

Treasury Corporation of Victoria (TCV)

Submission on Discussion Paper *Public Finance in Victoria Practices and Legislation*, October 2008

1.0 Introduction and summary

TCV wishes to commend the Victorian Government and the Department of Treasury and Finance for undertaking a comprehensive review of Victorian public finance legislation.

In our view, the Discussion Paper is clearly presented and provides a meaningful starting point for deliberations on the wide range of issues that need to be addressed in seeking to establish a more modern legislative framework.

1.1. Who is TCV?

TCV is a statutory body, established by the *Treasury Corporation of Victoria Act 1992* (TCV Act) to be the central financing authority and financial adviser for the State of Victoria.

We provide treasury services to those State and public authorities that have been accepted as participating authorities by the TCV under the TCV Act and to other Victorian entities, at the request of the Victorian Treasurer. At 30 June 2008, there were 84 participating authorities, in addition to the budget sector.

Our payment obligations in relation to borrowings and derivative transactions are guaranteed by the State of Victoria under section 32 of the TCV Act. Our loans to participating authorities are themselves guaranteed by the State of Victoria.

The Treasurer of the State of Victoria is our shareholder. His interests are monitored by the Department of Treasury and Finance (DTF). Our Chairman, on behalf of the Board of Directors, reports directly to the Treasurer.

1.2. TCV's interest in the review

Accordingly, TCV is interested in the review of the public sector finance legislation on a number of levels. First, we are ourselves part of the existing public sector finance framework and have 'lived through' the developments in public sector finance over the last 14 years.

Secondly, we have a large and varied client base which includes State departments, public statutory authorities and much smaller entities, such as trusts and community health centres.

Thirdly, we are a statutory authority in our own right, required to comply with the *Financial Management Act* and Ministerial Directions, as well as the *Borrowing and Investments Powers Act 1987* (the BIP Act).

While our client base may be impacted in different ways by any changes to the public sector finance legislation, we have not solicited our clients views on the issues raised in the Discussion Paper. Rather, our comments come from a State-wide perspective, and from TCV's experiences as an independent statutory authority subject to the relevant legislation.

2.0 The case for change

TCV agrees there is a case for modernising Victoria's public administration through the simplification of the public finance system. We fully endorse the statement that 'all participants should clearly understand their functions, what they are accountable for and to whom they are accountable'. We would add that all participants should also clearly understand the *powers* available to them in furtherance of their functions, including the full scope and limitations of such powers.

2.1. Emerging thinking and trends

TCV understands the benefits of linking inputs and outputs to measurable outcomes that would have greater relevance to the taxpaying public.

As an entity that, over recent years, has sought to report on non-financial as well as financial measures, we are very much aware of the internal management challenges this presents. We would also stress the practical difficulties of obtaining (and maintaining) timely, reliable and valid information in order to make such measures meaningful so that there is real benefit to improved performance. Dedicated resources, adequate staff training and a long term commitment to the process are required by all concerned.

We are, however, aware of recent improvements in measurement systems that are occurring in the private sector as well as other state and international jurisdictions.

In our view, there may be room to explore more fully the link between performance management processes, data and systems and broader risk management/compliance processes, data and systems, so that resources are not directed to different but ultimately related pillars of 'good corporate governance'.

2.2. Modernisation and simplification

TCV agrees that there are inconsistencies between the *Financial Management Act* and related legislation, which can give rise to uncertainties and the need for clarification.

2.2.1. Entities

This is particularly so in the definition and categorisation of 'public bodies'. We comment further in this regard in 3.2.1.

2.2.2. Accrual based appropriations and flexibility

TCV has no comment to make here.

2.2.3. Reporting

TCV agrees it is appropriate to re-evaluate the cost benefits of the current level and type of financial reporting, particularly as some of the reporting appears repetitive.

2.2.4. Other public finance legislation

TCV's borrowing and investment powers are, like many entities, to be found in the separate BIP Act. We agree that this can cause confusion and be difficult for users to follow, whether those users are within the public sector, or external to it, such as our counterparties or other financial intermediaries. We agree that it would be sensible for the interrelated elements of public finance to be generally located in one comprehensive Act. We comment further on this in 3.2.4.

2.2.5. Procurement

See our comments under 3.2.5

3.0 Possible directions for reform

3.1. An outcomes framework

3.1.1. Planning

Should a requirement to develop strategic plans be embedded in legislation?

The TCV Act requires TCV each year to submit for the approval of the Treasurer a three- year strategic plan for its operations and to report to the Treasurer each quarter against that Plan.

TCV considers this requirement a normal and appropriate accountability measure, consistent with having an independent board of directors responsible for overseeing corporate strategy. Further, a clear benefit of the strategic planning process is the necessary dialogue that occurs between TCV and its stakeholders as to shared objectives and the means of achieving these.

Accordingly, TCV considers that, in general terms it would be desirable to legislate for the development of strategic plans at the both the department and entity level. However, there needs to be a workable framework around any such obligation, including an efficient approval and feedback mechanism with the flexibility to alter any approved strategic plans without adverse consequences if circumstances require.

There may, however, be some entities for whom the process would be unnecessarily cumbersome. There should therefore be a simple means by which their plans can be incorporated into those of their umbrella body, or they can otherwise be made exempt.

What form should these strategic plans take?

TCV does not have a particular view on this, other than to say it would be helpful if there was a standard or recommended form that could be adapted as appropriate to the particular needs of each department or entity.

3.1.2. Providing and allocating resources

TCV has no comment to make here.

3.1.3. Accountability

Should a requirement to report progress against strategic plans be legislated?

In our view, the requirement to report progress against a strategic plan follows from a requirement to develop a strategic plan.

If so, should reporting of progress against strategic plans be at the level of:

- whole-of-government
- departments
- entities?

What accountability arrangements should be established for performance at input, output and outcome levels?

In terms of reporting, what do you consider to be the appropriate balance between:

- **financial and non-financial information**
- **prospective and retrospective information?**

The level of reporting should reflect the decision-making sought from the plan. A ruling on the level at which reporting is made should reflect the materiality of the entity and its sensitivity in terms of delivery of State outcomes. This is likely to be part of the initial planning process and agreed at outset so all relevant parties are aware of the ongoing reporting obligations.

From TCV's perspective, the reality of commercial sensitivity is a major issue in terms of financial market activity as well as the ability to report in a meaningful fashion on non-financial information. This has been and will be an ongoing commercial issue for us.

It is unlikely reporting on prospective information can be meaningfully achieved within our scope of operations.

3.2. Modernisation and simplification

3.2.1. Entities

To which entities should the Public Finance Bill apply?

TCV considers that the definition of 'public entity' contained in the *Public Administration Act 2004* (PAA) is a good starting point. It is primarily these entities that the public would expect to be accountable for the expenditure of public funds.

However, expenditure of public funds (or the contingent expenditure of public funds) may apply in respect of a broader range of entities under the proposed Bill.

The proposal to include financial and *Borrowing and Investment Powers Act* (the BIP Act) provisions in the Public Finance Bill, may potentially result in the application of the proposed public finance legislation to other entities funded wholly or partly by public moneys or to other entities whose obligations are guaranteed by the State.

Part 5 of the BIP Act, if subsumed within the Public Finance legislation, would enable the provision of guarantees for economic development projects to bodies which are not public entities as defined in the PAA.

TCV itself is able to provide financial assistance to entities ('public authorities' as defined in the TCV Act) which may not necessarily fall within the definition of 'public entities' in the PAA and these loans are subject to Government guarantee.

It may be desirable to include the flexibility to enable persons or bodies not falling within the PAA 'public entity' definition to be able to seek coverage of certain parts of the proposed Public Finance legislation. The Victorian *Audit Act* provides an illustration of flexibility in relation to inclusion of 'other persons or bodies' which are not necessarily public entities as defined in the PAA .

Should all elements of the Bill apply equally to all entities (for example, financial management, governance, reporting, procurement, compliance frameworks)?

TCV does not consider that all elements of the Bill should apply equally to all entities. Our experience is that entities across the public sector vary greatly in size, their exposure to various types of risk and the resources available to them.

If a differential framework were to be adopted, what form would it take and what criteria would it take into account (for example, financial position, materiality, public interest)?

This is a complex matter to which we would need to give greater consideration. In essence, however, we believe the criteria should be risk-based, with each entity still being clear on what their obligations are. The framework also needs to be sufficiently flexible to allow for the transfer of particular entities in or out of relevant groupings, depending on changed circumstances or particular outcome requirements.

3.2.2. Accrual- based appropriations and flexibility

TCV has no comment here.

3.2.3. Reporting

What options for modernising and simplifying reporting should be considered?

As required under current Standing Directions issued under the Financial Management Act, TCV summarises in its Annual Report our results and balance sheets for the last five years. While appropriate measures and outcomes may vary materially between different entities, reporting over longer periods appears appropriate.

TCV can report within three months of year end if required and supports this initiative.

As TCV raises debt from public markets in Australian and offshore, we are required to publish our own financial statements. Smaller entities would probably benefit from a consolidated rather than individual reporting. TCV also issues concise financial statements, suitable for those readers less interested in analysing the financial results in detail. In many cases, the provision of the full and to a lesser extent the concise reports electronically, rather than in printed format, may be more appropriate.

3.2.4. Other public finance legislation

Are the proposals for related legislation appropriate?

TCV supports the consolidation of the Acts listed on page 21 of the Discussion Paper into one overarching framework. We make the following comments in relation to two of these Acts:

Borrowing and Investment Powers Act 1987 (the BIP Act)

TCV has no issue with repealing the BIP Act and inserting general borrowing and investment powers into the Public Finance Bill. It would also be sensible to repeal these powers from other pieces of legislation and incorporate them into the Bill.

TCV is, however, concerned to ensure that the existing provision for an express statutory guarantee and the provision for a discretionary guarantee (together with the accompanying appropriation mechanisms) are retained within the TCV Act itself. [Refer to sections 32 to 35 of the TCV Act].

TCV considers that it is in a unique position in this regard, in view of its interface with investors in capital markets, both domestically and offshore. We believe that this was the rationale behind the specific inclusion of sections 32 to 35 in the initial TCV Act of 1992, rather than relying on the general guarantee provisions contained in the BIP Act of 1987.

The benefit of having a specific statutory guarantee within TCV's establishment Act should not be underestimated. A statutory guarantee removes any doubt by investors or financial intermediaries as to the terms of the guarantee.

Other than this concern, TCV makes no particular comment on the range of entities subject to government monitoring and control, or requirements to invest centrally. We consider that this is a matter of overriding government policy, to be informed by others.

Monetary Units Act 2004

TCV agrees that this Act could be included in the new public finance legislation, provided that it is clearly separated from other provisions for ease of reference.

3.2.5. Procurement

Should procurement principles be incorporated into the new Public Finance Bill?

TCV considers that it would be appropriate to incorporate broad procurement principles into the new Public Finance Bill, in order to guide entities and departments in setting their own policies and procedures, for which those entities and departments would remain accountable. We would wish to understand more fully however, the possible consequences that may flow from any allegations that the principles were not abided by in any particular situation.

We agree with the view that the procurement function could become self-regulating, and resources should be better directed to resolving complaints and improving practices, rather than monitoring rule compliance with prescriptive requirements.

What functions associated with procurement need to remain entrusted to a statutory body or be independent of government?

We agree on the need for mechanisms independent of government to ensure proper probity processes are in place, particularly for large projects. Persons or companies with reasonable grounds for concern need to be able to report those concerns to an independent office or body, and such allegations need then to be independently investigated and reported on.

Is the scope and nature of procurement controls sufficient?

TCV does not have sufficient experiences of 'across the board' procurement practices to comment on this.

3.2.6. Principles based legislation

Should the Public Finance Bill be drafted as principles-based legislation?

TCV supports the Public Finance Bill being drafted as principles-based legislation, for the reasons given on page 25 of the Discussion Paper. We believe that a principles based framework should apply consistently across the interrelated pillars of public governance, in order to promote compliance with the spirit of the legislation and codes of conduct. There is still a need, however to address consequences where principles are breached.

We accept that principles-based legislation may introduce a level of uncertainty for some participants, particularly in the early stages of the Bill's life. In our experience, this can be overcome by adequate training and guidance material that participants can use to adapt to their own circumstances.

We also agree that, if a principles based approach is adopted, the legislative framework in its entirety should be readily available to the public for reasons of transparency.