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Senator Minchin asked Could you take it on notice to supply to the committee

- i. evidence that the ANAO had tabled reports in the caretaker period prior to the Regional Partnerships report?
- ii. evidence that the ANAO prior to the 2007 election had tabled reports during caretaker periods?

Response:

- i. Four reports were tabled during the 2007 caretaker period prior to the Regional Partnerships report.
- ii. The below table provides information on the number of reports tabled during the caretaker period of each of the last four elections.

Election year	Caretaker period	No. of days in period	No. of reports tabled
2007	17/10 - 3/12	48	6
2004	31/8 - 9/10	40	0
2001	8/10 - 10/11	34	2
1998	31/8 - 3/10	34	4

Details of reports tabled and tabling dates is at Attachment A.

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Senator Robert Ray asked could the ANAO provide the committee with a copy of the legal advice sought in relation to the timing of the tabling of reports during caretaker periods?

Response:

A copy of the legal advice sought in relation to the tabling of reports during caretaker periods is at Attachment B.

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Senator Murray asked I would ask you on notice whether you could provide to the committee at the earliest opportunity the real effects of the efficiency dividend cut and your views on whether it is manageable or whether it will have a negative effect on the broader fiscal objective of the government, which is to reduce unnecessary expenditure or wasteful expenditure?

Response:

The impact of the application of the one off 2% efficiency dividend on the ANAO amounts to a reduction of just over \$5 m over 4 years to ANAO resources. Coupled with the changes in ANAO estimates by the 0.25 per cent increase in efficiency dividend at the 2007-08 MYEFO, this takes the total impact of the efficiency dividend for the ANAO to \$7.5 m over 4 years.



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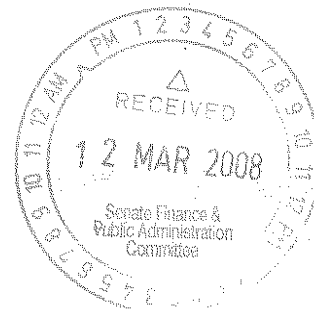
Our ref. 2000050094

10 September 2007

Mr Russell Coleman
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cc. Mr Ron Richards



Dear Mr Coleman

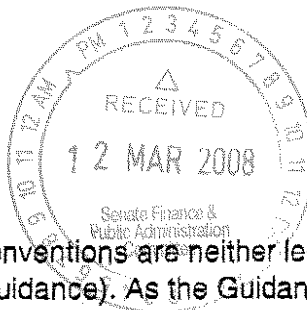
Caretaker Conventions

1. Thank you for your request for our comments in relation to the possible impact, if any, of the caretaker conventions on the responsibility of the Auditor-General to conduct performance audits and report on those audits. By way of background we note that the conventions apply during the 'caretaker period'. That period begins with the dissolution of the House of Representatives and ends when the election result is clear or a new government is appointed (if there is a change of government).

COMMENTS

2. We do not think that the conventions impose any legal impediment to the Auditor-General deciding in the exercise of his discretion to conduct a performance audit, eg, under s 15 of the *Auditor-General Act 1997* (the A-G Act) and, having completed that report, causing it to be tabled in accordance with his statutory duty (eg, on an 'out of session' basis in the Senate following prorogation of the Parliament and dissolution of the House of Representatives). In brief, that is because the conventions do not create legal rights and obligations (nor 'hard and fast' rules, for that matter) that, for example, override the statutory functions and powers and duties conferred on the Auditor-General. Rather, they represent, in effect, good administrative practice to be followed during the period preceding the election in order to ensure that an incoming government is not limited in its future actions and to protect the apolitical nature of the public service (see the Introduction to the *Guidance on Caretaker Conventions* issued by the Department of the Prime Minister and Cabinet - August 2007).



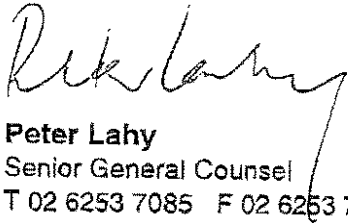


3. As mentioned above, the conventions are neither legally binding nor hard and fast rules (see para 1.6 of the Guidance). As the Guidance points out 'the conventions and practices have developed primarily in the context of the relationship between Ministers and their departments' (see para 1.5). However, the Guidance suggests that statutory authorities and other bodies 'should observe the conventions and practices unless to do so would conflict with their legal obligations or compelling organisational requirements' (see para 1.5). Paragraph 7 of the Guidance deals with Related Matters. It provides in para 7.1.2 as follows:

Reports of an administrative nature, such as annual reports, can be tabled out of session. However, where a report contains information that is likely to be controversial, consideration should be given to whether tabling should be deferred until after the caretaker period.
4. In the light of the objective and content of the conventions some may argue that it would be appropriate for the Auditor-General to take them into account, at least in so far as to do so would not be inconsistent with the performance of his functions and powers and duties.
5. How the Auditor-General chooses to respond to such an argument is, ultimately, a matter for the Auditor-General. As mentioned above, the conventions do not have the effect of imposing any legal obligation on the Auditor-General. His views in this regard would no doubt be informed by his understanding of the essential nature of the role of the Auditor-General taking into account, amongst other things, the status as an independent officer of the Parliament having, subject to the A-G Act, complete discretion in the performance of the functions and powers of the office (see section 8 of the A-G Act).
6. However, we do not think that the Auditor-General's functions and powers prevent him from deciding to defer tabling in particular circumstances. In this context, we note that the Auditor-General is required to cause a report to be tabled in each house of the Parliament 'as soon as practicable'. He is also to give a copy to the 'responsible Minister'. We do not think that the requirement to table 'as soon as practicable' is the same thing as a requirement to table 'as soon as possible'. Rather, we think it allows for a greater degree of flexibility as to timing of tabling, depending on particular circumstances. It seems to us that the particular circumstances could include those arising out of a caretaker period. Generally stated, these could include, for example, that the caretaker conventions which include practices aimed at preventing controversies about the role of the public service, would be in operation. Also, that Parliament would have been prorogued and the House of Representatives would have been dissolved. Although the Senate remains in existence and a report could therefore be tabled there 'out of session', there is no scope to do that in the case of the House. And that the 'responsible Minister' would be in a caretaker role and in accordance with the conventions may not be in a position to respond to matters in a report. In summary, we think there would be scope for the Auditor-General to defer tabling in particular circumstances.

7. We would be happy to discuss the issues further.

Yours sincerely



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