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*A Framework for Reforming the Independence and Accountability of Statutory Officers of Parliament. A Case Study of Victoria*

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# **A FRAMEWORK FOR REFORMING THE INDEPENDENCE AND ACCOUNTABILITY OF STATUTORY OFFICERS OF PARLIAMENT: A CASE STUDY OF VICTORIA**

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# **A FRAMEWORK FOR REFORMING THE INDEPENDENCE AND ACCOUNTABILITY OF STATUTORY OFFICERS OF PARLIAMENT: A CASE STUDY OF VICTORIA**

## **ABSTRACT**

Considerable attention has been given to the independence of auditors-general in the literature. However, there are other officers of parliament who also have roles that may require protection from the excessive use of power by the executive arm of government. In response to the recent Public Accounts and Estimates Committee *Inquiry into a Legislative Framework for Victorian Statutory Officers of Parliament*, the study compares the enabling legislation of four Victorian officers of parliament in terms of their powers, independence, funding, and mandate as well as the accountability mechanisms available to parliament in terms of their appointment, tenure, and oversight. The four officers are: the auditor-general; the ombudsman; the regulator-general; and the director of public prosecutions. A number of notable differences in the enabling legislation are identified and reform options for strengthening such legislation are presented.

## **Introduction**

Considerable attention has been given to the independence of auditors-general in the literature. However, within that literature there has been limited comparison of the provisions within their enabling legislation that provide for their independence as well as their accountability. Further, auditors-general are only one of a number of independent parliamentary officers with roles that may require protection from the excessive use of power by the executive arm of government.

Therefore a key motivation of this study is to examine the legislative provisions for the independence and accountability of other officers of parliament in addition to the auditor-general. Although the independence and accountability provisions as contained in the enabling legislation of the auditors-general of Australia have been compared (De Martinis and Clark forthcoming), a similar comparison of the legislative provisions for the independence and accountability of other officers has not been undertaken. Examining the enabling legislation of other officers of parliament is important because such officers also contribute to the enhancement of government and public sector accountability (Mulgan 1997).

Further motivation comes from examining the enabling legislation of two officers of the parliament of Victoria that have received government and media attention. The enabling legislation of the director of public prosecutions underwent significant challenge during 1994 (Corns 1994; Zifcak 1997). Also, a number of changes to the enabling legislation of the auditor-general of Victoria were made by the Kennett government and the subsequent Bracks government (Craswell 1997; English and Guthrie 2001; Houghton and Jubb 1998).

Therefore, it is not surprising that in April 2000, the Victorian Public Accounts and Estimates Committee (PAEC) commenced an inquiry into a legislative framework for Victorian statutory officers of parliament. The PAEC was to undertake an inquiry and report on:

1. *An appropriate legislative framework for Victorian officers of Parliament such as the Ombudsman, the Auditor-General and other statutory office-holders, that would recognise the special position of statutory officers of the Parliament in terms of their relationship with the Victorian Parliament but which also ensures that their greater autonomy is accompanied by very clear accountability requirements; and*
2. *Developments in this area in other jurisdictions.*

The PAEC inquiry follows an earlier similar inquiry conducted in New Zealand *Inquiry into Officers of Parliament* (Finance and Expenditure Committee 1989). The New Zealand inquiry recommended conferring the status of “Officer of the Parliament” to officers who should be afforded protection from the arbitrary use of power by the executive arm of government, with such positions being created only rarely. Whilst proposing protection from the excesses of the executive, the Committee recommended a number of mechanisms to ensure that, in turn, the officers of parliament were accountable to parliament. The PAEC has not yet presented a report on its findings and recommendations.

The purpose of this paper is to compare the enabling legislation of four statutory officers of parliament in Victoria with regard to their accountability *to* parliament as well as their independence *from* the parliament, including the adequacy of their powers, funding, and mandate. The four Victorian statutory officers of parliament, who may be considered to be officers of the parliament in terms of their relationship with parliament, are: the auditor-general (*Audit Act 1994*); the director of public prosecutions (*Public Prosecutions Act 1994*); the ombudsman (*Ombudsman Act 1973*); and the regulator-general (*Office of the Regulator-General Act 1994*). As at January 1, 2002, the Office of the Regulator-General became the Essential Services Commission. These officers were chosen to provide a sample that may be perceived as representing key officers of the parliament, regardless of whether their enabling legislation explicitly identifies them as such.

This comparison of the enabling legislation allows for the identification of provisions that could be enhanced to further strengthen the independence and accountability of the officers. Such a comparison enables the identification of the differences in the enabling legislation, where the differences found are used to assess relative strengths and weaknesses of the enabling legislation with respect to the independence and accountability provisions. The identification of weaknesses subsequently justifies the presentation of reform options in the conclusion.

In order to assist the PAEC to report on an appropriate legislative framework for Victorian (or other) officers of parliament, and following on from JCPA (1996, 1989) and English and Guthrie (2000), this study uses an independence and

accountability framework as a basis to examine the current legislative frameworks applicable to the above four parliamentary officers with regard to independence, mandate, and funding issues. Also compared are the accountability mechanisms available to parliament in terms of their appointment, tenure, and oversight. The model developed by English and Guthrie (2000), in respect of auditors-general, is adapted here as a model that can have wider application to other officers of parliament. Thus the model provides a framework that can be adopted by legislators in considering reforms to the enabling legislation provisions for independence and accountability of independent officers of parliament.

Interestingly, in Victoria, the term ‘parliamentary officer’ does not appear to be clearly defined. There is a *Parliamentary Officers Act 1975*, with the officers identified within that Act being the clerks of each House of Parliament and other similar staff who work within Parliament House. Particular enabling legislation that creates an officer may refer to that officer as being an officer of the parliament. For example the auditor-general is referred to as an officer of the parliament in the *Constitution Act 1975, Section 94 B(1)*. If the term is taken to mean officers who are appointed by the parliament, or by the governor-in-council on its behalf, then an even wider scope of the notion of officers of parliament is created. Barrett (1996a: 138) states that “it remains an open question at this point in time as to what being an ‘Officer of the Parliament’ means in practice, particularly in relation to the audit office itself.” Therefore, before any legislative framework is developed, it will be necessary to provide an appropriate and adequate definition. Note, however, it is beyond the scope of this paper to identify those officers who should be deemed to be independent statutory officers of parliament.

The paper is structured as follows. The next section provides a review of the key literature and, in particular, presents the independence and accountability framework that forms the basis of the analysis. Using this framework, the enabling legislation of the four Victorian officers of parliament is then compared. Finally we present a summary and conclusion including reform options for strengthening the enabling legislation based on the findings. The reform options are justified in their attempt to address the findings.

### **Key Literature**

Literature on public sector accounting, accountability, and auditing is extensive (see, for example, English and Guthrie 1991; Funnell and Cooper 1998; Mulgan 1997; Taylor 1992 and Zifcak 1997). In particular, the literature gives considerable attention to the 1997 review of Victoria's *Audit Act 1994* (Maddock, Dahlsen, and Spencer 1997) and the apparent threats to the independence of the Auditor-General of Victoria (Craswell 1997; De Martinis, Clark and Roberts 1998; English and Guthrie 2001; Guthrie and English 1997; Houghton and Jubb 1998). This incident involving the Auditor-General was preceded by a similar incident in 1993 involving attempts to restructure the Office of the Director of Public Prosecutions. Corns (1994: 277) cites the claim made by the then director of public prosecutions, Bernard Bongiorno Q.C.:

...that the proposed reforms would effectively undermine prosecutorial independence and allow political considerations to influence key prosecution decisions and structures.



In recent times the literature has acknowledged a model of accountability that comprises a number of complementary ‘agencies’, processes, and channels of accountability between the public and public servants (Mulgan 1997). Figure 1, sourced from Mulgan (1997), depicts the ‘agencies’ of accountability to include freedom of information legislation, courts, ministers, parliament, and committees and officers of parliament including the ombudsman and the auditor-general. The four main processes of accountability comprise reporting or accounting, information-seeking or investigation, assessment or verification, and direction and control. The agencies can ensure the accountability of governments or public servants through a number of channels. However, the literature acknowledges that the effectiveness of these accountability agencies, particularly in the context of the role of public sector audit, depends on the existence of legislative provisions that ensure independence and adequate funding, as well as powers related to a comprehensive mandate (Barrett 1996a, 1996b; De Martinis and Clark forthcoming; De Martinis, Clark, and Roberts 1998; English and Guthrie 2001, 2000, 1991; Funnell, 1997, 1996; Taylor 1996a, 1996b).

Insert Figure 1 about here

Debate on the role of public sector audit in public accountability represents a significant part of the literature on public accountability (see, for example, De Martinis, Clark, and Roberts 1998; English and Guthrie 2000, 1991; Funnell and Cooper 1998; Mulgan 1997; Taylor 1992; Walsh 1995). English and Guthrie (2000) present a framework on the independence and accountability for auditors-general, which this study adapts to facilitate an examination of the appropriateness and

adequacy of current legislative frameworks of all parliamentary officers with regard to mandate, independence, and funding issues. The adapted framework provides the basis for reporting on an appropriate legislative framework for the Victorian officers of parliament that: (i) recognises the special position of statutory officers of the parliament in terms of their relationship with the Victorian Parliament; and (ii) ensures that their greater autonomy is accompanied by very clear accountability requirements.

### **Comparison Of The Enabling Legislation Of Victorian Officers Of Parliament**

Based on landmark reports on the Commonwealth Auditor-General by the Joint Committee of Public Accounts (JCPA) (JCPA 1996, 1989), English and Guthrie (2000) examine the role, powers, and independence of the Commonwealth Auditor-General in the context of the accountability mechanisms available to parliament, as per Table 1. The two-part framework describes (i) the *accountability mechanisms available to parliament* related to audit scope, auditor-general appointment, tabling of reports, funding, and oversight, and (ii) the *powers required by auditors-general to conduct audits* related to independence, mandate and funding source. On the accountability mechanisms available to parliament (that is, Table 1: column 1), discussion includes issues related to the appointment of the officers, their scope of function, powers of parliament or other officers/committees in relation to each officer, and funding and oversight of the officers. On the powers granted to perform duties (that is, Table 1: column 2), discussion includes issues related to scope and mandate, independence from direction/control by the executive, and funding.

Insert Table 1 about here

On the issue of accountability, Table 1: column 1 presents mechanisms available to the parliament in respect of the auditors-general. These include no impediment to the scope of the auditor-general in conducting financial statements and performance audits all government entities. Further, that parliament have powers to appoint and oversee the office of the auditor-general, as well as to request audits and have all audit reports tabled in parliament. The parliament is the client, not the executive or auditee. In respect of funding, the model proposes that funding be determined by the parliament with input from the parliamentary audit committee. Finally, that there be oversight of the office of the auditor-general through an independent audit of the auditor-general. These accountability mechanisms available to parliament in respect of the auditor-general can be generalised to provide a framework for evaluating the accountability of other officers of parliament, to the parliament.

On the issue of independence, both public and private sector auditors are required to comply with professional standards such as AUP 32 (AuSB 2002). In general, AUP 32 states that auditors should be, and appear to be independent from the auditee. This requirement could apply to other officers of parliament with respect to the executive or government of the day. Table 1, column 2 contains more specific independence requirements applicable to auditors-general and, again, these are adapted within this study for other officers of parliament. These requirements include the need for an adequate mandate, as well as the need for sufficient funding as recommended by parliament to enable the effective exercise of such mandate. Other necessary powers relate to independence from direction by the executive by

way of having such independence enshrined in law, free of direction/control from executive, discretion to determine type of work, reporting to parliament not the executive, wide information gathering powers, and appointment by parliament - not the executive.

The officers enabling legislation as at September 2000 were examined to determine whether the accountability mechanisms (Table 1: column 1) and the required powers (Table 1: column 2) were or were not explicitly addressed. The *Parliamentary Officers Act 1975* was also reviewed. However, the provisions relating to these officers have not been reported upon, as their duties and relationship with the parliament are quite different to other others who may be considered officers of the parliament.

To facilitate the comparison across each officer's enabling legislation, the framework as contained in Table 1 was restructured to form the basis of the analyses as appearing in the first column of Tables 2 to 5. Tables 2 to 5 provide a summary of the key features of the enabling legislation of each officer under the separate accountability mechanisms and required powers. A total of thirty issues are contained within these tables. The enabling legislation was then examined to determine the extent to which the issues as contained in Tables 2 to 5 were addressed. To validate our findings in terms of accuracy and errors, the relevant parts of Tables 2 to 5 were sent to each officer. Comments were received from each officer or a representative, and where necessary and deemed appropriate, amendments based on such comments were incorporated in the relevant parts of this paper and the tables.

It is noted that, by practice or convention, some officers may have more or less independence or have more or less accountability to the parliament than suggested by the analysis of the legislation alone. This is because such practice or convention may not reflect a literal interpretation and application of the enabling legislation. An examination of instances where such variations between practice and the legislative provision occur is beyond the scope of the present study. However, as an example of where such a divergence was found, the Commonwealth auditor-general, by convention, presents an annual work plan to parliament without there being a legislative requirement to do so. It is only in the case of the auditor-general of Victoria that a legislative requirement to submit an annual plan to parliament exists.

## **Accountability Mechanism Available to Parliament**

### ***1. Powers of Parliament in Relation to Victorian Officers of Parliament***

Table 2 shows a number of differences between the four Victorian officers in relation to the powers of parliament. Although consistency appears over the appointment and removal of the officers, there are significant differences in other areas. Of note is the degree of difference in the terms of office, eligibility for re-appointment, and in the requirement for an annual work plan. A more detailed description follows below.

Insert Table 2 about here

(a) Appointment

For each officer examined, the appointment to the position is by the governor-in-council. In the case of the auditor-general the legislation further provides that the appointment by the governor-in-council is on the recommendation of the parliamentary committee (that is, the PAEC). In the case of the regulator-general, associate regulators-general may be appointed, with these appointments being made by the minister rather than the governor-in-council.

#### (b) Term of Office

The legislation reveals differences in the periods for which the officers may be appointed, and their eligibility for re-appointment. The auditor-general is appointed for seven years; the director of public prosecutions is to be appointed for at least ten years and at most twenty years; the ombudsman is appointed for a term of ten years; whilst the regulator-general is appointed for five years. The appointment of the auditor-general and the director of public prosecutions are provided for in the *Constitution Act 1975*, whereas the other officers' appointment is provided for in their respective enabling legislation.

#### (c) Eligibility for re-appointment

The ombudsman is the only officer not eligible for re-appointment.

#### (d) Remuneration

Remuneration for the auditor-general, the ombudsman, and regulator-general is determined by the governor-in-council. In the case of the director of public prosecutions, salary and allowances are determined under the *Judicial Remuneration Tribunal Act 1995*.

(e) Payments out of Consolidated Fund

In terms of the source of funds for these payments, the auditor-general, the director of public prosecutions, and the ombudsman are paid from the Consolidated Fund. The legislation is silent on this matter in respect of the regulator-general.

(f) Removal from office

Removal of each officer can only be by parliament.

(g) Appointment of Acting Officers

The appointment of an acting officer is by the governor-in-council, which is the same as the process for appointing the substantive office holder.

(h) Submission of annual work plan

The auditor-general is the only officer examined required to submit an annual plan describing the proposed work program for that year to the parliament; with the draft plan being subject to consideration and comment by the parliamentary committee. The auditor-general is then required to report upon the performance of that plan following that year. The other parliamentary officers do not appear to be subject to any parliamentary or ministerial direction as to an annual work plan. The director of public prosecutions must consult with the director's committee before making a special decision. The regulator-general is required to consult the minister prior to conducting an inquiry. In all other respects, the other parliamentary officers do not appear to be required to consult or confer in planning or determining their work program.

The director of public prosecutions is responsible to the attorney-general for the due performance of his or her functions and exercise of his or her powers under the Act. It is not clear what the implications of this provision are in terms of determining the effective relationship between the director of public prosecutions and the attorney-general, and in particular the independence of the director of public prosecutions.

(i) Power to request investigations or audits

In the case of the ombudsman, the legislation provides that the Legislative Council, Legislative Assembly, or a joint committee of both houses of parliament, may refer to the ombudsman any matter for investigation or report (*Ombudsman Act 1973* Section 16). In the case of the regulator-general, the minister may request inquiries.

(j) Tabling of annual reports

In terms of provisions relating to annual reporting, the auditor-general and the ombudsman are to submit an annual report directly to the parliament; while the director of public prosecutions submits annual reports to the attorney-general for tabling in parliament. The regulator-general is to produce an annual report, however the legislation is silent regarding the provisions for the submission of this annual report to parliament or the relevant minister. The Committee of Public Prosecutions also submits an annual report to the attorney-general which is to be laid before parliament.

(k) Submission of other reports

In respect of other forms of reports, the auditor-general submits all audit reports to the parliament. The ombudsman also submits his/her other reports directly to the



parliament. However, the regulator-general submits reports of inquiries to the minister for tabling in parliament; whilst the director of public prosecutions does not appear to be subject to a provision requiring submission of other reports. Further, the ombudsman may be authorised to publish any report relating to the exercise of his functions.

## ***2. Funding of Offices***

Table 3 shows that for the auditor-general, funding is determined in consultation with the PAEC, whereas costs for performance audits for authorities are to be paid out of the money appropriated to the parliament. In the case of the ombudsman, parliament is to appropriate funds for use by the Office of the Ombudsman. Whereas for the director of public prosecutions and the regulator-general, the relevant legislation appears to be silent in respect of the funding of the office.

Insert Table 3 about here

## ***3. Oversight of Offices***

Table 4 shows that the Office of the Auditor-General is subject to an independent audit in respect of the financial statements each year, as well as being subject to an independent performance audit at least every three years, with the independent auditor being appointed by the parliament. Both the independent financial statement auditor and the performance auditor are to report to parliament. All other offices are subject to independent audit conducted by the auditor-general. However, the

relevant legislation for each officer other than the auditor-general does not explicitly refer to the conduct of an audit.

Insert Table 4 about here

## **Powers to Perform Functions**

### ***4. Mandate to Perform Functions***

Since the functions performed by the various officers differ, it is difficult to draw comparisons about the extent to which the relevant legislation provides a comprehensive mandate to those officers to perform their respective functions. There are, however, differences between the extent to which these officers may perform their mandate at their own discretion without being subject to the direction of the parliament (or its committees). For example, in respect of the planning of their work (such as, the auditor-general being required to consult with the PAEC on the annual work plan), or in terms of being subject to requests to perform specific investigations or audits (see above section: *Powers of Parliament in Relation to Victorian Officers of Parliament*).

### ***5. Independence from Direction by Parliament or its Committees***

Table 5 shows both similarities and differences in issues affecting the independence of each officer from direction by parliament or its committees.

Insert Table 5 about here

(a) Independence enshrined in law

The auditor-general, under the provisions of the *Constitution Act 1975*, is an independent officer of the parliament. Similarly the Office of the Regulator-General is not subject to the direction or control of the minister in respect of any determination, report or inquiry. The director of public prosecutions and the ombudsman do not appear to have any provision for the explicit enshrinement of their independence from direction provided with the relevant legislation.

(b) Discretion to perform functions

The relevant legislation provides for discretion in varying degrees for the officers under consideration. The auditor-general has very explicit provision for discretion, contained within the *Constitution Act 1975*, which provides “complete discretion” in the performance or exercise of functions or powers and is not subject to direction from anyone in relation to: whether or not a particular audit is conducted; the way a particular audit is to be conducted; or the priority to be given to any particular matter. The director of public prosecutions does not appear to have explicit provision to exercise discretion, however, this provision may be seen as being implicit, for example having the power to discontinue criminal proceedings. The ombudsman has discretion to conduct inquiries and investigations and regulate procedures. The regulator-general has the discretion to conduct inquiries as deemed fit.

(c) Access to information

The enabling legislation for auditor-general, the ombudsman, and the regulator-general make such a provision. There are, however, differences in the wording of this provision and exemptions to compliance. The ombudsman has power to gather any information except any information that a person is not compelled to produce before a court. The regulator-general has power to obtain information and documents except where compliance may tend to incriminate a person. The enabling legislation for the director of public prosecutions does not in the same way explicitly provide such a provision. However, it is likely that other legislative authority provides this power to the director of public prosecutions. It is noted that the ombudsman has no access to any deliberations of ministers and parliamentary committees in the performance of his duties. In the case of the auditor-general, there is no apparent limitation to call for persons or documents. However, the auditor-general does not have the authority to access information held by private sector contractors relating to services provided by such contractors to public sector agencies. This may be seen as a serious limitation in an era when contracting out is prevalent.

(d) Power to engage consultants and contractors

Each officer has the power to delegate the powers of that office. In the case of the auditor-general, the legislation provides the further explicit provision that the auditor-general may engage persons on a contract basis to conduct audits. Similarly, the regulator-general explicitly has the power to engage consultants.

(e) Determining terms and conditions of staff

For each officer the enabling legislation is silent on the matter of determination of the terms and conditions of staff. In the case of the auditor-general, the PAEC has the power to exempt the auditor-general from the employment provisions generally applicable to government agencies. This is not the same as the auditor-general directly having the power to determine the terms and conditions of staff.

## **Summary and Conclusion**

Following on from JCPA (1996, 1989), English and Guthrie (2000), and De Martinis and Clark (forthcoming), this study used a two-part independence and accountability framework as a basis to examine the enabling legislation of four Victorian statutory officers of parliament with regard to independence, mandate, and funding issues. This comparative analysis comprised the auditor-general, the director of public prosecutions, the ombudsman, and the regulator-general. Whether or not these particular officers should have the status of officers of parliament, and the associated independence and accountability, was not explored. Rather, the approach was to evaluate the adequacy of the provisions of their enabling legislation in terms of independence and accountability should they be considered to be officers of the parliament. The first part of the framework provided an assessment of the accountability mechanism available to parliament with reference to scope, powers of parliament (in relation to requesting and tabling of reports), funding, and oversight. The second part provided an assessment of the powers and independence required by such officers to perform their function based on the extent of mandate, independence from direction by the executive, and funding.

This analysis revealed areas where such provisions may be further strengthened through amendments in the enabling legislation. For example, the director of public prosecution's remuneration determination process, the ombudsman's eligibility for re-appointment, and the regulator-general's term of office. Also found was the requirement for only one officer, the auditor-general, to submit an annual work plan to parliament. Arguably this is a requirement that may be seen to inhibit the scope and independence of the auditor-general. Other notable differences exist in relation to the powers of parliament to request investigations or audits, and in the case of the director of public prosecutions and the regulator-general, an absence of explicit reference to funding mechanisms. However, the most important difference identified was that two of the four officers, the auditor-general and the regulator-general, have their independence enshrined in law.

Overall, most of the deficiencies exist because the enabling legislation is silent (that is, the dominance of the 'not explicitly stated' entry). Therefore, such deficiencies could be addressed through appropriate amendments to the enabling legislation that explicitly address the issues.

It is acknowledged that, in general, some legislative provisions give rise to specific obligations or actions that can be readily observed and measured. For example, provision for all audit reports to be tabled in parliament. However, there are other legislative provisions that may be little more than symbolic statements. For example, reference to the auditor-general being an "independent officer of the parliament". Arguably, the outcomes of such symbolism may not be measurable in a quantitative

manner because evidence does not readily exist to support the effectiveness of such symbolism.

Finally, based on findings of this study, two possible reform options for strengthening the enabling legislation are suggested. The first option is to enact a ‘Statutory Officers of the Parliament Act’ that would establish a legislative framework for all statutory officers of parliament within the jurisdiction. Although such a legislative framework is possible, it may be necessary to recognise within the current individual legislation the different function of each office in the context of such a broad legislative framework. The second option is to adopt a set of principles that form the basis of amendments to each separate act for statutory officers of parliament. This overcomes the need to develop an overall legislative framework for all officers of parliament within the jurisdiction. Yet, at the individual level, all officers of parliament would have enshrined in law the minimum level of power and independence to perform their duties, and parliament is provided with the necessary minimum level of accountability mechanisms.

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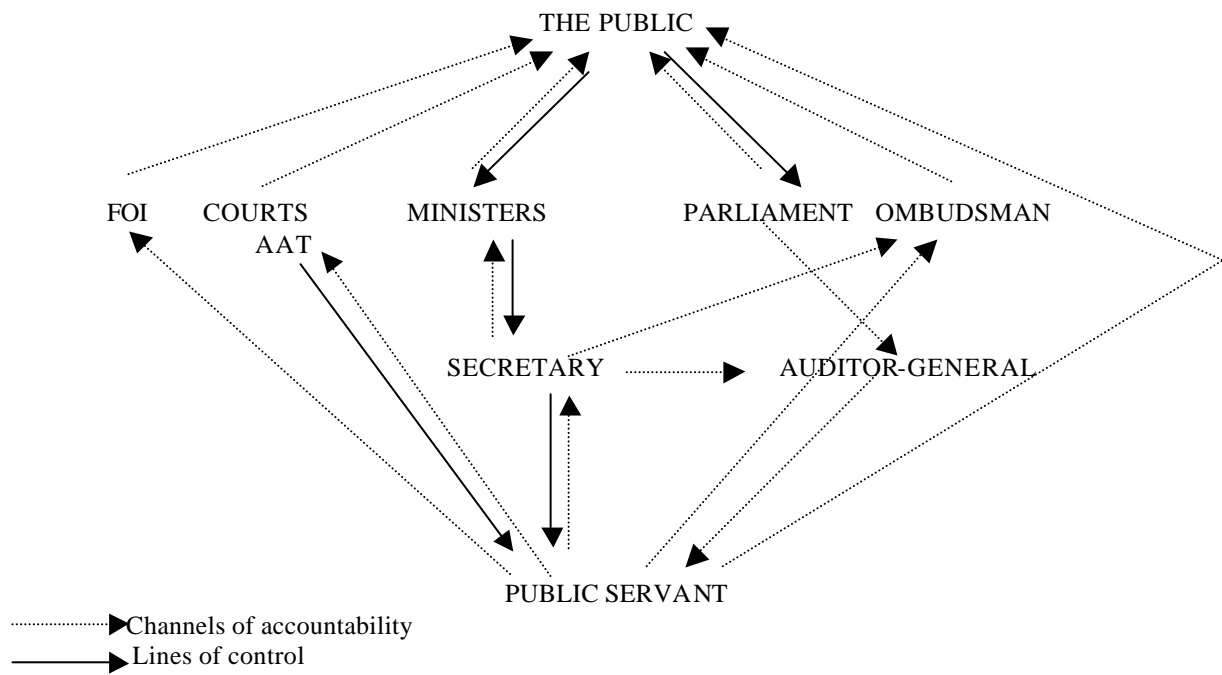


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**Figure 1: Main Channels of Public Accountability**



\* Source: Mulgan (1997)

**Table 1: Accountability Mechanisms Available to Parliament Related to Audit Mandate, Independence and Funding\***

| Accountability Mechanisms Available to Parliament  | Powers Required by Auditors-General to Conduct Audits   |
|--|---|
| <p><b>Scope of audit in the public sector</b></p> <ul style="list-style-type: none"> <li>▪ No impediment to AG conducting financial statements and performance audits of all government entities</li> </ul> <p><b>Powers of parliament in relation to audit</b></p> <ul style="list-style-type: none"> <li>▪ Parliamentary audit committee to appoint, oversee AG and his/her office</li> <li>▪ Power to request audits</li> <li>▪ All audit reports to be tabled in the parliament</li> <li>▪ Recognition that parliament is the client, not the executive or auditee</li> </ul> <p><b>Funding determined by parliament</b></p> <ul style="list-style-type: none"> <li>▪ Funding determined by parliament via input from parliamentary audit committee</li> </ul> <p><b>Oversight of AG</b></p> <ul style="list-style-type: none"> <li>▪ Independent audit of AG</li> </ul> | <p><b>Mandate to perform audits</b></p> <ol style="list-style-type: none"> <li>1. Financial statement audits of agencies</li> <li>2. Performance audits of agencies</li> <li>3. Financial statement audits of authorities and companies</li> <li>4. Performance audits of authorities and companies</li> </ol> <p><b>Independence from direction by the executive</b></p> <ol style="list-style-type: none"> <li>1. Independence enshrined in law</li> <li>2. Free of direction/control from executive</li> <li>3. Discretion to determine type of audit and auditee</li> <li>4. Reporting to parliament not the executive</li> <li>5. Wide information gathering powers</li> <li>6. Audit committee of parliament to advise on audit priorities and oversee audit function</li> <li>7. Appointment of the AG by parliament not the executive</li> <li>8. AG an officer of the parliament</li> <li>9. ANAO a statutory authority and AG to determine terms and conditions of employment of staff</li> </ol> <p><b>Funding of AG</b></p> <ol style="list-style-type: none"> <li>1. Sufficient to enable AG to exercise effective mandate</li> <li>2. Funding level recommended by parliamentary audit committee not by treasury</li> <li>3. No cost recovery from auditees</li> </ol><br><ol style="list-style-type: none"> <li>1. Parliament to appoint independent auditor of AG</li> <li>2. Independent auditor to report to parliamentary audit committee</li> </ol> |

\*Source: English and Guthrie (2000)

**Table 2: Powers of Parliament in Relations to Victorian Officers of Parliament**

|   | <b>Auditor-General</b> | <b>Director of Public Prosecutions</b>             | <b>Ombudsman</b>   | <b>Regulator-General</b>                          |
|---|------------------------|--|--------------------|---|
| (a) <b>Appointment by</b>                                     | Govenor-in-council*    | Govenor-in-council                                 | Govenor-in-council | Govenor-in-council                                |
| (b) <b>Term of office</b>                                     | 7 years                | At least 10 years, at most 20 years                | 10 years           | 5 years   |
| (c) <b>Eligible for re-appointment</b>                        | Yes                    | Yes  | No                 | Yes   |
| (d) <b>Remuneration determined by</b>                         | Govenor-in-council     | <i>Judicial Remuneration and Tribunal Act 1995</i> | Govenor-in-council | Govenor-in-council                                |
| (e) <b>Officer to be paid out of Consolidated Fund</b>        | Yes                    | Yes  | Yes                | Not explicitly stated                             |
| (f) <b>Removal from office by</b>                             | Parliament             | Parliament   | Parliament         | Parliament  |
| (g) <b>Appointment of acting officer</b>                      | Govenor-in-council     | Govenor-in-council                                 | Govenor-in-council | Govenor-in-council                                |
| (h) <b>Annual work plan to be submitted to parliament</b>     | Yes                    | No   | No                 | No  |
| (i) <b>Power to request investigations or audits</b>          | Parliament             | Not explicitly stated                              | Parliament         | Minister  |
| (j) <b>Annual reports to be tabled directly to parliament</b> | Yes                    | To Parliament via the Attorney-General             | Yes                | Not explicit as to who receives the annual report |
| (k) <b>Submission of other reports to</b>                     | Parliament             | No other reports required                          | Parliament         | Minister  |

\* On the recommendation of the PAEC.

**Table 3: Funding of Offices**

|  | <b>Auditor-General</b> | <b>Director of Public Prosecutions</b> | <b>Ombudsman</b> | <b>Regulator-General</b> |
|--|------------------------|--|------------------|--------------------------|
| (a) <b>Funding of office determined by</b> | Parliament             | Not explicitly stated                  | Parliament       | Not explicitly stated    |

**Table 4: Oversight of Offices**

|  | <b>Auditor-General</b> | <b>Director of Public Prosecutions</b> | <b>Ombudsman</b>      | <b>Regulator-General</b> |
|--|------------------------|--|-----------------------|--------------------------|
| (a) <b>Independent financial statement audit</b> | Yes                    | Not explicitly stated                  | Not explicitly stated | Not explicitly stated    |
| (b) <b>Independent performance audit</b>         | Yes                    | Not explicitly stated                  | Not explicitly stated | Not explicitly stated    |

**Table 5: Independence from Direction by Parliament or its Committees**

|  | <b>Auditor-General</b>  | <b>Director of Public Prosecutions</b>                        | <b>Ombudsman</b>      | <b>Regulator-General</b> |
|--|-------------------------|---|-----------------------|--------------------------|
| (a) <b>Independence enshrined in law</b>               | Yes                     | Not explicitly stated   | Not explicitly stated | Yes                      |
| (b) <b>Discretion to perform functions</b>             | Yes                     | Not explicitly stated   | Yes                   | Yes                      |
| (c) <b>Access to information</b>                       | No restrictions evident | Not explicitly stated as to variety of information accessible | Restricted            | Restricted               |
| (d) <b>Power to engage consultants and contractors</b> | Yes                     | Not explicitly stated   | Not explicitly stated | Yes                      |
| (e) <b>Determining terms and conditions of staff</b>   | Not explicitly stated   | Not explicitly stated   | Not explicitly stated | Not explicitly stated    |