

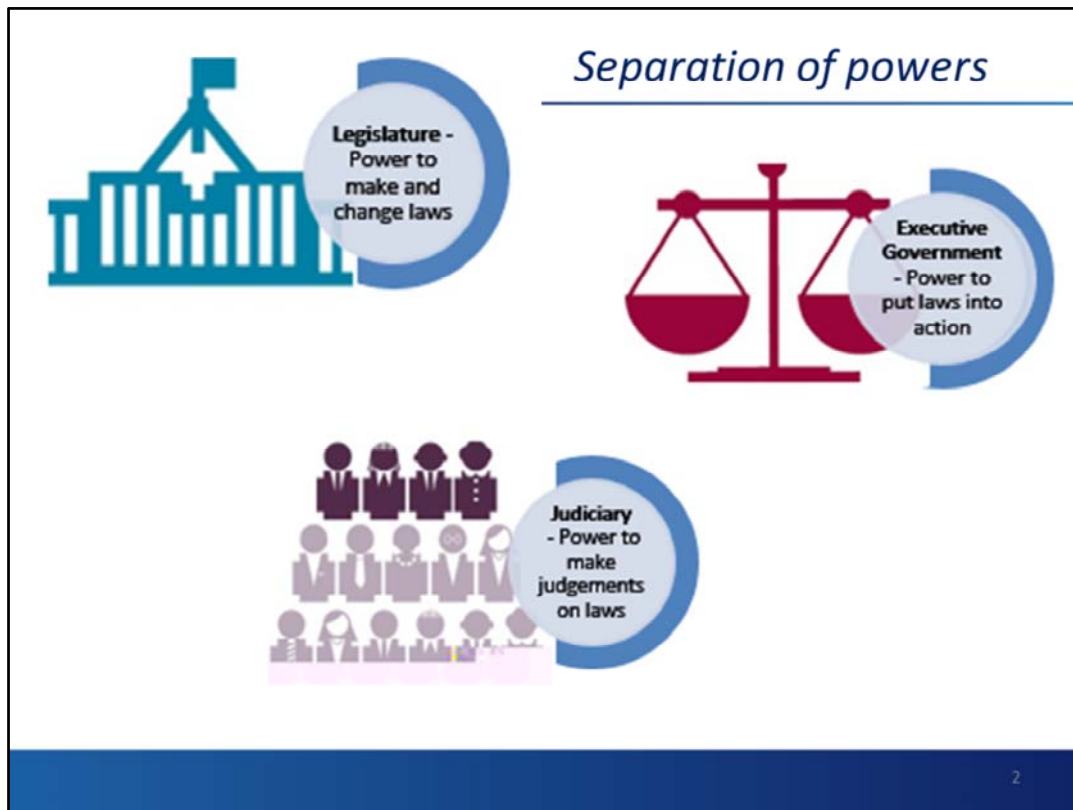


Much of the discussion on the 'independence of parliament' has focused on the separation of the 3 branches of our Westminster democratic system – the **legislature, executive & judiciary**.

This presentation will focus on the importance of having an **independent parliament**, separate from the executive.

We'll be highlighting the CPA's Latimer House Principles and Parliament's fundamental role which is to hold the Executive to account.

The second part of this presentation (which my colleague Jon Breukel will be speak on) will be an exposée of how the Victorian Parliament is currently faring regarding its independence and what we see as an **Executive** which may has overstepped its mark – having encroached upon the independence of Parliament over time.



One of key elements of our democratic system is the **separation of powers** of our three branches of government ...

The powers vested in each of these agencies exist for the purpose of keeping a check on each other.

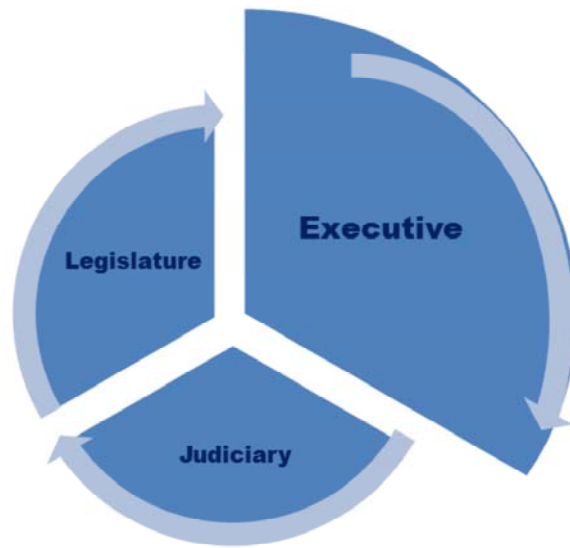
- the Legislature is there to **make & amend** the laws
- the Executive is there to **administer** the laws
- and the Judiciary is there to **enforce** and make judgements on the laws.

For example, the Executive (or Government) **is and should be** subject to **scrutiny** by Members of Parliament, particularly the Opposition, who are there to ensure the Government doesn't overstep its mark and remains **fair and honest** in its operations.

The system of **checks & balances** that should protect the independence of Parliament can be upset by the increased dominance of the Executive.



Separation of powers



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The **Executive** has a natural tendency to **exert more power & control** over the other two agencies ... as ultimately it is the Executive which forms the Government ...

But this can also serve to weaken our democracy ...



Latimer House Principles

The Latimer House Principles are a set of agreed Commonwealth principles on the accountability of, and relationship between, the three branches of government.

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I just want to say a little about the Latimer House Principles - which are a set of agreed Commonwealth principles on the **accountability of**, and **relationship between**, the three branches of government.

They were agreed upon in 2003 at Latimer House in England by representatives from all Commonwealth Parliaments.



Latimer House Principles


- Democratic institutions are reinforced, accountable and transparent
- Judiciary may not encroach on parliament's legislative function
- Judiciary or Government must not compromise judicial independence
- Parliamentary procedures enforce the accountability of the Executive to Parliament

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In a nutshell, the Latimer House Principles ... are that...

- Democratic institutions are reinforced, accountable and transparent
- Judiciary may not encroach on parliament's legislative function
- Judiciary or Government must not compromise judicial independence
- Parliamentary procedures enforce the accountability of the Executive to Parliament

Victoria



meaning of 'creep'

1. verb - *move slowly and carefully in order to avoid being noticed*
2. noun - *a detestable person*

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I'll now move onto the situation in Victoria and the '**executive creep**' ...

But before I do, I should stress that we use the word 'creep' only as the **verb**, not as the noun!

The research we have done, which is laid out in more detail in the paper we published in May this year, titled '**Independence of Parliament**'... (HOLD UP A COPY) ... suggests that the Victorian Executive has perhaps

encroached too far in this area, resulting over time in what we've termed '**executive creep**' — this has led to a **weakening** of our parliamentary independence ...

I will now explain how this has occurred ... and at the end of this presentation, we will offer **some solutions** on how this could be fixed.



Executive creep ...

The Victorian Government:

- treats Parliament as a 'government agency'
- subjects Parliament to whole-of-government measures
- Mandates that Parliament reports on its finances to the Government on a *daily* and *monthly* basis, as well as on its performance, financial outcomes and achievement of outputs, on a *quarterly* basis

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The executive creep has occurred on **one level (financial)** ... through the Victorian Government doing 3 things:

1. **treating** Parliament's as another 'government agency'
2. Thus **making** Parliament subject to 'whole-of-government measures
3. And **mandating** that Parliament report on its finances to the Government not annually, BUT on a **daily, monthly and quarterly** basis ...

| | Committee involvement in setting the budget | Required to report performance to Treasury for funding | Access prior years' surplus independent of Exec approval |
|--------------|---|--|--|
| ACT | Y (ACT) | N | Y |
| Commonwealth | Y (Cth) | N | Y |
| NSW | N | N | N |
| New Zealand | N | Y (annual reporting only) | N |
| NT | N | Y (annual reporting only) | N |
| QLD | Y (Qld) | N | N |
| SA | N | N | N |
| TAS | N | Y | N |
| VIC | N | Y (daily/monthly/quarterly reporting mandated) | N |
| WA | N | N | N |

2012 ANZACATT survey

This 2012 ANZACATT survey reveals that Victoria's lack of financial independence is not unique - but it is arguably **the worst** (see yellow).

As you can see, **Victoria** has to report to Treasury, not annually, but on a daily, monthly & quarterly basis.

And as you can see in the **1st column** - only the **ACT**, the **Commonwealth & Queensland** have their Committees involved in setting their budgets

And As you can see in the **3rd column** - only the **ACT & the Commonwealth** can access prior years' surplus, independent of Executive approval.



Executive creep ...

Purchaser / provider model output measures:

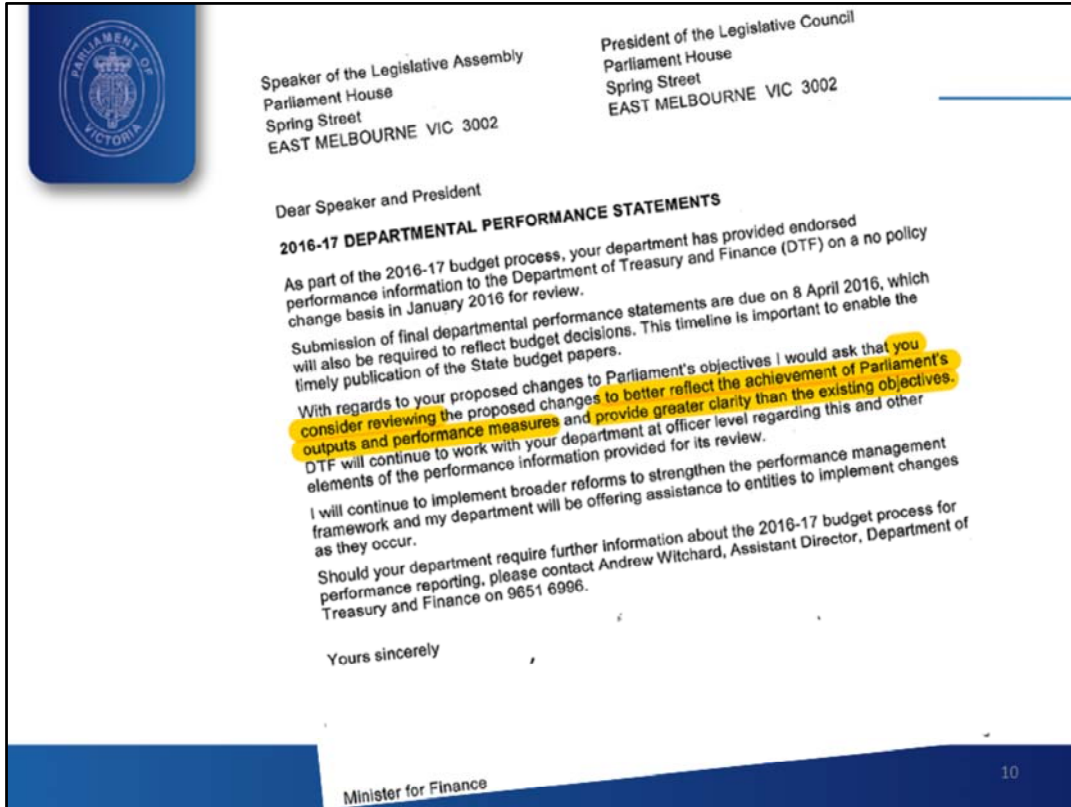
- indexes, records and speeches and transcripts provided within agreed timeframes
- payroll processing completed accurately and within agreed timeframes
- monthly management reports to MPs and departments within 5 business days after the end of the month to include variance information against budgets
- parliamentary audio system transmission availability
- inquiries conducted and reports produced in compliance with procedural and legislative requirements
- reports tabled in compliance with procedural and legislative deadlines

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These are some of the **outputs** by which the Executive (or Department of Treasury & Finance) **measures** our Parliament's efficiencies ...

These should **ALL** be outputs from the Parliamentary Departments **to the** Parliament and **not** to the **Executive**.

It should be up to the Parliament to assess and manage these performance measures of **its own** parliamentary departments.



The Finance Minister regularly writes to the Presiding Officers regarding Parliament's Output Performance statements ...

Here's an example of one letter our Parliament has recently received - we've highlighted some of the wording where Parliament is given clear instructions

by the Executive to '***better reflect on its achievements***' and '***provide greater clarity***' on its objectives.

Parliament is being **treated subserviently** by Treasury, as if it's **another government department** - and is clearly **not in control** over its own operations.



Executive creep ...

2011 legal opinion:

'there is no provision in the Appropriation Acts or elsewhere that authorises the executive to purchase outputs that contribute to government (i.e. executive) outcomes from Parliament ...

... it is not appropriate or acceptable that Department of Treasury and Finance officials take any steps that interfere with the Parliament's control of its appropriation'

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In 2011, our Secretary of Parliamentary Services sought a **legal opinion** on this issue, which stated:

'there is no provision in the appropriation Acts or elsewhere that authorises the executive to purchase outputs that contribute to government (i.e. executive) outcomes from Parliament',

and furthermore ... that *'it is not appropriate or acceptable that DTF officials take any steps that interfere with the Parliament's control of its appropriation'.*

I'll now pass on to my colleague, **Jon Breukel** who will talk more about how our Executive has **challenged our Parliament's independence** and what might be done to stop this...



Victoria's Independent Officers of Parliament

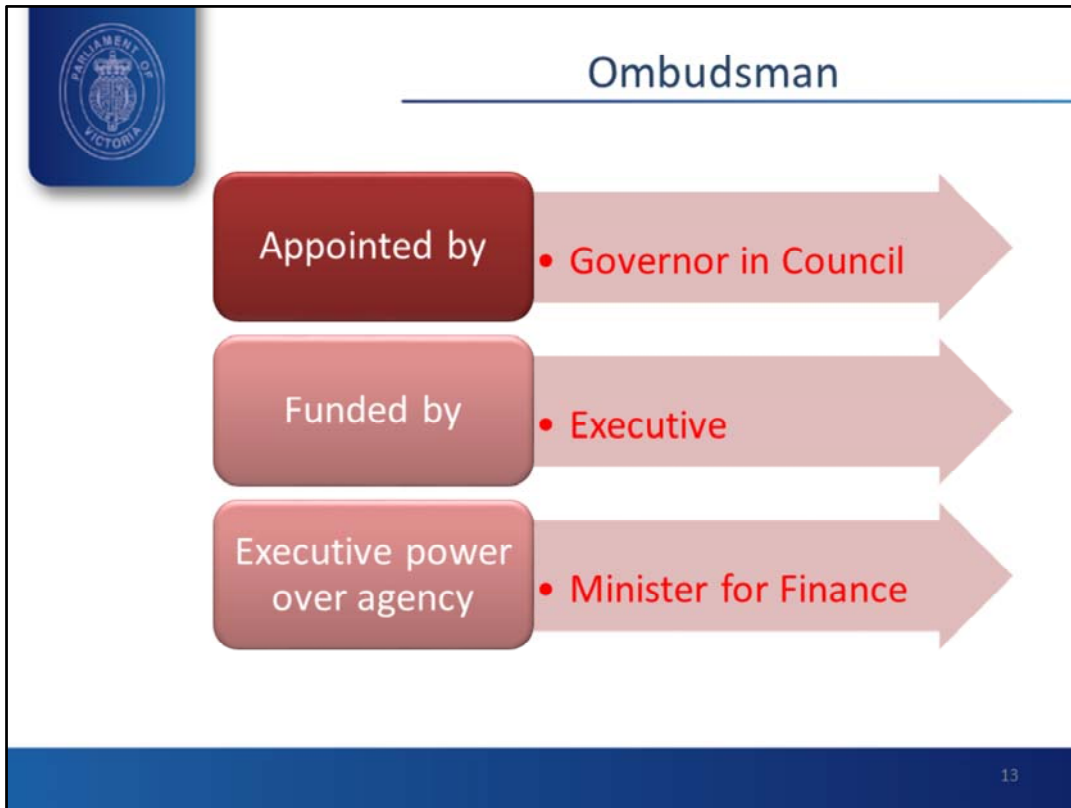
- Auditor-General (VAGO)
- Ombudsman
- IBAC Commissioner
- Electoral Commissioner
- Victorian Inspectorate
- Parliamentary Budget Officer

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Another area which has threatened the independence of our Parliament is the manner in which our **Independent Officers of Parliament** operate – in particular, the way they are **appointed** and **funded**.

Victoria has 6 Independent Officers who are **ALL appointed** by the Governor in Council—effectively the Executive—and all are directly **funded** by the Executive (VAGO is the only agency which draws its funding from Parliamentary Appropriation – although it also relies on Government Special Appropriations).

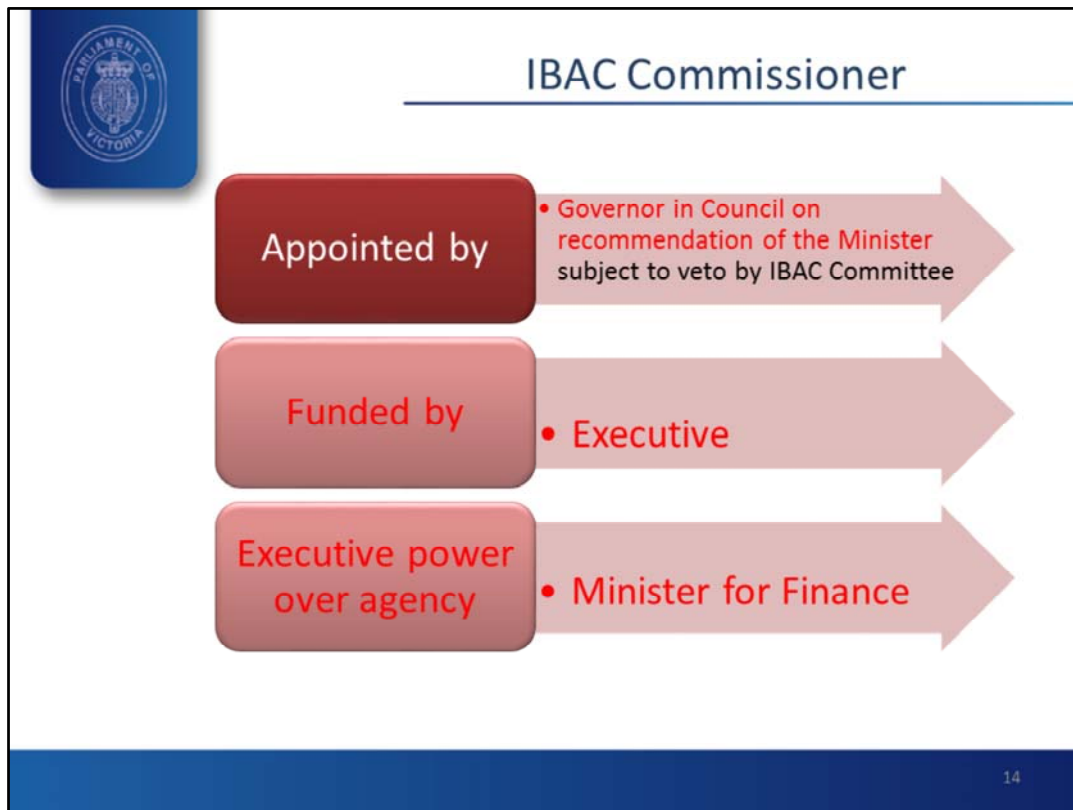
Being **appointed** in this manner and being **funded** by the **Executive** lessens their status as 'Independent Officers of Parliament' and further challenged the independence of the Parliament to control these agencies.



For example, the Ombudsman is **appointed** by the Executive and solely **funded** by the Executive.

The Ombudsman's independence is further **compromised** by the fact that the Minister for Finance has **executive powers over it** through issuing Ministerial Directions*.

*NOTE – All Independent Officers of Parliament are subject to [Standing Directions of the Minister for Finance](#) under the S 8 of the [Financial Management Act 1994](#).



The Independent Broad-based Anti-corruption Commissioner or **IBAC Commissioner** is also far from being a fully Independent Officer of the Parliament ...

He / she is **appointed** by the government, on **recommendation of the Minister** – but subject to veto by the Parliamentary IBAC Committee ... so there is at

least some level of parliamentary involvement in their appointment.

Like the previous two – IBAC is **funded** by the government and the Minister for Finance also **holds executive power over it**.

These are just 3 of our so-called **Independent Officers of Parliament** – the other 3 are similar in both their funding and appointments.



Statement to the Government

'As independent officers of the Parliament, it is essential that we are, and are seen to be, independent of the Executive, over whom we have jurisdiction. We propose consistency in provisions governing the appointment, tenure, immunity, removal and remuneration of our roles and seek to maximise the involvement of the Parliament rather than the Executive in these areas. This is particularly important for the process for allocating budgets: the Parliament, not the Government, should determine funding and other resources for independent officers.'

**Victorian Auditor-General, Ombudsman & IBAC
Commissioner, May 2016**

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Here's what the **Victorian Auditor-General, Ombudsman & IBAC Commissioner** told the Victorian Government in a combined statement last year

'As independent officers of the Parliament, it is essential that we are, and are seen to be, independent, of the Executive, over whom we have jurisdiction. We propose consistency in provisions governing the appointment, tenure, immunity, removal and remuneration of our roles and seek to maximise the involvement of the Parliament rather than the Executive in these areas. This is particularly important for the process for allocating budgets: the Parliament, not the Government, should determine funding and other resources for independent officers.'



Office of the Opposition

- funded by DPC (Executive)
- located outside the parliamentary precinct
- unable to access parliamentary intranet

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Another problem we've identified which **diminishes the independence** of our Parliament - relates to our **Office of the Opposition**.

The Office is funded by the Executive when it's role should clearly be within the Parliament – as it has nothing to do with DPC.

This funding arrangement and the location of the Office of the Opposition **outside** our Parliamentary Precinct are further examples of '**executive creep**' in

Victoria ...

This has resulted in the Victorian Opposition not having access to the Parliamentary Intranet or the Library's online resources ... which impacts on their ability to adequately perform their role of scrutinising the Government.



Financial independence *- the 1991 'False Start'*

- separate Appropriation Bill for Parliament
- prepared by the Presiding Officers
- consultation with Parliament Service Committee & the government in setting Parliament's budget

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I just want to backtrack a little (26 YEARS AGO) ...

In 1991, the Victorian Parliament, through a **Joint Select Committee**, inquiring and reporting on the administration and funding of the Parliament – made **several recommendations**.

Most of these were ignored, with the exception of just one recommendation which was to have a **separate Appropriation Bill for the Parliament**.



1991 Russell Review

'Parliament should re-assert the importance of its role as a substantially separate arm of government, which must function effectively if the constitutional framework is to work'

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This Joint Select Committee endorsed the findings of the 1991 *Strategic Management Review of the Parliament of Victoria* (known as the **Russell Review**), which recommended that:

to quote... *'Parliament should **re-assert the importance of its role as a substantially separate arm of government**, which must function effectively if the constitutional framework is to work'*



1991 Russell Review

Concluded that:

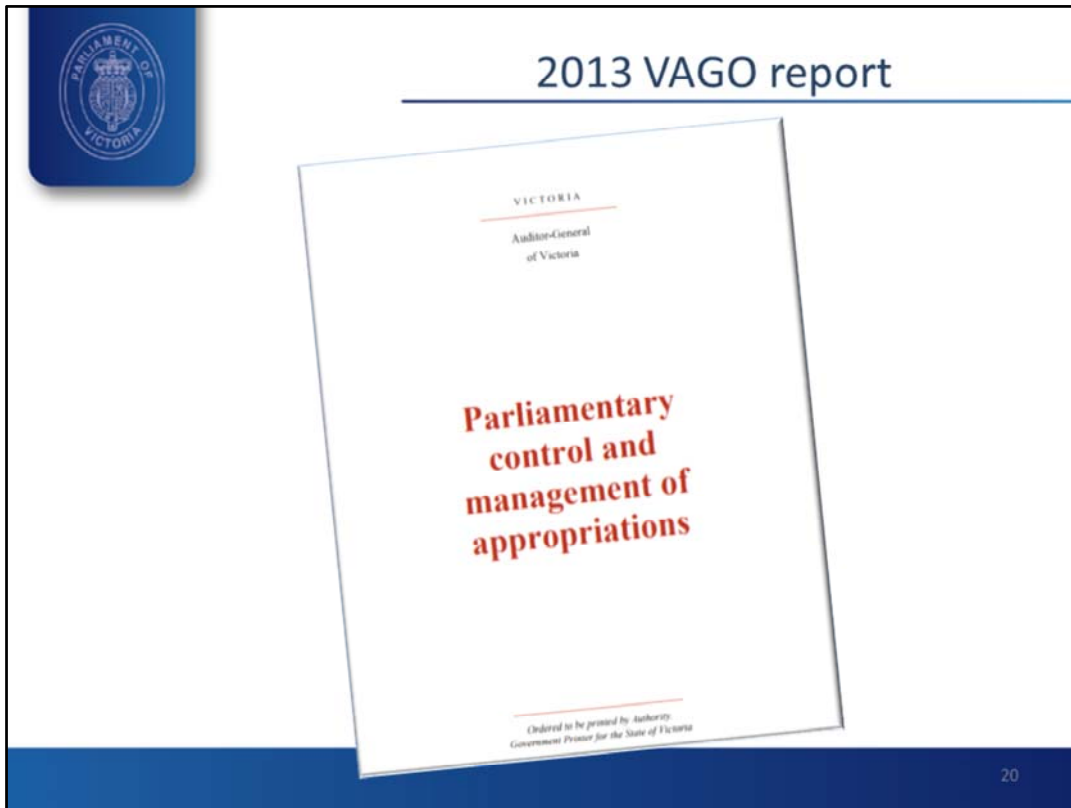
- the independence of Parliament had been compromised by requiring detailed approval of Parliament's budget by public servants ...
- the requirement for government approval of parliamentary committee inquiries and their budgets, significantly compromised Parliament's ability to independently scrutinise the Executive ...

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Furthermore, the Russell Review concluded that ...

- the independence of Parliament had been compromised by requiring detailed approval of Parliament's budget by Public Servants ... and that
- the requirement for government approval of parliamentary committee inquiries and their budgets significantly compromised Parliament's ability to independently scrutinise the Executive ...

This was **26 years ago**... and still nothing has changed... In fact, **it's become worse** ... as the Executive now has a firm hold over Parliament's finances.



In a 2013 report on ***Parliamentary Control & Management of Appropriations***, the Victorian Auditor-General stated that the ***purchaser-provider model*** ... in which the Government 'buys' *outputs* from public service agencies — including the

Parliament — and aggregates these *outputs* to achieve the Government's objectives... has created a situation where the Parliament now falls under the '**Government's political objectives**' in delivering its fiscal outcomes for the state....

It is not a surprise that over the past **10 years** approximately **50% of Parliament's funding submissions** have been **rejected** by the Executive, on advice from DTF.



1991 – What went wrong

- Lack of understanding of Westminster system and independence by Government and MPs
- Control by the Executive through the **purchaser / provider** model of budgeting
- Parliament Appropriation Bill – ‘symbolic’, not real financial independence

So what went wrong?

- There was clearly a lack of understanding of the Westminster system and the independence of Parliament by both the Government and the MPs.
- the Executive continued to wield control through its **purchaser / provider** model of budgeting
- The separate Parliament Appropriation Bill – is merely a ‘symbolic’ concession on behalf of the Government – as it doesn’t offer any real financial independence.



How to control '*executive creep*'?

Parliament will need to:

1. Determine & manage its own budget through the establishment of a Parliamentary Corporate Body (PCB)
2. Table its own Parliamentary Appropriation Bill through the Presiding Officers
3. Conduct a review of its Independent Officers of the Parliament


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So this now leads me to conclude this presentation with a question - how do we to **control this executive creep**, which has been allowed to occur in Victoria?

What can we do to withstand this encroachment on our Parliamentary Independence?

Part of the answer is fairly simple – but its implementation is not that easy. We've identified these **3 things** which Parliament should do to control the '*executive creep*'.

It will take a strong Parliament with independent Presiding Officers to champion these recommendations in Victoria.



Separate Appropriation Bills & Parliamentary Corporate Bodies (PCB's)

| Jurisdiction | Separate Appropriation Bill | Parliamentary Corporate Body (PCB) to manage Parliament's budget |
|-------------------|-----------------------------|---|
| Australia | Yes | No |
| Victoria | Yes | No |
| NSW | Yes | No |
| Queensland | Yes | No |
| Western Australia | No | No |
| South Australia | No | No |
| Tasmania | Yes | No |
| ACT | Yes | Office of the Legislative Assembly |
| NT | No | No |
| UK | No | House of Commons Commission House of Lords Commission |
| Scotland | No | Scottish Parliamentary Corporate Body |
| Canada | No | Board of Internal Economy (House of Commons) Standing Committee on Internal Economy, Budgets and Administration (Senate) |
| Ontario | No | Board of Internal Economy |
| New Zealand | No | Appropriations Review Committee & Parliamentary Service Commission |

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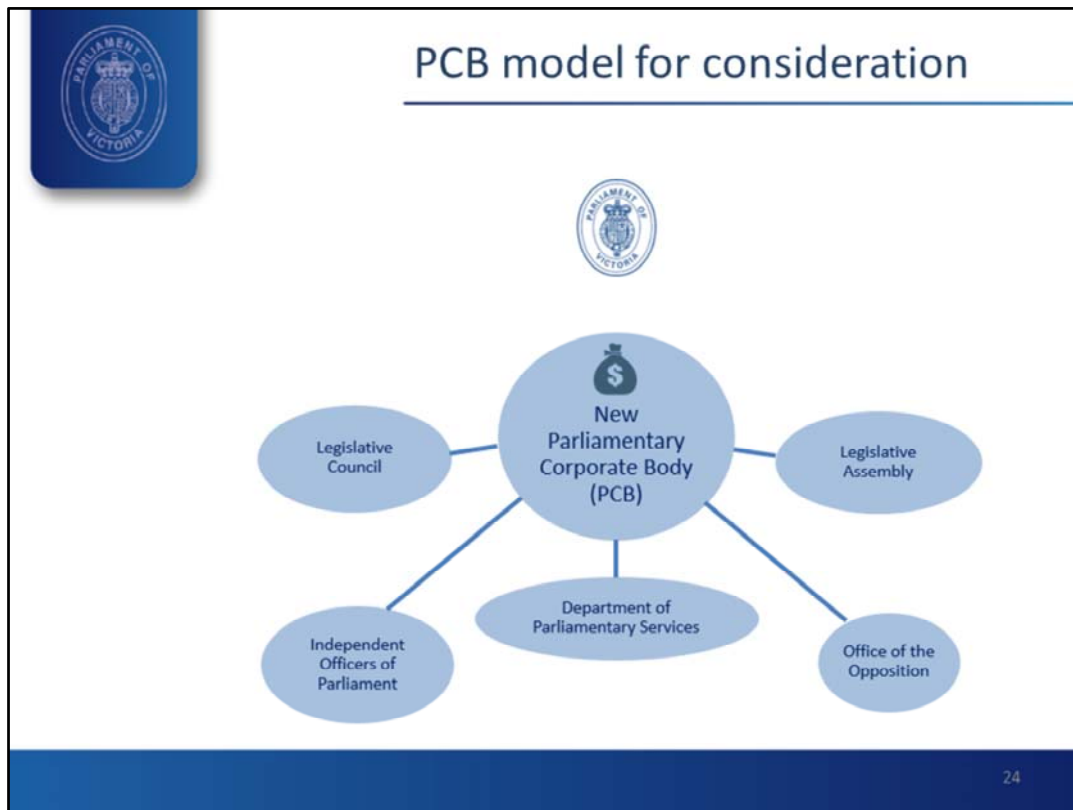
The first solution to set up a separate **Parliamentary Corporate Body (PCB)** is not a new one – in fact, PCB's are now considered '*best practice*' in Westminster systems – and it's not only Victoria, but all the other states in

Australia should consider embracing this concept. As you can see, the ACT is the only Australian jurisdiction with a PCB – whilst the UK, Scotland, Canada & New Zealand have had these separate bodies overseeing their budgets now for several years.

What is also interesting to note is that the parliaments with a PCB have seen no need for a separate Appropriation Bill – highlighting how tokenistic this can be...

As the bill is conceived and tabled by the Executive and may as well be contained in their Government Appropriation Bill.

In our research paper we recommended that the Victorian Parliament revisit the recommendations of the 1991 *Progress Report of the Joint Select Committee on the Parliament of Victoria*, which included the establishment of a PCB. We think this 1991 Report provides some useful guidance in this area, but it was unfortunately ignored by the government of the day and has been shelved ever since.



This is the model we have put forward for Victoria ... It's a simple model, but would require support from the Presiding Officers, the Government and non-government members, the Clerks and the Secretary of Parliamentary Services.

- The PCB would manage the funding of Parliament through drafting the *Parliamentary Appropriation Bill* for the Legislative Assembly, Legislative Council, Parliamentary Services, Independent Officers and Office of the Opposition each financial year.
- The Presiding Officers would present the *Parliamentary Appropriation Bill* to the Treasurer for tabling at the same time as the *Government Appropriation Bill*.
- A new *Parliamentary Corporate Body Act* would be drafted to define the PCB's constitutional arrangements, membership, functions and relationships.
- A new *Independent Officers of Parliament Act* would be drafted to define and delineate their roles within Parliament and formalise their funding arrangements under Parliament.



Questions?



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We invite you to read our **research paper** (*which is downloadable from our website*) and we'd be happy to answer any questions you may have about our presentation.