

9 April 2009

The Secretary
Joint Committee of Public Accounts and Audit
Parliament House
CANBERRA ACT 2600

Dear Secretary

I refer to the inquiry by the Joint Committee of Public Accounts and Audit into the
Auditor-General Act 1997.

The office of the Commonwealth Ombudsman wishes to provide the attached submission.
Our contact office for this matter is Helen Fleming (02 6276 0170),
legal.foi@ombudsman.gov.au).

Yours sincerely



Dr Vivienne Thom
Acting Commonwealth Ombudsman

**Submission by the Acting
Commonwealth Ombudsman**

**INQUIRY INTO THE AUDITOR GENERAL
ACT 1997**

Submission by the Acting Commonwealth Ombudsman, Dr Vivienne Thom

April 2009

Introduction and summary

As with the Auditor-General, the Commonwealth Ombudsman forms part of a structure devised by the Commonwealth to ensure efficient and effective public administration. Both have an underlying purpose of securing integrity in government through the oversight of government activities.

To the extent that the work of the Auditor-General and the Ombudsman increasingly covers common ground, there is much to be said for a need to ensure that both agencies work closely together whilst retaining their independence from each other.

Background

The Commonwealth Ombudsman safeguards the community in its dealings with Australian Government agencies by:

- correcting administrative deficiencies through independent review of complaints about Australian Government administrative action
- fostering good public administration that is accountable, lawful, fair, transparent and responsive
- assisting people to resolve complaints about government administrative action
- developing policies and principles for accountability, and
- reviewing statutory compliance by law enforcement agencies with record keeping requirements applying to telephone interception, electronic surveillance and like powers.

Response to Terms of Reference

The Ombudsman strongly supports the independence of the Auditor-General. It notes that the Auditor-General has become an officer of the Parliament and suggests that, if the Committee considers this has assisted the actual and perceived independence of the office, that similar provision be made for the Ombudsman and comparable oversight agencies, for example, the proposed Information Commissioner.

Under the *Ombudsman Act 1976*, there is an express power for the Ombudsman to cease an investigation and transfer a complaint to a specified office-holder, for example, the Privacy Commissioner and the Australian Communications and Media Authority. The Ombudsman considers that this provision should operate generically so as to permit transfer of a complaint to an agency such as the Auditor-General even if it is not specifically named and that other Commonwealth legislation should establish mirroring provisions so as to enable matters to be transferred to the Ombudsman.

On a related point, the Ombudsman notes and commends the work of the Auditor-General in conducting audits aimed at improving the quality of service delivery by Commonwealth agencies. This work parallels an increasingly important part of the Ombudsman's activities¹, and the Ombudsman considers there is much to be said for facilitating cooperation between the agencies, while retaining the essential independence of each. This may require legislative support to enable free disclosure of information between the oversight bodies.

The Ombudsman considers that there is a case for providing the Auditor-General with an express role in relation to any new whistleblowing scheme. Especially where a disclosure may raise issues about financial management, corruption or waste, the particular expertise of the Auditor-General should be available to enable the Parliament and the public to be assured that matters raised by whistleblowers are properly considered. Information that becomes available through disclosures may help the Auditor-General to identify and target specific areas of activity.

The Ombudsman notes that the Auditor-General has significant powers under s 32 of the *Auditor-General Act 1997* to obtain information, including from persons other than agencies and officials. If concern should emerge about the way in which these powers are exercised, the Ombudsman's office notes that it would be consistent with its functions for it to have the role of examining records to ensure that intrusive powers are used appropriately and lawfully.

Point (e) of the Inquiry's terms of reference relates in part to the adequacy of the Auditor General Act to enable the Auditor-General to examine Commonwealth grants made to State and local governments.

The Ombudsman suggests that any difficulty could be addressed through cooperative arrangements between the Auditor-General and that office's state/territory counterparts. The Ombudsman Act sets out such arrangements in relation to the Ombudsman although to date, little use has been made of them partly because the prescribed process is considered to be more complex than may be warranted.

¹ The Ombudsman's website, www.ombudsman.gov.au, contains many examples of investigation reports of this kind.