



The Parliament of the Commonwealth of Australia
Joint Committee of Public Accounts

REPORT 346

Guarding the Independence of the Auditor-General

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DUTIES OF THE COMMITTEE

The Joint Committee of Public Accounts is a statutory committee of the Australian Parliament, established by the *Public Accounts Committee Act 1951*.

Section 8(1) of the Act describes the Committee's duties as being to:

- examine the accounts of the receipts and expenditure of the Commonwealth including the financial statements transmitted to the Auditor-General under sub-section (4) of section 50 of the *Audit Act 1901*;
- examine the financial affairs of authorities of the Commonwealth to which this Act applies and of inter-governmental bodies to which this Act applies;
- examine all reports of the Auditor-General (including reports of the results of efficiency audits) copies of which have been laid before the Houses of the Parliament;
- report to both Houses of the Parliament, with such comment as it thinks fit, any items or matters in those accounts, statements and reports, or any circumstances connected with them, to which the Committee is of the opinion that the attention of the Parliament should be directed;
- report to both Houses of the Parliament any alteration which the Committee thinks desirable in the form of the public accounts or in the method of keeping them, or in the mode of receipt, control, issue or payment of public moneys; and
- inquire into any question in connection with the public accounts which is referred to it by either House of the Parliament, and to report to that House upon that question.

The Committee is also empowered to undertake such other duties as are assigned to it by Joint Standing Orders approved by both Houses of the Parliament.



MINISTER FOR FINANCE

Mr Alexander Somlyay, MP
Chairman
Joint Committee of Public Accounts
Parliament House
CANBERRA ACT 2600

7 2 AUG 1996

Dear Mr Somlyay *Alex*,

As you may recall, the package of legislation (3 main Bills plus consequentials) to replace the *Audit Act 1901* had not been passed before Parliament was prorogued for the Election. At that stage, a number of amendments - mainly to the Auditor-General Bill - had been passed by the Senate and rejected by the House but had not yet been reconsidered by the Senate.

In consultation with relevant colleagues (principally, the Parliamentary Secretary to the Treasurer, Senator Gibson) and the Auditor-General (Mr Barrett), I have sought to settle a revised package that I could put to Cabinet for agreement with a view to introduction early in the Spring Sittings. I should confirm that one of the proposals on which I shall be seeking Cabinet agreement is that the Joint Committee of Public Accounts (JCPA) be given the functions of an Audit Committee of Parliament, as recommended by the JCPA in its Report 331 and subsequently agreed by the Senate.

One aspect, however, having great significance for the ultimate complexion of the Auditor-General Bill is how best to effect the Coalition's policy to guarantee independence for the Office of the Auditor-General from the Executive. I am aware that the Australian National Audit Office, in the light of legal opinion obtained on the matter, has certain reservations about seeking to achieve the goal through the stated policy intention to declare the Auditor-General to be "An Officer of the Parliament"; there is a perception, as I understand it, that damage may inadvertently occur to the very independence that the Government seeks to enhance.

Given that this issue is of core importance to the future functioning of the Office of the Auditor-General, I can appreciate his desire for the available options to be carefully and thoughtfully explored. I think that such a process would assist the Government optimise its policy objective in this regard. I have consulted the Prime Minister on this matter and he agrees that the issues warrant careful consideration. He has also concurred with my suggestion that the most appropriate vehicle for undertaking that process would be by way of a reference to the JCPA.

Accordingly, I would be grateful if the JCPA would accept the following terms of reference which have been endorsed by the Prime Minister; namely, the JCPA is requested 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; and
- conclude its examination of the issues and furnish a report not later than two months from the date of this reference.

While the resolution of this issue is important in relation to the Auditor-General, it is not intended to delay the introduction and progress of the proposed Bills, as a package, until after the JCPA has reported. Suggestions that may be furnished by the JCPA that the Government takes up can be incorporated into the package as Government amendments during debate and passage. As I am sure you would recall, this is precisely what occurred when the package of Bills was originally introduced into the House of Representatives in June 1994 and immediately referred for examination to the JCPA, which reported in September 1994 with a number of recommendations for changes to particular provisions.

Officers of my Department will, of course, be available to assist your Committee in its deliberations in any way possible.

Yours sincerely



JOHN FAHEY

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LIST OF ABBREVIATIONS

ANAO	Australian National Audit Office
GBE	Government Business Enterprise
INTOSAI	International Organisation of Supreme Audit Institutions
JCPA	Joint Committee of Public Accounts
JCPAA	Joint Committee of Public Accounts and Audit

CHAIRMAN'S FOREWORD

Prior to the 1996 Federal election, the Hon John Howard MP, now Prime Minister, gave a commitment to the Australian people to implement a series of reforms to restore authority and meaning to our parliamentary institutions. In particular he proposed to establish a completely independent Auditor-General who would be an 'Officer of the Parliament'¹. This report is an examination of how the functional independence of the Auditor-General can be secured, and is an important step in reinvigorating the role of Parliament in scrutinising the performance of the Executive and its agencies.

For the Joint Committee of Public Accounts (JCPA), Mr Howard's announcement was welcome news. The JCPA has reported to the Parliament twice in the last decade on the desirability of strengthening the relationship between the Parliament and the Auditor-General, and on the need for legislative measures to underpin the independence of the Auditor-General.

In its Report 296, tabled in 1989, the JCPA informed the Parliament that the Australian Audit Office (as it then was) was in a state of crisis, that it was under-resourced, and that a lot of the problems stemmed from Parliamentary complacency. The JCPA also identified confusion about whether the Executive or the Parliament was responsible for the Auditor-General, with the result that the office was neglected by both.

Seven years later, the question of where the Auditor-General fits in the framework of government still generates debate, as the Committee discovered during this inquiry. In this report, the Committee has attempted to resolve the issue, concluding that the title 'Independent Officer of the Parliament' best symbolises the role and status of the Auditor-General for the Commonwealth, and recommending that a declaration to this effect be included in the Auditor-General Bill.

1 Hon John Howard MP, *The Role of Government: A Modern Liberal Approach* (Menzies Research Centre 1995 National Lecture Series, Parliament House, Canberra, June 1995), pp. 22-23.

The Committee is aware that many people consider it would be better not to give the Auditor-General such a title or status, preferring the current ambiguity that surrounds the role to a title that might carry unintended legal consequences. The Committee has attempted to allay fears about the appointment of the Auditor-General as an 'Independent Officer of the Parliament' in this report, outlining in some detail what the JCPA understands by the title, and recommending provisions to be included in the Auditor-General Bill to clarify the meaning and intended ramifications of the title.

As requested by the Minister for Finance in his letter of reference, the JCPA has suggested appropriate measures that could be incorporated into the Auditor-General Bill to support the functional independence of the Auditor-General. The Committee was 'flying blind', not having seen *the Auditor-General Bill 1996*, and thus not being in a position to suggest specific amendments or additions. The Committee has, instead, outlined a legislative framework that could be put in place to underpin the Auditor-General's independence.

A key element of this framework involves the Audit Committee of Parliament. The Minister for Finance confirmed his intention to seek Cabinet agreement that the JCPA be given the functions of an Audit Committee. The JCPA envisages the Audit Committee guarding the independence of the Auditor-General in many ways - most importantly by examining the budget estimates of the Australian National Audit Office and making recommendations to Parliament on the proper resourcing of the office.

The JCPA is enthusiastic about the prospect of becoming the Audit Committee of the Parliament. The Audit Committee functions are an integral part of the JCPA's existing broad role of reporting to the Parliament on ways to improve public accountability.

It will be apparent in this report that the JCPA considers the independence of the Auditor-General to be absolutely fundamental to public accountability in Australia. If the Auditor-General is not properly resourced - or does not have a legislative mandate - to carry out an effective and broad scrutiny of the public sector, then Parliament itself is compromised in its ability to hold the Executive Government to account.

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I commend this report to the Parliament. I urge Members and Senators to take an interest not only in this report, but in the work of the Auditor-General whose future effectiveness will have a major impact on the effectiveness of the Parliament itself.

In conclusion, I would like to thank my colleagues on the JCPA, and all those who gave evidence to the inquiry, whose collective commitment to the task has enabled the Committee to table this report within two months of receiving the reference, as requested by the Minister.

Alex Somlyay MP

Chairman

RECOMMENDATIONS

Recommendation 1 (para 4.14)

The Auditor-General Bill should state that:

- (a) there is to be an Auditor-General for Australia, exercising the audit functions described in this Act;
- (b) the Auditor-General is an 'Independent Officer of the Parliament';
- (c) the title 'Independent Officer of the Parliament' has the meaning given to it in this Act and no other and, further, has the legal consequences expressly provided for in this Act and no other; and
- (d) the Parliament has no power to act in relation to the Auditor-General except as expressly provided in this Act.

Recommendation 2 (para 4.15)

The Auditor-General Bill should state that:

The Auditor-General shall have complete discretion in the discharge of the audit functions set down in this Act, subject only to any duties imposed by statute. In particular, the Auditor-General is not subject to direction in relation to:

- (a) whether or not an audit is to be conducted;
- (b) the priority to be accorded to any particular matter; and
- (c) the manner in which an audit is to be conducted.

Recommendation 3 (para 4.16)

The Auditor-General Bill should also state that:

The staff of the Australian National Audit Office (ANAO):

- (a) have a duty to assist the Auditor-General in the performance of the Auditor-General's functions; and
- (b) may be directed only by the Auditor-General in the performance of audit duties.

Recommendation 4 (para 4.20)

The Auditor-General and the Australian National Audit Office should be the portfolio responsibility of the Prime Minister.

Recommendation 5 (para 4.28)

The Audit Committee should be empowered to:

- (a) approve by a majority of no less than three-quarters of the Committee membership the Government's nomination for appointment to the position of Auditor-General; and
- (b) conduct a public confirmation hearing to take evidence from the person nominated to the position of Auditor-General prior to giving approval to the appointment.

Recommendation 6 (para 4.35)

The Audit Committee should be empowered to:

- (a) examine the budget estimates of the Australian National Audit Office (ANAO);
- (b) examine the levels of audit fees set by the Auditor-General under the Auditor-General Act;
- (c) seek evidence and advice on the estimates of the ANAO, including at public hearings;
- (d) make recommendations to Parliament and to the Prime Minister about the appropriation for the ANAO; and
- (e) monitor, over time, the adequacy of funding for the ANAO, with particular attention to the ability of the office to attract staff and to maintain and upgrade information technology as necessary.

Recommendation 7 (para 4.36)

The appropriation for the Australian National Audit Office should appear as a separate schedule in the Budget Papers.

Recommendation 8 (para 4.39)

The Auditor-General Bill should provide:

- (a) that the Minister for Finance must issue drawing rights under the relevant provision of the Financial Management and Accountability Act to cover the full amounts that the Parliament appropriates for the purposes of the Australian National Audit Office; and
- (b) that the Auditor-General has authority to approve a proposal to spend money under an appropriation for the ANAO.

Recommendation 9 (para 4.43)

The Auditor-General Bill should provide that:

- (a) the Executive may only direct the Auditor-General to exclude sensitive audit information from a report to the Parliament where disclosure of the information would be likely to prejudice national security;
- (b) where the Executive orders the Auditor-General to suppress sensitive audit information on the grounds of national security, the Audit Committee should receive an unabridged copy of the audit report and/or a copy of the suppressed information; and
- (c) where sensitive information is excluded from an audit report, the fact of the exclusion and the reasons for the exclusion should be reported to the Parliament in the audit report.

Recommendation 10 (para 4.48)

The Auditor-General Bill should require that:

If the Executive gives any direction to the Auditor-General, then:

- (a) such direction should be in writing and should be reported to Parliament by inclusion in a schedule in the Annual Report of the Auditor-General; and
- (b) the Executive should immediately report the substance of the direction, and the reasons for the direction, to the Audit Committee of Parliament.

Recommendation 11 (para 4.51)

The Audit Committee should be empowered to:

- (a) approve the appointment of the Independent Auditor and advise the Independent Auditor of the Parliament's audit priorities;
- (b) seek advice from the Independent Auditor on the performance of the Australian National Audit Office (ANAO) in the course of examining the annual estimates of the ANAO (Recommendation 6 refers); and
- (c) report to Parliament on the performance of the ANAO at any time as appropriate.

Recommendation 12 (para 4.60)

The *Public Accounts Committee Act 1951* should be amended to provide for the Joint Committee of Public Accounts (JCPA) to assume the role and functions set out in Recommendations 5, 6, 9, 10 and 11 above.

The Government should provide the JCPA with sufficient additional resources to allow these additional functions to be performed.

Recommendation 13 (para 4.64)

The Auditor-General Bill should include specific provisions to the effect that:

- (a) the Auditor-General is to be appointed for a term of 10 years;
- (b) the Auditor-General is to be ineligible for reappointment to the office or appointment to any other Commonwealth public office within 3 years of stepping down as Auditor-General;
- (c) the Auditor-General cannot hold office beyond the age of 65;
- (d) the Auditor-General may be removed from office only by the Governor-General acting on resolutions from both Houses of the Parliament in the same session; and
- (e) the remuneration of the Auditor-General is to be at the level of remuneration for the first tier of Departmental Heads in the Australian Public Service.

Recommendation 14 (para 4.65)

The Auditor-General Bill should provide that:

- (a) the Auditor-General is to be appointed as the auditor of all Commonwealth entities; and
- (b) the Auditor-General has a general mandate to initiate the full range of audits in relation to all Commonwealth entities (including performance audits of Government Business Enterprises).

Recommendation 15 (para 4.66)

The Auditor-General Bill should provide that:

- (a) the Auditor-General is to be given wide powers of access to information and premises in performance of audit functions; and
- (b) the Auditor-General is to have the ability to engage professional services on contract to assist in the performance of audit functions.

Recommendation 16 (para 4.67)

The Auditor-General Bill should provide that:

The Auditor-General has the right to report to Parliament on any matter at any time as the Auditor-General sees fit.

1

CONDUCT OF THE INQUIRY

No person who holds parliamentary sovereignty dear could be other than disturbed at the steady decline in both the actual power and the reputation of the parliamentary institution.

... I wish in advance of the election of a Coalition Government to commit the next government of this country to a series of reforms which will restore greater authority, dignity and meaning to our parliamentary institutions.

... We will establish a completely independent Auditor-General so that a fearless and authoritative surveillance of government departments can occur without intimidation from the Executive ...

Under the Coalition the Auditor-General will be an officer of the Parliament ...¹

Hon John Howard MP, then Leader of the Opposition (June 1995)

Terms of Reference

1.1 On 12 August 1996, the Minister for Finance, the Hon John Fahey MP, in consultation with the Prime Minister, requested the Joint Committee of Public Accounts (JCPA) to report to the Parliament within two months on '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'. The Minister's letter appears at pp. vi-vii above.

1.2 The Minister indicated that the revised package of legislation to replace the *Audit Act 1901* (which includes an Auditor-General Bill) would be put to Cabinet for agreement, with a view to the Bills being introduced into Parliament early in the 1996 Spring Sitzings.

1 Hon John Howard MP, *The Role of Government: A Modern Liberal Approach* (Menzies Research Centre 1995 National Lecture Series, Parliament House, Canberra, June 1995), pp. 22-23

1.3 The Chairman of the JCPA wrote to the Minister accepting the reference, at the same time requesting that the Committee have access - in confidence, if necessary - to a copy of the *Auditor-General Bill 1996* prior to considering its recommendations on this reference.

1.4 At the time of writing, the *Auditor-General Bill 1996* had not been finalised for introduction into Parliament and the Committee had not seen the Bill.

1.5 It has been difficult for the Committee to report on 'appropriate measures that could be incorporated into the Auditor-General Bill' without knowledge of the form and content of the Auditor-General Bill.²

1.6 The course of action adopted by the Committee to overcome this impasse has been to report its conclusions on matters of principle concerning the independence of the Auditor-General, and to recommend a broad legislative framework in which the independence of the Auditor-General can be supported. It is possible some of the recommendations in this report have already been given effect in the Bill. The circumstances of this inquiry were unfortunate.

1.7 The most significant guidance given to the Committee on the legislative framework proposed by the Government to guard the independence of the Auditor-General was the Minister's confirmation that he would seek Cabinet approval for the JCPA to be given the functions of an Audit Committee of Parliament. The JCPA has taken this into account in formulating its conclusions and recommendations in this report.

Gathering evidence

1.8 The Committee accepted the Minister's reference on 21 August 1996, and the inquiry was advertised in the *Australian Financial Review* of 23 August 1996, and in the *Weekend Australian* of 24 August 1996.

2 The Department of Finance advised the Committee that it is likely the 1996 Bill will be based on the *Auditor-General Bill 1994*, but incorporating some of the Senate amendments to that Bill.

1.9 Letters inviting written submissions to the inquiry were sent to over 40 persons and agencies likely to have an interest in the inquiry, including the Auditor-General, State and Territory Auditors-General, and the Australasian Council of Auditors-General.

1.10 The Chairman wrote to the Speaker of the House of Representatives and the President of the Senate, who administer the Parliamentary Departments, given that the future appointment of the Auditor-General as an 'Officer of the Parliament' could have had ramifications for their offices.

1.11 The Committee received 23 written submissions and 11 exhibits to the inquiry, listed in **Appendices I and II** respectively of this report. The Committee received one further submission and one further exhibit in confidence.

1.12 In view of the tight reporting timeframe, the Committee decided to convene a public hearing early in the inquiry, on Tuesday 3 September 1996. This was conducted as a roundtable public hearing. The witnesses who gave evidence at this hearing are listed in **Appendix III**.

1.13 The Committee received informal briefings from the Department of Finance - on the Terms of Reference, and from the Auditor-General and staff of the Australian National Audit Office (ANAO) - on the legal advice to which the Minister referred in his letter.

1.14 The Committee was also briefed by Mr Graham Fortune, the High Commissioner for New Zealand, and Dr Brook Barrington, First Secretary (Economic), New Zealand High Commission, on the role and status of the New Zealand Controller and Auditor-General and on the operation of the Officers of Parliament Committee of the New Zealand House of Representatives.

1.15 The Committee held a private meeting with Mr John Taylor AO, former Auditor-General.

1.16 The ANAO provided the Committee with information on the role and functions of Auditors-General in various Australian and international jurisdictions and this information is included in the report at **Appendix IV**.

1.17 The Committee is most appreciative of the contribution made by each participant to this inquiry - on relatively short notice and in very tight timeframes - to assist the Committee to meet its reporting deadline.

Background to the inquiry

1.18 In mid-1995, Hon John Howard MP, then Leader of the Opposition and now Prime Minister, supported the establishment of a completely independent Auditor-General who would be an 'Officer of the Parliament'.³

1.19 This statement reinforced the JCPA's commitment to resolve the ongoing debate about the proper status of the Auditor-General. The JCPA has, since 1989, been an advocate of a legislative framework that would promote the Auditor-General's independence of the executive arm of government and strengthen the role of the Parliament in ensuring that audit functions are adequately resourced.

3 Hon John Howard MP, *The Role of Government: A Modern Liberal Approach*, June 1995, pp. 22-23

1.20 The tension inherent in the Auditor-General's dependence on the Executive⁴ - and particularly the Auditor-General's financial dependence - has been apparent virtually since the creation of the office of Auditor-General for the Commonwealth. Ongoing disputes between the Auditor-General and the Executive about resourcing of the office are well documented.⁵

1.21 The JCPA has reported to Parliament twice previously on the need for legislative support for the independence of the Auditor-General.

1.22 The JCPA's landmark *Report 296: The Auditor-General - Ally of the People and the Parliament* (1989)⁶ tackled the key problems facing the Auditor-General at that time and provided the impetus for new financial and audit legislation to replace the desperately outmoded *Audit Act 1901*.

1.23 The JCPA also reviewed the ensuing package of legislation in *Report 331* (1994).⁷ *Report 331* contained several recommendations designed to enhance the functional independence of the Auditor-General.

4 In this report, the Constitutional term 'Executive' is used to refer to that arm of government which includes all government departments and agencies and is controlled by the Government of the day.

5 For example, *Audit Report No. 43, 1993-94, Parliament's right to know: Legislation to replace the Audit Act 1901* (AGPS, 1994) documented the complaints of successive Auditors-General that the funding of the Office had not kept pace with additional functions required to be carried out - especially following the introduction of efficiency (performance) auditing in the 1978-79 financial year. But financial dependence on the Executive did not just arise as an issue in the 1970's and 1980's. In its *Report 296*, the JCPA noted that the first Auditor-General for the Commonwealth, Mr J W Israel, had reported to the Parliament in 1902 in his first annual report that the audit office was inadequately resourced for the discharge of the statutory audit function (JCPA, *Report 296: The Auditor-General: Ally of the People and Parliament: Reform of the Australian Audit Office* (AGPS, 1989), p. 60).

6 JCPA, *Report 296: The Auditor-General: Ally of the People and Parliament: Reform of the Australian Audit Office* (AGPS, 1989).

7 JCPA, *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* (AGPS, 1994).

1.24 The 1994 Bills reviewed by the JCPA lapsed when Parliament was prorogued for the 1996 Election, with the result that the recommendations in both the JCPA's reports have not yet been given effect. The community could perhaps be forgiven for seeing this delay of seven years as evidence of the 'executive's unwillingness to abrogate control of commonwealth audit functions and powers to the parliament'.⁸

1.25 However, the Minister for Finance indicated his intention to introduce financial and audit legislation in the Spring Sittings of 1996, substantially similar to the legislative package reviewed by the JCPA in 1994.

1.26 This present inquiry provides the opportunity for the JCPA to recommend a legislative framework in which the functional independence of the Auditor-General will be assured for the future.

Importance of the inquiry

1.27 The Committee sees this present inquiry as being of profound importance to public accountability in Australia.

1.28 The Committee believes that the community expects the Parliament to hold the Executive to account for the use of public funds: - disclosures of profligacy or fraud in the use of public monies, and incompetence or inefficiency in the management of public services, naturally provoke public outrage.

1.29 The Parliament, in turn, relies on the Auditor-General to provide expert independent advice to help it to fulfil its function of scrutinising Executive agencies. The Auditor-General performs a function which makes an important contribution to effective Parliamentary scrutiny but which the Parliament itself lacks the technical expertise and resources to exercise.

8 Linda English and James Guthrie, *Submission*, p. S69. Ms English (Department of Accounting, University of Sydney) and Dr Guthrie (Graduate School of Management, Macquarie University) have written extensively on public sector auditing and public sector

1.30 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.

1.31 The Parliament - and, in particular, Parliamentary committees which examine the financial affairs and the performance of government agencies in detail - are becoming increasingly reliant on the Auditor-General to hold the Government of the day to account.⁹ The increasing complexity of arrangements for government service delivery - particularly contracting out of public services to private enterprise - and the devolution of financial management to line managers, are challenges to public accountability that can only be met with the assistance of a well equipped and fiercely independent Auditor-General.¹⁰

1.32 Although this report deals only with the independence of the Auditor-General, and the resourcing of the Auditor-General, the Committee recognises - as have witnesses in this inquiry and related inquiries - that there is a broader underlying issue of the Executive's willingness to resource adequately those institutions in the system of government that expose the Government to criticism.¹¹

1.33 The independence of the Auditor-General is fundamental to public accountability but it is not the end of the story. Once the Auditor-General's reports are tabled in Parliament, the Parliament itself, or its Committees, must pick up the issues raised and ensure that recommendations made by the Auditor-General are implemented. The Auditor-General has no power to impose his or her views on audited agencies.

9 Linda English and James Guthrie, *Submission*, p. S70.

10 Linda English and James Guthrie, *Submission*, p. S71.

11 In evidence to this inquiry, the Clerk of the Senate, Mr Harry Evans, observed that the Parliamentary appropriations are not free from Executive control. *Transcript*, p. 83. Mr John Nethercote, Editor of the *Canberra Bulletin of Public Administration*, who writes extensively on public administration matters, submitted that Parliament and other review agencies, such as the Auditor-General and the Ombudsman, should have their funding determined by a parliamentary commission - as is the case in the United Kingdom

1.34 Following the Minister's advice that the JCPA is likely to assume the functions of an Audit Committee of the Parliament, the Committee has designed a model in which the Audit Committee would support the independence of the Auditor-General on behalf of the Parliament. The Audit Committee itself will become a crucial link in the chain of accountability. For the same reason that it is essential that the Auditor-General is adequately resourced to fulfil its audit functions, it is also essential that the Audit Committee of the Parliament be properly resourced to guard the independence of the Auditor-General.

Structure of this report

1.35 Chapter 2 of this report is a discussion of the factors that underpin the functional independence of the Auditor-General.

1.36 In Chapter 3, the Committee considers whether or not it would be appropriate to style the Auditor-General as an 'Officer of the Parliament'.

1.37 In Chapter 4, the Committee suggests appropriate measures that could be incorporated in the Auditor-General Bill, and appropriate amendments to the *Public Accounts Committee Act 1951*, to support the functional independence of the Auditor-General.

2

FUNCTIONAL INDEPENDENCE OF THE AUDITOR-GENERAL

Audit independence and audit effectiveness can amount to much the same thing. If an auditor does not enjoy independence from the bodies subject to audit it will be only a matter of time before some measure of control by auditees becomes apparent. When that happens, the effectiveness of the audit process will inevitably suffer. In practical terms, impairment of the auditor's independence is synonymous with impairment of audit effectiveness.

It is timely to question whether the independence of the Auditor-General ... from the executive arm of government is not more apparent than real.¹

- K F Brigden AO, tenth Auditor-General for Australia (1981-85)

2.1 The Committee's concern in this chapter is to identify the elements of the Auditor-General's functional independence, that, in turn, ensure the effectiveness of the Commonwealth audit function.

What are the elements of functional independence for the Auditor-General?

2.2 The Australian Society of Certified Practising Accountants identified two main elements of independence for Auditors-General - personal independence and freedom of investigation and reporting.²

1 From the *Report of the Auditor-General on the Financial Statement prepared by the Minister for Finance for the year ended 30 June 1984*. Reproduced in *Audit Report No. 43, 1993-94, Parliament's right to know: Legislation to replace the Audit Act 1901* (AGPS, 1994) p. 43.

2 Exhibit No. 6. Australian Society of Certified Practising Accountants, *The Importance of the Role of Independent Auditors-*

2.3 Dr Warwick Funnell, Associate Professor, Department of Accounting and Finance, University of Wollongong, submitted that the Auditor-General of the Commonwealth presently enjoys only a limited form of personal independence. He considered that substantive independence for the Auditor-General would only be present:

*... if public sector audit independence encompasses **legal, fiscal and political independence**. Legal independence refers to statutory provisions which are designed to protect the person of the Auditor-General and to identify and proscribe behaviour which could be construed as interfering with his duties. Political independence is present if no overt or covert attempts are made by political actors to influence the work of the Auditor-General.*

... The greatest threat to the Auditor-General's independence has been his dependence on the Executive for the resources necessary to meet his audit mandate.³ [emphasis added]

2.4 The International Organisation of Supreme Audit Institutions has recognised that **complete** independence for Auditors-General is neither possible nor desirable, but that, inter alia:

- an adequate degree of independence from the legislature and executive is essential for conduct of the audit and to maintain the credibility of the executive;
- independence from political influence is essential for impartial audits; and
- the national audit office must be free to set its own audit priorities and methodologies.⁴

3 Warwick Funnell, *Submission*, pp. S82-83.

4 International Organisation of Supreme Audit Institutions (INTOSAI) *INTOSAI Auditing Standards* (3 June 1987). Cited in JCPA,

Report 90C, p. 50.

2.5 Drawing on this diversity of views, the Committee considers that the principal elements of functional independence for the Auditor-General are:

- **personal independence** in relation to appointment and tenure;
- a **wide legislative mandate** empowering the Auditor-General to audit the complete spectrum of Commonwealth functions;
- **audit independence**, including freedom to determine the audit programme, and to decide the nature and scope of audits to be conducted;
- **unrestricted access to information** in performance of the audit function together with the right to report any findings to Parliament; and
- **adequate resourcing** to fulfil audit functions effectively.

2.6 Each of these elements is discussed below.

P e r s o n a l i n d e p e n d e n c e

2.7 The Auditor-General is the external auditor of the Executive Government and has a duty to report to the Parliament on the integrity, economy and efficiency of the financial operations of government.

2.8 It follows that the office must be held by an appointee who has the confidence and respect of the Parliament, and who cannot be personally penalised for exposing any shortcomings in the management of Executive departments or agencies.

2.9 In this context, the Committee considered the appropriate process for appointing the Auditor-General and the appropriate terms of appointment for the Auditor-General.

Appointment of the Auditor-General

2.10 At present, the Auditor-General is appointed by the Governor-General on the advice of the Executive.

2.11 The Australasian Council of Auditors-General submitted that there was some disparity between the standard of behaviour that the Government required for appointment of auditors in the private sector and the way it behaved in appointing its own auditor:

It is a generally held principle that an auditee should not appoint the auditor because in so doing the independence or perceived independence of the auditor can be compromised. In the private sector this principle is buttressed by Parliament's requirement that the shareholders of public companies (rather than Directors of the Board or the Executive) appoint the external auditor.

The analogous situation for the States and Commonwealth is that the Executive should not appoint the Auditor-General without the consent of Parliament (or its appointed Committee).⁵

2.12 The Committee considers that Parliament should have the right to approve the appointment of the Auditor-General.

2.13 A number of options were proposed to the Committee in relation to Parliamentary involvement in the appointment of the Auditor-General:

- the President of the Senate, Senator Hon Margaret Reid, proposed that the Minister, before recommending to the Governor-General the appointment of the Auditor-General, should be required to consult with the JCPA and both Presiding Officers;⁶

⁵ Australasian Council of Auditors-General, *Submission*, p. S43.

⁶ *Submission of the JCPA to the Committee*, p. S20.

- Mr John Nethercote proposed that a panel - comprising the Presiding Officers, a nominee of the Prime Minister and a nominee of the Leader of the Opposition, nominees of the Government and Opposition Leaders in the Senate, and the Chairman of the JCPA - should be responsible for recommending the appointment of the Auditor-General to the Parliament, and should be able to engage a 'search committee' to assist it; the Parliament, in turn, would make a recommendation to the Governor-General;⁷
- Mr Eric Dyrenfurth, former Research Director for the Victorian Parliamentary Estimates Committee, proposed that an all-party Parliamentary committee could interview the preferred candidate for the position of Auditor-General and report to the Government;⁸ and
- the Australasian Council of Auditors-General suggested that Parliament, or a committee of the Parliament, could select a candidate from a short-list provided by the Executive or, alternatively, itself provide a short-list from which the Executive could nominate the Auditor-General.⁹

2.14 The Committee believes that the Parliament should have a right of final approval in relation to the Auditor-General, not just a right to be consulted. The Committee is also concerned that the process of appointment should not be unwieldy.

2.15 The Committee's view on how Parliament might appropriately be involved in the appointment of the Auditor-General has been formed in the context of the Minister for Finance having foreshadowed that the JCPA will be given the functions of an Audit Committee of the Parliament.

7 J R Nethercote, *Submission*, pp. S124-25.

8 Eric Dyrenfurth, *Submission*, p. S111.

9 Australasian Council of Auditors-General, *Submission*, p. 10.

2.16 The Audit Committee, as it is proposed to be constituted¹⁰ would represent the views of both Chambers of the Parliament and all parties. At the same time, the Committee will have greater flexibility than the Parliament as a whole to conduct the tasks associated with the appointment of the Auditor-General.

2.17 The Committee notes that Parliamentary Committees play an important role in the appointment of the Auditor-General in other jurisdictions.¹¹ For example, in New South Wales, the Public Accounts Committee has the power to veto the appointment of the Auditor-General in that State.¹²

2.18 The Committee believes that approval of the appointment of the Auditor-General is one of the functions that could be carried out by the Audit Committee on behalf of the Parliament (see **Recommendation 5**).

Tenure, dismissal and reappointment

2.19 Under the *Audit Act 1901*, the Auditor-General is appointed until age 65 and can only be dismissed for incapacity, incompetence or misbehaviour by the Governor-General following an address from each House of Parliament in the same session of Parliament.¹³

2.20 Sir Lenox Hewitt OBE argued strongly against changing the tenure of the Auditor-General, pointing to the underlying principle enunciated by Sir George Turner when introducing the Audit Bill into the Parliament in 1901:

10 The JCPA recommended in Report 331 that the membership of the Committee be increased to 16 members with one position being reserved for a nominee of minority parties or independents (Report 331, Recommendation 39). Under the *Public Accounts Committee Act 1951*, as it stands, two-thirds of the members (10 members) are drawn from the House of Representatives and the remaining one-third (5 members) from the Senate.

11 See Appendix IV.

12 Australasian Council of Auditors-General, *Submission*, p. S43. Public Accounts Committee of the Parliament of NSW, *Submission*, p. S104.

13 The Committee considers the existing legislative provisions for the removal from office of the Auditor-General to be appropriate in safeguarding the Auditor-General from unfair dismissal (see

We have thought it necessary to give the Auditor-General the best possible tenure of office, because he may often have to check steps taken by the Government of the day with regard to the expenditure of money; and the tenure we give him is during good behaviour.¹⁴

2.21 Sir Lenox considered that any derogation from this principle would do nothing but erode and damage the independence of the office of Auditor-General.¹⁵

2.22 Mr John Nethercote shared this concern:

It is the proposed term of appointment [up to 7 years] combined with prohibition on reappointment that is the weakest and least convincing part of the previous bill [the Auditor-General Bill 1994].

The JCPA should not be in any doubt that what has been proposed will undermine the audit role, probably irrevocably. It will be a deterrent to good candidates - the younger they are, the greater the deterrent. It does not allow enough scope for an enterprising appointee to make much impact.

Great weight should be attached to the views placed before the Committee by Sir Lenox Hewitt.¹⁶

14 Sir George Turner, *Hansard*, Vol 1. p.1248, cited by Sir Lenox Hewitt OBE, *Submission*, p. S40.

15 Sir Lenox Hewitt OBE, *Transcript*, p. 68.

16 J R Nethercote, *Submission*, p. S125.

Mr John Nethercote proposed that the Auditor-General be appointed for a fixed term of 15 years, or for a minimum term of 7 to 10 years with an option of reappointment. He considered it inappropriate to specify a retirement age for the Auditor-General since this would allow the Government to circumvent the fixed term by appointing an

2.23 The Auditor-General, Mr Pat Barrett, submitted that a fixed term appointment of five to seven years would be 'in line with contemporary practice of appointing most statutory officers and heads of Executive Agencies on fixed term contracts'.¹⁷ The Auditor-General noted that Auditors-General are appointed for non-renewable fixed terms of five to ten years in New South Wales, Queensland, the Australian Capital Territory, Canada, South Africa and New Zealand.¹⁸

2.24 The modern tendency to appoint Auditors-General for fixed terms was said to have arisen in the context of the current practice of appointing younger Auditors-General.¹⁹

2.25 In the event that the Auditor-General is appointed by the Executive for a fixed term ending before retirement age, it has been argued that the Auditor-General should have neither the option of reappointment nor the option of subsequent appointment to other Executive office. The Australasian Council of Auditors-General pointed out that the option of subsequent employment by the Executive of the Auditor-General:

... has the potential to compromise or appear to compromise rigour and independence, particularly in the latter stages of an initial term. Because there is no identifiable way to mitigate that potential, it is difficult to support the availability of an option to reappoint an Auditor-General, unless there is a provision for vigorous Parliamentary involvement in the process.

*Similarly, once the term of office has expired, the Council believes the Auditor-General should not be immediately eligible to take up a position within the immediate public sector jurisdiction, but may do so after the expiry of a suitable time period.*²⁰

17 Auditor-General, *Submission*, p. S130.

18 Auditor-General, *Submission*, p. S134.

19 Tony Harris, Convenor, Australasian Council of Auditors-General, *Transcript*, p. 65.

2.26 The Auditor-General, Mr Pat Barrett, agreed that reappointment of an Auditor-General at the end of a fixed term appointment was inappropriate.²¹

2.27 The Committee notes that Commonwealth Auditors-General have, in the past, tended to serve relatively short terms before retiring.²² In evidence to the JCPA's inquiry into the *Auditor-General Bill 1994*, Mr John Taylor, then Auditor-General expressed concern that one of the problems of the Australian National Audit Office (ANAO) was 'the revolving door of the appointees [which resulted in] nobody ... staying round long enough to actually change the culture'.²³

2.28 The Committee can see that, from an operational standpoint, it is not desirable to appoint Auditors-General for a period that is too short to allow for identification and implementation of necessary reforms or initiatives.

2.29 The Committee considers that continuing to appoint the Auditor-General with permanent tenure could perpetuate this problem. However, the Committee considers that the term of appointment proposed in the *Auditor-General Bill 1994* (up to seven years) would be not be conducive to the appointment of strong and independent Auditors-General.

2.30 The Committee considers that the Auditor-General should be appointed for a fixed term of ten years or to retirement at age 65. The period of ten years would see the Auditor-General auditing the affairs of at least three Governments, and would give the Auditor-General the opportunity to implement significant reforms. The Committee considers that Auditors-General should be ineligible for reappointment, or other appointment to Executive office in the same jurisdiction within three years of stepping down from the office of Auditor-General (see

Recommendation 13 (a)-(c)).

21 Auditor-General, *Submission*, p. S131.

22 The Committee notes that four of Australia's twelve former Auditors-General served terms of only three to five years, and only three served for terms of ten years or more. (JCPA, Report 296, Appendix III)

23 John Taylor, then Auditor-General, in evidence to the JCPA's Review of the Financial Management and Accountability Bill 1994, Commonwealth Authorities and Companies Bill 1994 and the

Remuneration

2.31 The salary and allowances paid to the Auditor-General are determined by the Remuneration Tribunal and the Auditor-General's salary is a standing appropriation of the Consolidated Revenue Fund.²⁴

2.32 Mr John Nethercote submitted that the Auditor-General had not been remunerated at an appropriate level - given the significance of the office - for the last two decades.²⁵

2.33 Although the issue of the Auditor-General's salary did not loom large in this present inquiry, the Committee noted evidence to the JCPA's 1989 and 1994 inquiries indicating that the Auditor-General's remuneration was unreasonably low.²⁶

2.34 The level of the Auditor-General's remuneration and the way that remuneration is determined can affect the functional independence of the office in that:

- the level of remuneration paid to the Auditor-General may influence public perceptions of the importance that the Executive attaches to the office of Auditor-General and the way in which senior officers of Executive agencies relate to the Auditor-General; and
- Executive involvement in setting remuneration levels may provide an opportunity to reward or penalise Auditors-General.

2.35 The Australasian Council of Auditors-General submitted that, in some jurisdictions, the remuneration for the Auditor-General is 'pegged' to a reference remuneration either by legislation or, in practice, by a remuneration tribunal:

24 Auditor-General, *Submission*, p. S131.

25 J R Nethercote, *Submission*, p. S126.

26 The JCPA noted in Report 296 (pp. 79-80) that the Auditor-General's salary package was far less attractive than the packages for partners in city accounting firms. The JCPA noted in Report 331 (pp. 90-91) that the Auditor-General was only remunerated with the second tier of Departmental secretaries. The Auditor-General of the Northern Territory had suggested that this could result in a perception that top public servants could 'pull rank' or that the Auditor-General's

The former approach ['pegging' in legislation] has the advantage that the Executive is not involved in any manner in setting the Auditor-General's remuneration and thus cannot be accused of using remuneration to reward or punish the Auditor-General. At the same time, the 'pegging' enables the remuneration to move over the term of the appointment according to pay standards applicable to the referenced remuneration.

... Some jurisdictions peg the salary against a specified judicial office; others against the salary paid to the most senior chief executives in the public service.²⁷

2.36 The Committee considers that the Auditor-General's remuneration should be set at the level of remuneration paid to the first tier of Departmental Heads in the Australian Public Service (see **Recommendation 13(e)**).

M a n d a t e

2.37 The Australasian Council of Auditors-General submitted that Auditors-General should:

- *be responsible for the external audit of all public agencies over which the government has control, or significant influence or financial exposure; [and]*
- *have a mandate to report on audits of financial statements, controls, compliance with legislation, performance indicators, examinations of public sector effectiveness and efficiency and other matters of significance ...²⁸*

²⁷ Australasian Council of Auditors-General, *Submission*, p. S44.

2.38 The Society of Certified Practising Accountants, similarly, recommended in 1994 that:

*with the Auditors-General should lie the ultimate responsibility for the external audit of all public sector agencies over which the Government has control or significant influence ..., interest in, or to which it has financial exposure ... This includes, but is not limited to, agencies, state owned enterprises, companies and joint ventures ...*²⁹

2.39 The former Commonwealth Auditor-General, Mr John Taylor, stressed that the extent of the Auditor-General's mandate was also the extent of the Parliament's effective oversight of the public sector:

*If the Parliament wants to keep an effective interest in what is being done with power or resources provided by it to the government in the interests of the community as a whole, it must have a clear and formally independent and accountable channel through which it is advised regularly, consistently across programmes, by an official who is independent and apolitical and who can report 'without fear or favour'; who has a clear, unambiguous, legal requirement to look across the public sector as a whole; who has the power to allocate available resources according to assessment of risk; who has command of appropriate resources which are independent of the executive, with wide powers of access; and who has the power to report to the Parliament and others relevant as necessary/appropriate....*³⁰ [emphasis added]

2.40 The *Auditor-General Bill 1994* gave the Auditor-General an absolute mandate in relation to financial audits of Commonwealth entities and a wide, but not complete, mandate in relation to performance audits. The Bill proposed that the Auditor-General have an unfettered discretion to conduct performance audits in all entities except government business enterprises (GBEs). Performance audits could only be conducted in GBEs at the request of the Minister responsible

29 Exhibit No. 6, p. 12.

30 John Taylor, 'Parliament and the Auditor-General' in *Papers on Parliament No. 26: Republicanism, Responsible Government and Human Rights* (Department of the Senate, Parliament House,

for the GBE or at the request of both Houses of Parliament. In Report 331, the JCPA expressed the view that provisions such as this would represent a 'limitation on the Parliament's capacity to make informed assessments about the efficiency with which taxpayers' money is being used by GBEs.'³¹

2.41 The Committee remains of this view.

2.42 In Report 331 the JCPA proposed a compromise whereby the Audit Committee of Parliament would have been given the discretion to request a performance audit of a GBE. This position was rejected by the former Government.

2.43 The Committee now believes the best way of ensuring Parliament's capacity to assess effectively the operation and activities of GBEs is to ensure that the Auditor-General has an absolute audit mandate - covering all Commonwealth entities for all types of audit. Such a mandate would help secure the functional independence of the Auditor-General by removing the power of both the Executive and the Parliament to restrict the Auditor-General in the performance of audit functions (see **Recommendation 14**).

2.44 In Report 331, the JCPA also recommended that the Auditor-General's mandate encompass financial statement audits for intelligence and security agencies.³²

2.45 The Committee did not take any evidence on this matter during the current inquiry. However, in the context of the Committee's position that the Auditor-General should have a broad overview of all Commonwealth entities, and in the absence of any concerns expressed to the JCPA since the publication of Report 331 about financial statement audits of intelligence and security agencies, the Committee believes the recommendation in Report 331 should stand.

31 JCPA, Report 331, p. 66.

32 JCPA, Report 331, Recommendation 31. Clause 51 of the *Auditor-General Bill 1994* provided that the application of the Auditor-General Act to intelligence and security agencies would be subject to modifications prescribed by regulations. The JCPA recommended that Clause 51 be amended to require the Auditor-General to audit the financial statements of intelligence and security agencies, including exempt accounts.

Audit independence

2.46 Under the *Audit Act 1901*, the audit independence of the Auditor-General is implied. The Act provides that the Auditor-General 'may' undertake an audit if requested to do so by a Minister.³³ The fact that audit independence is implied rather than explicit does not compare well with other jurisdictions.³⁴

2.47 The Australasian Council of Auditors-General submitted that Auditors-General should have a specific power to determine which discretionary audits would be conducted, how the audits would be conducted and by whom the audits would be conducted.³⁵

2.48 In some jurisdictions, the audit independence of the Auditor-General is enshrined in legislation. In the United Kingdom, the operational independence of the Comptroller and Auditor-General is enshrined in the *National Audit Act 1983* (UK) which provides that:

*[Section 3] Subject to any duty imposed on him by statute, the Comptroller and Auditor General shall have complete discretion in the discharge of his functions and, in particular, in determining whether to carry out any examination under Part II of this Act and as to the manner in which any such examination is carried out; but in determining whether to carry out any such examination he shall take into account any proposals made by the Committee of Public Accounts.*³⁶

33 *Audit Act 1901*, sections 48C(2), 48C(6), 48C(7) and 63P. The Auditor-General submitted:

While the Audit Act 1901 does not include provisions which deal explicitly with the functional independence of the Auditor-General, by convention the Auditor-General has not been subject to direction or interference in performing audit functions from either the Executive or the Parliament. (Submission, p. S6)

34 See Appendix IV.

35 Australasian Council of Auditors-General, *Submission*, p. S46.

36 *Cited in the submission of the Auditor-General to the Committee of Public Accounts.*

FUNCTIONAL INDEPENDENCE

2.49 In South Australia, sub-section 24(6) of the *Public Finance and Audit Act 1987* provides that:

[ss24(6)] The Auditor-General is not subject to the direction of any person as to -

- a) the manner in which functions are carried out or powers are exercised by the Auditor-General under this Act; or*
- b) the priority that he or she gives to a particular matter in carrying out functions under this Act.³⁷*

2.50 There is a similar provision guaranteeing the audit independence of the Queensland Auditor-General in the *Financial Administration and Audit Act 1977* (Qld).

2.51 The Auditor-General considered a guarantee of audit independence, enshrined in legislation, to be the top priority to support the functional independence of the Auditor-General.³⁸

2.52 The Committee believes that the Auditor-General, by the very nature of the position, develops breadth and depth of knowledge of public sector management, and is best placed to identify priorities for audit. It follows that it is essential for the Auditor-General to have freedom to determine the audit programme of the ANAO, including the choice of bodies to be audited, the nature and scope of audits to be conducted, and whether the work will be carried out by the ANAO or contracted out to private enterprise.

2.53 The Committee considers that the Auditor-General's audit independence should be guaranteed by a statement to this effect in legislation (see **Recommendation 2**).

2.54 However, while it is clearly not appropriate for Parliament - either House or its members - to direct the Auditor-General to deploy limited audit resources in pursuing issues of particular interest, nonetheless it would be useful for the Parliament to have a formal channel for communicating its priorities to the Auditor-General.

37 Exhibit No. 8.

38 Prof. Bennett, *Auditor-General, Transcript*, p. 86.

2.55 The Australasian Council of Auditors-General, while maintaining that the audit independence of Auditors-General was essential, recognised:

... the importance of sound and cooperative working relationships between Auditors-General and their respective Parliaments, and the majority of jurisdictions enjoy this mutually beneficial relationship without necessarily seeing it as an impediment to independence. Parliaments which take an active interest in the objectives of Auditors-General, which provide constructive input into plans and which request review of areas of interest, can only enhance the work of the Auditor-General and ensure Parliament's needs and expectations are met.³⁹

2.56 The Committee considers that the Audit Committee could fulfil the function of advising the Auditor-General of the Parliament's audit priorities. The Committee notes that this would be a consultative and advisory function, and would **not** compromise the Auditor-General's absolute discretion to determine the audit programme.

2.57 The former Auditor-General, Mr John Taylor, in evidence to the JCPA's inquiry into the *Auditor-General Bill 1994*, made the distinction well:

The audit committee ... as the Joint Committee of Public Accounts proposed it, was not going to say, 'On Monday, John, you are going to do an efficiency audit into the Reserve Bank, particularly its derivatives, control and all the rest of it.' No. At the moment we get a lot of signals from parliament ... The reality is that parliament does not have to tell us what to do. We are sensitive enough to realise what to do if a number of parliamentarians or a committee says, 'We are interested in this.' We are always polling committee chairmen and secretariats about what they are interested in. We really want to know. I am not running some sort of show for my own benefit. The only benefit is in serving you. But it would be nugatory if we were just your investigators being told to go out and do this and go out and do that. That would not be an independent audit.⁴⁰

39 Australasian Council of Auditors-General, *Submission*, p. S45.

40 John Taylor, then Auditor-General, in evidence to the JCPA's 1994 inquiry into the Auditor-General Bill, (Canberra, 8 July 1994)

2.58 The Committee considers that the Audit Committee could provide a conduit for conveying Parliament's audit priorities to the Auditor-General.

Powers to obtain and disclose information

2.59 The Auditor-General must have powers of access to information and premises to be able effectively to conduct audits. The *Auditor-General Bill 1994* afforded the Auditor-General wide powers to obtain information and the Committee considers that the *Auditor-General Bill 1996* should provide the same powers (see **Recommendation 15(a)**).

2.60 The principal purpose of the Auditor-General obtaining information is to enable complete and accurate reporting to the Parliament.

2.61 The Committee believes that the Auditor-General should have a discretion not to disclose certain classes of 'sensitive information' to the Parliament.

2.62 However, the Committee considers the Auditor-General must not be unduly **restricted** by the Executive from reporting audit information to the Parliament.

2.63 The President of the Senate, Senator Hon Margaret Reid, drew the Committee's attention to provisions in the *Auditor-General Bill 1994* that, if enacted, would have restricted the ability of the Parliament to seek advice from the Auditor-General.⁴¹

2.64 Clause 34 of the *Auditor-General Bill 1994* provided that the Auditor-General could not release 'sensitive' information in a report to be tabled in Parliament if:

- the Auditor-General was of the opinion that release of the information would be contrary to the public interest; or
- if the Attorney-General had issued a certificate to the Auditor-General stating that release of the information would be contrary to the public interest.

41. President of the Senate, Submission, pp. S38-39.

2.65 Clause 34 provided for the Auditor-General to prepare an unabridged report (including 'sensitive' information) but distribution of the unabridged report was restricted to the Ministry.

2.66 The Bill defined 'sensitive' information as:

... information whose disclosure would be contrary to the public interest for any of the following reasons:

- 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 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.⁴²*

2.67 The Committee could not visualise any form of moderately interesting information about the activities of government that would not fit into one or other of the categories above. In the context of this inquiry into the independence of the Auditor-General, the Committee is not concerned about the Auditor-General's discretion to restrict publication of audit information that might fit into any of the above categories.

2.68 However, the Committee is most concerned that it was intended to give the Attorney-General a similarly wide discretion. Clause 34, if enacted, would have compromised the Auditor-General's freedom to report to Parliament by giving the Executive a broad discretion to suppress 'sensitive' audit information from publication.

42 Clause 34 para 3 *Auditor-General Bill 1994*

2.69 More disturbingly, the Bill did not provide any check whatsoever on the exercise of the Attorney-General's power to issue a certificate. The Parliament was not even to be informed that the Attorney-General had given a direction to the Auditor-General, let alone the reasons for the direction.

2.70 The Committee suggests that the inclusion of the same provision in the *Auditor-General Bill 1996* would be inappropriate.

2.71 If the Auditor-General Bill is to contain a provision allowing the Executive discretion to prevent the disclosure of audit information to the Parliament, then the Committee considers that:

- the Executive should only have discretion to order the Auditor-General to suppress information where disclosure would be likely to prejudice national security; and
- there must be a mechanism allowing Parliament to monitor the exercise of any such Executive discretion, to guard against the abuse of the discretion.

2.72 The Committee believes that an Audit Committee could monitor the exercise of Executive discretion to withhold audit information from the Parliament. The Committee considers that if the Executive has a legislative discretion to order the Auditor-General to withhold information from the Parliament, then the Audit Committee should have the right to receive a copy of any suppressed information or an unabridged copy of the audit report from which 'sensitive' information has been excluded (see **Recommendation 9**).

Resourcing

2.73 - In evidence to the Committee's inquiry into the *Auditor-General Bill 1994*, Professor Robert Parker suggested that the 'Achilles heel' of the Auditor-General's independence was resourcing. He submitted that:

*So long as the staffing and supplies of the Australian National Audit Office, unlike the Auditor-General's own salary, are dependent on annual budget appropriations, there remains the potential for the Executive to squeeze the Office's activities if they become inconvenient to the government of the day.*⁴³

2.74 There was general agreement in this inquiry that resourcing was a key issue underpinning the Auditor-General's functional independence.⁴⁴

2.75 The Auditor-General, Mr Pat Barrett, responding to a question from the Committee on legislative provisions required to make the Auditor-General and the ANAO more functionally independent of the Executive, indicated that resourcing was a key determinant of functional independence:

It gets down to issues like resourcing. ...

*In essence, I am for changes of substance. Changes of substance are about my employer, which I regard as being the parliament, having a substantive say in what applies to me and my office. At the end of the day I am responsible to the parliament, and they get the outcome of their own decisions - not the decisions of someone else. I am responsible and accountable to the parliament for the efficiency with which I utilise the resources that you have provided. At the end of the day you are responsible for the resources you give me. Therefore I cannot do anything more than what you are prepared to provide to me.*⁴⁵

2.76 The Committee considers that the proper resourcing of the Auditor-General and the ANAO is integral to the functional independence of the Auditor-General.

2.77 The Committee further agrees that it is the role of the Parliament, the Auditor-General's 'employer' - and not the Executive - to take responsibility for ensuring that audit functions are adequately resourced.

43 JCPA, Review of the Financial Management and Accountability Bill 1994, the Commonwealth Authorities and Companies Bill 1994 and the Auditor-General Bill 1994, *Submission*, p. S11.

44 Strong arguments to this effect were advanced, for example, by Warwick Funnell, *Submission*, pp. S82-84, and J R Nethercote, *Submission*, pp. S126-27.

45 Pat Barrett, Auditor-General, *Transcript*, pp. 86-87.

2.78 The problem is that the Executive controls the funding of all Commonwealth bodies, including the Parliament itself. This stems from the Executive's control of the Commonwealth treasury under section 56 of the Constitution.

2.79 The Department of Finance explained:

... under our constitutional framework, the responsibility for funding all Commonwealth activities falls to the Executive. ... It is the Executive, rather than the Parliament ... that has the exclusive power to draw money from the 'Treasury of the Commonwealth' via appropriations, proposed laws for which it is the Executive's exclusive prerogative to introduce into Parliament. Thus, it is open to conclude that the Auditor-General is dependent on the Executive for the allocation of the financial resources the Office needs to carry out its functions. However, the same circumstance applies equally to the funding of the Judiciary, the Parliament and myriad other functionally independent Commonwealth agencies and entities.

Accordingly, while it is inescapable that the Office of Auditor-General cannot be legally or financially independent from the Executive in any absolute sense, it is important that the perception and functioning of the Office, as prescribed by the law, reflect the special status and nature of the activities carried out by that Office.⁴⁶

2.80 Within this constitutional construct, the Committee has examined ways for insulating the Auditor-General's resourcing from Executive influence.

2.81 Parliamentary committees (or Parliamentary commissions) in several jurisdictions play an important role in examining the resourcing of the Auditor-General, to ensure that the audit office is not starved of funds by the Executive.

2.82 Mr John Nethercote observed that the United Kingdom and Canada had established parliamentary commissions to administer the resourcing of bodies that scrutinise Executive Government, and suggested that the creation of a similar parliamentary commission in Australia was long overdue.

⁴⁶ Department of Finance, *Submission*, p. S49

Under present arrangements the overseers of Executive Government, and the organisations which service them, are treated as if they are departments and agencies of Executive Government.

Although there is no reason for exempting those bodies from a requirement to conduct their business according to the highest standards of efficiency, economy and effectiveness, there is every reason to expect that control of their expenditure and staff should be in the hands of somebody different from those they oversee.

In Britain and Canada there are parliamentary commissions available for such purpose.

In the absence of such a body - whose creation at the Commonwealth level is long overdue - an interim arrangement [is desirable] to address the principle that there should be a distinctive process to approve the budget and staff arrangements of the ANAO. This task could legitimately be entrusted to the JCPA [or another Parliamentary committee].⁴⁷ [emphasis added]

2.83 In the United Kingdom, the Public Accounts Committee receives the Estimates of the Controller and Auditor-General, prior to the submission of the Estimates to the Public Accounts Commission⁴⁸ which ultimately approves the budget for the National Audit Office. The Public Accounts Committee typically takes evidence and produces a report on the Estimates.⁴⁹

2.84 In New Zealand, the Controller and Auditor-General submits Estimates to the Officers of Parliament Committee of the New Zealand House of Representatives.⁵⁰ The Committee has the ability to call for expert advice -

47 J R Nethercote, *Submission*, pp. S126-27.

48 The membership of the Public Accounts Commission comprises the Leader of the House of Commons, the Chair of the Public Accounts Committee and seven members of the House of Commons who are not Ministers.

49 John Taylor, 'The Auditor-General: Ally of the People, the Parliament and the Executive' in *Papers on Parliament No. 7: Unchaining the Watchdogs* (Department of the Senate, Parliament House, Canberra, March 1990), p. 13.

50 This Committee is made up of the Speaker, and six other members from Government and Opposition parties, excluding Ministers.

for example, from the Treasury - in examining the Estimates before submitting its recommendations on the Estimates to the House.⁵¹

2.85 In Queensland, the 1991 report of the Electoral and Administrative Review Commission recommended that the Public Accounts Committee review the estimates of the Audit Office and forward the estimates to the Treasurer with a recommendation for formal inclusion in a separate Appropriation Bill. This recommendation was not accepted in its entirety, but the Financial Administration and Audit Act (Qld) requires the Treasurer to consult with the Public Accounts Committee in developing the proposed budget for the Audit Office for each financial year.

2.86 The Auditor-General of Queensland, Mr B M Rollason, submitted that:

*All I would say about the current budget setting process is that the jury is still out. In other words, Treasury's influence is still patently evident.*⁵²

2.87 The Committee considers that the Audit Committee of the Australian Parliament could play an important role in limiting Executive control over the resourcing of audit functions.

2.88 The Committee does **not** believe it is necessary or appropriate for the Parliament to determine the appropriation for the ANAO, although evidence to this inquiry suggested that this could be achieved by a standing appropriation - possibly subject to an upper limit set each year by the Audit Committee.⁵³ However, the Committee considers that the resourcing of audit functions should be made **transparent** to the Parliament, allowing the Parliament to hold the Executive to account for the level of resources appropriated to allow the Auditor-General to fulfil the statutory functions of the office.

51 John Taylor, 'The Auditor-General: Ally of the People, the Parliament and the Executive', p. 15.

52 Auditor-General of Queensland, *Submission*, p. S65.

53 Attorney-General's Department, *Submission*, pp. S58-59.

2.89 Accordingly, the Committee proposes that the Audit Committee should examine the estimates of the ANAO and make recommendations to the Parliament (and to the responsible Minister) on the appropriate level of funding for the ANAO (see **Recommendation 6**). The ANAO's estimates and the recommendation of the Audit Committee would then be considered by the Executive as part of the normal Budget process.

C o n c l u s i o n

2.90 The Committee considers that the personal independence of the Auditor-General, the Auditor-General's mandate, the Auditor-General's audit independence and the financial independence of the office should be supported in legislation. Specific legislative measures to achieve this are suggested in Chapter 4.

3

OFFICER OF THE PARLIAMENT

The treatment of Commonwealth auditors-general by the executive and its bureaucracy parallels (and perhaps reflects) the Parliament's unwillingness or inability to exercise its potential and actual power as compared with that of the executive. One result of party discipline has been that for many decades the Parliament, with few exceptions, has acquiesced in being tied to the executive's chariot wheels.¹

John Taylor AO, twelfth Auditor-General for Australia (1988-95)

Introduction

3.1 A key issue in this inquiry, perhaps **the** key issue, has been how the office of Auditor-General can be established so that it is **seen** to be independent of the Executive and accountable to the Parliament.

3.2 In the context of this report, which proposes a legislative framework to guarantee the Auditor-General's audit independence, financial independence and personal independence, the question of the status of the Auditor-General is essentially about symbolism.

3.3 However, the Committee believes that symbolism is important. The way that the Auditor-General is styled in the Auditor-General Bill will influence public perceptions of the role and significance of the office. Very few people, even in the bureaucracy, will ever know the details of the legislative framework that underpins the Auditor-General's role, functions and independence. It is thus important to give the Auditor-General a title that will encapsulate the features of that legislative framework.

1 John Taylor, from an occasional address delivered after stepping down as Auditor-General: 'Parliament and the Auditor-General' in

3.4 The issue of whether or not the Auditor-General should be appointed as an 'Officer of the Parliament' has been debated over at least the last seven years, since the JCPA first recommended, in 1989, that:

Future audit legislation state unequivocally that the Auditor-General is an officer of the Parliament in order to emphasise the Auditor-General's relationship with Parliament.²

3.5 The Committee continues to believe that the Auditor-General should be given a title designed to dispel ambiguity about the role of the office and to reinforce the Auditor-General's functional independence from the executive arm of government.

3.6 In determining what title might appropriately be given to the Auditor-General to describe the role and functions of that office, the Committee seeks to resolve the following issues in this chapter:

- For whom does the Auditor-General work?
- What is the Auditor-General's Constitutional role?
- Where does the Auditor-General 'sit' in the Constitutional framework?
- What is the meaning of the title, 'Officer of the Parliament'?

3.7 The Committee then heeds the warning in the Minister's letter of reference that there is a perception, based on legal opinions obtained by the ANAO, that the appointment of the Auditor-General as an 'Officer of the Parliament' could damage the independence of the office. The Committee considers:

- What would be the potential legal consequences of appointing the Auditor-General as an 'Officer of the Parliament'? In particular, could this compromise the Auditor-General's independence?

3.8 The Committee concludes that a position can be reached whereby the Auditor-General can be given a title that reflects the proper role of that office to support the Parliament in its scrutiny of the Executive, but without compromising the independence of the office of Auditor-General.

For whom does the Auditor-General work?

3.9 The balance of evidence to this inquiry suggested that the Auditor-General works first and foremost for the Parliament.

3.10 The incumbent Auditor-General, Mr Pat Barrett, believes that he works for the Parliament, giving evidence at the public hearing on this inquiry that he regarded the Parliament as his 'employer'.³

3.11 Mr John Nethercote submitted that the office of Auditor-General in the Westminster system of government, as it was originally created in Britain (in the 19th century) by W E Gladstone, then Chancellor of the Exchequer, was intended to serve the Parliament:

The Australian office of auditor-general is modelled upon that of the comptroller & auditor-general in Britain. This was an office created on the initiative of W E Gladstone as Chancellor of the Exchequer by consolidating a number of audit posts. The purpose was to ensure that public expenditure conformed to the appropriations of Parliament in terms of quantity and purpose. The Government could only spend money if it had been appropriated by the Parliament and only then for purposes approved by Parliament.

The auditor-general is thus an instrument of the Parliament in overseeing the Executive Government. Apart from its own procedures and committees the Parliament has no other instrument for overseeing obedience to its wishes.⁴

3.12 It was argued that the Auditor-General's audit mandate still derives from the Parliament:

- the Australasian Council of Auditors-General affirmed that the 'statutory audit function is a service to the Parliament rather than the Government';⁵

3 Pat Barrett, Auditor-General, *Transcript*, p. 87.

4 J R Nethercote, *Submission*, p. S123. Dr Warwick Funnell noted that Gladstone had called the Auditor-General an 'Officer of Parliament' in 1869, *Submission*, p. S80.

- the Auditor-General of Queensland, Mr B M Rollason, agreed that 'the Auditor-General derives the audit mandate from the Parliament';⁶ and
- the Auditor-General of South Australia, Mr Ken MacPherson, described the office of Auditor-General as 'a creature of statute created by the Legislature to assist it in the discharge of its responsibilities as Parliament in the oversight of the Executive'.⁷

3.13 The JCPA itself, in *Report 296: The Auditor-General - Ally of the People and the Parliament*, agreed with the British Public Accounts Committee that the Auditor-General audits 'on behalf of the Parliament'.⁸

3.14 The previous Auditor-General, Mr John Taylor, though recognising his professional responsibilities to the Executive and to auditees, considered that, 'the Parliament is the Auditor-General's ultimate (some would say only) client'.⁹ In 1993, he was reported to have expressed concern that auditees were confused about the independence of the 'Parliament's auditor':

*departments are not giving good advice about the independence of the Parliament's auditor. Departments seem to believe that I work for them and that therefore I should be more circumspect. They are giving advice which is coloured by self interest; [they are] not interested in public exposure of their faults.*¹⁰

6 Auditor-General of Queensland, *Submission*, p. S65.

7 Ken MacPherson, Auditor-General of South Australia, in evidence to the Economic and Finance Committee, Parliament of South Australia, *Submission*, p. S91.

8 JCPA, *Report 296*, p. 76.

9 John Taylor, 'The Auditor-General: Ally of the People, the Parliament and the Executive' in *Papers on Parliament No. 7* (March 1990), p. 5.

10 Cited in Warwick Funnell, *Submission*, p. S81. Addressing this issue, Ms Linda English and Dr James Guthrie recommended that the Australian National Audit Office should be directed to regard the Parliament as its chief client, and further recommended that the Auditor-General should be an 'Officer of the Parliament'.

3.15 Dr Warwick Funnell took a broader view of the role of the Auditor-General. He argued that, since the threat of exposure to public criticism is the final discipline on the actions of the Executive, then, in reality, the Auditor-General works for the wider community, not just its representatives who sit in Parliament.¹¹

3.16 Of course, the Auditor-General does not have a single client. The Auditor-General works for the public - providing a window on the operations of government agencies; the Auditor-General also works for Ministers - providing independent advice that assists them to control their portfolio agencies; the Auditor-General works for departments and agencies - providing auditing services and management consultancy advice.

3.17 Nonetheless, the Committee believes that the Auditor-General's ultimate client is the Parliament. The primary purpose of public audit is to assist the Parliament to hold the Executive to account for its use of public monies.

Auditor-General's Constitutional role

3.18 The Committee sought advice on whether the Auditor-General's role and functions could best be characterised as:

- **assisting the Executive** in the execution and maintenance of the laws of the Commonwealth (under section 61 of the Constitution); or
- **assisting the Legislature** (established under section 1 of the Constitution) to make laws (under Part V of the Constitution), and to control the Commonwealth's finances (as provided for in Chapter IV of the Constitution).

3.19 The Attorney-General's Department advised that there was not a convincing argument either way:

The Constitution provides for three arms of government - the Parliament, the Executive and the Judicature. In very basic terms, the role of the Auditor-General is to report to one arm of government, the Parliament, in relation to specified activities of another arm of government, the Executive.

... Having regard to the provisions of the Constitution, the ANAO's functions do not sit directly with either the Parliament or the Executive.¹²

3.20 Mr Tony Harris, representing the Australasian Council of Auditors-General, noted that the WA Royal Commission into Commercial Activities of Government and Other Matters had examined the constitutional position of the Auditor-General in that State and concluded that the Auditor-General was a 'constitutional orphan'.¹³

3.21 In the absence of any clear Constitutional answer, there was vigorous debate about whether the Auditor-General's role was within the ambit of Parliament or the Executive.

3.22 The Clerk of the Senate, Mr Harry Evans, argued that the Auditor-General belonged in the Legislature:

.... conceptually the Auditor-General belongs to the legislative branch. In constitutional theory the legislative branch has the function of scrutinising the operations of government, and the Auditor-General is a very important adjunct to that function of scrutinising the operations of government. Therefore, conceptually, the office belongs to the legislative branch rather than to the executive branch.¹⁴

3.23 The Auditor-General, Mr Pat Barrett, was in agreement with the Clerk of the Senate from a conceptual point of view.¹⁵

12 Attorney-General's Department, *Submission*, p. S54.

13 Tony Harris, Convenor, Australasian Council of Auditors-General, *Transcript*, p. 97.

14 Harry Evans, Clerk of the Senate, *Transcript*, p. 96.

3.24 Mr John Nethercote submitted that the Auditor-General was a unique office in the machinery of government,¹⁶ nonetheless maintaining that the Auditor-General was not an officer of the Executive:

*It may be that the Auditor-General is not an officer of the Parliament but **nothing is clearer than that the Auditor-General is not an officer of the Executive Government** and needs a great deal of fundamental as well as day to day independence from the Executive.¹⁷ [emphasis added]*

3.25 The counter view - that the Auditor-General was an officer of the Executive - was put by the Department of Finance, thus:

Perhaps the most useful starting point is the conceptual context that the Constitution appears to have for the independence of the Auditor-General - in particular, the fact that the Auditor-General's powers and functions are conferred by statute. That is, the Office of Auditor-General is, and will remain, expressly governed by a 'law of the Commonwealth' - the execution and maintenance of which is a functional responsibility of the Executive Government (s61 of the Constitution refers). Within our legal framework, therefore, the Auditor-General is, in a real sense, a creation of the Executive.¹⁸

3.26 The Attorney-General's Department advised that the ANAO was currently administered as an agency of the Executive, under the Minister for Finance, but that there was no constitutional prohibition on the Auditor-General being appointed as an 'Officer of the Parliament'.¹⁹

16 J R Nethercote, *Submission*, p. S123.

17 J R Nethercote, *Submission*, p. S123.

18 Department of Finance, *Submission*, p. S49.

3.27 The Committee's view of this debate is that the proponents of each viewpoint are arguing at cross purposes. In particular, there is some confusion between:

- the Auditor-General's Constitutional **role** - that is the purpose and functions of the office; and
- the Auditor-General's Constitutional **position** - that is, where the office happens to 'sit' in the Constitutional framework for administrative purposes.

3.28 It is true that, conceptually, the Auditor-General assists the Legislature. It is equally true that, in practice, the ANAO has been - and will continue to be - administered as an agency of the Executive. In this sense, the term 'constitutional orphan' aptly describes the position of the Commonwealth Auditor-General.

3.29 Mr Tony Harris observed that Prime Minister Barton had referred to Australia's Auditor-General as an 'Officer of the Parliament' at the turn of the century and noted that the title 'Officer of the Parliament' is 'a **symbol** of the **role** of the Auditor-General'[emphasis added].²⁰

3.30 The Committee considers that the **role** of the Auditor-General is captured by the title, 'Officer of the Parliament' because the Auditor-General assists the Parliament in holding the Executive to account. The Committee considers the Auditor-General's Constitutional **position** below.

20 Tony Harris, Convenor, Australasian Council of Auditors-General,

Constitutional position of the Auditor-General

3.31 The Auditor-General and the ANAO are currently located within the executive arm of government and are the responsibility of Ministers of State:

- the Auditor-General is appointed by the Governor-General on the advice of the Prime Minister;
- the staff of the ANAO are employed under the *Public Service Act 1922* as part of the Department of Prime Minister and Cabinet (although the Auditor-General exercises the powers of Secretary in relation to the ANAO); and
- funds for the ANAO are included in the appropriations for the Department of Finance.²¹

3.32 The Committee suggests that it is appropriate for the Auditor-General to remain in the executive arm of government for administrative purposes while fulfilling its role of assisting the Parliament, provided that safeguards are put in place to limit Executive influence over the Auditor-General. Devising such safeguards has been the Committee's task in this inquiry.

3.33 The constitutional contradiction of the Auditor-General's being seen as an 'Officer of the Parliament' but, being located within the executive arm of government exists in other Westminster jurisdictions.

21 Advice to the ANAO from Blake Dawson Waldron, dated 5 June 1996. Submission no. S10.96

3.34 Mr Tony Harris, representing the Australasian Council of Auditors-General observed that, although the Auditors-General of New Zealand and the United Kingdom are 'styled' as 'Officers of the Parliament', they are in reality appointed by the Crown and thus 'Officers of the Crown'. He concluded:

*So the term 'officer of the parliament' has some symbolic meaning, but in fact we cannot identify any Auditor-General who is actually an officer of the parliament in current times.*²²

3.35 The Australasian Council of Auditors-General submitted, in similar terms:

The term 'Officer of the Parliament' has been applied to Commonwealth Auditors-General from the early years of Federation. To some extent, this merely reflects the accepted view that Auditors-General should not be viewed as being part of the Executive Government because their principal role is to report to Parliament on the assertions and performance of the Executive Government.

*... [but] no Australian jurisdiction has created the position of Auditor-General as an Officer of the Parliament. All of them are Officers of the Crown.*²³

3.36 The Committee has recognised and dealt with the dichotomy throughout this report. So, for example:

- while the Committee has accepted that the appointment of the Auditor-General will continue to be by the Governor-General on advice from the Executive, the Committee considers that the Parliament should be able to approve the appointee (see **Recommendation 5**);
- while the Committee has not suggested that the Executive cannot ultimately control the Auditor-General's appropriation, the Committee has recommended that the resourcing of the office should be transparent to the Parliament (see **Recommendation 6**); and

22 Tony Harris, Convenor, Australasian Council of Auditors-General, *Transcript*, p. 64.

23 Australasian Council of Auditors-General *Submission n S42*

- while the Committee has accepted that the staff of the ANAO will continue to be employed within an Executive agency, the Committee has recommended that the Auditor-General Bill state that only the Auditor-General can direct ANAO staff in the performance of audit duties (see **Recommendation 3**).

3.37 The Committee considers that it should be possible to arrive at a similar position in relation to the status and title of the Auditor-General.

3.38 The legislative measures that the Committee is suggesting in this report to guard the independence of the Auditor-General do not require that the Auditor-General be moved from the Executive to the Legislature. The Committee believes that the Executive could retain administrative responsibility for the office of Auditor-General and the ANAO, but that the Parliament - the Auditor-General's 'employer' and 'ultimate client' - should ensure that the Auditor-General's audit independence is respected and that the Auditor-General is properly resourced to carry out audit functions.

3.39 The Committee notes the advice of Blake Dawson Waldron to the ANAO that it would be possible to have the Auditor-General declared by legislation to be an 'Officer of the Parliament' but to have the appointment made by the Executive Government as was proposed under the *Auditor-General Bill 1994*.²⁴ The *Auditor-General Bill 1994* was clearly drafted on the basis that the Auditor-General would remain within the executive arm of government.

3.40 The Committee considers that the measures it is suggesting in this report to support the functional independence of the Auditor-General can be incorporated in the type of legislative framework outlined in the *Auditor-General Bill 1994*. The Committee accepts that, under the Auditor-General Bill, the Auditor-General will be a statutory officer (and the ANAO will be a statutory authority) administered within the executive arm of government.

24 Advice to the ANAO from Blake Dawson Waldron, dated 6 June 1996. *Submission*, p. S24.

3.41 Within this framework, the Committee considers that the Prime Minister should have Ministerial responsibility for the Auditor-General and the ANAO²⁵ (see **Recommendation 4**).

Accountability of the Auditor-General

3.42 The Auditor-General, like all other Commonwealth office holders, must be accountable for his or her exercise of authority and use of public funds.

3.43 The question is, 'To whom should the Auditor-General be accountable?'.

3.44 The Committee accepts that the Prime Minister will have Ministerial responsibility for the Auditor-General and the ANAO for administrative purposes.

3.45 However, the Committee considers that the Auditor-General should be accountable to the Parliament for the efficient performance of the audit function, since, as the Committee concluded above, the public audit mandate derives from the Parliament.

3.46 The Committee notes that, in other jurisdictions, parliamentary committees play an important role in reviewing the performance of the Auditor-General.

25 In Report 296, the JCPA expressed concern that the audit office be distanced from the Department of Finance (DoF). The JCPA commented:

The contradiction ... is that the Audit Office's most important auditee advises Government on how many resources the Audit Office receives. The nature of this relationship must have a bearing on audits of the DoF. Of note is that Auditors-General tend to make mild statements in their reports on financial statements prepared by the Minister for Finance. Also of note is that no Auditor-General has ever subjected any part of the Department of Finance to an efficiency audit. (p. 68)

The Committee considers that it is inappropriate for the ANAO to be funded within the Finance portfolio and considers that the Auditor-General should be located in the portfolio of the Prime Minister, along with other review agencies such as the Ombudsman.

3.47 For example, in New Zealand, the Officers of Parliament Committee conducts an annual financial review of the Controller and Auditor-General and reports to the Parliament on the management, including financial management, of the Audit Office.²⁶ The Committee also examines the business plans of the Audit Office.

3.48 In NSW, the Public Accounts Committee is responsible for reviewing the Audit Office every three years under the *Public Finance and Audit Act 1983*. In practice, the most recent review, tabled in April 1996, was carried out by several top accounting firms, and by an independent panel of advisers; however, the ensuing report and recommendations were for the Committee to accept or reject in its report to Parliament.²⁷

3.49 The Committee believes that the Audit Committee of the Australian Parliament, similarly, could facilitate the Auditor-General's accountability to Parliament for the effective discharge of the audit function.

3.50 In practice, the Audit Committee could:

- approve the appointment of the Independent Auditor and advise the Independent Auditor of the Parliament's audit priorities;
- seek the advice of the Independent Auditor in reviewing the estimates of the ANAO;
- examine the Auditor-General's strategic plans; and
- report to the Parliament on the performance of the Auditor-General as appropriate.

3.51 The Committee considers that Audit Committee review would enhance Parliamentary awareness of, and confidence in, the performance of Commonwealth audit functions (see **Recommendation 11**).

26 Officers of Parliament Committee of the New Zealand House of Representatives, *1994/95 Financial Review: Audit Office* (1996).

27 Public Accounts Committee of NSW, *Submission*, p. S103.

'Officer of the Parliament'

Meaning of the title 'Officer of the Parliament'

3.52 In Report 296, the JCPA recommended that the Auditor-General for the Commonwealth of Australia should be appointed as an 'Officer of the Parliament'. However, in Report 331, the JCPA had gone cold on the idea because of uncertainty surrounding the meaning and ramifications of the title in the context of Australian government.

3.53 The term 'Officer of the Parliament' is already defined in Commonwealth law under section 9(8)(a) of the *Public Service Act 1922*. The Clerk of the Senate, who gave evidence to this inquiry, is one of several 'Officers of the Parliament'. Section 9A of the Public Service Act provides for the Speaker of the House of Representatives and the President of the Senate to create and abolish Parliamentary offices to facilitate the conduct of Parliament.

3.54 The Department of Finance submitted that it would be inappropriate for the Auditor-General to be appointed as an 'Officer of the Parliament', given the meaning of that term in the context of the Australian Parliament:

The positions of Clerk, Secretary of each Parliamentary Department, Black Rod etc have been created by the Parliament - not under statute but under its own rules - for the sole purpose of facilitating the manner and form in which Parliament conducts itself and its business. The persons who occupy these positions are, indeed, 'Officers of the Parliament'.

On the other hand, the Auditor-General's relationship with the Parliament, while important and special, is not one which is central to the manner and form for the conduct of the institution that is Parliament. While the Parliament is the main (but not only) 'client' of the Auditor-General, it does not rely on the Auditor-General in order to function. The declaration of the Auditor-General as an Officer of the Parliament, on the face of it, would result in the existence of two quite different types of Officers of Parliament in terms of nature and role.²⁸

3.55 The Committee accepts that the existing definition of the term 'Officer of the Parliament' in the Public Service Act could not be appropriately applied to the Auditor-General.

3.56 However, the Committee does not accept that the definition of 'Officer of the Parliament' in the Public Service Act is the only proper meaning of that term.

3.57 In New Zealand, the term 'Officer of Parliament' has a clearly defined meaning. An 'Officer of Parliament' in New Zealand is created by the Parliament in legislation **to provide a check on the arbitrary use of power by the Executive and to discharge functions which the House of Representatives itself, if it so wished, might carry out.**²⁹ The Controller and Auditor-General of New Zealand, also the Ombudsman, the Parliamentary Commissioner for the Environment and the Wanganui Computer Centre Privacy Commissioner, are appointed as 'Officers of Parliament'.

28 Department of Finance, *Submission*, p. S51.

29 Finance and Expenditure Committee of the New Zealand House of Representatives, *Report on the Inquiry into Officers of Parliament* (1980) pp. 5-7.

3.58 The Committee considers that the Auditor-General for the Commonwealth of Australia could be styled as an 'Independent Officer of the Parliament' to avoid any ambiguity in the use of the title, to distinguish the Auditor-General from other 'Officers of the Parliament' in Australia, and, most importantly, to accurately reflect the true independence of the office that would result from the adoption of the measures suggested in this report³⁰ (see **Recommendation 1(b)**).

Potential legal consequences of appointing the Auditor-General as an 'Officer of the Parliament'

3.59 In his letter of reference, the Minister observed that the ANAO, in light of legal opinion obtained on the matter, had reservations about the appointment of the Auditor-General as an 'Officer of the Parliament' because of a perception that this could damage the independence of the Auditor-General.

3.60 The Committee has reviewed the legal opinions provided to the ANAO by Blake Dawson Waldron and by the Attorney-General's Department on this issue.³¹

3.61 At the outset, the Committee notes that these legal opinions were obtained in a vacuum of advice about the intentions or will of the Parliament in appointing the Auditor-General as an 'Officer of the Parliament'. This is neither a criticism of the advice, nor those who sought it. It is simply a recognition that a lot of the legal opinion pertains neither to the legislative model envisioned by this Committee to protect the independence of the Auditor-General, nor to the Committee's conception of the title 'Officer of the Parliament'.

3.62 It appears to the Committee that the principal concerns about the risks of appointing the Auditor-General as an 'Officer of the Parliament' arise from:

- a perceived threat that the Auditor-General would be subject to direction by the Parliament; and

30 The Auditor-General for Western Australia proposed this title as appropriate to the office of Auditor-General in evidence to the Commission on Government, Western Australia. COG, *Report No. 1* (August 1995), p. 214.

31 Included in the Auditor-General's submission to the inquiry, *Submission no. S10.24*.

- the contention that the Auditor-General would be part of the legislative arm of government, with the attendant problems that would create, especially for the ANAO.

3.63 To a significant extent, both of these concerns stem from the uncertain meaning of the term, 'Officer of the Parliament'. The Committee addresses each of these points in turn.

Independence from the Parliament

3.64 The ANAO's legal opinions - and other evidence received in the course of the Committee's inquiry - raised concerns that the appointment of the Auditor-General as an 'Officer of the Parliament' could threaten the independence of the office if, in fact, it meant that the Auditor-General could be subject to the direction of the Parliament in the performance of Commonwealth audit functions.³²

3.65 The Australasian Council of Auditors-General pointed out that the title 'Officer of the Parliament':

... has a technical meaning which can be less helpful to the full role of Auditors-General. If it connotes that the Auditor-General is a servant of Parliament, rather than an Officer of the Crown, it can connote that the Auditor-General's capacity to audit the spending of Parliament or of individual Members of Parliament is constrained.

32 This concern was raised by several parties, including the President of the Senate, *Submission*, p. S38. The issue is discussed in advice to the ANAO from Blake Dawson Waldron, dated 5 June 1996, included in the Auditor-General's submission to the inquiry, *Submission*, pp. S18-19.

The ANAO's advice from Blake Dawson Waldron also explores a compromise option for each House of the Parliament to have a limited power to direct the Auditor-General to carry out particular audits, with a special standing appropriation for that purpose.

In its extreme, the term Officer of the Parliament can connote that the duties of the Auditor-General are, in practice, defined by the majority of the members of the House or Houses to which the Auditor-General reports or by the Speaker and/or the President of those Houses or by the majority of a specially constituted Committee of Parliament. This process could create strains for individual members of Parliament, if there were conflicts between the requirements of the auditing process and their own duties.³³

3.66 Further to this issue, ANAO's legal advisers pointed out:

- that, if the Auditor-General was treated like existing 'Officers of the Parliament', then the Auditor-General would be subject to the joint direction and control of the Presiding Officers;³⁴
- that direction of the Auditor-General by the House of Representatives (and/or a Government controlled Senate) would effectively subject the Auditor-General to the control of the Executive;³⁵
- that, in the event that the Auditor-General was subject to direction by both Houses of the Parliament, and the Senate was not controlled by the Government, then any conflict between the chambers could result in a stalemate;³⁶ and
- that there was a question as to whether or not the Auditor-General, as an 'Officer of the Parliament' could retain any discretion to withhold audit information from the Parliament on any grounds.³⁷

3.67 The suggestion that 'Officer of the Parliament' status could actually damage the independence of the Auditor-General is alarming.

33 Australasian Council of Auditors-General, *Submission*, p. S42.

34 Advice to the ANAO from Blake Dawson Waldron, dated 5 June 1996, *Submission*, p. S18.

35 Advice to the ANAO from Blake Dawson Waldron, dated 5 June 1996, *Submission*, p. S18.

36 Advice to the ANAO from Blake Dawson Waldron, dated 5 June 1996, *Submission*, p. S18.

37 Advice to the ANAO from the Office of General Counsel in the Attorney-General's Department, dated 14 March 1996, *Submission*, p. S19.

3.68 The Committee affirms that the Auditor-General needs not only to be functionally independent of the Executive but also functionally independent of the Parliament.

3.69 However, the Committee does not accept that the use of the title 'Officer of the Parliament' to describe the Auditor-General need make the office subject to the direction of the Parliament or either of its Houses, or its individual members. It is certainly not the Committee's intention that the title carry these ramifications.

3.70 The Committee considers that the inherent risks of styling the Auditor-General an 'Officer of the Parliament' may have been overstated.

3.71 Indeed, while the Committee took considerable evidence about the risks associated with the indiscriminate application of the title 'Officer of the Parliament' to the Auditor-General, there was a counter view that the title, by itself, was essentially symbolic and need not have any impact whatsoever on the functional independence of the Auditor-General.

3.72 The President of the Senate submitted:

I share the view that, if the Auditor-General were to be really an officer of the Parliament and were to be appointed by resolution of each House, this would detract from the independence of the office by making it unduly dependent on the two Houses rather than the government. If the proposed 'officer of the Parliament' status is to be conferred simply by some sort of declaration in the statute, this would not have any substantive effect.³⁸
[emphasis added]

3.73 The Attorney-General's Department confirmed that the use of the title 'Officer of the Parliament' to describe the Auditor-General, by itself would 'be of little or no effect'.³⁹

38 President of the Senate, *Submission*, p. S38.

3.74 The reasoning leading up to this conclusion was as follows:

The Parliament acts through its legislative powers, that is, by passing Acts of Parliament. A legislative provision which simply stated that the Auditor-General was an officer of the Parliament would leave Parliament powerless to act in respect of the Auditor-General except by means of an Act of Parliament.

Accordingly, something more will be required if the Auditor-General is in reality to be an Officer of the Parliament for whom the Parliament, not the Executive, is responsible.⁴⁰

3.75 In the legislative framework proposed by this Committee to guard the independence of the Auditor-General, there would be provisions allowing Parliament to act in respect of the Auditor-General. If the recommendations in this report were to be adopted in full, the Parliament (through its Audit Committee) would have powers over the Auditor-General in relation to:

- approving the appointment of the Auditor-General;
- recommending the appropriate level of resourcing for the audit office;
- monitoring Executive directions to the Auditor-General; and
- seeking advice on the performance of the Auditor-General from the Independent Auditor.⁴¹

3.76 Although these are important powers, they are limited and do not go to the performance of audit functions.

3.77 Moreover, the Committee proposes that the audit independence of the Auditor-General should be guaranteed in legislation (see **Recommendation 2**) to put beyond doubt that neither the Executive nor the Parliament has the right to direct the Auditor-General in any way in the performance of audit functions.

40 Attorney-General's Department, *Submission*, p. S55.

41 Recommendations 5, 6, 9, 8, 10 and 11, paragraph 2.

3.78 The Committee does not consider that the appointment of the Auditor-General as a symbolic 'Independent Officer of the Parliament' **in the context of the legislative measures proposed in this report to support the independence of the Auditor-General** would compromise the independence of the Auditor-General.

Constitutional position of the Auditor-General and the ANAO

3.79 The other serious concern about the appointment of the Auditor-General as an 'Officer of the Parliament' was that such an appointment might place the Auditor-General in the Legislature, following which it would be impossible for the Auditor-General to head an Executive department or agency (the ANAO as presently constituted) without offending the division of powers effected by the Constitution.⁴²

3.80 The Committee explained earlier in this chapter why it would be unnecessary for the Auditor-General to be established within the legislative arm of government as part of the package of legislative measures proposed in this report. Indeed, if the Auditor-General were to become part of the Legislature, then it is arguable that the measures proposed in this report would be inappropriate.

3.81 The Committee rejects any suggestion that the mere use of the title, 'Independent Officer of the Parliament' to describe the Auditor-General would propel the Auditor-General out of the Executive and into the Legislature.

42 Advice to the ANAO from the Office of General Counsel in the Attorney-General's Department, dated 14 March 1996, *Submission*,
[REDACTED]

3.82 The Committee has accepted that the staff of the ANAO will continue to be employed within an Executive agency.⁴³

3.83 In this context, the Committee has recommended that the Auditor-General Bill state that only the Auditor-General can direct ANAO staff in the performance of audit duties to insulate ANAO officers from Executive direction. (see **Recommendation 3**).

Confining the meaning of the term 'Officer of the Parliament'

3.84 The Auditor-General, Mr Pat Barrett, following advice received by the ANAO from Blake Dawson Waldron, submitted, as his 'fallback option' a proposal for making the Auditor-General an 'Officer of the Parliament' without compromising the functional independence of the office.⁴⁴

3.85 The Auditor-General stressed that it would be important to define, or confine, the meaning of the term 'Officer of the Parliament' in the Auditor-General Bill. In particular, the Auditor-General submitted that:

- *it would not be appropriate simply to include in the Auditor-General Bill a declaration that the Auditor-General be an 'Officer of the Parliament' as a bare declaration that the Auditor-General has the status of an 'Officer of the Parliament' would have uncertain legal consequences; [and]*

43 Blake Dawson Waldron advised the Auditor-General that:

... there is no legal repugnancy or breach of constitutional principle in conferring on the Auditor-General the status of 'officer of the Parliament' and having the ANAO staffed by persons who are part of the Australian Public Service employed under the Public Service Act 1922 so long as it is clear - as it is under clause 36 of the Auditor-General Bill 1994 - that when such staff are part of the ANAO their duty is to assist the Auditor-General in the performance of the Auditor-General's function. That statutory duty precludes the staff being subject to direction of the Executive in relation to the performance of the duties of their employment positions. (Submission, p. S24)

The Committee was guided by this advice.

- *if there is to be a legislative declaration that the Auditor-General is an 'Officer of the Parliament' then the legislation should expressly declare that the Auditor-General is an 'Officer of the Parliament' to the extent expressly provided for in the legislation ...*⁴⁵

3.86 The Committee recognises that these provisos are an attempt to address the uncertain meaning of the title, 'Officer of the Parliament' and has sought to accommodate these concerns. In particular, the Committee has accepted that there are inherent dangers in the indiscriminate use of the title 'Officer of the Parliament' and has sought ways to eliminate these risks.

3.87 The Committee considers that the declaration of the Auditor-General as an 'Independent Officer of the Parliament' would employ a symbolic title, reflecting the true role and status of the office of Auditor-General as established under the Auditor-General Bill (as amended to incorporate the recommendations in this report). The title would **describe** the legislative framework in which the office of Auditor-General is established, not dictate it. This should be made clear in the legislation itself or in the Explanatory Memorandum.⁴⁶

3.88 The Committee suggests that the declaration of the Auditor-General as an 'Independent Officer of the Parliament' in the Auditor-General Bill should be accompanied by a statement that the title has no legal consequences other than those explicitly provided for in the legislation and that the title takes its meaning from the Auditor-General Bill and not from any other Commonwealth legislation (see **Recommendation 1(c)**).

45 Auditor-General, *Submission*, p. S35.

46 Blake Dawson Waldron advised the ANAO that:

The risk [that declaring the Auditor-General to be an 'Officer of the Parliament' could be seen as making him, like other 'Officers of the Parliament', subject to direction by the Presiding Officers] would be reduced by statements in the Second Reading Speeches and Explanatory Memoranda - for example, it could be stated that the declaration was not itself intended to have any legal implications but simply to describe the effect of the operative provisions.

That would leave the declaration with 'symbolic' value but should prevent it carrying unintended or even unforeseen legal consequences.

Appointing the Auditor-General as an 'Independent Officer of the Parliament'

3.89 To conclude, the Committee believes that the Auditor-General for Australia should be appointed as an **'Independent Officer of the Parliament'**.

3.90 The Committee believes that this title is a **symbol** of the primary role of the Auditor-General who assists the Parliament in its role of scrutinising the exercise of authority and the expenditure of public funds by the Executive.

3.91 At the same time, the title, 'Independent Officer of the Parliament' **encapsulates the legislative model** that would be in place if the recommendations in this report were adopted. The title describes how the Auditor-General will operate in the framework of government - that is, the Auditor-General will be assisting the Parliament in its important scrutiny role, but the Auditor-General will be independent of the Parliament in that the Parliament will have **no power of direction** in relation to the Auditor-General.

3.92 Moreover, the title 'Independent Officer of the Parliament' **heralds a change** in the respective roles of the Executive and the Parliament in relation to the appointment and resourcing of the Auditor-General. Under the legislative framework proposed in this report, the Executive would retain administrative responsibility for the Auditor-General and the ANAO but Parliament, the Auditor-General's employer and ultimate client - would be involved in the appointment and funding of the Auditor-General.

3.93 The Committee has been at pains to ensure that the declaration of the Auditor-General as an 'Independent Officer of the Parliament' would enhance, not compromise, the independence of the Auditor-General. To this end the Committee is also recommending that:

- the declaration of the Auditor-General as an 'Independent Officer of the Parliament' be accompanied by provisions that explicitly state that the term has no meaning or consequences outside the Auditor-General Bill (see **Recommendation 1 (c)&(d)**); and

- the Auditor-General Bill contain a statement guaranteeing the absolute independence of the Auditor-General in the performance of audit functions (see **Recommendation 2**).

3.94 The Committee does not accept that declaring the Auditor-General to be an 'Independent Officer of the Parliament' would require that the office of Auditor-General be established within the legislative arm of government. Accordingly, the Committee does not consider it objectionable for the ANAO to be established as an Executive agency. However, to make it clear that staff of the ANAO cannot be directed other than by the Auditor-General in the performance of audit duties, the Committee is recommending that a statement to this effect be included in the Auditor-General Bill (see **Recommendation 3**).

3.95 The Committee considers that these provisions, taken together, will support the functional independence of the Auditor-General. In particular, the Committee considers that the title 'Independent Officer of the Parliament' will send a clear message to the community and to the bureaucracy about the significance and independence of the office of Auditor-General for the Commonwealth of Australia.

4

SUGGESTED MEASURES

... for supporting the functional independence of the Auditor-General in legislation

... Ultimately, of course, it is for the community to determine whether the Commonwealth is to continue to have a robust, effective and independent external audit institution; or, perhaps, to make do with some docile client of the Department of Finance. If it is to be the former, the pre-requisites are a strong and clear audit mandate, and resourcing arrangements that do not prejudice the institution's independence.¹

J V Monaghan AO, eleventh Auditor-General for Australia (1985-87)

4.1 In this chapter, the Committee fulfils its inquiry reference by suggesting legislative measures to support the functional independence of the Auditor-General.

4.2 At the public hearing on this inquiry, the Committee invited the Auditor-General, Mr Pat Barrett, to give his priorities for changes to his office that could be put in place to make the office of Auditor-General more independent of the Executive than it now is, both in real terms and symbolically.

1 From the *Annual Report of the Australian National Audit Office, 1986-87*, reproduced in *Audit Report No. 43, 1993-94, Parliament's right to know: Legislation to replace the Audit Act 1901* (AGPS, 1994), p. 42.

4.3 The Auditor-General replied:

I would have to say that a clear statement of independence in legislation would be of great assistance because it would put everyone on notice that that is the view of the parliament. It subsumes the executive in terms of the message that it gives to the whole of the public and private sectors. So that is my No. 1 priority.

Then we get down to the issues that are being discussed. They really have come up in this context of independence ... the individual elements, like appointment, dismissal, terms and conditions and resourcing. My second priority concerns parliament and/or its committees ... if the parliament, through its committees, has a marked influence on issues like appointment and resourcing, I think a lot of the issues simply disappear. That is my view.² [emphasis added]

4.4 The Committee agrees with the Auditor-General's priorities and has framed its recommendations accordingly.

4.5 **First**, the Committee recommends appointing the Auditor-General as an 'Independent Officer of the Parliament' and enshrining in legislation a guarantee of the Auditor-General's absolute independence in carrying out audit functions. This clear legislative statement of the role and status of the Auditor-General is pivotal to supporting the independence of the Auditor-General.

4.6 **Second**, the Committee recommends that the administrative relationship between the Auditor-General and the Executive be made transparent, as a guard against Executive influence over the operations of the Auditor-General. This could be achieved by giving the Audit Committee of Parliament effective oversight of the Auditor-General's operations.

4.7 **Third**, the Committee recommends the enactment of specific provisions that extend to the Auditor-General explicit statutory rights and powers. Elements of the personal independence of the Auditor-General - such as tenure and remuneration; also the Auditor-General's audit mandate and operational powers, can be enshrined in legislation.

² *Parliamentary Commissioner for the Environment, 1998, p. 22.*

Independent Officer of the Parliament

4.8 The Committee considers it would be appropriate to declare the Auditor-General to be an Independent Officer of the Parliament.

4.9 The title, 'Independent Officer of the Parliament', **symbolises** the role and status that the office of Auditor-General would have if the recommendations in this report were to be adopted. The title is essentially descriptive; it is not intended to have any meaning outside the context of this legislative model for guarding the independence of the Auditor-General.

4.10 The title, 'Independent Officer of the Parliament', reflects the actual status of the Auditor-General in the legislative model proposed by the Committee in this report, given that:

- the Auditor-General's audit independence from both the Executive and the Parliament will be guaranteed in legislation;
- the Auditor-General will have an absolute mandate to report to the Parliament on the operations of Commonwealth entities, to assist the Parliament to hold the Executive to account;
- Parliament, through its Audit Committee, will approve the appointment of the Auditor-General;
- Parliament, through its Audit Committee, will monitor the performance of audit functions;
- Parliament, through its Audit Committee, will be involved in the resourcing of audit functions; and
- Parliament, through its Audit Committee, will monitor Executive influence over the Auditor-General.

4.11 The Committee believes that the symbolism of the title, 'Independent Officer of the Parliament', is important. The title states the proper role of the office of Auditor-General for Australia, setting clear parameters of proper conduct for the Executive and the Parliament in their dealings with the Auditor-General. The Committee considers that the symbolism of the title, 'Independent Officer of the Parliament' could well have a more immediate impact on the functional independence of the Auditor-General than the particular operative provisions designed to guard that independence.

4.12 The Committee considers it essential for the Auditor-General Bill to incorporate a statutory guarantee of absolute audit independence for the Auditor-General, to put beyond doubt the Auditor-General's freedom from direction by the Executive or the Parliament in the performance of audit functions.

4.13 To underpin the Auditor-General's absolute audit independence, the Committee considers that the Auditor-General Bill should make explicit that staff of the ANAO are only subject to direction by the Auditor-General in the performance of audit duties. Of course, the Auditor-General should be able to delegate this power of direction.

4.14 **Recommendation 1**

The Auditor-General Bill should state that:

- (a) *there is to be an Auditor-General for Australia, exercising the audit functions described in this Act;*
- (b) *the Auditor-General is an 'Independent Officer of the Parliament';*
- (c) *the title 'Independent Officer of the Parliament' has the meaning given to it in this Act and no other and, further, has the legal consequences expressly provided for in this Act and no other; and*
- (d) *the Parliament has no power to act in relation to the Auditor-General except as expressly provided in this Act.*

4.15 Recommendation 2

The Auditor-General Bill should state that:

The Auditor-General shall have complete discretion in the discharge of the audit functions set down in this Act, subject only to any duties imposed by statute. In particular, the Auditor-General is not subject to direction in relation to:

- (a) whether or not an audit is to be conducted;*
- (b) the priority to be accorded to any particular matter; and*
- (c) the manner in which an audit is to be conducted.*

4.16 Recommendation 3

The Auditor-General Bill should also state that:

The staff of the Australian National Audit Office (ANAO):

- (a) have a duty to assist the Auditor-General in the performance of the Auditor-General's functions; and*
- (b) may be directed only by the Auditor-General in the performance of audit duties.*

4.17 As an Independent Officer of the Parliament, the Auditor-General's relationship with Parliament will be of paramount importance. The Auditor-General will report primarily to the Parliament, will be accountable primarily to the Parliament, and will be resourced on the recommendation of the Audit Committee of the Parliament.

4.18 However, the Committee recognises that the Auditor-General will not be completely independent of the Executive in the legislative model proposed in this report.

4.19 To the extent that the Auditor-General and the ANAO will continue to be administered as part of the executive arm of government, the Committee believes that the Prime Minister should take responsibility for the Auditor-General and the ANAO. The Committee considers it is not appropriate for these offices to be in the same portfolio as their main auditee, and the Executive's adviser on budgetary matters, the Department of Finance.

4.20 **Recommendation 4**

The Auditor-General and the Australian National Audit Office should be the portfolio responsibility of the Prime Minister.

**Role and functions of an Audit
Committee of the Australian
Parliament**

4.21 The title, 'Independent Officer of the Parliament', recognises that the Auditor-General works principally for the Parliament.

4.22 However, the Auditor-General can never be completely independent of the Executive since the Executive ultimately controls the Commonwealth treasury and is responsible under the Constitution for the administration of legislation (including the Auditor-General's enabling legislation). There is a consequent need for Executive decisions in relation to the Auditor-General to be transparent to the Parliament, so the Parliament can call the Executive to account for its treatment of the Auditor-General.

4.23 The Committee believes that enhanced transparency of the Auditor-General's operations could be achieved by giving an Audit Committee of Parliament oversight of the Auditor-General.

4.24 Accordingly, the second plank of the Committee's strategy to guard the independence of the Auditor-General involves the establishment of an Audit Committee of Parliament:

- to approve the appointment of the Auditor-General;
- to make recommendations to the Parliament about the resourcing of the ANAO;
- to monitor Executive influence of the Auditor-General; and
- to facilitate the Auditor-General's accountability to the Parliament.

4.25 The Audit Committee would act on behalf of the Parliament in relation to the Auditor-General and report to the Parliament on the Auditor-General.

Role of the Audit Committee in the appointment of the Auditor-General

4.26 The Committee considers that the Audit Committee, should have the right to approve the appointment of the Auditor-General. The Audit Committee, as it is intended to be constituted³ would represent both Houses of the Parliament and all parties and so would be well suited to act on behalf of the Parliament in this matter. To ensure that the decision of the Audit Committee on the appointment of the Auditor-General truly reflects the views of the Committee's different constituent interests, the Committee believes that approval of the appointment of the Auditor-General should require a majority vote of no less than three-quarters of the membership of the Audit Committee.

3 The JCPA recommended in Report 331 that the membership of the Committee be increased to 16 members with one position being reserved for a nominee of minority parties or independents (Report 331, Recommendation 39). Under the *Public Accounts Committee Act 1951*, as it stands, two-thirds of the members (10 members) are drawn from the House of Representatives and the remaining one-third (5 members) from the Senate.

4.27 The Committee also considers that the Audit Committee should conduct a public hearing to take evidence from the person nominated by the Executive to the position of Auditor-General. The Committee is recommending in this report that the Auditor-General be appointed for a fixed term of 10 years (see **Recommendation 13(a)**) in which case the Auditor-General could be expected to outlast at least three Parliaments. The appointment is thus of major significance in the framework of government in Australia and the process of appointment should be visible. The Committee considers that a public hearing would provide an opportunity for the person nominated to the position of Auditor-General to outline his or her priorities and visions for the future. The Committee considers that this process would enhance public confidence in the office of Auditor-General.

4.28 **Recommendation 5**

The Audit Committee should be empowered to:

- (a) *approve by a majority of no less than three-quarters of the Committee membership the Government's nomination for appointment to the position of Auditor-General; and*
- (b) *conduct a public confirmation hearing to take evidence from the person nominated to the position of Auditor-General prior to giving approval to the appointment.*

Role of the Audit Committee in resourcing the Auditor-General

4.29 In Chapter 2, the Committee argued the case for enhanced Parliamentary oversight of the funding of the ANAO by the Audit Committee on behalf of the Parliament.

4.30 At the public hearing on this inquiry, the Auditor-General, Mr Pat Barrett, was asked if Audit Committee involvement in the process for examining and recommending ANAO estimates to Parliament would improve transparency and enhance the public perception of the Auditor-General's independence. The Auditor-General replied:

... I have no doubt about that. I think it is the representatives of both houses who are having an independent say on what resources are needed to do this job of audit. That recommendation is made; it is transparent. I would prefer to have it as a public report, a public recommendation. If the government of the day decides that for other reasons they will not agree, it is quite clear that those reasons have to be transparent, and of course that would be subject to parliamentary debate. That is the way democracy works in this country.⁴

4.31 The Auditor-General proposed that Audit Committee involvement in the funding process would take place, each year, as follows:

- the ANAO would prepare estimates of receipts and expenditure and submit these to the Audit Committee;
- the Audit Committee would examine the estimates, taking advice from Finance officers;⁵
- the estimates, together with the report of the Audit Committee, would be referred to the Minister for Finance for timely consideration in preparation of the Appropriation Bills;⁶
- the ANAO's estimates would then be considered during the normal budget processes;⁷ and
- the ANAO's appropriation would be included in a separate schedule to the Budget Papers solely for the ANAO, distinct from appropriations for Departments and Services.⁸

4 Pat Barrett, Auditor-General, *Transcript*, p. 87.

5 Auditor-General, *Submission*, p. S7.

6 Auditor-General, *Submission*, p. S7.

7 Auditor-General, *Submission*, p. S7.

8 Auditor-General, *Submission*, p. S132.

4.32 The Committee supports this proposal, with three significant refinements.

4.33 First, the Committee believes the process for Audit Committee review of ANAO resourcing should take place at public hearings - with the Audit Committee seeking advice from advisers other than the Department of Finance, including the Independent Auditor. Second, the Committee considers that the Audit Committee's report and recommendations on the ANAO estimates should be tabled in the Parliament, not just submitted to the responsible Minister. Third, the Committee believes that the Audit Committee, as part of its annual review of the ANAO's budget, should examine the audit fees set by the Auditor-General.

4.34 The Committee considers that the appropriation for the ANAO should be visibly separate from both Departmental and Parliamentary appropriations, to reinforce the perception of independence and to facilitate comparison of the ANAO's appropriation with the recommendation of the Audit Committee on that appropriation.

4.35 **Recommendation 6**

The Audit Committee should be empowered to:

- (a) *examine the budget estimates of the Australian National Audit Office (ANAO);*
- (b) *examine the levels of audit fees set by the Auditor-General under the Auditor-General Act;*
- (c) *seek evidence and advice on the estimates of the ANAO, including at public hearings;*
- (d) *make recommendations to Parliament and to the Prime Minister about the appropriation for the ANAO; and*
- (e) *monitor, over time, the adequacy of funding for the ANAO, with particular attention to the ability of the office to attract staff and to maintain and upgrade information technology as necessary.*

4.36 Recommendation 7

The appropriation for the Australian National Audit Office should appear as a separate schedule in the Budget Papers.

4.37 Once Parliament has approved the appropriation for the ANAO, the Executive should be denied the discretion to withhold any portion of this appropriation. The Committee notes that there was a provision to this effect in the Auditor-General Bill 1994 (Clause 46) and that the Department of Finance has indicated that such a provision is intended to be included in the *Auditor-General Bill 1996*.⁹

4.38 The *Auditor-General Bill 1994* also provided for the Auditor-General to have authority to approve a proposal to spend money under the ANAO's appropriation (Clause 47). Such authority is generally vested in the Minister responsible for an Executive department or agency. The purpose of Clause 47 was to give the Auditor-General independence from the Executive in incurring expenditure.¹⁰ The Committee considers that this provision would be important to support the financial independence of the Auditor-General.

4.39 Recommendation 8

The Auditor-General Bill should provide:

- (a) that the Minister for Finance must issue drawing rights under the relevant provision of the Financial Management and Accountability Act to cover the full amounts that the Parliament appropriates for the purposes of the Australian National Audit Office; and***
- (b) that the Auditor-General has authority to approve a proposal to spend money under an appropriation for the ANAO.***

9 Department of Finance, *Submission*, p. S50.

10 Maurie Kennedy, Assistant Secretary, Financial Administration Advisory Branch, Department of Finance, *Treasury*, p. 81.

Role of the Audit Committee in monitoring the exercise of Executive discretion

4.40 As a matter of broad principle, the Committee considers that the Audit Committee of Parliament should play a role in monitoring the exercise of any Executive direction to the Auditor-General.

4.41 In Chapter 2, the Committee indicated its serious concerns about the broad and unfettered discretion that would have been given to the Executive, had the *Auditor-General Bill 1994* been enacted, to exclude sensitive audit information from reports to Parliament.

4.42 The Committee accepts that the Executive will reserve the right to suppress the publication of audit information that would prejudice national security. However, the Committee considers that there must be a mechanism for the Parliament to check the exercise of Executive discretion in relation to directions to the Auditor-General to suppress audit information from the Parliament.

4.43 **Recommendation 9**

The Auditor-General Bill should provide that:

- (a) *the Executive may only direct the Auditor-General to exclude sensitive audit information from a report to the Parliament where disclosure of the information would be likely to prejudice national security;*
- (b) *where the Executive orders the Auditor-General to suppress sensitive audit information on the grounds of national security, the Audit Committee should receive an unabridged copy of the audit report and/or a copy of the suppressed information; and*
- (c) *where sensitive information is excluded from an audit report, the fact of the exclusion and the reasons for the exclusion should be reported to the Parliament in the audit report.*

4.44 In his submission to this inquiry, the Auditor-General, Mr Pat Barrett, drew the Committee's attention to Clause 51 of the *Financial Management and Accountability Bill 1994* which would have required the Auditor-General to provide information to the Minister for Finance on request.¹¹ The Department of Finance informed the Committee that a special exemption had been included in the *Auditor-General Bill 1994* to provide that the Auditor-General only had to comply with a request for information under Clause 51 if the chief executives of at least two other agencies also had to comply with the same request.¹² The Committee considers this to be an inadequate safeguard in a situation where the potential for damage to the Auditor-General's independence has been acknowledged.

4.45 The Committee considers that this is another potential circumstance where it would be appropriate for the Audit Committee to be informed of the reasons for an Executive direction.

4.46 The Committee considers that the Parliament, and in particular its Audit Committee, should be informed - by the Minister responsible - of any Executive direction to the Auditor-General.

4.47 In light of the fact that the Committee has not seen the *Auditor-General Bill 1996*, the Committee cannot comment on specific provisions. However, the Committee states its in-principle position that any exercise of Executive discretion in relation to the Auditor-General should be reported to the Audit Committee.

11 Auditor-General, *Submission*, p. S37.

12 Mr Maurie Kennedy, Assistant Secretary, Financial Administration Advisory Branch, Department of Finance, giving evidence at the public hearing, explained that:

To make the audit office and Auditor-General immune from any scope for victimisation by an executive to overwhelm the audit office with requests for information from this and that and to divert its resources from what it ought to be doing, we included this safeguard provision in the bill that said that the audit office does not have to do that unless it is in concert with two or more other agencies. Again, it

4.48 Recommendation 10

The Auditor-General Bill should require that:

If the Executive gives any direction to the Auditor-General, then:

- (a) *such direction should be in writing and should be reported to Parliament by inclusion in a schedule in the Annual Report of the Auditor-General; and*
- (b) *the Executive should immediately report the substance of the direction, and the reasons for the direction, to the Audit Committee of Parliament.*

Role of the Audit Committee in facilitating the Auditor-General's accountability to Parliament

4.49 Since the Auditor-General works principally for the Parliament, to assist the Parliament to scrutinise the operations of the Executive, then it is the Parliament that is most affected by the performance of the Auditor-General. Accordingly, it is appropriate that the Auditor-General be accountable to the Parliament for the performance of audit functions.

4.50 The Committee considers that the Audit Committee can facilitate this process of accountability by taking responsibility for some of the associated functions, namely approval of the appointment of the Independent Auditor, seeking advice from the Independent Auditor, and reporting to Parliament regularly on the performance of the Auditor-General.

4.51 Recommendation 11

The Audit Committee should be empowered to:

- (a) *approve the appointment of the Independent Auditor and advise the Independent Auditor of the Parliament's audit priorities;*
- (b) *seek advice from the Independent Auditor on the performance of the Australian National Audit Office (ANAO) in the course of examining the annual estimates of the ANAO (Recommendation 6 refers); and*
- (c) *report to Parliament on the performance of the ANAO at any time as appropriate.*

Establishing the Audit Committee in legislation

4.52 Provisions to give effect to the above recommendations concerning the Audit Committee could be incorporated into the *Public Accounts Committee Act 1951*.

4.53 In Report 331, the Committee discussed in detail the rationale for the JCPA assuming the role of Audit Committee, and proposed changes to the Public Accounts Committee Act to allow this to happen.¹³ In particular, the JCPA stated its views in Report 331 that, inter alia:

- the Audit Committee should be established in statute (by amendments to the Public Accounts Committee Act), rather than by resolution of the Parliament;¹⁴
- the name of the JCPA should be changed to the Joint Committee of Public Accounts and Audit (JCPAA);¹⁵

13 JCPA, Report 331, Chapter 5.

14 JCPA, Report 331, pp. 104-06.

- the JCPAA's functions as an Audit Committee should be seen as distinct from its other duties and, to this end, the JCPAA should convene as the Audit Committee when performing audit committee functions;¹⁶
- the functions of the Audit Committee should be added to the JCPA's statutory duties under the Act and the same powers and privileges that the JCPA enjoys when carrying out its existing statutory duties should be conferred upon the Audit Committee;¹⁷ and
- the membership of the JCPAA should be 16 members (one more than the present membership of the JCPA) with the additional position being reserved for a parliamentarian nominated by any minority groups or independents in the Parliament - or, if no such person exists, then the position should be filled according to the practice of the Parliament at the time for joint committees.¹⁸

4.54 In view of the Minister's support for the proposal that the JCPA be given the functions of an Audit Committee, it is not intended to debate the issue again in this report. Nor is it intended to discuss, at length, the machinery provisions for establishing the JCPA as the Audit Committee.

4.55 The focus of the Committee's attention in this report has been on how the Audit Committee can support the functional independence of the Auditor-General.

4.56 Nonetheless, the Committee wishes to make it clear that it stands by the conclusions and recommendations stated in Report 331 concerning the Audit Committee, except to the extent that they may be qualified by the recommendations in this report.¹⁹

16 JCPA, Report 331, p. 105.

17 JCPA, Report 331, p. 106.

18 JCPA, Report 331, pp. 106-07.

19 These conclusions and recommendations are set out in Report 331,

4.57 The Speaker of the House of Representatives, Hon Bob Halverson OBE MP, noting the Minister's intention that the JCPA assume the duties of an Audit Committee, supported the proposal in principle but was concerned about the resource implications, noting that:

... it must be kept in mind that any proposed significant increase in JCPA's functions requires assessment in the light of the Government's facilitation of the provision of additional resources, or the Committee's meeting the requirements placed on it by a re-allocation of priorities. Additional resources for the JCPA can only be provided at the expense of existing parliamentary functions or additional government funding.²⁰

4.58 If the JCPA is to perform the functions of an Audit Committee of Parliament effectively, at the same time as continuing to fulfil its many other statutory duties, it is essential that additional resources be provided to the JCPA.

4.59 The Committee suffered a significant reduction in staffing at the commencement of this Parliament and is presently only staffed to run two Sectional Committees, compared to three in the previous Parliament. Given that the JCPA has a heavy burden of statutory duties and routine business - including its mandatory duty to review **all** reports of the Auditor-General - any increase in statutory duties, without additional resourcing, would effectively incapacitate the JCPA to initiate major inquiries into broad accountability issues.

4.60 **Recommendation 12**

The Public Accounts Committee Act 1951 should be amended to provide for the Joint Committee of Public Accounts (JCPA) to assume the role and functions set out in Recommendations 5, 6, 9, 10 and 11 above.

The Government should provide the JCPA with sufficient additional resources to allow these additional functions to be performed.

Specific legislative provisions

4.61 The Committee considers that there are some elements of the Auditor-General's independence which can be set down in legislation. In particular, guarantees of the Auditor-General's personal independence - tenure and remuneration, the Auditor-General's mandate, information gathering powers and the right to report to Parliament - can be appropriately entrenched in the Auditor-General Bill.

4.62 The Committee is not aware of the content of the Auditor-General Bill 1996, which may already have been drafted to incorporate the provisions suggested below.

4.63 The Committee believes the Auditor-General Bill should include provisions giving effect to the following recommendations.

Supporting the personal independence of the Auditor-General

4.64 Recommendation 13

The Auditor-General Bill should include specific provisions to the effect that:

- (a) the Auditor-General is to be appointed for a term of 10 years;*
- (b) the Auditor-General is to be ineligible for reappointment to the office or appointment to any other Commonwealth public office within 3 years of stepping down as Auditor-General;*
- (c) the Auditor-General cannot hold office beyond the age of 65;*
- (d) the Auditor-General may be removed from office only by the Governor-General acting on resolutions from both Houses of the Parliament in the same session; and*
- (e) the remuneration of the Auditor-General is to be at the level of remuneration for the first tier of Departmental Heads in the Australian*

Supporting the Auditor-General's mandate

4.65 **Recommendation 14**

The Auditor-General Bill should provide that:

- (a) *the Auditor-General is to be appointed as the auditor of all Commonwealth entities; and*
- (b) *the Auditor-General has a general mandate to initiate the full range of audits in relation to all Commonwealth entities (including performance audits of Government Business Enterprises).²¹*

Supporting the Auditor-General's ability to conduct audit investigations

4.66 **Recommendation 15**

The Auditor-General Bill should provide that:

- (a) *the Auditor-General is to be given wide powers of access to information and premises in performance of audit functions; and*
- (b) *the Auditor-General is to have the ability to engage professional services on contract to assist in the performance of audit functions.*

Supporting the Auditor-General's right to report to Parliament

4.67 **Recommendation 16**

The Auditor-General Bill should provide that:

The Auditor-General has the right to report to Parliament on any matter at any time as the Auditor-General sees fit.

21 The Committee explained in Chapter 2 that the Auditor-General should conduct **financial statement audits** of intelligence and

C o n c l u s i o n

The Committee believes that the package of legislative measures proposed in this report will support the functional independence of the Auditor-General and, in so doing, ensure the integrity of Commonwealth public audit.

Alex Somlyay MP

Chairman

9 October 1996



APPENDIX - SUBMISSIONS

1. Auditor-General. Submission of 30 August 1996.
2. President of the Senate. Submission of 29 August 1996.
3. Sir Lenox Hewitt OBE. Submission of 2 September 1996.
4. Australasian Council of Auditors-General. Submission tabled at public hearing on 3 September 1996.
5. Department of Finance. Submission tabled at public hearing on 3 September 1996.
6. Attorney-General's Department. Submission tabled at public hearing on 3 September 1996.
7. Speaker of the House of Representatives. Submission of 3 September 1996.
8. Auditor-General of Queensland. Submission of 2 September 1996.
9. Department of the Prime Minister and Cabinet. Submission of 3 September 1996.
10. Dr James Guthrie, Macquarie Graduate School of Management and Linda English, Department of Accounting, University of Sydney. Submission of 2 September 1996.
11. Coopers & Lybrand. Submission of 6 September 1996.
12. Dr Warwick Funnell, Department of Accounting and Finance, University of Wollongong. Submission of 3 September 1996.

13. Economic and Finance Committee, Parliament of South Australia. Submission of 6 September 1996.
14. Parliamentary Standing Committee of Public Accounts, Parliament of Tasmania. Submission of 5 September 1996.
15. Mr E. Chapman, Private Citizen. Submission of 3 September 1996.
16. Public Accounts Committee, Parliament of NSW. Submission of 9 September 1996.
17. Mr Eric Dyrenfurth, Private Citizen. Submission of 9 September 1996.
18. Public Accounts Committee of the Legislative Assembly of Queensland. Submission of 5 September 1996.
19. Professor R S Parker. Submission of 10 September 1996.
20. J R Nethercote. Submission of 16 September 1996.
21. Auditor-General. Supplementary submission of 16 September 1996.
22. Public Accounts and Estimates Committee, Parliament of Victoria. Submission of 23 September 1996.
23. Australian Society of Certified Practising Accountants. Submission of 20 September 1996.

II

APPENDIX - EXHIBITS

1. Department of Finance. Information on the General Accounting Office in the United States, requested by the JCPA at the meeting on 19 August 1996.
2. New Zealand High Commission. Copy of paper from the Office of the Controller and Auditor-General, New Zealand, *A corporate or other collective persona for the Auditor-General?* (31 October 1995).
3. New Zealand High Commission. Part II of the *Public Finance Act 1977* (NZ), containing the provisions dealing with the Audit Office and Audit Department.
4. New Zealand High Commission. Copy of booklet published by the Controller and Auditor-General (NZ) in September 1995 on the role, functions and operation of the Audit Office (NZ).
5. Australasian Council of Auditors-General. Submission to the Australasian Council of Public Accounts Committees, *Minimum independence requirements for the Auditor-General*.
6. Australasian Council of Auditors-General. Copy of: Australian Society of Certified Practising Accountants, *The importance of the role of independent Auditors-General* (Discussion Paper No. 8, March 1994).
7. Australasian Council of Auditors-General. Copy of: *The Review of the Audit Office of NSW under section 48A of the Public Finance and Audit Act 1983*, Volume I (April 1996).

8. Economic and Finance Committee (SA). Copy of the *Public Finance and Audit Act 1987* (SA) which sets out the provisions for the appointment of the Auditor-General; also extracts from *The Public Sector Auditor* (an in-house manual published by the Auditor-General's Department in 1993-94) and from the Auditor-General's Report to Parliament for the year ended 30 June 1995.
9. Attachment to Submission No. 10. English, Linda and Guthrie, James, 'Public sector auditing: a case of contested accountability regimes' in *Australian Journal of Public Administration*, Vol. 50, No. 3 (September 1991).
10. Attachment to Submission No 10. Guthrie, Dr James, *Parliamentary Scrutiny of Performance: A re-shaping of Estimates Committees* (Paper delivered at the Workshop on the Estimates Process, Royal Institute of Public Administration, Hobart, Tasmania, 21 August 1995).
11. Attachment to Submission No. 16. Public Accounts Committee of the Parliament of NSW, *Review of the Audit Office of New South Wales under Section 48A of the Public Finance and Audit Act*, Volume I (Report No. 97, April 1996).



APPENDIX - WITNESSES AT PUBLIC HEARING

Canberra, Tuesday 3 September

Australasian Council of Auditors-General

- Mr Tony Harris, Convenor

Australian National Audit Office

- Mr Pat Barrett, Auditor-General
- Mr Ian McPhee, National Business Director, Performance Audit Business Unit
- Mr Russell Coleman, Executive Director, Information Management Branch

Attorney-General's Department

- Mr Peter Lahy, Acting Senior General Counsel
- Mr Leo Hardiman, Counsel

Clerk of the Senate

- Mr Harry Evans

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Department of Finance

- Mr Maurie Kennedy, Assistant Secretary, Financial Administration Advisory Branch
- Mr Norm Holcroft, Director, Legislation Section

Private citizen

- Sir Lenox Hewitt OBE

IV

APPENDIX - COMPARISON

... of roles and functions of Auditors-General across several jurisdictions

The following table was prepared by the Australian National Audit Office.¹

The table shows provisions in place in selected jurisdictions to protect the independence of the Auditor-General in relation to:

- the personal independence of the Auditor-General (including provisions setting out the process for appointing the Auditor-General and the terms of his or her appointment);
- the audit independence of the Auditor-General;
- the mandate of the Auditor-General;
- the Auditor-General's discretion to engage audit staff and set their terms and conditions;
- the Auditor-General's right to report to Parliament;
- the Auditor-General's right of access to information;
- mechanisms for handling 'sensitive' audit information that could be withheld from publication in the national interest;
- the process for funding the audit office; and
- the role of Parliamentary Committees in supporting the independence of the Auditor-General.

¹ This table was included in the Auditor-General's supplementary submission to the inquiry of 16 September 1996 (Submission No. 21). An earlier version of this table was published as part of the Auditor-General's supplementary submission of 1996 (Submission No. 21).

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The Committee found this information helpful in developing its model for guarding the independence of the Auditor-General of the Commonwealth of Australia.

Comparison of roles & functions of Auditors-General across several jurisdictions

Country/State	Legislation/ System of Government	Status/ Appointment / Dismissal
United Kingdom	National Audit Act 1983	<ul style="list-style-type: none"> • Officer of the House of Commons • Appointed by the Queen by Letters patent on an address to the House of Commons by the Prime Minister following agreement with the Chairman of the Committee of Public Accounts • Can only be removed from Office by the Queen on an address from both Houses of Parliament • Head of NAO
Canada	Auditor-General Act 1977	<ul style="list-style-type: none"> • Appointed by the Governor-General in Council for 10 years • Not eligible for re-appointment • Salary equal to that of a puisne judge of the Supreme Court • May be removed by the Governor in Council on address of the Senate and House of Commons
United States	Budget and Accounting Act 1921	<ul style="list-style-type: none"> • Appointed by the President for 15 years - "by and with the advice and consent of the Senate" • A commission in Congress is formed which recommends at least three candidates from which the President may choose and confirm the appointment of one. • Salary set at level II of their Executive Schedule • Head of Statutory Authority
New Zealand	Public Finance Act 1977	<ul style="list-style-type: none"> • Appointed by the Governor-General • Not under State Service Act • In practical terms, a bi-partisan committee made a recommendation to the Government on the last appointment • Head of Office
NSW	Public Finance and Audit Act 1983	<ul style="list-style-type: none"> • Appointed by the Governor, recommendation from the Treasurer for a term of 7 years • Not eligible for re-appointment • Prior to appointment, the Treasurer must put a proposal before the Public Accounts Committee; the Committee is empowered to veto the proposed appointment. • Head of Statutory Authority • The Governor may suspend the Auditor-General and on agreement of the Houses of Parliament remove the Auditor-General
QLD	Financial Administration and Audit Act 1977	<ul style="list-style-type: none"> • Appointed by the Governor-in-Council for a term no longer than 7 years • Not eligible for reappointment • May only be appointed if advertised nationally; the Minister has consulted with the Parliamentary Committee about the process of selection and the appointment of the person as Auditor-General • Head of Office • May be dismissed by the Governor on an address from the Legislative Assembly on the motion of the Premier

Comparison of roles & functions of Auditors-General across several jurisdictions

WA	Financial Administration and Audit Act 1985	<ul style="list-style-type: none"> • The Governor appoints the Auditor-General until 65 • No mention of process • The Governor may suspend the Auditor-General and on agreement of each House of Parliament remove the Auditor-General
Australia	Audit Act 1901	<ul style="list-style-type: none"> • Appointed by the Governor-General until 65 • Salary set by remuneration tribunal • Head of the ANAO - part of the Public Service

Comparison of roles & functions of Auditors-General across several jurisdictions

Country/State	Legislation/ System of Government	Independence
United Kingdom	National Audit Act 1983	<ul style="list-style-type: none"> • Subject to any duty imposed on him by statute, the Comptroller and Auditor General shall have complete discretion in the discharge of his functions and as to the manner in which any such examination is carried out; but in determining whether to carry out any such examination he shall take into account any proposals made by the Committee of Public Accounts • Duties imposed by statute include responsibilities to certify and report on the Departmental Appropriation Accounts and to examine the Revenue Accounts, Stock and Store Accounts and Trading Accounts • No specific mention • Can undertake referred work if it does not interfere with primary responsibilities.
Canada	Auditor-General Act 1977	<ul style="list-style-type: none"> • The GAO (headed by the Comptroller General) is an instrumentality of the US Government independent of the executive departments. • The Comptroller General may make regulations to carry out the duties and powers granted under the Act
United States	Budget and Accounting Act 1921	<ul style="list-style-type: none"> • When exercising its powers in respect of the Audit Department, the State Services Commission shall have due regard to maintaining the independence of the Controller and Auditor-General. • Neither the Minister of Finance nor the Minister in charge of the Audit Department shall be in any way responsible for carrying out or exercise by the Audit Office of its functions, duties and powers ... • However, disputes of a legal nature are resolved by the Governor-General in Council and the Controller and Auditor-General must act in accordance with the determination.
New Zealand	Public Finance Act 1977	<ul style="list-style-type: none"> • No specific mention
NSW	Public Finance and Audit Act 1983	<ul style="list-style-type: none"> • The Auditor-General is not subject to direction by any person about (a) the way in which the Auditor-General's powers in relation to an audit are to be exercised; or (b) the priority to be given to audit matters. • The Auditor-General must report directly to the Parliament
QLD	Financial Administration and Audit Act 1977	
WA	Financial Administration and Audit Act 1985	
Australia	Audit Act 1901	<ul style="list-style-type: none"> • No specific mention • The Auditor-General may undertake an audit if requested to do so by a Ministers

Comparison of roles & functions of Auditors-General across several jurisdictions

Country/State	Legislation/ System of Government	Powers (Types of Audits, appointment of staff etc)
United Kingdom	National Audit Act 1983	<ul style="list-style-type: none"> • Audits referred by statute (financial statement - governed by the Exchequer and Audit Department Acts 1866 and 1921) • Performance audits - departments, other bodies mainly supported by public funds • The Comptroller and Auditor-General sets the terms and conditions for staff
Canada	Auditor-General Act 1977	<ul style="list-style-type: none"> • Financial Statement audits referred by statute • Auditor of all the accounts of Canada (broad power to do anything) • Staff employed under the Public Service Employment Act as public servants
United States	Budget and Accounting Act 1921	<ul style="list-style-type: none"> • Specific Financial audit provisions (including audit of D.C.) • Wide performance audit powers • Either House can order an investigation; a competent committee can request an investigation • Conduct the annual audit of the US Government's consolidated financial statement
New Zealand	Public Finance Act 1977	<ul style="list-style-type: none"> • In addition to statutory duties, Audit Office may, whenever it thinks fit, make such examination as it considers necessary ... (performance audit)
NSW	Public Finance and Audit Act 1983	<ul style="list-style-type: none"> • Financial statement audits • Performance audits • Request Audits
QLD	Financial Administration and Audit Act 1977	<ul style="list-style-type: none"> • Financial statement audits • Performance management systems audits • Staff are employed under the Public Service Management Employment Act 1988 as public servants
WA	Financial Administration and Audit Act 1985	<ul style="list-style-type: none"> • Financial statement audits • Performance audits • Performance Indicator audits • Staff employed as part of the Public Service
Australia	Audit Act 1901	<ul style="list-style-type: none"> • Financial statement • Project performance • Performance • Staff employed under the Public Service Act 1922 as public servants

Comparison of roles & functions of Auditors-General across several jurisdictions

Country/State	Legislation/ System of Government	Reports
United Kingdom	National Audit Act 1983	<ul style="list-style-type: none"> • May report the results of any audits carried out • Statutory obligations to make certain reports to Parliament under the Exchequer and Audit Departments Acts 1866 and 1921
Canada	Auditor-General Act 1977	<ul style="list-style-type: none"> • Must present an annual report on the results of audits • May present a special report on any matter of "pressing importance or urgency"
United States	Budget and Accounting Act 1921	<ul style="list-style-type: none"> • Similar performance audit provisions to Audit Act • Report individual audits and evaluations regularly throughout the year to Congressional Committees responsible for the subject • GAO officers also testify before Committees
New Zealand	Public Finance Act 1977	<ul style="list-style-type: none"> • May report to a minister or any other person on any matter which is subject to audit under any Act.
NSW	Public Finance and Audit Act 1983	<ul style="list-style-type: none"> • Reports for authorised audits only mentioned
QLD	Financial Administration and Audit Act 1977	<ul style="list-style-type: none"> • Reports for authorised audits only mentioned • May prepare a report on any audit conducted under the Act
WA	Financial Administration and Audit Act 1985	<ul style="list-style-type: none"> • Opinions on financial statement audits and performance indicators reported • Performance Audit reports • General reports on matters of significance
Australia	Audit Act 1901	<ul style="list-style-type: none"> • Reports on all audits types

(all prepare annual reports)

Comparison of roles & functions of Auditors-General across several jurisdictions

Country/State	Legislation/ System of Government	Access
United Kingdom	National Audit Act 1983	<ul style="list-style-type: none"> • Access to all records and documents required
Canada	Auditor-General Act 1977	<ul style="list-style-type: none"> • Access to anything required • May get Governor in Council to require people to furnish information required • May station people at any department • May administer and examine under oath
United States	Budget and Accounting Act 1921	<ul style="list-style-type: none"> • General access powers (strong) • Power to subpoena and bring a civil action
New Zealand	Public Finance Act 1977	<ul style="list-style-type: none"> • Full and free access to books, etc; may require persons to supply information; may require, by notice in writing, any person to deliver specified information; may search and take extracts of records.
NSW	Public Finance and Audit Act 1983	<ul style="list-style-type: none"> • May require people to attend to give evidence, may administer an oath. • Access to all records and documents required • May require a person to attend and produce documents • Provisions in the Act prevent the Auditor-General from accessing cabinet documents and documents subject to legal professional privilege
QLD	Financial Administration and Audit Act 1977	<ul style="list-style-type: none"> • Access to all records and documents required • May require a person to attend and produce documents
WA	Financial Administration and Audit Act 1985	<ul style="list-style-type: none"> • Access to all records and documents required • May require a person to attend and produce documents • Power to administer and examine under oath
Australia	Audit Act 1901	<ul style="list-style-type: none"> • General access to accounts and record (strong) • Precept power • Power to administer and question under oath

Comparison of roles & functions of Auditors-General across several jurisdictions

Country/State	Legislation/ System of Government	Sensitive Information
United Kingdom	National Audit Act 1983	<ul style="list-style-type: none"> Handled without legislation "by convention"
Canada	Auditor-General Act 1977	<ul style="list-style-type: none"> No specific provision
United States	Budget and Accounting Act 1921	<ul style="list-style-type: none"> Draft reports are subject to statutory and executive orders on handling and storing classified information No mention of how reports to Congress, etc are handled
New Zealand	Public Finance Act 1977	<ul style="list-style-type: none"> No specific mention
NSW	Public Finance and Audit Act 1983	<ul style="list-style-type: none"> s38 of the Act deals with the secrecy of documents and information obtained during the course of audit work
QLD	Financial Administration and Audit Act 1977	<ul style="list-style-type: none"> Sensitive information (as considered by the Auditor-General) must only be disclosed to the Parliamentary Committee (ICPA Equivalent)
WA	Financial Administration and Audit Act 1985	<ul style="list-style-type: none"> No specific mention
Australia	Audit Act 1901	<ul style="list-style-type: none"> Sensitive information must be restricted from performance audit reports when requested (ordered) by the Attorney-General

Comparison of roles & functions of Auditors-General across different jurisdictions		
Country/State	Legislation/ System of Government	Budgetary Process
United Kingdom	National Audit Act 1983	<ul style="list-style-type: none"> Approved by the Public Accounts Commission set up under the 1983 National Audit Act for this purpose the Act requires the Commission to have regard to advice from the Treasury, but in practice the Treasury plays a minor role in the process Estimates proposals go to the PA Commission, PA Committee (and are copied to the Treasury for information) as memoranda simultaneously in November the C&AG gives oral evidence to the Committee whose Chairman is a member of the Commission. Treasury may provide a memorandum to the Commission and the C&AG gives evidence to the Commission before approval includes all running costs and capital expenditure, including POE (rent and leases)
Canada	Auditor-General Act 1977	<ul style="list-style-type: none"> Estimates are presented to the Minister of Finance Estimates are reviewed by the Public Accounts Committee of the House of Commons. They do not have the right to recommend change
United States	Budget and Accounting Act 1921	<ul style="list-style-type: none"> the GAO's annual appropriation comes directly from the US Congress No other Government Department or agency has intervention powers includes operating expenses, including rents and leases
New Zealand	Public Finance Act 1977	<ul style="list-style-type: none"> Budget presented to the Officers of Parliament Committee (OPC) who review the budget and may take advice (usually from Treasury) before recommending to the House of Representatives The bid may be changed by the OPC, the Audit Office has always been involved The House of Representatives then recommends inclusion of the Office budget in an Appropriation Bill The Appropriation Bills are then presented as per normal process The budget is not presented to Treasury or subject to normal cabinet scrutiny The budget is subject to initial scrutiny by Parliament rather than the Government
NSW	Public Finance and Audit Act 1983	<ul style="list-style-type: none"> self funded no budget approval it is currently proposed the NSW Office receive direct Parliamentary funding via the PAC
QLD	Financial Administration and Audit Act 1977	<ul style="list-style-type: none"> Section 68 of the Financial Administration and Audit Act states that the Auditor-General must provide the Treasurer with estimate and the Treasurer must consult with the Parliamentary Committee in developing the proposed budget of the Audit Office for each financial year
WA	Financial Administration and Audit Act 1985	<ul style="list-style-type: none"> estimates provided to Treasury before consideration by Cabinet estimates Committee and normal appropriation processes includes all running cost and capital items
Australia	Audit Act 1901	<ul style="list-style-type: none"> Estimates go to the Department of Finance Discussed through the Senate estimates process and the Executive presents to Parliament

Comparison of roles & functions of Auditors-General across several jurisdictions

Country/State	Legislation/ System of Government	Parliamentary Committee
United Kingdom	National Audit Act 1983	<ul style="list-style-type: none"> The NAO has a Parliamentary Audit Committee and a Public Accounts Committee The Chairman of the Public Accounts Committee is involved in the appointment of the C&AG Both the Public Accounts Committee and Public Accounts Commission have roles to play in the NAO's Budgetary process Included in decision making regarding appointment of the Auditor-General and the budget
Canada	Auditor-General Act 1977	<ul style="list-style-type: none"> The OAG does not have a Parliamentary Audit Committee
United States	Budget and Accounting Act 1921	<ul style="list-style-type: none"> The GAO does not have a Parliamentary Audit Committee
New Zealand	Public Finance Act 1977	<ul style="list-style-type: none"> The New Zealand Audit Office does not have a Parliamentary Audit Committee An Office of Parliament
NSW	Public Finance and Audit Act 1983	<ul style="list-style-type: none"> No Parliamentary Audit Committee
QLD	Financial Administration and Audit Act 1977	<ul style="list-style-type: none"> The Qld Public Accounts Committee reviews the audit reports of the Office
WA	Financial Administration and Audit Act 1985	<ul style="list-style-type: none"> No Parliamentary Audit Committee The WA Commission on Government has recommended a Joint Audit Committee be established
Australia	Audit Act 1901	<ul style="list-style-type: none"> The ANAO does not have a Parliamentary Audit Committee

