

IPAA Submission to JCPAA Inquiry into the Auditor-General Act 1997

This submission has been prepared on behalf of the Institute of Public Administration Australia by Professor John Wanna (Editor of the Australian Journal of Public Administration) and Andrew Podger (National President).

(a) The Focus of the Act

The Auditor-general has three mandated powers – financial statement audits, performance audits of an agency, and a general performance audit. This provides wide powers but various compositions of government activities may sit between these formal legislative powers. The old *Audit Act* had a provision to allow the Auditor-General to declare a ‘special audit’. The power was largely undefined in the legislation and was not frequently used – but it did allow some broad ranging reviews to be undertaken on occasions (eg into Aboriginal enterprise schemes in the mid 1970s). This provision could be explored to see whether it would improve the legislative backing to the Auditor-General in conducting performance audits over such major projects as mentioned in the Committee Inquiry’s terms of reference.

Reviewing Government Advertising. We are uncomfortable about the Auditor-General’s recently established role in reviewing government advertising. The issue of government advertising is an important one, our unease going only to the particular role now given to the Auditor-General. Our unease goes to the risks involved in the Auditor-General participating so closely in the decisions of the Executive, and to the competence of the Auditor-General to make firm and authoritative judgments on the matters involved.

Traditionally, the Auditor-General would examine expenses in this area through financial statement auditing. There would be little scope for performance auditing such expenses.

Most importantly, the Auditor-General is now being asked to give a view on every advertising campaign involving more than a threshold level of spending, and before final commitments are entered into. While he has clarified his focus is on the processes used by agency heads and on their assurances against the

guidelines set, we are concerned he is being drawn into the Executive decision-making process which he is meant to audit on behalf of the Legislature.

The Auditor-General is being asked to ascertain specifically whether any advertising campaigns are legitimately authorised, properly targeted and non-political.

The recent High Court case lodged by Greg Combet of the ACTU against the former government's advertising under WorkChoices determined that within the outcomes appropriation framework such advertising was 'legitimately authorised'. It is not clear how the Auditor-General would be capable or authoritative in making such determinations in the future. The High Court should remain the arbiter of whether advertising is legally authorised.

Whether the advertising is 'properly targeted' is a difficult issue to untangle – even for marketers and advertising professionals. The issue of targeting is a political and policy determination, and often driven by timelines, costs, choice of medium etc. For example, if an advertising campaign was targeting say young and vulnerable workers would 'targeting' include broadsheet newspapers or not? How would an Auditor-General test whether the appropriate targeting had occurred, over what timeframe, with what impact etc. This is not a job for an Auditor-General.

Similarly, declaring whether something being advertised is political or 'non-political' is a minefield for the Auditor-General. It involves a subjective determination, nuanced in the contours of the day-to-day politics. We may all be able to spot blatant political advertising, but so much of what a government advertises is not in this category and would be subject to various legitimate explanations. Was the terrorism alert advertising political or not? Was the industrial relations advertising political or not? These are not matters to be decided by the Auditor-General. The Auditor-General has, understandably, avoided giving direct clearance, or a direct refusal to clear, relying instead on explicit judgments by agency heads, but that simply ducks the issue rather than resolves it.

We suggest a better solution might be to involve the Public Service Commissioner who has carriage of ethical standards under the *Public Service Act 1999* and who presents the annual State of the Service Report tabled in

the Parliament. It is noteworthy that the current Commissioner has issued new guidelines on official conduct in response to the controversial issue in 2007 of a senior public servant appearing in government advertisements. She is also establishing an ethical guidance unit to advise public servants facing ethical dilemmas, which could well include interpretations of being 'apolitical' (the term used in the first APS Value in S10 of the Act) in managing government advertising. A more systematic role, as has now been given to the Auditor-General, might fit much more comfortably with the Commission which has independence but is not outside the Executive arm of government.

(b) Rights, Obligations and Powers

The Auditor-General already has wide powers and authority to scope and conduct audits. Section 32 of the Act talks of the responsibility of persons to cooperate and provide evidence to the Auditor-General (information, oral evidence, documents). But the term 'person' is not defined. Section 30 states that the *Audit-General Act* does not apply to the powers, privileges and immunities of parliament and parliamentarians. Yet Ministers and their staff could be valuable witnesses. In the MRI case, the then Minister for Health and Aged Care, Dr Michael Wooldridge, invited the Auditor-General to conduct an investigation and instructed his staff to give their full cooperation. The Act could clarify how far the Auditor-General's powers extend to ministers and ministerial offices, especially if not invited to investigate by the relevant minister.

(c) Capacity to Audit GBEs

We have no suggestions for changing the categories of agencies that the Auditor-General audits. As a general rule, we would prefer that the Auditor-General audit all government agencies including Government Business Enterprises, but can understand the commercial factors that might limit the role in regard to GBEs.

(d) Independence of the Auditor-General

The Auditor-General nominally enjoys considerable formal independence but there is still scope for improvement. The Auditor-General's position is not advertised and to some this may appear like a grace and favour appointment

from someone emanating from the central agencies of government. No private sector auditor has ever been appointed, nor someone from academia or other professions.

The current appointment process is not transparent and appears perfunctory – the executive (the Finance Minister) routinely informs the JCPAA of the name of the intended candidate possibly only a few days before the announcement is made. There may be some private processes through which the JCPAA indicates views on potential candidates and its acceptance of the name that is eventually and formally brought forward by the Finance Minister, but that is not at all clear. The impact of the requirement to consult the JCPAA is not obvious – could the JCPAA effectively stop an unacceptable (to it) appointment or does it merely note the intended appointment?

Perhaps something more consistent with the processes recently introduced by the current government for appointment of statutory authority and other agency heads could apply. These involve public advertising and a selection advisory committee including the APS Commission. The Parliamentary Service Commissioner could be involved in the case of the Auditor-General and, in addition to advertising, the professional accounting bodies could be invited to suggest names.

The budget of the Audit Office is supposedly separately allocated and voted upon by the JCPAA but we understand that the budget is provided by Finance and the Auditor-General is given no option but to state that the resources are sufficient to perform his/her duties. Pat Barrett spoke out after he was no longer the Auditor-General that the budget was often too little to accomplish what he felt he needed to undertake. Possible reforms here would be for the JCPAA to nominate a preferred budget to Finance having received advice from the Auditor-General (requiring the government to transparently accept or not the JCPAA's preferred budget); for the ANAO to be given a three year one line budget with draw-downs and carry-forwards; or for the ANAO's budget to be benchmarked against all other OECD Audit offices on some a pro-rata basis.

(e) Capacity to Examine Grants to State and Local Governments

There is a glaring gap in the accountability of Commonwealth grants to states – especially where specified results or performance indicators are agreed. The Commonwealth Auditor-General does not audit these programs against the agreed objectives, nor do state Auditors-General. States may report back on their claimed performance but the Commonwealth has no real check as to their validity and reliability. While the Productivity Commission's *Reports of Government Services* present an improvement on previous arrangements, there has been criticism of the quality of the data and the reports are not audited by anyone. Occasionally some improvement takes place under some agreements, as occurred with the 2003 Australian Health Care Agreements which led to the annual reports issued by the Commonwealth Department of Health and Ageing on public hospitals performance. But these too are not fully audited. The foreshadowed reporting by the COAG Reform Council, while most welcome, does not seem to have any audit process defined at this point either.

We would support the notion of developing a regime of joint audits – joint teams of Audit staff from the Commonwealth and States/Territories (supplemented by private sector audit experts if necessary). These teams could review program performance, including reports and systems used by the COAG Reform Council, and report to both or all parliaments. It would be hoped that a joint report of findings could be agreed, although provision will have to be made for the event of disagreements or different emphases. Such joint reports could highlight issues such as the need for common data definitions that might be developed by specialist bodies such as the Australian Institute of Health and Welfare.

Concluding Comments

The Auditor-General is an 'officer of the Parliament' under the *Auditor-General Act*. While this term has never been fully explained or defined, the designation is greatly valued by ANAO. It signifies considerable independence from the Executive which we believe is important for an Auditor-General as the primary function is to audit the accounts and performance of the activities of the Executive on behalf of the Legislature. The Auditor-General also needs to

retain a degree of independence from the Parliament, remaining above the political debates which are necessarily central to Parliamentary processes, and to work mostly in cooperation with agencies under ministerial control. ANAO staff are employed under the *Public Service Act* and, for the purposes of that Act, the Auditor-General is a statutory Agency Head; they are all therefore subject to the APS Values which imply they are part of the Executive arm of government notwithstanding this considerable degree of independence. We accept this is appropriate, but highlight the balancing involved.

Balancing the roles, and exercising independence wisely, depends enormously on the qualities of the person appointed, as well as the legislative provisions. Judgments must be made continuously on such matters as advising agencies on good practice in particular situations (requiring close understanding of the immediate context) while keeping above the actual decision-making which may later be subject to audit review.

Our suggestions above are particularly aimed to give the Auditor-General greater clarity about the role and responsibilities, and to address current challenges such as Commonwealth-State shared responsibilities, while also strengthening the processes around appointments. We have mostly been well served by the Auditors-General we have had, but there is room to make more firm the merit-based appointment process.

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