



Auditor-General for Australia



3 December 2009

Senator Helen Polley  
Chair  
Standing Committee on Finance and Public Administration  
PO Box 6100  
Parliament House  
CANBERRA ACT 2600

Dear Senator Polley

I refer to the letter from the Committee Secretary of 23 November 2009 in which the ANAO was invited to provide a written submission to the Committee's Inquiry into Independent Arbitration of Public Interest Immunity Claims.

The ANAO's submission is at Attachment A. The Australian National Audit Office contact officer is Mr Russell Coleman, who can be contacted on (02) 6203 7464.

Yours sincerely

Ian McPhee

**INQUIRY INTO INDEPENDENT ARBITRATION OF PUBLIC INTEREST IMMUNITY CLAIMS**

**AUSTRALIAN NATIONAL AUDIT OFFICE SUBMISSION**

The committee has sought the views of the Australian National Audit Office (ANAO) regarding the role of the Auditor-General as an independent arbitrator in relation to claims made by a Minister or a Committee that documents and information are commercially confidential.

The ANAO considers it is important that any consideration by the Committee concerning a role that the Auditor-General could have in relation to public interest immunity claims ensures that the independence of the Auditor-General is not compromised.

To preserve the Auditor-General's independence, it is generally accepted that it is not appropriate for the Auditor-General to perform executive type roles. In years past, the Auditor-General has been involved from time to time in performing executive roles such as in relation to electoral redistribution committees and tax agents' registration boards. Previous governments, with the strong support of the ANAO, have removed these executive responsibilities from the Auditor-General. This has allowed the ANAO to focus on its primary auditing role.

The ANAO notes that the role of independent arbitrator would, in effect, mean that the Auditor-General would have a decision-making role, that is, akin to an executive role. It is suggested that such a role would be incompatible with the Auditor-General's independent audit role.

As the Committee will be aware, the Auditor-General gives close consideration to requests for audits by the Parliament and its Committees. The ANAO's annual audit of agencies' compliance with the Senate Order for Departmental and Agency Contracts is such an example. This audit includes a review of departmental and agency contract lists to assess the correctness of the use of confidentiality provisions. In doing this, the Auditor-General is performing an audit role, and reports the results to the Parliament.