

**VICTORIAN GOVERNMENT RESPONSE TO PUBLIC
ACCOUNTS AND ESTIMATES COMMITTEE REPORT
ON CORPORATE GOVERNANCE IN THE VICTORIAN
PUBLIC SECTOR**



DEPARTMENT OF PREMIER AND CABINET
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PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE REPORT ON CORPORATE GOVERNANCE IN THE VICTORIAN PUBLIC SECTOR

Introduction

1. The Public Accounts and Estimates Committee (PAEC) is established under section 14 of the *Parliamentary Committees Act 2003* and is empowered to consider and report on any proposal, matter or thing concerned with public administration or public sector finances.
2. The Committee in a discussion paper on corporate governance in April 2002 set Terms of Reference in relation to undertaking a report on Corporate Governance in the Victorian Public Sector. The Victorian Government provided a whole of government submission on its earlier discussion paper to the Committee in October 2002.
3. The Committee's Report, entitled "*Corporate Governance in the Victorian Public Sector*" was tabled in the Legislative Assembly and Legislative Council on 19 May 2005.

Recommendation 1

The Committee recommends that the Government make publicly available the governance reviews of arts agencies and non-departmental public entities.

4. The Government acknowledges the importance of ensuring sound corporate governance in arts agencies and public entities. For that reason, the State Services Authority (SSA) was empowered under the *Public Administration Act 2004* (PAA) to promote high standards of governance, accountability and performance of public entities and to review and advise on matters relating to governance and performance issues affecting public entities. The Government believes that creating processes to ensure the transparency of the performance and governance of public entities is the best means of pursuing the public interest.
5. In relation to the Arts Agencies review referred to by the Committee, those reviews, which cover a range of issues such as governance, asset management and financial management, were the subject of reports back to Cabinet.
6. In contrast, the so-called "review" of non-departmental entities was not a review of a specific class of public entities, but rather the policy development process leading to the enactment of the *Public Administration Act 2004*, and therefore not in the class of the other reviews identified by the Committee and released by the Government.

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.

7. The Government is comfortable with the corporatisation framework currently applying to entities operating as State Owned Companies (SOCs). As acknowledged in the report, there are a number of benefits of the SOC model including:
 - Accountability mechanisms (to shareholders) for regular financial reporting, audits and annual general meetings;
 - Fiduciary duties imposed on company officers to act in good faith, with due care and diligence and in the best interests of the company; and
 - Monitoring the ‘shareholding’ of these entities in the Department of Treasury and Finance (DTF).
8. There are only a limited number of SOCs and these are significant Government Business Enterprises (GBEs). There are no plans at this time to specifically review the SOC model under the *State Owned Enterprises (SOE) Act 1992*.

Recommendation 3

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

9. The Government does not support the recommendation.
10. That the SOE provides the authority for the Treasurer (after consultation with the relevant Minister and board of a State body) to determine a dividend or to direct a State body to repay capital does not imply that this will be an annual occurrence. It merely provides the Treasurer with the power to take these actions should they be required.
11. Not all State bodies, under the SOE Act, are by definition commercial. The SOE Act provides for commercial entities to be established as State business corporations or State Owned Corporations (SOCs) and, whilst a State body may operate commercially, it is not a requirement of the SOE Act. The provisions of the SOE Act, including those related to State bodies, provide the Government with the flexibility that is often required in the creation of entities. The SOE Act is therefore not restricted to the establishment of commercial entities.

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.

12. The Government does not support the recommendation.
13. The reasons are similar to those discussed above in relation to recommendation 3. The State body provisions of the SOE Act are not restrictive and the Government does not wish to see the inclusion of provisions that would limit the application of the SOE Act in this way.

Recommendation 5

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

- *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*
- *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.*

14. The Government does not support the recommendation.
15. The Government is committed to transparency in relation to dividend payments. This is clearly illustrated by the existing process where the Treasurer formally consults with the Boards of GBEs and the relevant portfolio Minister prior to making any dividend determinations.
16. Further, the current dividend policy provides for an open and transparent process where dividends are determined with reference to two general benchmarks:
- No.1 Dividend = 50% of net profit after tax; and
 - No.2 Dividends + income tax equivalent paid or payable = 65% of profit before tax.
17. For most GBEs, the dividend is determined using the first benchmark. For those GBEs not under the income tax equivalent regime - or where income tax payable is significantly different from income tax expense - reference is made to the second benchmark.
18. Following reference to the two general benchmarks dividends are set each year, taking into account relevant commercial considerations, including reported profit, operating cash flow, the views of the GBE Board and the relevant Minister, the capital requirements of the GBE, gearing and interest cover, and the Budgetary requirements of the State.
19. As noted by the PAEC, the outcome of the dividend arrangements in Victoria is broadly in line with other jurisdictions. Past practice has been to take a dividend only from the current year's profits or retained earnings.

20. As Victoria's dividend arrangements are broadly in line with other jurisdictions, a legislative amendment is not considered necessary. In those cases where a decision has been taken to wind up a particular entity, there needs to be a flexible mechanism that will allow the Government to take any outstanding retained earnings or capital. The Tasmanian arrangements provide for the payment of 'special' dividends, which effectively provides the Tasmanian Treasurer with the same provisions as currently applied in Victoria.

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.

21. The recommendation is supported subject to Victorian Government Procurement Group consultation with the Public Sector Standards Commissioner (PSSC) concerning Guidance documentation.
22. Victorian Government Purchasing Board (VGPB) policy is mandatory for departments and administrative offices as defined by the *Financial Management Act 1994* (FMA).
23. In May 2001, the Government announced a new purchasing framework, that amongst other things, required all public sector agencies and government business enterprises to articulate their purchasing policies and benchmark them against the Government's requirement for transparency and probity.
24. Many Public sector agencies and government business enterprises have responded to the Government's requirement by adopting VGPB board policy in its entirety supported by tailored procurement and contracting policy to meet their operational requirements.
25. VGPB policy entitled *Probity* requires departments and administrative offices to identify and resolve conflicts of interest. Any person involved in the tender process is to declare and address any actual or perceived conflict of interest (COI) prior to undertaking any quote or tender evaluation.
26. The Policy provides that:
- In its commercial dealings, the Victorian Government will observe the highest standards of probity. Government business must be fair, and open and demonstrate the highest levels of integrity consistent with the public interest;
 - Departments intending to let a tender worth more than \$10 million are required to develop a probity plan in advance of commencing the tender process;
 - For particularly large, sensitive or complex transactions the department has the option of appointing an external probity auditor to provide ongoing advice on probity issues throughout the tendering process; and

- Probity auditor reports are to be made available on request to Parliament, the Auditor-General (AG) and anyone else with an interest.
27. The Minister for Finance endorsed a revision of the Board's Probity Policy on 25 July 2005 titled *Policy for Conduct of Commercial Engagements*.
28. The revised policy provides a new approach which will: -
- Embed good probity practice in general staff training and in procurement activities;
 - Provide specific training to lift skills and capacity of staff involved in managing procurement activities;
 - Focus on probity principles and outcomes that can respond to a variety of tendering processes and commercial engagements; and
 - Encourage the selection of a probity adviser on the basis of the knowledge and experience required (can be either external or internal) in the specific transaction.
29. As part of the revision of the policy, care was taken to ensure that compliance was maintained with the Premier's policy statement *Ensuring Openness and Probity on Victorian Government Contracts*, released on 11 October 2000. The revised policy was released in September 2005.
30. Work is currently underway on developing extensive guidelines and revision of the Procurement and Contracting Centre for Education and Research (PACCER) training to support the new policy.
31. PACCER is an initiative of the VGPB. It was established in late 1997 as a brokerage service specialising in procurement and contract management training. It provides training which is practical, accessible, responsive and designed to maximise immediate skills transfer to the workplace.

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

32. The Government will consider this recommendation.
33. The Department of Human Services (DHS) has a partnership agreement with the health, housing and community sector. This Agreement was developed in close consultation with the sector and is tailored to reflect the diversity of the sector. The Agreement commits all signatories to work together in a collaborative and consultative manner to achieve improved service delivery, quality outcomes and improved governance and management of sector organisations.

34. The Department for Victorian Communities (DVC) has developed a suite of funding agreements for the grants it provides to community organisations based on agreements developed by the Australian Government Solicitor which are used by Commonwealth Government agencies. In developing these standard agreements DVC has undertaken extensive consultation incorporating feedback from Government agencies, community groups and previous funding recipients to ensure an appropriate balance between legal robustness and community accessibility.
35. Work undertaken to date by DHS and DVC provides a useful basis for the development of a standard form agreement and processes to guide development of partnership agreements between public sector agencies and non-government service providers. Both DHS and DVC are working collaboratively to develop best practice processes in this area.

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.

36. The Government accepts this recommendation in part.
37. Growing Victoria Together (GVT) is a long-term vision for Victoria that articulates what is important to Victorians and the priorities of the Government.
38. GVT is a high level statement that provides a guide to Departments' strategic planning to ensure a broad alignment between Departments objectives, the delivery of outputs and the Government's policy priorities.
39. GVT is not intended to cover the full range of desired outcomes from Government programs. However, as a set of organising principles, the GVT goals can be used to cover most, if not all, areas of government.
40. A refreshed version of GVT was released in March 2005 and includes ten goals for Victoria's future and associated measures of progress.
41. To date, three reports have been published outlining the progress that the Government has made to date in achieving its vision and goals.
42. The most recent report, published in the 2005-06 Budget Papers, included a larger number of indicators with the intention of providing more meaningful and robust assessment of progress. As indicators and data sources improve over time, new information will continue to be included. For some measures, data is not yet available or is not available from the base year of 1999, especially where new measures have been introduced.

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.

43. The Government supports this recommendation in principle.
44. The Government's resource allocation framework is designed to guide and facilitate more effective budget decision making and measurement and reporting against the State Budget.
45. Within this framework, GVT is a long-term vision for Victoria that articulates what is important to Victorians and the priorities of the Government. GVT is a high level statement that provides a guide to Departments' strategic planning to ensure a broad alignment between Departments' objectives, the delivery of outputs and the Government's policy priorities.
46. Departmental objectives flow out of departmental planning processes and reflect departmental responses to Government's desired outcomes.
47. Departmental outputs represent a clear definition of the goods and services to be delivered by a Department. All Departmental outputs have associated performance measures and targets covering quantity, quality, timeliness and cost.
48. A key challenge going forward for performance management and reporting is a stronger culture of evidence-based evaluation and a capacity for improved linkages between outputs and outcomes. Despite these issues, the Government's resource management framework has promoted an enhanced focus on performance measurement and reporting.
49. Other jurisdictions have shown that implementing a framework with clear linkages between outputs and outcomes is a long term and complex process. DTF and the Department of Premier and Cabinet (DPC) will continue to work on initiatives to better improve the performance management and reporting information provided to Government.

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.

50. The Government supports this recommendation. Improvements in reporting have been achieved in a variety of ways and the Premier's Circular 2003/3 is one such example where new whole-of-government reporting requirements on diversity

were linked to existing Departments' Annual Reports. The requirements for reporting on cultural diversity have also recently been strengthened by legislation contained in the *Multicultural Victoria Act 2004*.

51. Both the whole-of-government reports, which cover cultural diversity, women, youth and indigenous affairs and the Departments' Annual Reports are available to Parliament and the community.
52. DPC in conjunction with DVC and relevant departments plans to review the Premier's Circular 2003/3 later this year, with a view to strengthening performance reporting and to increase the focus on program outcomes and progress against milestones over time.

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.

53. The Government does not support the recommendation.
54. The Government currently has no immediate plans to extend the application of Financial Reporting Direction (FRD) 27 beyond the existing regional water authorities. More extensive requirements for performance reporting (output measures) are mandatory for Departments.
55. For government agencies, including those in the health and education sector, as well as public financial and other non-financial corporations, the Government believes that a more productive approach is to foster the development of meaningful internal performance indicators and measures, and embed such measures into management decision making.
56. The Standing Directions of the Minister for Finance, issued in June 2003, include requirement 4.4 which states:

“Public sector agencies must develop appropriate financial management performance indicators and monitor performance against these to identify key statistics and trends for use in management decision making.”

57. DTF will continue to work with all Departments and agencies to improve performance information and reporting.

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.

58. The recommendation is under review by the Government.
59. FRD 27, as currently drafted, requires an applicable entity to include in its report of operations an audited statement of performance. In applying FRD 27 some applicable entities have also elected to publish both the statement of certification and the audit opinion whilst other applicable entities have elected not to publish one or either of these.
60. The Government will review this requirement with a view to providing certainty regarding whether both the statement of certification and audit opinion are required to be published.

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.

61. The recommendation is under review by the Government.
62. The Government is examining opportunities to further improve the timeliness and effectiveness of financial reporting.

Recommendation 14

The Financial Management Act 1994 be amended to:

- *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;*
- *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*
- *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.*

63. The first part of the recommendation is under review by the Government.
64. The Government is continuing to examine opportunities to improve the timeliness of financial reporting.
65. The second part of the recommendation is under review by the Government.
66. The Government is continuing to examine opportunities to improve the timeliness of financial reporting.
67. At this stage it not possible to comment on a preferred model or otherwise.

68. The third part of the recommendation is under review by the Government.
69. The Government is continuing to examine opportunities to improve the timeliness of financial reporting

Recommendation 15

The Financial Management Act 1994 be amended to require that:

- *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*
- *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.*

70. The Government supports the recommendation.
71. The tabling of the annual reports of all agencies is supported including one copy of the annual report of small agencies. The distribution of copies of these reports to the PAEC should be the role for the papers office.
72. This issue is to be considered as part of a review of the *Financial Management Act (FMA) 1994*.
73. The publication of the annual reports of all agencies is supported including those of small agencies.
74. The Government will investigate the most appropriate mechanism to require agencies to publish these annual reports.

Recommendation 16

The Government amend the establishing legislation of agencies required to table non-financial annual reports to:

- *require the forwarding of annual reports to the relevant Minister within eight weeks of the end of the reporting period; and*
- *require Ministers to table annual reports in Parliament within four weeks of receiving it or the next sitting day.*

75. The Government notes the differing periods for presentation of non-financial annual reports in the examples provided by PAEC. Although the Government agrees in principle that non-financial annual reports should be available on a timely basis, the scope and scale of public entities' operations will differ. Accordingly that scope and scale will reflect the time by which these reports can be completed and presented. It is the responsibility of individual Ministers to ensure that the reporting periods specified in such legislation are both timely and sufficient.

76. The Government also notes that in practice most annual reports of the public entities identified by PAEC are presented to Parliament at the same time. The Government will continue to support this administrative practice and does not believe legislation is necessary in this instance.

Recommendation 17

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

77. The Government supports this recommendation and is committed to the continuing development of public hospital guidelines and procedures to ensure that complaints are handled effectively in line with best practice. DHS has developed complaint handling guidelines with the assistance of the Health Services Review Council and consultations have occurred with public hospitals to promote improved procedures. In support of this work, the Office of the Health Services Commissioner is currently conducting education for public hospitals on best practice in complaints handling procedures.

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.

78. The Government notes the Committee's positive finding regarding complaints handling procedures in the water sector. The Government supports the principle of agencies implementing best practice complaints procedures and reviewing those procedures periodically. The Government encourages agencies to examine the complaint handling processes referred to in the report.

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:

- *legislation applying to the agency;*
- *contact details for the agency; and*
- *links to performance reports published by the agency.*

79. The Government supports this recommendation. The SSA, in conjunction with DPC, is currently developing a database designed to contain key information concerning public entities, including contact details, legislation and possibly links to entity websites.

80. The Government notes however that while certain information on the database may become publicly accessible in the future, issues of privacy may restrict full access in relation to some information.

81. The SSA will aid in the further development of the database once it is implemented. The database will aid in its data collection functions.

Recommendation 20

The Government:

- *identify agencies where a clearer specification of the roles of boards, management (the chief executive officer) and Ministers can be made; and*
- *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.*

82. The Government supports this recommendation in principle and is grateful to PAEC for raising the issue of clarifying roles and responsibilities in the examples given. The PAA acknowledges the need for a greater clarification of roles through sections 95, 96 and 97 which require all public entities to make readily available to their directors any document issued by the Minister to the entity outlining the respective roles of, and relationships between, the entity, Department and Minister. Sections 95(2), 96(2) and 97(2) oblige the responsible Ministers to issue these documents to the entities.

83. A noteworthy initiative in the PAA is the statement of accountability in section 85 which seeks to outline the roles of boards *vis a vis* Ministers, and section 81 which further describes the duties of the entity and certain relationships with the responsible Minister.

84. The SSA, as part of its ongoing role in reviewing governance of public entities, may identify needs for legislative change in given circumstances, as a result of specific reviews. The Government will consider, on merit, any recommendations of the SSA that include legislative change regarding roles of public entity officers and Ministers.

Recommendation 21

The Government amend agencies' establishing legislation to provide for:

- *a single standard requiring all directions made to an entity governed by a board of management to be in writing; and*
- *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.*

85. The Government notes PAEC's comments concerning the use of "informal" directions. PAEC also recognises, however, that different agencies have different requirements based on their structures, and the extent to which an agency is considered to be at arm's length from the Government. The Government supports

the general principle that directions made by Ministers should be in writing, and there are many examples of agency legislation where the agency's governing legislation provides for directions to be in writing.

86. Notwithstanding, there will be circumstances where directions may not be made in writing, and this is dependent on the form or functions of the agency in question. To amend all agencies' establishing legislation to provide for written directions only would require careful consideration of individual agencies' functions and circumstances. Furthermore, there is a definitional issue regarding what constitutes an "informal" direction. PAEC identified an example of agency action following a Ministerial statement, yet there was no direct evidence that the statement was intended to act as some type of direction. In particular, entities with a degree of independence may react to a whole variety of Government actions, or if they so choose, may not react at all. Accordingly, it is difficult to tell exactly what might constitute an "informal" direction.
87. The Government will consider potential amendments to the PAA and where the SSA has conducted governance reviews, or provided other relevant advice, any recommendations relating to Ministerial directions being in writing.
88. The Government supports the general principle that directions made by Ministers should be included in annual reports. There are examples of agency legislation where the agency's governing legislation provides for directions to be included in annual reports. In some agencies' governing legislation, directions must also be tabled in Parliament within a specified time.
89. Notwithstanding, there will be circumstances where directions may not be tabled within five sitting days, and this is dependent on the form or functions of the agency in question. To amend all agencies' establishing legislation to provide for tabling of written directions within five sitting days would require careful consideration of individual agencies' functions and circumstances.
90. The Government will consider potential amendments to the PAA, and where the SSA has conducted governance reviews, any subsequent recommendations relating to the tabling of written Ministerial directions within five sitting days.

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.

91. The Government notes the Committee's comments regarding the structure of a number of agencies examined in the report, such as the Office of the Public Advocate.
92. Section 70 of the PAA outlines the functions of the SSA that comprise its role 4. These functions include the ability to provide advice on appropriate structures and

governance arrangements for public entities. As to the conduct of any review by the SSA regarding “independent” agencies, that is properly a matter for the SSA.

93. The Government will consider providing a reference to the SSA to examine the issues raised by the report and the recommendation.

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.

94. The Government supports this recommendation. In developing the PAA, developments in New Zealand were examined, including the statement of expectations and statement of intent present under various pieces of New Zealand legislation.
95. Section 95 of the PAA requires entities to retain documents issued to the entity outlining their responsibility and accountability relationship with the Minister and the Department.

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.

96. The Government does not support this recommendation.
97. The Government agrees that statements of expectations and statements of intent may have a valuable role to play in the relationship between agencies and Ministers. As the Committee has noted, these statements may also overlap with business and corporate planning requirements, and not all agency legislation requires these statements.
98. The importance of these statements is acknowledged in sections 95, 96 and 97 of the PAA, but it remains the responsibility of individual Ministers, who are responsible for the agencies within their portfolio, to manage their relationships with public sector agencies.
99. The new arrangements under the PAA, along with existing legislative requirements in individual statutes are sufficient and the changes suggested in the recommendation are unnecessary.

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.

100. The Government supports transparency in planning and accountability documents where the commercial operations or other sensitive information of Government enterprises are not compromised. Due to the large and diverse range of activities undertaken by Government enterprises it would be impractical to introduce a single rule for all agency planning and accountability documents. As the Committee has correctly identified, such a standard may require legislative amendment and may take some time. Careful consideration would also need to be given to the timing of the tabling requirement of such a standard as review of agency planning documents may not have occurred by the fifth day of the start of the reporting period to which they relate.
101. There exist a number of examples of legislation establishing agencies that provide for planning and accountability documents to be tabled in Parliament, and consequently be made public. There will however also be circumstances in which planning and accountability documents, or portions of them, should not be made publicly available, as they may contain information which is commercial in confidence, which may provide information which discloses Cabinet deliberations or which might provide an unfair economic advantage to third parties.
102. The Government will consider any relevant SSA advice on these issues.

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.

103. The Government does not support this recommendation.
104. Requirements for agencies to make publicly available relevant planning and accountability documents are currently set out in agencies' governing legislation and the *State Owned Enterprises Act 1992* where applicable.
105. As there is a large variety of agencies with differing functions, individual governing statutes appropriately cater for agencies' particular circumstances. There are circumstances when those documents, or portions of those documents should not be publicly available, such as when they contain commercial in confidence information, information which might disclose Cabinet deliberations, information which might compromise security or information which might unfairly advantage a third party for example. The Government considers that the existing requirements cater for specific agencies' circumstances. It is the responsibility of individual Ministers to consider whether existing legislative publication requirements for agencies are appropriate on a case by case basis.

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:

- *the appropriateness of current corporate governance arrangements; and;*
- *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.*

106. The Government does not support this recommendation. Such an obligation in the PAA would carry significant resource implications for the SSA, and would divert it from its core functions. In addition, the PAA currently allows such reviews to be carried out at the SSA's discretion (section 70(b)), or through the special review, special inquiry or systems review mechanisms. The SSA is developing a program of rolling reviews of classes of public entities as set out in section 70(b) of the PAA. The amendment is therefore unnecessary.

Recommendation 28

The State Services Authority:

- *in conjunction with agencies, undertake the lead role in facilitating sound public governance practices in government agencies; and*
- *assist agencies with clarifying responsibilities and accountability arrangements at ministerial level for major multi-agency initiatives involving the shared delivery of services.*

107. The Government supports this recommendation. The SSA's core tasks include role 4, which obliges it to provide advice on appropriate structures and governance arrangements for public entities (PAA, section 70(a)). The Committee has also noted the SSA's function under section 45(1)(a) of the PAA to identify opportunities to improve the delivery and integration of government services. Similarly, section 45(1)(d) of the PAA obliges the SSA to promote high standards of accountability and performance for public entities.

108. In carrying out these functions, the SSA's role is very much facilitative and seeks to aid Departments and public entities to improve governance, including issues such as clarification of responsibilities.

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.

109. The Government supports the public availability of governance information relating to agencies, but recognises that there will be circumstances where the release of certain information may not be desirable. For example, the release of commercial-in-confidence information, information that might disclose Cabinet deliberations or information which might unfairly advantage a third party, would not be in the public interest.

110. The SSA has no power under the PAA to replace restrictions on public availability, which are found in agency governing legislation. The Government will consider any advice from the SSA regarding this issue.

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.

111. This recommendation will be considered in conjunction with the yet to be made recommendations from the Victorian Ombudsman following the completion of his review of public sector agencies' administration of the *Freedom of Information (FOI) Act 1982* due to report later this year. Government will consider the reform recommendations arising from the Ombudsman's final report concurrently with recommendations 23-32 made by the Parliamentary Scrutiny of Acts and Regulations Committee in its inquiry into electronic democracy 2005 and also the previous Ombudsman's FOI Review (September 2003). It is appropriate for all of these reform proposals to be considered concurrently. This would involve examination of best practice reporting in place in other jurisdictions.
112. The resourcing impact of any changes to reporting responsibilities on the over 400 public sector agencies in Victoria (where FOI requests range from nil to over a thousand requests in any year) will be relevant in considering these reform proposals.

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.

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.

113. The Government does not support recommendations 31 and 32.
114. Victorian Government Purchasing Board (VGPB) policy is mandatory for departments and administrative offices as defined by the FMA.
115. Board policy titled *Disclosure of Contracts >\$100,000* requires departments to upload baseline contract details on the Contracts Publishing System (CPS) within 60 days after the award of contract.

116. In May 2001, the Government announced a new purchasing framework, that amongst other things, required all public sector agencies and government business enterprises to articulate their purchasing policies and benchmark them against the Government's requirement for transparency and probity.
117. Public sector agencies and government business enterprises have responded to the Government's requirement with many outer budget entities disclosing their contract details on the CPS system whereas other, mostly larger, outer budget entities disclose tender and contract details on their own information websites.

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.

118. The Government does not support the recommendation.
119. Departments and outer budget entities already apply the contract disclosure requirements by adopting the principles of openness and transparency specified in the FOI Act. This action is in accord with the Premier's policy statement of 11 October 2000, *Ensuring Openness and Probity in Victorian Government Contracts*.
120. In compliance with obligations under the Australia United States Free Trade Agreement (AUSFTA) – Government Procurement Chapter (GPC), Board policy requires the publication of contract details within 60 days of award of contract.
121. This timeframe allocated to the Auditor-General to consider contract matters is inconsistent with the obligations under the AUSFTA –GPC.
122. Each Department has FOI personnel to advise on disclosure issues. Involving the AG on each contract with a commercial-in-confidence element will result in a duplication of action and a delay in contract disclosure.

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.

123. The Government does not support the recommendation.
124. The current threshold of \$10 million has been in operation for a number of years and is considered an appropriate threshold.

Recommendation 35

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

- *issuing of standards regarding the adherence by public officials to public service values;*
- *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*
- *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.*

125. The Government believes the PAA contains sufficient power to ensure adherence by public officials to public sector values. Section 63 provides that the PSSC can make codes of conduct based on the values that are binding on specified public officials, and section 66(5) gives the PSSC the power to require information from public service body and public entity heads regarding the application of the public sector values, the public sector employment principles, and codes of conduct. The SSA is also required under section 74(1)(b) to report annually on the adherence by public officials to public sector values.

126. The PAA already provides for the SSA to carry out a special inquiry under section 52, or a special review under section 56. Both these powers allow the Premier to direct the SSA to inquire into any matter relating to the relevant bodies. These matters could therefore include the topics described in paragraph (b) of the recommendation. Furthermore, it should be noted that the Government does not believe further amendment in this area is necessary.

127. Part 7 of the FMA and Standing Direction 4.2 deal with information that must be contained in annual reports of agencies that are subject to Part 7 of the FMA. Agencies may also have specific reporting requirements arising from their establishing statute where applicable.

128. Section 48(b) of the FMA allows the Minister for Finance to request additional information be included in an annual report, whilst individual Ministers may also have such a power under specific governing legislation relating to agencies. These powers could be used to incorporate information relating to the issues raised in paragraph (b) of the recommendation. This is a matter for individual Ministers.

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.

129. The response to recommendations relating to the reporting requirements for the whistleblowers protection scheme should take into consideration the outcomes of

the Ombudsman's current review of the FOI Act and anticipated review of the *Whistleblower Protection Act 2001* (WPA) (2005 - 2006). These reviews may recommend changes to the reporting procedures for FOI and whistleblower matters.

130. Any revision to reporting requirements will need to take current reporting activity into account and the resource implications for DOJ and across agencies.

Recommendation 37

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

- *details of the numbers and types of disclosures made to public bodies during the year;*
- *the number and types of disclosures referred to the Ombudsman for determination of whether they are public interest disclosures;*
- *the number and types of disclosed matters that agencies declined to investigate;*
- *the number and types of disclosed matters that were substantiated on investigation, and the action taken on completion of the investigation; and*
- *the nature of disclosures, such as allegations of bribery or fraudulent use of public funds.*

131. Sections 102 and 104 of the WPA already require the first four particulars referred to in recommendation 37 to be included in the Annual Report of the Ombudsman or public bodies. There is no objection to these criteria being included in a report by the Attorney-General if Recommendation 36 is adopted.

132. The fifth requirement is not supported because a mandatory requirement to report the nature of the disclosure may reveal the identity of the whistleblower and create risk for the whistleblower. A qualified requirement to report the nature of the disclosure (unless it may reveal a whistleblower's identity or create risk for the whistleblower) would be supported.

Recommendation 38

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

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

133. Government supports best practice in the implementation of whistleblower processes, including training and awareness-raising strategies and will give further consideration to how effect may best be given to this recommendation.

134. The Government will consider providing a reference to the State Services Authority to examine the issues raised by the report and this recommendation.

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

135. As the Committee has noted, agencies must comply with Standing Directions under the FMA relating to independent chairs of audit committees. Annually each entity is required to certify to its Portfolio Minister its level of compliance against the Standing Directions. Portfolio Ministers rely on their Department to support the compliance-monitoring role. This role may include periodic audits by Departments as to compliance with the directions, but is not mandatory.
136. The AG also has powers under the *Audit Act 1994* to audit the compliance of agencies with the directions.
137. The Government will encourage Departments to more closely monitor portfolio agencies' compliance in the area of audit committees, and will consider whether some form of spot auditing on a periodic basis should be made mandatory.

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.

138. The Government supports this recommendation. The Government agrees that a more strategic approach may further improve governance. Consistently with the response to recommendation 39, the Government will consider mechanisms to help agencies develop that strategic approach.

Recommendation 41

Agencies develop strategies to effect a more strategic approach to the conduct of their internal audit committees.

139. The Government supports this recommendation. The Government agrees that a more strategic approach to audit committees may further improve governance. Consistently with the response to recommendation 39, the Government will consider mechanisms to help agencies develop that strategic approach.

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.

140. The recommendation is under review by the Government.
141. The Government will review the appropriateness of requiring 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.

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.

142. The recommendation is under review by the Government.
143. The Government will review the FRD with a view to requiring agencies to provide in their annual report a summary of the activities of their internal audit.

Recommendation 44

The Department of Premier and Cabinet develop and maintain a publicly available register of appointees to public sector agency boards that includes:

- *the agency/agencies to which the person is appointed;*
- *the term of appointment for each agency to which the person is appointed; and*
- *the position held on each board (chair, deputy chair, etc).*

144. The Government supports this recommendation in part and refers to its response to recommendation 19. The SSA, in conjunction with DPC, is currently developing a database designed to contain key information concerning public entities including contact details, legislation and possibly links to entity websites. Information included in this database will also cover appointee data such as term of appointment, position held and other agencies to which a person is appointed.
145. The Government notes, however, that while certain information on the database may become publicly accessible in the future, issues of privacy may restrict full access in relation to some information.

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.

146. The Government notes the Committee's comments regarding the composition of boards in terms of skills, and the most appropriate size. Section 70(a) of the PAA states that one of the SSA's functions is to provide advice to the Premier on appropriate structures and governance arrangements for public entities.

147. The size and skills mix of boards is a key feature of governance of public entities and the Government will consider any advice provided by the SSA regarding appropriate skills mix and composition of boards that are the subject of SSA examination.

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.

148. The Government supports this recommendation. The Government *Guidelines for the Appointment and Remuneration of Part-Time Non-Executive Directors of State Government Boards and Members of Statutory Bodies and Advisory Committees* (the Guidelines) are now available on the DPC website, subject to some minimal exclusions.

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.

149. The Government does not support this recommendation. The PAA currently provides the SSA with the power to provide advice on the governance arrangements for public entities, which may include appointment process issues.
150. To request the SSA to monitor all board appointment processes would entail a significant resource burden, given the large number of public entities. Such an obligation would seriously detract from the SSA's other statutory functions and would divert resources away from its workplan and any references given to it. Furthermore, the SSA's monitoring role might lead to an increase in the time taken to make important or urgent appointments, to the detriment of the governance of boards.
151. The Government believes that the existing arrangements for the SSA are appropriate and that the SSA is already empowered to advise on any specific governance problems regarding appointments that may arise as a result of its normal operations.

Recommendation 48

The governance principles in the Public Administration Act 2004 be extended to appropriate agencies after review on a case-by-case basis.

152. The Government supports this recommendation. The PAA specifically provides that public entities created after 1 July 2005 are covered by the entirety of Part 5 of the Act. Section 75 of the Act also expressly provides that public entities

created before 1 July 2005 can be brought under the entirety of Part 5 by way of an Order in Council.

153. The Government will consider the extension of the entirety of Part 5 to appropriate public entities following any relevant SSA advice or reviews, and more generally on a case-by-case, or class-by-class basis.

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.

154. The Government supports this recommendation. The PAA specifically provides that public entities created after 1 July 2005 are covered by the entirety of Part 5 of the Act. Section 75 of the Act also expressly provides that public entities created before 1 July 2005 can be brought under the entirety of Part 5 by way of an Order in Council.
155. The Government will consider the extension of the entirety of Part 5 to appropriate public entities following any relevant SSA advice or reviews, and more generally on a case-by-case, or class-by-class 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.

156. The Government supports this recommendation. Section 81 of the PAA obliges public entity boards to have in place adequate procedures for the assessment of director performance. The SSA, as part of its role 4 described in section 70 of the PAA, can provide advice on governance structures in public entities.
157. The Government will consider any advice from the SSA regarding this issue.

Recommendation 51

The Government review the appropriateness of some public sector agencies not paying fees to board members.

158. The Government supports this recommendation, and notes that there are a variety of reasons as to why in certain cases board members are not paid. These reasons include:
- the individual declines payment as they feel morally obliged to;
 - the individual is prohibited from receiving payment by a legislative provision, usually because they are a public servant; and

- in some circumstances, an individual may not be eligible for remuneration under the Guidelines due to their holding another position. In these cases, payment might be construed as “double dipping”.

159. The Government also notes that it does not necessarily always follow that merely because a person is not being paid for sitting on a board, their level of commitment is any different from those being paid. In fact, there is an argument that those who are not paid are actually more committed, since money does not factor in their decision to sit. There are a large number of volunteers who sit on Government boards and who perform board functions with distinction.

160. The Government agrees that the level of responsibility of boards may have increased over time, and that Ministers and Departments, when considering remuneration for appointments, need to examine the appropriateness of payment.

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.

161. The Government supports this recommendation. The Government refers to section 68(c) of the PAA that states that one of the SSA’s functions, as part of role 3, includes providing leadership on workforce management and professional development in the public sector. The SSA is currently developing a number of strategies to implement this role.

162. Similarly, sections 45(1)(d) and 69 state that role 4 to be performed by the SSA is the promotion of high standards of governance, accountability and performance for public entities. The SSA is currently developing a number of strategies to implement this role.