indicators*, June 1999, p.8

¹⁴⁸ *Financial Administration and Audit Act 1985*, s.93

¹⁴⁹ Wilkins, P. and Mayne, J., *Providing assurance on performance reports: Two jurisdictions compared*, Auditor-General of Western Australia, December 2002, p.1

¹⁵⁰ See for example, Parks Canada, *Annual Report, 2003-04*, www.pc.gc.ca/docs/pc/rpts/rp-pa-2003-2004/sec0-/page3_e.asp (accessed 23 February 2005)

¹⁵¹ New Zealand Auditor-General, *Annual Report 2003-04*, p.98

¹⁵² *ibid.*

- the extent to which the forecast information and performance measures provide an appropriate framework for the meaningful assessment of the service provision.

The Committee noted the expectations that auditing performance measures would enhance the quality of the information in performance reports because agencies want an unqualified opinion from the auditor. Further, the assurance provided by the auditor would lend credibility to performance reports and encourage parliamentarians and others to use the reports in their deliberations.¹⁵³ This issue is discussed further in chapter 6.

3.1.4 Whole of government performance/outcomes reporting

The Committee reviewed arrangements in several jurisdictions for setting objectives and reporting on whole of government outcomes. The approach adopted by two jurisdictions are summarised below.

(a) Canada

In Canada, the Treasury Board of Canada Secretariat presents an annual report to the Parliament on the outcomes it is striving to achieve in six policy areas, as measured by 32 societal indicators that highlight how national performance is changing over time.¹⁵⁴

The themes and societal indicators included in the report are:¹⁵⁵

- Canada's place in the world – total trade, perceptions of security, trust in international institutions, and official development assistance;
- Canada's economy – barriers to entrepreneurship, employment rate, income security, innovation, literacy, educational attainment, and real gross domestic product per person;
- society, culture and democracy – attitudes towards diversity, safety, volunteerism, participation in culture and heritage activities, and political participation;
- Aboriginal peoples – educational attainment, employment rate, median income, health status, and housing;

¹⁵³ J. Mayne and P. Wilkins, 'Believe it or not: The Emergence of Performance Information Auditing', in *Quality Matters: Seeking confidence in evaluation, auditing and performance reporting*, 2004, pp.359–389

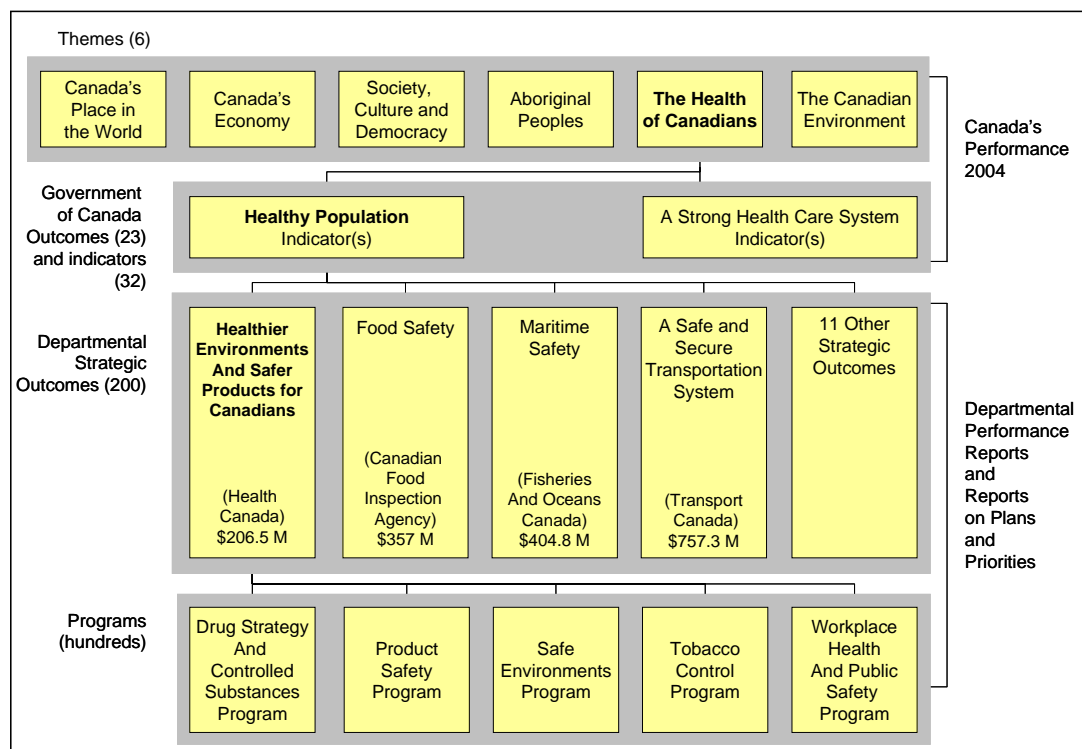
¹⁵⁴ Treasury Board of Canada Secretariat, *Canada's Performance, 2004 Annual Report to Parliament*, December 2004, p.2

¹⁵⁵ Hon. R. Alcock, President of the Treasury Board, media release, *Canada's Performance 2004 – A Significant Step Toward Developing a more Robust Aboriginal Report Card*, 2 December 2004

- the health of Canadians – life expectancy, self-rated health, infant mortality, healthy lifestyles, waiting times for key diagnostic and treatment services, and patient satisfaction; and
- the Canadian environment – climate change, air quality, water quality, biodiversity, and natural resources sustainability.

Exhibit 3.1 illustrates how each of the themes links to Government of Canada outcomes, societal indicators, and department and agency efforts.

Exhibit 3.1 Canada’s whole of government performance reporting framework – ‘The health of Canadians’



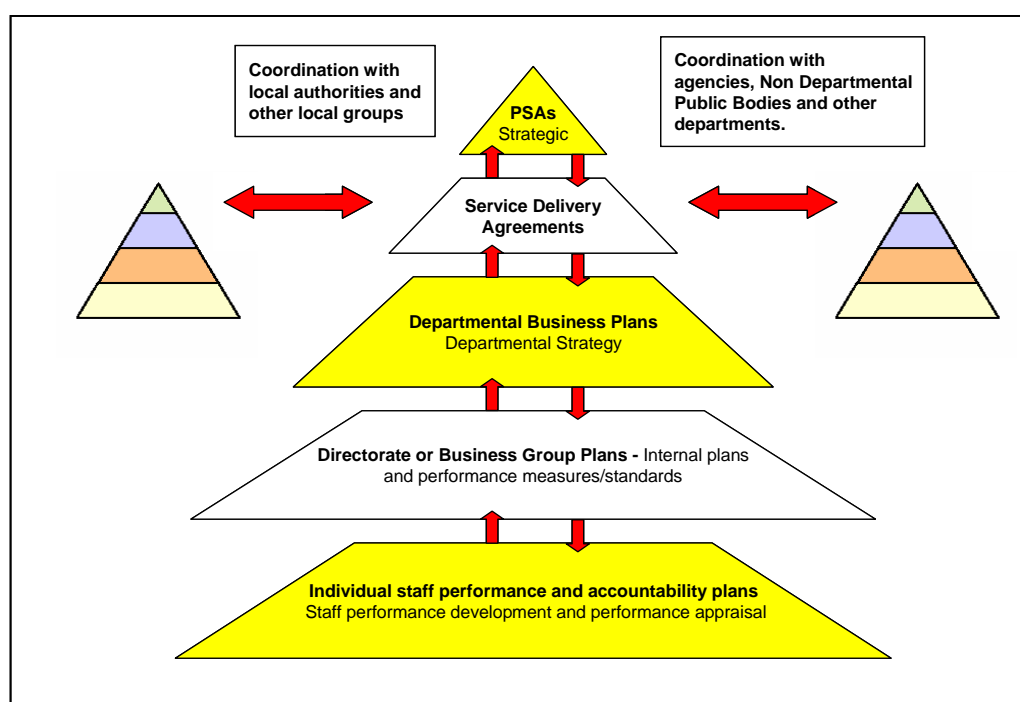
Source: Treasury Board of Canada Secretariat, *Canada's Performance, 2004 Annual Report to Parliament, December 2004, p. 131*

The Committee noted that the electronic version of the report links to the specific pages in the ‘reports on plans and priorities’ and the departmental performance reports that provide relevant details on plans, results and resources, as well as audit and evaluation information.¹⁵⁶

¹⁵⁶ ibid.

(b) United Kingdom

In the U.K. the government has developed ‘public service agreements’ with the 20 departments as well as agreements in five cross-departmental areas of policy, whereby all the departmental targets relevant to delivering government’s objectives in that area are drawn together.¹⁵⁷ Public sector agreements sit at the top of a detailed planning framework that flows down to individual staff performance (exhibit 3.2).¹⁵⁸

Exhibit 3.2 Cascading Public Sector Agreements into detailed business planning


Source: HM Treasury, *Outcome Focused Management in the United Kingdom*, undated, p.2

The Committee noted 130 public service agreement (PSA) targets – an average of fewer than seven per department. The structure of the PSA for each department is a single aim and a number of objectives, (which set out the aspirations of the department) and outcome/focused performance measures and targets (which translate the aspirations into specific metrics against which performance and progress can be measured) for each objective. Each PSA includes a value for money target that relates inputs to outcomes. The agreement concludes with a statement of accountability detailing the Minister responsible for delivery of the agreement, including details of any targets that have shared accountability.¹⁵⁹

¹⁵⁷ HM Treasury, *Outcome Focused Management in the United Kingdom*, undated, p.3

¹⁵⁸ *ibid.*, p.2

¹⁵⁹ *ibid.*

The implementation of public service agreements is specified in ‘Service Delivery Agreements’ with each department, which specify:¹⁶⁰

- how the department will deliver its public sector agreement targets, covering any key output or process targets necessary to deliver the outcome target set in the PSA. In some cases, the Service Delivery Agreement also includes details of factors outside the control of the department that may impact on the delivery of the outcome specified in the PSA; and
- what each department is doing over the next three years to modernise and to improve its efficiency and performance, including through use of management tools, benchmarking across different operating units, focusing on consumers of public services, ensuring policies and services respond to the needs of all groups in society, making services available on the internet and improving policy-making.

For a number of small government departments for which PSAs were not published, the SDA is used to set out both their key performance targets (outcome focused where possible) and how they will be achieved.¹⁶¹

The Committee noted that a single website provides links to all the key departmental documents on public service delivery and performance, and to the public service performance pages, which provide regular reporting on progress against the government's public service agreement targets.¹⁶²

3.1.5 Sunsetting an agency's existence

The inclusion of ‘sunset’ clauses within legislation – which automatically terminates the provisions of the legislation – is not a new phenomenon. This arrangement is widely used in the United States at a federal and state level for tax measures, spending programs and the existence of government agencies.¹⁶³

The concept of sunsetting is applied in Victoria to subordinate legislation, which is automatically revoked after ten years.¹⁶⁴

The Regulation Review Committee of the NSW reviewed how sunsetting is implemented in several jurisdictions in the United States:¹⁶⁵

¹⁶⁰ *ibid.*, p.5

¹⁶¹ *ibid.*

¹⁶² HM Treasury, Public service delivery and performance, www.hm-treasury.gov.uk/documents/public_spending_and_services/publicservice_performance/pss_perf_index.cfm, accessed 28 March 2005

¹⁶³ C. Edwards, ‘Sunsetting’ to reform and abolish federal agencies, *CATO Institute Bulletin No. 6*, May 2002

¹⁶⁴ *Subordinate Legislation Act 1994*, s.5

¹⁶⁵ Regulation Review Committee, *Comparisons with International Practice: Regulatory Scrutiny & Reform in England, Regulatory Impact Assessment in the Netherlands, Regulatory & Public Sector Reform in*

The sunset process was one of the first government accountability tools and was first introduced in the United States by the State of Colorado in 1975. Some have questioned whether it still has value today, or whether it might be time to 'sunset' sunset, as the State of South Carolina has done.

The Texas Sunset Advisory Commission defines the sunset process as the regular assessment of the need for a state agency to exist. While standard legislative oversight is concerned with agency compliance with legislative policies, Sunset asks a more basic question: Do the agency's functions continue to be needed?

In Texas the sunset process is guided by a ten member body appointed by the Lieutenant Governor and the Speaker of the House of Representatives. Assisting the Commission is a staff whose reports provide an assessment of an agency's programs, giving the Legislature information needed to draw conclusions about program necessity.

About 150 state agencies are subject to the Texas Sunset Act. The Sunset Act, which became effective in August 1977, specifies each agency's review date. Agencies under sunset typically undergo review once every twelve years. Certain agencies, such as universities and courts, are not subject to the Sunset Act.

An agency is automatically abolished unless the Legislature passes legislation to continue the agency. If an agency is abolished, the Sunset Act provides for a one-year wind-down period to conclude its operations. The agency retains full authority and responsibility until the end of that year, when all property and records are transferred to an appropriate state agency. Any enabling legislation is usually repealed at the end of that year.

Although the practice of including sunset provisions in regulations is widespread in other Australian jurisdictions, a public sector agency's existence is rarely limited by a sunset clause. An example exists in Western Australia, where the *Conservation and Land Management Act 1984* requires the relevant Minister to review the operations and effectiveness of the Marine Parks and Reserves Authority as soon as is practicable after 29 August 2002, and to consider the need for the authority to continue and any other matters that seem relevant to the Minister.¹⁶⁶ Such a review must be carried out as soon as practicable five years after the agency commenced operations, and as soon as practicable after the review report is prepared, and the report tabled in Parliament.¹⁶⁷

Ontario Canada, Legislative oversight & sunseting in the United States, and a case study on Boxing Regulation in North America, September 2001, pp.16–17

¹⁶⁶ A. Errington, *Review of the Statutory Authorities established by the Conservation and Land Management Act 1984*, March 2003, p.37

¹⁶⁷ *Conservation and Land Management Act 1984*, s.26E

3.2 Transparency and openness

Transparency and openness by public sector agencies includes the provision of appropriate information to stakeholders, as well as the adoption of suitable policies and practices for consulting with, and receiving feedback from those who receive goods or services from the agency. The Committee noted that the principle of transparency/openness:¹⁶⁸

is required to ensure that stakeholders can have confidence in the decision-making processes and actions of public sector organisations, in the management of their activities, and in the individuals within them. Being open, through meaningful consultation with stakeholders and the communication of full, accurate and clear information, leads to an effective and timely action and stands up to necessary scrutiny.

3.2.1 Timeliness of preparing financial statements and tabling annual reports in Parliament

The annual reports of agencies are a key accountability mechanism for Parliament and the community to scrutinize the activities of government. While many Westminster systems of government adopt annual reporting regimes that are similar to that in Victoria, the Committee noted instances where the annual reporting framework results in a more timely presentation of annual reports to Parliament.

The Committee is aware that the timelines for the preparation of whole of government financial statements are being improved in some jurisdictions so Parliament has more timely information on a government's financial performance and position. The *Charter of Budget Honesty Act 1988* (Cwlth), for example, requires Commonwealth entities to provide audited financial information to the Department of Finance and Administration so the final budget outcome report can be tabled in Parliament.

From 2004-05 Commonwealth departments required the Auditor-General's audit clearance of the financial information of larger entities by 20 July 2005, with the objective of providing the (unaudited) report to Parliament by 14 August 2005.¹⁶⁹ In contrast, the *Financial Management Act 1994* (Vic) requires the (audited) Annual Financial Report to be tabled in the Victorian Parliament by 15 October 2005.¹⁷⁰

In South Australia, a public sector agency is required to forward its annual report (including audited financial statements) to the responsible Minister by 30 September for reporting periods ending 30 June, after which the Minister has 12 sitting days to

¹⁶⁸ Australian National Audit Office, *Public Sector Governance: Framework, Processes and Practices*, July 2003, p.8

¹⁶⁹ Australian National Audit Office, *Control structures as part of the Audit of Financial Statements of Major Australian Government Entities for the Year Ending 30 June 2004*, June 2004, p.40

¹⁷⁰ *Financial Management Act 1994*, s.24

present the report to Parliament.¹⁷¹ Agencies are required to forward financial statements to the Auditor-General within six weeks (42 days) of the end of the financial year,¹⁷² but there is no timeframe specified for the completion of the audit, although the requirement for the Auditor-General to prepare his annual report by 30 September (which includes copies of agencies' financial statements) imposes a deadline for the signing of audit opinions.¹⁷³ The Committee noted that South Australian public sector agencies' 2003-04 annual reports were mostly tabled in Parliament from the middle of November, six weeks after Ministers were to have received reports and just within the 12 sitting day limit specified in the Act, and many agencies' reports were tabled after this limit in December.¹⁷⁴

In Queensland, the *Financial Management and Audit Act* 1994 provides for agencies to provide their annual report to the Minister within four months of the end of the reporting period, with the Minister then having fourteen days to table the report in Parliament.¹⁷⁵ Under an amendment to the Act introduced in 1996, reports may be tabled when Parliament is not sitting, by notice to the Clerk of the Parliament.¹⁷⁶ The Committee noted the Clerk of the Parliament received the 2003-04 annual reports for many Queensland Government agencies in late October and early November 2004.¹⁷⁷

In the Australian Capital Territory, government agencies were required under the *Annual Reports (Government Agencies) Act* 1995 to present annual reports to responsible Ministers by no later than 10 weeks from the end of the reporting period (30 June).¹⁷⁸ Ministers then had six sitting days in which to present the reports to Parliament.¹⁷⁹ The Auditor-General in the Australian Capital Territory noted that the Act, by specifying the number of sitting days after tabling, ties the date by which agencies must report to the days on which Parliament is scheduled to sit. Under these arrangements, a government could delay the presentation of annual reports for an indefinite period.¹⁸⁰ The Auditor-General suggested that the *Annual Reports (Government Agencies) Act* be amended to specify the date by which all reports are to be made public and to remove the intermediate date for the presentation of reports.¹⁸¹

The ACT Legislative Assembly passed the *Annual Reports (Government Agencies) Act* 2004 in March 2004. The new Act adopts the Auditor-General's recommendation, requiring the responsible Minister to present an agency's annual report to Parliament within three months of the end of the reporting period.¹⁸² The Act also includes

¹⁷¹ *Public Sector Management Act* 1995, s.6A

¹⁷² *Public Finance and Audit Act* 1987, s.23

¹⁷³ *ibid.*, s.36

¹⁷⁴ Parliament of South Australia, House of Assembly, *Index to Papers and Petitions 2004-05*, 17 February 2005

¹⁷⁵ *Financial Management and Audit Act* 1994, s.46

¹⁷⁶ *ibid.*

¹⁷⁷ Queensland Parliament, *Register of tabled papers: First session of the 51st Parliament*, 2004, pp.89–90

¹⁷⁸ *Annual Reports (Government Agencies) Act* 1995, s.11

¹⁷⁹ *ibid.*, s.14

¹⁸⁰ ACT Auditor-General, *Effectiveness of Annual Reporting*, March 2003, p.34

¹⁸¹ *ibid.*, p.35

¹⁸² *Annual Reports (Government Agencies) Act* 2004, s.13

provisions for out of session distribution of annual reports to Members, within the three month period, to cover instances in which Parliament was not sitting before the end of the three month deadline.¹⁸³ For agencies with a reporting period ending 30 June, the annual reporting arrangements require annual reports to be made public by 30 September.

In the private sector, the Australian Stock Exchange Listing Rules were amended in 2003 to bring forward the requirements for listed companies to provide the ASX with periodic reports from within 75 days for reporting periods ending 30 June 2003 to 60 days for reporting periods ending on or after 30 June 2004.¹⁸⁴ The deadline for a listed company's provision of an annual report (including audited financial statements) to the ASX is three months, which is the same deadline under the Corporations Act for providing a copy to the corporate regulator – the Australian Securities and Investments Commission.¹⁸⁵

3.2.2 Ex-ante reporting of business and corporate plans

The preparation of corporate planning documents that cover short, medium and long-term periods is a feature of corporate governance arrangements for public sector agencies. The arrangements requiring the preparation of such plans are typically part of an agency's establishing legislation or legislative or administrative elements of a financial management framework.

A feature of corporate planning requirements in some jurisdictions has been a requirement to make such plans publicly available, including tabling in Parliament.

In New South Wales, a copy of a completed 'statement of corporate intent' (a three year plan reviewed annually that contains the agency's objectives and performance targets and measures to judge its performance) for state owned companies is required to be tabled within 14 sitting days of the date on which the responsible Ministers received the statement.¹⁸⁶ The Committee noted, however, that the tabling of statements of corporate intent for the 14 government business enterprises covered by the Act for 2003-04 largely occurred in February 2004, more than eight months after the start of the reporting period.¹⁸⁷

In the Commonwealth, government business enterprises are required to table in Parliament a 'statement of corporate intent' within 15 sitting days of the start of the reporting period. The statement includes information on the overall strategic objectives of an agency rather than detailing performance information over the

¹⁸³ *ibid.*

¹⁸⁴ Australian Stock Exchange, *ASX Listing rules*, Chapter 4 – Periodic Disclosure, s.4.3

¹⁸⁵ *Corporations Act 2001*, s.319

¹⁸⁶ *State Owned Corporations Act 1989 (NSW)*, s.26

¹⁸⁷ NSW Parliament, Legislative Assembly Tabled Papers Register, search performed 28 February 2005

coming reporting period.¹⁸⁸ The Committee noted that statements for the more significant Commonwealth government business enterprises for 2003-04 (recognising that 2004-05 may have been affected by the federal election in November 2004) were tabled in Parliament during September and October 2004, and some were even tabled in December.¹⁸⁹

The practice of making public corporate planning documents is also evident in several overseas jurisdictions:

- in Canada – corporate plan summaries (excluding information that is commercially sensitive) for Crown corporations are required to be tabled in Parliament;¹⁹⁰ and
- in New Zealand – the responsible Minister of a Crown corporation is required to table the entity’s statement of corporate intent (a detailed plan covering a three year period) in Parliament within 12 sitting days of the statement being delivered to the Minister.¹⁹¹

3.2.3 Public disclosure of major contracts entered into by agencies

The Committee noted that some jurisdictions require the details of contracts entered into by public sector agencies to be made public.

In the Australian Capital Territory, the *Government Procurement Act 2001* requires around 34 agencies to provide a copy of contracts to the Department of Urban Services, which posts the contracts on a website (www.contractsregister.act.gov.au).¹⁹² The following features of the reporting regime include:¹⁹³

- a requirement for agencies to forward the contract and contract details to the chief executive of the Department of Urban Services within 21 days of the contract being made;
- a requirement for agencies, where confidential text is omitted from published contracts, to forward the text to the Auditor-General within 21 days;

¹⁸⁸ Department of Finance and Administration, *Governance Arrangements for Commonwealth Government Business Enterprises*, June 1997, p.6

¹⁸⁹ Parliament of Australia, House of Representatives, Index to Papers presented to Parliament, search performed 28 February 2005

¹⁹⁰ Treasury Board of Canada Secretariat, *2004 Annual Report to Parliament – Crown Corporations and Other Corporate Interests of Canada*, 2004, p.105

¹⁹¹ *Public Finance Act 1989*, s.41

¹⁹² *Government Procurement Act 2001*, ss.23–42

¹⁹³ *ibid.*

- a requirement for agencies to provide the Auditor-General with a six monthly list or statement that includes contracts entered into by the agency, within 21 days of the six month period ending. The Auditor-General must, as soon as practicable, provide this information to the appropriate parliamentary committee; and
- a threshold for the disclosure of contracts limited to those with a value of more than \$50,000.

In the Commonwealth public sector, the Commonwealth procurement guidelines require agencies subject to the *Financial Management and Accountability Act 1997* (around 85 agencies)¹⁹⁴ to publish contracts and standing offers with a value of \$10,000 or more, to demonstrate that public procurement is open and transparent, and that agencies are accountable for purchasing decisions. Contracts are published on a website that provides a searchable database (www.contracts.gov.au). The Committee noted that agencies subject to the Finance Minister's (CAC Act Procurement) Directions (around 105 agencies) are also required from 1 January 2005 to publish details of certain contracts and standing offers. Exemptions to publishing contract information are based on matters exempted under the *Freedom of Information Act 1982*.¹⁹⁵

The Committee noted that requirements for Commonwealth Government agencies to report on contracts are strengthened by a 2001 Senate Order that required agencies to report twice a year on contracts valued at more than \$100,000.¹⁹⁶ Reporting under the Order requires agencies subject to the Financial Management and Accountability Act to include a statement on each contract's confidentiality provisions and reasons for the confidentiality.¹⁹⁷

The Commonwealth Auditor-General regularly audits information published by agencies under the Order. The most recent audit found 15 of a selection of 26 contracts identified as containing confidential information, were inappropriately listed as containing confidential information, indicating that agencies needed to continually review their policies on government policy and that ongoing awareness raising is required among agency staff.¹⁹⁸

In South Australia, around 178 agencies subject to the *Public Finance and Audit Act 1987* were required from September 2003 to publicly disclose information on the

¹⁹⁴ Department of Finance and Administration, List of Agencies Subject to the Financial Management and Accountability Act 1997 (FMA Act), updated 11 February 2005

¹⁹⁵ Department of Finance and Administration, *Guidance on Procurement Publishing Obligations*, January 2005, p.9

¹⁹⁶ Parliament of Australia Parliamentary Library, 'Is there adequate Parliamentary scrutiny of government contracts?', *Research Note no. 38 2002-03*, May 2003

¹⁹⁷ Australian National Audit Office, *The Senate Order for Departmental and Agency Contracts (Calendar Year 2003 Compliance)*, September 2004, p.69

¹⁹⁸ *ibid.*

internet on certain contracts involving government expenditure.¹⁹⁹ The Committee noted the following features of the requirements:

- disclosure must occur within 60 days of the contract being executed;
- disclosure requirements differ for contracts between:
 - public authorities and a consultant with a value greater than \$25,000;
 - public authorities and the private sector for the provision of industry assistance with a value greater than \$200,000;
 - public authorities and the private sector for the expenditure of public funds of more than \$4 million;
 - public authorities and the private sector involving asset sales with a value greater than \$1 million; and
- exemptions from disclosure are based on genuinely confidential information, trade secrets/intellectual property, defence and national security, public interest and legal risk. In considering exemptions, an agency's chief executive is required to assess from the starting point that a contract should be released in full.

3.2.4 Board appointments

Many jurisdictions examined by the Committee have a large number of entities that operate at arms length from government and are governed by a board of directors charged with overseeing the operations of the agency. The Committee observed that some jurisdictions use mechanisms that enhanced the transparency of the board appointments process and provide assurance that selections are based on merit.

(a) Canada

In March 2004, the Canadian Government announced a new interim appointment process for appointments to Crown corporations.²⁰⁰ The government's goal for the selection arrangements is that the process should be competency based, professional and transparent.²⁰¹ The new measures required the following:²⁰²

- a permanent nominating committee will be struck by the board of each corporation. If the board so chooses, this committee may include outside

¹⁹⁹ Department of Treasury and Finance (SA), Treasurer's Instruction No. 27 – Disclosure of Government Contracts, updated 17 September 2003

²⁰⁰ Treasury Board of Canada, *Review of the Governance Framework for Canada's Crown Corporations*, February 2005, p.29

²⁰¹ *ibid.*, p.30

²⁰² Treasury Board of Canada, media release, *President of the Treasury Board Announces New Appointment Process for Top Executives of Crown Corporations*, 15 March 2004

eminent persons to support the work of the board. The nominating committee will establish appropriate criteria for candidate selection;

- a professional recruitment firm will be engaged to assist these nominating committees in the search for meritorious candidates. In addition, public advertisements will be posted in newspapers and in the *Canada Gazette* for all open positions of chief executive officer and chair of corporations;
- the nominating committee will make recommendations to the board of directors, and the board will provide a short list of candidates to the Minister responsible for the corporation. Based on this list, the Minister will make a recommendation for appointment; and
- the appropriate parliamentary committee will then review the candidate recommended by the Minister.

Since these measures have only recently been introduced, the Committee cannot determine their effectiveness.

(b) United Kingdom

The Commissioner for Public Appointments was established in 1995 in response to a recommendation of the Nolan Committee (on standards in public life).²⁰³ The recommendation was based on a widespread belief that such appointments were not always on merit. The Nolan Committee noted, however, that this belief was based on circumstantial and inconclusive evidence and identified the main weakness of the public appointments system as being the absence of external scrutiny.²⁰⁴

The Commissioner for Public Employment does not make appointments to boards. The Commissioner's role is to regulate, monitor and report on ministerial appointments to health bodies, non-departmental public bodies, public corporations, nationalised industries and the utility regulators.²⁰⁵

A code of practice for ministerial appointments to public bodies sets out the regulatory framework for the public appointments process and is based on seven principles recommended by the Nolan Committee:²⁰⁶

²⁰³ Commissioner for Public Appointments, undated, *First Report 1995-96*, p.5

²⁰⁴ *ibid.*

²⁰⁵ Commissioner for Public Appointments, *Code of practice for ministerial appointments to public bodies*, December 2003, p.5

²⁰⁶ *ibid.*, p.9

- ministerial responsibility – the ultimate responsibility for appointments is with Ministers.
- merit – all public appointments should be governed by the overriding principle of selection based on merit, by the well-informed choice of individuals whose abilities, experience and qualities match the need of the public body in question.
- independent scrutiny – no appointment will take place without first being scrutinised by an independent panel or by a group including membership independent of the department filling the post.
- equal opportunities – departments should sustain programs to deliver equal opportunities principles.
- probity – board members of public bodies must be committed to the principles and values of public service and perform their duties with integrity.
- openness and transparency – the principles of open government must be applied to the appointments process, its working must be transparent and information must be provided about the appointments made.
- proportionality – the appointments procedures need to be subject to the principle of proportionality (that is, they should be appropriate for the nature of the post and the size and weight of its responsibilities).

The code of practice aims to provide departments with a clear and concise guide to the steps they must follow to ensure a fair, open and transparent appointments process that produces a quality outcome and can command public confidence.²⁰⁷

British Ministers made over 2,800 appointments and re-appointments to public bodies in 2003-04. In the same year, the Office of the Commissioner for Public Appointments had a budget of around \$A1.5 million and a staff of 10, most of whom were seconded from government departments.²⁰⁸ The Commissioner has a rolling program of audits to ensure departments are following the appointment rules of the code of practice.

A 2004 survey of perceptions of the ministerial appointments process in the U.K. (including a quantitative survey of the public, as well as qualitative focus groups with stakeholders and the general public) found that awareness of the public appointments process is low, but awareness has risen from the level four years earlier.²⁰⁹ Researchers conducting the survey noted that:

²⁰⁷ *ibid.*, pp.5–6

²⁰⁸ Commissioner for Public Appointments, *Ninth Report 2003-04*, p.63

²⁰⁹ Office of the Commissioner for Public Appointments, *Perceptions of the Ministerial Public Appointments Process: Combined Qualitative and Quantitative Report*, February 2005, p.5

Only one in five of the UK general public (21 per cent) say that they have confidence in the public appointments system in this country. Furthermore, recent research for the Committee on Standards in Public Life shows there is a widespread belief that 'cronyism' is commonplace in the appointment of public office-holders; two-thirds of the general public think that people in public office get their jobs through someone they know, rather than through the correct procedures.

The void left by a lack of knowledge is filled by assumptions that the system hasn't really changed. Many are still concerned that these bodies are closed shops to the average person, instead they feel that a 'tap on the shoulder' approach and 'old boys' networks might still be the norm. However, there is a strong belief that the system should be regulated (71 per cent), even though most people don't know that it is already.

(c) New Zealand

The Committee noted that the State Services Commission of New Zealand publishes guidelines for departments and ministerial office staff who assist the Minister in making appointments.²¹⁰ The guidelines are publicly available.²¹¹

To promote the appointment of people from specific groups to Crown boards, several New Zealand Government agencies had developed nominations databases that departments could use when searching for suitable candidates. These agencies include:

- the Ministry of Women's Affairs;²¹²
- the Maori Affairs Ministry; which maintains a database of Maori available for nomination to various statutory boards, committees, and advisory groups;²¹³
- the Ministry of Pacific Island Affairs;²¹⁴ and
- the Office of Ethnic Affairs.²¹⁵

²¹⁰ State Services Commission, *Board Appointment and Induction Guidelines*, August 1999

²¹¹ State Services Commission, www.ssc.govt.nz/upload/downloadable_files/Board_guidelines.pdf

²¹² www.mwa.govt.nz/nomination_service.html, accessed 3 March 2005

²¹³ www.tpk.govt.nz/government/nominations/default.asp, accessed 2 March 2005

²¹⁴ www.minpac.govt.nz, accessed 3 March 2005

²¹⁵ www.ethnicaffairs.govt.nz/oeawebsite.nsf/wpg_URL/What-we-do-Nominations-database-Index?OpenDocument, accessed 3 March 2005

(d) Other Australian jurisdictions

The Committee's review of appointment processes revealed that, the systems used in Victoria were similar to those in other Australian jurisdictions, with a central agency providing guidelines for departments and agencies to follow. Processes in other jurisdictions include the following:

- New South Wales – Premier's Department guidelines on appointment processes for state agencies (developed February 2005)²¹⁶ are publicly available, and the department maintains a central register of people who have expressed an interest in being appointed to board positions;
- Queensland – the Department of Premier and Cabinet maintains a register for women seeking appointment to a board or committee, and the register is available for examination by departments;²¹⁷
- Western Australia – the Department of Premier and Cabinet has developed a whole of government 'interested persons register' that assists Ministers and their agencies in identifying suitable nominees for membership of relevant boards and committees;²¹⁸ and
- South Australia – the Department of Premier and Cabinet's guidelines are publicly available, and the Office for Women maintains a register for women seeking appointment to boards and committees, which agencies can use to identify suitable candidates for vacant positions.²¹⁹

3.2.5 Client service charters

In 1991, the U.K. government introduced a 'citizens charter' a means by which the public sector could acquire its own customer focus by replicating the market imperative that drives the private sector. Charters provide a framework in which government agencies are able to change their customer relations culture to improve service delivery. In addition, they are a means by which the performance of an agency may be measured and benchmarked.²²⁰ In 1993, the US federal government introduced the *Putting Customers First* program, which resulted in agencies developing customer

²¹⁶ NSW Premier's Department, www.premiers.nsw.gov.au/our_library/boards/BoardCommitteeGuidelines2005.doc, accessed 2 March 2004

²¹⁷ Department of Premier and Cabinet, www.premiers.qld.gov.au/getinvolved/Qld_Register_of_Nominees/Qld_Register_of_Nominees/, accessed 3 March 2005

²¹⁸ Department of Premier and Cabinet, *Boards and Committees WA Incorporating the Interested Persons' Register (IPR)*, www.boards.dpc.wa.gov.au/index.cfm?fuseaction=home.bchome, accessed 2 March 2005

²¹⁹ Department of Premier and Cabinet, *Government Boards and Committees: Guidelines for Agencies and Directors*, undated, www.premcab.sa.gov.au/pdf/boards&committees.pdf, accessed 2 March 2005; www.officeforwomen.sa.gov.au/site/page.cfm?area_id=10&nav_id=650, accessed 3 March 2005

²²⁰ Australian Public Service Commission, *Service charters: International developments*, www.apsc.gov.au, accessed 1 May 2005

service standards, or service guarantees, which would set the standards of service that customers, individual or corporate, could expect from government departments or agencies.²²¹

In Australia, the requirement for Commonwealth public sector agencies providing services directly to the public to develop service charters was first introduced in 1997 and then later re-launched in 2000.²²² The Public Service Commissioner reported that in 2003-04, 74 per cent of agencies had an agency-wide service charter in place, with service charters more common in large agencies (90 per cent) than small agencies (64 per cent).²²³

3.3 Integrity

The better practice guide prepared by the Australian National Audit Office emphasises that integrity depends on the effectiveness of the control framework, which is influenced by relevant legislation (such as statements of organisational values and the code of conduct) and determined by the personal standards and professionalism of individuals within an agency.²²⁴

Most Australian jurisdictions include public sector employment arrangements that apply a values based framework to govern employee behaviour. In some cases, a statutory body monitors the application of the framework in each jurisdiction (exhibit 3.3).

²²¹ *ibid.*

²²² *ibid.*

²²³ Australian Public Service Commission, *State of the Service Report 2003-04*, November 2004, p.54

²²⁴ Australian National Audit Office, *Public Sector Governance Better Practice Guide: Framework, Processes and Practices*, July 2003, p.8

Exhibit 3.3 Values based public sector employment arrangements, selected Australian jurisdictions

Jurisdiction	Summary of framework	Application	Monitoring
Commonwealth (a)	15 Australian public sector values that provide the real basis and integrating element of the Service, its professionalism, its integrity and its impartial and responsive service to the government of the day.	Covers around 130,000 employees in 96 agencies	Public Service Commissioner
South Australia (b)	Code of conduct includes three broad underpinning principles: Integrity, respect, accountability	Covers 23 'administrative units' comprising approximately 42,000 EFT employees	Commissioner for Public Employment
Queensland (c)	'Ethics principles' developed for public officials are: respect for the law and the system of government, respect for persons, integrity, diligence, economy and efficiency.	Covers around 158,000 employees in around 50 agencies	Public Service Commissioner

Notes (a) Relevant legislation is the Public Service Act 1999
 (b) Relevant legislation is the Public Sector Management Act 1995
 (c) Relevant legislation includes the Public Sector Ethics Act 1994 and the Public Service Act 1996

Sources: Commissioner for Public Employment, *Annual Report 2003-04*, p.8; Australian Public Service Commission, *State of the Service Report 2003-04*, pp.261–264; Office of the Public Service Commissioner (Qld), *Annual Report 2003-04*, pp.49–51

As discussed in chapter 2, a values based framework for public sector employee conduct in Victoria has been revised to some extent with the introduction of the *Public Administration Act 2004*. Some key differences between the values based framework in Victoria and the framework in other jurisdictions include the following:

- Commonwealth – the Australian Public Service Commissioner has inquiry powers to examine the extent to which agencies incorporate and uphold Australian Public Service values and the adequacy of systems and procedures in agencies for ensuring compliance with the code of conduct. In performing this role, the Public Service Commissioner has powers under the Auditor-General Act 1997 to obtain information and gain access to premises;²²⁵
- South Australia – the Commissioner for Public Employment has investigative powers to review personnel or industrial relations practices.²²⁶ The Committee understands that a recent external review of the Office of the Commissioner for Public Employment was critical of the Commissioner's failure to

²²⁵ *Public Service Act 1999*, ss.41–43

²²⁶ *Public Sector Management Act 1995*, s.25

systematically monitor observance of personnel management standards and guidelines, and to apply sanctions where appropriate;²²⁷ and

- Tasmania – the State Services Commissioner is responsible for evaluating the adequacy of agencies’ systems and procedures for ensuring compliance with the code of conduct and investigating alleged breaches of the code of conduct by agency heads. The Commissioner reports to the Premier on the results of such investigations. The powers of the Commissioner extend to summoning any person whose evidence appears to be material to any determination of the Commissioner. Subject to any exemptions specified in the Regulations, the Commissioner can require any person to produce documents or records in the person’s possession or subject to the person’s control that relate to matters of administration under the Act.²²⁸

The Committee noted that values based conduct frameworks for public sector employees were part of recent public service reviews conducted in New Zealand and Canada.

In New Zealand, a code of conduct developed by the State Services Commissioner under the *State Sector Act* 1998 forms the basis of the public service employees’ values based employment framework.²²⁹ The code, which has not changed since 2001, describes the following three principles of conduct which encompass the minimum standards of integrity and conduct expected of all public servants.²³⁰

- public servants must fulfil their lawful obligations to the government with professionalism and integrity;
- public servants must perform their official duties honestly, faithfully and efficiently, respecting the rights of the public and their colleagues;
- public servants must not bring the public service into disrepute through their private lives.

The Committee noted that legislative amendments have extended the role of the State Services Commissioner beyond a narrow definition of the public service (‘state services’ – around 171 agencies plus more than 2,500 school boards of trustees), to cover the ‘state sector’ agencies (an additional 55 agencies including some departments that are not part of the state services, tertiary education institutions, offices of Parliament; and state owned enterprises).²³¹ The extension of the State Services Commissioner’s powers varies in some areas including:²³²

²²⁷ Department of Premier and Cabinet, *Review of the Office for the Commissioner for Public Employment*, June 2004, p.21

²²⁸ *State Service Act* 2000, ss.18–19

²²⁹ *State Sector Act* 1998, s.57

²³⁰ State Services Commission (NZ), *New Zealand Public Service Code of Conduct*, February 2005

²³¹ State Services Commission (NZ), *State Services and wider State Sector*, updated 9 March 2005

²³² State Services Commission (NZ), *Role of the State Services Commissioner*, www.ssc.govt.nz/display/document.asp?DocID=4338, accessed 31 March 2005

- providing advice and guidance on integrity and conduct to employees across the state services (apart from Crown research institutes and their subsidiaries), setting minimum standards of integrity and conduct for a defined range of agencies in the State Services (predominantly most Crown entities). This includes the power to issue a code of conduct that can be varied to reflect an agency's circumstances;
- providing advice on management systems, structures and organisations, a power previously limited to advising the public service that now extends to advising most Crown entities; and
- promoting senior leadership and management development in the state services by communicating strategies and initiatives to the wider state services, and by inviting state services' participation in public service development activities.

In Canada, the *Public Sector Modernization Act 2003* significantly amended the Public Service Employment Act, although most provisions will not come into force until December 2005. As part of the changes, a Canadian School of Public Service was established, continuing the functions of three merged organisations, but with a broader mandate.²³³ The Canadian Public Service Commission summarised the major changes to the Public Service Employment Act as:²³⁴

- clarifying responsibilities and eliminating inefficiencies in the system, while retaining the core values of merit, non-partisanship, excellence, representativeness, and the ability to serve the public with integrity and in their official language of choice;
- giving a new meaning to merit that moves away from the rules-based concept of 'best-qualified' to a values based approach that allows managers to hire qualified and competent individuals more quickly; and
- creating new mechanisms for staffing recourse, including the replacement of appeal boards by the new Public Service Staffing Tribunal.

The new Public Service Employment Act gives the Public Service Commission an expanded role in protecting the political impartiality of the public service. Specifically, the Public Service Commission will guide departments on the rights of public servants to participate in political activities; determine whether to grant permission or leave without pay for someone to be a candidate in an election; and investigate allegations of improper political conduct by public servants.²³⁵

²³³ Hon. D. Coderre, President of the Queen's Privy Council for Canada, media release, *New Canada School of Public Service Opens*, 1 April 2004

²³⁴ Public Service Commission of Canada, *The Public Service Modernization Act and the new Public Service Employment Act: Overview*, www.psc-cfp.gc.ca/psea-lefp/new_psea_e.htm, accessed 31 March 2005

²³⁵ Public Service Commission of Canada, 'Recruitment & Assessment Services – Political Neutrality Appointment Integrity', INFO-PSC, Vol. 1, No. 1, March 2005

In the U.K. a draft Bill was published in November 2004 by the government as a basis for further consultation following the publication of the Public Administration Select Committee's proposal for a Civil Service Act.²³⁶ The Committee noted that, among other things, the proposed Civil Service Act would:²³⁷

- establish a Civil Service Commission as an independent statutory body whose primary responsibility will be to uphold the principle of selection on merit on the basis of fair and open competition;
- provide for the Minister for Civil Service to publish a civil service code of conduct and a code of conduct for special advisors;
- clarify what 'special advisors' (ministerial advisors) can and cannot do; and
- require transparency in the appointment of special advisors by requiring the Minister for Civil Service to make annual reports to Parliament giving advisors names, responsibilities, activities and cost.

3.4 Stewardship

Public officials manage agencies on behalf of the community. The Australian National Audit Office noted that it is important to govern public sector organisations in a way that their capacity to serve government and the public interest is maintained or improved over time.²³⁸ This includes financial sustainability and the efficient and effective management of resources, as well as less tangible factors, such as maintaining the trust placed in the organisation and/or the government as a whole.²³⁹

The practice of agencies establishing an audit committee and having an internal audit function appears to be widespread in most jurisdictions examined by the Committee. In some cases, such as Western Australia it is a requirement under agencies' financial management framework,²⁴⁰ in others, such as New South Wales, agencies current audit structures are largely a result of historical practice rather than an overarching policy.

The role of the audit committee has recently received significant attention in the private sector in response to strengthening corporate governance arrangements following corporate collapses overseas and in Australia. In the United States, the Sarbanes-Oxley Act required that the Securities and Exchange Commission and the

²³⁶ Cabinet Office (UK), Consultation Paper on a Draft Civil Service Bill, www.cabinetoffice.gov.uk/propriety_and_ethics/civil_service/civil_service_bill_consultation.asp, accessed 31 March 2005

²³⁷ Cabinet Office (UK), *A draft Civil Service Bill: A consultation document*, November 2004, pp.1–17

²³⁸ Australian National Audit Office, *Public Sector Governance: Framework, Processes and Practices*, July 2003, p.8

²³⁹ *ibid.*

²⁴⁰ *Financial Administration and Audit Act 1985*, s.55

New York Stock Exchange establish rules prohibiting the listing of securities of any company that does not have an ‘independent’ audit committee.²⁴¹

In Australia, companies listed with the Australian Stock Exchange are required to implement a structure of review and authorisation designed to ensure the truthful and factual presentation of a company’s position (or make a statement on why such structures were not put in place). The structure is to include:²⁴²

- a review and consideration of the financial accounts by the audit committee; and
- a process to ensure the independence and competence of the company’s external auditors.

The Committee noted that a number of jurisdictions implemented public sector audit policies similar to those in Victoria, including requirements to have ‘independent’ members as part of the audit committee. Guidelines developed in several Australian jurisdictions highlight the benefits of appointing audit committee members who are external to an organisation, although they do not appear to require that external members are appointed or specify whether the chair of the audit committee should be an external person.²⁴³

In February 2001, the Treasury Board Canada Secretariat issued a policy that requires government departments to:²⁴⁴

- have an effective, independent and objective internal audit function that is properly resourced to provide sufficient and timely assurance of all important aspects of the department’s risk management strategy and practices, management control frameworks and practices, and information used for decision-making and reporting;
- incorporate internal audit results into their priority setting, planning and decision-making; and
- issue completed reports in a timely manner and make them accessible to the public with minimal formality in both official languages.

²⁴¹ *Sarbanes Oxley Act 2002*, s.301

²⁴² Australian Stock Exchange, *ASX Corporate Governance Council: Principles of Good Corporate Governance and Best Practice Recommendations*, March 2003, p.29

²⁴³ see for example, Queensland Treasury, *Audit Committee Guidelines*, January 2000, pp.15–16; ACT Treasury, *Internal Audit Framework*, undated, pp.10–11

²⁴⁴ Treasury Board of Canada Secretariat, *Policy on Internal Audit*, February 2001, p.2, www.tbs-sct.gc.ca/pubs_pol/dcgpubs/ia-vi/dwnld/pia-pvi_e.rtf, accessed 8 March 2005

Departments have implemented the requirement to issue completed internal audit reports in a timely manner largely by posting internal audit reports on their websites.²⁴⁵

3.5 Leadership

Leadership is crucial principle from a corporate governance perspective. The Australian National Audit Office emphasises two key leadership roles: the establishment of sound governance structures and processes and supporting good governance through their own performance and behaviours.²⁴⁶

Australian jurisdictions examined by the Committee have developed public sector specific leadership training opportunities and programs including:

- Commonwealth – the Australian Public Service Commission has developed a ‘Senior Executive Leadership Capability Framework’, which identifies five core criteria for high performance by senior executives. Each of the criteria heads a group of inter-related capabilities. The Commission supports the implementation of the ‘Integrated Leadership System’ across Australian public sector agencies;²⁴⁷
- ACT – the Chief Minister’s department co-ordinates an ‘Executive Leadership Development’ program designed to strengthen the service-wide capabilities of ACT public service executives both now and in the future;²⁴⁸ and
- NSW – the Premier’s department coordinates an ‘Executive Development Program’, which aims to improve the skills and attributes managers need to lead effectively in the public sector of the future.²⁴⁹

In New Zealand, a leadership development strategy for the public sector was launched in July 2003 by the State Services Authority, which aims to improve the ability of agency executives to identify the people who can lead the Public Service of tomorrow; ensuring suitable development programmes are available and developing the pool of leadership talent.²⁵⁰ An evaluation of the strategy is to be completed by June 2005.²⁵¹

²⁴⁵ see for example, Public Service Commission (www.psc-cfp.gc.ca/audit-verif/index_e.htm, accessed 8 March 2005), Industry Canada, (www.ic.gc.ca/cmb/welcomeic.nsf/532340a8523f33718525649d006b119d/6fc21aac21e11587852568e4007b3ae1!OpenDocument, accessed 8 March 2005) and Fisheries and Oceans Canada (www.dfo-mpo.gc.ca/communic/cread/audits/index_e.htm, accessed 8 March 2005)

²⁴⁶ Australian National Audit Office, *Public Sector Governance Better Practice Guide: Framework, Processes and Practices*, July 2003, p.8

²⁴⁷ Public Service Commissioner, *Annual Report 2003-04*, p.41

²⁴⁸ Chief Minister’s Department, *2004 Executive Leadership Development Program Information Booklet*, www.psm.act.gov.au/executive_wforce.htm, accessed 31 March 2005

²⁴⁹ NSW Premier’s Department, *Executive Development Program 2005*, www.premiers.nsw.gov.au/our_library/learning/EDPbrochure.pdf, accessed 31 March 2005

²⁵⁰ State Services Commissioner (NZ), media release, *New Leadership Programme for the Public Service*, 3 July 2003

²⁵¹ State Services Commissioner (NZ), *Senior Leadership and Management Development (SLMD) Evaluation 2005: March update*, www.ssc.govt.nz/slmd-evaluation-2005, accessed 31 March 2005

In the U.K. the Cabinet Office is involved in a joint venture with the National Health Service, local government and the Association of Chief Police Officers in a 'Public Service Leaders Scheme'.²⁵² The objectives of the scheme are to contribute to the improved delivery of public services by developing a pool of future leaders with broader experience and understanding of work across the public sector and to improve organisations' ability to manage change.²⁵³

²⁵² E. Foster and J. Turner, *Evaluation of the Public Service Leaders Scheme*, October 2003

²⁵³ *ibid.*, p.5

CHAPTER 4: STATE OWNED ENTERPRISES AND PARTNERSHIP ARRANGEMENTS

Key Findings of the Committee:

- 4.1 The State Owned Enterprises Act provides for the creation of several different types of agencies that have varying degrees of commercial structure and focus. The Act also gives broad powers to the government which have been used to facilitate changes in the functions of government agencies, including privatisation.**
- 4.2 The broad powers provided to the government to establish agencies under the State Owned Enterprises Act have been used to form agencies that do not have a commercial focus.**
- 4.3 Several agencies have entered into ‘partnership agreements’ with non-government service providers to improve relationships and service delivery arrangements.**

This chapter addresses the second term of reference by reviewing the effectiveness of the present corporate governance and accountability arrangements for State Owned Enterprises and partnership arrangements between the Victorian public sector and the private sector/not-for-profit organisations.

4.1 State Owned Enterprises

The *State Owned Enterprises Act* 1992 has been used as a framework to corporatise and privatise a number of agencies. Entities currently operating under the Act earned more than \$1 billion in revenue and were responsible for the management of assets valued at more than \$3.5 billion in 2003-04, most of which relate to Melbourne’s water supply.²⁵⁴

The Act provides for the creation of several types of entity that have varying degrees of commercial structure. The three key types are:²⁵⁵

- state body – a fully government owned entity that is established by Order-in-Council. It is infinitely flexible because its rules, constitution and internal processes can be set by Order-in-Council. It is a statutory authority

²⁵⁴ Annual reports of entities operating as a State Body, a State Business Corporation or a State Owned Company under the State Owned Enterprises Act. Information on the revenue and assets of VicForests is not publicly available as it commenced operations in August 2004 and has yet to table an annual report

²⁵⁵ Hon. S. Bracks, MP, Premier of Victoria, submission no. 53, p.10

under control of the relevant Minister (for example, the Public Transport Ticketing Body and Emergency Communications Victoria);

- state business corporation – more of a transitional vehicle for existing state authorities to become more commercially oriented. In particular, it can have its functions altered by Order-in-Council, and can be required to stop performing non-commercial functions (for example, VITS Languagelink); and
- State Owned Company – an ordinary company fully owned by the state but subject to additional controls. These controls are much more akin to those that a shareholder in an ordinary company might have. A State Owned Company is the most commercial structure under the Act (for example, State Trustees Limited and Yarra Valley Water Limited).

Another type of body – reorganising body – can also be created under the Act (s. 7). There are currently three reorganising bodies in Victoria, Gascor Pty Ltd, Melbourne Water Corporation and the Port of Melbourne Corporation.

Introducing the legislation in Parliament in 1992, the then Treasurer commented that:²⁵⁶

The object of the State Owned Enterprises Act is to provide an umbrella framework for the reorganisation of specified businesses conducted by the State in accordance with a modern corporation model, while still retaining strong accountability to the government. The Act can be applied to existing or new entities. In some cases the framework will allow corporate restructuring as a step to partial or full privatisation.

The State Owned Enterprises Act provides a framework for the operation of entities at arms length from government. Although some entities provide services on commercial terms, The Committee noted that many agencies established and operating under the Act do not, and are not required to, operate in a commercial manner.

The Act also provides for the imposition of tax-equivalent payments on existing statutory corporations. Tax-equivalent payments seek to ensure government businesses, which are exempt from paying company tax, do not gain a comparative advantage over private sector counterparts.²⁵⁷ Agencies made subject to income tax-equivalent payments under the State Owned Enterprises Act in 1995 included electricity suppliers (before their privatisation), the Melbourne Water Corporation, the Rural Finance Corporation, the Transport Accident Commission and the Port of Melbourne Authority (now Melbourne Port Corporation).²⁵⁸ The Victorian WorkCover Authority was made subject to income tax-equivalent payments in 1998 and regional

²⁵⁶ Victorian Parliamentary Debates, Legislative Assembly, 10 November 1992, p.661

²⁵⁷ Productivity Commission, *Financial Performance of Government Trading Enterprises 1997-98 to 2001-02*, June 2003, p.16

²⁵⁸ Victoria Government Gazette, State Owned Enterprises Act 1992 Tax-Equivalent – Statutory Corporations Order, 15 March 1995

water authorities were covered by the income tax-equivalent payment regime in 2001.²⁵⁹

4.1.1 Types of State Owned Enterprises

The State Owned Enterprises Act provides for different forms that facilitate both corporatisation and privatisation (exhibit 4.1). The Act has been used to facilitate the privatisation of a range of public assets including electricity, gas, timber plantations and grain handling facilities. Most recently, a State Owned Company, the Overseas Projects Corporation, was sold to a private sector company.²⁶⁰

**Exhibit 4.1 State Owned Enterprise Act
Facilitation of entity restructures, 1992–2004**

State Body	Date	State Owned Companies	Date
Victorian Plantations Corporation*	May 1993	State Trustees	Jun 1994
Energy Brix Australia Corporation*	Oct 1993	South East Water	Dec 1994
Water Training Centre*	1993	City West Water	Dec 1994
Generation Victoria*	Oct 1993	Yarra Valley Water	Dec 1994
National Electricity*	Oct 1993	Overseas Projects Corporation*	Jun 1996
Electricity Services*	Oct 1993	Converting Body	
VITS Language Link	Feb 1993	Energy Brix Australia Corporation*	Jul 1996
Melbourne Parks and Waterways	Jun 1994	Victorian Power Exchange*	Oct 1997
Natural Resource Systems Corporation	Jan 1997	Gascor*	May 1998
Emergency Communications Victoria	Jun 2002	Reorganising Body	
Public Transport Ticketing Body	Jun 2003	Transport Accident Commission	Apr 1993
VicForests	Oct 2003	Port of Melbourne Authority	Nov 1993
Victorian Competition and Efficiency Commission	Jun 2004	Port of Geelong Authority	Aug 1993

²⁵⁹ Victoria Government Gazette, *State Owned Enterprises Act 1992 Declaration* by the Governor-in-Council under s.88A(1), No. G34, 21 August 2001, *State Owned Enterprises Act 1992 Order* under section 88A(1) declaration of a statutory corporation, No.G8, 26 February 1998

²⁶⁰ Hon. J. Brumby, MP, Minister for State and Regional Development, media release, *Successful OCPV buyer announced*, 2 July 2004

Exhibit 4.1 – continued

State Body	Date	State Owned Companies	Date
Victorian Plantations Corporation*	Jun 1993	State Trust Corporation	Dec 1993
Energy Brix Australia Corporation*	Oct 1993	Melbourne Water Corporation	Jun 1994
VITS Language Link	Dec 1998	Grain Elevators Board*	Nov 1994
VicForests	Oct 2003	Victorian Channels Authority	Mar 2003
		Melbourne Port Corporation	Mar 2003

Note: * denotes entities that were subsequently privatised

Sources: Victorian Government Gazette, various issues

The distinguishing corporate governance features of each type of entity established under the State Owned Enterprises Act are discussed below.

(a) State bodies

State bodies are not created by an Act of Parliament but rather established by the Governor-in-Council by Order in the Government Gazette.²⁶¹ Entities that are currently operating as a State Body include the Victorian Competition and Efficiency Commission (established 1 July 2004), the Public Transport Ticketing Body (formed on 17 June 2003) and Emergency Communications Victoria (formed on 4 June 2002).

The State Owned Enterprises Act requires that the Order establishing a state body:²⁶²

- must state the particular purpose of establishing the state body;
- must state the functions and powers of the state body;
- if the state body is to be a subsidiary of a statutory corporation, must so state and name the particular statutory corporation;
- if the state body is to have a share capital, must state particulars of the share capital;
- must contain particulars of the constitution of the board of the state body;
- may include provision for the appointment of directors by the Governor-in-Council;
- may designate a Minister as the relevant Minister for the purposes of this Act in relation to the state body; and
- may include such other particulars relating to the establishing or operation of the state body as the Governor-in-Council determines.

²⁶¹ *State Owned Enterprises Act 1992*, s.14

²⁶² *ibid.*

A state body is required to repay capital as directed in writing by the Treasurer (after consultation between the Treasurer and the board and relevant Minister).²⁶³ It may also pay a dividend as determined by the Treasurer. Such determinations do not need to be in writing but must include provisions for consultation between the Treasurer, the board and the relevant Minister.²⁶⁴

The Treasurer and the relevant Minister may give general directions to the board after consultation with the board. Such directions are to be in writing.²⁶⁵ The Committee noted that the State Owned Enterprises Act does not require the directions to be made public. Such a requirement, however, does apply for Emergency Communications Victoria and the Public Transport Ticketing Board, which must publish in their annual reports any general directions made by the Treasurer or relevant Minister to the board.²⁶⁶

The Committee noted that detailed governance arrangements are usually included in the Order establishing the state body. In the case of the Victorian Competition and Efficiency Commission, the Order in Council specified that:²⁶⁷

- the Commission may regulate its own proceedings;
- a simple majority of the Commissioners appointed for the time being constitutes a quorum of the Commission; and
- each Commissioner must give written notice to the Treasurer of all direct and indirect pecuniary interests that he or she has or acquires in a business or in a body corporate carrying on a business.

(b) State Business Corporations

Existing statutory corporations may be established as a State Business Corporation by an Order of the Governor-in-Council published in the *Government Gazette*.²⁶⁸ Agencies operating as state business corporations include VicForests (established 28 October 2003) and VITS Language Link (established 1 January 1999).

A State Business Corporation may be formed only from an existing statutory agency. The Committee noted that VicForests was initially formed as a state body (by Order in the *Government Gazette*) and then subsequently declared in the same order as a state business corporation.

²⁶³ *ibid.*, s.16A

²⁶⁴ *ibid.*, s.16B

²⁶⁵ *ibid.*, s.16C

²⁶⁶ Victoria Government Gazette, State Owned Enterprises (State Body – Emergency Communications Victoria) Order 2002, No. S94, 4 June 2002, s.13

²⁶⁷ Victoria Government Gazette, State Owned Enterprises Act 1992 S14 - State Owned Enterprises (State Body-Victorian Competition and Efficiency Commission) Order, No. G27, 1 July 2004

²⁶⁸ *State Owned Enterprises Act 1992*, s.17

The State Owned Enterprises Act established the principal objective of each State Business Corporation as being to perform its functions for the public benefit by:²⁶⁹

- operating its business or pursuing its undertaking as efficiently as possible consistent with prudent commercial practice; and
- maximising its contribution to the economy and wellbeing of the State.

The Act's specific governance provisions relating to state business corporations cover:²⁷⁰

- the appointment of directors by the Governor-in-Council having regard to the expertise necessary for the corporation to achieve its objectives;
- a term of appointment for three years, with the provisions for re-appointment;
- the office of director becoming vacant if a director fails to attend three consecutive board meetings without the board's approval or reaches 72 years of age;
- a requirement to disclose pecuniary interests and conflicts of interest, and the possibility of not being part of board deliberations on these interests; and
- duties to act honestly and with a reasonable degree of care and diligence.

Two additional governance features included in the Order that affect the board of VicForests: (1) VicForests must operate in a framework consistent with Victorian Government policy and priorities, and (2) must notify the Treasurer and the Minister *before* it enters into a contract or service agreement with a government body.²⁷¹ These features appear to be unique to VicForests, with no other State Business Corporation having these requirements. The Committee is aware that the requirement to notify the Treasurer or Minister before it enters into a contract or agreement with a government body would apply to agreements over the allocation of timber resources, as well as the contracting of 'back office' functions to government departments.

The Committee is concerned about the use of such requirements, which appear to conflict with other requirements in the order which require VicForests to also 'operate its business or pursue its undertakings as efficiently as possible with prudent commercial practice' and 'be commercially focused and deliver efficient, sustainable and value for money services'.²⁷²

The State Owned Enterprises Act specifies that the chief executive officer of a State Business Corporation is appointed on such other terms and conditions as are approved by the relevant Minister on the recommendation of the board and specified in the

²⁶⁹ *ibid.*, s.18

²⁷⁰ *ibid.*, ss.23–39

²⁷¹ Victoria Government Gazette, State Owned Enterprises Act 1992 S14 - State Owned Enterprises (State Business Corporation - VicForests) Order 2003, No. S198, 28 October 2003

²⁷² *ibid.*, s.3

instrument of appointment.²⁷³ The Act specifies the board's power to remove the chief executive officer.²⁷⁴ It does not, however, clarify how the chief executive officer is to be appointed, potentially creating some confusion about the involvement of the board and the Minister in the chief executive officer's appointment.

(i) Reporting

The State Owned Enterprises Act requires the board of a State Business Corporation to prepare a corporate plan each year, and provide a draft of the plan to the relevant Minister and the Treasurer before 31 May.²⁷⁵ The proposed plan must be in, or to the effect of, a form approved by the relevant Minister and the Treasurer and it must include a statement of corporate intent (see below), a business plan containing such information as the Treasurer or the relevant Minister requires, and financial statements containing such information as the Treasurer requires.²⁷⁶

The plan, or any part of the plan, must not be published or made available without the prior approval of the board, the Treasurer and the relevant Minister.²⁷⁷ The Committee noted that none of the current State Business Corporations publishes their corporate plans on their websites.²⁷⁸

The Committee acknowledges that there may be sound reasons when the prior disclosure of a business plan is not in the commercial interest of an entity. However, the Committee considers that, wherever possible, those parts of business plans that are not considered to be commercial in confidence should be made available.

The Act specifies a number of processes for the drafting and approval of the corporate plan and any amendments to the plan:²⁷⁹

- the board is required to consult in good faith and consider any comments made by the Treasurer or the relevant Minister within two months after the plan was submitted and to make such changes as agreed within two months from the commencement of the financial year;

²⁷³ *State Owned Enterprises Act 1992*, s.40

²⁷⁴ *ibid.*, s.40

²⁷⁵ *ibid.*, s.41; Agencies covered by the State Owned Enterprises Act are subject to a range of corporate planning requirements that are broadly similar to those applying to other public sector agencies. In some cases, the terminology for the same type of plan can vary. In other cases, similarly named plans can have differing content requirements. As a general guide, corporate or strategic plans are longer term in nature, a statement of corporate intent is generally medium term (3 years) and includes more detailed financial and non-financial information while a business plan covers a one year period and sets out specific activities that an agency intends to undertake

²⁷⁶ *ibid.*

²⁷⁷ *ibid.*

²⁷⁸ VicForests (www.vicforests.com.au) and VITS Language Link (www.vits.com.au), reviewed 27 January 2005

²⁷⁹ *State Owned Enterprises Act 1992*, s.41

- the board may modify the plan at any time with the agreement of the Treasurer and the relevant Minister. The Act specifies that:
 - if the board provides written notice of a change to the Treasurer and the relevant Minister the board may, within 14 days, make the modification unless the Treasurer or the relevant Minister, by written notice to the board, directs that board not to make it; and
 - the Treasurer or the relevant Minister may, by written notice to the board, direct the board to include any matter, or omit any matter from, a statement of corporate intent, a business plan or a prescribed financial statement. The board may comply with such a direction.

The statement of corporate intent must include matters specified in the State Owned Enterprises Act such as:²⁸⁰

- the objectives of the corporation and its subsidiaries;
- the main undertakings of the corporation and its subsidiaries;
- the nature and scope of the activities to be undertaken by the corporation;
- the accounting policies to be applied in the accounts;
- the performance targets and other measures by which the performance of the corporation and of its subsidiaries may be judged in relation to their stated objectives;
- the kind of information to be provided to the Treasurer and the relevant Minister by the corporation during financial years, including the information to be included in each half-yearly report; and
- such other matters as may be agreed by the Treasurer, the relevant Minister and the board from time to time.

The Committee noted that neither in the State Owned Enterprises Act nor the Orders in Council establishing the two current state business corporations (VITS LanguageLink and VicForests) formally require those bodies to submit an annual report for tabling in Parliament. Instead, these agencies are subject to annual reporting requirements set out in the Financial Management Act.²⁸¹

In the case of VITS LanguageLink, the annual report is not tabled in Parliament because the Financial Management Act exempts the responsible Minister from tabling the annual reports of entities with revenue and expenditure of less than \$5 million.²⁸² The Committee noted that VicForests commenced operations on 1 August 2004 and therefore has yet to provide an annual report to Parliament.

²⁸⁰ *ibid.*

²⁸¹ *Financial Management Act 1994, s.53A*

²⁸² *ibid.*

The State Owned Enterprises Act prescribes general reporting requirements for State Business Corporations.²⁸³

- the Treasurer may, in writing, require the board of directors of a State Business Corporation to give the Treasurer such information as the Treasurer considers necessary;
- the board must immediately notify the relevant Minister and the Treasurer of matters that have arisen that may prevent or significantly affect the achievement of objectives or targets established under the corporate plan; and
- the board must prepare half-yearly reports on operations (including prescribed financial statements) for the relevant Minister and Treasurer. The Treasurer and the relevant Minister may specify in writing that certain information is included in such a report.

(ii) Ministerial directions

Under the State Owned Corporations Act, the board of a State Business Corporation may be directed by the relevant Minister (with the approval of the Treasurer) to perform, or cease to perform functions that the relevant Minister considers to be in the public interest but that may cause financial detriment to the corporation.²⁸⁴ The Minister may also direct the board to cease actions that he or she considers not to be in the public interest.²⁸⁵

The Act specifies that directions to perform (or not to perform) non-commercial functions must be in writing and must be complied with by the board.²⁸⁶ These directions are not required to be made public.

The relevant Minister and Treasurer may also direct the board about the repayment of capital and the payment of dividends:²⁸⁷

- the capital of a State Business Corporation is repayable to the state at such times, and in such amounts, as the Treasurer, after consultation with the relevant Minister, directs in writing after consultation with the board. However, in giving such a direction, the Treasurer is required to have regard to any advice that the board has given to the Treasurer in relation to the corporation's financial affairs.²⁸⁸
- each State Business Corporation must pay to the state such dividend, at such times and in such manner, as is determined by the Treasurer after consultation with the board and the relevant Minister.

²⁸³ *State Owned Enterprises Act* 1992, s.53, 54,55

²⁸⁴ *ibid.*, s.45

²⁸⁵ *ibid.*

²⁸⁶ *ibid.*

²⁸⁷ *ibid.*, ss.48,49

²⁸⁸ *ibid.*, s.48

The Committee noted that directions to the board with respect to the payment of a dividend are not required to be in writing, nor is there any requirement to make the direction public.

(c) State Owned Companies

The Committee noted that state owned companies share the principal objectives of state business corporations, namely:²⁸⁹

- to operate their business or pursue their undertaking as efficiently as possible consistent with prudent commercial practice; and
- to maximise their contribution to the economy and wellbeing of the state.

The key difference between a State Owned Company and the other forms of state owned enterprise is that state owned companies are registered under the Corporations Act 2002 (Cwlth), with the shares owned by the state. Further, a State Owned Company (or a subsidiary) does not represent the state and cannot render the state liable for any debts, liabilities or obligations.²⁹⁰

The Committee observed that state owned companies are required to operate under rules similar to those applying to private sector companies. Victorian public sector entities operating as state owned companies include State Trustees Limited, Yarra Valley Water, South East Water and City West Water.

The State Owned Enterprises Act specifies governance provisions for state owned companies, including:²⁹¹

- reimbursement for undertaking agreed non-commercial activities. The Committee noted that such agreement must be made by the relevant Minister with the approval of the Treasurer and a State Owned Company and in accordance with its memorandum of understanding and articles of association;
- the provision that the Auditor-General may, or must if the articles of a State Owned Company so provide, act as auditor of a State Owned Company;
- the provision that the State Owned Company must provide the Treasurer at a time and in a manner specified by the Treasurer:
 - further financial information;
 - a business plan;
 - an annual report; and
 - a report on such matters specified.

²⁸⁹ *ibid.*, s.69

²⁹⁰ *ibid.*, s.70

²⁹¹ *ibid.*, ss.72,73,74

Although state owned companies are not required under the Act to make business and corporate plans publicly available, the Committee understands that the three year statement of corporate intent for Yarra Valley Water is published on its website.²⁹² The statements for the remaining State Owned Companies are not publicly available.

The Treasurer is required to table in Parliament, as soon as practicable after the Treasurer receives them for each State Owned Company:²⁹³

- the memorandum of understanding and articles of association and any amendments;
- financial statements, directors' reports and the auditor's report as required under the Corporations Act; and
- each report by the Auditor-General in relation to a State Owned Company.

Some governance arrangements for State Owned Companies are specified in their memorandum of understanding and articles of association. These include shareholder approval for acquisition or participation in subsidiaries, audit by the Auditor-General unless the company in general meeting determines otherwise and the payment of dividends.²⁹⁴ The amount of any dividend payable is determined by a resolution of the shareholders after consultation with the board.²⁹⁵

State Trustees advised the Committee how information flows between it and the Department of Treasury and Finance are managed.²⁹⁶

The requests for information are in a number of forms and they are as follows:

- *Each year, the Department of Treasury and Finance receive a copy of our corporate strategic plan. This document consists of the following three main sections:*
 1. *Strategic Plan (outlining overall strategic direction).*
 2. *Budget Outcomes (detailed financial impacts for the next four years).*
 3. *Other Matters (responding directly to specific issues of importance raised each year by the department).*

²⁹² Yarra Valley Water, *Statement of Corporate Intent 2002/2003 – 2004/2005*, www.yvw.com.au/about-us/pdfs/Statement_Corporate_Intent.pdf, accessed 27 January 2004; www.sewl.com.au, accessed 27 January 2004; www.citywestwater.com.au, accessed 27 January 2004; www.statetrustees.com.au, accessed 27 January 2004

²⁹³ *State Owned Enterprises Act 1992*, ss.75

²⁹⁴ *ibid.*, Schedule 1

²⁹⁵ *State Owned Enterprises Act 1992*, Schedule 1, s.7

²⁹⁶ Mr T. Fitzgerald, Managing Director, State Trustees Limited, response to follow-up questions, p.2

- *We prepare audited Financial Statements, in line with the Corporations Act and Accounting Standards – These are provided to the Treasurer and are tabled in Parliament.*
- *On a quarterly basis we prepare a summary report for the department, which covers the financial performance against budget, and includes a number of performance KPIs [key performance indicators] and provides some general commentary on the performance of the business.*
- *Outside of the above ‘formal’ reporting, the department will occasionally request additional information. These are less common, but include reforecasts of year end financial results, information on dividend expectations and responses to questions that may have been raised in Parliament or indirectly through individual members of Parliament.*

(d) Re-organising bodies

The State Owned Enterprises Act allows the Governor-in-Council, by Order in the Government Gazette, to declare a statutory corporation to be a re-organising body.²⁹⁷ Such a declaration may be made for the statutory corporation to become a State Business Corporation or a State Owned Company, or for any other reason.²⁹⁸

As shown in exhibit 4.1, only two entities currently operating have been declared as re-organising bodies – the Melbourne Water Corporation, and the Port of Melbourne Corporation. The assets and liabilities of the Victorian Channels Authority, declared as a re-organising body in March 2003, have been re-allocated to the Port of Melbourne Corporation and the Victorian Regional Channels Authority.

On declaration as a reorganising body, the Governor-in-Council may declare by Order in the Government Gazette that the constitution of an organisation is changed as specified in the Order, which may cover areas such as the number of board members; the qualifications, terms and conditions of appointment to the board; and appointments to and removal from the board.²⁹⁹

The declaration of the Melbourne Port Corporation and Victorian Channels Authority as reorganising bodies facilitated the implementation of reforms recommended in a review of port activities, including the creation of a new proposed port corporation.³⁰⁰ The Orders declaring the Melbourne Port Corporation and the Victorian Channels

²⁹⁷ State Owned Enterprises Act 1992, s.7

²⁹⁸ *ibid.*

²⁹⁹ *ibid.*, s.8

³⁰⁰ Victoria Government Gazette, State Owned Enterprises Act – Declaration of Melbourne Port Corporation as a Reorganising Body, No. S41, 12 March 2003

Authority as reorganising bodies changed the membership of each board and the completion of a three year corporate plan.³⁰¹

The Committee noted that one member of the Port of Melbourne Corporation board was Secretary of the Department of Innovation, Industry and Regional Development at the time of his appointment but this was ‘consistent with the terms and conditions as set out in his contract of employment’.³⁰² He has since been appointed as chair of the board and resigned as Secretary.

4.1.2 Department of Treasury and Finance oversight

The Department of Treasury and Finance performs an important monitoring role for state owned enterprises. A policy document, *Corporate Monitoring and Governance: A comprehensive guide for Government Business Enterprises*, guides both the department and relevant entities in meeting their statutory responsibilities as well as suggesting better practice by boards.³⁰³

The department informed the Committee that:

It was a document that was created during 1997, and it is now scheduled for update. The only reason we had paused for an update of that is what might come out of the Department of Premier and Cabinet’s work at the present time on governance and non-departmental public entities as to whether it needs to be expanded a little more. But it is scheduled now for an update to make sure it is best practice. It has proven to be quite a durable document, though. Corporate governance has grown in those years, but we would say it is the role of the board to interpret the current philosophies on corporate governance and apply them to their business, rather than to turn to a corporate guide, which we would not ever describe as an operations manual.

The following sections detail some of the arrangements in place that affect the corporate governance of state owned enterprises.

(a) Planning and reporting

The Department of Treasury and Finance outlined the process it follows in the development of corporate plans by government business enterprises:

³⁰¹ ibid.

³⁰² ibid.

³⁰³ Department of Treasury and Finance, *Corporate Monitoring and Governance: A comprehensive guide for Government Business Enterprises*, July 1998

Under various legislative provisions GBEs are required to submit strategic planning documents to the Treasurer and in some cases noted in the tabled document to the portfolio minister as well. These are usually described in legislation as corporate plans. The processes involved in the review of corporate planning documents are as follows:

- *the establishment by the governance unit in the early stages of the annual planning process of the key issues for government to be addressed in corporate planning documents — in other words, we issue to the business enterprises a list of key issues that the government wants to focus on in the establishment of the corporate plan for the coming three years;*
- *a submission by government business enterprises of corporate planning documents to the Treasurer and portfolio minister, where appropriate, which include three key components: a statement of corporate intent, which provides an overview of the operations of a business, together with business targets relating to value creation, risk, efficiency and customer service; a corporate plan which defines the business environment, key business strategies, planning assumptions, financial and non-financial targets and a sensitivity analysis — sometimes called scenario planning; and the business plan which presents in greater detail an action plan for the first year of the plan period;*
- *our unit is then involved in a process of review which includes discussion at officer level between the governance unit and the business enterprise on any matters in the planning documents requiring clarification. This discussion may result in the revision of the documents at draft stage or the provision of additional information. Revision at draft stage would usually only occur if there was a misalignment between the key issues issued by the department and the proposals from the business enterprise;*
- *a preparation of a brief to the Treasurer and a draft letter from the Treasurer to the GBE board with comments on the planning documents. This letter may advise that the planning documents represent an appropriate basis by which the business should monitor its progress against the business plan, or request that the board give further consideration to various matters. To our mind it is a key that the Treasurer not approve corporate plans, rather that he accepts them. It is technically a fine point, but where there is a Corporations Law entity the Treasurer may be perceived to be a director of the organisation if he is approving the corporate plans of the board. He therefore accepts them. The formal response from the GBE board is then sought for the Treasurer where required.*

Entities are required to submit quarterly, half-yearly and yearly performance reports to the department. These reports include financial statements against forecasts, key financial and non financial performance indicators, and a brief exceptions based commentary. The department advised the Committee that reports are used to facilitate the early identification and management of emerging risks for the business.³⁰⁴

Entities are subject to a continuous disclosure obligation in addition to regular monitoring.³⁰⁵ This obligation requires the board to immediately notify the department of situations in which there will be an adverse variation of 15 per cent or more in full year pre-tax profit or cash flow compared with the corporate plan. The continuous disclosure obligation also applies to any significant expected variation in non-financial key performance indicator performance, and to the implementation of key strategies.³⁰⁶

(b) Dividend determination

The Department of Treasury and Finance explained to the Committee the processes involved in determining the level of dividends that may be paid each year:³⁰⁷

As with private sector businesses, at various times dividends are paid to the shareholder. These reflect a return to the shareholder to recompense for the cost of capital provided to the business enterprises. Following receipt of the half year and full year results the governance unit negotiates with GBE management and officers of the portfolio department as to an appropriate dividend amount to be paid to the consolidated fund.

Consideration is given to a number of factors including an appropriate dividend yield for an investor in such a business; the cash flows generated by the business in the prior accounting period; the views of the board and the relevant portfolio minister; the required credit standing of the business enterprise; the appropriate balance between borrowings and retained profits to finance growth; and the budgetary requirements of the state. Once agreement on the dividend amount has been reached, the governance unit advises the Treasurer and prepares the relevant documentation in the form of a dividend determination.

The Department of Treasury and Finance also explained to the Committee the process involved in the negotiation of dividends:³⁰⁸

³⁰⁴ Mr A. Hawkes, Director, Commercial and Financial Risk Management Group, Department of Treasury and Finance, transcript of evidence, 5 April 2004, p.16

³⁰⁵ Department of Treasury and Finance, *Corporate Monitoring and Governance: A comprehensive guide for Government Business Enterprises*, July 1998, p.7

³⁰⁶ *ibid.*

³⁰⁷ Mr A. Hawkes, Director, Commercial and Financial Risk Management Group, Department of Treasury and Finance, transcript of evidence, 5 April 2004, p.16

³⁰⁸ *ibid.*, p.22

Each party brings to the discussion their own perspective on these features. Let me address the budget question: the government has put a significant amount of capital into these businesses and we would argue in DTF that that capital has a cost just as any shareholder in a private sector business would claim that the money they are putting in has a cost, and it should have a dividend yield applied to it. It is purposely put at the end of our list of dot points in our paper. It is not the overriding criteria here. In our view it is important for the state to earn a return commensurate with the amount of capital involved in the business and commensurate with the degree of risk taken in that investment; so we look at each business according to the risk which comes through the calculation of the weighted average cost of capital, and we look at the generation of profits that these businesses are required to earn through the State Owned Enterprises Act, which says they must act commercially.

The other dot points are usually things that the board brings to the table. They would talk about their plans for the use of funds in the businesses and whether those funds are to be borrowed funds or whether they are to be generated from business activity and hence profits are retained in the business rather than being distributed to the shareholder, so we take account of the need for funds for growth in a business going forward. We take account of things like the credit worthiness of businesses, because even though they do not borrow from the public, they borrow from the Treasury Corporation of Victoria. We would not want to see business enterprises that are not credit worthy in their own right because it could impact on the financial risk of the state as assessed by ratings agencies, so we are trying to balance credit worthiness across these institutions as well.

The first dot point is a calculation of what is an appropriate yield to a shareholder from a business enterprise. The last dot point, the budgetary requirements of the state – as I say, it is put last purposely because it is not a key point – are such that we require a return on funds invested, and that tends to be a calculation more of the government's cost of capital. But it is a matter of history that these businesses have been able to generate funds for the benefit of consolidated revenue that are available to be used more widely across the public sector, so there is no ignoring the budgetary requirements of the state here.

The department's corporate monitoring and governance guide states that dividends are determined with reference to two general benchmarks – 50 per cent of net profit after tax and dividends plus income tax-equivalent paid or payable is equal to 65 per cent of

profit before tax.³⁰⁹ The Committee is unaware of the current dividend policies applied to government business enterprises, but notes that for State Trustees Limited:³¹⁰

Currently we have a dividend policy which is set at 90 per cent of our [after tax] profit that goes back to the Department of Treasury and Finance. That's done on a half-yearly basis. So we report to them our interim profit and we calculate a dividend on that basis and that's passed back to the Government. But it's currently 90 per cent of profit.

4.1.3 Improving corporate governance arrangements applying to State Owned Enterprises

The above discussion highlights the wide range of agencies that are covered by the State Owned Enterprises Act, and how their corporate governance arrangements can differ significantly. Although initially established to provide a framework for the corporatisation and privatisation of government business activities, a range of agencies that provide services predominantly on a non-commercial basis, such as the Victorian Competition and Efficiency Commission and Emergency Communications Victoria, have now been established by Order in Council under the Act.

The Committee identified several governance issues that arise for different types of entity operating under the State Owned Enterprises Act, as discussed in the following sections. Issues that relate to state owned enterprises that are also relevant to other types of public sector agencies and bodies are discussed in chapters 5 and 6.

(a) State Owned Companies

Entities established as state owned companies under the Act are intended to operate as commercial businesses, being subject to the same regulatory environment that apply to private sector companies under the *Corporations Act 2001* (Cwlth) and having the principal benefit under the State Owned Enterprises Act as:³¹¹

to perform its functions for the public benefit by (a) operating its business and pursuing its undertaking as efficiently as possible consistent with prudent commercial practice; and (b) maximising its contribution to the economy and well being of the State.

The Committee noted that this objective is the same as that applying to state business corporations (VicForests and VITS Language Link). The State Owned Company model of a corporatised government business is one of several used in Victoria, and the Committee considers it to be the 'purest' form of corporatisation as it makes an

³⁰⁹ Department of Treasury and Finance, *Corporate Monitoring and Governance: A comprehensive guide for Government Business Enterprises*, July 1998, p.7

³¹⁰ Mr T. Fitzgerald, Managing Director, State Trustees Limited, response to follow-up questions, p.2

³¹¹ *State Owned Enterprises Act 1992*, s.69

entity subject to the same legislation and regulatory environment facing private sector companies.

Several other jurisdictions have adopted a corporatisation model that is largely similar to that in Victoria. In Queensland, corporatised entities may be subject to the Corporations Act (such as electricity generators and retailers) or to a regime that largely replicates private sector arrangements without the direct application of the Corporations Act (such as port authorities and rail transport).³¹² Other jurisdictions have adopted a different model, such as in New South Wales, where the status of several corporatised entities changed in 1998 when they were reclassified along the lines of a State Business Corporation and no longer made subject to corporations law.³¹³

The Committee noted that there can be benefits from making management and boards subject to the Corporations Act. Some of the major benefits from such a corporatisation model include:

- accountability mechanisms (to shareholders) for regular financial reporting, audits and annual general meetings;³¹⁴
- obligations imposed on company officers to act in the best interests of the members and limited rights of action available to members;³¹⁵ and
- centralising the ‘shareholding’ of commercial entities in the Department of Treasury and Finance, rather than with departments that have a service delivery focus.³¹⁶

While the Committee acknowledges the benefits of such an approach, there are some potential disadvantages, which were highlighted in the case of the contamination of water supplied by the Sydney Water Corporation in NSW. This case highlighted inadequate communication structures between the responsible Minister, the department and the Corporation’s board, which were directly related to the conflict between the corporatisation model and the public interest. This conflict resulted in the Corporation deciding to protect the commercial reputation of the Sydney Water Corporation rather than issue an alert to the public.³¹⁷

The Committee is aware that many of the potential advantages from applying the State Owned Company model can be, and have largely been, replicated under other corporatisation frameworks, such as those applying to state business corporations.

³¹² Productivity Commission, *Financial performance of government trading enterprises 1997-98 to 2001-02*, p.46

³¹³ *ibid.*

³¹⁴ Parliamentary Library of Australia, *Government Business Enterprises and Public Accountability through Parliament*, April 2000, p.18

³¹⁵ *ibid.*

³¹⁶ NSW Auditor-General’s Office, *Corporate Governance – Volume One: In Principle*, June 1997, p.8

³¹⁷ Freehills, *Competition Law: GBEs and public accountability*, November 1998

State Trustees Limited, which is subject to the Corporations Act, informed the Committee about the corporate governance framework applying to that agency.³¹⁸

[State Trustees Limited is] a Government business enterprise set up under the State Owned Enterprises Act and we ultimately roll up to Department of Treasury and Finance but we are a corporatised entity, so I guess the best comment I would make would be that the community gets the best of both worlds in the sense that we've got the private sector regulation that comes under Corporations Law and [the Australian Securities and Investments Commission] and a number of other pieces of legislation, as well as the public sector in Government overview and regulatory regime that would take into account the Ombudsman, the Auditor-General and a number of others. So I guess in terms of overview, we are one of the more regulated entities that operates within the public sector, because you've got both the private sector capture and a whole range of legislation under that, and then you've got the public sector stuff, as I said, with the Ombudsman and Auditor-General.

The Committee considers that the Department of Treasury and Finance should review whether the corporatisation framework for entities operating as state owned companies is resulting in strengthened governance arrangements, compared to frameworks applying to other models (such as those applying to regional water authorities and state business corporations). Where there are demonstrable benefits from maintaining this corporatisation model, the Committee is of the opinion that the government should also consider the possibility of extending this model to other appropriate entities. Other agencies that may be considered to come under the State Owned Company framework are those with a predominantly commercial focus and those that receive most of their revenue from sources other than the Victorian Government. Some examples include regional water authorities, VicForests, Adult Multicultural Education Services and VITS Language Link.

The Committee recommends that:

Recommendation 2: **The Department of Treasury and Finance review the corporatisation framework applying to entities operating as state owned companies, to determine the most appropriate models for Victoria and whether there is a case for abolishing this class of State Owned Enterprise.**

³¹⁸ Mr T. Fitzgerald, Managing Director, State Trustees Limited, transcript of evidence, 21 June 2004, p.9

(b) Application of a commercialised framework to a state body operating in a non-commercial manner

A state body is created by the Governor-in-Council by Order in the Government Gazette.³¹⁹ Most of the governance arrangements relating to a state body are usually specified in the Order that establishes it. Entities that have been recently established as a state body, such as the Victorian Efficiency and Competition Commission and the Public Transport Ticketing Body have a governance framework similar to that of many other statutory authorities. This framework covers functions, powers, board composition and proceedings, preparation of corporate plans, notification of the Treasurer and the relevant Minister of significant events and provisions for the Treasurer and the relevant Minister to direct the board.³²⁰

The Committee observed that a state body is required to repay capital as directed in writing by the Treasurer (after consultation between the Treasurer and the board and the relevant Minister)³²¹ and a state body must also pay a dividend as determined by the Treasurer. Such determinations do not need to be in writing but include provisions for consultation between the Treasurer, the board and the relevant Minister.³²²

The Committee noted that neither the Public Transport Ticketing Authority nor the Victorian Competition and Efficiency Commission are primarily commercial in nature. The Transport Ticketing Authority (trading as the Public Transport Ticketing Authority) is responsible for managing existing contracts with ticketing providers as well as managing the procurement of a new public transport ticketing system.³²³ The Victorian Competition and Efficiency Commission is responsible for conducting public inquiries into regulation and competition issues and providing advice to the Treasurer and other public sector agencies on regulations affecting business.³²⁴ The Committee considers that the governance framework applying to state bodies operating in a non-commercial manner, which was largely developed to facilitate corporatisation of government service provision, is inappropriate for Emergency Communications Victoria, the Victorian Competition and Efficiency Commission and the Public Transport Ticketing Authority given their primary responsibilities and functions. While the Committee acknowledges that creation of entities as state bodies may provide additional operational flexibility, the requirement to provide for a return on capital through dividend payments is inconsistent with the primary responsibilities and functions of these agencies.

³¹⁹ *State Owned Corporations Act 1992*, s.14

³²⁰ Victoria Government Gazette, State Owned Enterprises Act 1992 S14 - State Owned Enterprises (State Body – Public Transport Ticketing Body) Order 2003, No. S199, 17 June 2003, pp.1–5

³²¹ *State Owned Corporations Act 1992*, s.16A

³²² *ibid.*, s.16B

³²³ Transport Ticketing Authority, *Annual Report 2003-04*, p.6

³²⁴ Victorian Competition and Efficiency Commission, About the VCEC, www.vcec.vic.gov.au, accessed 11 April 2005

The Committee noted that the functions of Emergency Communications Victoria will be transferred to the newly established Emergency Services Telecommunications Authority during 2005.³²⁵

The Committee recommends that:

Recommendation 3: Entities established under the *State Owned Enterprises Act 1992* be limited to those providing goods or services on a commercial basis.

(c) *Creating new statutory bodies under the State Owned Enterprises Act*

The Committee noted that a number of entities were established in recent years via an Order in Council under the State Owned Enterprises Act. These organisations included Emergency Communications Victoria (2003), the Public Transport Ticketing Authority (2003), VicForests (2003) and the Victorian Competition and Efficiency Commission (2004).³²⁶

Some of these entities were created largely to manage issues in situations where the previous arrangements were unsuitable or could not be continued, for example Emergency Communications Victoria, is managing emergency call-taking and dispatch services (previously carried out under contract by a private service provider Integraph) until they can be transferred to a newly created statutory authority, the Emergency Services Telecommunications Authority, to be established during 2005.³²⁷

Other entities created as state bodies, such as the Public Transport Ticketing Authority and the Victorian Competition and Efficiency Commission, are clearly intended to operate over a longer time frame.

When the State Owned Enterprises Act was being debated, there were concerns that the options available under the Act shifted the ability to control the destiny of state owned enterprises from Parliament to the government.³²⁸

The Committee considers that a separate act of Parliament is a preferable method of creating new statutory entities, whether they are to undertake activities being provided by other entities or to carry out new activities. Such a process is likely to provide for greater scrutiny by the Parliament in establishing an entity's objectives and functions as well as providing for reporting and conduct arrangements that reflect current expectations.

³²⁵ *Emergency Services Telecommunications Authority Act 2004*, s.2

³²⁶ Victoria Government Gazettes, No. G27, 1 July 2004, pp.1862–1866; No. S119, 17 June 2003, pp.1–5; No. S94, 4 June 2002, pp.1–5; No. S198, 28 October 2003, pp.1–4

³²⁷ *Emergency Services Telecommunications Authority Act 2004*, s.2

³²⁸ Hon. K. Thompson, MP, Victorian Parliamentary Debates, Legislative Assembly, 13 November 1992, p.940

The Committee recommends that:

Recommendation 4: **The creation of new entities as state bodies under s.14 of the *State Owned Enterprises Act 1992* be limited to situations in which entities operate for only a limited (specified) time.**

(d) *Dividend ceilings*

All state owned enterprises, including state bodies, state business corporations and re-organising bodies can be directed to pay dividends to the government. The State Owned Enterprises Act provides that the entity must pay to the state such dividend, at such times and in such manner, as determined by the Treasurer after consultation with the board and the relevant Minister.³²⁹

Dividend arrangements for state owned companies (which are subject to the *Corporations Act 2001* (Cwlth)), are specified in their articles of association and specify that subject to the Corporations Act, members of the company (who hold the shares in the company on behalf of the state) may, in general meeting by resolution declare a dividend of an amount determined by the resolution of the members, after consultation by the directors.³³⁰

The Committee noted that the outcome of the dividend arrangements in Victoria, in terms of the proportion of after-tax profit paid to the Victorian Government is broadly in line with that in other jurisdictions, where an average of 82 per cent of after-tax profits was paid to governments in 2002-03.³³¹

The Committee is aware that the Corporations Act limits the value of dividends that can be paid, with the value of a dividend not to exceed current year profits or earnings retained from previous years.³³²

The Committee noted that in Tasmania, limits are placed on the value of dividends paid to the government which match the Corporations Act requirement that dividends can only be paid out of current after-tax profit and any retained earnings (profits from previous years).³³³ Outside of ‘normal’ dividends, the Tasmanian arrangements provide for the payment of ‘special’ dividends (over and above ‘normal dividends’). The portfolio Minister and Treasurer must not give a direction to pay a special dividend, unless they have consulted with the board and are satisfied that the entity has sufficient liquid assets to meet the special dividend and the body’s contingent and

³²⁹ *State Owned Enterprises Act 1992*, ss.13, 16B, 49

³³⁰ South East Water Limited, Articles of Association, s.78

³³¹ Productivity Commission, *Financial Performance of Government Trading Enterprises 1998-99 to 2002-03*, p.16

³³² *Corporations Act 2001*, s.245T

³³³ *Government Business Enterprises Act 1995*, ss.82–88

financial needs during the period are covered by its corporate plan.³³⁴ If such a direction is made, the Treasurer must lay a copy of the direction before each House of Parliament within five sitting days of having given the direction.³³⁵

While current dividend payments by Victorian public sector agencies are consistent with policies and practices in other jurisdictions, the Committee considers that a ceiling should be placed on the value of dividends that a government business enterprise is required to pay. Such an approach would improve corporate governance by placing a greater responsibility on the board to ensure the body can undertake the investment to fulfil its service provision objectives even if it pays the dividend.

The Committee considers that the limit should be applied to all agencies and bodies, including those that fall outside the State Owned Enterprises Act.

The Committee recommends that:

- Recommendation 5:** **Legislative provisions relating to the payment of dividends by State Owned Enterprises and other agencies be amended to:**
- (a) **place a maximum limit on the value of dividends that an agency is required to pay, consistent with the requirements imposed by the *Corporations Act 2001 (Cwlth)*; and**
 - (b) **provide greater transparency for the payment of dividends where the value of dividends exceeds after-tax profit and retained earnings by providing for a ‘special dividend’. These provisions could be modelled on the *Tasmanian Government Business Enterprises Act 1985*.**

4.2 Partnership arrangements

Many services are paid for by public sector agencies and bodies but delivered by private sector companies and non-government service providers. While contracting has been a feature of service delivery in Victoria in some sectors for a long time, outsourcing activity by public sector agencies accelerated in the mid-1990s, promoted by outsourcing guidelines developed by the Department of Treasury and Finance in 1995. Although contracting out of public sector functions was not compulsory for

³³⁴ *ibid.*, s.86

³³⁵ *ibid.*

public sector agencies, government policy encouraged the competitive contracting out of functions wherever possible.³³⁶

The next two sections examine some of the corporate governance issues relating to contracting arrangements with the private sector and non-government agencies.

4.2.1 Partnerships with the private sector

Partnership arrangements between agencies and the private sector come in a number of different forms. In recent years, several significant infrastructure projects have been undertaken under the *Partnerships Victoria* framework, which seeks to create partnerships between the Government and private businesses in which improved value for money is achieved by utilising the innovation capabilities and skills of both to deliver performance improvements and efficiency savings.³³⁷ The appropriate allocation of risks and rewards under the *Partnerships Victoria* framework raises significant corporate governance issues. The Committee will address these issues in a separate report to Parliament soon.

Some Victorian public sector agencies appear to have adopted more mature contracting arrangements with private sector companies that have provided services over a longer period. Yarra Valley Water even conducted a company-wide customer service training program that included contracted service providers.³³⁸ Yarra Valley Water reported that:³³⁹

We are very reliant on a number of partners and suppliers and recognise that our relationship with some of these organisations needs to improve. It means we need to work more closely in partnership with them for mutual benefit.

Yarra Valley Water is considerably reliant on contracted companies providing services. Yarra Valley Water reported that:³⁴⁰

One of the primary characteristics in our relationships with these business partners is a mutual and ongoing commitment to pursuing efficiency and quality. Firstly, by securing services in the open marketplace we can assure ourselves that the cost is competitive and benchmarked.

Secondly, by working together and focusing on improving quality while reducing cost, we innovate throughout the term of these contracts to improve efficiency and share in the benefits. We seek business partners

³³⁶ Industry Commission, *Competitive Tendering and Contracting by Public Sector Agencies*, Report No. 48, January 1996, p.428

³³⁷ Department of Treasury and Finance, *Partnerships Victoria*, undated, p.3

³³⁸ Yarra Valley Water, *Annual Report 2003-04*, p.8

³³⁹ *ibid.*, p.13

³⁴⁰ *ibid.*, p.91

who share our philosophy of continuous improvement and our major contracts contain key performance measures associated with improving efficiency, often containing incentive clauses associated with achieving improved service levels. This mutual commitment to efficiency has helped the company consistently achieve one of the lowest operating cost (per property served).

In chapter 2, the Committee discussed the contract disclosure requirements that apply to departments and noted that agencies not subject to the requirements should be 'encouraged to comply'. The Committee noted that Yarra Valley Water, while providing a list of contractors in its 2003-04 annual report, does not publish contractual information on the contracts publishing website.³⁴¹

While the Committee supports a mature 'partnership' approach to contracting arrangements, this approach needs to be underpinned by open and transparent tendering and contracting arrangements. The issue of transparency is explored in more detail in chapter 6, where the Committee recommends that the government extend disclosure requirements to all types of public sector agencies, rather than simply 'encouraging' them to do so.

A qualitative assessment of the processes for contracting arrangements supports the Committee's belief that agencies need to strengthen their contracting arrangements. The Committee noted the following, despite the Office of Public Employment finding that organisations had generally improved their policies and practices in relation to conflicts of interest.³⁴²

One of the most startling results ... is that 32.9% of large organisations, and 53.6% of small organisations, allow employees to approve expenditure that they have initiated. These organisations are therefore left more vulnerable to fraud and theft as they do not have this basic protection mechanism in place.

Some of the Office of Public Employment's survey findings are provided in exhibit 4.2.

³⁴¹ Victorian Government Purchasing Board, www.tenders.vic.gov.au, accessed 23 March 2005

³⁴² Office of Public Employment, *Organisational Self Assessment 2004*, March 2004, p.12

Exhibit 4.2 Systems or processes in place to ensure that employees avoid any real or perceived conflict between their work and personal interests

Response	Large* (n = 167) %	Small* (n = 84) %	All (n = 251) %
Procurement and contracting			
A declaration of Private Interests is completed annually by executives and staff with delegation to approve significant expenditures (eg. over \$20,000)	52.1	48.8	51.0
No employee is allowed to approve expenditure that they have initiated	67.1	46.4	60.2
Formal written policies specify criteria for arranging quotations or public tenders	81.4	66.7	76.5
Acceptance of quotations/public tenders over a fixed amount require a multi-person evaluation panel	65.3	69.0	66.5
All purchases/contracts over a fixed amount require separation of recommendation and approval authorities	68.3	71.4	69.3
Individuals involved in specific purchasing decisions over a fixed amount must make a 'conflict of interest' or 'pecuniary interest' declaration relating to the decision	27.5	–	–
Specific training on procurement and contracting is available for individuals involved in purchasing decisions over a fixed amount	27.5	–	–

Source: Office of Public Employment, Organisational Self Assessment 2004, March 2004, p.12

In light of these findings, the Committee recommends that agencies should review some of their purchasing/delegation arrangements to ensure contracting and purchasing decisions are subject to the highest standards of probity and integrity.

The Committee recommends that:

Recommendation 6: Public sector agencies implement appropriate procurement and contracting arrangements to ensure effective management of potential conflicts of interest and other probity issues in accordance with guidance issued by the Public Sector Standards Commissioner.

4.2.2 Partnerships with non-government service providers

In 2004-05, the Department of Human Services allocated \$1.04 billion to approximately 1,200 non-government service providers for the delivery of community services across a range of areas including disability services, housing assistance and palliative care.³⁴³

The term ‘participatory governance’ has been defined as ‘structures and arrangements which support effective relationships across public, private and community sectors as they collaborate in decision-making processes towards agreed objectives’.³⁴⁴ Since the early 1990’s, significant increases in the level of outsourcing of government services to the private and not-for-profit non-government agencies have been well documented. These increases have accelerated demands from those delivering services to have more input into all aspects of decision-making including priority setting and evaluation.

Several submissions by non-government service providers supported the development of a formal ‘partnership’ with government agencies.³⁴⁵ Berry Street Victoria informed the Committee that.³⁴⁶

While a partnership agreement may have the status of a memorandum or non-legally binding agreement, it needs to be informed by a number of guiding principles, such as:

- *governments and the not-for-profit sectors have different but complementary and essential roles in serving the needs of the community and it is in the public interest that the best possible relations exist between them;*
- *the relationship between the government and the not-for-profit sector must be based on mutual respect of each others’ roles while including the independence, autonomy and accountability to their stakeholders; and*
- *a focus on service outcomes needs to be balanced with the important role not-for-profit organisations play in engaging with service users in the particular places in which an organisation is sited.*

³⁴³ Department of Human Services, *Community Sector Investment Fund: Ministerial Action Plan*, January 2005, p.4

³⁴⁴ Professor M. Edwards, AM, Director, National Institute of Governance, University of Canberra, Address to the Minter Ellison seminar series, ‘The Public Sector in the New Millennium’, 27 June 2001

³⁴⁵ Berry Street Victoria, submission no. 10, p.9

³⁴⁶ *ibid.*

The Council of Intellectual Disability Agencies also supported the development of partnership arrangements.³⁴⁷

Accountability and governance arrangements will always be of interest to government departments, however, genuine partnerships are not forged on surveillance, intervention and control. Instead, there requires recognition by government for non-government agencies to be appropriately resourced to assist them to maximise their management and governance performance.

The Committee noted developments since the release of its issues paper in 2002, with the signing of a three year partnership agreement between the health, housing and community funded sectors and the Department of Human Services on how parties will work together to deliver services in these sectors.

The Victorian Council of Social Services considered that one of the benefits of the agreement had been a greater sense of ‘moral accountability’, in terms of consultation between the parties and trying to work together to reach agreement in a range of areas.³⁴⁸

The partnership agreement covers, for example, a vision, shared values and principles, governance and transparency arrangements and a definition of the relationship. The agreement also outlines key commitments such as the establishment of a three year funding cycle by the department. To operationalise the agreement, an implementation committee consisting of departmental and peak body representatives was formed to develop a shared work plan covering priority areas (for example, sector viability).

The Committee noted that the Department of Human Services had recently conducted a survey of funded organisations and departmental staff to identify areas of high satisfaction as well as areas for further improvement.³⁴⁹ Significantly, while the survey results were positive overall, funded sector organisations were less satisfied with the relationship (70 per cent compared to 86 per cent). In terms of areas for further improvement from the funded sector’s perspective, better respect and understanding of the funded sector was a major area for improvement.

As discussed in chapter 3, this is broadly consistent with the Canadian Government’s experience, with that government having developed an accord with the voluntary sector covering a framework of principles and a statement of roles and responsibilities. Considerable learning was involved by both sides and, the

³⁴⁷ Council of Intellectual Disability Agencies, submission no. 24, p.4

³⁴⁸ Ms C. Smith, Chief Executive Officer, Victorian Council of Social Services, transcript of evidence, 21 June 2004, p.3

³⁴⁹ Department of Human Services, *Partnership survey report*, December 2003

government, found it had not sufficiently understood the complexities of the voluntary sector.³⁵⁰

The Committee is aware that the Victorian Government has implemented initiatives to support partnership arrangements with non-government service providers including:

- the implementation of three year service agreements to assist better planning for delivering services;³⁵¹
- funding of \$255,600 to establish an 'ideas exchange' by the Victorian Council of Social Services, which would provide brokerage services, a clearinghouse website and a Skillsbank to match skills;³⁵² and
- the establishment of a \$7 million Community Sector Investment Fund to invest in initiatives and infrastructure that support efficiency and sustainability in the non-government sector.³⁵³

As part of activities supported by the Community Sector Investment Fund, the Department of Human Services included an evaluation framework to identify benefits arising from the implementation of the fund initiatives for non-government service providers and service recipients.

The Committee supports the inclusion of evaluation strategies, and looks forward to how they will inform decision-making on future policies.

The Committee was advised that another partnership agreement is in place with the Municipal Association of Victoria, which signed a 'partnership protocol' with the Department of Human Services in October 2002.³⁵⁴ The protocol provides a framework to guide existing and future relationships, agreements and activities undertaken by both parties, including planning, policy, program development, service coordination and evaluation at State, regional and local government levels.³⁵⁵

The Committee examined additional areas that may benefit from the negotiation of more formalised partnership arrangements. The Committee noted that the Office of Small Business had recently entered into partnerships with the Franchise Council of Australia, the Victorian Employers' Chamber of Commerce and Industry and the

³⁵⁰ Professor M. Edwards, AM, Director, National Institute of Governance, University of Canberra, Address to the Minter Ellison seminar series, 'The Public Sector in the New Millennium', 27 June 2001

³⁵¹ Department of Human Services, *Community Sector Investment Fund: Ministerial Action Plan*, January 2005, p.14

³⁵² Hon. J. Thwaites, Minister for Victorian Communities, media release, *Ideas exchange for community and corporate sectors*, 18 March 2005

³⁵³ Department of Human Services, What is the Community Sector Investment Fund?, www.dhs.vic.gov.au/pdpd/csif/index.htm, accessed 23 March 2005

³⁵⁴ Department of Human Services, *Partnership Protocol between Department of Human Services and Municipal Association of Victoria*, October 2002

³⁵⁵ *ibid.*

National Institute for Accountants to improve information provision to small businesses.³⁵⁶

The Victorian Council of Social Services noted that:³⁵⁷

some of the intention around the Department of Victorian Communities is very positive and it's got really great potential, however there's probably more experience to learn from within [the Department of Human Services] because they've got longer term, larger scale, more diverse relationships with organisations.

The Committee considers there is considerable merit in developing formal partnership arrangements between government agencies and non-government service providers, especially in areas where relationships might previously have been characterised by misunderstanding and/or poor communication.

The Committee recommends that:

Recommendation 7: The Department of Human Services and the Department for Victorian Communities work together to develop a standard form agreement and processes to guide the development of partnership agreements between public sector agencies and non-government service providers.

³⁵⁶ Hon. M. Thomson, Minister for Small Business, media release, *New Partnership to Better Inform Victorian Business*, 20 January 2005

³⁵⁷ Ms C. Smith, Chief Executive Officer, Victorian Council of Social Services, transcript of evidence, 21 June 2004, p.8

CHAPTER 5: MONITORING AND REPORTING ON SELECTED CORPORATE GOVERNANCE ARRANGEMENTS

Key Findings of the Committee:

- 5.1 The *Growing Victoria Together* whole of government performance reporting framework needs to be strengthened by better aligning all public sector agencies with the government's objectives, and providing easy access to whole of government performance information.**
- 5.2 Progress to allow the Auditor-General to exercise his mandate to audit performance information has been slow.**
- 5.3 There appear to be significant opportunities to improve the timeliness of agency annual reporting to Parliament. The adoption of practices used in other jurisdictions could allow annual reports to be made publicly available up to two months earlier.**
- 5.4 Approximately 65 agencies are exempt from tabling annual reports in Parliament. Although some of these agencies publish their annual reports electronically many do not, thereby limiting the information available about their performance.**
- 5.5 A range of policies issued by central government agencies influences the way that agencies promote the services offered to the community.**
- 5.6 The requirement for agencies to develop complaints handling processes is sometimes mandated as part of operating requirements. The processes adopted for metropolitan and regional water retailers appears to provide the best model for complaints handling.**

The third of the Committee's term of reference requires the Committee to review the effectiveness of arrangements for monitoring and reporting on corporate governance issues in the Victorian public sector on:

- the information that is publicly available on the performance of government entities and the mechanisms available to allow the Parliament, consumers and the community to gain access to this information;
- the information available about what services are offered to the community; and
- the complaint mechanisms available to Members of Parliament, consumers and the community.

5.1 Performance reporting

Performance reporting addresses the issue of how well public funds were spent, as well as the traditional audit opinion on financial statements, which covers whether the funds were used and brought to account according to legal and other requirements. Agencies' performance reporting to Parliament and the community on the effective, efficient and economical use of public funds is thus a crucial element in ensuring appropriate standards of accountability by the executive arm of government.

A key aspect of parliamentary oversight of agency performance is the appointment of the Auditor-General as the external auditor of public sector agencies' financial statements. In 2003-04 the Auditor-General issued audit opinions on the financial statements of 611 agencies, as well as providing assurance on the 2003-04 annual financial statement and the 2004-05 budget estimates.³⁵⁸

In addition to providing assurance to Parliament and the community on the financial operations of public sector agencies, the Victorian Auditor-General has a broader mandate to undertake performance audits to examine the efficiency and effectiveness of agency operations, to provide an audit opinion on the quality of performance measures for some agencies and, more recently, to examine whether public funds received by non-government bodies have been applied economically, efficiently and effectively for the purposes for which they were given.

5.1.1 Whole of government reporting

In November 2001, the Victorian government released *Growing Victoria Together* which identified the government's broad vision and priorities over the next ten years. The strategy identified 11 issues of most importance to Victoria, a series of priority actions and how progress would be demonstrated. The Committee noted that the strategy does not cover the desired outcomes from all government programs, and that it covers only public service departments, not all public sector agencies, even though agencies' progress in achieving priorities is reported in the Budget Papers.

The government updated the strategy in March 2005 to reflect some changing emphasis in achieving key goals for the future and included additional measures of progress. However, the overall intent and focus of the strategy has essentially remained the same.³⁵⁹ The ten goals identified in the updated GVT strategy are:³⁶⁰

- More quality jobs and thriving, innovative industries across Victoria;
- Growing and linking all of Victoria;
- High quality, accessible health and community services;

³⁵⁸ Victorian Auditor-General's Office, *Annual Report 2003-04*, p.2

³⁵⁹ Department of Premier and Cabinet, *Growing Victoria Together: A vision for Victoria to 2010 and beyond*, March 2005

³⁶⁰ *ibid.*, p.2

- High quality education and training for lifelong learning;
- Protecting the environment for future generations;
- Efficient use of natural resources;
- Building friendly, confident and safe communities;
- A fairer society that reduces disadvantage and respects diversity;
- Greater public participation and more accountable government; and
- Sound financial management.

The Auditor-General prepared a progress report on performance management and reporting to examine action taken since his 2001 performance report on this subject.³⁶¹ In his response to the report, the Secretary of the Department of Premier and Cabinet stated that ‘Victoria’s approach to performance management and reporting does not flow in a linear fashion from Growing Victoria Together’ with the strategy mainly focusing on strategic issues of importance to Victoria, not ‘the full range of desired outcomes from government programs’.³⁶²

Reporting of progress against the Growing Victoria Together framework is provided annually as part of the government’s budget statement to Parliament however there is no comprehensive across the board reporting to Parliament on key government outcomes.

In this regard, Victoria appears to be lagging behind states such as Western Australia where agencies are required to include in their annual reports the following information:

- the relationship between government goals, agency level government desired outcomes and agency services;
- key effectiveness indicators for each agency level government desired outcome;
- key efficiency indicators of each service; and
- key cost effectiveness indicators of each agency level government desired outcome.

The Committee also noted that in Western Australia, the accountable officer for the agency is required to sign a statement that the indicators are based on proper records, are relevant and appropriate to assess the performance of the agency and fairly

³⁶¹ Victorian Auditor-General’s Office, *Performance management and reporting, Progress report and case study*, April 2003

³⁶² *ibid.*, p.8

represents the agency's performance. These key performance indicators are subject to audit by the Auditor-General.³⁶³

Given the importance of performance management and reporting from a public accountability perspective, the Committee is concerned that no significant progress in this area has been made to address concerns raised by the Victorian Auditor-General. In the Committee's view, a major performance management and reporting initiative should be re-launched by the Department of Treasury and Finance to bring the Victorian Public Service in line with better practice.

The Committee noted several developments in whole of government reporting in the United Kingdom and Canada in chapter 3. The UK Government introduced public service agreements in 1998 to set targets for departments to deliver on outcomes within defined funding parameters. The agreements were accompanied by independent auditing and inspection to hold departments accountable for their performance against targets. Regular web-based reporting was established too, to advise on departments' progress in achieving targets.

In Canada, the Treasury Board of Canada reports annually to Parliament on how the country is performing in six broad areas of government activity, using a results-based approach.³⁶⁴ Each area has designated key government outcomes and measures to track performance with links to planning, performance and resource information that is contained in departmental performance reports and reports on plans and priorities.³⁶⁵ The measures to track performance include information from a variety of sources such as census data, social surveys and OECD reports.³⁶⁶

The Committee supports the thrust of developments in the United Kingdom and Canada where whole of government outcomes are identified and explicitly linked to the activities of all public sector agencies, and the government's progress in achieving these outcomes is regularly tracked and measured. The Department of Premier and Cabinet, as the agency responsible for the preparation of the *Growing Victoria Together* strategy, is the agency best placed to further develop a whole of government performance reporting framework.

³⁶³ Department of Treasury and Finance (Western Australia), Treasurer's Instruction 904

³⁶⁴ Report of the President, *Canada's Performance, Annual Report to Parliament 2004*, December 2004

³⁶⁵ *ibid.*

³⁶⁶ *ibid.*

The Committee recommends that:

Recommendation 8: **The government develop a measurable set of major government policy outcomes that can form the basis of a whole of government performance management and reporting framework. Such assessments could be complemented by clearly articulated assessments of outcomes achieved.**

Recommendation 9: **The Victorian Government develop a framework for performance reporting that reflects better practice used in Canada and the United Kingdom, including as a minimum clear linkages between a statement of government outcomes and departmental and agency objectives/ outcomes supported by measures of progress and measurable performance information.**

5.1.2 Cross agency reporting

The Committee noted that a directive was issued from the Premier in 2003 mandating reporting by departments on four community areas; cultural diversity, women, youth and indigenous affairs.³⁶⁷ Specifically departments must:³⁶⁸

- report annually to the Department for Victorian Communities. Departments are to report against a template that includes key departmental commitments, links to *Growing Victoria Together*, key project initiatives, quantitative and qualitative performance measures and forward priorities; and
- include a summary of achievements in annual departmental reports. Departments are to include a statement on initiatives, strategies for the coming year and appropriate performance measures.

This Committee's report on the 2004-05 Budget Estimates highlighted concerns with performance reporting on these four areas in departments' 2002-03 annual reports, including the failure of departments to report progress against milestones, the inability to compare performance over time and a lack of focus on program outcomes³⁶⁹.

³⁶⁷ Department of Premier and Cabinet, Premier's circular 2003/03, *Whole of Government Reporting on Responsiveness to Cultural Diversity, Women, Youth and Indigenous Affairs*, downloaded from the Victorian Government Intranet

³⁶⁸ *ibid.*

³⁶⁹ Public Accounts and Estimates Committee, *Report on the 2004-2005 Budget Estimates*, November 2004, pp.670-685

The Committee has reviewed departmental annual reports for 2003-04 and noted that although there had been some improvement in both the quantity and quality of information provided in annual reports across the four community areas, the summaries were mainly in the form of activities implemented or planned, rather than providing an assessment of progress using key performance measures.

The Committee considers the reporting requirements for departments should be improved to ensure Parliament and the community are informed of progress made and the degree of success achieved by agencies with implementing these initiatives.

The Committee recommends that:

Recommendation 10: **The Department of Premier and Cabinet strengthen the reporting template in the Premier's Circular 2003 /3 covering cultural diversity, women, youth and indigenous affairs to have a greater focus on departments' performance reporting of program outcomes, progress against milestones and performance tracked over time.**

5.1.3 *External auditing of the report of operations*

As discussed in chapter 2, the Audit Act was amended in 1999 to provide a discretionary mandate for the Auditor-General to audit any performance indicators in an agency's report to determine whether they:³⁷⁰

- are relevant to any stated objectives of the authority;
- are appropriate for the assessment of the authority's actual performance; and
- fairly represent the authority's actual performance.

The NSW Auditor-General, who does not have powers to audit performance measures, provided the Committee with an example of where such a power would have provided for greater accountability of NSW public sector agencies:

³⁷⁰ *Audit (Amendment) Act 1999*, s.11

talking about the financial audit of CityRail we had been including data from CityRail on on-time running of trains, for example. We became aware from a draft internal audit report within State Rail that there was a fair degree of doubt about the validity of those statistics, the way they were compiled, the rigour with which they were compiled. We felt because of that we could not publish the data even with a caveat that it was not audited but because we had published it previously we felt an obligation to report why we were not publishing it.

Had the government endorsed the recommendations of Treasury some years earlier [to audit performance measures] it may have been saved the embarrassment of me then having to comment some time down the track that performance audit data that had not been audited was found to be very, very suspect, whereas if it had been through an audit process that might have been discovered a lot earlier and resolved a lot earlier.³⁷¹

The Committee noted in its 1999 report on annual reporting in the Victorian public sector that providing assurance on performance reports will assist users of the performance information, as well as help to improve the quality of the information reported.³⁷² By having their performance information audited, agencies will likely correct any systemic shortcomings identified by the auditors, to receive a clear opinion³⁷³. As a result, external auditing by the Auditor-General is expected to have a direct impact on the quality of reported information.

The Committee noted that the Auditor-General commented in June 2001 that the performance management and reporting framework had not yet been sufficiently developed to enable audit opinions to be issued on the relevance, appropriateness and fair presentation of performance indicators.³⁷⁴

Given that performance measures related to departmental objectives had yet to be finalised, the Auditor-General assessed a selection of departmental budget-related output performance measures to assess their relevance, appropriateness and auditability.³⁷⁵ The Committee noted the Auditor-General's findings for the selected output performance measures:³⁷⁶

³⁷¹ Mr B. Sendt, NSW Auditor-General, transcript of evidence, 28 April 2004, p.26

³⁷² Public Accounts and Estimates Committee, *Annual Reporting in the Victorian Public Sector*, May 1999, p.63

³⁷³ Mayne, J. and Wilkins, P., 'Believe it or not?: The emergence of performance information auditing', in Schwartz, R. and Mayne, J. (eds), *Quality matters: Seeking confidence in evaluation, auditing and performance reporting*, 2004

³⁷⁴ Victorian Auditor-General's Office, *Report on Ministerial portfolios*, June 2001, p.421

³⁷⁵ Victorian Auditor-General's Office, *Departmental performance management and reporting*, November 2001, p.70

³⁷⁶ *ibid.*, p.73

- the performance measures were generally relevant to departmental objectives. For some departments, however, the measures did not address all parts of the objectives to which the outputs contributed; and
- in terms of appropriateness, the measures provided a balanced view addressing quality, quantity and timeliness. They did not however, measure or report the full accrual cost per unit of output; and
- the Auditor-General was satisfied that the performance measures were auditable.

As also noted, no performance measures for departmental objectives were available at the time the Auditor-General conducted his performance audit, leading him to conclude that.³⁷⁷

Until such time as departmental objectives have been finalised, a comprehensive set of performance indicators and output performance measures for managing, measuring and reporting performance of departments will not be available for departments to discharge their public accountability requirements. Until development of measures and indicators which are capable of objective measurement, ie: are auditable, I will not be able to fulfil the requirements of section 8(3) of the Audit Act 1994.

The Auditor-General in his April 2003 progress report on performance reporting concluded that he was still some time away from being in a position to subject performance information to the rigours of a full attest audit.³⁷⁸

In May 2004, the Department of Treasury and Finance issued Financial Reporting Direction no. 27, requiring water authorities to report performance information in an audited statement of performance as part of their report of operations. The direction applied to performance reporting for 2003-04.

Under the *Local Government Act* 1989, the Auditor-General is required to provide an opinion covering key strategic activities and associated performance targets and measures for Victoria's 79 local councils. Performance reporting by water authorities and local councils commenced for the 2003-04 reporting period.

There are no requirements, however, for similar performance reporting for other areas of the Victorian public sector.

The Committee understands that the Auditor-General recently developed a Performance Indicator Audit Methodology for auditing performance measures included in the report of operations. The Committee supports this work, but the

³⁷⁷ *ibid.*, p.74

³⁷⁸ Victorian Auditor-General's Office, *Performance management and reporting: Progress report and a case study*, April 2003, p.3

initiative's effectiveness depends on the Department of Premier and Cabinet's establishment of a better practice performance management and reporting framework, as recommended previously in this report.

The Committee recommends that:

Recommendation 11: **The Department of Treasury and Finance amend the financial reporting directions to require all public sector agencies to provide performance information and indicators in their annual reports commencing from the 2006-07 reporting period.**

The Committee reviewed the 2003-04 annual reports of water authorities and several local governments and noted that many had included both the statement of certification and the Auditor-General's opinion in relation to their performance statements. In some cases, however, the annual report did not include the statement of certification and/ or audit opinion.

Although the Committee is unaware of any instances in which a qualified audit opinion was issued for a water authority, it considers that annual reports should include the statement of certification and the Auditor-General's opinion on the statement of performance, as required for financial statements. The publication of such a statement provides Parliament and the community with greater confidence that the reported results are accurate and meaningful.

The Committee recommends that:

Recommendation 12: **The Department of Treasury and Finance amend Financial Reporting Direction 27 to require nominated agencies to include the statement of certification and audit opinion in their annual reports.**

5.1.4 *Improving the timeliness of annual reporting under the Financial Management Act*

As noted in chapter 4, Ministers are generally required to table the annual reports of public sector agencies in Parliament within four months of the end of the financial year. For agencies with a reporting period ending 30 June (which applies to the majority of agencies except those mainly in the education sector), the deadline for the tabling of annual reports is 31 October. If this deadline is not met, reports may be tabled on the next sitting day.³⁷⁹

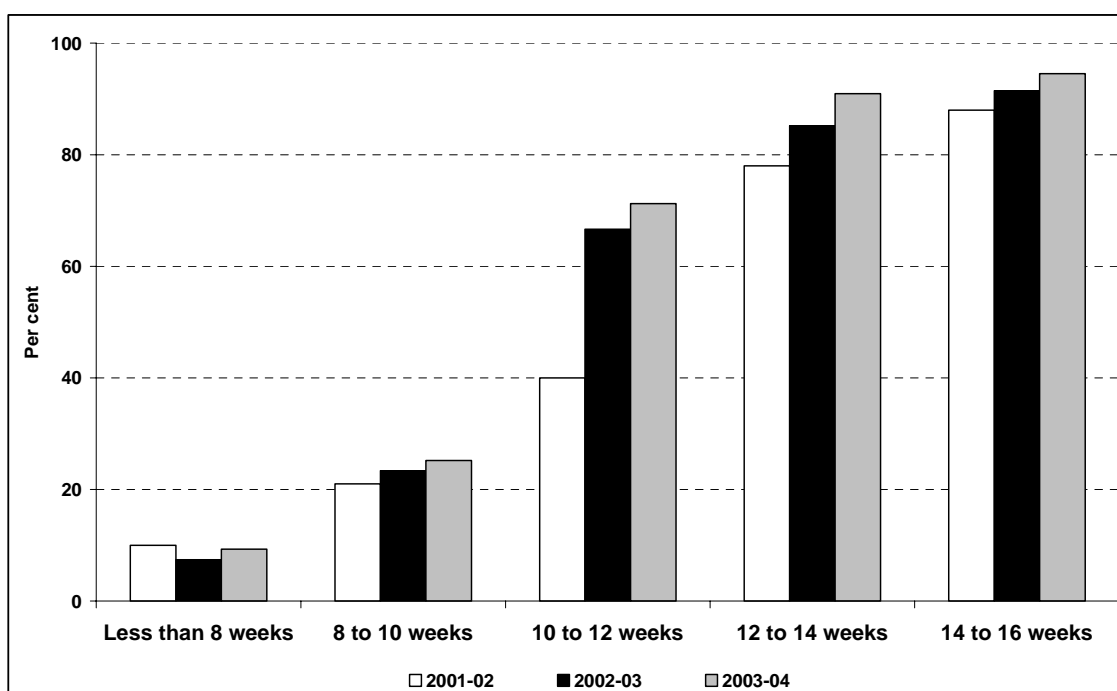
³⁷⁹ *Financial Management Act 1994*, s.46

A key aspect of the timetable for the tabling of annual reports is the Auditor-General's auditing of the financial statements and report of operations, which are required to form part of the annual report.

Agencies are required to provide the Auditor-General with a copy of the financial statements within eight weeks of the end of the reporting period.³⁸⁰ Entities that meet the definition of 'public bodies' are required to submit the report of operations to the Auditor-General 'as soon as practicable after it has been prepared'. The Committee understands that most agencies generally provide their financial statements and report of operations to the Auditor-General at the same time.

Once the Auditor-General has received the financial statements, the Audit Act specifies that the audit opinion must be provided within four weeks.³⁸¹ In recent years, the proportion of agencies with a reporting period ending 30 June that meet the required deadlines has improved, with 71 per cent of agencies in 2004 having had their financial statements signed by the Auditor-General within the 12 week statutory reporting requirement, up from 40 per cent in 2002 (exhibit 5.1).

Exhibit 5.1 Timeliness of audited financial statement completion



Sources: Victorian Auditor-General's Office, *Results of 30 June 2004 financial statement and other audits*, December 2004; *Report on Public Sector Agencies: Results of special reviews and 30 June 2002 financial statement audits*

³⁸⁰ *ibid.*, s.45

³⁸¹ *Audit Act 1994*, s.9

Notwithstanding the improvement in the turnaround time for the signing of the Auditor-General's opinion, the Committee considers that there are opportunities for further improvement. The Committee is aware that the Commonwealth Auditor-General could provide an unqualified audit opinion on the financial statements of the Department of Employment and Workplace Relations, for example, 20 days after the end of the reporting period.³⁸² While not suggesting that this should be a benchmark for Victorian public sector agencies, the Committee considers that this turnaround indicates the possibilities for improving the timeliness of auditing financial statements of public sector agencies.

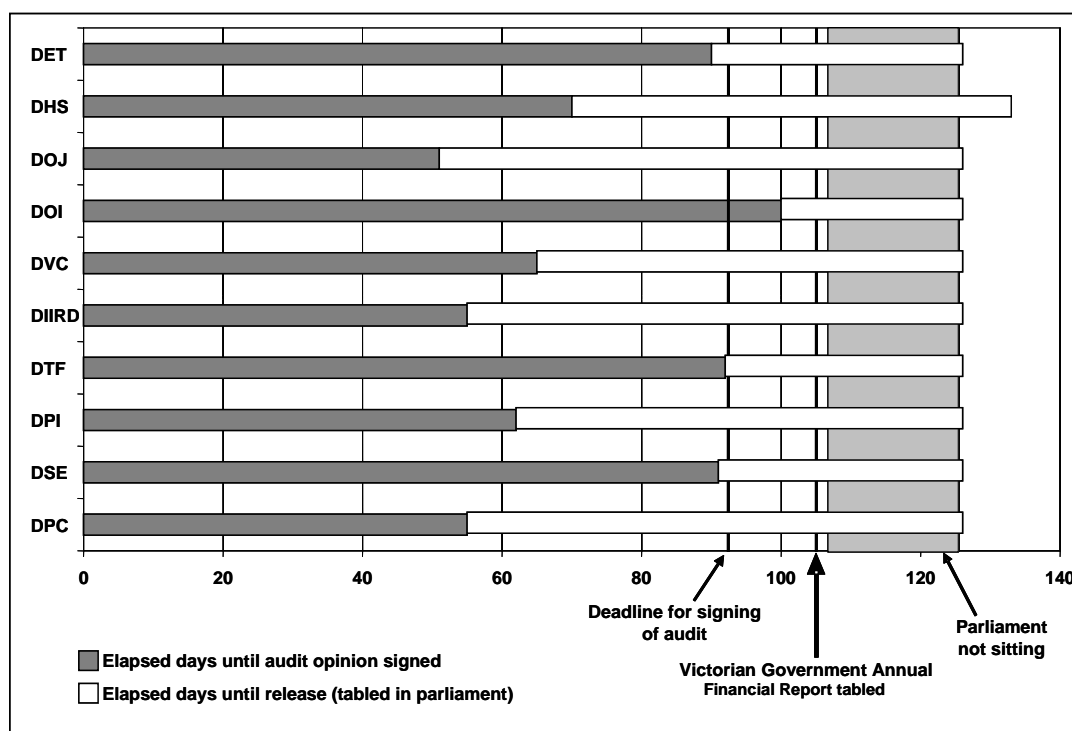
If the relevant Minister of a department or public body has not received the report of operations and financial statements of the department or public body in time to meet these requirements, the relevant Minister must provide an explanation to the Parliament and ensure that the report of operations and financial statements are tabled in the Parliament as soon as practicable after receiving them.³⁸³

In practice, the release of agency annual reports for entities with a reporting period ending 30 June usually occurs in November and December, although financial statements are usually certified by the Auditor-General well before this date (exhibit 5.2).

³⁸² (Commonwealth) Department of Employment and Workplace Relations, *Annual Report 2003-04*, p.212

³⁸³ *Financial Management Act 1994*, s.46

Exhibit 5.2: Timeliness of departmental 2003-04 annual reports



Source: Departmental 2003-04 annual reports

The Committee noted that the sitting pattern of Parliament strongly influences the date that reports are tabled in Parliament, with both Houses usually not sitting between mid-October and the first Wednesday of November (exhibit 5.3). As a result, most annual reports for the period ending 30 June are usually tabled in Parliament in early to mid-November, following the tabling of the Annual Financial Report, which the *Financial Management Act 1994* requires to be tabled in Parliament by 15 October.³⁸⁴

³⁸⁴ *ibid.*, s.27D. The report may be ‘transmitted’ to Parliament if it is in recess, thereby making available the publication of the report by the required date

Exhibit 5.3 Sitting patterns, Legislative Assembly

Year	October	November
2004	5, 6, 7, 12, 13 (b) , 14	3, 4, 9, 10, 11, 16, 17, 18, 30
2003	7, 8, 9, 14, 15, 16, 28 (b) , 29, 30	5, 6, 18, 19, 20, 25, 26, 27
2002 (a)	8, 9, 10, 15, 16, 17, 29 (b) , 30, 31	
2001	9, 10, 11, 16, 17, 18, 30 (b) , 31	1, 7, 8, 20, 21, 22, 27, 28
2000	3, 4, 5, 24 (b) , 25, 26, 31	1, 2, 14, 15, 16, 21, 22, 23

Notes: (a) Election on 30 November called on 4 November
 (b) Denotes day on which the Annual Financial Report was tabled

Sources: Parliament of Victoria, Vichansard Assembly and Council archive,
www.parliament.vic.gov.au/downloadhansard

While there is no requirement for the relevant Minister to table an annual report after the annual financial report, few agencies' annual reports are tabled earlier. The audited financial statements of agencies feed into the annual financial report, so the timely presentation of audited financial statements to the Department of Treasury and Finance is critical to the release of the annual financial report.

The Committee noted that the required preparation date for the annual financial report has been brought forward in recent years, with the date amended in 2003 to bring forward the report's release from 27 October to 15 October.³⁸⁵ The Committee understands that the Department of Treasury and Finance intends to further improve the release date for the annual financial report in 2005. Although the original aim was to audit the 2003-04 annual financial report by 23 September 2004 and release to Parliament by 28 September,³⁸⁶ the audit opinion was signed on 5 October 2004 and the tabling occurred on 13 October.

The Committee strongly supports the efforts of the Department of Treasury and Finance to shorten the timelines for releasing the annual financial report, which in turn shortens the timelines for the preparation and auditing of material entities. The production of timely information by public sector agencies makes it much more useful to the government, the Parliament and the community. The Committee considers that the Financial Management Act should reflect projected improvements in the release times for the annual financial report by the Department of Treasury and Finance, as an incentive for agencies to meet reporting timeframes.

Although private sector companies are required to lodge annual financial statements with the company regulator (ASIC) within three months and report to shareholders within four months of the end of the financial year,³⁸⁷ the timeframes for the release of

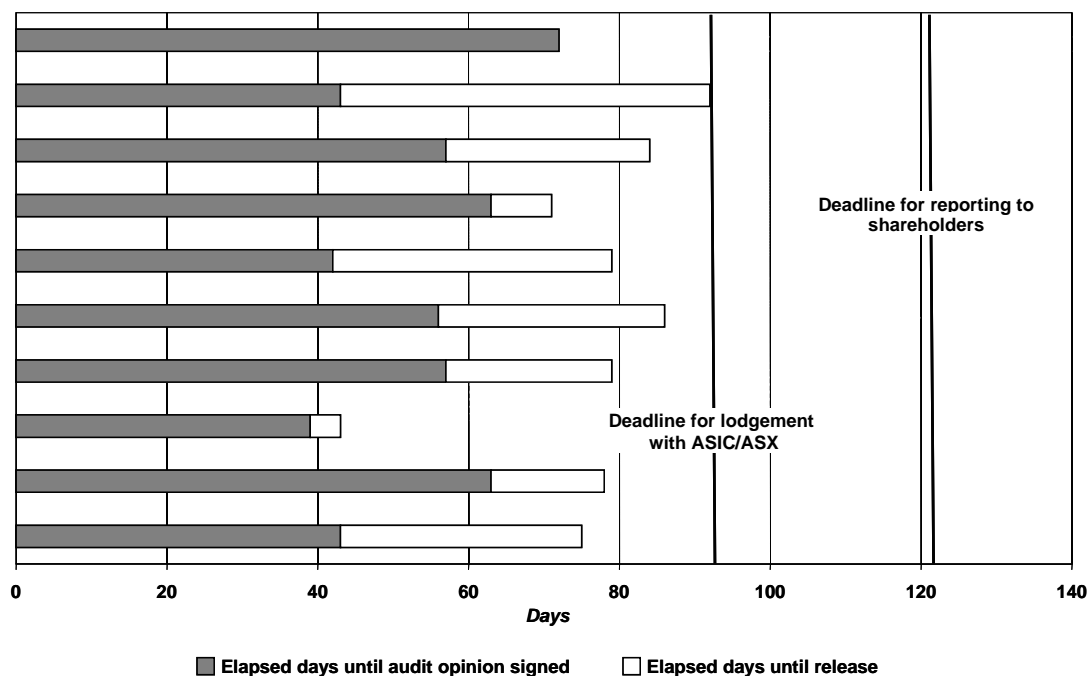
³⁸⁵ *Financial Management (Amendment) Act 2004*, s.12

³⁸⁶ Department of Treasury and Finance, AFR Timeframes, presentation to agencies, 10 March 2004, BFM intranet site

³⁸⁷ *Corporations Act 2001 (Cth)*, ss.315,319

annual reports of major entities listed on the Australian Stock Exchange is usually better than the prescribed requirements (exhibit 5.4).

Exhibit 5.4 Release of annual reports by selected private sector companies



Note: (a) The relevant companies (from top to bottom) are Mayne Group, Hills Motorway Group, Australian Pipeline Trust, National Bank of Australia, Commonwealth Bank, Envestra Limited, AGL, Westpac, BHP Billiton and Telstra

Source: Company annual reports

Although some difference in the release of annual reports by departments and private sector companies can be attributed to shorter turnarounds on obtaining an audit opinion (exhibit 5.2), most of the difference relates to the period between the signing of the audit opinion and the tabling of departmental annual reports in Parliament.

The NSW Department of Treasury advised the Committee that they had given some consideration to bringing forward the timelines for the tabling of NSW public sector agency annual reports:³⁸⁸

particularly now that our financial deadlines are coming forward and because the whole world of printing and desktop publishing has changed, it is possible to bring that forward. It is something we are looking at, yes.

³⁸⁸ Mr M. Smith, Principal Policy Analyst, Financial Management, NSW Treasury, transcript of evidence, 28 April 2004, p.14

The Committee noted recent comments by the Victorian Auditor-General, who stated that:³⁸⁹

Notwithstanding the improved timeliness of financial reporting by agencies [in respect of those with reporting periods ending 30 June], the annual reports of most government agencies were not tabled until the latest possible date allowed by legislation. As accountability to Parliament is not achieved until annual reports (containing the audited statements) are tabled and made publicly available, the benefits of completing audited financial statements in much shorter timeframes can be compromised when the tabling of an annual report is delayed.

The Committee considers that the current deadlines under the Financial Management Act for the presentation of draft financial statements to the Auditor-General (up to 60 days) are generous, given that the timeframe for the *signing* of the audit opinion for private sector companies appears to be around 55 days. Shortening this deadline would provide for a earlier tabling of annual reports, so tabling reports in the first parliamentary sittings in October would be readily achievable.

The Committee recommends that:

Recommendation 13: **The Department of Treasury and Finance examine the extent to which current deadlines under the *Financial Management Act 1994* for the presentation of draft financial statements to the Auditor-General can be reduced to enable earlier tabling of annual reports.**

As discussed in chapter 4, the Australian Capital Territory has adopted an annual reporting framework that appears to provide for an earlier tabling of annual reports by public sector agencies, and Queensland government agencies can make annual reports available when Parliament is not sitting. This arrangement brings forward the public release of reports by about two weeks.

The Committee considers that the tabling of annual reports in Parliament could be brought forward by at least one month, so annual reports are publicly available before the end of September. The Committee also considers that current arrangements should be strengthened using the model adopted in the Australian Capital Territory, whereby annual reports must be tabled within three months of the end of the reporting period and, if Parliament is not sitting at the end of this period, then out-of-session tabling is allowed, as for reports of the Auditor-General and parliamentary committees.

³⁸⁹ Victorian Auditor-General's Office, *Results of 30 June 2004 financial statement and other audits*, December 2004, p.4

The Committee recommends that:

- Recommendation 14:** **The *Financial Management Act 1994* be amended to:**
- (a) bring forward the release date for the annual financial report to mid-September, in line with the aims of the Department of Treasury and Finance;**
 - (b) require the relevant Minister to table in Parliament an agency's report of operations and audited financial statements within three months of the end of the reporting period; and**
 - (c) provide for out-of-session tabling of annual reports up to three months after the end of the reporting period, modelled on the provisions applying to reports by the Auditor-General and parliamentary committees.**

5.1.5 *Financial Management Act exemptions to tabling annual reports in Parliament*

As discussed in chapter 2, the Financial Management Act provides an exemption for small agencies from having to table an annual report in Parliament. Where the expenses and obligations of a department or public body do not exceed \$5 million, annual reports are not required to be tabled, although the relevant Minister must report to each House of the Parliament that the annual report has been received.³⁹⁰

Although each agency may be relatively small in terms of their financial transactions, the combined expenditure of the small agencies that did not table an annual report in Parliament in 2004 could have been up to \$325 million.³⁹¹

The Committee is aware of only limited occasions when a member of either House of Parliament has requested the Minister to table a report of operations and financial statements.³⁹² While this may indicate a low level of interest in the operations of small agencies, the Committee considers that the limited interest may be due to the limited information that is available on some of these small agencies.

³⁹⁰ *Financial Management Act 1994*, s.46

³⁹¹ 65 times \$5 million.

³⁹² One recent example was a request for a copy of the Dandenong Development Board's 2003-04 Annual Report

The Committee noted that some of these small agencies make their annual reports available electronically via their website,³⁹³ but others with a website did not make their reports available on that site.³⁹⁴

While the Committee appreciates that this arrangement for small agencies saves printing and distribution costs, it is concerned that there is limited public scrutiny of the performance and financial outcomes of these smaller agencies. Even when agencies publish reports on their websites, the Committee considers that tabling in Parliament is preferable because it imposes a notional deadline for annual reports to be released.

The Committee noted that the issue of a multi-tiered reporting and accountability framework was recently examined by the NSW Parliament Public Accounts Committee, which agreed that the principle of accountability for public funds should be upheld despite the expense.³⁹⁵ Recognising that some of the annual reporting arrangements in Victoria differ from those in New South Wales, the Committee nevertheless shares the view of the NSW Public Accounts Committee that the community generally expects that agencies be accountable to Parliament.

Further, although many of these small agencies have expenditure that is significantly less than the \$5 million threshold, the Committee considers that the range of non-financial information that is usually included in annual reports, such as service quality and governance issues, is important for Parliament and the community to assess the performance of agencies.

The Committee previously examined this exemption as part of its inquiry into annual reporting in the Victorian public sector in 1999 and recommended the removal of the exemption.³⁹⁶ In its response to the Committee, the Government indicated that it accepted the recommendation and would include it in the Financial Management Act review program.³⁹⁷

The Committee is disappointed that this issue has not yet been addressed, despite amendments to other parts of the Financial Management Act in 2000 and 2004, and a review of the Minister for Finance Directions in 2003.

³⁹³ see for example, Health Purchasing Victoria (www.hpv.org.au); the Dental Practice Board (www.dentprac.vic.gov.au); and the Optometrists Registration Board (www.optomboard.vic.gov.au).

³⁹⁴ see for example, Lorne Community Hospital (www.lornecommunityhospital.com.au); and the Chiropractors Registration Board (www.chiroreg.vic.gov.au).

³⁹⁵ Public Accounts Committee (Parliament of NSW), *Reporting and auditing requirements for small agencies*, December 2004, p.vi

³⁹⁶ Public Accounts and Estimates Committee, *Annual Reporting in the Victorian Public Sector*, June 1999, p.10

³⁹⁷ Government response to Annual Reporting in the Victorian Public Sector, December 1999, p.3

The Committee considers that scrutiny would be strengthened by requiring Ministers to table one copy of the report in Parliament so it is available (at the Parliament's expense) to the wider community. Parliamentary scrutiny would also be strengthened by requiring a copy to be forwarded to the Public Accounts and Estimates Committee as part of its review of annual reports. Further, small agencies with an existing website should make copies of their annual reports available for downloading.

The Committee recommends that:

- Recommendation 15:** **The *Financial Management Act 1994* be amended to require that:**
- (a) one copy of a small agency's annual report be tabled in Parliament and a copy be forwarded to the Public Accounts and Estimates Committee; and**
 - (b) each small agency publish a copy of its annual report on its website or where the agency does not have its own website, on the relevant portfolio department's website.**

5.1.6 *Other annual reporting arrangements*

As discussed in chapter 2, a number of public agencies present annual reports to Parliament under provisions outside the Financial Management Act. The Committee noted that the timeliness with which these reports must be tabled in Parliament varies, with some timelines similar to those applying under the Financial Management Act (for example, the Office of the Small Business Commissioner) and some agencies having a longer timeframe to prepare reports (for example, Consumer Affairs Victoria) (exhibit 5.5).

Exhibit 5.5 Timeframe for tabling annual reports in Parliament by selected entities

Entity	Deadline for presentation to Minister (a)	Deadline for tabling in Parliament by Minister once received	Date 2003-04 report was tabled	Actual date that tabling must occur (b)
Consumer Affairs Victoria	Within 6 months	Within 21 sitting days (c)	9 December 2004	16 June 2005 (d) 21 April 2005 (e)
Adult Parole Board	Within 3 months	Within 14 sitting days	9 December 2004	18 November 2004
Community Visitors Board	Within 3 months	Within 14 sitting days	18 November 2004	18 November 2004
Community Visitors (Psychiatric Services) Board	Within 4 months	Within 14 sitting days	8 December 2004	9 December 2004
Office of the Small Business Commissioner	Within 3 months	Within 3 months of 30 June or next sitting day	3 November 2004	3 November 2004
Victorian Environmental Assessment Council	Within 4 months	Within 7 sitting days	4 November 2004	17 November 2004

- Notes:
- (a) For periods ending 30 June
 - (b) Based on actual sitting schedule for the 2005 autumn session of the Victorian Parliament
 - (c) 21 sitting days under the Fair Trading Act. Within 3 weeks under the Credit (Administration) Act. If Parliament is not sitting then the report must be tabled within three weeks after the next assembling of Parliament
 - (d) Fair Trading Act
 - (e) Credit (Administration) Act

Sources: Credit (Administration) Act 1984, s.16; Fair Trading Act 1999, s.102; Corrections Act 1986, s.72; Intellectually Disabled Persons' Act 1986, s.62; Mental Health Act, s.116A; Small Business Commissioner Act 2003, s.14; Victorian Environmental Council Act 2001, s.14

The Committee noted that the annual report of the Health Services Commissioner, although tabled in Parliament, is not required to be tabled under the *Health Services (Conciliation and Review) Act 1987*.³⁹⁸ Such reporting to Parliament appears to be unusual and, although the Commissioner's annual report for the past two financial years has been tabled in Parliament in mid-November, there are no timeliness

³⁹⁸ The Act states that 'the annual report of the Commissioner must contain any information required by the Minister and may contain any information considered by the Commissioner to be appropriate' (s.11). In relation to presenting reports to Parliament (which may include the annual report), the Act states that the Commissioner 'may at any time place a report before each House of Parliament on any matter the Commissioner considers necessary arising from an individual complaint or in relation to the Commissioner's operations.' (s.12)

provisions in the Act relating to, and when, the Commissioner's annual report is published.³⁹⁹

The Committee considers that timely availability of the annual reports of agencies which are mainly of a non-financial nature is just as important as it is for agencies producing annual reports under the Financial Management Act.

Although in practice the annual reports of most of these agencies are presented to Parliament at the same time as agencies presenting reports under the Financial Management Act, reporting requirements for some of these agencies can be strengthened by aligning the timeliness with which they are required to be presented with the timeframes under the Financial Management Act.

The Committee recommends that:

- Recommendation 16:** **The government amend the establishing legislation of agencies required to table non-financial annual reports to:**
- (a) require the forwarding of annual reports to the relevant Minister within eight weeks of the end of the reporting period; and**
 - (b) require Ministers to table annual reports in Parliament within four weeks of receiving it or the next sitting day.**

5.2 Information on services available to the community

The Committee noted that, at a whole of government level, information on services provided by agencies is available through a number of avenues including:

- Information Victoria – provides referral services for inquiries via an Internet website (www.information.vic.gov.au) and telephone service; and
- Department of Innovation, Industry and Regional Development – provides referral services for inquiries via an Internet website (www.business.vic.gov.au) and a telephone service.

To inform people whose first language is not English about services provided by agencies, the Victorian Office of Multicultural Affairs developed a government services guide. The guide is published in 11 languages.⁴⁰⁰

³⁹⁹ *Health Services (Conciliation and Review) Act 1987*, s.11

⁴⁰⁰ Victorian Office of Multicultural Affairs, *Guide to Victorian Government Services*, www.voma.vic.gov.au/web8/vomasite.nsf/Frameset/VOMA?OpenDocument, accessed 30 March 2005

The Committee understands that the government is also looking to expand access to these information services in rural areas through 'Government Service Points', which feature:⁴⁰¹

- free Internet access to government websites - State, Federal and Local; and
- free telephone access to the Information Victoria Call Centre

Information on services to business at a whole of government level is also being developed by the Victorian Business Master Key, a new electronic case management system to reduce the amount of time small business operators spend dealing with government agencies. Introduction of the Victorian Business Master Key is expected later in 2005.⁴⁰²

The Committee's review revealed no requirements in an agency's establishing legislation that mandate arrangements by which an agency makes information on the services it provides to the community. However, the Committee noted that there are a range of policies that affect the practices used by agencies to promote the services they offer to the community including:

- guidelines for Victorian Government Advertising and Communications – issued by the Department of Premier and Cabinet, setting out principles and objectives of government advertising and communications, avoidance of misuse of public funds, and maintenance of high standards;
- State Government of Victoria Communications Manual – issued by the Department of Premier and Cabinet, setting out a range of requirements to be taken into account by agencies in developing communications strategies such as:
 - Whole of Victorian Government (WoVG) Web Site Guidelines, which is used by departmental and agency staff and consultants involved in developing, managing and maintaining Victorian Government websites;
 - communications guidelines for writing government publications; and
 - a multicultural communications policy that requires ethnic communities are informed of government services and programs and that departments and agencies commit a minimum of five percent of their campaign advertising budget to ethnic media;
- a checklist guide by the Victorian Office for Multicultural Affairs for agencies when formulating communication strategies aimed at specific categories of culturally and linguistically diverse Victorians; and

⁴⁰¹ Information Victoria, Information Service, www.information.vic.gov.au/info_serv/index.html#GSP, accessed 29 March 2005

⁴⁰² Hon. M. Thomson, Minister for Small Business, media release, *Hospitality Sector on the Boil as Victorian Small Business Sector thrives*, 17 January 2005

- a guide developed by the Victorian Office for Multicultural Affairs for agencies on the use of interpreters and translators which offers practical advice on obtaining high quality language services.

The Committee noted several instances where the effectiveness of communication strategies may need to be monitored including:

- small business – a survey conducted in 2003 for the Department of Innovation, Industry and Regional Development found that small businesses were confused about what level of government was responsible for certain services;⁴⁰³ and
- access to Internet – the provision of free or affordable public Internet access for disadvantaged groups across Victoria.⁴⁰⁴

The Committee encourages agencies to regularly review the way that information is made available to the public about the services they offer.

5.3 Complaint mechanisms available to Members of Parliament, consumers and the community

Since the early 1990s, governments have become increasingly aware that agencies must be more active in dealing with complaints by the public, and resolving them as early as possible. In the U.K., for example, the Citizen's Charter was introduced in 1991 which gave an undertaking that citizens would have better redress when things had gone wrong.

In July 2004, the Department of Constitutional Affairs (U.K.) issued a White Paper on *Transforming Public Services: Complaints, Redress and Tribunals*, which outlined a major shift in how complaints were dealt with, and included a new agency to provide a unified organisation to cover the work of existing tribunals.⁴⁰⁵ The White Paper outlines the following features of a good service delivery organisation from a user's perspective:⁴⁰⁶

- the decision making system must be designed to minimise errors and uncertainty;
- the individual must be able to detect when something has gone wrong;

⁴⁰³ Victoria University Small Business Research Unit, *Small Business Access to Government Business Assistance Programs*, 2003

⁴⁰⁴ Hon. M Thomson, MP, Minister for Information and Communication Technology, media release, *Bricks Government closing the digital divide*, 3 December 2004

⁴⁰⁵ *Transforming Public Services: Complaints, Redress and Tribunals*, Presented to Parliament by the Secretary of State for Constitutional Affairs, July 2004, pp.3–4

⁴⁰⁶ *ibid.*

- the process for putting things right must be proportionate, that is, there should be no disproportionate barriers to users in terms of the cost, speed, or complexity, but misconceived or trivial complaints should be identified and rooted out quickly;
- those with the power to correct a decision get things right; and
- changes are fed back into the decision making system so that there is less error and uncertainty in the future.

The Committee noted that some of these features complement a recent U.K. National Audit Office report on complaints handling procedures in the public service. Some of the key findings of this report cover:⁴⁰⁷

- defining what constitutes a complaint;
- having well-written, up to date and accessible information on how to make a complaint;
- undertaking regular and systematic recording of complaints by agencies;
- taking account of diversity when designing redress procedures;
- obtaining feedback from the public on the handling of complaints; and
- incorporating evaluation results into the continuous improvement processes.

In the Victorian public sector, the results of an organisation self-assessment completed by agencies (and summarised in the Commissioner for Public Employment's 2004 Annual Report) indicated that 86 per cent of organisations with 50 or more full time staff have a systematic approach to seeking and following up on client complaints.⁴⁰⁸

Given the range of agencies within the Victorian public sector, the Committee has focused on those organisations where there are high levels of direct customer contact. The Committee selected large metropolitan public hospitals, metropolitan water retailers and the metropolitan train operator (Connex) for further examination. From the perspective of corporate governance transparency, the Committee assessed the degree to which these organisations have clear, comprehensive and accessible information on how the public can make a complaint. The Committee made this assessment by investigating the respective websites.

In relation to the hospital sector, the Australian Health Care Agreement 1998–2003 required each state to review and update its patient charter, consequently, Victoria introduced the Public Hospital Patient Charter.

⁴⁰⁷ Report by the Comptroller and Auditor General, National Audit Office, *Citizen's Redress: What Citizens Can Do If Things Go Wrong With Public Services*, March 2005

⁴⁰⁸ Commissioner for Public Employment, *Organisational Self Assessment 2004*, March 2004, p.24

The current 2003-08 agreement⁴⁰⁹ requires that this charter be reviewed and updated in conjunction with the Australian Council for Safety and Quality in Health Care (ACSQHC). While this has not occurred yet, the Committee understands that ACSQHC will coordinate this review across all states.

In public hospitals, there have been improvements in terms of advising patients of their rights and of complaints handling processes. The Committee noted that the websites of three major metropolitan public hospitals provide patient information, including statements of patient rights and responsibilities, incorporating elements of the charter. In contrast to the water industry (see below), this information varied across hospitals in terms of the level of accessibility and the degree of information provided to patients. In relation to the complaints handling processes, the Committee noted in some instances that no reference was made to the role of:

- the patient representatives in public hospitals in assisting with concerns or dealing with complaints; or
- the Health Services Commissioner as an independent statutory authority to investigate and resolve complaints.⁴¹⁰

The Committee recommends that:

Recommendation 17: **The Department of Human Services, in consultation with public hospitals, institute best practice complaints handling procedures within public hospitals.**

In terms of the water industry, under s.9 of the *Water Industry Act* 1994, the granting of a licence requires the licensee to enter into a customer dispute resolution scheme approved by the Essential Services Commission. The Committee noted that a benchmark customer contract was developed by the then Office of the Regulator-General (now the Essential Services Commission) and was adopted by licensees. The statement of obligations (issued under s.8 of the *Water Industry Act*) provides the legislative basis for requiring licensees to adhere to the benchmark customer contract.

The Committee noted that a draft customer service code, which includes a customer charter, has been developed by the Commission. The licensee is required to enter into consultation with customers and to seek the Commission's approval of the charter. The Commission intends to have the code take effect from 1 July 2005.

⁴⁰⁹ *Australian Health Care Agreement between the Commonwealth of Australia and the State of Victoria 2003–2008, Schedule D*

⁴¹⁰ *Health Services (Conciliation and Review) Act 1987*

In terms of the three metropolitan water retailers, the Committee found the current customer charters to be clear and comprehensive in terms of the complaints handling process. The charters covered, for example, the complaint escalation process if the complainant is not satisfied with the initial handling of the case, and the right of the complainant to seek external resolution of the complaint through the Energy and Water Ombudsman. In two cases, the charters included a commitment to respond to a complaint within ten business days.

The Committee noted that, as part of the franchising arrangements for the metropolitan public transport system, the train transport operator (Connex) is developing a new customer service charter. Although the new partnership agreement with Connex commenced in April 2004, the Committee is aware that the new customer service charter has not been finalised. The Committee understands that the charter will be completed shortly covering Connex's complaints handling process and the circumstances under which matters can be referred to the Public Transport Ombudsman.

The Committee considers that the model of complaints handling processes adopted for metropolitan and now regional water retailers provides the strongest framework in terms of how complaints are made and for clarifying how complaints are then handled. The Committee encourages agencies to benchmark their own complaints handling processes on this model and seek to review complaints handling processes regularly.

The Committee recommends that:

Recommendation 18: **Agencies benchmark their complaint handling processes against the model established for Victorian water retailers and monitor the effectiveness of their complaint handling processes on a regular basis.**

CHAPTER 6: IMPROVING VICTORIAN PUBLIC SECTOR CORPORATE GOVERNANCE ARRANGEMENTS

Key Findings of the Committee:

- 6.1** Complex corporate governance arrangements apply to some Victorian public sector agencies. This complexity may result in parts of a public sector agency and the community not having a clear understanding of the agency's functions and objectives; the role of its board and senior management; or a clear expectation of its future activities and performance.
- 6.2** Participating agencies must ensure that joined-up arrangements clearly establish the roles and responsibilities of each agency, as well as appropriate reporting arrangements.
- 6.3** Some agencies do not make all elements of their corporate governance arrangements publicly available, weakening their accountability to Parliament and also reducing the ability of Parliament and the community to scrutinise their performance.
- 6.4** The Victorian Government Purchasing Board has published details of contracts entered into by selected agencies, strengthening the transparency of relationships between private sector providers and these agencies. Mandating wider participation, to include all agencies, strengthens the transparency of contractual arrangements and increases accountability to the community and Parliament.
- 6.5** The powers of the State Services Authority do not provide for the independent conducting of inquiries into the degree of adherence by agencies with prescribed values and standards unlike other jurisdictions such as the Commonwealth public service.
- 6.6** The development of a corporate culture that encourages and actively supports good governance is dependent on strong leadership at all levels of the organisation; not just at senior levels. In addition, the State Services Authority has a critical role to play in working with agencies in raising overall governance standards throughout the Victorian public sector.

The fifth term of reference required the Committee to determine what improvements need to be made to current corporate governance frameworks in the Victorian public sector.

Consistent with the Committee's examination of corporate governance developments in other jurisdictions in chapter 3, the Committee has considered the current Victorian public sector arrangements with reference to the five governance 'principles' developed by the Australian National Audit Office: accountability, transparency/openness, integrity, stewardship and leadership.⁴¹¹

6.1 Accountability

Accountability is often linked to a range of concepts including responsibility, responsiveness and regulation and control.⁴¹² In this section, the notion of accountability is primarily concerned with the process whereby organisations, and the individuals within them, are responsible for their decisions and actions and how they submit themselves to appropriate external scrutiny.

6.1.1 *Application of the Public Administration Act to public sector agencies*

As discussed in chapter 2, the Public Sector Management and Employment Act was repealed by the *Public Administration Act 2004*, although there are several parts of the Public Administration Act that are yet to come into effect.⁴¹³

The Committee noted that the Public Administration Act includes a number of different types of entity that are covered by the Act, including an 'advisory entity', 'public sector body', 'public service body', 'public entity', 'exempt body' and 'special body'.⁴¹⁴ The Act also includes provisions that allow the Governor-in-Council by order published in the Government Gazette to declare a body (or class of body) to either be a 'public entity' or not to be a 'public entity' for the purposes of the Act.⁴¹⁵

While the Committee considers that some of the definitions in the Public Administration Act are clear, there are others that may lead to some confusion by agencies and members of the community as to whether they are covered or not covered by the Act. Moreover, the inclusion of provisions in the Act for agencies to be

⁴¹¹ Australian National Audit Office, *Public Sector Governance Better Practice Guide: Framework, Processes and Practices*, July 2003, p.8

⁴¹² Mulgan, R., *Accountability Issues in the New Model of Governance*, Discussion Paper No.91, April 2002

⁴¹³ Office of the Chief Parliamentary Counsel, *Acts Commencement Book*, as at 1 April 2004. The Act will come into operation in full on 1 January 2006, unless proclaimed earlier (*Public Administration Act 2004*, s.2). Sections of the Act covering the establishment of the State Services Authority commenced on 4 April 2004, with sections covering governance principles of public entities commencing on 1 July 2005

⁴¹⁴ *Public Administration Act 2004*, ss.4-6

⁴¹⁵ *ibid.*, s.5

made subject to (or not subject to) the Act may also result in confusion over time if information published in the Government Gazette is not accessible.

The Committee expects that the annual report of the Public Sector Standards Commissioner will include a list of agencies subject to the Public Administration Act in a manner similar to the annual reports of the former Commissioner for Public Employment.⁴¹⁶

To overcome this confusion and to create an authoritative up-to-date source of information affecting corporate governance arrangements, the Committee considers that a database on all public bodies should be developed by a central agency to provide updated information to agencies and the community on the application of key legislation to each agency (such as the Public Administration Act) the agency's key relationships for corporate governance purposes as well as links to the agency and reports on its performance. The Committee considers that the State Services Authority is the most appropriate agency to collect and maintain such information.

The Committee noted that a similar database in the UK covering 839 'public bodies' was recently launched by the Cabinet Office.⁴¹⁷

The Committee recommends that:

Recommendation 19: **The State Services Authority develop and maintain a publicly accessible database covering all public sector agencies in Victoria. As a minimum, the database should include information on:**

- (a) legislation applying to the agency;**
- (b) contact details for the agency; and**
- (c) links to performance reports published by the agency.**

6.1.2 *Establishing clear roles and responsibilities*

As discussed in chapter 2, the Victorian public sector uses different management models for agencies. Each model has implications for how those charged with the responsibility of managing public sector agencies are accountable to Ministers, Parliament and the community. In general terms, agencies are managed in either of two ways:

⁴¹⁶ see for example, the Commissioner for Public Employment's 2001-02 annual report, pp.109-112

⁴¹⁷ www.knowledgenetwork.gov.uk/ndpb/ndpb.nsf, accessed 6 April 2005

- by a group of people charged with responsibility for overseeing the management of an organisation. Day-to-day running is delegated to a chief executive officer; or
- by a single person acting as the chief executive and reporting directly to the Minister.

The establishment of statutory authorities with boards of management is intended to provide for an ‘arms length’ relationship with the government, giving operational autonomy to the board to provide services or outcomes as agreed with Ministers. To varying degrees, individual board members have a responsibility to act in the interests of the agency and in accordance with specified duties, such as a duty to exercise reasonable care and skill.

Although the respective roles of board members, the chief executive and Ministers are usually specified in an agency’s establishing legislation, the Committee considers that the specification of roles and responsibilities can be strengthened in some cases.

(a) Role of a board of management

Under a private sector corporate model, shareholders delegate the board of directors with the authority and responsibility to manage the company in the interest of shareholders. The board usually appoints its own chair (and deputy chair) and additional board members if required, although shareholders sometimes ratify appointments at the company’s annual general meeting. Day-to-day management of the company is further delegated to a chief executive officer (who, in some cases, is also a member of the board), who must carry out his or her activities within the policies and strategic framework established by the board.

The role of the board was summarised by the Royal Commission into HIH:⁴¹⁸

There are many ways in which the fundamental role of the board has been described in the literature. The essential role of the board includes setting the company’s strategic aims, providing leadership to put them into effect, supervising the management of the business and reporting to shareholders on their stewardship. The board must also ensure that the corporation has in place the necessary controls over its activities and, of equal importance, ensure that the controls are working. The appointment of a chief executive officer and the continued review of his or her performance and, through the chief executive, of management, is in large part a reflection of these obligations.

⁴¹⁸ The HIH Royal Commission, *Final Report*, April 2003, chapter 6

The use of boards of management in the public sector largely mimics the governance model used in the private sector. Significant differences can arise, however, through different conceptions of the ‘shareholder’, which in the case of most public sector agencies is deemed to be the relevant Minister, who holds ‘shares’ (or the community’s interests in an agency) on behalf of the community. These differences relate to how Ministers exercise power over boards (including how members are appointed and the roles that they perform) and chief executives, as well as how relationships develop between board members, the chief executive officer and Ministers.

The Committee noted that the relationship between the board of a public sector agency and the relevant Minister could vary across agencies, with the NSW Auditor-General advising the Committee that:⁴¹⁹

not all ministers universally and wholly endorse the principle of a governing body having the right to govern and ministerial responsibility being limited to a more regulatory-type role, which would be a purist model, and sometimes ministerial directions or the indication of ministerial preferences does create a difficulty for boards.

The roles of each party can be affected by board members lacking understanding of some factors that impact on public sector agency governance, including relationships among shareholders (that is the responsible Ministers), board members and the board chair, and senior management. Professor Storey informed that Committee that:⁴²⁰

A lack of understanding of the differences [between the roles of members of governing bodies of public, not-for-profit and private organisations] creates difficulties for members of the governing bodies of public sector organisations.

I once served on one statutory board where one of the other board members was a very experienced board member of a number of large public companies. On one occasion he said words to the effect of ‘how can we exercise our responsibilities as directors when we have no say in who is appointed to the board, we have no say in who is appointed as Chair, our choice of a person as CEO can be overruled by the Minister, the policy we as a board decide on can be changed by a direction from the Minister and our major source of income is dependent on government budget decisions out of our control?’

In chapter 2, the Committee noted that arrangements for the appointment of boards and chief executives of public sector agencies usually include a role for Ministers and central agencies. The involvement of Ministers and departmental secretaries is often specified in the establishing legislation of a number of agencies, which may provide

⁴¹⁹ Mr B. Sendt, NSW Auditor-General, transcript of evidence, 28 April 2004

⁴²⁰ Professor H. Storey, submission no. 33, p.3

for the board to appoint a CEO ‘with the approval of the Minister’ or for the CEO’s terms and conditions to be ‘approved by the Secretary’. The Committee also noted instances in which establishing legislation does not include the position of CEO, consequently it is not clear what arrangements are in place.⁴²¹ The Minister (or Governor-in-Council) usually appoints the chair of a board.

Notwithstanding these differences in the way in which a board, the chair of a board and a CEO are appointed, the role of the board and chief executive officer in public sector agencies generally reflects the private sector model. However, ownership, reporting and legislative requirements often make these somewhat different. The Committee noted several examples where these roles can, or have recently been, better specified for Victorian public sector agencies.⁴²² In relation to public hospitals, a key finding of a 2003 review of governance arrangements that the Act should clearly articulate the roles, responsibilities and accountabilities of the key parties – the Minister, the department, the board and the CEO.⁴²³ Parliament passed amendments to clarify these roles in June 2004.⁴²⁴

In the case of Victoria’s two ambulance services (Rural Ambulance Victoria and the Metropolitan Ambulance Service), the Committee noted that the *Ambulance Services Act 1986* was amended in 2004 to clarify the respective roles of the board and the CEO, including that the board is responsible for developing strategic directions for the ambulance service and appointing and monitoring the performance of the CEO.⁴²⁵ The role of the CEO was also formally defined following amendments to the Act; previously the role was defined in the by-laws of each ambulance service.⁴²⁶

The Committee supports recent changes made to clarify roles, but it is aware of instances in which these roles can be better clarified including:

- the Rural Finance Corporation – although the *Rural Finance Act 1988* establishes the corporation’s functions, it does not clearly articulate the role of the board.⁴²⁷ The Act creates the position of CEO but does not clearly define it;⁴²⁸

⁴²¹ For example, the *Rail Corporations Act 1996* does not include provisions relating to the CEO for several organisations that are created under the Act including the VicTrack and the Spencer Street Station Authority. A similar situation exists under the *Water Act 1989*, which establishes regional water authorities

⁴²² See for example, Office of Training and Tertiary Education, *TAFE Governance Review*, May 2003, pp.30–31 and Department of Education and Training, *Review of University Governance*, May 2002, pp.25–27

⁴²³ Department of Human Services, *Governance Reform Panel: Final Report*, August 2003, p.25

⁴²⁴ *Health Services (Governance and Accountability) Act 2004*

⁴²⁵ *Ambulance Services (Amendment) Act, 2004*, s.11

⁴²⁶ Metropolitan Ambulance Service, *By-laws of the Metropolitan Ambulance Service*, November 2001

⁴²⁷ *Rural Finance Act 1988*, s.6

⁴²⁸ *ibid*, s.15

- rural water authorities – boards of directors established under the *Water Act* 1989 govern the authorities, but the Act does not formally specify the role of the board or mention the position of CEO;⁴²⁹ and
- Melbourne Market Authority – although the *Melbourne Market Authority Act* 1977 establishes the position of CEO, it does not formally specify the role of the board and the CEO.⁴³⁰

The Committee noted that agencies whose roles are not clearly defined in legislation are more likely to be those that have existed for some time. Although management practices for these agencies are likely to reflect current practice, the Committee considers that the government should attempt over time to amend legislation to formally define the roles of each respective party.

The Committee recommends that:

Recommendation 20:

The Government:

- (a) **identify agencies where a clearer specification of the roles of boards, management (the chief executive officer) and Ministers can be made; and**
- (b) **develop a program of legislative amendments for future years to formalise the clarification of the role of boards, chief executive officers and the responsible Minister/s in legislation.**

The Committee noted that a recent governance review of Commonwealth public sector agencies raised questions about the appropriateness of using a governing board model for some agencies.⁴³¹ The Commonwealth Government's response to the review has been to conduct a two-stage, case-by-case examination of agencies to examine whether a governing board model or executive management model (that is, no board structure with a chief executive officer directly accountable to the Minister) is appropriate.

The first phase of the Commonwealth Government's response to the review is due to be completed by April 2005, involving the examination of eight major statutory authorities that currently are managed by a governing board. The second phase will involve an examination of the remaining 170 statutory authorities by departments by

⁴²⁹ *Water Act* 1989, s.85

⁴³⁰ *Melbourne Market Authority Act* 1977, s.13B

⁴³¹ J. Uhrig, *Review of the Corporate Governance of Statutory Authorities and Office Holders*, June 2003, pp.10–11;

April 2006. The third phase will involve the completion of all legislative changes required to implement any changes arising from the examinations.⁴³²

The Committee considers that many of the issues identified in the Commonwealth Government's governance review are likely to be relevant to some types of agency in the Victorian public sector. The Committee encourages the Victorian Government to monitor the outcomes of examinations of Commonwealth public sector agencies to determine whether the use of a governing board management model remains appropriate for some Victorian agencies.

(b) Ministerial directions

As noted in chapter 2, for many agencies Ministers are given explicit powers in an agency's establishing legislation to give directions to a board/chief executive officer. In some cases, the power to issue a direction may relate to all matters or only to specific issues, such as the payment of dividends or the variation of corporate planning documents. Sometimes, the power of Ministers to issue directions is constrained, excluding specific matters or requiring adherence to a specific process.. Limitations noted by the Committee applying to some agencies included investment decisions (Victorian Funds Management Corporation), employment of a particular person (ambulance services) and consultation requirements prior to the payment of dividends (Emergency Communications Victoria).

For many agencies, restrictions on the power of a Minister to issue directions are intended to reflect Parliament's intention to place agencies at 'arms length' from the government. During this inquiry, the Committee noted instances in which the degree of separation between a Minister and the board or CEO as specified in legislation may not be consistent with public perceptions. The Rural Finance Corporation (a statutory authority with a board of directors operating under the *Rural Finance Act 1988*), for example, is subject to the general direction and control of the Treasurer (without any limitation).⁴³³ This limited degree of separation from ministerial control is not reflected by the name of the agency and its marketing strategy (that is, the agency is not a 'Corporation' in the sense implied by laws applying to private sector companies and by its use of a '.com' Internet address (www.ruralfinance.com.au)).

The Committee is aware that many public sector agencies may receive directions on an informal basis or where agencies have relied on public statements by the government or a Minister to undertake specific tasks or to assist in decision making. The Committee noted for example, recent comments by the head of Telstra's Corporate Services Division that the board would reconsider its sponsorship

⁴³² Blake Dawson Waldron, *Company Law and Governance Update*, December 2004

⁴³³ *Rural Finance Act 1988*, s.8

arrangements with a non-government agency following public comments by the Prime Minister.⁴³⁴

The Committee considers that requirements for Ministers' directions to be made in writing provide for greater accountability of agencies by ensuring agencies clearly understand what they are required to do. While public statements by Ministers can guide board members and management of government policies, the Committee considers there is room for ambiguity unless directions are issued in writing directly to the board/chief executive officer. Such an understanding is also important for Parliament and the community to assess an agency's performance.

Even when there is a requirement to make directions in writing, the Committee noted in chapter 2 that there appear to be no arrangements, in most cases, to make directions public. Where an agency's establishing legislation does include such a provision, such directions can be made public in a number of different ways including to the public on request, a notice in the government gazette and tabling in Parliament.

Given the varying requirements for how directions can be given to agencies, whether directions must be made public and directions are to be made public, the Committee considers that there can be considerable confusion for an agency, its Minister and Parliament on the agency's expected role and performance.

While recognising that the differing requirements reflect the extent to which an agency is considered to be at arms length from the government, the Committee considers that the Victorian Government should adopt a single standard for both the making of directions and the arrangements for making directions public. Such a standard would account for circumstances in which a board of management has been appointed to provide for operational autonomy.

The Committee recommends that:

Recommendation 21: The government amend agencies' establishing legislation to provide for:

- (a) a single standard requiring all directions made to an entity governed by a board of management to be in writing; and**

⁴³⁴ Mr B. Scales AO, Group Managing Director, Regulatory, Corporate and Human Relations, Telstra, Senate Environment, Communications, Information Technology and the Arts Legislation Committee, Estimates (Additional Estimates), 14 February 2005, pp.90–95

- (b) **a single standard requiring public disclosure of written directions made to boards of management to be tabled in Parliament within five sitting days of being given to an agency, as well as being included in the agency's annual report.**

(c) ***Formalising an agency's roles and the government's expectations***

The role and function of an agency are usually specified in establishing legislation. In some cases, roles and functions may be clearly specified. In these cases, accountability is strengthened because there is a common understanding of what the agency does and how it should be managed to achieve its objectives. However, in other instances, the roles and functions assigned to agencies can be conflicting, and require some interpretation or definition by the agency or the government.

In chapter 2, the Committee has noted several instances in which Victorian public sector agencies may face multiple and possibly conflicting objectives including the Port of Melbourne Corporation, Metropolitan Ambulance Service and Melbourne Market Authority.

The functions and objectives of public sector agencies can, in many cases, be varied under provisions that allow Ministers to give directions to the board (or, where there is no board, the CEO). As previously discussed, in some cases the ability of Ministers (or a departmental secretary, as in the case of some health sector agencies) to issue such directions is limited to issuing directions in writing and directions may be required to be made publicly available.

As discussed in the following section on transparency and openness, the Committee is also aware of instances in which some elements of the governance arrangements for public sector agencies are not publicly available and/or are considered to be 'commercial in confidence'.

The Committee considers that the clear specification of an agency's roles and the expectations of both Ministers and an agency's management are critical to ensuring the agency can deliver the outcomes expected by the government and the community. Where there is a lack of clarity, it is difficult for the management of an entity to pursue its functions with certainty.

The Committee also considers that other issues may need to be clarified for an agency to meet performance expectations. These are discussed below.

(i) Clarifying ‘independence’

The Committee received several submissions from agencies operating independently from government suggesting there should be an examination of whether the corporate governance structure of such agencies reflects the concept of independence and how the public accountability of such agencies is ensured. The Victorian Law Reform Commission informed the Committee that:⁴³⁵

At present, the legislation creating independent statutory bodies varied greatly in its approach to corporate governance. Because independent public bodies may be established for a variety of purposes, some differences in structure may be appropriate. However some of the current differences in corporate structure appear to be the product of historical accident, rather than considered judgements about the type of structure best suited to an independent agency.

The Office of the Public Advocate (OPA) informed the Committee that:⁴³⁶

OPA is administratively attached to the Department of Justice. While there are a number of benefits in this for a small statutory office, an ongoing challenge is to facilitate the independence of the office and to clearly define the nature of the relationship with the central agency.

The Equal Opportunity Commission informed the Committee that it considered several issues relating to the concept of independence required exploration:⁴³⁷

Removal provisions – in what circumstances, and pursuant to what procedure, officers within an independent statutory authority can be removed from office.

Funding arrangements – issues surrounding independence are related as much to perception as to actuality. For this reason, the manner in which independent agencies are funded (including the funding source as well as the accountability for funding variations) is critical to their independence and perceptions about their capacity to perform a watchdog role.

Employment of staff – the heads of some independent authorities are authorised to act as agency heads in relation to staffing ... others however, act under personal delegations from the heads of central agencies. It poses a clear challenge to perceptions of independence where staff of an independent authority are in fact employees of a central agency that could at some point potentially be involved in a matter within the jurisdiction of the independent authority.

⁴³⁵ Victorian Law Reform Commission, submission no. 13, p.2

⁴³⁶ Office of the Public Advocate, submission no. 50, p.1

⁴³⁷ Equal Opportunity Commission, submission no. 23, pp.1–2

Reporting arrangements – this has two components. Firstly, independent authorities reporting and accounting for their own actions and use of public funds ... A second component, however, is the standing accorded to topical or issue based reports released by independent bodies from time to time – eg: whether a responsible Minister is compelled to table and respond to such reports.

Relationship with auspicing bodies – the Commission recognises the significant benefits associated with linkage to a central agency ... and is not suggesting independence requires statutory authorities to be separate from such bodies. What the Commission is suggesting is that the relationship between such bodies needs to be governed by clear understandings and protocols to ensure that, over time, there are appropriate and consistent arrangements that allow for effective cooperation whilst preserving independence.

Some agencies appear to have adopted informal arrangements to clarify some of these issues. The Victorian Relief Committee, for example, informed the Committee that it negotiates an annual ‘agreement deed’ with the Department of Premier and Cabinet regarding funding to support the annual business plan.⁴³⁸ The Victorian Competition and Efficiency Commission, which is staffed by officers of the Department of Treasury and Finance has a ‘protocol agreement’ with the secretary of the department to ensure the independence of the secretariat’s advice to the Commission.⁴³⁹

The Committee noted that the Better Regulation Taskforce in the U.K. examined some areas that affected the independence of government agencies involved in regulatory activities.⁴⁴⁰ In addition to examining the statutory provisions that provide for agencies’ structural separation from other areas of government, the taskforce identified areas in which independence can be compromised including:⁴⁴¹

- finance – sources of funding include grants from central agencies, industry levies, fees and other for-service payments;
- personnel – the terms and conditions of employment at agencies are subject to approval by central agency executive management;
- operations – objectives can be unclear or contradictory. They could be clarified through formal statements/agreements with Ministers, allowing the agency to develop the policies that will meet the objectives and functions set for it; and

⁴³⁸ Victorian Relief Committee, submission no. 12, p.6

⁴³⁹ Victorian Competition and Efficiency Commission, About us, www.vcec.vic.gov.au, accessed 13 April 2005

⁴⁴⁰ Better Regulation Taskforce, *Independent Regulators*, October 2003, pp.18–22

⁴⁴¹ *ibid.*

- enforcement – regulators have a variety of measures to improve compliance, including monetary fines and deregistration. An overarching concordat on enforcement approaches could provide agencies with independence in deciding how to apply enforcement practices within a framework agreed to by the government.

Many of the issues identified by the Better Regulation Taskforce as affecting the independence of regulators are also relevant for agencies that provide advice or that are involved in service delivery. The Committee noted the following examples of arrangements that differ between ‘independent’ public sector agencies:

- responding to recommendations/issues raised. The government should respond to inquiry reports of the Victorian Competition and Efficiency Commission within six months of their release by the Treasurer (which the Treasurer ‘should’ release within six months of receiving reports from the Commission).⁴⁴² Similarly, the Minister for the Environment must respond to recommendations by the Commissioner for Environmental Sustainability by tabling a statement in Parliament within 12 months.⁴⁴³ There is no such requirement for the government to respond to reports of the Victorian Law Reform Commission or of the Equal Opportunity Commission of Victoria;⁴⁴⁴
- resourcing. The Secretary to the Department of Innovation, Industry and Regional Development must take reasonable steps to ensure adequate resources are made available to the Small Business Commissioner to carry out his or her functions and exercise his or her powers.⁴⁴⁵ There is no such arrangement to cover the resourcing of the Office of the Public Advocate (which is funded as a separate output in the Budget Papers and, as such, includes overheads relating to the Department of Justice) and the Commissioner for Environmental Sustainability; and
- reporting. Interim reports and reports on references by the Law Reform Commission are sent to the Attorney-General, who must table them in the Parliament within 14 sitting days.⁴⁴⁶ In contrast, there is no requirement for reports of the Victorian Competition and Efficiency Commission to be made public. (The order establishing the Commission states that the Treasurer ‘should’ release inquiry reports).⁴⁴⁷ The Privacy Commissioner may, in the public interest, publish reports and recommendations relating generally to the

⁴⁴² Victorian Government Gazette, State Owned Enterprises (State Body – Victorian Competition and Efficiency Commission) Order 2003, No. G27, 1 July 2004, s.4

⁴⁴³ *Commissioner for Environmental Sustainability Act 2003*, s.17

⁴⁴⁴ *Victorian Law Reform Commission Act 2000*; *Equal Opportunity Act 1995*

⁴⁴⁵ *Small Business Commissioner Act 2003*, s.5

⁴⁴⁶ *Victorian Law Reform Commission Act 2000*, s.21;

⁴⁴⁷ Victorian Government Gazette, State Owned Enterprises (State Body – Victorian Competition and Efficiency Commission) Order 2003, No. G27, 1 July 2004, s.4

Privacy Commissioner's functions, whether or not the matters to be dealt with in any such report have been the subject of a report to the Minister.⁴⁴⁸

The Committee agrees with the Law Reform Commission that there should be a closer examination of the current legislative framework for 'independent' agencies, and of the way in which relationships have developed between these agencies, departments and Ministers, to ensure each agency can operate with the level of independence envisaged at the time they were established by Parliament. The Committee considers that the State Services Authority is well placed to conduct such a review.

Some of the public sector agencies that should be considered as part of the review include the Equal Opportunity Commission of Victoria, the Office of Public Prosecutions, the Victorian Law Reform Commission, the Victorian Competition and Efficiency Commission, the Office of the Public Advocate, the Office of the Privacy Commissioner, the Office of the Legal Ombudsman, the Office of the Small Business Commissioner, the Commission for Environmental Sustainability and the (newly established) Legal Services Board.

The Committee considers that informal arrangements that might have developed for resourcing and reporting, for example, should be formalised in legislation or by some other mechanisms (such as a protocol or memorandum of understanding). If other mechanisms are developed, these should be made publicly available.

The Committee recommends that:

Recommendation 22: **The State Services Authority conduct a review of 'independent' public sector agencies to examine whether the current legislation, as well as policies and practices developed over time, allow these agencies to operate with the degree of independence envisaged at the time they were created, while being fully accountable to the Parliament.**

(ii) *Expectations and intent*

The Committee noted that arrangements in place in New Zealand, and planned for adoption by Commonwealth Government agencies, provide for a Minister to issue a 'statement of expectations' to the management of a public sector agency which responds with a 'statement of intent' (chapter 4).

⁴⁴⁸ *Information Privacy Act 2000*, s.63

While recognising that the ‘statement of intent’ may overlap with current corporate and business planning arrangements for some agencies (which can require detailed specification of what an agency proposes to do), the Committee considers the development of a ‘statement of expectations’ would represent a new requirement for most public sector agencies in Victoria. Importantly, a statement of expectations should account for governance issues that are not detailed in establishing legislation or other formal documents, as well as accounting for directions made by Ministers to an agency’s management about its functions or objectives.

The Committee considers that the development of statements of expectations and statements of intent would be strengthened by an agency’s establishing legislation requiring the preparation of such statements. Before this legislative requirement is made, however, the Committee is of the opinion that all agencies and their responsible Ministers should formalise existing expectations by developing such statements.

In line with ensuring that this clarity of roles and expectations extends to informing the public on what an agency is required to do, the Committee considers that all such statements should be made public. The Committee’s preferred model is for the statements to be tabled in Parliament and subsequently made available on an agency’s website.

The Committee recommends that:

Recommendation 23: **The government consider the New Zealand model where responsible Ministers develop a ‘statement of expectations’ and management of a public sector agency respond with a statement of intent.**

Recommendation 24: **The establishing legislation for public sector agencies be amended to require that a statement of expectations and a statement of intent be prepared and reviewed annually and included in annual reports.**

(d) *Establishing clear expectations of performance and success*

The current process for establishing the strategic directions and functions of agencies is usually tied to corporate planning processes, which usually requires agencies to outline future activities and detail financial forecasts for the Minister or Treasurer. The terminology used for such documents varies, but includes ‘corporate plans’, ‘statements of corporate intent’ and ‘statements of priorities’ and ‘statements of obligations’.

The requirement to prepare such documents is usually specified in an agency's establishing legislation, but may also be required under directions issued by the Minister. These documents normally form a key source of accountability to the government and the community – accountability that is strengthened for those boards required by their establishing legislation to 'act in accordance' with such a statement.

There is usually no requirement for such statements to be made publicly available, although the Committee noted instances in which such statements must be made available within specified limits:

- public health services – a statement of priorities and any variation to the statement must be made available to the public on request;⁴⁴⁹
- regional water authorities – an up to date corporate plan must be available at the Authority's office during business hours for inspection on request;⁴⁵⁰ and
- port corporations – the corporate plan, or any part of the plan, must not be published or made available without the prior approval of the board, the Minister and the Treasurer.⁴⁵¹

Although some agencies make such documents available via their website, the absence of a general standard or requirement across the Victorian public sector does not promote such availability as a matter of course. The Committee considers that making such documents public strengthens agency accountability and that agencies should be making such documents accessible to the public as quickly as possible.

The Committee noted comments from the Office of the Chief Electrical Inspector (OCEI) that:⁴⁵²

The performance of agencies against financial and operational performance measures contained in corporate and business plans should be made public. In the case of the OCEI it appears that the Electrical Safety Act may need to be amended to achieve this end.

The Committee's preferred mechanism for making such documents available is for agencies to be required to table the documents in Parliament, as occurs for corporatised entities in NSW.⁴⁵³ This approach is also preferred by the Auditor-General, who recommended agencies table their corporate plans, including key performance indicators and targets in Parliament.⁴⁵⁴

⁴⁴⁹ *Health Services Act 1988*, s.65ZF A

⁴⁵⁰ *Water Act 1989*, s.249

⁴⁵¹ *Port Services Act 1995*, s.33

⁴⁵² Office of the Chief Electrical Inspector, submission no. 46, p.12

⁴⁵³ *State Owned Corporations Act 1989*, s.21

⁴⁵⁴ Victorian Auditor-General's Office, *Parliamentary control and management of appropriations*, April 2003, p.44

Where other mechanisms are prescribed for some agencies, such as documents being made available ‘on request’, there is no guidance on how such a request should be made or when such information would be made available. While recognising that achieving this standard of public disclosure will take time as legislation is amended, the Committee does not perceive any short-term barriers to agencies making such information available on their website.

The Committee recommends that:

Recommendation 25: **The government adopt a clear set of rules for making agency planning and accountability documents publicly available by requiring that they be tabled, along with any amendments, in Parliament within five sitting days of the start of the reporting period to which they relate.**

Recommendation 26: **All Victorian public sector agencies make publicly available copies of all planning and accountability documents, as well as any amendments, on their website.**

6.1.3 ‘Sunsetting’ public sector agencies

As discussed in chapter 3, the inclusion of ‘sunset’ clauses in establishing legislation provides a mechanism for reviewing the performance of an agency and an opportunity to assess whether it should continue operating and whether governance arrangements should either be retained, refined or whether an alternative service delivery option should be developed.

The Public Administration Act includes provisions that allow the State Services Authority to carry out ‘systems reviews’, ‘special inquiries’ and ‘special reviews’.⁴⁵⁵ While this provides a mechanism to conduct public sector-wide reviews of an agency’s corporate governance arrangements and alternative service delivery arrangements at the direction of government, the Committee believes that a better approach is to legislate for a program of agency reviews on an ongoing basis, every ten years.

⁴⁵⁵ *Public Administration Act 2004*, ss.50, 52 and 56

The Committee recommends that:

- Recommendation 27:** **The Public Administration Act be amended to require the State Services Authority to conduct a review of each public sector agency every ten years to assess:**
- (a) **the appropriateness of current corporate governance arrangements; and**
 - (b) **opportunities for the services provided by the agency to be delivered by other means, including by other existing agencies and/or the creation of a new agency/agencies.**

6.1.4 *Joined-up government*

Governments both interstate and overseas have pursued a policy of joined-up or seamless government as a means of getting different agencies to work together to achieve shared goals through a coordinated and integrated approach. This can cover policy development, program management and service delivery. Joined-up government is also a recognition that policies and programs are increasingly not the sole responsibility of a single agency and service delivery requires a collaborative approach from various providers.

The potential advantage for the community from joined-up government is that there is less need to understand the various roles of agencies and their interrelationships or to have to deal with a range of agencies. On the other hand, the experience of governments is that joined-up government should be approached with caution. The New Zealand State Services Commission recently commented that *'more joint working is not the answer - only work together when it adds value'*.⁴⁵⁶ The Commission also commented that there should be a clear demonstration of the net cost and benefits of working together.⁴⁵⁷

Joined-up government can take many forms such as arrangements between agencies at the same level of government, different levels of government (i.e. commonwealth, state and local) or between government and the private sector. The use of Public Private Partnerships such as the Victorian County Court Project is an example of the latter where the government contracted with a private consortium for the provision of accommodation and other services for a total cost of approximately \$22 million

⁴⁵⁶ State Services Commission (NZ), *Managing for Outcomes Programme Office*, 2004

⁴⁵⁷ *ibid.*

annually.⁴⁵⁸ The government continues to provide all other services such as court reporting.

The Commonwealth Auditor-General noted in relation to public-private sector arrangements '*agreeing governance structures and demonstrating accountability are particular challenges*' as both sectors have different legislative obligations and accountability requirements.⁴⁵⁹ Governance issues relating to public private partnerships are being considered as part of a separate inquiry by the Public Accounts and Estimates Committee.

In addition to major infrastructure projects, Victorian public sector agencies have also engaged in a range of joined-up governance arrangements of differing scales and complexities. For example, the Neighbourhood Renewal Program involves eight public sector agencies providing programs and services to the most disadvantaged neighbourhoods in Victoria under a whole of government agreement.⁴⁶⁰ The agreement includes:⁴⁶¹

- upgrading of properties and security and working with local government to rejuvenate common facilities and public areas (Key agency - Office of Housing); and
- improving energy efficiency of existing public housing stock (Key agency - Sustainable Energy Authority Victoria).

The Minister for Housing recently indicated that more than \$108 million had been invested in the Neighbourhood Renewal program since July 2002, with a further \$90 million to be allocated over the 2004-05 and 2005-06 financial years.⁴⁶²

On a smaller scale, Building and Advice Conciliation Victoria (BACV) is a one stop shop for consumers and builders providing free advice and assistance in resolving domestic building disputes. The operations of BACV are managed under a memorandum of understanding between Consumer Affairs Victoria and the Building Commission.⁴⁶³

(a) Ministerial responsibility and accountability

Multi-agency governance arrangements create challenges in terms of assigning ministerial accountability as, under more traditional forms of government,

⁴⁵⁸ Department of Justice response to the Committee's 2004-05 Budget Estimates questionnaire

⁴⁵⁹ P. Barrett, AM, *Governance and Joined-up Government – Some Issues and Early Successes*, Speech to the Australasian Council of Auditors-General Conference, Melbourne, 6 February 2003

⁴⁶⁰ Department of Human Services, *Whole-of-Government Agreements – 2002-2003*, November 2002

⁴⁶¹ *ibid.*

⁴⁶² Department of Human Services, *Creating a fairer Victoria, Minister for Housing's Statement on Neighbourhood Renewal*, November 2004, p.5

⁴⁶³ Department of Justice response to the Committee's 2003-04 Budget Outcomes questionnaire

responsibility and accountability for a portfolio rests with a single Minister. The use of ministerial task forces and cabinet committees are a response to addressing this issue.

Even where formal multi-agency governance agreements have been established, the Committee found that ministerial responsibility and accountability may not be explicitly stated. The Victorian Aboriginal Justice Agreement is an example. This agreement was a joint initiative between the Department of Justice, the Department of Human Services, the Aboriginal Torres Strait Islander Commission and the Victorian Aboriginal Justice Advisory Committee and was launched by the Premier in May 2000.⁴⁶⁴ The agreement establishes a framework to:⁴⁶⁵

- address the ongoing issue of Aboriginal over-representation within all levels of the criminal justice system;
- improve Aboriginal access to justice-related services; and
- promote greater awareness in the Aboriginal community of their civil, legal and political rights.

The 2004-05 budget included \$12.7 million allocated over four years to 2007-08 to implement a range of initiatives under the agreement.⁴⁶⁶

The agreement states that the Department of Justice provides the primary organisational, policy and management focus for four separate ministerial portfolios within the Justice Portfolio: Attorney-General, Consumer Affairs, Small Business and Police, Emergency Services and Corrections⁴⁶⁷. The agreement also provides for annual implementation reporting on outcomes by Aboriginal Affairs Victoria (currently located within the Department for Victorian Communities) which, at the time of the agreement, was located within the Department of Human Services⁴⁶⁸.

The Committee was also concerned that the Agreement's commitment has not been met for annual implementation reporting through the Victorian Government Indigenous Affairs report. The first annual report covered the period from November 1999 to October 2002. The second report was tabled in April 2005 and covered the period 2002–2004. The Department for Victorian Communities advised that subsequent reporting will be on a financial year basis.⁴⁶⁹

⁴⁶⁴ Hon. S. Bracks, MP, Premier of Victoria, media release, *Premier launches Aboriginal Justice Agreement*, 31 May 2000

⁴⁶⁵ Department of Justice, *Victorian Aboriginal Justice Agreement, A Partnership between the Victorian Government and the Koori Community*, 2000, p.5

⁴⁶⁶ Budget Paper No. 3, *2004-05 Service Delivery*, pp.291–292

⁴⁶⁷ Department of Justice, *Victorian Aboriginal Justice Agreement, A Partnership between the Victorian Government and the Koori Community*, 2000, p.9

⁴⁶⁸ *ibid.*, p.28

⁴⁶⁹ Department for Victorian Communities response to the Committee's 2003-04 Budget Outcomes questionnaire, p.7

(b) Central agency guidance and facilitation

Despite the fact that agencies have entered into a variety of multi-agency arrangements involving significant expenditure of public monies and the increased complexity of managing governance issues associated with these arrangements, there is no policy or procedural guidance provided to agencies and other stakeholders. This is in contrast to other jurisdictions such as the Queensland Government, which has developed some guidance on how whole of government arrangements may be structured.⁴⁷⁰ For governance arrangements covering external bodies, particular attention should be given by participating agencies to:

- establishing a set of guiding principles, common terms and definitions;
- clearly specifying at the outset goals and measurable targets and outcomes;
- allocating responsibility and accountability for achieving goals and targets both at a ministerial and agency level;
- identifying and reaching agreement on the respective roles of participating agencies covering key stages from policy development to evaluation;
- reaching agreement on the appropriate management models (e.g. designating a lead agency or entering a partnership arrangement);
- determining the extent of resources to be applied by various bodies;
- identifying risks and the approach to sharing risks;
- identifying individual and shared milestones for key components of the program;
- having an explicit understanding of how parties will work together such as frequency and purpose of meetings and information sharing arrangements;
- providing for the full and accurate public reporting of costs and major risks; and
- establishing mechanisms for dealing with dispute resolution.

The State Services Authority under s.45(1)(a) of the *Public Administration Act 2004* has a role to identify opportunities to improve the delivery and integration of government services. The Committee considers the State Services Authority should have an important role in providing better practice guidance on governance, particularly for multi-agency arrangements.

⁴⁷⁰ Office of the Public Service Merit and Equity (Queensland), *Seamless government: Improving outcomes for Queenslanders, now...and in the future*, 2004

The Committee recommends that:

Recommendation 28:

The State Services Authority:

- (a) in conjunction with agencies, undertake the lead role in facilitating sound public governance practices in government agencies; and**
- (b) assist agencies with clarifying responsibilities and accountability arrangements at ministerial level for major multi-agency initiatives involving the shared delivery of services.**

6.2 Transparency and openness

The adoption of open and transparent processes can promote a greater awareness of an agency's activities and provide for more informed examination of its performance.

6.2.1 Making governance arrangements transparent

The Committee's review of governance arrangements for agencies revealed several instances in which additional requirements were superimposed on, or modified existing governance arrangements, the details of which were not publicly available. Examples included the following:

- the State Revenue Office, an administrative office established under the Public Sector Management and Employment Act, has a 'framework agreement' with the Department of Treasury and Finance. The agreement covers its aims and objectives, the preparation of strategic and annual business plans, reporting responsibilities, the monitoring role to be undertaken by the department; and financial and staffing arrangements.⁴⁷¹ The Committee understands that the State Revenue Office considers the framework to be 'commercial in confidence';
- the boards of Victoria's two ambulance services (Rural Ambulance Victoria and the Metropolitan Ambulance Service) operate under by-laws established under the *Ambulance Services Act 1986*.⁴⁷² Although the Committee was provided with a copy of the by-laws on request from the ambulance services, it noted that neither ambulance service had a copy of the by-laws available on its

⁴⁷¹ Victorian Auditor-General's Office, *State Revenue Office: A customer focus towards improving taxation collection*, 1998, p.20

⁴⁷² *Ambulance Services Act 1986*, s.36

website.⁴⁷³ In addition, the Committee noted that the 2004 legislative amendments removed the requirement that the ‘committee of management [the board] must keep a copy of its by-laws in force in a place accessible to the public, and must permit inspection of those by-laws without fee on demand made during ordinary working hours’;⁴⁷⁴

- Melbourne’s metropolitan water retailers operate under operating licences administered by the Department of Sustainability and Environment. Licencees are required to establish appropriate dispute resolution procedures for customers and not engage in activities that are not within the agency’s constitution. The licences of two retailers are available on the agencies’ websites, but the licence of the third (South East Water) is not publicly available unless requested from the agency; and⁴⁷⁵
- the agency – ‘Water for Rivers’ – was jointly established by the Victorian, Commonwealth and New South Wales governments under the Corporations Act to purchase water savings funded by these governments. It is required to provide business plans and reports to each government. The Committee was advised by the Department of Sustainability and Environment that

*as both the Commonwealth and NSW Governments are parties to these documents, the release of any documents that are not already on the public record may also require the consent of these parties.*⁴⁷⁶

The Committee considers it unacceptable that some arrangements for managing or directing public sector agencies are considered not to be public documents and are withheld from Parliament and the community. For roles and responsibilities to be clarified, all parties to the arrangements, as well as Parliament and the community should be provided with this information. Where the Victorian Government enters joint venture agreements with other governments, the Committee considers that the highest standards of transparency should apply, with agreements requiring that all relevant documents be publicly available.

⁴⁷³ Victorian Ambulance Service, www.ambulance-vic.com.au, accessed 16 March 2005; Rural Ambulance Victoria, www.rav.vic.gov.au, accessed 16 March 2005

⁴⁷⁴ *Ambulance Services (Amendment) Act 2004*, s.18

⁴⁷⁵ See City West Water Limited, www.citywestwater.com.au/uploads/documents/CWW%20Licence_1091595207343.pdf (accessed 16 February 2005); Yarra Valley Water Limited, www.yvw.com.au/about-us/organisation/pdfs/water_and_sewerage_licence.pdf, pdf (accessed 16 February 2005); email received from South East Water Limited, 17 March 2005

⁴⁷⁶ Department of Sustainability and Environment response to the Committee’s 2003-04 Budget Outcomes questionnaire, p.25

The Committee recommends that:

Recommendation 29: **The State Services Authority replace arrangements that restrict public availability of information relating to the governance arrangements applying to public sector agencies, so that a higher standard of public disclosure is applied to what an agency is expected to do, how it is managed and the manner in which it reports on its progress.**

6.2.2 *Reporting of requests under the Freedom of Information Act*

The Ombudsman is undertaking a broad review of public sector agencies' administration of freedom of information requests.⁴⁷⁷ The Ombudsman intends to review:⁴⁷⁸

- the timeliness and adequacy of responses to freedom of information requests;
- the policies and practices adopted by departments and agencies for handling freedom of information requests;
- the adequacy and effect of protocols and arrangements between the departments and contractors on the keeping and availability of documents where public functions are performed by bodies other than departments or agencies;
- the obligations under other legislation including the *Public Records Act 1973*, the *Health Records Act 2001* and the *Information Privacy Act 2000*; and
- the legislative requirements imposed on departments and agencies.

The Committee awaits the release of the Ombudsman's review of Freedom of Information Act with interest.

The Committee reviewed requirements relating to the publication of the outcomes of freedom of information applications in a number of jurisdictions. This review has highlighted instances in which there is potential for strengthened disclosure of information about agencies' administration of freedom of information applications. For example:

- reporting by the Commonwealth Department of Family and Community Services on the timeliness of freedom of information applications in its annual report;⁴⁷⁹

⁴⁷⁷ Victorian Ombudsman's Office, *Annual Report 2003-04*, pp.83-84

⁴⁷⁸ *ibid.*

- whole of government reporting on the freedom of information administration process in South Australia, which includes summary information on the time taken agencies to respond to requests, the number of decisions to waive charges and the reasons for waiving charges, and the estimated costs of processing applications;⁴⁸⁰
- reporting by the Queensland Information Commissioner on the proportion of cases that are finalised within three, six and 12 months;⁴⁸¹ and
- as part of the Commonwealth Government's annual report on Commonwealth government agencies' administration of freedom of information requests, reporting on the impact on agency resources such as an estimate of the staff-years spent on freedom of information matters and an estimate of non-staff costs directly attributable to freedom of information matters, including photocopying).⁴⁸²

The Committee considers that reporting on the operation of the Freedom of Information Act can be strengthened by adopting some of the arrangements in place in other jurisdictions.

The Committee recommends that:

Recommendation 30: **The Attorney-General strengthen reporting requirements for public sector agencies under the Freedom of Information Act based on better practice in other jurisdictions such as South Australia.**

6.2.3 Public disclosure of government contracts

As discussed in chapter 2, the transparency of public sector agency contracting activity was strengthened in 2000 through the introduction of measures to improve the probity of contracting arrangements, including the publication in full by departments and some other agencies of contracts valued at more than \$10 million and of the headline details of contracts valued at more than \$100,000.⁴⁸³

⁴⁷⁹ Department of Family and Community Services, *Annual Report 2003-04*, p.331

⁴⁸⁰ Estimated processing costs can include estimates of salaries and legal advice (State Records of South Australia, *Freedom of Information Act 1991: Annual Report 2003-04*, pp.18–20

⁴⁸¹ Queensland Information Commissioner, *Freedom of Information Annual Report 2003-04*, p.15

⁴⁸² Hon. P. Ruddock, MP, Attorney-General, *Freedom of Information Act 1982 Annual Report 2003-04*, Report by the Attorney-General to the operation of the Act, October 2004 pp.20–25

⁴⁸³ Hon. S Bracks, MP, Premier of Victoria, *Ensuring openness and probity in Victorian Government contracts: A policy statement*, 11 October 2000

Despite this improvement, the Committee noted in its recent examinations of the budget estimates and budget outcomes instances in which information is not being released because it is considered to be commercial-in-confidence.⁴⁸⁴

The Committee considers that the disclosure of contracts is sufficiently important to be included in legislation rather than required as part of administrative guidelines issued under legislation – in this case the Financial Reporting Directions and policies of the Victorian Government Purchasing Board. The Committee considers that an amendment to the Financial Management Act should be considered to strengthen this requirement. The details for implementing disclosure should remain part of the administrative guidelines issued under the Financial Management Act.

The Committee recommends that:

Recommendation 31: **The Financial Management Act be amended to require agencies to publish the details of major contracts on the Victorian Government Purchasing Board’s contracts publishing website.**

In its review of contract disclosure arrangements in other jurisdictions (see chapter 4), the Committee noted that the requirements for publication of contracts in Victoria can be strengthened in a number of ways.

(a) *Broader application of mandatory reporting*

The application of the contract disclosure policy to other government agencies (other than the ten departments and ten administrative offices) is voluntary, with public sector agencies having to register with the Victorian Government Purchasing Board for contracts to be made available. Not extending the requirement for public sector agencies to publish details of major contracts reduces the transparency of contractual arrangements. Although many agencies register contracts on the Victorian Government Purchasing Board’s database, the Committee considers that mandatory listing of major contracts on the Board’s contracts publishing website should be extended beyond the departments and agencies currently required to do so. Such a move would align with requirements of the Commonwealth Government (applying to around 190 agencies) and the South Australian Government (applying to around 180 agencies). The simplest way of achieving this objective would be to amend the Financial Reporting Direction to extend coverage to agencies covered by the Financial Management Act.

⁴⁸⁴ Public Accounts and Estimates Committee, *Report on the 2004-2005 Budget Estimates*, November 2004, p.478; *Report on the 2003-2004 Budget Outcomes*, April 2005, p.256

The Committee recommends that:

Recommendation 32: **The requirement to publish the details of major contracts on the Victorian Government Purchasing Board’s contracts website in Financial Reporting Direction No. 12 be amended to apply to all entities defined as a public body under the *Financial Management Act 1994*.**

(b) *Review of contracts considered by agencies to contain commercial in confidence material*

Non-disclosure of contracts or sections of contracts is allowed if satisfying one or more criteria under the *Freedom of Information Act 1982*.⁴⁸⁵ Exemption criteria specified under the Act include documents relating to national security, defence or international relations, and trade secrets and documents for which disclosure is contrary to the public interest.⁴⁸⁶

While the Committee is unaware of any circumstances in which information has been excluded from contracts published on the Victorian Government Purchasing Board’s website, to ensure agencies apply the exemption criteria consistently, the Committee considers agencies should be required to regularly forward contracts (or sections of contracts) that meet exemption criteria to the Auditor-General to review. The Committee considers that the model used in the ACT would be appropriate (see chapter 3).

The Committee recommends that:

Recommendation 33: **The *Financial Management Act 1994* be amended to require contracts (or sections in contracts) considered by agencies to be commercial-in-confidence to be forwarded to the Auditor-General for review within 21 days of signing the contract and provide 3 months for the Auditor-General to review the relevant documents.**

⁴⁸⁵ Department of Treasury and Finance, Financial Reporting Direction No. 12, Disclosure of Major Contracts

⁴⁸⁶ *Freedom of Information Act 1982*, ss.28–38A

(c) Timely disclosure of government contracts and disclosure thresholds

The Victorian Government Purchasing Board contract disclosure policy does not specify any timeframes for the publication of major contracts.⁴⁸⁷ The Committee considers that the timely publication of contracts strengthens transparency, and agencies should be required to publish contracts within a reasonable time period. The Committee considers that a reasonable period is 21 days, consistent with practices in the ACT but earlier than in South Australia (60 days).

The Committee also reviewed the threshold used in Victoria (\$10 million) for the disclosure of the full text of contracts, compared with disclosure thresholds used in other jurisdictions. Based on these comparisons, the Committee considers that the threshold should be lowered to \$5 million and the threshold for the provision of summary details should be retained at \$100,000.

The Committee recommends that:

Recommendation 34: **The threshold for the disclosure of major contract details be lowered from \$10 million to \$5 million in Financial Reporting Direction No. 12 and the relevant Victorian Government Purchasing Board policy.**

6.3 Integrity

The better practice guide prepared by the Australian National Audit Office emphasises that integrity is dependent on effectiveness of the control framework, influenced by relevant legislation (such as statements of organisational values and code of conduct) and ultimately determined by the personal standards and professionalism of individuals within the agency.⁴⁸⁸

While legislative provisions governing integrity in the Victorian public sector are in place and the Commissioner for Public Employment has commented that agencies have strongly embedded integrity into their values,⁴⁸⁹ the challenge for the Victorian public sector is to ensure that the behaviour of management and staff meet these values. This is reinforced by comments of the Victorian Auditor General who wrote that good governance '*is mostly about behaviours rather than processes*'.⁴⁹⁰ There are indications from the Commissioner's 2004 Annual Report that there is room for

⁴⁸⁷ Victorian Government Purchasing Board, Procurement Policies 2002 (as at February 2005), p.44

⁴⁸⁸ Australian National Audit Office, *Public Sector Governance Better Practice Guide: Framework, Processes and Practices*, July 2003, p.8

⁴⁸⁹ *ibid.*, p.22

⁴⁹⁰ Cameron. J W, *Guiding principles of good governance in the public sector*, 'Spotlight on Spring Street' seminar paper, Institute of Public Administration, June 2003

further improvement in the application of these values. This is discussed in greater detail in Section 6.5 of this chapter under leadership.

The Victorian Auditor General's performance audit report entitled *Meeting our future Victorian Public Service workforce needs* identified that better practice public and private sector organisations recruited staff against values and their degree of compatibility with the organisation's culture. In addition, staff were promoted and their performance assessed on the basis of their demonstrated behaviour in meeting these values.

In terms of developing and reinforcing behaviour that embraces the prescribed Victorian public sector values including integrity, the Committee's view is that it would be desirable that all major components of an agency's human resource management from the initial selection of an individual through to their professional development, performance assessment (including the payment of Executive Officer bonuses), promotion and succession planning should in part be based on the degree to which an individual's professional behaviour meets specified values.

The Committee understands that the Public Service Standards Commissioner may, under s.66(2) of the *Public Administration Act 2004*, issue standards concerning the application of public sector employment principles. However this does not extend to the application of public sector values. The Committee's view is that the Commissioner should have discretionary powers in this regard. The Committee considers there would be considerable value in the Commissioner issuing a standard requiring agencies to incorporate in their annual reporting an outline of the specific action taken to ensure compliance with prescribed public sector values as well as employment principles.

The Committee was surprised to learn that the powers of the State Services Authority are considerably less than other jurisdictions. The Authority can review the actions of an agency at the request of an employee and conduct special inquiries at the direction of the Premier. However, it cannot independently initiate an inquiry on the degree of adherence by agencies with prescribed values, principles and codes of conduct. The Authority can under the *Public Administration Act 2004* require agencies to provide information on the application of public sector values, employment principles, codes of conduct and standards.⁴⁹¹ The Authority must also prepare an annual report on, among other things, the adherence of public officials with public sector values and compliance with applicable codes of conduct.⁴⁹²

In contrast, the Australian Public Service Commissioner under the *Public Service Act 1997* has inquiry powers to examine the extent to which agencies incorporate and uphold Australian Public Service values and the adequacy of systems and procedures in agencies for ensuring compliance with the code of conduct. In performing this role, the Public Service Commissioner has powers similar to those of the Commonwealth

⁴⁹¹ *Public Administration Act 2004*, s.66

⁴⁹² *ibid.*, s.74

Auditor-General under the *Auditor-General Act 1997* to obtain information and gain access to premises.

In terms of other interstate jurisdictions, the Office of the Public Sector Standards Commissioner in Western Australia under the *Public Sector Management Act 1994* has powers to monitor compliance with designated principles of human resource management, principles of official conduct and as well as any public sector standards, codes of ethics and codes of conduct that have been developed.⁴⁹³

In South Australia, the Commissioner for Public Employment under the *Public Sector Management Act 1995* has investigative powers to review personnel or industrial relations practices. A recent external review of the Commissioner's Office was critical of the failure by the Commissioner to systematically monitor observance of personnel management standards and guidelines or apply sanctions where appropriate.⁴⁹⁴

Given the importance to sound corporate governance of embedding public sector values and the onus on the State Services Authority to report on the extent of adherence by agencies to these values, the Committee supports an extension of the powers of the Public Sector Standards Commissioner to allow for the independent conduct of inquiries on the extent of adherence by agencies to public sector values, employment principles, relevant code of conduct and standards. The Committee considers that this can be achieved without impinging on the responsibilities of the heads of public service agencies for the effective, efficient and economical administration of their organisations.

The Committee recommends that:

- Recommendation 35:** **The powers of the State Services Authority under the *Public Administration Act 2004* be expanded to provide for:**
- (a) issuing of standards regarding the adherence by public officials to public service values;**
 - (b) conducting independent inquiries into the adherence by agencies with public sector values and employment principles and the degree of compliance with standards and relevant code of conduct; and**

⁴⁹³ s.21 of the *Public Sector Management Act 1994* outlines the functions of the Commissioner having regard to the principles contained in Sections 7, 8 and 9 of the Act. These cover general principles of public administration and management, human resource management and official conduct

⁴⁹⁴ Department of Premier and Cabinet (SA), *Review of the Office for the Commissioner for Public Employment*, June 2004, p.21

- (c) **the State Services Authority issue a standard requiring agencies to incorporate in their annual report key strategies for ensuring adherence with public sector values and employment principles, as well as compliance with other standards and relevant codes of conduct.**

The Office of Public Employment recently conducted a research project to determine the feasibility of expanding its information framework on employee conduct in the Victorian public sector to include community perceptions of the application of the employee and conduct principles (as were defined in the *Public Sector Management and Employment Act 1998*).⁴⁹⁵ Some of the key findings included:⁴⁹⁶

- of the sub-sectors measured, respondents were least confident in the conduct of employees within the Victorian public service with accountability being the area of greatest concern;
- across all sub-sectors respondents were relatively confident that employees are serious about confidentiality and are honest and trustworthy, however, they were less confident that employees value the opinions of their customers;
- approximately a third of respondents currently in the labour market reported that they would not consider applying for a job with a Victorian public sector organisation;
- the positive perceptions of public sector employment when compared to the private sector in relation to work-life balance and training and development opportunities provides a competitive advantage for organisations in attracting and retaining quality personnel. In contrast, community perceptions that remuneration and the quality of management are better in the private sector pose a significant challenge; and
- of particular concern is the low level of confidence that job selection decisions within the sector are based on merit. Approximately 28 per cent of respondents disagreed that Victorian public sector organisations employ people solely on their qualifications and experience.

Improving perceptions of employment practices and conduct in the public sector is an important aspect in providing confidence to the community that agencies are acting in the interests of the community. The Committee considers that there is merit in undertaking further research in this area.

⁴⁹⁵ Office of Public Employment, 'Community Perceptions of Conduct and Employment within the Victorian Public Sector', *Scope*, Edition 16, October 2004

⁴⁹⁶ *ibid.*

6.3.1 *Whistleblowers Protection Act*

As discussed in chapter 2, the *Whistleblowers Protection Act* 2001 provides an important check on the conduct of employees and management of public sector agencies. It offers protection to whistleblowers who make disclosures in accordance with the Act, and establishes a system for the matters disclosed to be investigated and for rectifying action to be taken.⁴⁹⁷

The Committee considers there would be significant value in preparing a whole of government report on activity under the *Whistleblowers Protection Act* similar to the report prepared by the Attorney-General on the Freedom of Information Act. Such reporting would provide greater detail on the nature of disclosures, possibly without identifying agencies and promoting awareness of the whistleblowers protection legislation. The Committee considers that the Attorney-General, who has responsibility for the administration of the Act, should prepare a summary legislation report.

The Committee recommends that:

Recommendation 36: **The *Whistleblowers Protection Act* 2001 be amended to require the Attorney-General to table in Parliament an annual report on the operation of the *Whistleblowers Protection Act*, modelled on the requirements included in s.64(1) and s.64(2) of the Freedom of Information Act.**

Recommendation 37: **The content of the recommended whole of government report on the operations of the *Whistleblowers Protection Act* 2001 include:**

- (a) details of the numbers and types of disclosures made to public bodies during the year;**
- (b) the number and types of disclosures referred to the Ombudsman for determination of whether they are public interest disclosures;**
- (c) the number and types of disclosed matters that agencies declined to investigate;**

⁴⁹⁷ Victorian Ombudsman's Office, *Whistleblowers Protection Act 2001: Ombudsman's Guidelines*, November 2001, p.5

- (d) **the number and types of disclosed matters that were substantiated on investigation, and the action taken on completion of the investigation; and**
- (e) **the nature of disclosures, such as allegations of bribery or fraudulent use of public funds.**

The Committee noted that awareness of the Whistleblowers Protection Act is high amongst Victorian public sector employees, with the Ombudsman reporting that:⁴⁹⁸

It is evident from the disclosures received by my office that there is a greater awareness and support for the principle of protecting any individual who is prepared to raise concerns about improper conduct in the public sector. There appears to be a growing understanding of the operations of the [Act] amongst the public sector and the general public. I am firmly of the opinion that the [Act] is an important safeguard of good administrative practice in Victoria, ensuring that concerns are not buried because of fear or intimidation.

As a result of complaints by whistleblowers, the Ombudsman has drawn attention to, for example, concerns raised about the Overseas Projects Corporation Limited, which was referred to the Auditor-General, who conducted an audit. This confirmed the existence of irregular cash transactions, which represented a serious breakdown in internal controls by the company.⁴⁹⁹

While the Committee is satisfied that most agencies have implemented the appropriate procedures required under the Whistleblowers Protection Act, it noted comments in the annual report of the Office of Public Employment that:⁵⁰⁰

Over three-quarters of employee survey respondents (76.2 per cent) either agreed (49.3 per cent) or strongly agreed (26.9 per cent) with the statement: 'I am aware of this organisation's processes for the reporting of improper employee behaviours'. At face value, this is a positive result.

With the introduction of the Whistleblowers Protection Act in 2001, sector organisations will have reviewed their processes for reporting improper conduct (the proportion of organisations reporting compliance with the Ombudsman's Guidelines is now approaching 100 per cent). Despite this, less than half of all employee survey respondents (47.2 per cent) claim to be aware of those particular processes.

⁴⁹⁸ Victorian Ombudsman's Office, *Annual Report 2003-04*, p.77

⁴⁹⁹ Victorian Ombudsman's Office, *Annual Report 2003-04*, p.79; Victorian Ombudsman's Office, *Annual Report 2002-03*, pp.20–21

⁵⁰⁰ Commissioner for Public Employment, *Annual Report 2003-04*, p.26

Therefore, there must be some doubt about the currency and completeness of knowledge among the 76.2 per cent of employees who said they were aware of processes for reporting improper behaviour.

In a recent study of ethical behaviour by Victorian public sector employees the Commissioner for Public Employment noted the 26 per cent of respondents to a 2004 survey were unsure of where to go to report unethical behaviour, down from 30 per cent in 2001.⁵⁰¹ The focus groups and in-depth interviews conducted as part of the study also revealed a reluctance to report unethical behaviour, with a feeling that there was little protection for ‘whistleblowers’. Some employees had been witness to some uncomfortable situations in the office in which ‘whistleblowers’ had become ostracised.⁵⁰²

The findings of the Commissioner for Public Employment suggest that some agencies can do more to promote greater awareness of their processes under the Whistleblowers Protection Act, as well as encouraging a workplace culture that recognises the role of whistleblowers.

The Committee recommends that:

Recommendation 38: The Public Service Commissioner and agencies subject to the *Whistleblowers Protection Act 2001*:

- (a) review, as a matter of urgency, why there is not a strong awareness of whistleblower processes in the Victorian public sector; and**
- (b) develop effective and appropriate whistleblower training activities (including details in induction programs for new employees) to promote awareness of the Whistleblowers Protection Act.**

6.4 Stewardship

This section examines two corporate governance requirements that are largely ‘imposed’ through external mechanisms but need a firm commitment by an agency’s management to ensure that they operate effectively.

⁵⁰¹ Office of Public Employment, *Ethics at work – Integrity Survey*, December 2004, p.11

⁵⁰² *ibid.*

6.4.1 **Audit Committees and the internal audit function**

As discussed in chapter 2, the Minister of Finance issued an update of Standing Directions under the *Financial Management Act* 1994 which took effect from 1 July 2003. These directions complement the legislation by outlining obligations and procedures that all agencies must meet. The directions were developed to reflect better practice in other government jurisdictions and the private sector.

The Committee supports the audit committee membership requirements specified in the revised directions, which include that the audit committee must be chaired by an 'independent' member and that at least one other member must be 'independent'. The Committee considers that the skills and personal characteristics of the independent members are crucial to the effective functioning of an agency's audit committee and it is incumbent on agencies to ensure these members can undertake their job effectively.

The Committee also considers that the central agencies should conduct regular audits of agency certification under the Financial Management and Compliance Framework on the independence of external members of the audit committee to ensure the agency is adhering to guidelines defining independence.

The Committee recommends that:

Recommendation 39: Departments conduct periodic audits of the membership of portfolio agency audit committees to ensure the committees satisfy the guidelines on the appointment of 'independent' people.

Based on responses prepared by agencies to the Committee's 2004-05 Budget Estimates questionnaire, departments and agencies selected for review have complied with the major requirements of the Standing Directions issued by the Minister for Finance.⁵⁰³ This compliance provides a degree of assurance that appropriate stewardship is occurring for the management and sustainability of resources. However, the Committee identified the following areas in which the stewardship of agencies could be improved:

- the internal audit function in many organisations was largely focused on dealing with control weaknesses and risk exposures. While these aspects are, and will continue to be, important, there is limited evidence that the investment in internal audit is maximised by adopting a more strategic focus.⁵⁰⁴ Such an audit approach could involve, for example, examining the effectiveness,

⁵⁰³ Departmental responses to the Committee's 2004-05 Budget Estimates questionnaire

⁵⁰⁴ By way of illustration, the Victorian Government Purchasing Board's register of contracts indicates that the cost of the outsourced internal audit function and the engagement of an independent chairperson of the Audit Committee at the Department of Infrastructure was \$1.2 million and \$300,000 respectively over 3 years

efficiency and economy of significant programs and activities, or advising senior management on opportunities for the introduction of improvements in business operations.

If the audit charter were expanded to embrace more of a strategic focus, the existing capacity and capability of internal audit units would need to be re-examined. The Committee would support a formal rotation program where lay agency staff with the necessary skills are assigned to internal audit for a set period and supported by adequate induction and training programs.

- it was common practice for agencies to use the outsourced internal audit provider to also undertake consultancy services for the organisation. For example, the respective outsourced internal audit providers for the Department of Infrastructure and VicRoads undertook three consultancies in each organisation worth a total of nearly \$160,000 in 2003-04.⁵⁰⁵

While the Committee considers that these arrangements are not necessarily inimical to sound governance, potential conflict of interest needs to be carefully managed. In these circumstances, the agency's annual report should disclose the number, nature and cost of these consultancies. This disclosure should also include details of the management and mitigation of conflicts of interest. The Financial Reporting Directions should be amended to mandate this disclosure. The Committee considers such reporting is in line with the philosophy of changes to the *Corporations Act 2001* that require external auditors to provide a written declaration to the directors that there has been no contravention of the auditor's independence.

The Committee recommends that:

Recommendation 40: **Agencies upgrade their audit charter, where necessary, to provide for a more strategic focus on major issues of effectiveness, efficiency and economy including acting as a strategic partner to senior management.**

Recommendation 41: **Agencies develop strategies to effect a more strategic approach to the conduct of their internal audit committees.**

⁵⁰⁵ Department of Infrastructure response to the Committee's 2004-05 Budget Estimates questionnaire

Recommendation 42: **The Financial Reporting Directions under the *Financial Management Act 1994* be amended to require agencies to disclose the nature and extent of consultancies undertaken by the outsourced internal audit provider and how any conflicts of interest are managed and mitigated.**

In chapter 3, the Committee noted that enhanced reporting arrangements for internal audit activity are required for federal public sector agencies in Canada. Given the resources that some agencies direct to internal activity, in terms of management time as well as the cost of staff (whether contracted or internal), the Committee considers that agencies should be required to annually report a summary of the work of the audit committee and internal audit projects.

The Committee recommends that:

Recommendation 43: **The Financial Reporting Directions under the *Financial Management Act 1994* be amended to require agencies to provide in their annual report a summary of the activities of their internal audit program.**

6.4.2 *Effective operation of public sector boards of management*

The effective operation of an agency's board is critical to its performance. The Department of Treasury and Finance provided the Committee with an insight into the potential pool of candidates available to fill positions on Victorian public sector boards.⁵⁰⁶

The pool is fairly deep in terms of people who are experienced in corporate governance and who have had board experience in other places in terms of some technical groups such as those with a chartered accounting background, a legal background, perhaps some of the more common engineering disciplines – water engineering or civil engineering. It is perhaps not so deep in some areas like our ports corporation where we would like to have a marine engineer or a specialist in port matters, and we then look to the Department of Premier and Cabinet's guidelines, perhaps use search consultants or maybe advertise the position and draw upon the registers kept by some departments who specialise in those industries such as the Department of Sustainability and Environment or the Department of Infrastructure.

⁵⁰⁶ Mr A. Hawkes, Director, Commercial and Financial Risk Management Group, Department of Treasury and Finance, transcript of evidence, 5 April 2004, p.18

We remain very cautious about using some of those sources because of the requirements of the Privacy Act and the fact that people's personal details have been given to those departments in some privacy. So we are conscious of that fact. So it depends on what we are looking for at the time to get that balance of skills, experience and gender on a particular board.

(a) Characteristics of Victorian public sector boards of management

The Committee is unaware of a publicly accessible database in Victoria that includes information on members of Victorian public sector boards. Some jurisdictions, such as Queensland, provide a searchable database of appointees to government bodies. Information contained in the Queensland register, which is regularly updated, is provided by Queensland Government departments and coordinated through the Queensland Department of the Premier and Cabinet.⁵⁰⁷

The Committee considers that such a register would be an important source of information to the public about membership of Victorian public sector agency boards. The Committee considers that the Department of Premier and Cabinet, as the central agency responsible for co-ordinating appointments to boards, is the most appropriate agency to develop and maintain such a publicly available register.

The Committee understands that guidelines issued by the Department of Premier and Cabinet require individual departments to maintain an up-to-date database on appointments (which includes information such as the term of appointment, details of the appointee and the postcode of the appointee).⁵⁰⁸ The Department of Human Services provides on its website a consolidated list of the 112 people currently serving on 12 boards overseen by the department.⁵⁰⁹

⁵⁰⁷ Department of Premier and Cabinet, State Affairs Branch – Register of Appointees to Queensland Government Bodies, <http://governmentbodies.premiers.qld.gov.au/stat/>, accessed 13 January 2005

⁵⁰⁸ Department of Premier and Cabinet, *Guidelines for the appointment and remuneration of part-time non-executive directors of state government boards and members of statutory bodies and advisory committees*, January 2003 revision, p.10

⁵⁰⁹ Department of Human Services, *Metropolitan Health Services Board of Directors*, updated 15 December 2004, www.health.vic.gov.au/governance/metro-board-directors.xls, accessed 17 March 2005

The Committee recommends that:

- Recommendation 44:** **The Department of Premier and Cabinet develop and maintain a publicly available register of appointees to public sector agency boards that includes:**
- (a) the agency/agencies to which the person is appointed;**
 - (b) the term of appointment for each agency to which the person is appointed; and**
 - (c) the position held on each board (chair, deputy chair, etc).**

As discussed in chapter 2, the government has a target of 40 per cent women for government appointments and is working towards a longer-term target of 50 per cent.⁵¹⁰ Based on advice from the Office of Women's Policy, the Committee understands that this target applies to all types of boards, including advisory, regulatory and management boards.

The Office of Women's Policy maintains a register of women who express an interest in being appointed to public sector boards.⁵¹¹ As noted in chapter 3, this practice is common in several other jurisdictions. The Office also has a role in monitoring the proportion of board positions held by women. The Committee understands that the proportion of women on Victorian public sector boards (which includes boards of management as well as advisory boards) increased from 29.6 per cent in June 1999 to 38.3 per cent in June 2003.⁵¹²

The Committee noted that the representation of women on the boards of the larger commercial public sector agencies in 2003-04 largely mirrored representation across all types of boards in the Victorian public sector, with women holding an average of 41 per cent of board positions (exhibit 6.1). The Committee was surprised that the position of board chair was held by women in only two cases for the agencies examined.

⁵¹⁰ Office of Women's Policy, *Leading with Victoria's Women 2004-2007*, December 2004, p.17

⁵¹¹ Office of Women's Policy, Womens register, www.women.vic.gov.au, accessed 13 January 2005

⁵¹² Office of Women's Policy, *Gaining ground for Victoria's women*, September 2004, p.10

Exhibit 6.1: Number of women appointed to boards of selected public sector agencies, 2003-04

Entity	No. of women appointed to board	Share of total board positions held by women
Commercially focused boards		
Melbourne Water Corporation	(a) 4	50
Yarra Valley Water	3	43
South East Water	(a) 4	57
City West Water	3	60
Port of Melbourne Corporation	3	38
VenCorp	3	30
VicForests	2	33
Barwon Regional Water Authority	2	29
Coliban Regional Water Authority	3	50
VicTrack	2	40
Rural Finance Corporation	2	29
Victorian WorkCover Authority	2	29
Victorian Funds Management Corporation	3	50
VicUrban	4	44
Federation Square Management P/L	2	40
Victorian Regional Channels Authority	2	50
Total (selected agencies)	44	41
Health Services boards		
Women's and Childrens Health	(a) 5	50
Austin Health	(a) 3	33
Eastern Health	4	44
Southern Health	3	33
Northern Health	(a) 3	43
Bayside Health	3	33
Western Health	3	38
Peninsula Health	5	56
Barwon Health	(a) 3	38
Total	27	40

Exhibit 6.1 – continued

Entity	No. of women appointed to board	Share of total board positions held by women
Advisory boards		
Regional Development Advisory Committee	2	33
Animal Welfare Advisory Committee	4	29
Alpine Advisory Committee	5	31
National Parks Advisory Committee	4	40
Building Advisory Council	3	33
Public Records Advisory Council	4	50
Total	22	34.9
Regulatory boards		
Essential Service Commission	0	0
Gambling Commission	1	33
Medical Practitioners Board	(a) 6	50
Nurses Board of Victoria	(a) 7	78
Dental Practice Board of Victoria	4	36
Pharmacy Board of Victoria	2	20
Physiotherapists Registration Board of Victoria	4	57
Dairy Food Safety Authority Victoria	4	57
Surveyors Board of Victoria	2	40
Total	30	44.8

Notes: (a) Position of board chair is held by a woman

Sources: Agency 2003-04 annual reports and review of agency websites, 21 January 2005

Given the range of skills and experience required for serving on different types of public sector agency boards, monitoring by the Office of Women's policy should differentiate between the different types of boards that operate in the Victorian public sector. This distinction will make it possible to examine trends in representation for different skills and responsibilities that women hold in public sector agencies.

(b) Appointments to public sector boards of management

As discussed in chapter 2, a range of legislative and other formal arrangements cover appointments to public sector boards.

In some jurisdictions, some boards have representation from business, the government and employee representatives. For example, in New South Wales, the boards of port authorities formed in 1995 are required to have representation from staff members.⁵¹³

The Committee is generally supportive of specific membership requirements for boards, provided they result in the appointment of individuals with the necessary skills and experience required to oversee the operation of an agency.

The Committee recognises that these requirements often do not significantly affect the appointment of skilled and motivated individuals to boards. In relation to the membership requirements of university councils (which require that appointment of representatives from staff and students to the council), the Committee noted the following comments in a recent review of university governance that:⁵¹⁴

While university councils may be as susceptible to improvement as any other body, the review saw no fault or flaw in councils' operations that would be improved by changing their composition. There are opportunities for improvement in their strategic orientation and management of performance, but these opportunities may be pursued by their leadership and their current agenda — not necessarily by a change in their composition.

The Committee is concerned, however, about requirements that are inflexible, and may hinder the appointment of the most suitable candidates to the relevant board. Requirements relating to board size, for example, may limit the appointment of suitable candidates (that is the limit specified is too small) or makes the board unworkable (that is the limit specified is too large).

In addition, where some type of membership (such as a member of a local council or from a particular organisation) is a pre-requisite for appointment to a board, The Committee noted that the person, although having an implicit duty to act in the interests of the agency as a whole, may be compromised by his or her allegiance to an organisation or constituent group. Such difficulties were recently highlighted at a Commonwealth level by controversy over the role and conduct of the staff-elected board member of the Australia Broadcasting Corporation.⁵¹⁵ Professor Storey informed the Committee that:⁵¹⁶

The members of the boards need to remember that they are accountable to all users of their services and they must not be pressured into decisions favouring one group over another because of the pressure.

⁵¹³ *Ports Corporatisation and Waterways Management Act 1995*, s.18

⁵¹⁴ Department of Education and Training, *Review of University Governance*, May 2002, p.30

⁵¹⁵ Hon. D. Williams, MP, Minister for Communications and Information Technology and the Arts, news release, *Resignation of ABC Board Director*, 16 June 2004

⁵¹⁶ Professor H. Storey, submission no. 33, p.5

... This may be particularly difficult for some members of government agencies. Often they will have been chosen from or even appointed by or elected by a particular constituency such as unions or staff. It is good that they bring the knowledge and perspective of that constituency to the board, but they do not represent the constituency. They must decide on matters on the basis of what is good for the organisation as a whole, not just what is good for the constituency.

While the Committee is unaware of any specific instances in which such requirements have reduced the effectiveness of boards in Victoria, the Committee considers that the State Services Authority should examine this issue as part of a program of review of public sector agencies.

The Committee recommends that:

Recommendation 45: **The State Services Authority have a watching brief to ensure that establishing legislation does not limit the effectiveness of the board's operation.**

As discussed in chapter 2, the Department of Premier and Cabinet has developed guidelines for departments and agencies on the appointment of people to boards and committees. The Committee noted that the Department of Premier and Cabinet's guidelines on filling board vacancies are not a public document, in contrast to arrangements that apply in several other jurisdictions (see chapter 3).

The unavailability of such a policy to members of the community may contribute to the public's lack of understanding of the board appointments process. The Committee considers that these guidelines should be made public to promote awareness of how candidates are selected for board appointments.

The Committee recommends that:

Recommendation 46: **The Department of Premier and Cabinet make publicly available its guidelines for the appointment and remuneration of part-time non-executive directors of State Government boards and members of statutory bodies and advisory committees.**

While the advertisement of vacant positions appears to be the norm for some types of boards, such as regional water authorities and metropolitan health services, the Committee is aware that some board positions recently filled were not advertised. The Committee considers that the application of the merit principle and the transparency of the appointments process are enhanced when vacancies are advertised, thereby attracting the most suitable candidates.

The Commonwealth Department of Finance and Administration advised the Committee on the appointments process applying to government business enterprises:⁵¹⁷

The governance arrangements provide that when there are board vacancies that the chairman will be consulted, and that generally happens and the chairman generally provides a list of names or in some cases a list of skills that he would like considered. We provide advice and where the [government business enterprises] are a joined shareholder, we provide that in consultation with the Joint Shareholder Department both on skill sets that we think the board could benefit from and also names; we maintain a board database. One of the jobs my unit does is really scan constantly the environment for new directors and keep an eye on corporate governance issues, particularly in the private sector.

We make recommendations.... Ministers then consider it... finally the boards are appointed by cabinet. Sometimes ministers make their own decisions about particular names. But I would say generally they take advice in relation to the skill sets.

As discussed in chapter 3, several overseas jurisdictions use a range of measures to select and appoint people to public sector boards. The Committee considers that the model used in the UK for almost ten years, whereby an independent government agency (the Office of the Commissioner for Public Appointments), monitors the appointment process, would improve public confidence in the appointments process in Victoria, thereby deepening the available pool of potential candidates because people will no longer be deterred by a perception of appointments being a largely political process. The Committee considers that the State Services Authority is well placed to monitor the appointments process.

While recognising that appointment processes that require openness and probity would have some costs, the Committee considers that the costs need to be weighed against the risks to organisational performance of not appointing people with the required skills and experience, and of not having the benefits of diversity.

The Committee recommends that:

Recommendation 47: **The *Public Administration Act 2004* be amended to provide for the State Services Authority to monitor the process for all appointments to Victorian public sector boards of management, along the lines of the model of the UK Commissioner for Public Appointments.**

⁵¹⁷ Ms M. King, Branch Manager, Asset Management Group, Department of Finance and Administration, transcript of evidence, 29 April 2004, p.7

(c) Board performance

As discussed in chapter 2, board operation is likely to be largely influenced by the competence of individual board members and their capacity to work together. In some cases, an agency's establishing legislation regulates board conduct.

While the Committee is unaware of any instances in which legislated matters relating to board conduct is reducing the board's effectiveness, any provisions that limit a board's performance should be addressed as soon as possible. The Committee generally favours removing any prescriptive provisions relating to how a board operates, to give boards the flexibility to determine the most appropriate arrangements in each case. These cover requirements that specify the minimum number of meetings and how meetings are conducted.

(i) Regulating board member conduct

In many instances, the conduct of board members is regulated in an agency's establishing legislation via provisions relating to the disclosure of interests and duties. These duties are largely modelled on those applying under common law or the Corporations Act (Cwlth).

As discussed in chapter 2, the duties specified in the establishing legislation for existing agencies can be added to by standard provisions introduced by the *Public Administration Act 2004*.

Although these provisions are not new for many agencies because they were already specified in establishing legislation and are similar to duties under common law, the Committee supports the inclusion in the Act of a standard set of duties for board members.

The Committee noted that provisions relating to board member conduct will initially apply only to public agencies established on or after the commencement of the Act.⁵¹⁸ The Act includes, however, provisions for the governance principles to apply to board members of existing public agencies by an order of the Governor-in-Council.⁵¹⁹

The Committee considers that the governance principles should be applied as soon as practicable to agencies that do not have similar requirements under their establishing legislation.

⁵¹⁸ *Public Administration Act 2004*, s.77

⁵¹⁹ *ibid.*, s.75

The Committee recommends that:

Recommendation 48: **The governance principles in the *Public Administration Act 2004* be extended to appropriate agencies after review on a case-by-case basis.**

(ii) *Induction and board member training*

With more than 160 board members appointed to public sector agency boards in 2004,⁵²⁰ induction training for newly appointed board members is important to ensure these members understand the legislative and other requirements that affect their conduct and performance as a board member. While induction processes have generally been left to agencies to arrange, the Committee was informed by Ms Heron that:⁵²¹

I would say that's something that - I think when I first joined, you know, you just got plonked in and you had to force the induction through your due diligence. But now there is a real awareness and we have just, with the [Country Fire Authority (CFA)], completely reviewed the whole induction process to ensure that we are actually affording the CFA, the Government and the new Board members, as well as fellow Board members, a degree of certainty, and let's say protection as well, that these people understand what it is that's required. Because with the compliance, and that's one of the things that is really important with the induction, is that more and more Board members are actually being asked to - the line between Board and management is narrowing and they're being asked to get a little bit closer, so they do need to be aware of when [it] is appropriate and when [it] is not.

The Committee is aware that several government departments centrally arrange induction programs for newly appointed board members. Examples of programs recently conducted or planned to be conducted include those for:

- regional water authorities – conducted jointly by the Department of Treasury and Finance, the Department of Sustainability and Environment and the Victorian Water Industry Association;⁵²² and

⁵²⁰ Ministerial media releases 2004: Minister for Water, 18 October, 29 September, 30 September (8), 29 June (7); Treasurer of Victoria, 13 September; Minister for the Environment, 30 July, 11 June; Minister for Health, 1 July; Minister for the Arts, 15 June; Minister for Transport, 17 January; Minister for Sport and Recreation, 13 January

⁵²¹ Ms S. Heron, Interim Executive Director, Australian Institute of Management (Victoria and Tasmania), transcript of evidence, 21 June 2004, p.21

⁵²² Victorian Water Industry Association Inc., Board Induction Workshop, 23 August 2004

- rural and regional health services and hospitals – undertaken by contracted private providers for the Department of Human Services.⁵²³

The Committee noted that a recent review of governance in Victorian reported that:⁵²⁴

The Panel considers it is crucial that board appointees are comprehensively briefed and educated about their new role to ensure strong board performance.

A few boards have taken steps to train and develop directors, including paying for courses such as those offered by the [Australian Institute of Company Directors].

The Panel considers that it would be a worthwhile investment for DHS and the sector to sponsor the development of an ongoing training and education program tailored to Health Service boards. The course should comprise modules to provide flexibility in meeting different needs.

The government accepted the recommendations of the governance review of public hospitals, including that:

- *boards should develop a comprehensive induction package for new members;*
- *boards should formally assess and satisfy the ongoing training and education needs of members; and*
- *a newly-established Health System Improvement Board should develop an ongoing training and education program specifically tailored to Health Service boards of governance. The program should embody the principles of best practice governance.*

The Committee acknowledges that induction and training for new board members should be a matter for an individual board, but considers there is considerable merit in agencies and departments facilitating induction and training programs, where many new board members are appointed.

(iii) Performance evaluation

Regular evaluation of the performance of a governing board, and the performance of individual board members, is an important aspect of corporate governance. Evaluations of board performance can be carried out in a number of ways including:⁵²⁵

⁵²³ Department of Human Services, Boards of management: Rural Health Boards of Management Development Program, www.health.vic.gov.au/ruralhealth/hservices/bom.htm, accessed 20 April 2005

⁵²⁴ Department of Human Services, *Governance Reform Panel: Final Report*, August 2003, p.57

⁵²⁵ CPA Australia, *Corporate Governance Toolkit: Performance Assessment*, August 2002

- board member self assessments;
- self assessments that are then subject to external analysis by a specialist consultant;
- general discussions at board meetings;
- interviews with the board chair; and
- interviews with the responsible minister.

In its review of the 2003-04 annual reports of selected agencies, the Committee noted few instances in which agencies described the performance evaluation process they used. South East Water Limited stated that:⁵²⁶

The Board has established a formal process to review the effectiveness and performance of the Board, its Committees and individual Directors. The Board review process incorporates data from Directors and Executives or Senior Managers of the Company who are closely involved with Board or its Committees. The Chairman meets with stakeholders to discuss issues related to Company and Board performance.

The Peter MacCallum Cancer Institute informed the Committee that:⁵²⁷

The formal annual performance review of Board of Directors is pivotal to good governance and has highlighted the need for ongoing professional development, for example membership of the Institute of Company Directors, or similar. The Board supports the sponsorship of an annual funding allocation to promote initial and ongoing professional development of Board members. The education of the Board provides a context to provide increased independence as a counter point to bureaucracies.

The Commonwealth Department of Finance and Administration advised the Committee on arrangements that applied to government business enterprises:

Chairmen are required or requested under the governance arrangements to undertake an annual review of the board performance and what we are finding increasingly is that boards are bringing in external consultants to do that through a variety of means, questionnaires, that sort of thing. ... So consultants might come in and watch a couple of board meetings and just see. They talk on a confidential basis or survey formally to each of the people about how their colleagues perform and that sort of thing and talk, I guess, extensively to the chairmen. The results of that, chairmen communicate to ministers but we are generally not privy to that; that's one of the things that happens between the

⁵²⁶ South East Water Limited, *Annual Report 2003-04*, p.27

⁵²⁷ Peter MacCallum Cancer Institute, submission no. 17, p.1

chairmen and the minister. But generally I would say that that does happen on an annual basis and that is something that is important to ensuring the good performance of the board.

The Committee noted that the Public Administration Act includes requirements for boards of newly established agencies (with retrospective application to existing agencies by order of the Governor-in-Council) to have procedures for assessing the performance of individual directors, dealing with poor performance by directors and resolving disputes between directors.⁵²⁸ Such a requirement is consistent with the board performance evaluation required for companies listed on the Australian Stock Exchange, which requires enhanced reporting on the process by which director performance is evaluated.⁵²⁹

The Committee supports the requirement for agency boards to evaluate their own performance, although it acknowledges that most high performing boards are likely to have such systems in place.

The Committee considers that the obligation to ensure that appropriate performance management systems and process are in place should be extended to existing agency boards as soon as practicable. It also considers that an appropriate agency, most likely the State Services Authority, should examine the processes that have been implemented to monitor board member performance, to ensure they are the most appropriate for each agency.

The Committee recommends that:

Recommendation 49: **The *Public Administration Act 2004* requirement that the boards of new public agencies establish adequate procedures to assess the performance of individual directors be extended to appropriate existing agencies after review on a case-by-case basis.**

Recommendation 50: **The State Services Authority (or an appropriate government agency) review whether the procedures used by boards to assess director performance are adequate.**

⁵²⁸ *Public Administration Act 2004*, ss.77 and 81

⁵²⁹ Australian Stock Exchange, *Principles of Good Corporate Governance and Best Practice Recommendations*, March 2003, pp.47–48

(iv) Multiple memberships and succession planning

It is not unusual in the private or public sector for individuals to serve on a number of boards at the same time. The Committee identified many individuals belonging to Victorian agency boards who hold board positions on large and small private companies, as well as individuals who hold board positions with multiple public sector agencies. This situation does not appear to be unusual compared to other jurisdictions. For example, the Committee's search of the Queensland register of board members identified a number of individuals who held two or three positions.⁵³⁰

The primary benefit of multiple board memberships (where individuals are 'interlocked' with different businesses) is in circumstances in which an individual's skills and knowledge are readily transferable across different areas. Other benefits arise from the personal relationships and contacts that individuals can make within and across different organisations.⁵³¹

The Committee noted that a cross over in board membership between Victoria's regional water authorities and catchment management authorities, for example, is not uncommon. In 2003-04, the boards of five of the ten catchment management authorities included at least one member who was also a member of a regional water authority board.⁵³² It was not possible for the Committee to examine this issue on a public sector-wide basis without the availability of a sector-wide database, which the Committee considers should be developed to improve the transparency of board appointments.

Best practice guides suggest, given potential workload pressures and the potential for increasing conflicts of interest and the reduced independence of directors, there should be a limit to the number of directorships that an individual can have. This is especially the case where an individual is appointed as chair or is involved in board sub-committees.⁵³³ The NSW Auditor-General recognised this issue as having a potential impact on board performance:⁵³⁴

where directors possess particularly relevant expertise and/or community links, and are hence well equipped to add value, time available in which to exercise this expertise effectively may be a factor limiting the extent of value adding by boards.

⁵³⁰ Department of Premier and Cabinet, State Affairs Branch, Register of Appointees to Queensland Government Bodies, <http://governmentbodies.premiers.qld.gov.au/stat/>, accessed 18 March 2005

⁵³¹ M. Alexander, G. Nicholson and G. Kiel, Degrees of Separation: Personal Connectedness and Social Capital in Directorship Networks, Paper submitted to the Academy of Management Conference 2002

⁵³² Catchment Management Authorities' 2003-04 annual reports

⁵³³ Australian Council of Super Investors, *Best Practice Guidelines*, March 2003, p.8

⁵³⁴ NSW Auditor-General, *Public Sector Corporate Governance In Principle*, June 1997, p.60

The potential limits to multiple board memberships are recognised in the current guidelines issued by the Department of Premier and Cabinet on board appointments, which state that:⁵³⁵

It is not generally recommended that an individual hold more than two to three positions on Government bodies at any one time. Such a policy creates opportunities for a larger number of individuals to be represented on Government boards, and for boards to more accurately reflect the composition of the community. However, there may be circumstances where multiple appointments are desirable, such as where the number of suitable nominees from target groups is small.

Ministers considering recommending the appointment of individuals already on a number of Government boards to a new board should seek assurances that the individual will be able to devote adequate time to his/her duties. Self-assessment by the nominee should be verified with independent consideration of the other positions and responsibilities which would be concurrently held by the nominee (including membership of other Government boards and/or private sector boards).

The Committee supports the Department of Premier and Cabinet's policy on the appointment of individuals to multiple boards. Efforts to reduce the incidence of multiple board memberships, where appropriate, will also have the effect of providing more Victorians with the opportunity to serve on public sector boards and, over time, improve the board representation of some groups within the community.

(v) Board remuneration

As discussed, appointment to some agency boards is on an honorary basis, with individuals receiving no direct remuneration for serving on the board. Examples cited by the Committee included some regional health services and cultural/arts agencies.

While individuals may be motivated by serving the public interest to become board members, the Committee considers there is merit in examining whether unpaid members of some agency boards have enough incentive and commitment to participate effectively in board deliberations. This is an issue largely because the level of responsibility of board members has increased in recent years, as evidenced by requirements to establish an effective audit committee, and moves to skills-based rather than representative boards for some agencies, such as regional health services.

While the government is likely to face an additional cost in paying sitting fees of around \$10,000 to \$25,000 (or higher where individuals are appointed as the board chair), where board members did not previously receive any remuneration, the

⁵³⁵ Department of Premier and Cabinet, *Guidelines for the appointment and remuneration of part-time non-executive directors of state government boards and members of statutory bodies and advisory committees*, January 2003 revision

Committee considers that these additional costs are likely to be offset by improved board performance, as a result of increasing the attractiveness of serving on some types of boards.

The Committee recommends that:

Recommendation 51: **The government review the appropriateness of some public sector agencies not paying fees to board members.**

6.5 Leadership

The Committee noted comments by the Australian National Audit Office that:⁵³⁶

It is difficult to objectively measure factors such as leadership, ethics and organisational culture, or to identify problems before they become manifest in organisational performance. It is often only through significant failures (for example, corrupt behaviour, staff or management acting contrary to the interests and objectives of the organisation or high staff turnover in critical work units) that problems in these areas are detected.

The Committee noted that the Victorian Government was a key party to the establishment of the Australian and New Zealand School of Government in 2002.⁵³⁷ An example of a public sector leadership development initiative, the Australian and New Zealand School of Government is a consortium of Australian and New Zealand Governments, universities and business schools covering the Victorian, Commonwealth, New South Wales, Queensland and New Zealand jurisdictions. The School's Scholarship program helps to prepare participants to be public sector leaders of the future.⁵³⁸

The Commissioner for Public Employment in his 2003-04 annual report commented on the application of the conduct and employment principles under the former *Public Sector Management and Employment Act 1998* and makes a number of key findings.⁵³⁹ In summary, the Committee's assessment of these findings is that there is evidence that elements of the first leadership role is in place, as defined in the Australian National Audit Office's Better Practice Guide, with processes established in key areas such as recruitment and selection and the use of formal statements that emphasise values. In terms of the second leadership role, the results are mixed in terms of the

⁵³⁶ Australian National Audit Office, *Public Sector Governance: Framework, Processes and Practices*, July 2003, p.17

⁵³⁷ Hon. S. Bracks, MP, Premier of Victoria, media release, *Premier announces Australian School of Government*, 4 July 2002

⁵³⁸ *ibid.*

⁵³⁹ Commissioner for Public Employment, *Annual Report 2003-04*, p.10

application of conduct and employment principles.⁵⁴⁰ For example, there were low confidence levels among employees that there had been compliance with the merit principle.⁵⁴¹

Both the Australian National Audit Office and the Victorian Auditor-General have emphasised that good governance is about the application of appropriate behaviours.⁵⁴² Based on the results of the Commissioner for Public Employment's 2003-04 annual report, it is translation into practice rather than the articulation of good governance principles where the most improvement needs to occur within the Victorian public sector. This translation of good governance principles into practice is dependent on leaders in an organisation establishing and reinforcing a governance culture.

The Australian National Audit Office's Better Practice Guide emphasises that leadership 'sets the tone at the top'.⁵⁴³ The guide refers to five critical success factors for Senior Executive leaders in the Australian Public Service:⁵⁴⁴

- shape strategic thinking;
- achieve results;
- cultivate productive working relationships;
- exemplify personal drive and integrity; and
- communicate with influence.

While the Australian public service's view of leadership is pitched at the senior management level, the Committee is aware that there are many leaders throughout an organisation and these may not all be at senior levels. In this way, the development of a governance culture should be articulated and actively supported by senior management and this role should be included in performance contracts.

The Committee therefore considers that establishing a governance culture should occur at two leadership levels:

- at the senior management level, where executives could personally sign up to upholding and actively sponsoring a set of governance principles and for this aspect to be reflected in any assessment of their performance. The active sponsoring of good corporate governance should be manifested in key high profile activities such as utilising induction training to emphasise the

⁵⁴⁰ *ibid.*, pp.18–21

⁵⁴¹ *ibid.*

⁵⁴² Auditor-General of Victoria, Presentation to Senior Emergency Services Leadership Program, The Australasian Fire Authorities Council Executive Leadership Program Australian Institute of Police Management -Manly NSW, 10 October 2003

⁵⁴³ Australian National Audit Office, *Public Sector Governance Better Practice Guide: Framework, Processes and Practices*, July 2003, p.8

⁵⁴⁴ Australian Public Service Commission, Senior Executive Leadership Capability Framework, www.apsc.gov.au/selc/, accessed 1 May 2005

fundamental importance of good governance to the organisation's values and performance; and

- at the middle management level, where a statewide program could be developed to support governance champions throughout organisations in establishing a governance culture through implementing good governance practices.

The Committee noted that younger executives in the Victorian public sector indicated that a higher priority should be given to career management and succession planning, mentoring, peer support and leadership development programs.⁵⁴⁵ The Auditor-General commented that any central agency involvement in executive programs could include an emphasis on younger executives broadening their skills and experience within and outside the Victorian public sector, as part of a planned development program.⁵⁴⁶ This should include an emphasis on the importance of sound corporate governance.

The Committee considers that the State Services Authority, with its function to promote high standards of governance,⁵⁴⁷ can play a lead role in working with agencies to improve the standard of governance statewide, including fostering leadership strategies to achieve this.

The Committee recommends that:

Recommendation 52: **The State Services Authority, in close consultation with agencies, develop strategies to encourage and provide greater leadership in agencies to drive improved governance standards.**

This report was adopted by the Public Accounts and Estimates Committee at its meeting held on 2 May 2005 in Meeting Room 4 at Parliament House, Melbourne.

⁵⁴⁵ Victorian Auditor-General's Office, *Meeting our future Victorian Public Service workforce needs*, December 2004, p.59

⁵⁴⁶ *ibid.*

⁵⁴⁷ *Public Administration Act 2004*, s.45

APPENDIX 1: ACRONYMS AND ABBREVIATIONS

ACSQHC	Australian Council for Safety and Quality in Health Care
BACV	Building and Advice Conciliation Victoria
CFA	Country Fire Authority
FMA	Financial Management Act
GVT	Growing Victoria Together
LTCCPs	Long Term Council Community Plans
OCEI	Office of the Chief Electrical Inspector
OPA	Office of the Public Advocate
PSA	Public Service Agreement
SLMD	Senior Leadership and Management Development
WoVG	Whole of Victorian Government

APPENDIX 2: SUBMISSIONS

Submissions were received from the following individuals and agencies:

Submission No.	Date	Organisation	
1.	15/04/2002	Office of the South Australian Independent Industry Regulator	Mr Lewis W. Owens Independent Industry Regulator
2.	26/04/2002		Dr Sharon Keeling
3.	01/05/2002	Monash University	Professor David Robinson Vice-Chancellor and President
4.	03/05/2002	Victorian Auditor-General's Office	Mr J W Cameron Auditor-General
5.	07/05/2002		Dr Trevor Kerr
6.	10/05/2002	Emergency Services Super	Mr John Soumprou Manager, Office Services
7.	16/05/2002	RSPCA	Mr Peter Barber, State Director
8.	27/05//2002	State Trauma Committee	Dr Craig White, Chair
9.	23/05/2002	Yarra Valley Water Ltd	Mr Peter Hartford, MD
10.	30/05/2002	Berry Street Victoria	Ms Sandie de Wolf, CEO
11.	30/05/2002	Accessible Transport	Mr Kym Irvine, Senior Policy Adviser
12.	30/05/2002	The Victorian Relief Committee	Ms Hilary Bolton, CEO
13.	30/05/2002	Victorian Law Reform Commission	Professor Marcia Neave, Chairperson
14.	30/05/2002	Bayside Health	Dr Michael Walsh, Chief Executive
15.	30/05/2002	Victorian National Parks Association	Mr Ian Harris, President
16.	05/06/2002	University of Melbourne	Professor Alan D Gilbert Vice-Chancellor
17.	31/05/2002	Peter MacCallum Cancer Institute	Dr David J Hillis Chief Executive Officer

Submission No.	Date	Organisation	
18.	31/05/2002	Victorian Electoral Commission	Mr Colin A Barry Electoral Commissioner
19.	31/05/2002	Yooralla Society of Victoria	Mr Bryan Woodford Chief Executive
20.	31/05/2002	Projektion Pty Ltd	Ms Virginia Kirton Director
21.	31/05/2002	Commissioner for Public Employment	Mr P R Salway Commissioner
22.	29/05/2002	Estate Agents Council	Mr David Marks Deputy Chairperson
23.	03/06/2002	Equal Opportunity Commission of Victoria	Dr D Sisely Chief Executive
24.	03/06/2002	Council of Intellectual Disability Agencies	Ms Gillian Damonze Policy and Member Support Officer
25.	03/06/2002	Dental Health Services Victoria	Dr Tracey Batten Chief Executive
26.	03/06/2002	Prostitution Control Act Ministerial Advisory Committee	Ms Judith Dixon Chairperson
27.	03/06/2002	Children's Welfare Assoc of Victoria	Ms Coleen Clare Chief Executive Officer
28.	03/06/2002	CPA Australia	Professor Colin Clark FCPA President, Victorian Divisional Council
29.	03/06/2002	Physiotherapists Registration Board of Victoria	Mr Mark E Strickland Registrar
30.	04/06/2002	City of Greater Geelong	Mr Geoff Whitebread Chief Executive
31.	06/06/2002	Legal Ombudsman (Victoria)	Ms Kate Hamond Legal Ombudsman
32.	07/06/2002	Southern Health	Mr Garry Richardson Chair – Board of Directors
33.	11/06/2002	Victoria University Public Sector Research Unit	Professor Haddon Storey, QC Faculty of Business and Law

Submission No.	Date	Organisation	
34.	12/06/2002	Rochester and Elmore District Health Service	Mr Robert R Skinner Acting Chief Exec Officer
35.	13/06/2002	South West Institute of Technical and Further Education	Mr Barrie Baker Director
36.	17/06/2002	Chartered Secretaries Australia	Mr Tim Sheehy Chief Executive
37.	20/06/2002	Country Fire Authority	Mr Bob Seiffert Chief Executive Officer
38.	20/06/2002		Ms Ruth Kershaw
39.	20/06/2002	Institute of Chartered Accountants in Australia CPA Australia (joint submission)	Mr G Brayshaw FCA President, Institute of Chartered Accountants in Australia Mr Brian Blood FCPA President, CPA Australia
40.	20/06/2002	Association of Professional Teachers	Mr Rob Fenton President
41.	26/06/2002	State Revenue Office	Mr Tony Whelan Executive Director
42.	27/06/2002	Geelong Performing Arts Centre	Mr Brendan Schmidt President
43.	03/07/2002	Community and Public Sector Union	Ms Karen Batt Secretary
44.	03/07/2002	Hume City Council	Mr Gavan O'Keefe Manager Corporate and Customer Support
45.	24/06/2002	Monash University – Privatisation and Public Accountability Centre	Professor Graeme Hodge Director
46.	03/07/2002	Office of the Chief Electrical Inspector	Mr Ian Graham Chief Electrical Inspector
47.	30/05/2002	Victorian Law Reform Commission (<i>additional material to submission no. 13</i>)	Professor Marcia Neave Chairperson
48.	11/07/2002	Best Value Commission	Mr Brian Hine Executive Officer

Submission No.	Date	Organisation	
49.	15/07/2002		Ms Maree Fitzpatrick, Doctoral Candidate, School of Management, Victoria University
50.	24/07/2002	Office of the Public Advocate	Ms Louise Glanville Legal Officer
51.	23/08/2002	Victoria University	Ms Melanie Prezioso Associate to the Hon. Justice Vincent, Chancellor
52.	16/09/2002	East Yarra Reference Group	Professor Anona Armstrong Centre for International Corporate Governance Research
53.	24/10/2002	Whole of Government	Hon. Steve Bracks, MP Premier of Victoria

APPENDIX 3: LIST OF INDIVIDUALS AND ORGANISATIONS PROVIDING EVIDENCE

Wednesday, 1 May 2002 – Public Hearing

Mr W. Cameron, Victorian Auditor-General
Mr E. Hay, Deputy Auditor-Genera, Victorian Auditor-General's Office
Mr R. Walker, Assistant Auditor-General, Victorian Auditor-General's Office
Mr R. Spence, Chief Executive Officer; Municipal Association of Victoria
Ms S. Jones, Manager, Corporate Policy, Municipal Association of Victoria
Ms A. Sharman, President, Energy Action Group
Mr J. Dick, Vice-President, Energy Action Group
Ms L. Hancock, President, Victorian Council of Social Service
Ms D. Fifer, Chief Executive Officer, Victorian Council of Social Service
Professor G. Hodge, Director, Centre for Privatisation and Public Accountability, Monash University

Monday, 5 April 2004 – Public Hearing

Mr T. Moran, Secretary, Department of Premier and Cabinet
Mr I. Killey, Acting Special Adviser, Department of Premier and Cabinet
Mr M. Bini, Senior Adviser, Government Branch, Department of Premier and Cabinet
Mr W. Hodgson, Deputy Secretary, Commercial Division, Department of Treasury and Finance
Mr A. Hawkes, Director, Commercial and Financial Risk Management Group, Department of Treasury and Finance

Wednesday, 28 April 2004 – Public Hearing

Mr M. Ronsisvalle, Acting Deputy Secretary, Resources and Budget, New South Wales Treasury
Mr A. Hunter, Acting Senior Director, Financial Management and Reporting, New South Wales Treasury
Mr D. Houlihan, Policy Analyst, Financial Management Improvement, New South Wales Treasury
Mr M. Smith, Principal Policy Analyst, Financial Management, New South Wales Treasury
Mr B. Sendt, Auditor-General, New South Wales Auditor-General
Mr L. White, Assistant Auditor-General, Financial Audit Branch, Audit Office of New South Wales
Professor M. A. Adams, Perpetual Trustees Australia Chair of Finance Services Law; Professor of Corporate Law, Faculty of Law, University of Technology
Mr M. Orkopoulos, Chairman Public Bodies Review Committee, Parliament of New South Wales
Mr W. A. Merton, MP, Member, Public Bodies Review Committee, Parliament of New South Wales
Ms J. Ohlen, Project Officer, Public Bodies Review Committee, Parliament of New South Wales

Thursday, 29 April 2004 – Public Hearing

Mr J. Hutson, Division Manager, Department of Finance and Administration
Mr M. Mowbray-d'Arbela, Branch Manager, Financial Management Group, Department of Finance and Administration
Mr D. Yarra, Division Manager, Department of Finance and Administration
Ms M. King, Branch Manager, Asset Management Group, Department of Finance and Administration
Mr A. Podger, Public Service Commissioner
Ms L. Tacy, Deputy Public Service Commissioner
Mr T. Burgess, Acting Deputy Auditor-General, Group Executive Director - Financial Audit, Australian National Audit Office
Mr M. Watson, Group Executive Director - Financial Audit, Australian National Audit Office
Mr D. Box, Executive Director - Technical Branch, Australian National Audit Office
Mr K. Caruana, Senior Manager - Technical Branch, Australian National Audit Office
Mr B. Boyd, Performance Audit, Australian National Audit Office
Professor M. Edwards, Director, National Institute for Governance, University of Canberra
Dr R. Ayres, Deputy Director, National Institute for Governance, University of Canberra
Professor J. Halligan, Deputy Director, Division of Business, Law and Information Sciences, University of Canberra

Monday, 21 June 2004 – Public Hearing

Ms M. Webster, Vice President, Victorian Council of Social Services
Ms C. Smith, Chief Executive Officer, Victorian Council of Social Services
Mr T. Fitzgerald, Managing Director, State Trustees Limited
Mr R. McDonald, Chief Financial Officer, State Trustees Limited
Ms S. Heron, Interim Executive Director, Australian Institute of Management
Ms C. Dale, Chief Executive Officer, Nillumbik Council
Ms S. Caulfield, Vice President, Arthritis Victoria
Ms N. Savin, Acting Chief Executive Officer, Arthritis Victoria
Ms T. Greenway, Senior Manager Policy and Planning, Arthritis Victoria

MINORITY REPORT

Minority Report by Opposition Members

Hon. B Forwood, MLC

Mr R Clark, MP

Hon. G Rich-Phillips, MLC

Hon. B Baxter, MLC

It is with disappointment that the undersigned members tender this Minority Report on corporate governance in the Victorian public sector, noting that the bulk of the report has been adopted with bipartisan agreement.

During debate on the adoption of this report, Labor members of the Committee used their majority to insist on the inclusion of the following lines.

From the Executive Summary –

“In relation to hospital waiting lists, the Committee noted that the government has recently enhanced reporting of hospital performance in a number of areas, providing more detailed information to patients and their doctors on services offered by hospitals.”

From Chapter 2 –

“The Minister for Health recently announced changes to the way hospital performance was reported, with web-based reporting that would allow patients and their doctors to compare hospitals’ waiting times for different procedures, as well as reporting on waiting times for dental services. The Committee welcomes this development, and considers that it provides more accessible and useful information than was previously available.”

Opposition members strongly dispute that the government is providing more detailed information on waiting lists, and believes that the changes made by the government to the way hospital performance is reported are designed to obfuscate rather than inform. Opposition members of the Committee certainly do not welcome this development.

The following facts are pertinent to this debate:

- the government has cut the level of transparency in half by reporting half as often – only 6 monthly rather than quarterly;
- the measures disclosing public hospital waiting lists and waiting times have been changed leading to an inability to easily compare the government’s current and recent performance with earlier years;
- individual hospital data contained within the Your Hospitals Report is reported in such a way as to make comparison with previous reports difficult. In addition, many measures are reported as percentage rather than actual numbers. Some of these percentages are not as meaningful as would be desired were a genuine attempt to report been made;
- ambulance bypass statistics have been fudged in two ways:
 - the non-reporting of Hospital Early Warning System (HWES) incidents – the hospitals are effectively bypassed but not reported as such. Estimates are that there are hundreds of such incidents every quarter, but the actual number of HWES incidents is unknown as the government deliberately tries to understate bypasses by not allowing their collection; and

- the Your Hospitals Report fails to disclose the actual number of bypasses, reporting only a hospital bypass percentage. This, too, is a deliberate action designed to hide the actual number of bypasses which occurs;
- there is no measure of the ‘waiting list before the waiting list’, that is, the length of time that patients wait before their first appointment. After the initial appointment, patients are allocated to the published waiting list. In some cases patients wait one or two years, or even longer, on the ‘waiting list before the waiting list’. These long lists are not disclosed by the Your Hospitals Report.

For the record, the following statistics are relevant:

- the total number waiting on the elective surgery waiting lists as at 31 Dec 2004 was 41,469, compared to 40,301 in Dec 1999;
- the number waiting on the URGENT elective surgery waiting lists as at 31 Dec 2004 was 407, compared to 354 in Dec 1999;
- the number waiting on the SEMI-URGENT elective surgery waiting lists as at 31 Dec 2004 was 17,613, compared to 13,299 in Dec 1999; and
- the number waiting on the NON-URGENT elective surgery waiting lists as at 31 Dec 2004 was 23,449, compared to 26,648 in Dec 1999.

In addition, under this government the Hospital Services Report no longer reports on:

- emergency patients admitted by hospital;
- emergency patient numbers treated by hospital;
- emergency patient numbers waiting over 12 hours by hospital;
- emergency patient numbers treated by hospital in triage categories 1, 2, or 3;
- open & available coronary care beds;
- open & available ICU & HDU beds by hospital;
- admissions and cancellations from waiting lists – in total or by hospital;
- numbers of urgent and semi-urgent patients waiting longer than ideal;
- targets to be met each quarter (targets are now to be reported only half-yearly);
- admission source of hospital activity; and
- numbers of Victorians with private health insurance.

It is a nonsense to suggest that hospital performance is reported adequately, and appalling to “welcome” what little is provided.

Finally, Opposition members believe that where key measures are changed, the government has an obligation to continue to report the old measures in parallel for at least the next twelve months.

A handwritten signature in blue ink, appearing to be 'B Forwood', written over a horizontal line.

Hon. Bill Forwood, MLC

A handwritten signature in blue ink, appearing to be 'R Clark', written in a cursive style.

Mr Robert Clark, MP

A handwritten signature in blue ink, appearing to be 'Gordon Rich-Phillips', written in a cursive style.

Hon. Gordon Rich-Phillips, MLC

A handwritten signature in blue ink, appearing to be 'B Baxter', written in a cursive style.

Hon. Bill Baxter, MLC

EXTRACT FROM THE MINUTES OF PROCEEDINGS

The Minutes of the Proceedings of the Public Accounts and Estimates Committee show the following divisions which took place during consideration of the draft report. A summary of the Proceedings follows:

Monday 2 May 2005

4. CONSIDERATION OF THE DRAFT REPORT ON CORPORATE GOVERNANCE IN THE VICTORIAN GOVERNMENT SECTOR:

Chapter 2 – Victorian public sector corporate governance arrangements

Page 33

Amendment: *That lines 758 to 763 be deleted.*

Moved: Hon. Bill Forwood, MLC **Seconded:** Hon. Gordon Rich-Phillips, MLC

The Committee divided:

Ayes: 2

Hon. Bill Forwood, MLC

Hon. Gordon Rich-Phillips, MLC

Noes: 3

Hon. Christine Campbell, MP

Ms Glenyys Romanes, MLC

Mr James Merlino, MP

Amendment negatived.

Executive Summary

Page 2

Amendment: *Lines 71 to 74: Omit all words after “In relation”.*

Moved: Hon. Bill Forwood, MLC **Seconded:** Hon. Gordon Rich-Phillips, MLC

The Committee divided:

Ayes: 2

Hon. Bill Forwood, MLC

Hon. Gordon Rich-Phillips, MLC

Noes: 4

Hon. Christine Campbell, MP

Ms Glenyys Romanes, MLC

Mr Luke Donnellan, MP

Mr James Merlino, MP

Amendment negatived.

