Des Pearson is Auditor-General of Victoria

Trends in public sector audit legislation: from federation to follow-the-dollar

Des Pearson

I am a fairly recent participant in the ASPG and I must say that it has already opened my eyes to a few things — perhaps most immediately to how many of the issues that my audit office works through on a day to day basis are common to all of the interactions between the Parliament and the Executive. The tensions and balance between autonomy and oversight, between flexibility and accountability, between working together and remaining independent…in many ways, these issues lie under what we have heard at this conference, and certainly dictate many of the day to day challenges of delivering our audit program. Right now, I am pleased to round off this session of 'Victorian perspectives' with a quick run-down of how one key instrument in Parliament's interaction with the Executive has changed over the past century and where — and why — it is continuing to change. The 'instrument' I am referring to is, of course, the office of the Auditor-General — an independent officer of the Parliament of Victoria, charged with the external audit of more than five hundred and fifty public sector entities. Whilst not a part of Parliament itself, Auditors-General are inextricably intertwined with the Parliaments they serve. In Victoria, Parliament guides the development of our audit program and oversees the Office budget and the appointment of the Auditor-General. The Parliament, in turn, makes good use of the assurance and commentary we provide, using Auditor-General reports as one of their chosen sources of advice to inform new legislation, Committee inquiries, petitions, statements and debate. Auditors-General are, indeed, part of the Parliamentary infrastructure and a key instrument for Parliament's oversight of the Executive.

So, to turn to the legislation underpinning the role of Auditor-General — what changes have we seen? Are we likely to see? First, a quick look back. Australian public sector audit legislation, and the practices and policies that underpin it, has passed through several distinct historical 'phases' since the turn of the nineteenth century. Soon after Federation, a single Auditor-General was created in Victoria, with a permanent tenure and a direct reporting line to Parliament. This role provided 'attest audits' of transactions, working year-round, and often with auditors based directly in agencies — a kind of 'institutional audit' service, without the guidance of consistent national accounting and reporting standards. Although

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appointed by the Parliament, this kind of audit approach was vulnerable to capture, and was at risk of being 'mired in the detail' of thousands of transactions. In 1958, the *Audit Act* introduced the discretion for the Victorian Auditor-General to determine the 'extent of check' — in other words, he could set his own scope for audit activities. This was the fledgling beginnings of a more risk-based approach to audit, and gave the Auditor-General additional independence from the Executive. In the 1980s, an activist Victorian Auditor-General began to use this section of the Audit Act to do what we now see as early 'performance audits', undertaking special audits focussed on particular issues and risks within public sector financial activity. Eventually, this led to the introduction in 1990 of amendments to the Audit Act — followed in 1994 by an entire new Audit Act, one that now explicitly gave the Auditor-General the mandate to audit the 'efficiency, effectiveness and economy' of public sector activities.

Coinciding with this, a new approach to financial auditing was introduced to the public sector. In line with changes in the accounting and auditing profession more broadly, the Auditor-General moved away from year-round audits of transactions to more risk-based audits of systems and assurance on year-end reports. These major shifts in Victoria's audit legislation across the 1970s, 80s and 90s gave rise to the kinds of modern audit reports that Parliament now use — the distillation of targeted audits of systemic issues, and the provision of opinions on the reliability and accuracy of agencies' own financial reports. For the first time, Parliaments could ask their auditor to report to them not just 'how much' — but 'how well'. How well was government doing its job? How well was money spent? How well was the public interest guarded in major investments and dealings with the private sector? With this shift in mandate came, obviously, a more contentious role for the Auditor-General. The Executive now came within the purview a new kind of critique, one with special powers to access any operational information and report directly to the elected legislature. I think of this second major phase as being the 'performance audit' reforms. This shift to a more active, and more controversial, role for Auditors-General made necessary the third phase of public sector audit legislation in Victoria — the 'independence reforms'. Many of you here will recall the controversy of the 1990s when a past Victorian Premier privatised, and opened up to competition, large sections of the audit activity of the then Auditor-General, effectively removing all but a handful of the staff supporting Parliament's auditor. There was a public outcry at the perceived 'muzzling' of this key Parliamentary watchdog, and much talk of the importance of public sector audit being undertaken by a truly independent auditor. The need to tender to Government, year in and year out, was seen as sorely undermining the possibility of such independence — how could you deliver robust and public critiques of the public sector to the very Government whom you hoped would re-engage you at the end of your tender?

Following this outcry over independence, a new Government embarked on the most recent wave of reforms to sector audit legislation. In 1999, historic amendments to Victoria's Constitution Act introduced special protection for the independence of the Auditor-General. Section 94B now states that the Auditor-General 'has

complete discretion in the performance or exercise of his or her functions or powers and, in particular, is not subject to direction from anyone.' Balancing these profound new protections were a suite of new accountability requirements for the Auditor-General and his office, most notably the introduction of mandatory natural justice procedures for performance audits and the requirement for the Auditor-General to consult extensively with a committee of the Parliament in determining his audit program. This brief history brings us to today — and the final question we ask — what reforms lie ahead for this critical instrument of Parliamentary oversight of the Executive? What further changes are in the wind?

Two years ago I spoke before the Australasian Council of Public Accounts Committees, in Wellington, New Zealand. In front of representatives from more than two dozen Parliaments, I shared the results of research undertaken across all Australian jurisdictions, benchmarking their public sector audit legislation against recently released Independence Standards from the international association of Auditors-General, INTOSAI. These Standards measure how effective a Parliament's external audit function is, by how well it meets some basic criteria for being truly independent from the Executive. Whilst we scored well on many counts, the news for Victoria was not all good. There were significant gaps in our ability to cover the use of all public funds, due to the erosion of Parliamentary accountability arising from Victoria's increasing use of private sector service delivery — these activities are increasingly 'off radar' for the Auditor-General and therefore for the Parliament. Troublingly, significant areas of audit of public sector entities still relied on voluntary protocols — in particular, the administration of courts and the Parliament itself remained 'off mandate', contrary to legislation in many other States. The rights of audited government agencies and departments to include comments in the Auditor-General's reports to the Parliament, with no restrictions, abrogated some fundamental INTOSAI standards relating to the freedom for Auditors-General to report to Parliament. Finally, Victoria's legislation leaves the Auditor-General vulnerable to Executive interference through the finances and staffing of the office that supports him or her. VAGO is subject to much administrative legislation and policy, as it employs public servants, and the Office budget is determined by and reported upon the Executive — an obvious conflict of interest. Thankfully, these drivers for change have been picked up on by the current government, and we understand a new wave of legislative reform is now underway for Victoria's audit legislation. I hope these reforms will lead to an Auditor-General's office which can better meet the needs of the Parliament we serve through:

- reports that range across the gamut of major public services, not hemmed in by outsourcing and public private partnerships
- robust audits undertaken in line with professional standards, of *all* public sector entities
- high quality and peer assessed reports that stand apart from the comment and counter claims of the entities we audit
- a sustainable office that is safeguarded from Executive influence, and free to report unhindered to Parliament. ▲