

## Strengthening the audit independence of the Auditor-General

### Background

4.1 The independence of the Auditor-General is fundamental to public accountability in Australia. In 1996, the Joint Committee of Public Accounts in its report *Guarding the independence of the Auditor-General* stated:

If the Parliament cannot ensure the independence of the Auditor-General from the Executive, and if the Executive can effectively inhibit the effective discharge of audit functions by starving the Auditor-General of resources, then the chain of public accountability is broken.<sup>1</sup>

4.2 The independence of the Auditor-General is clearly defined in Part 3 of the *Auditor-General Act 1997*, which states in part:

- the Auditor-General is an independent officer of the Parliament;
- subject to this Act and to other laws of the Commonwealth, the Auditor-General has complete discretion in the performance or exercise of his or her functions or powers. In particular, the Auditor-General is not subject to direction from anyone in relation to:
  - ⇒ whether or not a particular audit is to be conducted; or
  - ⇒ the way in which a particular audit is to be conducted; or

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<sup>1</sup> Joint Committee of Public Accounts, *Report 346: Guarding the Independence of the Auditor-General*, p 7.

⇒ the priority to be given to any particular matter.<sup>2</sup>

- 4.3 There were only two issues raised specifically under this term of reference: the appointment of the Auditor-General and the Auditor-General's budget allocation.

## Appointment of the Auditor-General

- 4.4 The appointment of the Auditor-General is set out in Schedule 1 of the *Auditor-General Act 1997*. The Auditor-General is appointed by the Governor-General on the recommendation of the Minister.<sup>3</sup> The Minister is required to refer the proposed recommendation to the Joint Committee of Public Accounts and Audit for approval. The legislation further states that the Minister must not make a recommendation to the Governor-General unless the JCPAA has approved the proposed recommendation by absolute majority. The Act does not provide any detail on the selection process for a candidate.
- 4.5 The *Public Accounts and Audit Act 1951* outlines the role of the JCPAA in the appointment of the Auditor-General. Specifically, the JCPAA has forty-four days to approve or reject the recommendation and if a decision is not made within the required time period, the Committee is considered to have approved the proposal.
- 4.6 Whilst acknowledging the integrity of all current and former Auditors-General, the Institute of Public Administration Australia submits that when the position of Auditor-General is not advertised it could be seen as a 'grace and favour'<sup>4</sup> appointment for someone from the central agencies of government. The IPAA is also concerned that the appointment process is not transparent and appears perfunctory.<sup>5</sup>
- 4.7 Additionally, the IPAA submits that the impact of the requirement to consult the JCPAA is not clear, stating:

... 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

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2 Subsections 8(1)-(4) of the *Auditor-General Act 1997* (Cth).

3 Schedule 1 of the *Auditor-General Act 1997* makes the following note: The effect of section 19A of the *Acts Interpretation Act 1901* is that "the Minister" refers to the Minister who administers this clause. The administration of Acts or particular provisions of Acts is allocated by Administrative Arrangements Orders made by the Governor General.

4 Institute of Public Administration Australia, sub 5, npn.

5 Institute of Public Administration Australia, sub 5, npn.

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.<sup>6</sup>

4.8 In the 2009 paper “Can the Executive influence the ‘independence’ of the Auditor-General”, Dr Charles Lawson elaborates on the role of the JCPAA in the appointment of the Auditor-General. Lawson maintains that selection of the candidate is subject only to a veto by the JCPAA and states:

...the majority of members of the JCPAA are government Members so that a majority decision about appointment ...will merely reflect the Executive’s perspective.<sup>7</sup>

4.9 The Auditor-General told the Committee that there was no question that there could be a more open process for the appointment of the Auditor-General. However, he also advised the Committee that at the time of his appointment a recruitment consultant had been employed by government to find a candidate and, although it was not advertised in the press, there was a lot of work done behind the scenes to find a suitable candidate.<sup>8</sup>

4.10 Mr Glenn Poole, the convenor of the Australian Council of Auditors-General expressed the view that the appointment of the Auditor-General should be as open and transparent as possible so that there cannot be any suggestions that might impact on the independence of the person who is appointed.<sup>9</sup>

4.11 The IPAA outlined to the Committee a possible alternative to the current appointment process. This involved a model similar to that within the Executive arm, where ‘the Public Service Commissioner plays a significant role in relation to a range heads of agencies and statutory authorities’.<sup>10</sup> Under this model, the final decision still rests with government, however, it involves a process of transparent merit protection arrangements, a selection committee and advertisement of the position.<sup>11</sup>

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6 Institute of Public Administration Australia, sub 5, npn.

7 Lawson, C. (2009). Can the Executive influence the independence of the Auditor-General under the Auditor-General Act 1997 (Cth)? *Australian Journal of Administrative Law*, 16, 90.

8 Mr Ian McPhee PSM, transcript, 22 June 2009, p 20.

9 Mr Glenn Poole, transcript, 22 June 2009, p 28.

10 Mr Andrew Podger AO, transcript, 22 June 2009, p 36.

11 Mr Andrew Podger AO, transcript, 22 June 2009, p 36.

- 4.12 Under the *Auditor-General Act 1997* only the current Auditor-General has been appointed to date.<sup>12</sup>

### **Committee comment**

- 4.13 The Committee is satisfied that the current arrangements for the appointment of the Auditor-General are appropriate and it therefore makes no recommendation in this regard. In the interests of enhancing transparency around the appointment process, however, the Committee notes the recent selection process undertaken by the Department of Prime Minister and Cabinet to re-appoint the Independent Auditor of the ANAO, Mr Geoff Wilson on 19 March 2009. In particular, the Committee welcomed the advice it received on the selection process, including advice on the applications received and a briefing on the reasoning behind the recommended appointment.
- 4.14 The Committee expects that a similarly transparent process including full advice on the applications received and a briefing on the rationale behind the recommended appointment would be followed with regard to the appointment of the Auditor-General.

### **Budget resourcing**

- 4.15 In its submission, the IPAA also suggests possible reforms to the budget process for the ANAO. In particular, it suggests that the JCPAA could nominate a preferred budget to the Department of Finance and Deregulation after the Auditor-General has provided advice to the Committee. The IPAA assert that this would require the Government to transparently accept or reject the JCPAA's preferred budget.<sup>13</sup>
- 4.16 The IPAA also made further suggestions that the ANAO 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 pro-rata basis.<sup>14</sup>
- 4.17 The Committee notes that the IPAA's suggestion about the budget process was based on the following assumption:

The budget of the Audit Office is supposedly separately allocated and voted upon by the JCPAA but we understand that the budget

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12 Viewed at Australian National Audit Office, <http://www.anao.gov.au/director/aboutus/history.cfm> on 20 April 2010.

13 Institute of Public Administration Australia, sub 5, npn.

14 Institute of Public Administration Australia, sub 5, npn.

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.<sup>15</sup>

- 4.18 At the hearing on 22 June 2009, the Auditor-General challenged this assumption and reiterated that each year the JCPAA is provided with the Auditor-General's views about resourcing.<sup>16</sup>
- 4.19 For the sake of clarification, the Committee outlines its responsibilities in this regard as follows.
- 4.20 Through the *Public Accounts and Audit Committee Act 1951* (sub-sections 8(j) and (l)) the Committee is empowered to consider and make recommendations to the Parliament on the draft budget estimates of the ANAO. As with other public sector agencies, the ANAO is funded each year through the federal budget process. However, over the second half of the financial year the Auditor-General briefs the Committee on the funds he/she will be seeking in the budget and why, and the ANAO's informal understanding of which of its proposals are likely to be successful or unsuccessful.
- 4.21 In support of this process the *Auditor-General Act 1997* empowers the Auditor-General to disclose to the JCPAA, before the federal budget, the draft estimates for the Audit Office (effectively the ANAO's budget submission). The Committee then has the information it requires to make formal representations to Government on behalf of the ANAO if necessary.
- 4.22 Immediately before the federal budget is delivered to the Parliament, the ANAO briefs the Committee on its funding allocation for that year. The Committee Chair then makes a statement to the Parliament, on budget day, on whether the Committee believes the ANAO has been given sufficient funding to carry out its functions.
- 4.23 This power is intended to discourage governments from trying to influence the Auditor-General by unduly restricting his/her funding, and is reinforced by the Committee having the information needed to make representations to the Executive Government on behalf of the ANAO if necessary.

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15 Institute of Public Administration Australia, sub 5, npn.

16 Mr Ian McPhee PSM, transcript, 22 June 2009, p 20.

**Committee comment**

- 4.24 The Committee has a unique role in scrutinising the proposed budget for the ANAO and it makes representations to Government when necessary in advance of the federal budget.
- 4.25 The Committee takes its role very seriously and discharges this obligation with great diligence. The Committee sees no need for any legislative amendment to the current arrangements.
- 4.26 In the interests of transparency, however, the Committee accepts that it may be prudent for any of its written representations to the Government to be published unless there are compelling reasons for not doing so.
- 4.27 Further, with regard to the IPAA's suggestion that the ANAO be given a three-year one line budget, the Committee has publicly endorsed calls from the Auditor-General for the ANAO's funding to be placed on a more sustainable long-term footing by indexing its budget to the rate of growth in the public sector.<sup>17</sup>

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17 Ms Sharon Grierson MP, *Report by the Joint Committee of Public Accounts and Audit on the 2008-2009 Draft Estimates for the Audit Office*, p 3.