



Joint Committee of Public Accounts and Audit  
Review of the Auditor-General Act 1997  
9 December 2020

Opening Statement by the Auditor-General

**Introduction**

1. Good morning Chair and Committee Members. Thank you for the opportunity to appear before the committee today as part of the review of the *Auditor-General Act 1997*.
2. The Auditor-General Act (the Act) has served the Parliament and the public well since it came into effect in 1998 and has been amended over time. This inquiry is a timely opportunity to consider improvements that could be made to the Act to reflect developments in public administration over the last decade. The ANAO submission of 27 November 2020 outlined potential amendments to the Act that could be made in response to each of the JCPAA's terms of reference while noting that a number of provisions have been effective and amendments to those provisions would risk reducing the effectiveness of the ANAO. These provisions are discussed in my correspondence to the Chair and on page 1 of the submission.
3. There are four key issues in the submission which are considered to be the most important:
  - the independence of the Auditor-General and resourcing;
  - the operation of section 37 of the Auditor-General Act;
  - the Auditor-General's mandate and capacity to initiate audits; and
  - the application of parliamentary privilege to the Auditor-General's information-gathering powers and ANAO documents.

**The independence of the Auditor-General and resourcing**

4. The importance of the connection between the Auditor-General's independence and the ability to provide effective assurance to Parliament has long been recognised by the JCPAA and its predecessor committee, as well as internationally through resolutions of the United Nations

General Assembly. Independence is the key overarching theme of the submission and some of the most important issues raised by the ANAO relate directly to independence.

5. In the Australian system, the ANAO forms part of the executive government which it audits. This could represent an independence risk, including as the ANAO is subject to the policies and processes of the executive government which it is required to audit. The submission recommends JCPAA consideration of whether the governance frameworks of the ANAO can be amended to better support ANAO independence, such as by making the ANAO a Parliamentary Department.
6. The process for setting the ANAO's budget is another key issue when considering independence and the ability of the Auditor-General and ANAO to perform their functions. The submission recommends that the JPCAA consider if its current role in setting the ANAO's budget is appropriate.
7. The submission also recommends that the JPCAA consider whether the appointment mechanisms for the Auditor-General can be conducted in a way that further enhances the perception of Auditor-General independence. Appointment issues also arise if the ANAO were to become a Parliamentary Department.

#### **Operation of section 37 of the Auditor-General Act**

8. The fundamental principles behind sections 36 and 37 of the Act are appropriate. The Auditor-General receives unrestricted access to information. Sections 36 and 37 balance that unrestricted access by ensuring that the Auditor-General and ANAO must handle that information in confidence and cannot disclose information where it would be contrary to the public interest to do so. Section 37 does this in a way that does not undermine the independence of the Auditor-General, by including a public interest test which is applied by the Auditor-General.
9. As a further safeguard, the Attorney-General may require the Auditor-General to omit 'particular information' from a report to Parliament, in which case the information may not be disclosed to Parliament by the Auditor-General or ANAO.
10. That said, the executive government's first use of section 37 in 2018 was expansive. It prevented the public disclosure of ANAO analysis and part of the Auditor-General's overall audit opinion on the value for money of Defence's procurement of Hawkei vehicles for the Army. The certificate issued by the Attorney-General was not restricted to preventing the public disclosure of particular sensitive information which was otherwise prohibited from public release.
11. The issues were considered by the Committee during its inquiry into the Hawkei certificate and in JCPAA Report 478 released in April 2019. Foremost amongst these issues was the impact of the

executive's use of section 37 on the Parliament's ability to hold the executive to account, given the effect of its use on the independence and transparency of the Auditor-General's reporting to Parliament. The Committee recommended in that report that the issues, including those raised in the ANAO's submission to that particular inquiry, be considered in the context of this legislative review.

12. The restrictions which apply when the Auditor-General uses section 37 are also significant. For example, if the Auditor-General decides to exclude information from a report under section 37 they are prohibited from disclosing that information to the Parliament, even in a confidential briefing. This has led me to be very reluctant to use the provision.

### **The Auditor-General's mandate and capacity to initiate audits**

13. The ANAO submission proposes that the Committee consider a number of issues relating to the Auditor-General's mandate. Changes to funding mechanisms within government pose challenges where the mandate is limited. Two key issues are :
  - The Auditor-General should have the authority to initiate performance audits of Commonwealth controlled government business enterprises (GBEs). This was recommended by the JCPAA in its last review of the Auditor-General Act (JCPAA Report 419).
  - The technical gap in the Auditor-General's mandate, where entities jointly controlled by corporate Commonwealth entities fall outside the Auditor-General's mandate, should be resolved.
14. There is also an opportunity to extend the Auditor-General's mandate to undertake mandatory annual audits of performance statements following the completion of the current pilot of assurance audits. This was recommended by the JCPAA in Report 469.

### **Application of Parliamentary Privilege to the Auditor-General's information-gathering powers and ANAO documents**

15. It has long been the practice that parliamentary privilege applies to the Auditor-General's information-gathering powers and ANAO-generated documents as they relate to making a report to Parliament. This practice is based on consultation from the current and former Clerks of the Senate and legal advices from the then Solicitor-General, Stephen Gageler and Professor Dennis Pearce.
16. More recently issues of parliamentary privilege have arisen, including in the Parliament, and therefore the submission recommends that the JCPAA consider amendments to the Act to clarify the matter, for the avoidance of doubt.

17. My colleagues and I would be happy to answer any questions the Committee may have.