

Introduction

Background

- 1.1 On 25 February 2009, the Joint Committee of Public Accounts and Audit (JCPAA) resolved to conduct an inquiry into the *Auditor-General Act 1997*. The terms of reference can be found at page xi.
- 1.2 The *Auditor-General Act 1997* (the Act) was enacted in October 1997. The Act, along with two companion Acts, the *Financial Management and Accountability Act 1997* (the FMA Act) and the *Commonwealth Authorities and Companies Act 1997* (the CAC Act) was introduced to replace the *Audit Act 1901*. This package of legislation is a principles-based accountability framework which was widely acknowledged as representing best practice.¹
- 1.3 The *Audit Act 1901*, the fourth Act to be passed by the first Federal Parliament, provided a legislative basis for the financial management of Commonwealth monies and the audit of related accounts. The *Audit Act 1901* also provided a legal foundation for the appointment of an Auditor-General.²
- 1.4 In 1989 this Committee's predecessor, the Joint Committee of Public Accounts (JCPA) initiated an inquiry as a result of its concern about public sector auditing at that time.³ The JCPA's report, *The Auditor-General – Ally of the People and the Parliament* addressed the key problems facing the then Auditor-General and was the impetus for the suite of new legislation

1 Joint Committee of Public Accounts and Audit, *Report 386: Review of the Auditor-General Act 1997*, p 2.

2 Joint Committee of Public Accounts, *Report 296, The Auditor-General: Ally of the People and Parliament*, p 13.

3 Joint Committee of Public Accounts, *Report 296, The Auditor-General: Ally of the People and Parliament*, p 3.

to replace the outdated *Audit Act 1901*.⁴ The JCPA's 1989 report also recommended that a parliamentary committee, an Audit Committee, be established to advise the Auditor-General on Parliament's audit priorities and consider the Australian Audit Office's finances in detail.⁵

1.5 In June 1994, the then Minister for Finance, the Hon Kim Beazley MP, introduced three Bills: the *Auditor-General Bill 1994*; the *Financial Management and Accountability Bill 1994*; and the *Commonwealth Authorities and Companies Bill 1994*.⁶

1.6 The Bills were referred to the Joint Committee of Public Accounts for review and in September 1994, the JCPA tabled *Report 331: An Advisory Report on the Financial Management and Accountability Bill 1994, the Commonwealth Authorities and Companies Bill 1994 and the Auditor-General Bill 1994, and on a Proposal to Establish an Audit Committee of Parliament*. The Committee made 39 recommendations several of which were designed to enhance the independence of the Auditor-General.⁷ However, the 1996 election was called and the Parliament was prorogued before agreement could be reached between the House of Representatives and the Senate on the Bills. The 1994 Bills therefore lapsed.

1.7 In 1996, the then Minister for Finance, the Hon John Fahey MP, indicated that a revised package of legislation would be introduced in the Spring sittings and requested the JCPA to:

Suggest appropriate measures that could be incorporated into the Auditor-General Bill, or other legislation, to support the functional independence of the Auditor-General, in keeping with the nature of that Office.⁸

1.8 In October 1996, the JCPA tabled *Report 346: Guarding the Independence of the Auditor-General*. The report contained 16 recommendations outlining a legislative framework to underpin the independence of the

4 Joint Committee of Public Accounts, *Report 346: Guarding the Independence of the Auditor-General*, p 5.

5 Joint Committee of Public Accounts, *Report 296, The Auditor-General: Ally of the People and Parliament*, p xvii.

6 Joint Committee of Public Accounts, *Report 331: An Advisory Report on the Financial Management and Accountability Bill 1994, the Commonwealth Authorities and Companies Bill 1994 and the Auditor-General Bill 1994, and on a Proposal to Establish an Audit Committee of Parliament*, p 1.

7 Joint Committee of Public Accounts, *Report 346: Guarding the Independence of the Auditor-General*, p 5.

8 Joint Committee of Public Accounts, *Report 346: Guarding the Independence of the Auditor-General*, p vii.

Auditor-General.⁹ The creation of an audit committee of the Parliament was also key to achieving the functional independence of the Auditor-General.¹⁰

The Auditor-General Act 1997

1.9 The *Auditor-General Act 1997* came into effect on 1 January 1998. At the same time, legislative amendments to the *Public Accounts Committee Act 1951* made the Joint Committee of Public Accounts the audit committee of the Parliament.

1.10 The main features of the *Auditor General Act 1997* included:

- a number of provisions that strengthened the independence of the office of the Auditor-General and the Australian National Audit Office (ANAO). In particular, the Act made the Auditor-General an independent officer of the Parliament;
- the strengthening of the Auditor-General's role as external auditor of Commonwealth agencies, authorities and companies and their subsidiaries. The Act provided the Auditor-General with a comprehensive mandate to conduct, with some limited exceptions, financial statement and performance audits of all government entities; and
- clarification of the Auditor-General's mandate and powers.¹¹

1.11 In 2001, the JCPAA conducted a review into the effectiveness of the Act. The objectives, scope and focus of that review were stated as follows:

...to provide an assurance function and test whether the functions of the Act are being properly fulfilled. This examination has identified a number of sections of the Act that could be enhanced through legislative amendment.¹²

1.12 In particular, the Committee examined *Section 19 – Comments on proposed reports; Sections 32 and 33 – Information gathering powers; and Section 37 – Sensitive information not to be included in public reports*. The review also

9 Joint Committee of Public Accounts, *Report 346: Guarding the Independence of the Auditor-General*, p xii.

10 Joint Committee of Public Accounts and Audit, *Report 386: Review of the Auditor-General Act 1997*, p 2.

11 Joint Committee of Public Accounts and Audit, *Report 386: Review of the Auditor-General Act 1997*, p 3.

12 Joint Committee of Public Accounts and Audit, *Report 386: Review of the Auditor-General Act 1997*, p 5.

focused on various aspects of the operation and procedures of the ANAO such as the circulation of reports to relevant Ministers and the Auditor-General's powers in regard to the actions of Ministers.¹³

- 1.13 The JCPAA tabled *Report 386: Review of the Auditor-General Act 1997* in August 2001. The Committee made five recommendations, four of which were accepted by Government. These recommendations were designed to clarify the distribution of performance audit reports; make provision for the inclusion of any comments on a proposed report in the final report; clarify the circumstances in which the Auditor-General may disclose copies or extracts of reports to entities and other parties during the course of the audit; and clarify the powers of the Auditor-General when sensitive information, the disclosure of which would be contrary to the public interest, was not to be included in a public report.
- 1.14 One recommendation was that the Privileges Committees of both Houses of Parliament examine whether ANAO draft reports and extracts of draft reports attract parliamentary privilege and if not, whether they should. To date, no action has been taken on this recommendation by either Privileges Committee (see discussion at page 34 onwards).
- 1.15 The *Auditor-General Amendment Bill 2008* introduced legislation to implement and build on the recommendations made by the JCPAA in its 2001 review. The Bill was passed unamended in February 2009 and although some recommendations had already been implemented administratively, they provided legislative certainty for the practices of the Auditor-General in relation to matters such as the distribution of draft reports.¹⁴

Purpose of the inquiry

- 1.16 The purpose of this inquiry is to review and report on whether the provisions of the *Auditor-General Act 1997* remain adequate in the modern public sector environment.
- 1.17 The Committee's review is timely. The Auditor-General now performs a number of functions which do not sit precisely within the traditional financial assurance and performance audit roles of his office. Nor are they explicitly provided for in the Act. For example, the ANAO now reviews information provided by the Defence Materiel Organisation (DMO) and reports annually to Parliament along with the DMO on the status of major

13 Joint Committee of Public Accounts and Audit, *Report 386: Review of the Auditor-General Act 1997*, p 7.

14 *Auditor-General Amendment Bill 2008*, Explanatory Memorandum, p 1.

Defence acquisition projects. Between July 2008 and March 2010 the Auditor-General also held responsibility for reviewing government advertising campaigns which exceeded \$250,000 for compliance with the *Guidelines on Campaign Advertising by Australian Government Departments and Agencies*.¹⁵

- 1.18 In 2001, the JCPAA stressed the need to periodically review critical legislation such as this Act to ensure that its objectives are being met.¹⁶ It has been nine years since the JCPAA conducted a review.

Conduct of the inquiry

- 1.19 The terms of reference for the inquiry were advertised in March 2009. Additionally, all major portfolio agencies, private sector organisations and individuals were invited to provide submissions. The terms of reference and other information about the inquiry were also advertised on the JCPAA's internet homepage at:

■ <http://www.aph.gov.au/house/committee/jpaa/agact/index.htm>

- 1.20 Nineteen submissions were received. A list of the submitters can be found at Appendix A. The Committee also received one exhibit the details of which can be found at Appendix B.
- 1.21 Four public hearings were held during 2009 and 2010 (see list at Appendix C) during which a number of witnesses gave evidence to the Committee.
- 1.22 Transcripts from the hearings are available through the Committee's website.

Structure of the report

- 1.23 The report comprises five chapters largely corresponding to the inquiry's terms of reference. Chapter two discusses legislative support for new functions the Auditor-General has recently undertaken and chapter three addresses a number of areas in the Act that require clarification such as the Auditor-General's capacity to audit Government Business Enterprises. Chapter four examines submissions made to strengthen the audit independence of the Auditor-General and the final chapter addresses cross-jurisdictional and Commonwealth jurisdictional arrangements.

15 See Department of Finance and Deregulation, *Campaign Advertising by Australian Government Departments and Agencies*.

16 Joint Committee of Public Accounts and Audit, *Report 386: Review of the Auditor-General Act 1997*, p 1.

- 1.24 The Committee makes a number of recommendations on the basis of the evidence it received. These recommendations are set out in full at page xv.