Submission No. 8

ACT AUDITOR-GENERAL'S OFFICE

M11/14

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Mr Shane Rattenbury MLA
Chair, Standing Committee on Administration and Procedure
Civic Square
London Circuit
CANBERRA ACT 2601

Dear Mr Rattenbury

Inquiry into the Feasibility of Establishing the Position of Officer of the Parliament

I refer to your letter of 19 May 2011. I have attached the Audit Office's submission to the inquiry by the Standing Committee on Administration and Procedure into the 'feasibility of establishing the position of Officer of the Parliament as it might relate to the Auditor-General, Ombudsman, Electoral Commissioner and other statutory office holders'.

This submission addresses the feasibility of designating the Auditor-General as an Officer of the Parliament.

Your letter indicates that the Committee may be holding a 'round table' to discuss this matter. I have advised Ms Janice Rafferty (Assistant Secretary) that the Audit Office would be pleased to participate in this discussion if invited to do so.

My staff and I look forward to responding to any questions the Committee may have in relation to this submission. Please contact Mr Brett Stanton (Acting Director, Performance Audits and Corporate Services) on 6207 0827 or myself on 6207 0821 if you have any queries regarding this matter.

Yours sincerely

Bernie Sheville
Acting Auditor-General
20 July 2011

noted by Speaker
& referred to
A & P Sec. 4/8

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ATTACHMENT

SUBMISSION TO THE STANDING COMMITTEE ON ADMINISTRATION AND PROCEDURE

INQUIRY INTO THE FEASIBILITY OF ESTABLISHING THE POSITION OF OFFICER OF THE PARLIAMENT

A. Introduction

This submission is provided to the Standing Committee on Administration and Procedure (the Committee) in response to its 'Inquiry into the feasibility of establishing the position of Officer of the Parliament'. The Committee is inquiring into the 'feasibility of establishing the position of Officer of the Parliament as it might relate to the Auditor-General, Ombudsman, Electoral Commissioner and other statutory office holders'.

This submission contains the Audit Office's response to the Inquiry.

This submission considers the role of the Auditor-General, the concept of an 'Officer of the Parliament' and the merits of designating the Auditor-General as an Officer of Parliament. The submission does not express an opinion on the feasibility of such a designation for other statutory office holders.

B. General Comments

Role of the Auditor-General

The functions and powers of the Auditor-General are contained in the *Auditor-General Act 1996*. This Act requires the Territory to have an Auditor-General and prescribes the functions and powers of the Auditor-General and the administration of the Audit Office.

The Act provides the Auditor-General with a broad mandate to, among other things:

- promote public accountability in the public administration of the Territory; and
- perform financial and performance audits of public sector agencies.

The Act empowers the Auditor-General to do anything that is incidental or conducive to performing the functions of the Auditor-General.

The Act supports the independence of the Auditor-General by providing that the Auditor-General is not subject to direction by the Executive or any Minister in the exercise of the Auditor-General's functions.

The Auditor-General reports to the ACT Legislative Assembly in the exercise of these functions. In practice, this role is mostly fulfilled by keeping the Assembly informed on performance of the ACT public service by reporting the results of performance and financial audits to the Assembly.

Officer of the Parliament

There is no statutory definition or established criteria for the role of Officer of the Parliament. (Ferguson, 2010, p.133) The term 'rarely appears in legislation and has never been subject to judicial interpretation.' (Victorian Public Accounts and Estimates Committee, 2006, p.24; Parliament and Constitution Centre, 2003, p.7) Although there is no statutory definition or established criteria, the term has, over time, been applied to certain offices or roles within the parliamentary process.

In the United Kingdom 'the term has come to denote a special relationship of accountability to Parliament and such designation implies independence of the executive.' (Parliament and Constitution Centre, 2003, p.8)

In New Zealand 'the Offices of Parliament are generally independent accountability agencies created to provide a check on the arbitrary use of power by the executive and to protect the various rights of the individual.' (Ferguson, 2010, p.134)

In Australia, the Victorian Public Accounts and Estimates Committee identified that 'the term is used as a means to denote that some statutory officer holders have a special relationship with Parliament and to emphasise those officers' independence from the executive government.' (Victorian Public Accounts and Estimates Committee, 2006, p24)

These references indicate that an 'Officer of the Parliament' has a special relationship with the Parliament and is independent from the executive government.

Designating the Auditor-General as an Officer of the Parliament

The Audit Office supports the designation of the Auditor-General as an 'Officer of the Parliament'. This designation would emphasise the special relationship that exists between the Auditor-General and ACT Legislative Assembly – a relationship in which the Auditor-General is accountable to the ACT Legislative Assembly and independent of the government of the day.

Such a designation would also be consistent with the practice in some other jurisdictions. For example, auditors-general have been identified as Officers of the Parliament at the Commonwealth level, in Victoria, Western Australia, New Zealand, Canada and United Kingdom.

***Submissions to the Inquiry into the* Auditor-General Act 1996**

This submission is consistent with the submission provided by the Audit Office (23 January 2010) and Australasian Council of Auditors-General to the 'Inquiry into the *Auditor-General Act 1996*' by the Standing Committee on Public Accounts.

In its submission to that Inquiry the Audit Office stated:

> 'The Auditor-General Act does not include the term 'independent officer of Parliament', although it is a term sometimes used to describe an Auditor-General, and is specifically included (although not defined) in the *Auditor-General Act 1997* (Commonwealth). The term is largely symbolic, but nevertheless emphasises the independent role of the Auditor-General. The Committee may wish to consider whether there is merit in formally designating the Auditor-General as an 'independent officer of Parliament'.

In its submission to the inquiry, dated 4 February 2010, the Australasian Council of Auditors-General stated:

> 'There are a number of aspects which could be considered in order to strengthen the role of the Auditor-General as an independent officer of the Parliament. A number of Australian jurisdictions presently include a provision in their legislation which specifically recognises that the Auditor-General is an independent officer of Parliament. Such a provision could be included in the ACT legislation to give recognition to this role.'

C. Conclusion

The Audit Office supports the designation of the Auditor-General as an 'Officer of the Parliament'.

Auditor-General's Office
20 July 2011

References:

Beattie, A. (2006) Officers of Parliament – the New Zealand model in *Australasian Parliamentary Review*, Autumn 2006, 21(1) 143-156.

Ferguson, L. (2010) Parliament's Watchdogs – New Zealand's Officers of Parliament in *Australasian Parliamentary Review*, Spring 2010, 25(2) 133-145.

Gay, O and Winetrobe, B eds (2008) '*Parliament's Watchdogs: At The Crossroads*'. The Constitution Unit, University College London: United Kingdom.

Gay, O and Winetrobe, B (2003) '*Officers of Parliament – Transforming the Role*'. The Constitution Unit, University College London: United Kingdom.

Parliament and Constitution Centre (2003) '*Officers of Parliament – A Comparative Perspective (Research Paper 03/77')*'. House of Commons Library: United Kingdom.

Victorian Public Accounts and Estimates Committee (2006) '*Report on a Legislative Framework for Independent Officers of Parliament*'. Parliament of Victoria: Australia.