



**Department of  
Innovation, Industry and Regional Development**

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25 March, 2010

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Mr R Stensholt MP  
Parliament of Victoria  
Parliament House  
Spring Street  
East Melbourne  
Victoria 3002

Dear Mr Stensholt,

**PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE VICTORIA  
INQUIRY INTO VICTORIA'S AUDIT ACT 1994**

Thank you for your invitation to provide feedback on the Discussion Paper on the Inquiry into Victoria's Audit Act 1994.

I am pleased to provide the attached submission for the consideration of the Public Accounts and Estimates Committee.

Yours sincerely,

**Howard Ronaldson**  
Secretary

**PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE VICTORIA  
INQUIRY INTO VICTORIA'S AUDIT ACT 1994  
SUBMISSION FROM DEPARTMENT OF INNOVATION, INDUSTRY AND  
REGIONAL DEVELOPMENT.**

The Department of Innovation, Industry and Regional Development (the "Department") welcomes the opportunity to provide comments on the Discussion Paper on the Inquiry into Victoria's *Audit Act* (the "Act"). In view of its particular interest and expertise, the Department has focussed its input into the material covered by chapters 5 and 7.

These comments address matters raised in the Discussion Paper which are of most relevance to the Department.

**5.2.1 Right of Access to Premises and Records of Private Sector Contractors**

General Comments

As a general principle, it is our strong view that the Department, when dealing with the private sector, needs to be able to do so on a fully commercial basis to engender and ensure a free market for the supply of necessary services. It is this underlying principle which underpins our approach to how the provision of goods and services to DIIRD ought to be audited by the Auditor-General.

Whilst there may be strong public policy reasons which might suggest that the Auditor-General should be able to "follow the public dollar", this general proposition needs to be tempered, having regard to specific circumstances. If legislation were introduced which exposed all contractors engaged by Government to the potential of audit of their operations, this may provide a significant disincentive to those contractors from dealing with Government. The disincentive would be heightened if the Auditor-General were permitted by legislation to have access to the physical premises of providers. The effect of this could be an increase in the cost of obtaining services, as some contractors may be dissuaded from entering the tendering process. There could also be a negative impact on quality if the number of potential providers were to shrink.

Department as Customer

The Department as contracting agency is fully accountable for ensuring the delivery of contracted services and goods for its own consumption. The Auditor-General routinely and, in our submission, appropriately audits agencies' discharge of their accountability to ensure the delivery of contracted services and goods as provided for in the relevant contract. Agencies are accountable for establishing adequate controls over service delivery through contract provisions as contained in some standard contract documents.

Therefore, in the case of services provided to Government (as distinct from services provided to the community on behalf of Government), the Auditor-General should have no legislative right of access to the provider's records (or indeed premises).

There are currently provisions in the Department's standard Agreement allowing some access by the Department (or persons authorised by the Department) to records in relation to the provision of services, as well as to premises, data, records and other financial material relevant to the performance of the contract. Contractors understand through their review of the contract that there is a right of access, and their acknowledgment of that through the acceptance of the contract terms and conditions preserves the commerciality of the relationship. It is our strong view that to use legislation to compel access to contractor records by the Auditor-General would be highly counter-productive.

It is the responsibility of the Department to ensure appropriate delivery of goods and services, and that value for money is capable of being demonstrated. Any further involvement of the Auditor-General would weaken the long-standing accountability of the public sector for its efficient and effective administration.

#### Department as Service Provider/Manager

The Department's in-principle position is this: if a service is provided on behalf of Government, it seems reasonable that the Auditor-General should be able to review aspects of services providers' operations, but only as part of a performance audit to ascertain the veracity of claims around service delivery and outcomes. It is the Department's view that the purview of the Auditor-General should be limited to performance, and not include access to underlying financial information (which might result in disclosure of commercially sensitive information). Whilst we agree in principle that in this class of service provision there is an argument to allow additional access, questions remain regarding the extent of access, and whether such access would distort the cost models which apply without such access.

Consideration of the public value of extending the Auditor-General's role in auditing contracted service provision also needs to take account of any distortion in the public sector's accountabilities. In the case of DIIRD, outsourced service provision is through contracts that demand appropriate standards for service delivery, at costs determined to be value for money through competitive procurement processes. The right of access by the Department to contractor premises and records is provided by contract, and the same commercial principles apply as noted above for contractors providing goods and services for Departmental consumption.

We would welcome the opportunity to comment further on this topic, when a more concrete proposal is formulated.

#### **5.2.2 Extent of legislative authority to investigate and audit matters pertaining to public money and public property**

The broad question here is whether the Act might be amended to allow the Auditor-General an explicit investigative power covering all matters relating to the use of public money or public property. A key area where this might be relevant in the business of this Department is the awarding of grants to various recipients. Access is typically granted to Department representatives through contractual provisions, to enable an audit view to be given on the achievement of stated objectives. There are already provisions in the Act to allow such funding agreements to be audited. No

additional accountability or assurance would be gained by granting the Auditor-General legislative authority to audit the use of grant monies.

### **5.2.3 Provisions relating to policy objectives of government**

It is the Department's view that the constraint on the Auditor-General with regard to exclusion of policy objectives from audit is satisfactorily documented in the existing legislation. The Westminster model reinforces the position that policy ought to remain the prerogative of the Executive. Government policy is exempt from Auditor-General commentary to Parliament, and should remain so. As for seeking to define the meaning of policy further, the debates regarding the boundaries between policy and administration form part of the robust exchange between the auditor and auditee.

### **5.2.4 Incidental Functions of the Auditor-General**

DIIRD believes that there is significant value to be derived from the results of performance audits conducted by the Auditor-General. However, as noted in the *Discussion* on this topic, there is a danger that the independence of the Auditor-General and his staff could be impacted if the Auditor-General also sets, by default, the operational and other standards by which the results of audits are to be judged.

It would be preferable if the Auditor-General were to make recommendations to the Department of Treasury and Finance, or other accountable agency, so that that agency could develop and promulgate good practice guides as well as amend or develop applicable standards for application across Government.

These activities, while valuable, are ancillary to the prime mission of the Auditor-General. It is acknowledged that the Auditor-General has historically played a valuable role in developing good practice guides.

### **5.2.5 Consolidation of Auditor-General's general powers**

Consolidation of the description of the Auditor-General's powers within the Act is seen as desirable as an aid to comprehension. As a general proposition, it is the Department's view that if minor amendments are made to the drafting of the Act to assist in interpretation, or to modernise language, this should be encouraged.

### **5.2.6 Application of Auditing Standards**

The absence of specific standards for government external audit predicates that it is necessary for some standards to be developed by the Auditor-General. In framing specific standards for his work the Auditor-General would naturally have regard to standards adopted in other jurisdictions.

### **5.2.7 Legal Professional Privilege**

The provisions under section 12 of the *Act* as currently worded arguably extend to allow access to documentation that would be otherwise be covered by legal

professional privilege. While subsection (2) would appear to stop the release of that information by the Auditor-General (once accessed by the Auditor-General), subsection (3) allows the publication of that information if the Auditor-General believes it appropriate to do so. This provision causes concern because divulging advice that is clearly privileged could be a real deterrent in obtaining or providing full, frank and fearless legal advice on issues at hand. Therefore, while it is acknowledged that the Auditor-General may need to access material which is otherwise protected by legal professional privilege in the course of performing his duties, it is our firm position that the public release of such material is highly undesirable.

### **5.2.8 Annual audits of performance indicators developed by government and its Agencies**

The audit of all performance indicators developed by agencies, rather than those which are published, could be seen as an intrusion into management's accountability and prerogative to manage their activities. It is believed that the Auditor-General should comment on the accuracy and adequacy of the published Key Performance Indicators only.

The power of the Auditor-General to dispense with all or part of an annual audit of performance statements prepared by agencies is a reasonable discretion and is supported.

It is problematical to comment on the proposal for the Auditor-General to audit the annual outcomes progress report until the format and content of the report is clear. It is recommended that this matter be considered when the reporting standard is determined.

### **5.2.9 Audit of overseas entities**

The provision of clarity regarding the Auditor-General's authority to audit overseas entities is supported for the removal of any uncertainty.

### **5.2.10 Disclosure of information to external parties**

DIIRD has a general view that there should not be a limitation on the Auditor-General providing information in his possession on wrongdoing to the relevant investigatory Agency in the public interest.

### **5.2.11 Legal issues experienced by the Auditor-General concerning sections 3, 12 and 15 (1)(b) of the Audit Act**

Subject to our earlier comments regarding reasonable limitations to access by the Auditor-General to contractors, the Auditor-General should be empowered to audit any "entity" established in the public sector regardless of the form of its constitution. The Act should be modified to clarify that this is the intent.

### **5.2.12 Charging of Audit Fees**

If the Auditor-General is required to conduct an audit under empowering legislation, there ought to be cost recovery. However, if an audit is conducted as a matter of discretion, it ought to be funded centrally (which increases the independence of the audit in any event). If cost is a genuine concern, this would appear to be a matter for negotiation as to appropriate funding by Government. The Department would support the idea that the Auditor-General have certain moneys available for discretionary spending.

### **5.2.13 Application of the statutory definition of 'Authority' to Administrative Offices and multiple entities**

The proposal to remove doubt is supported.

### **5.2.14 Involvement of the Auditor-General as the auditor of state companies**

While the proposed change to the Act is supported, we note that the Auditor-General is obliged to conduct audits with the interests of the state as the prime focus. The interests of minority shareholders may not be safeguarded with the impartiality that an independent auditor operating under the full suite of audit standards would provide.

### **5.2.16 Incorporation of comments of audited agencies in reports of the Auditor-General tabled in Parliament**

The removal of the statutory requirement to include agency comments in audit reports is strongly opposed for the natural justice reasons stated in the *Discussion* on this topic.

### **7.1.6 Other procedural matters raised with the Committee by the Auditor-General**

DIIRD supports the intentions of the Committee in supporting the view that it is the role of the Auditor-General and VAGO to assist in improving the performance of the public sector and to achieve this through creating positive relationships.