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## **Joint Committee of Public Accounts and Audit**

Answers to Questions on Notice

**Department/Agency:** Australian National Audit Office

**Inquiry:** Review of the Auditor-General Act 1997

**Committee Member:** Ms Lucy Wicks MP

**Type of question:** Page 4, Hansard, 9 December 2020

**Date set by the committee for the return of answer:** 22 January 2021

Number of pages: 7

### **Question**

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CHAIR: I think that is helpful. There is a lot in there. I will go to Senator O'Sullivan and then Senator Chandler. Before I do, Auditor-General, for the committee's benefit, perhaps on notice, could you provide some information, almost like a comparison—the PBO for instance, what your proposal is and how that would align with the current framework that the PBO sits in? That might be helpful for us, on notice.

Mr Hehir: Yes

### **Response**

The below table provides details about what the ANAO's proposal is for the ANAO to become a Parliamentary Department and how it aligns with the PBO framework. The first part of the table sets out a comparison of the current ANAO framework, current PBO framework and the ANAO's proposal. The second part of the table provides an overview of issues that would not change if the ANAO was to become a Parliamentary Department.

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**TABLE 1 - OVERVIEW OF CURRENT ANAO FRAMEWORK, PBO FRAMEWORK AND ANAO'S PROPOSED MODEL**

ISSUE	CURRENT FRAMEWORK WITH ANAO UNDER THE <i>PUBLIC SERVICE ACT 1999</i>	CURRENT FRAMEWORK WITH PBO UNDER THE <i>PARLIAMENTARY SERVICE ACT 1999</i>	PROPOSED MODEL FOR ANAO UNDER THE <i>PARLIAMENTARY SERVICE ACT 1999</i>
Independence in appearance	<p>The Auditor-General is an independent officer of the Parliament. The ANAO is established by the <i>Auditor-General Act 1997</i> (the Act) and forms part of the executive government, which the ANAO audits.</p>	<p>The Parliamentary Budget Officer is an independent officer of the Parliament and the PBO is a Parliamentary Department established under the <i>Parliamentary Service Act 1999</i> (Plty Act).</p> <p>The PBO therefore operates in a framework which aligns it to the Parliament, and is independent of Executive government.</p>	<p>The ANAO proposes that amendments be made to the Act and Plty Act to specify that the ANAO is a Parliamentary Department.</p> <p>The ANAO would continue to be established by the Act and the Auditor-General and ANAO would operate under the Act. As explained in more detail below, the current independence protections in the Act would be retained and it is proposed that consideration be given to applying appropriate independence protections in the Plty Act, such as those applying to the Parliamentary Budget Officer.</p> <p>The Plty Act would govern employment of ANAO staff and related matters in the same manner that the <i>Public Service Act 1999</i> does currently.</p>
Application of parliamentary privilege - perceptions	<p>Based on advice from a former Solicitor-General, Clerks of the Senate and Professor Dennis Pearce, the ANAO operates on the basis that:</p> <ul style="list-style-type: none"> <li>parliamentary privilege does not create any significant limitations on the Auditor-</li> </ul>	<p>The ANAO understands that PBO reports are prepared for the purposes of parliamentary proceedings and therefore the ANAO understands that they would be subject to parliamentary privilege.</p> <p>The application of parliamentary privilege is less likely to be an issue for the PBO not only because of the nature of its work but also its</p>	<p>This issue is considered in issue 3.b in Table 3 below. The key issue is to remove uncertainty about parliamentary privilege. The recommendation to become a parliamentary department serves in part to achieve greater alignment to the Parliament.</p>

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	<p>General’s information-gathering powers; and</p> <ul style="list-style-type: none"> <li>parliamentary privilege applies to draft and final audit reports and ANAO working papers.</li> </ul> <p>These positions appear to be accepted by the Parliament and Executive Government. However, these positions have been questioned by audited entities and the application of parliamentary privilege to draft audit reports and ANAO working papers has been challenged in the Federal Court.</p>	<p>operation as an independent Parliamentary department.</p>	<p>The ANAO’s recommendations in issue 3.b are not dependent on the ANAO becoming a parliamentary department. There would be no substantive change in the application of parliamentary privilege to the Auditor-General and ANAO, if the ANAO was to become a parliamentary department.</p> <p>If the ANAO was a Parliamentary Department, it would be more obvious to persons not familiar with the ANAO’s role that the ANAO’s activities/documents come under the umbrella of parliamentary privilege and this perception may be sufficient to reduce future challenges.</p>
<p>Directions on employment matters</p>	<p>The APS Commissioner may issue directions about employment matters including but not limited to employment conditions, redeployment, and application of APS Employment Principles (section 11A <i>Public Service Act 1999</i> (PS Act)).</p> <p>Such direction is subject to any relevant direction issued by the Prime Minister.</p>	<p>The Presiding Officers in consultation with the Parliamentary Service Commissioner and with regard to the advice given by the Commissioner may issue a determination about employment matters including the same matters listed in section 11A of the PS Act and application of the PS Employment Principles (sections 11C &amp; 71 of the <i>Parliamentary Services Act 1999</i> (Plty Act))</p>	<p>The ANAO proposes that the standard Plty Act arrangements would apply to the ANAO.</p> <p>The ANAO, as an executive agency, is currently subject to the directions issued by the APS Commissioner as well as the Prime Minister in its approach to its employment matters.</p> <p>The Plty model where the Presiding Officers, with regards to advice given by the Parliamentary Service Commissioner, jointly issue determinations to handle Plty Department employment matters means that if the ANAO adopts the Plty Model, it will no longer be subject to the direction from the Executive Government that the</p>

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			ANAO audits. This would strengthen the independence of the ANAO.
Directions on management and leadership	The Prime Minister may issue general directions in writing to Agency Heads relating to management and leadership (section 21 PS Act)	<p>The Presiding Officers may issue general directions relating to the management and leadership (section 20 Plty Act) of the PBO following consultation with the Parliamentary Service Commissioner.</p> <p>There are specific protections in place, for example, the Parliamentary Budget Officer is not subject to direction by Presiding Officers when performing their function (section 64P PBO Act). There are similar protections for the Clerks who are not subject to direction by a Presiding Officer in relation to their advisory function (section 19 Plty Act).</p> <p>In addition, the Plty Act provides additional independence protections than the PS Act as the Presiding Officers must consult with the Commissioner before issuing a direction to the PBO and there are two Presiding Officers who must agree before issuing a direction.</p>	The ANAO proposes that similar protections to those in section 64P PBO Act and section 19 of the Plty Act be introduced to clarify that the directions cannot relate to Auditor-General functions.
Inquiry into alleged breach of Code of Conduct	The APS Commissioner may inquire into Code of Conduct matters (section 41A PS Act)	The Merit Protection Commissioner may inquire and determine on Code of Conduct matters (section 48A Plty Act)	The ANAO proposes that the standard Plty Act requirements apply.
Code of conduct	The ANAO is subject to the APS Code of Conduct.	The PBO is subject to the Parliamentary Code of Conduct which is almost identical to the APS Code of Conduct. The most notable difference is that the Parliamentary Code of Conduct refers to confidentiality of dealings with Parliament, including committees, rather than Ministers as in the APS Code of Conduct. Also	<p>The ANAO proposes that the standard Parliamentary Code of Conduct apply to the ANAO.</p> <p>The Parliamentary Code of Conduct is more appropriate for the ANAO as the ANAO serves and has more frequent dealings with</p>

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		Parliamentary Service employees must comply with conduct requirements made by either House of the Parliament or by determinations as opposed to regulations under the APS Code of Conduct.	Parliament and its committees such as the JCPAA than with Executive Government Ministers.
Appointment of the agency head	The Auditor-General is appointed by the Governor-General, on the recommendation of the Minister, for a term of 10 years. (section 1 of schedule 1 of the Act)	The Parliamentary Budget Officer is appointed by the Presiding Officers, for a term of 4 years. (section 64X Plty Act)	<p>As set out in issue 1.c in Table 3 below, the ANAO has recommended two options for the JCPAA to consider.</p> <p>The first option is for the appointment process to be similar to the appointment process for the Parliamentary Budget Officer, where an Auditor-General candidate is recommended by the Presiding Officers and the JCPAA continues to have the power to approve or reject appointments under section 8A of the <i>Public Accounts and Audit Committee Act 1951</i> (PAAC Act)</p> <p>Another option is that the process could be reversed so that the JCPAA manages the recruitment process and makes a recommendation to the Presiding Officers.</p> <p>The ANAO has not suggested any change to the term of appointment for the Auditor-General.</p>
Appropriations	The ANAO receives appropriations through standard appropriation bills <sup>1</sup> .	The PBO and other Parliamentary Departments receive their appropriations through	The ANAO proposes that it receive appropriations through Appropriation (Parliamentary Departments) Acts in the

<sup>1</sup> For example, the most recent ANAO appropriation was in Appropriation Bill (No. 1) 2020-2021.

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		Appropriation (Parliamentary Departments) Acts.	same way as other Parliamentary Departments. Transitional requirements may be required to ensure that prior year appropriations are retained. This should be considered with budget issues outlined in issue 1.b in Table 3 below.
Administrative Arrangements Order	The Act and PS Act are currently administered by the Department of the Prime Minister and Cabinet (PM&C).	The Plty Act is not currently listed in the Administrative Arrangements Order.	For Administrative Arrangements Order purposes, the Act should be treated in the same way as the Plty Act which establishes the Parliamentary Budget Officer and PBO.
<b>OVERVIEW OF ISSUES WHERE THE ANAO AND PBO HAVE THE SAME MODEL AND NO CHANGE WOULD OCCUR</b>			
<b>ISSUE</b>	<b>DESCRIPTION OF ISSUE</b>		
The ANAO's legal status as part of the Commonwealth	<p>The ANAO currently has no status as a separate legal entity and forms part of the Commonwealth. As a parliamentary department, the ANAO would also form part of the Commonwealth and therefore no change is required to the ANAO's legal status. The unchanged legal status would limit the need for other changes including:</p> <ul style="list-style-type: none"> <li>• money held by the ANAO remains part of the Consolidated Revenue Fund;</li> <li>• application of legislation applying to the Commonwealth is unchanged; and</li> <li>• contracts administered by the ANAO on behalf of the Commonwealth do not need to be novated or varied.</li> </ul>		
Application of the PGPA Act	<p>The <i>Public Governance, Performance and Accountability Act 2013</i> (PGPA Act) currently applies to both the ANAO and the PBO and would continue to apply.</p> <p>Being a parliamentary department would not put the ANAO beyond all Executive Government policies. For example the Auditor-General would still be subject to the PGPA Act as an accountable authority and therefore must govern the entity in a way that is not inconsistent with the policies of the Australian Government, where it is not inconsistent with the Auditor-General Act. (sections 15 and 21 of the PGPA Act).</p>		
Practical employment arrangements for existing ANAO staff	<p>While the ANAO would employ staff under the Plty Act rather than the PS Act, employment conditions for APS Employees and Parliamentary Service Employees are very similar, and include:</p> <ul style="list-style-type: none"> <li>• ability for staff to transfer between the two systems under section 26 of the Plty Act;</li> <li>• transferability of entitlements (e.g. leave) for staff permanently moving from the APS to the Parliamentary Service and vice versa (subsection 26(3));</li> <li>• arrangements to retain entitlements for staff temporarily moving from the APS to the Parliamentary Service and vice versa (section 26A);</li> </ul>		

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	<ul style="list-style-type: none"><li>• access to the same superannuation schemes (CSS, PSS, PSSap under relevant legislation); and</li><li>• staff of parliamentary departments and APS staff are covered by the <i>Long Service Leave (Commonwealth Employees) Act 1976</i>, <i>Maternity Leave (Commonwealth Employees) Act 1973</i> and <i>Safety, Rehabilitation and Compensation Act 1988</i>.</li></ul>
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## **Joint Committee of Public Accounts and Audit**

Answers to Questions on Notice

**Department/Agency:** Australian National Audit Office

**Inquiry:** Review of the Auditor-General Act 1997

**Committee Member:** Mr Julian Hill MP

**Type of question:** Page 10, Hansard, 9 December 2020

**Date set by the committee for the return of answer:** 22 January 2021

Number of pages: 27

### **Question**

[Page 10 of Hansard]

Mr HILL: I have a process question and perhaps a request. There's a huge amount in this. Is it possible over the next few weeks to prepare two tables for us to help us keep track of the issues? One table might be on section 37, because there's a lot of complexity in that—and I think Senator Patrick and I were the only two members who sat through that inquiry last term. It's actually quite a simple report. I'd encourage anyone who wants to get across it to read the Auditor-General's submission to that inquiry, because it had some very specific recommendations for change. But it might be helpful if it were possible to organise those suggestions into a table with what the suggestion is and what the rationale is, because I think it might be easier. Then, more broadly, in terms of Senator Chandler's questions about mandate and a few of the others, it might be helpful if it were possible to get a table organised that effectively puts, from your submission—you don't have to repeat all the words—what the specific suggestions are.

Mr Hehir: Okay.

Mr HILL: And, where possible, if they could be themed. That way we can think about mandate, we can think about your appointment, and we can think about the privilege issues. It would be a structured way for us to work through those. I'd also be interested in any supplementary comments. It may be a silly way to think about it, but we're currently sitting seventh out of 10 on the league table of Australian and New Zealand Auditors-General. What would we need to do to put ourselves back in the top couple of spots—because everyone else will play leapfrog—in the next 10 years? Are the recommendations you put in your table going to get us back there? Is that what we should be looking at?

Mr Hehir: We can probably take a guess at what those things would do. The framework that is used is pretty easy to apply, so we can have a go at that.

### **Response**

The ANAO has prepared the below two tables in response to this question. Table 2 summarises the key issues raised by the ANAO and considered by the JCPAA in the context of the JCPAA inquiry into the Issuing of a Certificate under section 37 of the *Auditor-General Act 1997* and Table 3 sets out the specific suggestions for changes to the Act from the Submission.

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**TABLE 2 - KEY ISSUES RAISED IN CONTEXT OF PREVIOUS JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT (JCPAA) INQUIRY INTO THE ISSUING OF A CERTIFICATE UNDER SECTION 37 OF THE AUDITOR-GENERAL ACT 1997**

This table summarises the key issues raised by the ANAO and considered by the JCPAA in the context of the JCPAA inquiry into the Issuing of a Certificate under section 37 of the *Auditor-General Act 1997*. The inquiry resulted in JCPAA Report 478: Issuing of a Certificate under section 37 of the *Auditor-General Act 1997*, Inquiry based on Auditor-General's Report No. 6 (2018–19), of April 2019.

**Background to Table 2: ANAO submission (October 2018)**

To assist the Committee, three key issues and six sub-issues were identified in Part 6 (pp.20-24) of the ANAO's 4 October 2018 submission to the JCPAA. The table below includes the commentary on each of these issues appearing in the ANAO submission:

- A. Parliamentary scrutiny of the confidential audit report provided to Ministers by the Auditor-General on 6 September 2018.
- B. The operation of section 37 and Parliamentary oversight of the certification process.
  - i. Consider distinguishing between types of disclosures.
  - ii. Consider a Parliamentary process if a proposed certificate affects the audit conclusion or information not otherwise prohibited from disclosure.
  - iii. Consider the disclosure of all applications for a certificate to Parliament and their referral to the Auditor-General in the first instance.
  - iv. Consider a time limit for issuing any certificate.
  - v. Consider the provision of substantive reasons for any certificate.
  - vi. Consider requiring the Auditor-General to provide any confidential report to the Parliament.
- C. The application of Parliamentary privilege to the Auditor-General's work.

**Background to Table 2: JCPAA Report 478 (April 2019)**

The report summary stated that 'In relation to section 37, the Committee believes that it is important that an appropriate balance between transparency and valid reasons for non-publication of certain material is achieved' (paragraph 1.10). The committee also observed that 'While the Committee was kept informed by the Auditor-General of key events during the course of the (Hawkei) audit, consideration should be given to how a higher level of assurance and greater transparency could be provided to the Parliament in relation to future audit reports where a certificate is issued (paragraph 2.10).

The Committee noted that 'A range of matters that might strengthen the operation of section 37 were raised by the Auditor-General for the Committee's consideration. Many of these proposals warrant consideration in future instances when section 37 is utilised' (paragraph 2.11 and paragraph 2.60).

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The Committee made four recommendations, as follows.

**Recommendation 1**

The Committee recommends that the Joint Committee of Public Accounts and Audit undertakes an inquiry on each occasion a certificate is issued under section 37 of the *Auditor-General Act*.

**Recommendation 2**

The Committee recommends:

- That detailed consideration be given by the Committee to the proposal that a statutory timeframe be legislated in which the Attorney-General is required to make a decision in regards to a section 37 application, and included in this legislative amendment is a mechanism for the Attorney-General to self-execute time extensions for this decision, subject to notification of the extension to the Auditor-General and the Joint Committee of Public Accounts and Audit; and
- That this proposal be examined on the next occasion a certificate is issued under section 37 of the *Auditor-General Act* or at the next review of the *Auditor-General Act*, whichever is the earlier.

**Recommendation 3**

The Committee recommends that the other issues raised by the Auditor-General in his submission to this inquiry be referred for further consideration as part of the next periodic review of the *Auditor-General Act*, including:

- A provision for a confidential report to be provided to at least the Chair of the Joint Committee of Public Accounts and Audit along with relevant Ministers;
- That the Joint Committee of Public Accounts and Audit be consulted on a confidential basis if a proposed certificate affects the audit conclusion or information not otherwise prohibited from disclosure;
- To consider amendments to distinguish between types of certificates to at least require confidential consultation with the Joint Committee of Public Accounts and Audit before certificates are issued for non-national security matters; and
- That substantive reasons be provided when a certificate is issued.

**Recommendation 4**

The Committee recommends the referral to the privileges committees of both the Senate and the House of Representatives the question of whether the draft reports and working papers of the Auditor-General are subject to parliamentary privilege.

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**TABLE 2 - KEY ISSUES RAISED IN CONTEXT OF PREVIOUS JOINT COMMITTEE OF PUBLIC ACCOUNTS AND AUDIT (JCPAA) INQUIRY INTO THE ISSUING OF A CERTIFICATE UNDER SECTION 37 OF THE AUDITOR-GENERAL ACT 1997**

<b>ISSUE RAISED BY ANAO<sup>2</sup></b>	<b>ANAO SUGGESTION<sup>3</sup></b>	<b>JCPAA OBSERVATIONS IN REPORT 478<sup>4</sup></b>	<b>JCPAA RECOMMENDATION IN REPORT 478</b>
<p><b>A. Parliamentary scrutiny of confidential audit report to Ministers (pp.20-21)</b></p> <p>Subsection 37(3) of the <i>Auditor-General Act 1997</i> (the Act) provides that the Auditor-General cannot be required and is not permitted to disclose information omitted under subsection 37(1) to a House of the Parliament, a member of a House of the Parliament, or any committee of the Parliament.</p> <p>This prohibition applies only to the Auditor-General and the ANAO, not to members of the Executive or other parties.</p>	<p>The JCPAA may wish to consider accepting any such offer by the Department of Defence relating to the confidential (Hawkei) audit report provided to Ministers on 6 September 2018.</p>	<p>The Committee has previously expressed the view that where confidential documents that the Committee considers relevant to an inquiry are required, they can be made on a restricted and in-camera basis. The Committee maintains that confidential documents and briefings can be provided to the Committee (paragraph 2.26).</p>	<p>No recommendation.</p>

<sup>2</sup> Issues raised by the ANAO in its 4 October 2018 submission to the JCPAA: Issuing of a Certificate under section 37 of the Auditor-General Act 1997 - Inquiry based on Auditor-General's Report No. 6 (2018-19). Available at:

[https://www.aph.gov.au/Parliamentary\\_Business/Committees/Joint/Public\\_Accounts\\_and\\_Audit/AuditReportNo6/Submissions](https://www.aph.gov.au/Parliamentary_Business/Committees/Joint/Public_Accounts_and_Audit/AuditReportNo6/Submissions)

<sup>3</sup> ANAO suggestions in its 4 October 2018 submission to the JCPAA. See footnote 3.

<sup>4</sup> Joint Committee of Public Accounts and Audit, *Report 478: Issuing of a Certificate under section 37 of the Auditor-General Act 1997, Inquiry based on Auditor-General's Report No. 6 (2018-19)*, April 2019. Available at:

[https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024235/toc\\_pdf/Report478IssuingofaCertificateundersection37oftheAuditor-GeneralAct1997.pdf;fileType=application%2Fpdf](https://parlinfo.aph.gov.au/parlInfo/download/committees/reportjnt/024235/toc_pdf/Report478IssuingofaCertificateundersection37oftheAuditor-GeneralAct1997.pdf;fileType=application%2Fpdf)

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<p>In recent years the Department of Defence has offered, in the context of the JCPAA’s review of the annual Defence Major Projects Report, to provide the Committee with confidential in-camera briefings and information on sensitive matters. Similar offers have been made to other Parliamentary committees, including the Joint Standing Committee on Foreign Affairs, Defence and Trade, and the Senate Foreign Affairs, Defence and Trade Legislation Committee.</p>			
<p><b>B (i). Consider distinguishing between types of disclosures (p.21)</b></p> <p>In JCPA Report 346 (1996) the JCPA accepted that the Executive will reserve the right to suppress the publication of audit information that would prejudice national security (JCPA, 1996, p.69). In Report 386 (2001) the JCPAA considered it ‘appropriate to have the Attorney-General provide a safeguard’ as ‘there may be exceptional circumstances relating to such issues as defence and national security which require the input of executive government’ (JCPAA, 2001, p.41).</p>	<p>Consideration could be given to making a distinction between disclosures in a public audit report which may prejudice defence and national security (part of paragraph 37(2)(a)) or involve the disclosure of Cabinet deliberations or decisions (paragraph 37(2)(b)), and public disclosures relating to the other matters contained in paragraphs 37(2)(c) to 37(2)(f) of the Act.</p> <p>The Parliament, through the JCPAA, could be consulted on a confidential basis before any decision is made by the Executive to issue a certificate for any of the reasons set out in</p>		<p>Recommendation 3:                  The Committee recommends that the other issues raised by the Auditor-General in his submission to this inquiry be referred for further consideration as part of the next periodic review of the Auditor-General Act, including:</p> <ul style="list-style-type: none"> <li>• To consider amendments to distinguish between types of certificates to at least require confidential consultation with the Joint Committee of Public Accounts and Audit before certificates are issued for non-national security matters.</li> </ul>

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	paragraphs 37(2)(c) to 37(2)(f) of the Act.		
<p><b>B (ii). Consider a Parliamentary process if a proposed certificate affects the audit conclusion or information not otherwise prohibited from disclosure (p.22).</b></p> <p>The Attorney-General’s June 2018 certificate was not limited to protecting the disclosure of ‘particular information’ to which legal or other prohibitions on release otherwise applied. The certificate required the Auditor-General to omit analysis by the ANAO and part of the Auditor-General’s audit conclusion relating to the audit objective, which was to assess the effectiveness and value for money of this acquisition. Further, the Auditor-General has not received any information which would suggest the particular information the subject of the certificate could otherwise be withheld from the Parliament on the basis of a public interest immunity claim.</p>	<p>Where the Executive considers issuing a certificate affecting any part of an Auditor-General’s audit conclusion, or requiring the omission of information which is not otherwise prohibited from public disclosure, for any of the reasons stated in paragraphs 37(2)(a) to 37(2)(f) of the Act, the Parliament, through the JCPAA, could be consulted on a confidential basis before any decision is made by the Executive to require such an omission.</p>	<p>A key issue for the ANAO was the implications for accountability and transparency to the Parliament when its analysis or conclusions cannot be disclosed. The Auditor-General was unable during the public hearings to respond to questions relating to the effectiveness and value for money of this procurement. The inability to provide assurance to the Parliament is an issue of concern to the Committee (paragraph 2.9).</p>	<p>Recommendation 3:                  The Committee recommends that the other issues raised by the Auditor-General in his submission to this inquiry be referred for further consideration as part of the next periodic review of the Auditor-General Act, including:</p> <ul style="list-style-type: none"> <li>• That the Joint Committee of Public Accounts and Audit be consulted on a confidential basis if a proposed certificate affects the audit conclusion or information not otherwise prohibited from disclosure.</li> </ul>
<p><b>B (iii). Consider the disclosure of all applications for a certificate to Parliament and their referral to</b></p>	<p>It would be appropriate for the Parliament and the Auditor-General to be informed in a timely manner</p>	<p>Further, the Committee expects that, in reaching a decision upon any application under section 37,</p>	

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<p><b>the Auditor-General in the first instance (p.22).</b></p> <p>It is unclear whether the Attorney-General was approached only by Thales Australia Limited for a certificate, or by other parties.</p>	<p>of all applications to the Executive for a certificate. The Act does not provide for this at present.</p> <p>Further, on receipt of any application for a certificate by the Executive, it would be appropriate for the Auditor-General to be asked to first consider the public interest under paragraph 37(1)(a) of the Act, and to advise the Parliament, the applicant and the Executive of the outcome. The Auditor-General is best placed, in the first instance, to consider any claims for the omission of information from a public audit report, drawing on audit evidence collected by the ANAO and having regard to any legal or other prohibitions applying to the public disclosure of particular information.</p> <p>In the defence context, the ANAO seeks the advice of the Department of Defence to inform the Auditor-General's consideration of such matters, and the Auditor-General can, and has, arranged to meet with the Secretary of Defence and the Chief of the Defence Force to discuss the disclosure of sensitive information.</p>	<p>the Attorney-General would request advice from departments and the Auditor-General so as to ensure his or her decision is fully informed (paragraph 2.19).</p> <p>In its 1996 report on the independence of the Auditor-General, the Committee stated that 'as a matter of broad principle, the Committee considers that the Audit Committee of Parliament should play a role in monitoring the exercise of any Executive direction to the Auditor-General'. The Committee is of the view that a statutory notification requirement could be considered. This might be modelled on processes that already exist for other parliamentary committees (paragraph 2.24).</p> <p>A notification requirement would serve the dual purpose of ensuring the Parliament is informed and allowing the Joint Committee of Public Accounts and Audit (JCPAA) to monitor the process as it proceeds. Should the Committee have concerns, it would be open to it to write to the Attorney-General if further information is required (paragraph 2.25).</p>	
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	<p>Under this approach, the Executive would only consider issuing a certificate under paragraph 37(1)(b) of the Act after the Auditor-General has had an opportunity to consider any application for the omission of information in a public report, under paragraph 37(1)(a).</p>		
<p><b>B (iv). Consider a time limit for issuing any certificate (pp.22-3).</b></p> <p>The Executive’s consideration of the certificate issued in June 2018 took almost six months. Defence’s procurement of Hawkei vehicles continued during these deliberations and the ANAO’s performance audit engagement also continued in accordance with the ANAO Auditing Standards. The audit report was updated to reflect material events in the procurement until July 2018, resulting in additional audit costs. The Auditor-General informed the Executive (through the Attorney-General) on a number of occasions of his obligation under subsection 17(4) of the Act to present performance audit reports for tabling as soon as practicable after their completion, and was informed that a decision</p>	<p>To avoid undue delay to the completion of an audit and reporting to Parliament, and to prevent additional avoidable costs, a time limit could be placed on Executive decision-making under paragraph 37(1)(b) of the Act.</p> <p>The Act currently provides for a consultation period of 28 calendar days for the receipt of entity comments on a draft performance audit report. This may also be a reasonable time period for Executive consideration of any application for a certificate. Additional time may be required if other processes are introduced to enhance Parliamentary scrutiny of the operation of section 37.</p>	<p>While the Committee notes the Auditor-General’s concern that the lack of a statutory timeframe impacts on his obligation to table a report as soon as practicable, the Committee considers it is essential that any consideration of a certificate be conducted as thoroughly as possible. At the same time, the Committee sees merit in a statutory timeframe that includes a formal mechanism so that the Attorney-General can report that any request is under active consideration (paragraph 2.22).</p> <p>A self-executing provision to obtain additional time should a timeframe be unable to be met would appear to be an appropriate means to address any concerns about a statutory obligation. This is a matter that the Committee of the 46<sup>th</sup> Parliament could consider (paragraph 2.23).</p>	<p>Recommendation 2:</p> <ul style="list-style-type: none"> <li>• That detailed consideration be given by the Committee to the proposal that a statutory timeframe be legislated in which the Attorney-General is required to make a decision in regards to a section 37 application, and included in this legislative amendment is a mechanism for the Attorney-General to self-execute time extensions for this decision, subject to notification of the extension to the Auditor-General and the Joint Committee of Public Accounts and Audit; and</li> <li>• That this proposal be examined on the next occasion a certificate is issued under section 37 of the <i>Auditor-General Act</i> or at the next review of the <i>Auditor-General Act</i>, whichever is the earlier.</li> </ul>

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<p>would be made without unreasonable delay.</p>			
<p><b>B (v). Consider the provision of substantive reasons for any certificate (p.23).</b></p> <p>There is limited transparency to Parliament regarding the Executive’s substantive reasons for issuing the June 2018 certificate, and the Act only provides for strictly formal reporting to the Parliament on any certificate. Subsection 37(4) states that if the Auditor-General omits particular information from a public report because the Attorney-General has issued a certificate under paragraph 37(1)(b) in relation to the information, the Auditor-General must state in the report: (a) that information (which does not have to be identified) has been omitted from the report; and (b) the reason or reasons (in terms of subsection 37(2)) why the Attorney-General issued the certificate.</p> <p>Further, the considerations leading to the issuing of the certificate have not been made known nor explained to the Auditor-General, and the certificate does not provide</p>	<p>Transparency and accountability to the Parliament would be strengthened if substantive reasons were provided to the Parliament on a confidential basis, through the JCPAA, if a certificate is issued by the Executive. The provision of substantive reasons for any certificate would also assist the Auditor-General in the administration of paragraph 37(1)(a) of the Act.</p>		<p>Recommendation 3:</p> <ul style="list-style-type: none"> <li>• The Committee recommends that the other issues raised by the Auditor-General in his submission to this inquiry be referred for further consideration as part of the next periodic review of the Auditor-General Act, including:             <ul style="list-style-type: none"> <li>– That substantive reasons be provided when a certificate is issued.</li> </ul> </li> </ul>



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<p>detail on the substantive reasons for issuing the certificate. As a consequence, the Auditor-General remains unaware as to why the reasons set out in paragraph 37(2)(a) of the Act apply to the information that the certificate requires be omitted from the Auditor-General’s report to Parliament. This is of particular concern because Thales Australia Limited applied for a certificate on the grounds set out in paragraph 37(2)(e) of the Act—relating to unfair prejudice to commercial interests—while the certificate issued in June 2018 went further and was also based on paragraph 37(2)(a) of the Act, relating to prejudice to the security, defence or international relations of the Commonwealth. The certificate and certification process are therefore of limited assistance to the Auditor-General’s future consideration of the public interest under paragraph 37(1)(a) of the Act.</p>			
<p><b>B (vi). Consider requiring the Auditor-General to provide any confidential report to the Parliament (pp.23-4).</b></p>	<p>Transparency and accountability to the Parliament would be strengthened if the Auditor-General were required to provide any confidential report to the JCPAA, in addition to Ministers. This approach</p>		<p>Recommendation 3:                  The Committee recommends that the other issues raised by the Auditor-General in his submission to this inquiry be referred for further consideration as part of the next</p>

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<p>The JCPA recommended in 1994 that the Auditor-General be required to give a copy of a report containing ‘sensitive’ information to the Chairman of that Committee as well as to Ministers (JCPA, Report 331, 1994, p.77). That Committee also recommended in 1996 that where the Executive orders the Auditor-General to suppress sensitive audit information on the grounds of national security, the Audit Committee of Parliament should receive an unabridged copy of the audit report and/or a copy of the suppressed information (JCPA, Report 346, 1996, p.69).</p>	<p>would also ensure unfettered reporting from the Auditor-General to the Parliament.</p>		<p>periodic review of the Auditor-General Act, including:</p> <ul style="list-style-type: none"> <li>– A provision for a confidential report to be provided to at least the Chair of the Joint Committee of Public Accounts and Audit along with relevant Ministers.</li> </ul>
<p><b>C. Parliamentary privilege (p.24).</b></p> <p>Issues of Parliamentary privilege arose in the context of a Federal Court action brought against the Auditor-General in the course of the Hawkei audit. The parties to the litigation incurred substantial legal costs. External legal costs of some \$223,000 (ex GST) were incurred by the ANAO to address issues relating to the certificate and Federal Court actions.</p>	<p>There would be benefit in resolving any uncertainties.</p>	<p>The Committee reaffirms the view of previous Committees in recognising that the provision of parliamentary privilege is an essential element in protecting the office of the Auditor-General. The Committee considers that the privileges committees should consider the matter in more detail, including the possibility of legislative amendments to seek to put the matter beyond doubt (paragraph 2.32).</p>	<p>Recommendation 4:</p> <ul style="list-style-type: none"> <li>– The Committee recommends the referral to the privileges committees of both the Senate and the House of Representatives the question of whether the draft reports and working papers of the Auditor-General are subject to parliamentary privilege.</li> </ul>

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<p>The JCPAA has previously considered the application of Parliamentary privilege to the work of the Auditor-General in reports 386 (2001) and 419 (2010), and identified a number of uncertainties.</p>		<p>There is further discussion at paragraphs 2.27 to 2.32 of the report.</p>	
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**TABLE 3 - TABLE OF SPECIFIC CHANGES TO THE AUDITOR-GENERAL ACT RECOMMENDED IN THE AUDITOR-GENERAL'S SUBMISSION OF 27 NOVEMBER 2020**

This table sets out the specific suggestions for changes to the Act from ANAO's submission to the review organised by the JCPAA's terms of reference.

The table also sets out supplementary comments regarding the potential impact on the independence score of the ANAO as reported by Dr Gordon Robertson in the *Independence of Auditors General A 2020 update of a survey of Australian and New Zealand legislation* (the 2020 Independence Update). This report was included as Attachment E to the Auditor-General's submission to the JCPAA dated 27 November 2020 (the Submission).

REF	SUBMISSION RECOMMENDATION	RATIONALE FOR RECOMMENDATION	SUPPLEMENTARY COMMENTS	THEME AND PRINCIPLE
<b>ISSUES RELATING TO TERM OF REFERENCE 1: THE AUDITOR-GENERAL AND ANAO'S GOVERNANCE FRAMEWORK, INCLUDING THE INDEPENDENCE OF THE AUDITOR-GENERAL AND RESOURCING</b>				
1.a  [Paragraphs 27-32 of the Submission]	The ANAO recommends that the JCPAA consider whether the governance frameworks of the ANAO can be amended to better support ANAO independence and recognise the role of the Auditor-General as an independent officer of the Parliament such as by making the ANAO a Parliamentary Department.	Further detail about this recommendation is provided in Table 1 and also in the ANAO's response to Question on Notice 2.  Independence is the key overarching requirement of the International Organisation of Supreme Audit Institutions (INTOSAI) 2007 Mexico Declaration on SAI Independence (Mexico Declaration).  Independence comprises independence of mind and independence in appearance. Making the ANAO a Parliamentary Department would significantly enhance independence in appearance, as the ANAO would be seen to be independent from the Executive Government that it audits. As an executive agency the ANAO	In the 2020 Independence Update the ANAO score for managerial autonomy and reporting is impacted by zero scores in the areas of staffing independence and office autonomy. This reflects the ability of the Executive and / or public service bureaucracy to influence issues regarding staffing and whole of government policy directives. The jurisdictions which score a maximum of eight points for staffing independence are New Zealand (NZ) and New South	Parliamentary Department  Mexico Declaration Principle 8 (Financial, managerial and administrative autonomy and the availability of appropriate resources)

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		<p>is subject to the direction of the APS Commissioner and the Prime Minister (for example see issue 3.a below).</p> <p>Considering the Auditor-General is an independent officer of the Parliament and that audits are prepared for the purposes of the Parliament, to reclassify the ANAO as a Parliamentary Department is a better presentation of the operational reality. This would help provide clarity to audited entities that the audit is conducted for the purposes of the Parliament not for their benefit or the Executive Government more broadly. It could also assist with the parliamentary privilege issues that have been raised by audited entities and also by a Defence contractor in the Federal Court.</p>	<p>Wales (NSW), where staff are not public service employees. Similarly audit offices in NZ and NSW as well as the ACT score a maximum of eight points for office autonomy as they are structurally independent of Executive government.</p> <p>On this basis, the proposal to make the ANAO a Parliamentary Department would be expected to result in an increase in the overall independence score of 8 points.</p>	
<p>1.b [Paragraphs 37-39 of the Submission]</p>	<p>The ANAO recommends that the JCPAA consider if the JCPAA has an appropriate role in setting the ANAO's budget.</p> <p>The ANAO does not recommend any changes to the current approach of funding audits through appropriation from the Parliament.</p>	<p>While the system of having the ANAO's draft estimates prepared by the Executive Government and considered by the JCPAA is effective when there are no changes to the ANAO's budget, there are risks when there have been late budget changes such as occurred in 2018.</p> <p>A higher level of JCPAA involvement in setting the budget for the ANAO would contribute to the independence of the ANAO.</p> <p>For this reason the ANAO outlined the example that the JCPAA could have an explicit role in</p>	<p>In the 2020 Independence Update the ANAO score for managerial autonomy and reporting is also impacted by a score of three in the area of financial independence. This reflects the Executive being the decision-maker in respect of budget, but also recognises the role of the JCPAA in considering draft estimates and making recommendations to the Parliament on the budget.</p>	<p>Financial independence</p> <p>Mexico Declaration Principle 8 (Financial, managerial and administrative autonomy and the availability of appropriate resources)</p>

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		<p>providing the executive its view on proposals by the ANAO for changes to its budget, at the time the request for supplementation or the impact of a budget change is under consideration by the Executive.</p>	<p>In NZ, the Parliament decides on the level of funding for the Auditor-General, who submits its annual budget to Parliament directly through the Speaker.</p> <p>This model would be expected to result in an increase in the overall independence score of the ANAO of one point.</p>	
<p>1.c                  [Paragraphs 40-44 of the Submission]</p>	<p>The ANAO recommends that the JCPAA consider whether the appointment mechanisms for the Auditor-General can be conducted in a way that increases the Auditor-General's independence.</p>	<p>While the current process for appointing the Auditor-General has worked well, independence can be compromised if selection and appointment is by the Executive.</p>	<p>In the 2020 Independence Update the ANAO score for appointment of the Auditor – General is two points out of a possible eight. This reflects the appointment being proposed by the Executive, while recognising the JCPAA has a veto power. There is also no external supervision of the appointment process by an independent body.</p> <p>In the ACT, Victoria (Vic) and NZ, the appointment is made on a recommendation of the legislature or a Parliamentary Committee. In Vic and NZ the process is undertaken and supervised by a Parliamentary Committee.</p>	<p>Appointment of Auditor-General</p> <p>Mexico Declaration Principle 2 (independence of SAI heads and members, including security of tenure and legal immunity)</p>

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			<p>These jurisdictions score eight points for the appointment process, including supervision.</p> <p>Applying this model would be expected to result in an increase in the overall independence score of the ANAO of six points.</p>	
<p><b>ISSUES RELATING TO TERM OF REFERENCE 2: THE AUDITOR-GENERAL’S INFORMATION GATHERING POWERS AND CONFIDENTIALITY OF INFORMATION</b></p>				
<p>2.a  [Paragraphs 53-59 of the Submission]</p>	<p>The ANAO recommends that the JCPAA consider amendments to the Auditor-General Act or <i>Freedom of Information Act 1982</i> to provide additional protections from freedom of information for ANAO documents held by other entities.</p>	<p>Further detail about this issue is provided in the ANAO’s answer to Question on Notice 3.</p> <p>In summary, there is what appears to be a technical defect in the interaction between the Act and the <i>Freedom of Information Act 1982</i> (FOI Act). While the Auditor-General and ANAO are exempt from application of the FOI Act, once ANAO generated documents are in the custody of a third party, they are subject to the FOI Act and therefore potentially available to the general public. In the ANAO’s answer to Question on Notice 3, the ANAO outlined three possible legislative amendments that could be made to resolve this issue.</p> <p>The policy rationale for making one of these legislative amendments is that the confidentiality obligations in the Act reinforces that the Auditor-General and ANAO are</p>	<p>In its response to Question on Notice 3, the ANAO provided additional detail to that included in its Submission, by outlining three options for legislative amendments that the Parliament could make to resolve this issue.</p>	<p>The theme of this issue is FOI law rather than a principle of the Mexico Declaration</p>

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		<p>custodians of documents belonging to others and the Auditor-General and ANAO FOI exemption is part of protecting this information. ANAO generated documents frequently contain information that should be kept confidential either indefinitely or at least until the Auditor-General has made a final decision on the contents of the public audit report. For example, the ANAO may include detailed sensitive information in a report preparation paper that is intended to test a hypothesis with the audited entity and is not intended to be included in a final report. Another example is that a draft audit report might contain draft findings that are later removed, when further evidence is obtained or the Auditor-General has considered the audit findings.</p> <p>Due to the sensitivities of this information the Parliament has seen fit to protect it with the statutory confidentiality obligation in section 36 of the Act, which carries a penalty of up to 2 years imprisonment. However, section 36 is not recognised by the FOI Act as a secrecy provision capable of exempting a document from application of the FOI Act.</p>		
<p>2.b                  [Paragraphs 60 and 61 of the Submission]</p>	<p>The ANAO recommends that the JCPAA consider if the Act should clarify the Auditor-General's ability to disclose information to integrity agencies.</p>	<p>Subsection 36(2) of the Act specifically allows the Auditor-General to disclose particular information to the Commissioner of the Australian Federal Police (AFP) but not other agencies.</p>	<p>This amendment is not strictly necessary due to existing mechanisms in the Act to disclose information. However, it would reduce doubt and potentially allow broader</p>	<p>The theme of this issue is disclosure to integrity agencies rather than a principle of the Mexico Declaration</p>



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		<p>The ANAO proposed that for the avoidance of doubt, this should be expanded to reference other heads of integrity agencies, such as the Australian Commissioner for Law Enforcement Integrity, Inspector-General of Intelligence and Security, the Commonwealth Director of Public Prosecutions and any future Commonwealth Integrity Commissioner.</p> <p>The policy rationale for this change is that the Auditor-General could provide information that may be of interest to other integrity agencies and that would assist those agencies in performing their integrity functions.</p>	<p>disclosures, as subsection 36(2) is subject to a public interest test that differs slightly from other disclosure mechanisms in the Act.</p>	
<b>ISSUES RELATING TO TERM OF REFERENCE 3: THE INTERACTION OF THE ACT AND OTHER RELEVANT LEGISLATION</b>				
<p>3.a(i)  [Paragraphs 65-67 of the Submission]</p>	<p>The ANAO recommends that the JCPAA consider options for improvements in relation to the interaction of the Act with the PGPA Act to ensure that these Acts interact in a manner that supports the Auditor-General's mandate, information access and ability to report on audit work.</p>	<p>The ANAO recommended in its Submission that the JCPAA consider whether the Executive should retain the ability to demand reports, documents and information of the ANAO's activities under section 19 of the PGPA Act.</p> <p>The policy rationale for modifying the application of section 19 of the PGPA Act to the Auditor-General is that the duty to keep the responsible Minister and Finance Minister informed presents a potential threat to the Auditor-General's independence.</p>	<p>More information is provided in the ANAO's response to Questions on Notice 4 and 5.</p> <p>The ANAO notes that the risk of section 19 of the PGPA Act would be reduced, but not completely removed if the ANAO was to become a Parliamentary Department.</p>	<p>Mexico Declaration Principle 8 (Financial, managerial and administrative autonomy and the availability of appropriate resources)</p>
<p>3.a(ii)</p>	<p>The ANAO recommends that the JCPAA consider options for improvements</p>	<p>The ANAO recommended in its Submission that the JCPAA consider whether it is appropriate for information to be able to be withheld from</p>	<p>The risk of section 105D is unchanged regardless of the governance structure of the</p>	<p>Mexico Declaration Principle 6 (Freedom to decide</p>

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<p>[Paragraphs 68-72 of the Submission]</p>	<p>in relation to the interaction of the Act with the PGPA Act to ensure that these acts interact in a manner that supports the Auditor-General's mandate, information access and ability to report on audit work.</p>	<p>ANAO reports under section 105D of the PGPA Act.</p> <p>The policy rationale for modifying the application of section 105D of the PGPA Act is that while it performs a necessary function, section 105D applies very broadly and presents an independence risk as it allows an instrument to modify the application of any section within Parts 2-3 and 3-2 of the PGPA Act, including the audit obligations. Therefore a section 105D instrument could be used to limit the Auditor-General's ability to conduct financial statement audits. The most serious risks are that an instrument could exempt an entity from preparing financial statements, specify that those statements are not subject to audit, or remove information, including parts of conclusions, from a public audit report without marked-up redactions to make it clear to the Parliament that key information has been removed.</p>	<p>ANAO including whether it is a Parliamentary Department.</p>	<p>the content and timing of audit reports and to publish and disseminate them)</p>
<p>3.b(i) [Paragraphs 76-85 of the Submission]</p>	<p>The ANAO recommends that the JCPAA consider... the application of parliamentary privilege to the Auditor-General's information-gathering powers.</p>	<p>The ANAO noted issues with application of parliamentary privilege to the Auditor-General's information-gathering powers, as this issue has been raised in two separate Senate Estimates hearings and Senator Paterson wrote to the Auditor-General about it. The ANAO considers that there is no need for legislative change in this area but raised these issues for JCPAA consideration.</p>		<p>The theme of this issue is parliamentary privilege rather than a principle of the Mexico Declaration</p>

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<p>3.b(ii)  [Paragraphs 86-94 of the Submission]</p>	<p>The ANAO recommends that the JCPAA consider... application of parliamentary privilege to draft audit reports and working papers.</p>	<p>The ANAO considers that the Parliament and Executive Government’s position in relation to application of parliamentary privilege to ANAO draft reports and working papers has been settled by advice from former Clerk of the Senate and Solicitor-General. The risk of future litigation delaying tabling of an audit report in Parliament would be reduced, if the Act more clearly clarified the application of parliamentary privilege to ANAO draft reports, extracts of draft reports and working papers.</p> <p>This could be done by, for example, inserting a clarification note in the Act. The policy rationale for this proposed change is that it would provide a simple explanation of a complicated issue to explain the intention of the Parliament for the benefit of any future reader, including a person considering litigation against the Auditor-General or a Court hearing such litigation.</p>		<p>The theme of this issue is parliamentary privilege rather than a principle of the Mexico Declaration</p>
<p>3.b(iii)  [Paragraphs 95-96 of the Submission]</p>	<p>The ANAO recommends that the JCPAA consider... application of parliamentary privilege to audit reports published on the ANAO website.</p>	<p>The ANAO also considers the risk that the ANAO publishes audit reports on the ANAO website after they are tabled in the Parliament and that it is not beyond doubt that these copies of audit reports may not be protected by Parliamentary privilege. The JCPAA could clarify application of parliamentary privilege to reports published on the ANAO website through either the Act or a separate order of the JCPAA or a House of Parliament.</p>		<p>The theme of this issue is parliamentary privilege rather than a principle of the Mexico Declaration</p>

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		The policy rationale for this proposed change is that this it would be a simple amendment that reduces a risk that parliamentary privilege does not apply to all copies of an audit report.		
<b>ISSUES RELATING TO TERM OF REFERENCE 4: THE AUDITOR-GENERAL’S CAPACITY TO INTIATE AUDITS INTO, AND EXAMINE THE PERFORMANCE OF ALL ENTITIES IN THE AUSTRALIAN GOVERNMENT SECTOR</b>				
4.a  [Paragraphs 97-105 of the Submission]	The ANAO recommends that the JCPAA consider making a similar recommendation to its recommendation 2 in Report 419, to provide the Auditor-General with the mandate to initiate the full range of audits of Commonwealth entities including performance audits, performance statement audits and assurance reviews of GBEs.	The ANAO provides information about this issue in response to Question on Notice 6.  In the past, many GBEs were entities preparing for privatisation that competed directly in the market and made profit without Government financial support (eg Qantas and the Commonwealth Bank). The GBEs in existence now have a more public-purpose, generally receive significant government investment and operate in different competitive environments. For example, there are no private sector entities competing directly with GBEs to build an inland rail route or a western Sydney airport.	The following ANAO supplementary comments apply to issues 4.a, 4.b(i) and 4.b(ii).  Western Australian (WA) <sup>5</sup> and Tasmanian (Tas) <sup>6</sup> legislation include provisions that establish the concept of a "related entity". Their Auditors-General are able to conduct financial and performance audit on any partnership and trust that involve government, as well as any entity that performs State entity functions through their "instrumentality". These provisions allow examination of any matter relating to public resources but are even broader as it could apply to performance of State entity	Mandate  Mexico Declaration Principle 3 (a sufficiently broad mandate and full discretion, in the discharge of SAI functions)
4.b(i)  [Paragraphs 111-113 of the Submission]	The ANAO recommends that the JCPAA consider resolving the technical mandate issues that limit the Auditor-General's ability to conduct audits of some bodies	The Norfolk Island Health and Residential Aged Care Service (NI Health) was established under the laws of Norfolk Island, before self-government on Norfolk Island was abolished, it is not a corporate Commonwealth entity and falls outside of the Auditor-General’s mandate.		Mandate  Mexico Declaration Principle 3 (a sufficiently broad mandate and full discretion, in the

<sup>5</sup> See s 17 of [Auditor General Act 2006 \(WA\)](#)

<sup>6</sup> See s 22 of the [Audit Act 2008 \(TAS\)](#)

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		<p>This is a technical exclusion simply based on the fact that the PGPA Act defines Commonwealth entities as a body corporate that is established by a law of the Commonwealth.</p>	<p>functions without resources being provided.</p> <p>Victorian legislation is similarly very broad by virtue of the concept of "associated entity".</p>	<p>discharge of SAI functions)</p>
<p>4.b(ii)  [Paragraphs 11-11 of the Submission]</p>	<p>The ANAO recommends that the JCPAA consider resolving the technical mandate issues that limit the Auditor-General's ability to conduct audits of some bodies</p>	<p>The PGPA Act states that control has the meaning in the accounting standard that applies for the purpose of deciding whether a company has to prepare consolidated financial statements under the <i>Corporations Act 2001</i> (this is Australian Accounting Standard AASB 10 Consolidated Financial Statements (AASB 10)).</p> <p>The AASB 10 definition of "control" is based on the concept applicable to Corporations Act companies that all entities have a single ultimate parent company. This concept is not always applicable to corporate Commonwealth entities.</p> <p>This gives rise to an outcome that some entities despite being controlled 100% by the Commonwealth fall outside of the Auditor-General's mandate.</p> <p>For example, The Auditor-General cannot audit the National DAB Licence Company Limited (DAB) because neither the ABC nor SBS 'controls' the DAB as it is equally owned at 50% by ABC and SBS.</p>	<p>The 2020 independence update considers each of the following (none of which the Commonwealth legislation includes in mandate) as separate categories for the purpose of scoring coverage mandate - trusts, deemed entities, related entities, affiliated entities (six points each, total of 24 points). This is the reason for the large gap in score between the Commonwealth and other jurisdictions.</p> <p>Currently the Act provides some of these powers through the concept of "Commonwealth Partner" for the Auditor-General to follow the money and conduct performance audit on any entity receiving money from the Government with an</p>	<p>Mandate</p> <p>Mexico Declaration Principle 3 (a sufficiently broad mandate and full discretion, in the discharge of SAI functions)</p>

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			<p>agreement to do certain or not do certain things.</p> <p>However, the Auditor-General's mandate is not as broad. Firstly the WA and Tas legislation is not limited to following money. Also the follow the money powers do not apply to financial statement audits and specifically exclude anything that is already covered by the Act, meaning that all GBEs are specifically excluded.</p> <p>For this reason the ANAO recommended that a purposive statement could be included in the Act to express Parliament's intention that the Auditor-General is the auditor of all entities that are funded by appropriations or controlled by the Commonwealth.</p> <p>Further, the ANAO notes that issue 4.b(ii) could be resolved by a specific amendment to the PGPA Act definition of control, to clarify how it applies to joint control by</p>	
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			corporate Commonwealth entities.	
4.c  [Paragraph 117 of the Submission]	The ANAO recommends that the JCPAA consider implementation of its recommendation in JCPAA Report 469 to enable mandatory annual audits of performance statements by the Auditor-General, following the completion of the pilot of assurance audits of entities' annual performance statements.	Question on Notice 7 provides further information about this issue.  ANAO audits have consistently highlighted that the information presented in the performance statements falls short of fully meeting the object of the PGPA Act - to provide the Parliament and the public with meaningful information. The policy rationale for implementing mandatory audits of performance statements is to drive improvements in performance reporting by Commonwealth entities. Further it would resolve independence issues, while the Auditor-General may conduct a performance audit at any time, section 40 of the PGPA Act constrains the Auditor-General's independence in conducting an audit of the annual performance statements of Commonwealth entities unless requested by either the Minister for Finance or the responsible minister.	ACT, NZ and WA legislation mandate annual audits of performance information. These jurisdictions score an additional two points in the 2020 Independence Update to reflect this mandate.	Mandate  Mexico Declaration Principle 3 (a sufficiently broad mandate and full discretion, in the discharge of SAI functions)

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<b>ISSUES RELATING TO TERM OF REFERENCE 5: ACCESSABILITY AND TRANSPARENCY OF REPORTS AND AUDIT                      CONCLUSIONS, INCLUDING OPERATION OF SECTION 37 OF THE ACT</b>				
5.a  [Paragraphs 118-125 of the Submission]	The ANAO recommends that the JCPAA consider implementation of its recommendations in JCPAA Report 478 (Report 478 was titled <i>Issuing of a Certificate under section 37 of the Auditor-General Act 1997</i> )	No further information is provided here as Table 2 is focused on the issue of application section 37 of the Act.	In the 2020 Independence Update the ANAO score for content, timing and publication of reports is 18, being the lowest score of all jurisdictions. The ability of the Attorney-General, under s37, to issue a certificate prohibiting the release of information if the Attorney-General considers that it is not in the public interest to release it results in a zero score in respect of sensitive information. WA legislation has a similar provision. The absence of such a provision results in a score of six in other jurisdictions.	Sensitive information  Mexico Declaration Principle 6 (Freedom to decide the content and timing of audit reports and to publish and disseminate them)
5.b  [Paragraphs 126-129 of the Submission]	The ANAO recommends that the JCPAA consider if amendments should be made in relation to the accessibility of audit responses and the implementation of audit	The ANAO's Question on Notice 8 provides further information about this issue.  The policy rational for this change is that a major benefit of audits is that they can drive improvements but only if audit recommendations are considered and appropriately implemented.	In the 2020 Independence Update the ANAO score for follow-up mechanisms is four, which is consistent with all jurisdictions except the ACT. The ACT is the only jurisdiction with an explicit legislative requirement for	Follow-up mechanisms  Mexico Declaration 7 (existence of effective follow-up mechanisms on SAI recommendations)



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	recommendations by audited entities.	The JCPAA could also consider whether the Act or the PGPA Act should bind accountable authorities to implement audit recommendations that they agreed to, or the PS Act could introduce a duty for accountable authorities to implement agreed recommendations of the Parliament and the ANAO.	recommendations to be followed up. In all other jurisdictions follow-up is at the discretion of the Parliament and/or its Committees.  The ACT score for this principle is eight, however this model is not proposed in the ANAO submission.	
<b>ISSUES RELATING TO TERM OF REFERENCE 6: THE AUDIT PRIORITIES OF THE PARLIAMENT</b>				
6  [Paragraphs 130-136 of the Submission]	The ANAO makes no recommendations in relation to the audit priorities of the Parliament.	The ANAO considers that the current provisions in the PAAC Act and the Act are appropriate and did not recommend any further amendments.		
<b>ISSUES RELATING TO TERM OF REFERENCE 7: THE ROLE AND APPOINTMENT OF THE INDEPENDENT AUDITOR</b>				
7  [Paragraphs 137-139 of the Submission]	The ANAO is not and should not be involved in the role and appointment of the Independent Auditor and therefore makes no recommendations in relation to this term of reference.	It is not appropriate that the ANAO has influence over, or express a view about, the arrangements for the role and appointment of the Independent Auditor.	In the 2020 Independence Update the ANAO score for managerial autonomy and resourcing – external auditor is two which reflects that the external auditor is appointed by the Executive while recognising that the JCPAA has veto power.  In the ACT, NZ and Victoria the external auditor is appointed by the Parliament, resulting in	Appointment of external auditor  Mexico Declaration Principle 8 (Financial, managerial and administrative autonomy and the availability of appropriate resources)

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			<p>a score of four for those jurisdictions.</p> <p>The ANAO also notes that the JCPAA may wish to consider the issues the ANAO has raised in relation to appointment of the Auditor-General in issue 1.c as the similar considerations apply to appointment of the Independent Auditor.</p>	
<b>ISSUES RELATING TO TERM OF REFERENCE 8: ANY RELATED MATTERS</b>				
<p>8.a</p> <p>[Paragraphs 142-144 of the Submission]</p>	<p>The ANAO recommends that the JCPAA note the ANAO's operationalisation of subsections 17(4) and 18(2) of the Act and consider if it has any concerns with current processes.</p>	<p>The ANAO made no recommendations in relation to this issue but would consider further if the JCPAA had concerns with the current processes in relation to embargoed copies of performance audit reports.</p> <p>Embargoed reports are provided to interested persons up to two days before the reports are tabled in the Parliament. Interested persons primarily include responsible Ministers and entity accountable authorities who are required by the Act to receive a copy. To facilitate those persons receiving information other persons such as ministerial staff and senior public servants also receive embargoed reports.</p>		<p>The theme of this issue is operationalisation of embargoed reports rather than a principle of the Mexico Declaration</p>
<p>8.b</p>	<p>The ANAO recommends that the JCPAA consider reducing the section 19</p>	<p>Question on Notice 8 provides further information about this issue.</p>		<p>The theme of this issue is consultation periods, rather than</p>

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<p>[Paragraphs 145-150 of the Submission]</p>	<p>consultation period to a standard of 21 days, with the ability for the Auditor-General to set a different consultation period of not less than 14 days.</p>	<p>The policy rationale for this change is that the 28 day timeframe which has been in place since 1979 unnecessarily slows the performance audit process and does not take account of the efficiencies of electronic document production, review and communication. ANAO processes ensure that the 28 days to comment on the proposed report is not the audited entity's first opportunity to see the issues the ANAO is raising as the report preparation papers are provided for early consultation before providing proposed reports. Therefore audited entities should already know what comments are likely to be made before receiving the proposed report and are unlikely to require the full 28 days.</p>		<p>a principle of the Mexico Declaration</p>
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