

JOINT SELECT COMMITTEE ON THE PARLIAMENTARY BUDGET OFFICE

Inquiry into the Parliamentary Budget Office

SUBMISSION

Australian National Audit Office



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Introduction

The following comments are provided to the Committee based on the ANAO's own experiences and our broad understanding of the operation of PBOs in a number of other countries, and the proposed role of the Australian PBO to:

support the work of the Parliament by providing information and advice to all members of Parliament on Budget related matters including financial analysis and policy costing; and to promote a greater public awareness of key budget and fiscal policy issues.

Mandate of the PBO

As with any new body, the ANAO suggests that the PBO's mandate should be clearly articulated in the enabling legislation, distinguishing if necessary, between functions that are mandatory and those that could be undertaken at the discretion of the PBO.

In this regard it is suggested that the roles proposed for the PBO, as mentioned above, would need to be further specified to assist in assuring that the authority for the work of the PBO is clear and is not subject to ongoing debate. For example, it is suggested that the legislation, or the supporting Explanatory Memorandum, would need to be clear about the PBO's mandate relating to questions of policy. In this regard, the ANAO notes that the mandate of other PBOs, including the recently established NSW PBO, generally does not extend to the development of policy proposals and is restricted to policy proposals put forward by parliamentary leaders or individual Parliamentarians.

Consideration also needs to be given to the scope and boundaries of the PBO's work, particularly the extent to which the PBO has the authority to provide advice to Parliamentary Committees, noting that the NSW PBO's mandate does not include providing advice and costings to Committees of the NSW Parliament. Further, the PBO's role in providing analysis to the Parliament about forward trends and the state of the nation's budget position would need to be decided.

Independence

As the Committee would be aware, the independence of the Auditor-General is an essential prerequisite to enable the Auditor-General to operate in an effective apolitical manner. In a similar vein, it is suggested that arrangements to ensure the PBO is able to function in an independent manner, free from government or political interference would be a necessary prerequisite to enable the PBO to operate effectively.

The specific arrangements to achieve the necessary independence of the PBO are ones for the Parliament to decide, but having regard to the ANAO's experience, it is suggested that the following matters should be addressed in the PBO's enabling legislation:

- the method of appointment and termination of the Head of the PBO, and the status of the Office of the Parliamentary Budget Office
- the method by which the remuneration of the Head of the PBO is determined

- the extent of the PBO's discretion in determining its own work program and priorities
- arrangements for determining the PBO's budget, and
- the PBO's reporting arrangements.

The ANAO suggests that a useful starting point in considering the arrangements that could apply in these matters is the relevant provisions of the *Auditor-General Act 1997*.

As the Committee would also be aware, the Auditor-General Act has a range of provisions, including the involvement of the Joint Committee of Public Accounts and Audit in relation to the ANAO's budget and work program, that are designed to protect the independence of the Auditor-General.

The ANAO notes that the submission by the Department of Parliamentary Services, in canvassing the institutional arrangements for the PBO, discusses a number of options including an option to establish the PBO as an adjunct to the ANAO¹ or the Productivity Commission.

In view of the proposed specialised role of the PBO and the existing functions of the Parliamentary Library, there would appear to be benefits in the PBO operating under the umbrella of the Department of Parliamentary Services in a manner similar to the Parliamentary Library. Should the PBO be established as a separate authority, resource efficiencies could be achieved if the PBO was able to utilise the corporate support services of an existing agency under the umbrella of a Memorandum of Understanding or similar arrangement.

As the Committee is aware, the focus of our work is on past performance (financial and administrative), rather than on potential policy measures, costing projections and assumptions. Further, the body of auditing and assurance standards by which the ANAO undertakes its responsibilities is largely directed at historical information and performance. It is for these reasons that the ANAO has not been in favour of any suggestion that it audit the Government's budget or elements of the budget.

Access to information and records

The ANAO considers that to be effective, the PBO would require full and free access to all information and records necessary to perform its functions. As such, it is considered that the PBO's enabling legislation would need to provide legislative authority for the PBO to access relevant information and records held by agencies and other bodies in a timely manner. Depending on the breadth of the proposed role, access to Cabinet documents may be required. In this regard, if the PBO's mandate were not to extend to the development of policy options, the ANAO considers it is unlikely there would be a need for the PBO to access Cabinet documents.

¹ The Auditor-General is an independent statutory office holder who is responsible directly to the Parliament, with complete discretion in the conduct of his or her work. While the Special Minister of State has administrative responsibility for the ANAO, the Auditor-General does not report to a Minister in relation to his or her audit and related functions.

The PBO's access powers would need to be complemented by strict confidentiality requirements.

Reporting arrangements

It would also be important that the PBO's enabling legislation set out that Office's reporting responsibilities. It is suggested that determining the extent to which the PBO will report publicly the results of its budget analysis, advice or briefings, will be a critical issue as will the extent of any reporting restrictions imposed on it. Based on the experience of the ANAO, public reporting would enhance both the overall transparency and accountability of the PBO.

Nevertheless, providing the PBO with broad powers of access together with its public reporting responsibilities would also require consideration be given to restrictions on it to publish certain information. In this regard, it is suggested that a similar public interest test to that applying to the Auditor-General in s37 of the Auditor-General Act should be considered by the Committee.

Resourcing and staffing arrangements

The ANAO is not in a position to comment on the level of resources that the PBO may require to meet its responsibilities but it would be important that it receive sufficient funding to be able to fulfil its mandate. As noted earlier, consideration could be given to providing a Parliamentary Committee with the responsibility to make recommendations to the Government and the Parliament on the PBO's budget in a similar manner to the JCPAA in respect of the ANAO's budget.

The PBO would need to be staffed by people with specialist skills and experience, and would require the flexibility to engage specialist contractors as required and to second staff from other agencies on an agreed basis.

Review arrangements

The ANAO considers it would be beneficial for the operation of the PBO to be subject to an independent review after two or three years to assess whether the PBO is meeting its objectives and whether any changes to its mandate or operating arrangements should be considered.

Consequential impacts

The ANAO also suggests that the Committee consider possible implications the establishment of the PBO will have on existing legislative requirements such as those contained in the *Charter of Budget Honesty Act 1998*.

Note: Extracts of the provisions of the Auditor-General Act referred to in this submission are reproduced in the Appendix.

Relevant extracts of the Auditor-General Act 1997

The following are extracts of the *Auditor-General Act 1997* referred to in the ANAO's submission to the Joint Select Committee on the Parliamentary Budget Office.

8 Independence of the Auditor-General

- (4) 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:
- (a) whether or not a particular audit is to be conducted; or
 - (b) the way in which a particular audit is to be conducted; or
 - (c) the priority to be given to any particular matter.

9 Appointment, conditions etc. for Auditor-General

Schedule 1 sets out the conditions of appointment and other matters that have effect in relation to the office of Auditor-General.

Schedule 1—Appointment, conditions of appointment etc. for Auditor-General

1 Appointment of Auditor-General

- (1) The Auditor-General is to be appointed by the Governor-General, on the recommendation of the Minister, for a term of 10 years.

2 Minister must refer recommendation for appointment of Auditor-General to the Joint Committee of Public Accounts and Audit

- (1) The Minister must not make a recommendation to the Governor-General under clause 1 unless:
- (a) the Minister has referred the proposed recommendation to the Joint Committee of Public Accounts and Audit for approval; and
 - (b) the Committee has approved the proposal.
- (2) A referral under paragraph (1)(a) must be in writing and may be withdrawn by the Minister at any time.

Note: Section 8A of the *Public Accounts and Audit Committee Act 1951* deals with how the Joint Committee of Public Accounts and Audit approves proposals.

Schedule 1 continued

3 Remuneration of Auditor-General

- (1) The Auditor-General is to be paid the remuneration that is determined by the Remuneration Tribunal. However, if no determination of that remuneration by the Tribunal is in operation, the Auditor-General is to be paid the remuneration that is prescribed by the regulations.
- (2) The Auditor-General is to be paid such allowances as are prescribed by the regulations.
- (3) This clause has effect subject to the *Remuneration Tribunal Act 1973*.
- (4) The Consolidated Revenue Fund is appropriated for payments under this clause.

5 Resignation

The Auditor-General may resign by giving the Governor-General a signed resignation notice.

6 Removal from office etc.

- (1) The Governor-General may remove the Auditor-General from office if each House of the Parliament, in the same session of the Parliament, presents an address to the Governor-General praying for the removal of the Auditor-General on the ground of misbehaviour or physical or mental incapacity.
- (2) The Governor-General must remove the Auditor-General from office if the Auditor-General does any of the following:
 - (a) becomes bankrupt;
 - (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors;
 - (c) compounds with his or her creditors;
 - (d) assigns his or her remuneration for the benefit of his or her creditors.
- (3) If the Auditor-General is:
 - (a) an eligible employee for the purposes of the *Superannuation Act 1976*; or
 - (b) a member of the superannuation scheme established by the Trust Deed under the *Superannuation Act 1990*; or
 - (c) an ordinary employer-sponsored member of PSSAP, within the meaning of the *Superannuation Act 2005*;

the Governor-General may, with the consent of the Auditor-General, retire the Auditor-General from office on the ground of physical or mental incapacity.

10 Auditor-General to have regard to audit priorities of Parliament etc.

In performing or exercising his or her functions or powers, the Auditor-General must have regard to:

- (a) the audit priorities of the Parliament determined by the Joint Committee of Public Accounts and Audit under paragraph 8(1)(m) of the *Public Accounts and Audit Committee Act 1951*; and
- (b) any reports made by that Committee under paragraph 8(1)(h) or 8(1)(i) of that Act.

32 Power of Auditor-General to obtain information

- (1) The Auditor-General may, by written notice, direct a person to do all or any of the following:
 - (a) to provide the Auditor-General with any information that the Auditor-General requires;
 - (b) to attend and give evidence before the Auditor-General or an authorised official;
 - (c) to produce to the Auditor-General any documents in the custody or under the control of the person.

Note: A proceeding under paragraph (1)(b) is a "judicial proceeding" for the purposes of Part III of the *Crimes Act 1914*. The Crimes Act prohibits certain conduct in relation to judicial proceedings.

- (2) The Auditor-General may direct that:
 - (a) the information or answers to questions be given either orally or in writing (as the Auditor-General requires);
 - (b) the information or answers to questions be verified or given on oath or affirmation.

The oath or affirmation is an oath or affirmation that the information or evidence the person will give will be true, and may be administered by the Auditor-General or by an authorised official.

- (3) A person must comply with a direction under this section.

33 Access to premises etc.

- (1) The Auditor-General or an authorised official:
 - (a) may, at all reasonable times, enter and remain on any premises occupied by the Commonwealth, a Commonwealth authority or a Commonwealth company; and
 - (b) is entitled to full and free access at all reasonable times to any documents or other property; and
 - (c) may examine, make copies of or take extracts from any document.
- (2) An authorised official is not entitled to enter or remain on premises if he or she fails to produce a written authority on being asked by the occupier to produce proof of his or her authority. For this purpose, **written authority** means an authority signed by the

Auditor-General that states that the official is authorised to exercise powers under this Division.

- (3) If an authorised official enters, or proposes to enter, premises under this section, the occupier must provide the official with all reasonable facilities for the effective exercise of powers under this section.

36 Confidentiality of information

- (1) If a person has obtained information in the course of performing an Auditor-General function, the person must not disclose the information except in the course of performing an Auditor-General function or for the purpose of any Act that gives functions to the Auditor-General.
- (2) Subsection (1) does not prevent the Auditor-General from disclosing particular information to the Commissioner of the Australian Federal Police if the Auditor-General is of the opinion that the disclosure is in the public interest.
- (2A) Subsection (1) does not prevent a person (the *information holder*) from disclosing information to another person under section 23A if the information holder does so in the circumstances permitted by that section.
- (2B) A person commits an offence if:
 - (a) information is disclosed to the person; and
 - (b) the information is disclosed in circumstances permitted by section 23A; and
 - (c) the information is not disclosed to the person because the person is performing an Auditor-General function; and
 - (d) the person uses or discloses the information.
- (2C) Subsection (2B) does not apply if the Auditor-General has consented to the use or disclosure.
- (3) A person who receives a proposed report, or an extract from a proposed report, under section 19 must not disclose any of the information in the report, or the extract, except with the consent of the Auditor-General.

37 Sensitive information not to be included in public reports

- (1) The Auditor-General must not include particular information in a public report if:
 - (a) the Auditor-General is of the opinion that disclosure of the information would be contrary to the public interest for any of the reasons set out in subsection (2); or
 - (b) the Attorney-General has issued a certificate to the Auditor-General stating that, in the opinion of the Attorney-General, disclosure of the information would be contrary to the public interest for any of the reasons set out in subsection (2).
- (2) The reasons are:
 - (a) it would prejudice the security, defence or international relations of the Commonwealth;

- (b) it would involve the disclosure of deliberations or decisions of the Cabinet or of a Committee of the Cabinet;
- (c) it would prejudice relations between the Commonwealth and a State;
- (d) it would divulge any information or matter that was communicated in confidence by the Commonwealth to a State, or by a State to the Commonwealth;
- (e) it would unfairly prejudice the commercial interests of any body or person;
- (f) any other reason that could form the basis for a claim by the Crown in right of the Commonwealth in a judicial proceeding that the information should not be disclosed.

(3) The Auditor-General cannot be required, and is not permitted, to disclose to:

- (a) a House of the Parliament; or
- (b) a member of a House of the Parliament; or
- (c) a committee of a House of the Parliament or a joint committee of both Houses of the Parliament;

information that subsection (1) prohibits being included in a public report.

(4) If the Auditor-General omits particular information from a public report because the Attorney-General has issued a certificate under paragraph (1)(b) in relation to the information, the Auditor-General must state in the report:

- (a) that information (which does not have to be identified) has been omitted from the report; and
- (b) the reason or reasons (in terms of subsection (2)) why the Attorney-General issued the certificate.

(5) If, because of subsection (1), the Auditor-General:

- (a) decides not to prepare a public report; or
- (b) omits particular information from a public report;

the Auditor-General may prepare a report under this subsection that includes the information concerned. The Auditor-General must give a copy of each report under this subsection to the Prime Minister, the Finance Minister and any responsible Minister.

53 Joint Committee of Public Accounts and Audit may request draft estimates for Audit Office

- (1) The Joint Committee of Public Accounts and Audit may request the Auditor-General to submit to the Committee draft estimates for the Audit Office for a financial year before the annual Commonwealth budget for that financial year.
- (2) The Auditor-General must comply with the request in time to allow the Committee to consider the draft estimates and make recommendations on them before the budget.

Note: For the Committee's powers to consider draft estimates and make recommendations, see paragraphs 8(1)(j) and (l) of the *Public Accounts and Audit Committee Act 1951*.