



29 January 2021

Mrs Lucy Wicks MP
Chair, Joint Committee of Public Accounts and Audit (JCPAA)
PO Box 6021
Parliament House
CANBERRA ACT 2600

By email – jcpaa@aph.gov.au

Dear Mrs Wicks

Review of the Auditor General Act 1997

On behalf all Australian members of the Australasian Council of Auditors General (ACAG) other than the Auditor General for Australia, I am pleased to submit our response to the 10-year review of the Auditor-General Act 1997.

ACAG was established over 60 years ago to facilitate the sharing of information and intelligence between Auditors-General in a time of increasing complexity and rapid change. The work of ACAG is underpinned by four strategic pillars, including knowledge sharing and collaboration, collective voice, capability development and maximising the value of ACAG as an organisation.

We have contributed to several Parliamentary Inquiries into public sector audit legislation, offering the views of members on opportunities to strengthen the independence, accountability, and operational effectiveness of Auditors-General.

ACAG appreciates the opportunity to provide comments and I trust you will find the attached useful. Should you require any further information, please contact our Executive Director, Rachel Portelli, on [REDACTED]

Yours sincerely

[REDACTED]

Brendan Worrall
Convenor
Australasian Council of Auditors General

AUSTRALASIAN COUNCIL OF AUDITORS GENERAL
Inquiry into the *Auditor General Act 1997 (the “Act”)*

This submission is limited to those Australasian Council of Auditors General (ACAG) members referred to in the attached covering letter. Any reference to ACAG relates only to those members participating in this submission.

Introduction

In every Australian jurisdiction, the Auditor-General is a key part of the public sector’s integrity and accountability system ensuring the accountability of the Government and its agencies to Parliament and the public. It is therefore important that legislation governing the Auditor-General be designed to achieve the highest level of public sector accountability and transparency.

Auditor independence is critical to providing trusted assurance on the finances and operations of governments. In a tangible sense, arms-length audit scrutiny and public reporting improves financial risk ratings and supports the confidence of capital markets to lend and invest on attractive terms.

It is for this reason that the matter of auditor independence has been examined extensively by capital market participants, parliaments, academics, practitioners, and other stakeholders.

The International Organisation of Supreme Audit Institutions (INTOSAI) is the umbrella organisation of Supreme Audit Institutions (SAI) of countries that belong to the United Nations. It is an autonomous, independent, and non-political organisation with special consultative status with the Economic and Social Council of the United Nations. INTOSAI aims to reinforce the independence and professionalism of external Government auditing.

In 2007, INTOSAI declared that eight core independence principles are essential requirements for effective public sector auditing:

- An effective statutory legal framework.
- Independence and security of tenure for the head of the audit institution.
- Full discretion to exercise a broad audit mandate.
- Unrestricted access to information.
- A right and obligation to report on audit work.
- Freedom to decide the content and timing of audit reports and to publish them.
- Appropriate mechanisms to follow-up on audit recommendations; and
- Financial, managerial, and administrative autonomy and availability of appropriate resources.

This submission by ACAG is based on these principles, which we believe are essential to the role of the Auditor-General.

In 2009, the Victorian Auditor General’s Office (VAGO) commissioned a survey on behalf of ACAG to identify and compare the range of independence safeguards for Auditors General in the legislative frameworks that then existed in New Zealand, in the Commonwealth of Australia and in each Australian State and Territory. The survey was based upon the eight core independence principles listed above.

The 2009 survey identified 60 key legislative components or ‘factors’ that contributed to each INTOSAI independence principle and the extent to which each factor was subject to the control of Executive government was assessed. That survey found that all jurisdictions had well established legislative frameworks governing their respective Auditors General. However, there was considerable variation in the independence safeguards provided for Auditors General and in the extent to which they, or the role they performed, could be influenced by the Executive government of the jurisdictions concerned.

The survey was repeated in 2013 and again in 2020. The aim of the most recent survey was to identify and compare the range of safeguards that exists to support the independence of Auditors General. Overall, the Commonwealth’s independence frameworks do not appear to have kept pace as it reduces from 5th most independent in 2009 to 6th in 2013 and 7th in 2020.

While the most recent survey showed an increase of 12 points from 275 (in 2009) to 287 (in 2020), there was much more significant increases in other jurisdictions such as Queensland (81 points), ACT (68 points), Victoria (24 points) and South Australia (22 points).

A copy of the full report *Independence of Auditors General: A 2020 update of a survey of Australian and New Zealand legislation* (“Independence Report”) is included as an attachment to this submission.

Specific Comments Related to the Terms of Reference against INTOSAI Independence Principles

1. The Governance Framework as it relates to the Auditor General and the Australian National Audit Office (ANAO), including the independence of the Auditor General as an Officer of the Parliament and the audit independence of the ANAO, and resourcing arrangements

INTOSAI Principle 1 - existence of an appropriate and effective constitutional/statutory/legal framework and of de facto application provisions of this framework.

INTOSAI Principle 8 - financial and managerial/administrative autonomy and the availability of appropriate human, material, and monetary resources)

The Independence Report concluded that in all the jurisdictions surveyed, the Auditor General is created by statute, not by administrative action.

When considering the governance frameworks of the ANAO, the objective should be to set up ANAO's governance in a manner that best supports its independence and recognises the role of the Auditor General as an independent officer of the Parliament.

The ANAO currently forms part of the Executive government, which means that it is subject to the policies and processes of Executive government, which it is also required to audit. This represents an independence risk. To mitigate this, the review may wish to consider the Auditor-General for NSW's Special Report on *The effectiveness of the financial arrangements and management practices in four integrity agencies* (published 20 October 2020) ("Special Report"). This audit assessed the effectiveness of the financial arrangements and management practices of four NSW integrity agencies, as well as the NSW Treasury and the Department of Premier and Cabinet because both departments are involved in the processes that lead to decisions about funding for the integrity agencies and managing access to this funding.

Noting the specific scope of the Special Report, extrapolating the conclusions and recommendations to this review, the current approach to determining annual funding for the ANAO does not appear to sufficiently recognise that the roles and functions of the ANAO are different to other departments and agencies that form part of Executive government.

This is because the current approach does not provide additional protection against the risk that funding decisions could be influenced by previous or planned investigations by the ANAO. This risk has the potential to limit the ability of the ANAO to fulfill its legislative mandate. A mechanism that addresses potential threats to independence whilst also ensuring accountability is recommended.

2. The Auditor General's information gathering powers and confidentiality of information, including with reference to parliamentary privilege and the interaction between the *Freedom of Information Act 1982*, and the Act

INTOSAI Principle 4 – unrestricted access to information

Unrestricted access to information means that the ANAO has the power to access all available information when undertaking analysis, to ensure that the ANAO and Parliament can be confident that its audit conclusions have a complete evidentiary basis. Unrestricted access to information does not, however, mean that this information is necessarily made public in audit reports. The legislative and policy framework in which the Auditor General and ANAO operate, including the confidentiality obligations in the Act, reinforce that the Auditor General and ANAO are custodians of documents belonging to others.

Part 5 of the Act provides the Auditor General with access powers relating to information, documents, persons, and premises. There are times when an Auditor General needs to consider Cabinet documents as part of the conduct of an audit or review in order to be aware of decisions by Cabinet that relate to the subject matter or area under audit or review or to substantiate other evidence and representations that have been obtained. Whilst the ability for the Auditor General to access these documents is available, it is recommended that it be made explicit in the Act. Similar clauses exist in the Western Australian and Victorian Acts.

Given the emergence and prominence of integrity agencies, with referrals from one agency to another, ACAG recommends the inclusion of a specific provision in section 36 that allows the Auditor General to provide information to integrity agencies.

3. The interaction of the Act and other relevant legislation including the Public Governance, Performance and Accountability Act 2013, the Public Accounts and Audit Committee Act 1951, Freedom of Information Act 1982, and the Parliamentary Privileges Act 1987

ACAG continues to support ANAO's current exemption from the *Freedom of Information Act 1982* to prevent the audit office being used as a "backdoor" for the release of documents belonging to an audited entity.

ACAG does not have any comments on the interaction of the Act and the other relevant legislation listed within point 3.

4. The Auditor General's capacity to initiate audits into, and examine the performance of all entities in the Australian Government sector

<i>INTOSAI Principle 3 – a sufficiently broad mandate and full discretion, in the discharge of SAI functions</i>
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Functional mandate refers to the type of audit work that an Auditor General can undertake. To have a full and effective audit mandate, the Auditor General should have a functional mandate to undertake audit work that includes:

- *Financial statements/accounts* – audit opinions that provide assurance about financial statements or accounts
- *Compliance with statutory obligations* – providing assurance or directly determining whether an agency has complied with its financial and non-financial statutory obligations
- *Management reporting systems* – providing assurance about the effectiveness of management reporting systems for financial and/or non-financial reporting
- *Performance indicators and/or performance reports* – providing assurance about performance indicators and/or performance reports

- *Performance audits/examinations* - directly examining or investigating any aspect of an entity's operations and/or the economy efficiency and effectiveness with which its functions were performed

There has been an international trend to broaden the type of work a SAI can undertake that extends beyond the SAI's traditional role of financial audit. For example, SAIs are increasingly undertaking performance audits into the efficiency and effectiveness of Government department operations and on occasion have additional discrete tasks legislated to be conducted by the Auditor General.

It is usual, and appropriate, for any matters relating to Government policy to be outside a SAI's functional mandate. This matter is most relevant to SAI's performance audit function that often examines an organisation's non-financial performance.

In recent years, there has been an increased Government focus on identifying and prosecuting bribery, fraud, and corruption. Traditionally, the primary responsibility for these matters has been with Government organisations such as the police, serious fraud offices, anti-corruption commissions, and Ombudsman offices, rather than SAIs.

However, there may be an expectation gap between what the public think a SAI does in these areas as opposed to what its mandate allows. It is important that this gap is addressed and there have been various efforts in different jurisdictions to support this. Also, mandates permitting, SAIs should consider if they can play a greater role in improving public sector governance standards and ethical behaviour in the public sector.

Coverage mandate refers to the type of organisation or entity a SAI can audit. Historically, a SAI's coverage mandate has been limited to "core" public sector entities such as Government departments. However, Governments are now funding and delivering public services through a variety of different legal entities such as Government Owned Entities. It is important that SAIs continue to have sufficient coverage mandate to audit a broad range of public sector entities, regardless of corporate structure, to ensure they are held accountable for what they do. The ability to audit private sector entities delivering services on behalf of the public sector is enshrined in most ACAG jurisdictions. In practice, these powers are used judiciously and for major contracts.

Currently the Act prevents the Auditor General from conducting *performance audits* of Commonwealth authorities that are Government Business Enterprises (GBEs) and wholly owned Commonwealth companies that are GBEs without a request from the JCPAA (that may be initiated by the Auditor General, but the request needs to come from the JCPAA). Since the last review of the Act, when this requirement was retained, the nature of a GBE has changed significantly, and many obtain significant government equity to invest in projects that would not be able to be delivered without public sector investment.

5. Accessibility and transparency of reports and audit conclusions, including the operation of section 37 of the Act

<i>INTOSAI Principle 5 – the right and obligation to report on work</i>

<i>INTOSAI Principle 6 – the freedom to decide the content and timing of audit reports and to publish and disseminate them</i>
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Section 37 of the Act refers to the inclusion of sensitive information in public reports. Specifically, that the Auditor General must not include information in a public report in their opinion that the disclosure of which would be contrary to the public interest or where the Attorney General has issued a certificate to the Auditor General stating that disclosure of the information would be contrary to the public interest.

ACAG notes this issue predominantly affects the ANAO given its mandate to audit highly sensitive agencies in the areas of national security and defence. As a result, ACAG, has no specific comment on the operation of Section 37 of the Act.

6. The Audit Priorities of the Parliament

ACAG has no view on the audit priorities of the Parliament.

7. The role and appointment of the Independent Auditor

ACAG has no view as to the role and appointment of the Independent Auditor.

Independent financial and performance audits of the Auditor General's office are standard practice in Australian jurisdictions and are critical accountability mechanisms.

8. Any other related matters

ACAG has no other related matters to raise.