

Public Finance Bill Project Team
Department of Treasury and Finance
Level 9, 1 MacArthur Street
Melbourne
VICTORIA 3002

Dear "Team",

PUBLIC FINANCE IN VICTORIA – PRACTICES AND LEGISLATION

1. INTRODUCTION

Thank you for the opportunity to submit comments on the Department of Treasury's discussion paper on "Public Finance in Victoria – Practices and Legislation".

Firstly it is noted that the Public Accounts and Estimates Committee have initiated a somewhat similar review of the Victorian Government's financial management. My responses acknowledge their terms of reference and note their responses in their draft report.

2. PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE (PAEC)

A review to the Department of Treasury and Finance's review is the Public Accounts and Estimates Committee's (PAEC) inquiry into Victoria's public finance practices and legislation initiated in June 2008.

The PAEC's terms of reference will inquire into Victoria's public finance practices and legislation and in particular will investigate:

- (a) modernisation of the Victorian public finance system based on world's best practice;
- (b) new and flexible mechanisms for financial administration and reporting that reflect the changing nature of the Victorian economy and society;
- (c) simpler and more effective ways of public financial reporting;
- (d) recent developments in democratic systems including Westminster jurisdictions on government financial and performance management reporting and related matters to the Parliament; and
- (e) Possible future changes to the legislative framework for financial administration and reporting in Victoria.

An Interim Report was tabled on 13 November 2008.

3. DEPARTMENT OF TREASURY AND FINANCE (DTF) DISCUSSION PAPER

The Department of Treasury and Finance in its Discussion Paper on Public Finance in Victoria, October 2008, declared that it aims to give greater emphasis on an **outcomes framework**, and **reducing complexity and ambiguity**.

Outcomes framework – Demonstrated by a conceptual organisational responsibility framework from whole-of- government, department, statutory bodies, and funded bodies of the financial expectations of funding, project/activity management accountability, and financial reporting.

Complexity caused by ambiguity of interpreting practices that were in the context of the change from cash basis accounting to accrual accounting, and ambiguity from legislative requirements from a whole-of-government perspective to devolved activities have skewed the definition and intent of some clauses that presently exist in current legislation. These should be identified, clarified, and simplified in order to “modernise” the Victorian Government’s financial management legislation.

4. ISSUES AND RECOMMENDATIONS

Improving financial administration of the public sector requires addressing amongst others, a combination of issues, including **governance, accountability, compliance, and assurance**.

4.1 GOVERNANCE:

Issue:

4.1.1 I do not have an issue with **principle-based legislation**. However, Principle-based legislation (Act, Regulations), should be conceptually mapped and linked to associated legislation (e.g. Public Administration Act 2004, Crimes Act, etc) and supported by detailed rules which are legislatively enforceable (e.g. Standing Directions of the Minister for Finance). Conceptual mapping and links are critical and essential to the establishment of a framework for good governance.

4.1.2 Good governance cannot be effectively practiced if the intent and emphasis is solely good **financial management practices**. Similarly an organisation cannot exercise good governance if it focuses solely on delivering **operational functional core expectations**. Good governance is concurrently putting into practice a myriad of good management practices exercised in harmony.

Recommendation:

4.1.1 The Department of Treasury and Finance in adopting **principle-based legislation** should conceptually map and link legislation to what is expected from organisations that receive and deliver government funding. I found the following papers interesting and practical in its explanation of “principles-based legislation” :

(a) Ter Kim Cheu, Parliamentary Counsel and Principal Senior State Counsel of the Legislation Division, Attorney-General’s Chambers, Singapore (AGC Singapore), assisted by Lee Chuan Huei, Deputy Senior State Counsel, Legislation Division, AGC Singapore, published a good paper titled *From “FUSSY” TO “FUZZY” : The Principles-Based Approach to legislative Drafting*”.

(b) The Queensland Government Treasury developed a paper titled “*Review of Queensland Financial Legislation – A policy Position – Principles-based Legislation*”. A similar paper could be prepared to mirror the Victorian Legislative situation and approach.

4.1.2 The Department of Treasury and Finance in conjunction with State Services Authority should jointly produce a **best practice guideline** that focuses on both operational management and financial management governance for adoption by all Victorian Government Departments, statutory bodies and funded bodies. The Professional Accountants in Business Committees of the International Federation of Accountants explored the concept of **enterprise governance**. They defined enterprise governance as “the set of responsibilities and practices exercised by the board and executive management with the goal of providing strategic direction, ensuring that objectives are achieved, ascertaining that risks are managed appropriately and verifying that the organisation’s resources are used responsibly. It produced a paper titled “*Enterprise Governance – Getting the Balance Right*”, 2003. A Victorian best practice guide could adopt a similar approach in addressing comprehensive governance.

4.2 ACCOUNTABILITY:

Issue:

4.2.1 It is critical to identify **who** is responsible and accountable for putting the principles into practice. The competency and available resources of some public service personnel and organisations may not be at a desired level. There will be a number of personnel without the ability to translate principles based legislation into ethical and professional practices. There will be others who creatively interpret principles and create practices that are innovatively different from the perceived intent.

4.2.2 With a prescriptive legislative framework **those that are not yet competent** can easily identify their shortcomings and strive to achieve the expected prescriptive standard. With a principle-based framework there is an added expectation that management is sufficiently competent and have the resources to identify the expected financial as well as core level operational expectations.

Recommendation:

4.2.1 The Department of Treasury and Finance (DTF) should also conceptually map and link legislation to the **responsibility centres and/or persons** who will be tasked with portfolio responsibility to ensure the expected tasks are performed and complied with. Producing modern and simplified outcomes based legislation is fine if management and operatives are either prescriptively provided with good guidelines together with the training and ability to produce clear outcomes, practical performance indicators that are measurable, verifiable and clearly traceable to outputs and outcomes.

4.2.2 In order to successfully change, we are required to train and monitor compliance with policies and procedures that are consistent with the spirit of the legislation. Thus to ensure principles-based legislation work effectively, policies and procedures targeting the different processing stages is required. DTF should also provide free training instead of expecting funds strapped Government organisations to individually engage outsourced user-pay providers who at times provide only high level principles based education, and leaving management and operatives suspended with what should next be customised into local policies and procedures. DTF should also provide a HELP/Advisory Service will complement the principle-based legislation will ensure management and employees are compliant with legislative requirements.

4.3 COMPLIANCE:

Issue:

4.3.1 Reforms in the public sector labelled “**New Public Management**” (NPM) is characterised by the adoption of private sector management concepts and styles, the introduction of quasi-markets and contracting process and the application of explicit standards and measures of performance. It is my perception that public sector management is perceived as changing from a public service stewardship approach to a commonly accepted private sector principal-agent employment arrangement. Where once one can assume that a public servant provides a public service, it has now evolved towards a private sector concept of contracted delivery of service for a fee – short of determining a profit margin for that service.

Legislation written for the private sector “consumption” appears very specific (e.g. Corporations Act and the Tax Act). Non-compliance would mean incurring a fine or a penalty.

Recommendation:

4.3.1 With changes in the perception of how public sector organisations should run warrant the consideration of whether devolution of business activities from a central body like the Department of Treasury and Finance require the inclusion of penalty clauses in the event of non-compliance.

Corruption thrives where opportunities exist for under-the table-deals and where government officials are not accountable to the public for their actions. Thus consideration should be given to link **disciplinary penalties** to the Public Finance bill as a deterrent.

For example, Sarbanes-Oxley Act Section 802 is listed within Title VIII of the act (Corporate and Criminal Fraud Accountability), and pertains to 'Criminal Penalties for Altering Documents'. This section imposes penalties of fines and/or up to 20 years imprisonment for altering, destroying, mutilating, concealing, falsifying records, documents or tangible objects with the intent to obstruct, impede or influence a legal investigation. This section also imposes penalties of fines and/or imprisonment up to 10 years on any accountant who knowingly and wilfully violates the requirements of maintenance of all audit or review papers for a period of 5 years

4.4 ASSURANCE:

Issue:

4.4.1 It is noted that this review of the Financial Management Act does not involve a concurrent review of the Audit Act 1994

4.4.2 A Financial Management Control Framework currently exists; however the assurance testing is not specific and reliant on the resources that a public sector organisation can provide to confirm that level of assurance.

Recommendation:

4.4.1 The Victorian Auditor General should comment on whether a concurrent review of the Audit Act should be conducted.

4.4.2 The value of the Financial Compliance Framework should be reiterated to all public sector organisations.

This contribution was undertaken to share my views of issues raised in the Discussion Paper. It is not intended to be treated as confidential. If you have any questions, please contact me.

Yours sincerely,

Geoffrey Wong

Geoffrey Wong
FCPA

2 November 2008

ATTACHMENT A – Table of DTF's discussion points and contributor's responses.

**PUBLIC FINANCE IN VICTORIA – PRACTICES & LEGISLATION DISCUSSION PAPER 2008
BREIF RESPONSES TO PROPOSALS IN THE DISCUSSION PAPER**

DISCUSSION QUESTIONS		AGREE	DISAGREE	RESPONSE
1	<p>Should a requirement to develop strategic plans be embedded in legislation?</p> <p>If so, should strategic plans be at the level of:</p> <ul style="list-style-type: none"> (a) Whole-of-government (b) Departments (c) Entities <p>What form should these strategic plans take?</p>	Yes		<p>Yes, Strategic Plans should be developed in detail and fully costed with information known at the time of preparation. These Plans should be updated annually.</p> <p>Strategic Plans should apply to all levels.</p> <p>Strategic Plans should be documented with Project management methodology and summarised to reflect their impact on outputs and outcomes in a phased delivery program.</p> <p>An appropriate strategic capital and operational financing and budgeting system should be adopted.</p>
2	<p>Does the current Victorian parliamentary appropriation system serve any continuing purpose?</p> <p>Should appropriation authorise:</p> <ul style="list-style-type: none"> (a) Payments from the consolidated fund at the department/output level. (b) Payments from the consolidated fund against each outcome (c) Drawing down of the consolidated fund to the level deemed necessary to achieve the government desired outcomes? <p>Should appropriations be annual or multi year or a mix of both?</p>	Partially		<p>In the interest of delivering outcomes that may take greater than one year, appropriations should be a mix of annual and multi year.</p> <p>An appropriate funding, cash management and accounting system should be adopted</p>

ATTACHMENT A – Table of DTF’s discussion points and contributor’s responses

3	<p>Should a requirement to report progress against strategic plans be legislated?</p> <p>Should reporting of progress against strategic plans be at the level of:</p> <ul style="list-style-type: none"> (a) Whole-of-government (b) Departments (c) Entities <p>What accountability arrangements should be established for performance at input, output and outcome levels?</p> <p>In terms of reporting what do you consider to be the appropriate balance between:</p> <ul style="list-style-type: none"> (a) financial and non-financial information (b) prospective and retrospective information 	Yes		<p>Yes, a reporting template should be adopted to report progress on an annual basis.</p> <p>Reporting should be objective and verifiable.</p> <p>An appropriate accounting and financial reporting system should be adopted here.</p>
4	<p>Should all elements of the Bill apply equally to all entities (for example, financial management, governance, reporting, procurement, compliance framework)</p> <p>If a different framework were to be adopted, what form would it take and what criteria would it take into account (for example, financial position, materiality, and public interest?)</p>	Yes		<p>Yes to the extent that proper boundaries and borders are clearly identified and there is no duplication of reporting.</p>
5	<p>What features of the cash-based system need to be retained?</p> <p>What other technical provisions are no longer required?</p>	Partial		<p>Cash Management of the whole-of-government should be maintained to ensure that the State is solvent.</p> <p>Phased projection of cash flow requirements from departments and entities are also</p>

ATTACHMENT A – Table of DTF’s discussion points and contributor’s responses

6	<p>What options for modernising and simplifying reporting should be considered?</p>	Yes		<p>A common framework for financing, budgeting, cash management, financial accounting and financial reporting should be agreed upon.</p> <p>Accounting systems and communications linkages should also be updated in order that the Department of Treasury and Finance can efficiently and effectively communicate with Departments and entities.</p>
7	<p>Are the proposals for related legislation appropriate?</p>	Yes		<p>They can be incorporated into the revised legislation.</p>
8	<p>Should procurement principles be incorporated into the new Public Finance Bill?</p> <p>What functions associated with the procurement need to remain entrusted to a statutory body or be independent of government?</p> <p>Is the scope and nature of procurement controls sufficient?</p>	Yes		<p>Procurement principles and systems controls via delegated financial levels currently exist.</p> <p>Any Statutory body established should have the power and ability to provide free advice and training to whole-of-government, departments and entities.</p>
9	<p>Should the Public Finance Bill be drafted as principles-based legislation?</p>	Yes with conditions		<p>Yes, it makes it easier to understand.</p> <p>The condition is that a structured conceptual control framework is established to provide detail policy and procedures and a communications system established to ensure that appropriate notice is provided to all on changes or additional compliance requirements. Thus an outcomes framework is set in place where management and the public can be assured that the control framework that is in place provides proper governance, accountability compliance and assurance.</p>