STANDING COMMITTEE ON PUBLIC ACCOUNTS

Inquiry into the ACT *Auditor-General Act 1996*

FEBRUARY 2011

Report 15

Committee Membership

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Mr Brendan Smyth MLA	Deputy Chair
Ms Joy Burch MLA	Member to 19 November 2009
Mr John Hargreaves MLA	Member from 20 November 2009

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Resolution of Appointment[1]

The ACT Legislative Assembly appointed the Standing Committee on Public Accounts on 9 December 2008 to:

(i) examine:

(A) the accounts of the receipts and expenditure of the Australian Capital Territory and its authorities; and

(B) all reports of the Auditor-General which have been presented to the Assembly;

(ii) report to the Assembly 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 Assembly should be directed;

(iii) inquire into any question in connection with the public accounts which is referred to it by the Assembly and to report to the Assembly on that question; and

(iv) examine matters relating to economic and business development, small business, tourism, market and regulatory reform, public sector management, taxation and revenue.

[1] ACT Legislative Assembly, Minutes of Proceedings No. 2, Tuesday 9 December 2008, pp. 15–16.

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RECOMMENDATIONS

RECOMMENDATION 1

3.31 The Committee recommends that the *Auditor-General Act 1996* be amended to designate the Auditor-General as an Officer of Parliament.

RECOMMENDATION 2

3.34 The Committee recommends that the Legislative Assembly's Administration and Procedure Committee inquire into and report on the merit of establishing a framework that formally recognises Officers of Parliament, details the nature and terms of the relationship these Officers have with the Assembly and to the Executive, and highlights that their primary responsibility is to the Assembly.

RECOMMENDATION 3

3.36 The Committee recommends that should the Standing Committee on Administration and Procedure recommend the establishment of a framework that formally recognises Officers of Parliament:

(i) the Legislative Assembly Secretariat's Strategy and Parliamentary Education Office, where appropriate, should incorporate reference to Officers of Parliament and the unique roles they perform on behalf of Parliaments, into education and information services and activities

(ii) the Legislative Assembly Secretariat's Strategy and Parliamentary Education Office should develop and publish an Assembly fact sheet on Officers of Parliament. The fact sheet should emphasise the unique relationship these Officers have with Parliament and the roles they perform on behalf of Parliaments, and

(iii) the major seminars for ACT public servants, for which the ACT Legislative Assembly Secretariat is responsible, in particular the seminars covering the role of the ACT Legislative Assembly and the workings of Assembly Committees, should specifically include content on the unique role of Officers of Parliament and their relationship with Parliaments.

RECOMMENDATION 4

3.47 The Committee recommends that the Standing Committee on Administration and Procedure review Standing Orders concerning the form of meetings for committees of the ACT Legislative Assembly.

RECOMMENDATION 5

3.64 The Committee recommends that the *Auditor-General Act 1996* be amended to require the Auditor-General to consult with the Standing Committee on Public Accounts regarding its annual performance audit program.

RECOMMENDATION 6

3.77 The Committee recommends that the Legislative Assembly Secretariat note the implications of the recommendations of this report on the Standing Committee on Public Accounts' Secretariat.

RECOMMENDATION 7

4.37 The Committee recommends that the *Auditor-General Act 1996* be amended to provide capacity for the Standing Committee on Public Accounts to recommend to the Executive an appointment to the Office of Auditor-General.

RECOMMENDATION 8

4.41 If recommendation seven is not accepted, the Committee recommends that the *Auditor-General Act 1996* be amended to provide that where the Standing Committee on Public Accounts vetoes a proposed appointment to the Office of Auditor-General that the Chief Minister must then propose an alternative appointment for its consideration.

RECOMMENDATION 9

4.42 Where the Standing Committee on Public Accounts repeatedly vetoes proposed appointments to the Office of the Auditor-General, the Committee recommends that the *Auditor-General Act 1996* should be amended to provide a default for the Legislative Assembly to be the final arbitrator.

RECOMMENDATION 10

4.48 The Committee recommends that the *Auditor-General Act 1996* be amended to provide the Standing Committee on Public Accounts with the power of veto over the appointment of an acting Auditor-General similar to that provided in relation to the appointment of the Auditor-General under section 8 of the Act.

RECOMMENDATION 11

4.54 The Committee recommends that the *Auditor-General Act 1996* be amended to provide for power to suspend the Auditor-General in certain circumstances. The process for suspending the Auditor-General should mirror the process for removal of the Auditor-General under Schedule 1 of the Act which requires a resolution to be passed by the Legislative Assembly.

RECOMMENDATION 12

4.59 The Committee recommends that the admission of an oath or affirmation of Office be referred to the Legislative Assembly's Standing Committee on Administration and Procedure.

RECOMMENDATION 13

4.64 The Committee recommends that the *Auditor-General Act 1996* be amended to include a provision which prevents the Auditor-General from holding other forms of remunerative employment while in the position.

RECOMMENDATION 14

4.67 The Committee recommends that the *Auditor-General Act 1996* be amended to require the Auditor-General to provide the Speaker of the ACT Legislative Assembly with a declaration of interests within one month of appointment to the Office.

RECOMMENDATION 15

4.72 The Committee recommends that section 9 of the *Auditor-General Act 1996* be expanded to recognise that the Auditor-General is not subject to direction by 'any person'.

RECOMMENDATION 16

4.96 The Committee recommends that the *Auditor-General Act 1996* be amended to prescribe a greater role for the Standing Committee on Public Accounts in managing the arrangements, on behalf of the Legislative Assembly, for a periodic independent performance audit of the operations of the Auditor-General and the Audit Office. This should include amendments that provide for the Committee to: (i) initiate the audit; (ii) determine the terms of reference; and (iii) appoint an appropriate independent auditor to undertake the audit.

RECOMMENDATION 17

4.98 The Committee recommends that the costs involved in undertaking an independent performance audit of the operations of the Auditor-General be included in the Legislative Assembly's budget of that year.

RECOMMENDATION 18

4.107 The Committee recommends that the *Auditor-General Act 1996* be amended to provide a fixed timeframe between section 29 audits of the Audit Office. Specifically, a section 29 audit should take place once in each Legislative Assembly term with the timing of the review to be at the discretion of the Standing Committee on Public Accounts.

RECOMMENDATION 19

4.109 The Committee recommends that section 29 of the *Auditor-General Act 1996* be amended to extend the terms of 'performance audit' to include strategic reviews, or other reviews, of the Office to provide more flexibility for the Standing Committee on Public Accounts in deciding which form of external review would be most appropriate at the time a review is requested.

RECOMMENDATION 20

4.115 The Committee recommends that the *Auditor-General Act 1996* be amended to clearly state that the independent auditor engaged to undertake financial and performance audits of the operations of the Auditor-General and Audit Office does not have to be the same auditor.

RECOMMENDATION 21

4.119 The Committee recommends that the *Auditor-General Act 1996* be amended to prescribe that a performance audit of the operations of the Auditor-General and Audit Office, under section 29 of the Act, can only occur if the Standing Committee on Public Accounts has formally initiated such a review.

RECOMMENDATION 22

4.121 The Committee recommends that Part 5 of the *Auditor-General Act 1996* be amended to prescribe minimum qualifications for the appointment of the independent auditors to conduct the financial and performance audits.

RECOMMENDATION 23

4.128 The Committee recommends that the Legislative Assembly's Administration and Procedure Committee should consider amending Standing Orders to formally specify that the Standing Committee on Public Accounts should: (i) be chaired by a non-Government Member; and (ii) have a membership that does not constitute a Government majority.

RECOMMENDATION 24

5.79 The Committee recommends that the *Auditor-General Act 1996* be amended to provide the Legislative Assembly through the Standing Committee on Public Accounts with a formal role in considering the Audit Office's draft budget estimates and making a report with recommendations to the Legislative Assembly, as part of the Australian Capital Territory's budget process, on the level of funding required by the Auditor-General.

RECOMMENDATION 25

5.84 The Committee recommends that the Audit Office should be funded to conduct a number of performance audits that is determined by the Auditor-General and endorsed by the Standing Committee on Public Accounts within the budget context.

RECOMMENDATION 26

5.92 The Committee recommends that the *Auditor-General Act 1996* be amended to ensure consistency between any designated role provided to the Legislative Assembly through the Standing Committee on Public Accounts in considering and recommending the draft budget estimates of the Auditor-General under section 22 of the Act and any additional budget supplementation sought by the Auditor-General under section 22A of the Act.

RECOMMENDATION 27

5.94 The Committee recommends that the *Auditor-General Act 1996* be amended to remove redundant references to the *Financial Management Act 1996* in sections 22 and 22A of the *Auditor-General Act 1996* respectively.

RECOMMENDATION 28

5.98 The Committee recommends that the *Auditor-General Act 1996* be amended to recognise that staff assisting the Auditor-General are not subject to direction of any person other than the Auditor-General, or a person authorised by the Auditor-General, in relation to matters dealing with audit functions and duties performed pursuant to the *Auditor-General Act 1996*.

RECOMMENDATION 29

5.102 The Committee recommends that the *Auditor-General Act 1996* be amended to permit the Auditor-General, subject to funds being available and subject to the provisions of *the Public Sector Management Act 1994* and the *Government Procurement Act 2001*, to engage persons on terms and conditions the Auditor-General considers appropriate to meet the needs of the audit work of the Audit Office.

RECOMMENDATION 30

6.36 The Committee recommends that the *Auditor-General Act 1996* be amended to provide the Auditor-General with an express authority to audit outsourced activities of the Government. This should provide the Auditor-General with authority to: (i) access documents of a recipient of public money; and (ii) audit a recipient organisation itself or the service(s) it provides.

RECOMMENDATION 31

6.37 The Committee recommends that any other legislation, as necessary be amended to permit performance audits of organisations that receive funding from the ACT Government only in respect of those activities funded by the ACT Government.

RECOMMENDATION 32

6.61 The Committee recommends that the *Auditor-General Act 1996* be amended to include a provision that the Auditor-General may take into consideration relevant professional standards and practices including auditing standards issued by the AUASB and other professional standards to the extent relevant. This provision should not in any way be seen as limiting the matters that the Auditor-General may have regard to in conducting any audits including those under the Commonwealth's *Corporations Act 2001*.

RECOMMENDATION 33

6.74 The Committee recommends that the Standing Committee on Justice and Community Safety, as part of its inquiry into the *Freedom of Information Act 1989*, consider the application of the FOI Act with regard to the Auditor-General.

RECOMMENDATION 34

6.86 The Committee recommends that section 18 of the *Auditor-General Act 1996* be amended to reflect section 19(3) of the Commonwealth *Auditor-General Act 1997*.

RECOMMENDATION 35

6.91 The Committee recommends that section 36 of the *Auditor-General Act 1996* be examined to ensure that the Auditor-General has the ability to disclose information to the Legislative Assembly (or relevant parliamentary committees); the police and other agencies, such as the Australian Securities and Investment Commission, and the courts to assist with the investigation and prosecution of offences.

RECOMMENDATION 36

6.103 The Committee recommends that the ACT Government seek advice on the effect of section 13 of the *Auditor-General Act 1996* on the powers of the Auditor-General.

RECOMMENDATION 37

6.109 The Committee recommends that the ACT Government clarify its definition of the term 'controlling interest' in all applicable legislation and amend any, or all, Acts as required.

RECOMMENDATION 38

6.128 The Committee recommends that section 16 of the *Auditor-General Act 1996* be amended to improve clarity and transparency with regard to its application. The provisions in section 21 of the Western Australian *Auditor-General Act 2006* relating to 'Audit fees' could be used to assist with framing any amendments.

RECOMMENDATION 39

6.133 The Committee recommends that sections 18(2) and 18(3) of the *Territory-owned Corporations Act 1990* be removed as they are not consistent with the requirements of section 16 of the *Auditor-General Act 1996*.

RECOMMENDATION 40

6.138 The Committee recommends that the *Auditor-General Act 1996* be amended to provide the Audit Office with the ability to recover the costs of providing advice and information. The provisions in section 23 of the Western Australian *Auditor-General Act 2006* relating to 'Provision of advice or information' could be used to assist with framing any amendments.

RECOMMENDATION 41

6.146 The Committee recommends that the *Auditor-General Act 1996* be amended to allow the Auditor-General to conduct joint investigations and/or performance audits with other statutory office holders tasked with oversighting institutional integrity within government.

1 INTRODUCTION AND CONDUCT OF INQUIRY

Referral of the inquiry

1.1 Under the ACT Legislative Assembly's Standing Orders[2], the Standing Committee on Public Accounts (the Committee) has the power to self refer inquiries. On 1 September 2009 the Committee resolved to conduct an inquiry into the ACT *Auditor-General Act 1996*.

Terms of reference

1.2 The Committee's terms of reference were to inquire into, and report on the following matters:

(1) whether any amendments to the *Auditor-General Act 1996* (the Act) are required to take account of developments in both auditing standards and public administration in the ACT and other jurisdictions

(2) whether there should be changes to the coverage and scope of the ACT Auditor-General's audit mandate and, in particular, with the power to audit organisations that receive funds from the ACT Government

(3) whether the annual budget for the ACT Auditor-General should be set by the Legislative Assembly and not by the Executive Government[3]

(4) any amendments that could be made which would strengthen the managerial autonomy and resourcing of the ACT Auditor-General

(5) any amendments which would strengthen the role of the ACT Auditor-General as an independent Officer of Parliament

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[2] In the ACT, Standing Committees are established by Assembly resolution and governed by standing orders.

[3] For example, note the objective of the ACT Auditor-General Amendment Bill 2009—presented 24 June 2009.

(6) what amendments, if any, are required to clarify the intention of sections 22—*Proposed appropriations* and 22A—*Additional amounts for certain audits*—of the Act

(7) the recommendations of an independent performance audit of the Auditor-General to be conducted in accordance with Part 5 of the Act during 2009–10, and

(8) any other relevant matter.

Conduct of inquiry

Advertisement

1.3 The Committee called for submissions by advertising in the *Canberra Times* on 7 October 2009, placing a notice on the ACT Legislative Assembly's website, and by writing to the responsible Minister[4] and other stakeholders.

Submissions

1.4 The Committee received five submissions. The individuals and organisations that lodged submissions are listed at **Appendix A**. Copies of the submissions can be downloaded from the Committee's website.[5]

Public hearings

1.5 A public hearing was held on 12 March 2010. Witnesses who appeared before the Committee are listed at **Appendix B**. The public hearing transcript can be accessed from the Committee's website.[6]

1.6 The Committee met on 23 November and 2 December 2010; 11 January 2011; and 1 and 8 February 2011 to discuss the Chair's draft report, which was adopted on 8 February 2011.

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[4] The Chief Minister as the Minister responsible for the administrative actions that have to be taken by Executive Government.

[5] <http://www.parliament.act.gov.au/committees/index1.asp?committee=116&inquiry=833>

[6] <http://www.parliament.act.gov.au/committees/index1.asp?committee=116&inquiry=833>

Structure of the report

1.7 The Committee has produced a report that examines and reflects on several key themes that became apparent throughout the course of the inquiry based on the evidence it received.

1.8 Some of the main themes to emerge during the course of the inquiry were:

- the role and relationship of the Auditor-General to the Legislative Assembly, and its delegate, the Standing Committee on Public Accounts
- the unique role of Officers of Parliament in the Westminster accountability model and audit system of democratic governance
- parliamentary involvement in the appointment of the Auditor-General
- parliamentary involvement in the budget appropriation for the Office of the Auditor-General
- independent external reviews of the operations of the Auditor-General and the Audit Office, and
- that any revision of the *Auditor-General Act 1996* should have regard to the New Zealand 'Officers of Parliament' system.

1.9 The Committee's report is divided into four parts and covers the following main topics:

Part 1—Background to the inquiry

- Introduction and conduct of the inquiry
- History of the ACT *Auditor-General Act 1996*

Part 2—Strengthening and safeguarding the independence of the Auditor-General

- Role of the Auditor-General
- Amendments to strengthen and safeguard the independence of the ACT Auditor-General

Part 3—Best practice in the contemporary public sector environment

- The contemporary public sector environment
- Amendments to clarify and strengthen the ACT Auditor-General's mandate in the modern public sector environment

Part 4—Summary and conclusions

- Committee summary and conclusions

Acknowledgements

1.10 The Committee thanks all those who contributed to the inquiry by making submissions, providing additional information, or appearing before it to give evidence.

2 HISTORY OF THE ACT *AUDITOR-GENERAL ACT 1996*

2.1 With the introduction of self government for the Australian Capital Territory (ACT), the ACT Auditor-General and the ACT Audit Office were established under the *Audit Act 1989*.

2.2 The Audit Act provided the basis for the financial administration of the ACT and for the audit of public accounts of the Territory.[7]

2.3 The Audit Act was repealed in 1996 and replaced with the *Financial Management Act 1996* and the *Auditor-General Act 1996* (the Act), which is the principal legislation that prescribes the operations of the ACT Auditor-General and the ACT Audit Office today.[8]

2.4 The main functions and powers of the Auditor-General are set out in the Act with it specifically providing 'for an auditor-general, and for related purposes'[9]. In her explanatory statement to the Auditor-General Bill 1996, the Chief Minister at the time, Kate Carnell MLA noted that:

> The objective of this Bill is to promote full public accountability for public sector activities and use of resources by ensuring members of the Legislative Assembly, as elected representatives of the public, are provided with accurate and complete information on the legality, efficiency and effectiveness with which public sector activities and resources are managed.
>
> This purpose will generally be achieved, firstly by the Auditor-General conducting audits to ensure that financial reports and performance information provided to the Legislative Assembly are reliable and complete, and secondly by the Auditor-General providing reports to the Legislative Assembly which contain independent evaluation of the legality, efficiency and effectiveness with which public sector activities and resources are managed.[10]

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[7] Explanatory Statement, ACT Audit Ordinance 1989 (Ordinance No. 37 of 1989). The Ordinance became an Act on 11 May 1989 (refer *ACT (Self-Government) Act 1988 (C'wealth*), s. 34(4)).

[8] ACT Auditor-General's Office <http://www.audit.act.gov.au/role.html>

[9] ACT *Auditor-General Act 1996.*

[10] Carnell, K. (1996) Explanatory Statement—Auditor-General Bill 1996, p. 1.

2.5 In summary, the Act, when introduced:

- consolidated the existing statutory framework relating to the Auditor-General
- provided greater emphasis on the independence of the Auditor-General's office
- clarified existing practices, and
- provided for the Auditor-General's office and functions.[11]

2.6 The Act provides the Auditor-General with a broad mandate to do anything that is incidental or conducive to carrying out the functions of the Auditor-General, including to:

- promote public accountability in the public administration of the Territory
- audit annual financial statements of the Territory, departments and Territory authorities under the *Financial Management Act 1996*, and
- conduct performance audits.[12]

2.7 It is important to acknowledge that the legislative mandates for Auditors-General can vary by jurisdiction. In evidence the Auditor-General explained:

> The mandate of the auditor-general varies from jurisdiction to jurisdiction. For example, the Northern Territory and South Australia do not have a performance audit function, while Queensland have *[has]* a very limited performance audit function. They do not do full efficiency and effectiveness performance audits; they do what they call an audit of the performance management system rather than a performance audit. New South Wales have *[has]* smaller scope for performance audits in terms of their relative importance compared to financial audits.
>
> …
>
> Our office is required to do more than other jurisdictions in a number of areas. For example, we look into the Public Interest Disclosure Act; other jurisdictions may have anticorruption bodies to take care of this. We have a requirement under the procurement act—a special role under the procurement act.[13]

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11 Carnell, K. (1996) Explanatory Statement—Auditor-General Bill 1996, p. 1.

12 ACT *Auditor-General's Act 1996;* ACT Audit Office < http://www.audit.act.gov.au/role.html>; *Financial Management Act 1996*.

13 Mrs Tu Pham, *Transcript of evidence*, 12 March 2010, p. 26.

2.8 The Committee notes, compared to other jurisdictions, amongst other differences, the ACT Audit Office is significant in having a strong performance mandate as provided through the *Act*. The Auditor-General told the Select Committee on Estimates 2010–11 that:

> Some offices do not have a performance auditing mandate at all. We have a very strong performance mandate given to us through legislation back in 1996. It has always been the intention of this Assembly to provide a strong performance audit mandate to the ACT office compared to others.[14]

2.9 Since coming into effect on 18 April 1996, there have been few amendments to the Act. A summary of significant amendments are discussed below.

Amendments to the Act in 2001

2.10 The Act was amended in 2001 as a result of a Private Member's Bill introduced by Mr Paul Osborne MLA on 29 November 2000 and passed by the Assembly on 20 June 2001.[15]

2.11 The amendments to the Act arising from Mr Osborne's Bill included:

- provision for tabling reports of the Auditor-General when the Legislative Assembly is not sitting (out of session)
- a requirement for the Auditor-General to appear before Committees of the Legislative Assembly
- the provision of additional appropriations in certain circumstances, and
- limiting the term of the Auditor-General to seven years with no eligibility for reappointment.[16]

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[14] Mrs Tu Pham, *Transcript of evidence*, Select Committee on Estimates 2010–11, 24 May 2010, p. 1029.
[15] ACT Legislation Register <http://www.legislation.act.gov.au/b/db_11659/default.asp>
[16] ACT *Auditor-General Act 1996* as amended in 2001.

Amendments to the Act in 2004

2.12 The Government introduced the Auditor-General Amendment Bill 2004 which was passed on 26 August 2004.[17] The objective of the amendments was to primarily clarify and strengthen the Auditor-General's powers.[18]

2.13 The amendments made in 2004 could be classed as the most significant since the Act was passed. The amendments were in a large part influenced by the experience of the former Auditor-General, Mr John Parkinson, in conducting performance audits, in particular the performance audit of the redevelopment of Bruce Stadium (now Canberra Stadium) which was undertaken in 2000.[19]

2.14 After the 2001 election, the Auditor-General:

> …wrote to the Chief Minister in early February 2002, suggesting a range of amendments, many of which were subsequently enacted in 2004.[20]

2.15 These amendments to the Act included:

- clarifying that the Auditor-General may conduct a single performance audit, covering activities common to more than one agency
- providing the Auditor-General with the power to require a person to answer questions on oath or affirmation and to allow the Auditor-General to administer an oath or affirmation
- ensuring the protection of information provided by witnesses so that, other than for an offence against the Act or relevant parts of the criminal code, any information or document obtained will not be admissible in evidence against the witness
- ensuring that the Auditor-General is given 'reasonable help' when on premises occupied by the Territory, or a Territory entity, in the performance of a function under the Act

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[17] ACT Legislation Register <http://www.lehislation.act.gov.au/b/db_11164/default.asp>
[18] Stanhope, J. (2004) Explanatory Statement—Auditor-General Amendment Bill 2004, p. 1.
[19] Submission No. 2, ACT Auditor-General's Office, January 2010.
[20] *Ibid.*, p. 2.

- providing additional controls relating to the reporting of sensitive information
- providing that the Auditor-General may include information in a report if they are satisfied that the substance of the information is already public knowledge, and
- strengthening the confidentiality provisions so that they can be applied to any person provided with information gathered or generated during an audit.[21]

2.16 In summary, the amendments to the Act in 2004:

> …clarified the role and mandate of the Auditor-General and strengthened the Auditor-General's legal capacity to collect and protect information gathered during the audit process.[22]

2.17 The amendments proposed to the Act in 2004 also noted that since its introduction, the Act had provided a good basis for the effective performance of the Auditor-General's functions. However, with experience, some provisions in the Act had called for clarification and strengthening.[23]

Why review the Act?

2.18 A statute is generally reviewed to update and consolidate it by assessing the performance of the Act in meeting its objectives. Specifically, in the case of the *Auditor-General Act 1996*, it is important to review the extent and application of the Act to take account of: (i) best practice in safeguarding the independence of Auditors-General; (ii) best practice in statutory review; and (iii) developments in audit legislation in other jurisdictions. Each of these is discussed below.

Best practice in statutory review

2.19 Generally, statutory review periods are designed to ensure a timely evaluation of the implementation and performance against the legislation.

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[21] Mr Jon Stanhope MLA, Media Release: 'Role of Auditor-General further clarified', 24 August 2004.
[22] Submission No. 2, ACT Auditor-General's Office, January 2010, p. 2.
[23] Mr Jon Stanhope MLA, Media Release: 'Role of Auditor-General further clarified', 24 August 2004.

Some statutes prescribe review periods that can range from between three to five years. The Act does not prescribe a statutory review period.

2.20 The purpose of a statutory review process is to:

- update and consolidate legislation—factoring in the performance of the Act in achieving its objective(s) and building upon guidance and best practice in other jurisdictions, and
- ensure that the legislation meets the needs of the operating environment, in this case, a changing public sector environment.

2.21 In commenting on the structure of the Act, Professor Wettenhall told the Committee:

> The impression is rather one of an Act which is, in several respects, clumsily put together, with some surprising gaps in it and eg with provisions relating to appointment of the Auditor-General appearing in several places whereas consolidation would enhance comprehension. I think the Act would be easier to read, and better able to serve as a guide to appropriate behaviour by all concerned, if it could be tightened up and better structured.[24]

Best practice in safeguarding the independence of Auditors-General

2.22 In an address to the 10th Biennial Conference of the Australasian Council of Public Accounts Committees, providing a summary of the application of the International Organisation of Supreme Audit Institutions (INTOSAI) independence principles to Auditors-General in Australian jurisdictions, the Victorian Auditor-General noted that many jurisdictions could do more to safeguard the independence of their Auditors-General. This could be achieved through strengthening:

- the coverage and scope of the audit mandate to address erosion accompanying changes to service delivery models
- access to information, particularly access to premises and access to information in third party entities or 'peripheral' public entities, and

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[24] Submission No. 1, Emeritus Professor Wettenhall, January 2010, p. 4.

- the role of the Parliament and its committees in ensuring access to financial resources and organisational independence for offices supporting Auditors-General.[25]

2.23 The Victorian Auditor-General concluded that those jurisdictions performing the highest in terms of safeguarding the independence of their Auditor-General were those with the most recent legislation, in particular Tasmania and Western Australia.[26]

2.24 As noted previously, the last substantive amendments to the Act occurred in 2004. Further, the Committee's inquiry is the first full inquiry into the Act since it was enacted in 1996.[27]

Developments in audit legislation in other jurisdictions

2.25 Substantive reform to public audit legislation in Australian jurisdictions can be organised into four waves: (i) the establishment of audit legislation in most jurisdictions occurred in the early 1900s; (ii) limited amendments or the introduction of new legislation 1900s to 1960; (iii) the introduction of a round of new legislation in a number of jurisdictions occurred in the 1970s and 1980s (Queensland *Financial Administration and Audit Act 1977*, South Australian *Public Finance and Audit Act 1987*; Western Australian *Finance and Administration Act 1985)*; and (iv) a new wave of reforms was launched in the early 2000s with the Tasmanian, Queensland, Western Australian, the Commonwealth, and Victorian audit legislation all under review in the last four years.[28] To date, this wave of reforms has resulted in new Acts for the audit legislation of Tasmania and Queensland.[29]

2.26 Notwithstanding that amendments to audit legislation in other jurisdictions will be indicative of the unique circumstances and mandate of the respective Auditor-General of those jurisdictions, the Committee notes that updates and

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[25] Pearson, D. (2009) 'Issues for maintaining independence: A survey of Australia's public audit legislation', Address to the 10th Biennial Conference of Australasian Council of Public Accounts Committees, 16 April, Wellington, New Zealand.

[26] *Ibid.*

[27] Submission No. 2, ACT Auditor-General's Office, January 2010, p.18.

[28] Pearson, D. (2009) 'Issues for maintaining independence: A survey of Australia's public audit legislation', Address to the 10th Biennial Conference of Australasian Council of Public Accounts Committees, 16 April, Wellington, New Zealand.

[29] Submission No. 2, ACT Auditor-General's Office, January 2010, p. 2.

revisions to audit legislation also reflect developments in the public sector, the auditing profession and changes in community expectations.[30]

2.27 In commenting on the current Act, the Auditor-General stated:

> The current legislation has provided a sound basis for the discharge of the Auditor-General's functions. However, since the time that the act was introduced in 1996—it was amended in 2004—there have been very significant changes within both the public sector, the accounting and auditing profession, as well as the broader role and mandate now expected of the Auditor-General, so I believe it is very timely to have the opportunity to review and improve the legislation, especially as there were other reviews in other jurisdictions and also the reform done overseas.[31]

2.28 In evidence, the Chief Minister told the Committee:

> …we are supportive of amendments that would clarify certain aspects of the Auditor-General's role. If you go to our submission you will see that the government is supportive of ensuring that the Auditor-General's role is clear and unambiguous and that her role and function are fully supported.[32]

2.29 Further, in the context of which areas of the Act could benefit from further clarification and strengthening, the Audit Office submitted that consideration should be given to:

- the power to audit outsourced activities and services
- providing the Legislative Assembly, through the Committee, with a greater role in approving the appropriation funding for the operations of the Audit Office
- clarifying the provisions for audit fees
- clarifying the arrangements for the periodic review of the operations of the Audit Office by an independent auditor, including the appointment of the auditor and the determination of the terms of reference, and
- exempting the Auditor-General from the provisions of the *Freedom of Information Act 1988*, insofar as they relate to the audit functions of the Office.[33]

*S*ummary

2.30 In summary, evidence to the inquiry was supportive of a review of the Act. Generally, the evidence submitted that in reviewing the Act, the inquiry

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[30] Submission No. 2, ACT Auditor-General's Office, January 2010, p. 2.
[31] Mrs Tu Pham, *Transcript of evidence*, 12 March 2010, p. 21.
[32] Mr Jon Stanhope MLA, *Transcript of evidence*, 12 March 2010, p. 3.
[33] Submission No. 2, ACT Auditor-General's Office, January 2010, p.18.

should: (i) take account of significant changes within the public sector environment and the accounting and auditing professions; (ii) take account of the broader role and mandate now expected of Auditors-General; and (iii) clarify and strengthen the Act on the basis of its performance, since it was enacted in 1996, in meeting its objectives.

2.31 It is therefore timely to review the extent and application of the Act to:

- ensure that it provides independence in public sector audit
- strengthen and safeguard the independence of the Auditor-General
- ensure that the legislative provisions reflect contemporary public sector practice. New pressures on accountability have arisen in the modern public sector environment, which have driven an increasing demand for a robust independent audit function. More detail on this is set out in chapter six—*Best practice in the modern public sector environment*
- take account of proposed amendments to the Act, as informed by the performance of the current Act, since it was enacted in 1996, in meeting its objectives
- take account of developments within both the public sector and the accounting and auditing professions and the subsequent impact of these developments on the Auditor-General's mandated roles and responsibilities, and
- ensure that the Auditor-General has the resources and mandate to carry out the Office's roles and responsibilities in the modern public sector environment.

2.32 The inquiry terms of reference, as detailed earlier in this report, can be organised into two broad themes, that is, whether the current provisions in the Act are: (i) best practice in the context of contemporary public administration; and (ii) appropriate in terms of safeguarding the independence of the Auditor-General. The Committee's report is structured around these two themes.

3 ROLE OF THE AUDITOR-GENERAL

3.1 In the Westminster system of government, the Office of the Auditor-General is a key accountability mechanism by which Parliaments hold the Executive Government to account.[34] Experts in the field of public administration have referred to the role of the Auditor-General within the Westminster accountability model as a 'core element of parliamentary oversight'.[35]

Supreme audit institutions

3.2 The World Bank defines Supreme audit institutions (SAI) as:

> …national agencies responsible for auditing government revenue and spending. Their legal mandates, reporting relationships, and effectiveness vary, reflecting different governance systems and government policies. But their primary purpose is to oversee the management of public funds and the quality and credibility of governments' reported financial data.[36]

3.3 Generally, SAIs can take one of three forms reflecting different governance and auditing systems: (i) the Judicial system also known as the Napoleonic system; (ii) the Westminster system also known as the Anglo-Saxon or Parliamentary system; and (iii) the Board system also known as the Collegiate model/system.

3.4 In a Westminster audit system, the Office of the Auditor-General is the SAI. Therefore within a Westminster audit system, the work of the SAI is intrinsically linked to the system of parliamentary accountability.[37]

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34 Sendt, B. (2002) 'Audit independence: Views from the public sector', Paper presented at the Restoring Confidence in the Australian Auditing and Accounting Industry; Coghill, K. (2004) 'Auditing the independence of the Auditor-General', paper presented as part of the Australian National University's Political Science Program, 11 February, pp. 1–19.

35 Funnell, W. (1996) 'Executive Encroachments on the Independence of the Commonwealth Auditor-General', *Australian Journal of Public Administration*, **55**, 4, pp. 109–123, December; World Bank (2001) Feature and functions of supreme audit institutions, PREMNOTE No. 59—Public sector, October.

36 World Bank (2001) Feature and functions of supreme audit institutions, PREMNOTE No. 59—Public sector, October, p. 1.

37 *Ibid.*

3.5 The predominant emphasis is on the Auditor-General's relationship to Parliament. This has been described as:

> The Auditor-General is an office whose purpose is to provide credible assurance to Parliament on governmental performance. Credible assurance can only be provided by ensuring that the Audit Office is independent and competent.[38]

3.6 In practice, for the Westminster audit system to function properly, it requires:

> …the interested knowledgeable and active involvement of Parliament to follow up the reports and opinions produced by the Auditor-General. Ultimately the legislature holds the Government to account; the Auditor-General gives it the information and tools to do so effectively. If Parliamentarians, especially the PAC, do not act on the Auditor-General's work, the system will not function effectively. Parliament needs to ensure that the Government responds to its recommendations and either implements them or explains why it is not doing so.[39]

Westminster accountability model

3.7 The role and purpose of the Auditor-General is founded upon constitutional principles and accordingly plays an important part in the Westminster accountability model. In a Westminster system of government, Parliament is supreme, with the authority for governmental activity, in particular the raising and spending of taxes, coming from Parliament. The Executive Government (Ministers and Government agencies) are accountable to Parliament for their use of resources and powers conferred by Parliament.[40]

3.8 As part of the accountability arrangements for executive government, Parliament seeks assurance from an independent source—the Auditor-General. The Auditor-General's role is:

> …to report to Parliament on how government agencies are operating and accounting for their performance in accordance with Parliament's intentions. To be credible such assurance must be seen to be independent and competent.[41]

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[38] NZ Office of the Controller and Auditor-General (OCAG) (1995) The Legislation Audit, OAGLEGA, NZ, June, p. 1.

[39] DFID. (2001) Department for International Development (UK), Characteristics of different external audit systems, Policy Division, London, p. 4.

[40] Sendt, B. (2002) 'Audit independence: Views from the public sector', paper presented at the Restoring Confidence in the Australian Auditing and Accounting Industry; Barrett, P. (1996) 'Some Thoughts about the Roles, Responsibilities and Future Scope of Auditors-General', *Australian Journal of Public Administration*, **55**, 4, pp. 137–146.

[41] Sendt, B. (2002) 'Audit independence: Views from the public sector', Paper presented at the Restoring Confidence in the Australian Auditing and Accounting Industry, p. 2.

3.9 The degree to which an Auditor-General can effectively contribute to a parliamentary accountability framework is reliant on independence.[42] Further, the bestowing (or conferring) of such independence places important obligations on an Auditor-General for their own performance and for that of their Office.[43] Independence of the Auditor-General and accountability for that independence are equally important.

3.10 In summary, the role of the Auditor-General as primarily scrutinising the performance of the Executive Government on behalf of Parliament is:

> The office of the Auditor-General provides a critical link in the accountability chain between the public sector, and the Parliament and the community. It alone subjects the practical conduct and operations of the public sector as a whole to regular investigations and review…The Auditor-General is the Parliament's principal informant on the performance of the administrative system.[44]

The role and relationship of the Auditor-General with Parliament

The Auditor-General as an Officer of Parliament

3.11 The Auditor-General plays an important role in the Westminster system of government by assisting Parliament to hold the Executive Government to account. This is on the basis that a clear constitutional provision exists that the role of an Auditor-General is concerned with serving the needs of the Parliament.[45]

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[42] Coghill, K. (2004) 'Auditing the independence of the Auditor-General', paper presented as part of the Australian National University's Political Science Program, 11 February, pp. 1–19; Funnell, W. (1996) 'Executive Encroachments on the Independence of the Commonwealth Auditor-General', *Australian Journal of Public Administration*, **55**, 4, pp. 109–123; Grove, R. (2002) 'Officers of Parliament and how their work impacts on the House', Paper presented by Clerk of the Legislative Assembly of NSW, 33rd Conference of Presiding Officers and Clerks, Brisbane, Queensland.

[43] Barrett, P. (1996) 'Some Thoughts about the Roles, Responsibilities and Future Scope of Auditors-General', *Australian Journal of Public Administration*, **55**, 4, pp. 137–146.

[44] Quoted in O'Neil and Wilkins, P. (2004) 'Auditing the enforcers: the role of Auditors-General' in 'Appraising the Performance of Regulatory Agencies', Papers presented at the 2002 National Administrative Law forum, AIAL, pp. 36–52.

[45] WA Auditor-General's Policy Advisory Committee (1990) *Discussion paper— Independence of the Auditor-General and the Office of the Auditor-General*, Perth, Office of the WA Auditor-General.

3.12 Officers, such as Auditors-General, who perform oversight and scrutiny work on behalf of Westminster style Parliaments have been referred to as Officers of Parliament.[46]

Officers of Parliament

3.13 According to the Victorian Public Accounts and Estimates Committee (VICPAEC):

> In a number of Westminster style Parliaments, the role of officers of Parliament has developed over the last 30 years, partly because traditional notions of ministerial responsibility have declined, but also because the process of government became more widespread, and difficult for citizens to access. These roles have emerged to assist Parliament undertake more active scrutiny and accountability tasks.[47]

3.14 As such, Officers of Parliament, and their respective roles, have developed to assist Parliaments to carry out their oversight responsibilities. This has also established Officers of Parliament as important participants in the Westminster accountability model.[48]

3.15 As to the origin of Officers of Parliament:

> The term Officer of Parliament rarely appears in legislation and has never been subject to judicial interpretation. Its origin is linked to the UK Parliament, and the authoritative guide to parliamentary procedure and practice, Erskine May, gives the fullest description of the applicability of the term, but does not offer a definition.[49]

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[46] UK House of Commons (2003) Parliamentary Library Research Paper 03/77, 'Officers of Parliament— A Comparative Perspective', 20 October; Grove, R. (2002) 'Officers of Parliament and how their work impacts on the House', Paper presented by Clerk of the Legislative Assembly of NSW, 33rd Conference of Presiding Officers and Clerks, Brisbane, Queensland.

[47] UK House of Commons (2003) Parliamentary Library Research Paper 03/77, 'Officers of Parliament— A Comparative Perspective', 20 October; Victorian Public Accounts and Estimates Committee (VICPAEC) (2006) *Report on a Legislative Framework for Independent Officers of Parliament*, February, Parliament of Victoria.

[48] *Ibid.*

[49] Victorian Public Accounts and Estimates Committee (VICPAEC) (2006) *Report on a Legislative Framework for Independent Officers of Parliament*, February, Parliament of Victoria, p. 24; May, E. (2004) *Parliamentary Practice*, (23rd edn.), p. 245.

3.16 According to Erskine May, the term Officer of Parliament is used as a means to signify that some statutory office holders have a unique relationship with Parliament and to highlight that these officers are independent of the Executive Government.[50] Herein are the defining attributes that distinguish independent officers of Parliament, as statutory officer holders, from other statutory office holders.

3.17 The cornerstone Officers of Parliament have been Auditors-General and Ombudsmen, who are tasked with scrutinising the performance of the Executive Government and report the outcomes of such scrutiny to Parliament. More recently, Electoral Commissioners have been added to this grouping, 'on the basis that their office protects fairness in elections on behalf of Parliament and its electors'.[51]

Characteristics of Officers of Parliament

3.18 A 1989 report by the New Zealand (NZ) Parliament's Finance and Expenditure Committee identified five criteria for determining or establishing an Officer of Parliament:

- an Officer of Parliament is created to provide a check on the arbitrary use of power by the Executive
- an Officer of Parliament must only discharge functions which the House of Representatives itself, if it so wished, might carry out
- Parliament should consider creating an Officer of Parliament only rarely
- Parliament should from time to time review the appropriateness of each Officer of Parliament's status as an Officer of Parliament, and
- each Officer of Parliament should be created in separate legislation principally devoted to that position.[52]

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[50] Victorian Public Accounts and Estimates Committee (VICPAEC) (2006) *Report on a Legislative Framework for Independent Officers of Parliament*, February, Parliament of Victoria, May, E. (2004) *Parliamentary Practice*, (23rd edn.), Butterworths, London, p. 245.

[51] Victorian Public Accounts and Estimates Committee (VICPAEC) (2006) *Report on a Legislative Framework for Independent Officers of Parliament*, February, Parliament of Victoria, p. 24; Grove, R. (2002) 'Officers of Parliament and how their work impacts on the House', Paper presented by Clerk of the Legislative Assembly of NSW, 33rd Conference of Presiding Officers and Clerks, Brisbane, Queensland.

[52] New Zealand Finance and Expenditure Committee (1989) *Report on the Inquiry into officers of Parliament*, pp. 5–6; Coghill, K. (2004) 'Auditing the independence of the Auditor-General', paper

3.19 The VICPAEC, in its *Report on a Legislative Framework for Officers of Parliament* identified four characteristics of an Officer of Parliament, in that they are:

- established in a generally standard way by an Act of Parliament
- appointed and dismissed with parliamentary involvement
- overseen by a statutory parliamentary committee which is also responsible for the budget approval of the Officer, and
- required to report to a specific parliamentary committee.

3.20 In considering the characteristics of an Officer of Parliament, the Committee acknowledges that Parliaments have a number of public officials whose roles are to assist the Parliament to carry out its function of: (i) scrutinising the Executive; and (ii) in so doing hold the Executive Government to account.[53]

3.21 The Committee is of the view that the ACT Auditor-General, whilst not formally declared an Officer of Parliament in the Act, is for all intents and purposes an Officer of Parliament in terms of meeting fully or partially most of the characteristics of an Officer of Parliament as set out at paragraph 3.19.

Officer of Parliament

3.22 A number of proposals were put forward that, whilst symbolic in that they would have no effect to the Auditor-General's actual independence from the Executive Government, would strengthen the status and symbolism of the Auditor-General as an Officer of Parliament together with emphasising the important relationship that exists between the Auditor-General and the Assembly. A summary of these is set out below.

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presented as part of the Australian National University's Political Science Program, 11 February, pp. 1–19.

[53] Grove, R. (2002) 'Officers of Parliament and how their work impacts on the House', Paper presented by Clerk of the Legislative Assembly of NSW, 33rd Conference of Presiding Officers and Clerks, Brisbane, Queensland.

Formal recognition of the Auditor-General as an Officer of Parliament

3.23 A number of submissions to the Committee proposed that the Act be amended to recognise the Auditor-General as an Officer of Parliament.

3.24 The Committee is aware that the Auditor-General for the purpose of reference in the statutory framework is not declared as an Officer of Parliament in the Act. In practice, this means that whilst the Auditor-General is an independent statutory officer that reports to the Assembly, the Act establishing the Office does not use the phrase—Officer of Parliament.

3.25 The Auditor-General submitted that the Act does not refer to the Auditor-General as an 'independent Officer of Parliament' and that there may be merit in formally designating the Auditor-General as such.[54] In evidence at a public hearing, the Auditor-General further added:

> There is a good reason for the Auditor-General to be declared an officer of the Parliament, and that is the case in a number of jurisdictions in Australia.[55]

3.26 The Australasian Council of Auditors-General (ACAG) submitted that a number of Australian jurisdictions include a provision in their legislation which specifically recognises that the Auditor-General is an independent Officer of Parliament. It suggested that such a provision could be included in the Act to give recognition to this role.[56] Amendments to the Commonwealth *Auditor-General Act 1997*, for example, recognised the independence of the Auditor-General by declaring the position as an Officer of Parliament in the statutory framework.[57]

3.27 In its submission, the Government also supported consideration of sections similar to those in the Commonwealth *Auditor-General Act 1997* which designated the Commonwealth Auditor-General as an 'Officer of Parliament'.[58]

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[54] Submission No. 2, ACT Auditor-General's Office, January 2010; *Transcript of evidence*, 12 March 2010, pp. 22–23.
[55] Mrs Tu Pham, *Transcript of evidence*, 12 March 2010, p. 23.
[56] Submission No. 3, ACAG, February 2010, p. 4; Submission No. 2, ACT Auditor-General's Office, January 2010, 13.
[57] Submission No. 2, ACT Auditor-General's Office, January 2010, p. 13.
[58] Submission No. 4, ACT Government, February, 2010; Section 8(1) C'wlth *Auditor-General Act 1997*.

3.28 Declaring the position of the Auditor-General as an Officer of Parliament, whilst symbolic, also:

> …emphasises that there is an important relationship between the Auditor-General and the parliament, and that the Auditor-General is not wholly an institution of the executive. It is of no consequence to the Auditor-General's actual independence from the Executive.[59]

3.29 The Committee is of the view that formally designating the Auditor-General as an Officer of Parliament highlights and affirms the special relationship between the Auditor-General and the Assembly. In the Committee's view, formal designation can also raise awareness regarding the special relationship and may also strengthen that relationship. Further, such an action symbolically distinguishes the Auditor-General from the Executive and associates the Office with the Assembly.[60]

3.30 One Member of the Committee disagreed that the Auditor-General should be designated as an "Officer of Parliament". The Act guarantees functional independence for that office and the imputation that control of the budget for the Office would result in undue interference is not accepted.

RECOMMENDATION 1

3.31 **The Committee recommends that the *Auditor-General Act 1996* be amended to designate the Auditor-General as an Officer of Parliament.**

3.32 The Committee considers that it would strengthen the independence of the Auditor-General, as an Officer of Parliament, if the Assembly considered the merits of developing a procedural framework that formally recognises its Officers of Parliament. In particular, the framework should: (i) detail the nature and terms of the relationship these Officers have with the Assembly, including how the relationship is governed; and (ii) highlight that the primary responsibility of these Officers is to the Assembly.

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[59] Lawson, C. (2009) 'Can the Executive influence the 'independence' of the Auditor-General under the Auditor-General Act 1997 (Cth)?', *Australian Journal of Administrative Law*, 16, 90, pp. 90–114.
[60] *Ibid.*

3.33 This could also include consideration of whether the ACT Ombudsman and ACT Electoral Commissioner, and whether any other officers, should be included within this framework and brought into line with the governing relationship the Assembly has with the Auditor-General. With regard to consideration of 'any other officers', apart from the cornerstone officers, the Committee acknowledges that the literature emphasises that Parliaments should consider creating an Officer of Parliament only rarely.

RECOMMENDATION 2

3.34 **The Committee recommends that the Legislative Assembly's Administration and Procedure Committee inquire into and report on the merit of establishing a framework that formally recognises Officers of Parliament, details the nature and terms of the relationship these Officers have with the Assembly and to the Executive, and highlights that their primary responsibility is to the Assembly.**

3.35 The Committee believes that, should the Standing Committee on Administration and Procedure recommend the establishment of a framework that formally recognises its Officers of Parliament, there is merit in the Legislative Assembly Secretariat designing some specific information and education initiatives, targeted at the Assembly and the ACT community, to promote the unique role of Officers of Parliament.

RECOMMENDATION 3

3.36 **The Committee recommends that should the Standing Committee on Administration and Procedure recommend the establishment of a framework that formally recognises Officers of Parliament:**

(i) the Legislative Assembly Secretariat's Strategy and Parliamentary Education Office, where appropriate, should incorporate reference to Officers of Parliament and the unique roles they perform on behalf of Parliaments, into education and information services and activities

(ii) the Legislative Assembly Secretariat's Strategy and Parliamentary Education Office should develop and publish an Assembly fact sheet on Officers of Parliament. The fact sheet should emphasise the unique relationship these Officers have with Parliament and the roles they perform on behalf of Parliaments, and

(iii) the major seminars for ACT public servants, for which the ACT Legislative Assembly Secretariat is responsible, in particular the seminars covering the role of the ACT Legislative Assembly and the workings of Assembly Committees, should specifically include content on the unique role of Officers of Parliament and their relationship with Parliaments.

Role and relationship of the Auditor-General with the Legislative Assembly

3.37 The work of the Auditor-General provides a link in the chain of accountability from government to Parliament. The Auditor-General reports to Parliament through the Speaker and not to the Government. This independence from the Government is a necessary requisite for the Auditor-General and their Office to carry out their work effectively. The Auditor-General:

> …must be free of obligations to any individual or institution and be free from fear of arbitrary dismissal or retaliation. The Auditor-General works for the Parliament, not the government of the day.[61]

3.38 In the ACT, the Auditor-General is:

> …responsible to the Legislative Assembly, for the audit of all public sector agencies. The Auditor-General provides assurance to the community, through the Legislative Assembly, that the ACT public sector is accountable and effectively and efficiently managed.[62]

3.39 The statutory office of the Auditor-General therefore plays an important role in public accountability. Reports of the Auditor-General are concerned with

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[61] Dubois, R. (1990) 'Accountability in Parliament: the role of the Auditor-General', *Canadian Parliamentary Review*, 13, 1, Spring.

[62] ACT Auditor-General's Report No. 7 of 2009: *Annual Report 2008-2009*, p. 3.

promoting public accountability in the public administration of the Territory.[63]

Relationship of the Auditor-General with MLAs

3.40 Whilst a Parliament's nominated oversight committee relies on the work of the Auditor-General and is tasked with oversighting and facilitating the relationship that a Parliament may have with its respective Auditor-General, all Members of Parliament use reports of the Auditor-General, often in ways that may not be highly visible, in the business of the Parliament. This occurs because the Auditor-General's work is 'often referred to as an authoritative, independent and objective source of information'.[64]

3.41 As noted previously, for the Westminster audit system to function properly, it requires a vigilant Parliament to follow up the reports and recommendations of the Auditor-General. Whilst the Public Accounts Committee (PAC), as the Parliament's delegate, plays an important part, all parliamentarians can contribute to the effectiveness of the Westminster accountability model and audit system of democratic governance by also following up on the reports and recommendations of the Auditor-General.

3.42 A potential mechanism that would assist parliamentarians in this regard is for the Auditor-General to make available a briefing session for all MLAs on performance audit reports shortly after tabling. This practice currently operates in the NSW, Victorian and Tasmanian jurisdictions. However, the Committee understands that in these jurisdictions the briefings take the form of an information session or seminar format and not as a parliamentary proceeding.

3.43 The benefits of making available briefing sessions to all parliamentarians on reports of the Auditor-General include: (i) allowing the Auditor-General to highlight key points within reports; (ii) providing immediate opportunities for parliamentarians to clarify issues and ask questions soon after reports have been tabled; and (iii) providing a forum for information exchange.

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63 ACT Auditor-General's webpage <http://www.audit.act.gov.au/> at 11 May 2010.

64 Dubois, R. (1990) 'Accountability in Parliament: the role of the Auditor-General', *Canadian Parliamentary Review*, 13, 1, Spring.

3.44 The Committee considers that there is merit in the Auditor-General making available a briefing session for all MLAs on performance audit reports shortly after tabling. However, the only format provided for under the Assembly's Standing Orders for this type of briefing is as an information session or seminar format. In this format, the briefing would not be a parliamentary proceeding and not covered by parliamentary privilege.

3.45 As is the current practice, the Committee understands that MLAs can approach the Auditor-General to seek a private briefing on individual performance audit reports. The Committee also notes that earlier in the 7th Assembly it considered in detail the options regarding briefings on reports of the Auditor-General and resolved that it was a matter for the Auditor-General to decide whether an information session or seminar format would be an appropriate means of briefing all MLAs.

3.46 The Committee is of the view that the Standing Committee on Administration and Procedure should examine the feasibility of providing Assembly committees with some additional proceeding and sitting options to conduct business. For example, a practice of committees of the Commonwealth Parliament's House of Representatives has been to hold roundtable forums, seminars and public meetings as options for conducting business. This practice is formally provided for by the House of Representatives' Standing Orders.[65] The roundtable forum, for example, may provide the means by which all MLA briefings on reports of the Auditor-General could be made available as a proceeding of Parliament.

RECOMMENDATION 4

3.47 **The Committee recommends that the Standing Committee on Administration and Procedure review Standing Orders concerning the form of meetings for committees of the ACT Legislative Assembly.**

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[65] Commonwealth Parliament—House of Representatives (2010) Standing Orders, SO 235—Proceedings and sittings of committee.

Relationship of the Auditor-General with the Public Accounts Committee

Overseen by a parliamentary committee

3.48 One of the defining characteristics of an Officer of Parliament is that they are overseen by a parliamentary committee. In many Westminster style Parliaments this role falls to the PAC. The PAC (as the Parliament's delegate) provides a nexus or link between the Auditor-General and the Parliament.[66]

3.49 Auditors-General need to be independent from the Executive, however, equally important, is the need to be accountable for that independence. As Parliament's delegate, oversight committees are critical to the process of ensuring the Auditor-General is publicly accountable.

3.50 Oversight committees also have a number of other important roles in facilitating and oversighting the Parliament's relationship with a specific Officer of Parliament. This includes:

- safeguarding the independence of their respective Officer of Parliament and making sure that they have the appropriate legislative mandate and resources to carry out their role on behalf of Parliament
- providing their respective Officer of Parliament with a link to community attitudes and concerns. This linkage also reminds the Officer of Parliament that they are subject to the people through the Parliament[67]
- supporting their respective Officer of Parliament and protecting them from unjustified attacks. Oversight committees are also the vehicle by which an Officer of Parliament communicates with the Parliament, and
- recommending changes to improve the operations of the agencies of the

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[66] Qld Public Accounts Committee. (2007) 'The role of PACs in strengthening the independence of Auditors-General', Paper presentation to the 9th ACPAC Biennial Conference, Canberra.

[67] Grierson, S. (2009) 'Different models for optimising cooperation between auditors-general, public accounts committees, and other accountability agencies', Paper presented at the 10th ACPAC Biennial Conference, April 2009; Griffith, G. (2006) 'Parliament and Accountability: The role of parliamentary oversight committees', *Australasian Parliamentary Review*, **21**, 1, pp. 7–46.

Officer of Parliament, including resourcing and legislative mandate. Oversight committees, on behalf of Parliament, also have a critical role in ensuring that the enabling legislation of an Officer of Parliament stays up to date.[68]

3.51 In the ACT, aside from reviewing reports of the Auditor-General, the Committee:

- examines the budget estimates for the Auditor-General and makes a recommendation to the Treasurer
- examines the operations and resources of the Audit Office via consideration of the Office's six monthly operational report
- considers the Audit Office's annual report as part of its inquiry into annual and financial reports, and
- provides input to the Audit Office's performance audit program. As part of this process, to help determine the Assembly's audit priorities, the Committee consults with other Standing Committees on the audit program.

Oversight of the Auditor-General's budget

3.52 As mentioned previously, another defining characteristic of an Officer of Parliament is that they are overseen by a parliamentary committee which is also responsible for budget approval.

3.53 A parliamentary committee that oversees 'the budget and appointment of the Auditor-General cements the Auditor-General's accountability relationship with Parliament'.[69]

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[68] Grove, R. (2002) 'Officers of Parliament and how their work impacts on the House', Paper presented by Clerk of the Legislative Assembly of NSW, 33rd Conference of Presiding Officers and Clerks, Brisbane, Queensland.

[69] Robertson, G. (2009) *Independence of Auditors-General—A survey of Australian and New Zealand Legislation*, Commissioned by the Victorian Auditor-General's Office, July.

3.54 The Auditor-General submitted that it would be desirable for amendments to the Act to give effect to a greater role for the Committee in approving the appropriation for the operations of the Auditor-General and in considering the Auditor-General's proposed performance audit program.[70] Further discussion on giving effect to a greater role for the Committee in approving the budget appropriation of the Auditor-General is at chapter five—*Budget appropriation*.

Performance audit program

3.55 The Committee is aware that audit legislation in other jurisdictions mandates requirements for consultation in the development of the Auditor-General's audit program in different ways. For example, Western Australian and Commonwealth audit legislation provides that the Auditor-General must have regard to the priorities of Parliament, and the Tasmanian audit legislation requires the Audit Office to consult with the PAC (or its equivalent) regarding its annual performance audit program.[71]

3.56 Further, these legislative requirements are framed so as not to conflict with the applicable provisions in audit legislation that the Auditor-General is not subject to direction either from the Executive Government or the Parliament.

3.57 The ACT has less formal arrangements, whereby the Auditor-General seeks input annually from the Committee on the Audit Office's draft performance audit program. This less formal arrangement involves the Auditor-General providing the Committee with the Office's proposed annual performance audit program for consideration (by way of correspondence) and an offer to meet with the Committee to discuss the draft program. The Auditor-General invites any advice or comments the Committee may wish to make on the proposed audit program, including any suggestions regarding possible additional audit topics and the Committee's view on priority attached to any specific audit topics.

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[70] Submission No. 2, ACT Auditor-General's Office, January 2010, pp. 15–16.
[71] *Ibid.*

3.58 As part of consultation on the 2010–11 performance audit program, the Committee resolved to write to the other Assembly Standing Committees to also seek comment on the draft program. This will be an ongoing arrangement for the term of the 7th Assembly.

3.59 The Auditor-General proposed that the Committee may wish to consider whether a formal requirement for consultation in developing the Auditor-General's audit program would be a useful adjunct to any greater role the Committee may have in considering the budget for the Auditor-General's Office.[72]

3.60 The Auditor-General submitted that the Committee's consideration of the draft performance audit program:

> …helps ensure the Audit Office delivers a program of audits that addresses the interests and priorities of the Legislative Assembly. Further, through this process, and the frequent contact the Auditor-General has with the PAC, the Committee is well informed of the performance audit activities of the Audit Office.[73]

3.61 The Committee is of the view that a formal requirement, whilst helping to ensure that the Audit Office delivers a program of audits that addresses the interests and priorities of the Legislative Assembly, also further strengthens the links between the Audit Office and the Assembly.

3.62 Furthermore, a formal requirement for consultation is reinforced because, compared to other jurisdictions, the Audit Office has a strong performance mandate as provided through the Act.[74]

3.63 A formal requirement for consultation whilst assisting the Audit Office to deliver a performance audit program that is indicative of the interests and priorities of the Legislative Assembly would also affirm and reinforce the strong performance audit mandate as provided by the Assembly to the ACT Auditor-General.

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72 Submission No. 2, ACT Auditor-General's Office, January 2010, p. 16.
73 *Ibid.*
74 Mrs Tu Pham, *Transcript of evidence*, Select Committee on Estimates 2010–11, 24 May 2010, p. 1029.

RECOMMENDATION 5

3.64 **The Committee recommends that the *Auditor-General Act 1996* be amended to require the Auditor-General to consult with the Standing Committee on Public Accounts regarding its annual performance audit program.**

Independence of the Auditor-General

3.65 Given the Auditor-General's role in scrutinising the performance of executive government, they may not always be in favour with the Executive Government of the day. At times, the Auditor-General may encounter a hostile government.

3.66 The first Commissioner of the NSW Independent Commission Against Corruption (ICAC) elaborates further on the nature of 'displeasure' that independent officers can cause, noting that:

> ...there will...be awkwardness caused because an important function of government, whatever it may be, is disclosed as being inadequately performed. It is the need for that demonstration to occur which imposes the requirement of independence. Only a non-partisan body can be authoritative and will enjoy public confidence. Periods of disharmony between government and independent officers are, accordingly inevitable. If they were never encountered, the only available conclusion would be that the independent officer was not doing his or her job properly.[75]

3.67 Furthermore, the issue highlights the important role and responsibility bestowed upon Parliaments to safeguard 'Officers of Parliament', such as the Auditor-General, and protect them from unjustified attacks from the Executive Government of the day. The former NSW ICAC Commissioner captures the importance of this role:

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[75] Temby, I. (1993) 'Safeguarding Integrity in Government', *Papers on Parliament* (Australian Senate), No. 7, pp. 7–8.

> It is Parliament that creates all of these bodies and it is Parliament which must look after them. When relations between a particular government and independent officer...become strained, the protection and support must be vouchsafed by Parliament. Why is this so? First, because parenthood brings responsibilities. Secondly, because those not directly affected can appreciate that the proper performance of functions, simply by doing the job laid down by legislation, can involve the making of inconvenient decisions. Thirdly, because the Parliament directly distils and reflects the will of the people in a way that the government and the bureaucracy never can and never will...[76]

3.68 In evidence at a public hearing, Professor Wettenhall elaborated on his submission which, amongst other things, emphasised the important role that Parliaments have in protecting their Officers of Parliament:

> …Ian Temby was the first independent commissioner against corruption in New South Wales. I have quoted, on page 2 of my submission, a statement from him. Without reading it all now, at the end he points to the terribly important role of parliament as a protector—he says as a parent—because there is parliamentary legislation that creates these bodies. But inevitably they are going to be in conflict with governments. They would not be doing their jobs properly if they were not sometimes in conflict with government. So parliament has also got to be the protector of them. That is what Temby said.
>
> I come to Dennis Pearce, who was Commonwealth Ombudsman. When he left the post of *[O]*ombudsman to go back to his law chair in the ANU, he simply said that it was par for the course that governments like to have bodies like the ombudsman but that they were also going to starve them of funds, because if they are doing their jobs properly, sometimes they are going to be very critical of what governments and government agencies do. Governments do not like that, so governments are going to starve them. So you get that kind of dilemma here: governments like to show they have got them, to show that they are nicely accountable, transparent and so on, but they do not want to help them to do their jobs very effectively. There is really quite a clash there.[77]

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[76] Temby, I. (1993) 'Safeguarding Integrity in Government', *Papers on Parliament* (Australian Senate), No. 7, pp. 7–8.

[77] Emeritus Professor Roger Wettenhall, *Transcript of evidence*, 12 March 2010, pp. 41–42.

3.69 In summary, in a Westminster system of government, the Parliament has a very important responsibility with regard to safeguarding the independence of the Auditor-General:

> The Parliament has a special responsibility to ensure both that the independent and effective resourcing of the Auditor-General are secured.[78]

3.70 On the basis that as Parliaments create Officers of Parliament, such as the Auditor-General, to do their work more effectively, Parliaments must look after them with regard to their independence and resourcing.[79]

Capacity of Parliaments to oversight the Auditor-General

3.71 It is important to emphasise that notwithstanding the appropriate legislative mandate being in place, an oversight committee, such as a PAC, will be unlikely to carry out its oversight role to an acceptable standard if it has not been adequately and appropriately resourced.[80] The former Deputy Speaker of the Parliament of Victoria, now Adjunct Professor Peter Loney, emphasises that PACs carry out their work on behalf of Parliament and this needs to be appropriately recognised by the Parliament with regard to their budget and resourcing.[81]

3.72 Professor Loney further emphasises that the budget provided by the Parliament to its Public Accounts Committee:

> …must be of sufficient size to ensure that the Committee can be backed up by a secretariat of sufficient size and skills to ensure that analysis of the government's financial documents is rigorous and independent.[82]

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[78] WA Report of the Royal Commission into Commercial Activities of Government and Other Matters (Warccagom) (1992).

[79] Grove, R. (2002) 'Officers of Parliament and how their work impacts on the House', Paper presented by Clerk of the Legislative Assembly of NSW, 33rd Conference of Presiding Officers and Clerks, Brisbane, Queensland.

[80] Loney, P. (2004) 'Beware the Gap!—Parliamentary Oversight or Parliament Overlooked?', A paper for the Association of Public Accounts Committees Conference, Nelspruit, South Africa, p. 3.

[81] *Ibid.*

[82] *Ibid.*

3.73 A study conducted by the World Bank in collaboration with the Commonwealth Parliamentary Association to assess how PACs were working in practice found that:

> …strong parliamentary oversight and scrutiny regimes are an essential part of combating corruption and promoting good governance…[83]

3.74 The Study identified, amongst other things, the following as main priorities for action to strengthen parliamentary oversight and scrutiny regimes:

> *Capacity Building*—A need to improve institutional capability, that is, the ability of Parliaments, PACs and Auditors-General's officers to carry out their functions by being provided with sufficient resources and having adequate training and access to the expertise that they require.
>
> *[and, amongst other recommendations, recommended that]*
>
> Parliaments should regard the PAC as their pre-eminent committee.[84]

3.75 PACs (or equivalent) are the primary mechanism for scrutiny of government and should be regarded as an essential committee of the Parliament. Accordingly, Parliaments should recognise the status and role of these committees with regard to their capacity and resourcing.

3.76 The Committee notes that many of the recommendations set out in this report will add more responsibilities to the ACT Standing Committee on Public Accounts.

RECOMMENDATION 6

3.77 **The Committee recommends that the Legislative Assembly Secretariat note the implications of the recommendations of this report on the Standing Committee on Public Accounts' Secretariat.**

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[83] Loney, P. (2004) 'Beware the Gap!—Parliamentary Oversight or Parliament Overlooked?', A paper for the Association of Public Accounts Committees Conference, Nelspruit, South Africa, p. 3.
[84] *Ibid.*, p. 8.

The relationship of the Auditor-General with the Executive Government

3.78 Throughout the lead-up to, and during, this inquiry, some public discussion and evidence to the Committee appeared to suggest that some in the community were unaware of the finer details that differentiate independent statutory office holders in the ACT, whose role is primarily to serve the Assembly, from other statutory office holders whose role is primarily to serve the interests of the Executive Government.

3.79 For example, in response to a Private Members' Bill proposing that the Assembly should set funding for the Auditor-General, the *Canberra Times* reported the Chief Minister as rejecting the proposal on the grounds that:

> …every agency and department could argue that to maintain independence from the executive the Assembly should set its budget.[85]

3.80 Further, in relation to the proposal, the Convenor of the ACT Greens also commented that:

> …her party would refer the Bill to an Assembly committee inquiry, agreeing with Mr Stanhope that other agencies could mount a similar claim for independence.[86]

3.81 In evidence, when discussing on what basis the Auditor-General should be singled out from other lines of appropriation, the Chief Minister stated:

> We simply do not accept or do not really understand at any level why this one office should be dragged out of executive consideration of the budget and responsibility or power vested in the legislature and not the executive—why you would select just this office in the first instance.[87]
> …
>
> If one just refines it and says statutory authorities, on what basis do you independently determine that the executive not be associated with determining the level of funding appropriate for the Auditor-General and not apply the same view or attitude to, say, the Human Rights Commission or the healthcare complaints commission or the Ombudsman or the Public Advocate? What is the point of differentiation between these statutory offices and statutory office-

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[85] Violante, V. (2009) 'Bill would see Auditor funded by Assembly', *Canberra Times*, 24 June, p. 2.
[86] *Ibid.*
[87] Mr Jon Stanhope MLA, *Transcript of evidence*, 12 March 2010, p. 3.

> holders: the Conservator of Flora and Fauna, the environment commissioner? I can see no basis on which to differentiate.[88]

3.82 The Committee reiterates that the point of differentiation between statutory office holders, classed as an Officer of Parliament, and other statutory office holders, is that their role is to serve the Parliament not the interests of the Executive Government. Further, the point of differentiation between various statutory officer holders can be clearly identified using the characteristics of an Officer of Parliament as outlined earlier in this report.

3.83 On the point of differentiation, the Committee also notes a finding of the VICPAEC *Report on a Legislative Framework for Officers of Parliament* that:

> …the categorisation of officers of Parliament depends on whether the functions and responsibilities of a particular office-holder are primarily directed to serving the interests of Parliament rather than the executive government. In other words, are the functions and responsibilities of an office-holder concerned with independent review or scrutiny of the implementation of executive government policy on behalf of Parliament, or do they constitute, even with a clear and vital independent status, an inherent element of the policy framework of the government or have a judicial role.[89]

3.84 This analysis provides an alternative viewpoint to that often put forward by executive governments to justify not supporting proposals to strengthen the independence of Officers of Parliament on the grounds that all statutory office holders will want to be treated in the same way.

3.85 The Committee notes that whilst there is a range of independent statutory office holders in the ACT, the literature suggests that there are only three that could be classed as Officers of Parliament—the Auditor-General, the Ombudsman, and the Electoral Commissioner, who primarily serve the interests of the Assembly.

3.86 Other statutory office holders have a range of other functions. These include, for example, office holders that have a judicial function, such as the Director of Public Prosecutions, office holders that perform executive responsibilities, such as the Commissioner for Public Administration, office holders that have

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[88] Mr Jon Stanhope MLA, *Transcript of evidence*, 12 March 2010, p. 6.

[89] Victorian Public Accounts and Estimates Committee (VICPAEC) (2006) *Report on a Legislative Framework for Independent Officers of Parliament*, February, Parliament of Victoria, p. 8.

a regulatory role, such as the Commissioner of the Independent Competition and Regulatory Commission, or office holders that have an advocacy and advisory role such as, the Human Rights and Discrimination Commissioner. An Officer of Parliament has a special relationship with the Assembly and is responsible for assisting the Assembly to scrutinise the performance of the Government.[90]

3.87 The Committee supports the view expressed by the VICPAEC that:

> …whilst these *[other]* statutory office holders require independence and autonomy to effectively carry out their responsibilities, they are established to primarily serve the interests of executive government not the parliament.[91]

3.88 In summary, Officers of Parliament play an important role in the Westminster accountability model and audit system of democratic governance. They are fundamental in assisting Parliaments to carry out their oversight and accountability functions. It is therefore equally important that the roles of these Officers are safeguarded and appropriately resourced to effectively carry out their mandated roles and responsibilities.[92]

Independence of the Auditor-General

The importance of independence

3.89 For Auditors-General to make effective evaluations of the operation and performance of executive governments they must be independent. As such the Office of an Auditor-General is considered a non-executive agency, or non-departmental public body (NDPB)[93], specifically established to be independent of the Executive.[94]

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[90] Victorian Public Accounts and Estimates Committee (VICPAEC) (2006) *Report on a Legislative Framework for Independent Officers of Parliament*, February, Parliament of Victoria.

[91] *Ibid.*

[92] *Ibid.*

[93] Submission No. 1, Emeritus Professor Wettenhall, January 2010.

[94] Commonwealth Joint Committee on Public Accounts and Audit (JCPAA) (2008) *The efficiency dividend and small agencies: Size does matter*, Report No. 413, December, Parliament of the Commonwealth of Australia, Canberra.

3.90 The former Victorian Premier, Steve Bracks, succinctly captures the importance of an independent Auditor-General:

> The need for an effective and independent Auditor-General is almost universally accepted as a hallmark of our democratic institutions. The Auditor-General plays a pivotal role in supporting Parliament in its function of authorising and supervising the spending of public money by the executive.[95]

3.91 Further, in its report, *Guarding the Independence of the Auditor-General*, the Commonwealth Joint Committee on Public Accounts (JCPA)[96], emphasised the importance of the independence of the Auditor-General as being a principal attribute in Parliament holding the Executive Government to account, stating:

> ...the independence of the Auditor-General is fundamental to public accountability.

3.92 The Auditor-General, along with the PAC, are established features of Westminster style Parliaments.[97] The former Commonwealth Attorney General, Daryl Williams, highlights the important relationship between independence and accountability and the role of the Auditor-General:

> Under the Westminster system of government, the Auditor-General's position is considered the crucial link in the process of accountability to the taxpayer on the utilisation of funding, and…it is vital that the Auditor-General not only be independent but also that they are seen to be independent.[98]

3.93 The Parliament also has a special responsibility:

> …to ensure both that the independence and effective resourcing of the Auditor-General are secured.[99]

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95 Bracks, S. (1999) 'Audit (Amendment) Bill Second Reading', Victorian Parliamentary Debates, 11 November, p. 364.

96 Commonwealth Joint Committee on Public Accounts (JCPA) (1996) *Guarding the independence of the Auditor-General*, Report No. 346, AGPS, Canberra, October.

97 Griffith, G. (2005) 'Parliament and Accountability: The Role of Parliamentary Oversight Committees', Discussion paper prepared for the ASPG Conference on Parliament and Accountability in the 21st Century: The role of Parliamentary Oversight Committees, 6–8 October 2005.

98 Williams, D. (1995) 'Auditor-General Role'—Commonwealth Parliamentary Debates, House of Representatives, 2 February, quoted in *Canberra Bulletin of Public Administration*, 78, August 1995.

99 WA Report of the Royal Commission into Commercial Activities of Government and Other Matters (Warccagom) (1992).

Interpreting independence

3.94 The literature suggests that there are different perspectives for interpreting the independence of an Auditor-General. Broadly speaking these can be organised along a continuum between two end points—substantive (sometimes referred to as unconditional, real, unqualified) versus conditional (sometimes referred to as functional, symbolic, qualified) independence.[100]

3.95 Generally, conditional independence exists when there are opportunities for the Executive Government to have influence or control over the Auditor-General and the operations of the Auditor-General. Absolute substantive independence exists when there are no opportunities for the Executive Government to influence or exert control over the Auditor-General and the operations of the Auditor-General.

3.96 The specific point at which an Auditor-General is positioned on the continuum will be influenced by the extent to which they are vulnerable to executive influence, for example, through a reliance on budget appropriation at the initiative of the Executive and where the Executive appoints the Auditor-General.

3.97 A number of studies assessing or auditing the independence, as provided through legislation, of Auditors-General in Australia and New Zealand have been conducted over the last decade.[101] The findings of these studies indicate that jurisdictions vary as to where their Auditor-General is located on the independence continuum.

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100 Funnell, W. (1996) 'Executive Encroachments on the Independence of the Commonwealth Auditor-General', *Australian Journal of Public Administration*, **55**, 4, pp. 109–123; Lawson, C. (2009) 'Can the Executive influence the 'independence' of the Auditor-General under the Auditor-General Act 1997 (Cth)?', *Australian Journal of Administrative Law*, **16**, pp. 90–140; Barrett, P. (1996) 'Some Thoughts about the Roles, Responsibilities and Future Scope of Auditors-General', *Australian Journal of Public Administration*, **55**, 4, pp. 137–146.

101 Lawson, C. (2009) 'Can the Executive influence the 'independence' of the Auditor-General under the Auditor-General Act 1997 (Cth)?', *Australian Journal of Administrative Law*, **16**, pp. 90–140; Robertson, G. (2009) *Independence of Auditors-General—A survey of Australian and New Zealand Legislation*, Commissioned by the Victorian Auditor-General's Office, July.; Coghill, K. (2004) 'Auditing the independence of the Auditor-General', paper presented as part of the Australian National University's Political Science Program, 11 February, pp. 1–19.

3.98 Where an Auditor-General has conditional or qualified independence, some in the literature are of the view that this can mean limited effectiveness and is likely to result in qualified accountability.[102] In terms of the Westminster accountability model, this would not be a desirable outcome for Parliaments and the respective communities they serve.

3.99 Others argue that, where conditional independence prevails, executive governments have captured the independence of their respective Auditor-General.[103]

3.100 Those with this view suggest that the Executive has much to gain by the existence of a public sector auditor who is perceived to be independent, as conditional independence provides an executive government with:

> …the means with which it can signal to the electorate its competent management and its respect for the conventions of Westminster financial accountability *[yet still provide it with indirect controls]*.[104]

3.101 In responding to whether the annual budget for the Auditor-General should be set by the Legislative Assembly, and not by the Executive Government, the Government submitted that this was not necessary as:

> There were already provisions in the current Act to ensure the independence of the Auditor-General and her office from the Executive.[105]

3.102 However, on the basis that as the literature suggests, notwithstanding a declaration in the statute that, for example, the Auditor-General is not subject to direction, where the Executive has influence over the budget of an Auditor-General, a form of conditional independence must exist.

3.103 Professor Wettenhall highlighted this issue:

> So you get that kind of dilemma here: governments like to show they have got them, to show that they are nicely accountable, transparent and so on, but they do not want to help them to do their jobs very effectively. There is really quite a clash there.[106]

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[102] Barrett, P. (1996) 'Some Thoughts about the Roles, Responsibilities and Future Scope of Auditors-General', *Australian Journal of Public Administration*, **55**, 4, pp. 137–146.

[103] Funnell, W. (1996) 'Executive Encroachments on the Independence of the Commonwealth Auditor-General', *Australian Journal of Public Administration*, **55**, 4, pp. 109–123.

[104] *Ibid.*

[105] Submission No. 4, ACT Government, February 2010, p. 4.

[106] Emeritus Professor Roger Wettenhall, *Transcript of evidence*, 12 March 2010, pp. 41–42.

3.104 Further discussion on the influence executive involvement in the budget appropriation of the Auditor-General can have on the Auditor-General's independence is discussed at chapter five—*Budget appropriation*.

4 STRENGTHENING AND SAFEGUARDING INDEPENDENCE

4.1 This chapter is concerned with examining amendments to the Act that will strengthen and safeguard the Auditor-General's independence.

4.2 By strengthening and safeguarding the role and powers of Officers of Parliament, such as the Auditor-General, the Parliament is able to more effectively hold the Executive government to account. An Auditor-General who is independent, but accountable, to the Parliament effectively makes the Executive Government more accountable.[107]

Assessing independence

4.3 A number of frameworks are available for assessing or measuring the independence of an Auditor-General. These include: (i) the INTOSAI's Mexico Declaration of Independence of Supreme Audit Institutions 2004 (refer **Appendix D**); (ii) the United Kingdom's (UK) National Audit Office independence criteria for Commonwealth Auditors-General (refer **Appendix E**); and (iii) the United States based organisation Global Integrity's criteria for independent oversight officers (refer **Appendix F**).

4.4 For the purpose of this report, the Committee has used the aforementioned frameworks as a guide to assist it to review and assess the independence of the Auditor-General and to consider the grounds on which various proposals were submitted to strengthen the independence of the Auditor-General.

4.5 Given the significance of the INTOSAI principles of public audit independence to the auditing profession, the background to these principles is discussed below.

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[107] Grove, R. (2002)'Officers of Parliament and how their work impacts on the House', Paper presented by Clerk of the Legislative Assembly of NSW, 33rd Conference of Presiding Officers and Clerks, Brisbane, Queensland.

INTOSAI principles of public audit independence

4.6 At its XIX Congress Meeting in Mexico, the INTOSAI established eight core principles of independence considered essential for 'proper public sector auditing'. These principles were set out in the INTOSAI's Mexico Declaration of Independence 2004. The principles were also informed by INTOSAI's Lima Declaration and decisions made at the XVIIth Congress of INTOSAI (in Seoul, Korea).[108]

4.7 Through the application of the principles, SAIs can work towards the achievement of independence using different means and safeguards that can be tailored to the unique circumstances of their jurisdiction. The principles are considered to be best practice for establishing an independent SAI.[109]

Why Parliaments should consider public audit independence?

4.8 It is always useful for Parliaments, and their PACs, to periodically review and assess the independence of their Auditor-General with a view to:

- Determining the extent to which the Auditor-General is vulnerable to executive influence. A critical aspect of the Auditor-General's independence is the freedom from direction or influence by the Executive or specific agencies.

  Independence from the Executive branch, and at length from audited entities, and other outside interested groups, is essential for the Auditor-General as well as clarity about the relationship of the Auditor-General to Parliament.[110]

- Clarifying the powers and ambit of the legislation of the Auditor-General and in so doing strengthening the role of the Auditor-General.[111]

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108 INTOSAI. (2004) *INTOSAI principles of public audit independence*, <http://www.intosai.org/>
109 *Ibid.*
110 Borge, M. (1999) *Supreme Audit Institutions—Roles in combating corruption and providing auditing and accounting standards and guidelines*, INTOSAI Development Initiative.
111 Grove, R. (2002) 'Officers of Parliament and how their work impacts on the House', Paper presented by Clerk of the Legislative Assembly of NSW, 33rd Conference of Presiding Officers and Clerks, Brisbane, Queensland.

- Establishing accountability mechanisms that secure the independence of the Auditor-General as well as reinforcing the links between the Auditor-General's Office and the Parliament.[112]

4.9 The Committee notes that across Westminster style Parliaments there has been growing support to legislate for greater involvement by the Parliament in various aspects of the management of the Auditor-General.[113] This wave of reform has been driven by Parliaments acknowledging the role they play in safeguarding the independence of Auditors-General, and the implication this has in terms of assisting Parliaments to hold executive governments to account.

4.10 Some in the literature have advanced that by strengthening the independence of Auditors-General and their offices from the Executive Government, and enhancing the role of Parliaments as both client and guardian of Auditors-General, Parliaments can gain some traction in the 'changing dynamics of checks and balances that pervade Australian democracy'.[114]

Amendments to strengthen and safeguard independence

4.11 This section sets out a number of proposed legislative amendments to the Act, as informed by the evidence received, which are aimed at strengthening and safeguarding the independence of the Auditor-General.

4.12 Because of the significance of the extent to which a Parliament is involved in determining the budget appropriation of its Auditor-General, and its subsequent influence on the independence of the Auditor-General, consideration of the Legislative Assembly's role in the budget appropriation for the Auditor-General and related discussion is detailed at Chapter 5—*Budget appropriation*.

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[112] Robertson, G. (2009) *Independence of Auditors-General—A survey of Australian and New Zealand Legislation*, Commissioned by the Victorian Auditor-General's Office, July.

[113] Barrett, P. (1996) 'Some Thoughts about the Roles, Responsibilities and Future Scope of Auditors-General', *Australian Journal of Public Administration*, **55**, 4, pp. 137–146.

[114] Halligan, J., Miller, R. & Power, J. (2007) *Parliament in the Twenty-first Century—Institutional Reform and Emerging Roles*, Melbourne University Press, Carlton, p. 97.

Appointment

4.13 A number of matters were raised with regard to the appointment of the Auditor-General and the Acting Auditor-General. These include: method of appointment; appointment of a person to act as Auditor-General; and power to suspend the Auditor-General.

Method of appointment

4.14 The literature suggests that the Auditor-General's independence is compromised from the beginning if selection is by the Executive alone. More recently there has been a 'trend to introduce stronger, statutory mechanisms to ensure some form of Parliamentary involvement in the appointment process' of Auditors-General.[115] A range of legislative alternatives are available and include:

- a requirement for the Executive to consult with leaders of political parties and/or a Committee of Parliament as well as the Speaker and President
- capacity for Parliament or a Committee of Parliament to veto an appointment proposed by the Executive
- capacity for Parliament or a Committee of Parliament to recommend an appointment to the Executive
- appointment directly by the Parliament or a Committee of Parliament, and
- the appointment is made from candidates recommended by an independent external body (not used in Australian or New Zealand jurisdictions).[116]

4.15 A 2009 survey of Australian and New Zealand audit legislation examining the independence of Auditors-General commented:

> If an appointment is made on the recommendation by the Parliament or a Committee of Parliament, it ensures that the appointee has the confidence of the Parliament, and also enhances the transparency of the appointment process.[117]

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[115] Robertson, G. (2009) *Independence of Auditors-General—A survey of Australian and New Zealand Legislation*, Commissioned by the Victorian Auditor-General's Office, July, p. 10.
[116] *Ibid.*
[117] *Ibid.*

Examples of Parliamentary involvement in the appointment process

4.16 This section sets out the appointment process for the NZ Controller and Auditor-General, UK's Comptroller and Auditor-General, and concludes with the current process for the appointment of the Auditor-General in the ACT.

New Zealand[118]

4.17 In NZ, six months prior to the expiry of the term of an existing Officer of Parliament, the Speaker, as Chair of the Officers of Parliament Committee will commence consultation with parties represented in the House through the Officers of Parliament Committee about a new appointment.

4.18 In the case of the Controller and Auditor-General, the Treasurer is advised of the commencement of the consultation process and is invited to participate in the process.

4.19 Whilst any Member of Parliament can propose nominees for an appointment, the procedures recognise that the responsible Government Minister will have a lead role in suggesting suitable nominees for consideration. The responsible Government Minister also participates in the deliberations of the Officers of Parliament Committee with regard to the appointment.

4.20 A proposal for the appointment of the Controller and Auditor-General must be unanimously agreed to by the Officers of Parliament Committee. Once this takes place:

> A recommendation for an appointment that is concurred in pursuant to these procedures *[for the Appointment of an Officer of Parliament*] will be put forward to the House by way of a Government notice of motion in the name of the Leader of the House.[119]

4.21 The NZ Parliament's Procedures for the Appointment of an Officer of Parliament are available at **Appendix G**.

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[118] NZ Parliament. (2002) 'Procedures for the Appointment of an Officer of Parliament', November.
[119] *Ibid*., p. 4.

United Kingdom

4.22 In the UK, the Comptroller and Auditor-General is an Officer of the House of Commons and is appointed:

> ... by a process which involves agreement between the Prime Minister and the Chairman of the Committee of Public Accounts, and also the principles of the Commissioner for Public Appointments' Code of Practice.[120]

4.23 A pre-appointment hearing is required for the post of the Comptroller and Auditor-General. The Comptroller and Auditor-General designate appears before the Select Committee on Public Accounts 'after the Government and the Chair of the PAC have agreed his/her name but before the debate on the motion for his/her appointment'.[121]

4.24 A pre-appointment hearing enables:

> …select committees to take evidence from candidates for certain, key public appointments before they are appointed. Hearings are in public and involve the select committee taking evidence from the candidate and publishing a report setting out the committee's views on the candidate's suitability for the post. Hearings are non-binding – but Ministers will consider any relevant considerations made by the committee before deciding whether to proceed with the appointment.[122]

4.25 The process is finalised:

> …on a motion of the House of Commons moved following agreement between the Prime Minister and the Chairman of the Public Accounts Committee.[123]

4.26 The UK House of Commons procedures for the appointment of the UK Comptroller and Auditor-General are at **Appendix H**.

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[120] UK House of Commons Library (2008) Comptroller and Auditor General—SN/PC/4595, p. 13.
[121] UK Government—Cabinet Office (2009) Pre-appointment Hearings by Select Committees: Guidance for Departments, August, p. 11.
[122] *Ibid.*, p. 2.
[123] UK House of Commons Library (2010) Parliamentary involvement in public appointments—SN/PC/4387, p. 11.

Australian Capital Territory

4.27 In the ACT, the appointment of the Auditor-General is managed by the Chief Minister, who will, on behalf of the Executive, convene a process to identify and consider suitable candidates. Under section 8 of the Act, before appointing a person to be Auditor-General, the Minister must first invite the presiding member of the PAC to comment on the proposed appointment.[124]

4.28 In evidence, the ACAG submitted, that the Act appears to suggest that the Auditor-General is not an Officer of Parliament but rather an Officer of the Crown:

> In the ACT I find the legislation to be perhaps a little curious compared to some of the other jurisdictions. If you look across the country, there are some auditors-general who are deemed to be officers of the Crown because they are appointed by a governor or, in my case, an administrator. In other cases, legislation is quite explicit in making that person an officer of the parliament. That is particularly the case in some of the acts that have been enacted in recent years. Western Australia is one that comes to mind.
>
> The ACT is a little different in that the auditor is appointed by the executive, having consulted with the Legislative Assembly, if my memory serves me correctly. Upon reading the ACT act I was left wondering whether the auditor belongs to the Crown or the parliament.
>
> At the moment it seems to be neither fish nor fowl, when I read it. Probably on balance, as I think legal advice would suggest, the Auditor-General is an officer of the Crown in the ACT and not of the parliament.[125]

4.29 Whilst the Committee has the power to veto the proposed appointment, the Act is silent on what should happen if it vetoes the proposed appointment.[126] Professor Wettenhall submitted:

> The Act does not specify the action to be taken if the Public Accounts Committee continues to object to the Minister's proposed appointment of an Auditor-General, but I think it should do so.[127]

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[124] Part 2, *ACT Auditor-General Act 1996*.
[125] Mr Frank McGuiness, *Transcript of evidence*, 12 March 2010, pp. 33–34.
[126] This provision (section 8 of the ACT *Auditor-General Act 1996*) is yet to be tested in the ACT.
[127] Submission No. 1, Emeritus Professor Wettenhall, January 2010, p. 4.

Regard to New Zealand 'Officers of Parliament' system

4.30 Professor Wettenhall submitted that in any revision of the Act it would be desirable to:

> …have regard to the New Zealand "officers of parliament" system, and to embrace as much of that system as is possible within this small jurisdiction.[128]

4.31 The Committee invited key stakeholders to comment on the process for the appointment of the Auditor-General, and in particular, whether the process used in NZ for the appointment of an Officer of Parliament might be suitable for the ACT jurisdiction.

4.32 The Committee is aware that the process that applies in NZ provides the Parliament with a much greater role in the nomination, selection, and appointment of an Auditor-General. This extends beyond the veto of the proposed appointment and in effect appears to remove the involvement of the Executive in the appointment process. Further, the requirement in NZ to commence consultation a minimum of six months before the end of the term of an existing Officer of Parliament recognises the importance of ensuring continuity of the Office, and the sometimes protracted nature of senior appointments.[129]

4.33 The Auditor-General commented:

> …that the New Zealand process, suitably tailored to the smaller operating environment of the ACT Legislative Assembly, combined with public advertising for the position, would offer a more independent, transparent and effective means of appointing an Auditor-General.[130]

4.34 However, the Government considered that consultation and veto powers already provided to the Committee under section 8 of the Act were suitable for a small jurisdiction. The Government also considered that the NZ procedures for the appointment of an Officer of Parliament may present an unnecessary layer of complexity for the Territory. Further, it noted that as the NZ Governor General appoints the Auditor-General on a

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[128] Submission No. 1, Emeritus Professor Wettenhall, January 2010, *Ibid.*, p. 5.
[129] New Zealand Parliament. (2002) Procedures for the Appointment of an Officer of Parliament, November; Submission No. 2, ACT Auditor-General's Office, January 2010, p. 14.
[130] Submission No. 2, ACT Auditor-General's Office, January 2010, p. 14.

recommendation of Parliament, 'it may not be practicable to develop a similar approach in the very different constitutional context of the ACT'.[131]

Summary

4.35 The Auditor-General is effectively appointed by the Executive Government after consulting with the Legislative Assembly via the Committee.

4.36 In assessing the current level of involvement of the Assembly in the appointment of the Auditor-General, the Committee is of the view that the independence of the Auditor-General could be strengthened by making the Assembly (and/or the Committee) more involved in the appointment process. Further, extending the involvement of the Assembly also enhances the transparency of the appointment process.

RECOMMENDATION 7

4.37 **The Committee recommends that the *Auditor-General Act 1996* be amended to provide capacity for the Standing Committee on Public Accounts to recommend to the Executive an appointment to the Office of Auditor-General.**

4.38 One Member of the Committee could not support recommendation seven as he believed that it offends the doctrine of the separation of powers in that the legislature should not involve itself in the detail of governance. The current role of the Committee is to exercise the power of concurrence with or veto of the recommended applicant for the position. This respects the primacy of the Parliament.

4.39 Whilst the Committee currently has veto over a proposed appointment, as noted earlier, the Act is silent on what should happen if the Committee vetoes the appointment and thereafter continues to veto subsequent proposed appointments. Subject to recommendation number seven, as above, the Committee is firmly of the view that the Act should be amended to clarify what should happen where it either vetoes a proposed appointment, as a single occurrence, or where it repeatedly vetoes proposed appointments.

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[131] Submission No. 4, ACT Government, February 2010, p. 7.

4.40 Where the Committee vetoes a proposed appointment, the Act should be amended to provide that the Chief Minister must then propose an alternative appointment for consideration.[132] Where the Committee repeatedly vetoes proposed appointments, the Act should provide a default for the Assembly to be the final arbitrator. The Committee notes however, that this proposed amendment must be considered in the context of any subsequent amendments that take effect regarding the method for the appointment of the Auditor-General.

RECOMMENDATION 8

4.41 **If recommendation seven is not accepted, the Committee recommends that the *Auditor-General Act 1996* be amended to provide that where the Standing Committee on Public Accounts vetoes a proposed appointment to the Office of Auditor-General that the Chief Minister must then propose an alternative appointment for its consideration.**

RECOMMENDATION 9

4.42 **Where the Standing Committee on Public Accounts repeatedly vetoes proposed appointments to the Office of the Auditor-General, the Committee recommends that the *Auditor-General Act 1996* should be amended to provide a default for the Legislative Assembly to be the final arbitrator.**

4.43 One Member of the Committee does not support recommendation nine. This Member believes that Parliament should not be part of a process rather a decision making body.

Appointment of a person to act as Auditor-General

4.44 A similar process applies to the appointment of a person to act as Auditor-General (Schedule 1) in the Auditor-General's absence, as takes place in relation to the appointment of the Auditor-General. However, the power of veto by the Committee is not specifically mentioned in the Act.

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[132] ACT *Auditor-General Act 1996*; Submission No. 2, ACT Auditor-General's Office, January 2010, pp. 13–14.

4.45 A recent survey, assessing the extent to which Australian and NZ legislative provisions dealt with Auditor-General independence, found that opportunities existed for the Executive Government to influence the position of the Auditor-General where there is a need to appoint an individual to act as Auditor-General. This can arise either during a temporary absence of the Auditor-General or where a vacancy arises in the position.[133]

4.46 Whilst Schedule 1 of the Act permits the Executive Government to appoint an acting Auditor-General after consulting with the Committee, ACAG submitted that:

> Consideration could be given to strengthening this requirement by providing the Committee with a power of veto over acting appointments similar to that provided in relation to the appointment of the Auditor-General under section 8.[134]

4.47 The Committee is of the view that the process for appointing an acting Auditor-General could be strengthened by providing it with a power of veto over acting appointments. This would assist in minimising the opportunity for any undue executive influence in the process and would be congruent with the current level of involvement by the Committee in the appointment of an Auditor-General.

RECOMMENDATION 10

4.48 **The Committee recommends that the *Auditor-General Act 1996* be amended to provide the Standing Committee on Public Accounts with the power of veto over the appointment of an acting Auditor-General similar to that provided in relation to the appointment of the Auditor-General under section 8 of the Act.**

Power to suspend Auditor-General in addition to being removed

4.49 Another matter raised during the inquiry concerned a proposal to amend the Act to provide for power to suspend the Auditor-General. This power would be in addition to the power to remove an Auditor-General.

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[133] Robertson, G. (2009) *Independence of Auditors-General—A survey of Australian and New Zealand Legislation*, Commissioned by the Victorian Auditor-General's Office, July; Submission No. 3, ACAG, February 2010, p. 5.

[134] Submission No. 3, ACAG, February 2010, p. 5.

4.50 The Committee is aware that the Act as it stands only provides for the resignation, retirement or removal of the Auditor-General. In effect, the Act provides a process to remove the Auditor-General but does not provide for a temporary suspension in certain circumstances, such as to conduct an investigation.[135]

4.51 In commenting on the Act not providing for the temporary suspension of the Auditor-General, the ACAG submitted that:

> Most Australian jurisdictions also include provisions allowing for the temporary suspension of the Auditor-General in certain circumstances. This allows for further consideration of whether, in the circumstances, the Auditor-General should be restored to or removed from office. To maintain the independence of the office of the Auditor-General, it is suggested that the process for suspending the Auditor-General be the same as for removal of the Auditor-General under Schedule 1 of the Act which requires a resolution to be passed by the Legislative Assembly.[136]

4.52 Evidence to the Committee suggested that the inclusion of such a provision would safeguard the holder of the Office, for example, from a poorly based decision by government to remove them. The ACAG elaborated further on the grounds for its proposal that such a provision be included:

> …if we talk about the independence of the Auditor-General, you need to then protect that person from, say, a capricious decision by government to remove the person from office. In a case like that, I would argue that the Legislative Assembly itself must have that final decision, or the Assembly itself needs to be convinced that the grounds for dismissal are valid. In some jurisdictions, there are provisions whereby an auditor-general can be suspended for a period while the grounds for dismissal are considered by the parliament or the Assembly. If they are upheld, the process continues and the auditor-general is removed from office. If they are not upheld, the auditor-general is restored. So the comments really were very much along the lines of trying to make sure that the holder of the office cannot be removed capriciously.[137]

4.53 To safeguard the independence of the Auditor-General, the Committee believes that there is merit in providing for a temporary suspension of the Auditor-General to allow the Legislative Assembly to consider further any grounds on which an Auditor-General should be restored or removed from

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[135] Submission No. 3, ACAG, February 2010, p. 5.
[136] *Ibid*., p. 7.
[137] Mr Frank McGuiness, *Transcript of evidence*, 12 March 2010, p. 36.

Office. Ideally, the process should be the same as for removal of the Auditor-General as specified under Schedule 1 of the Act which requires a resolution to be passed by the Legislative Assembly.

RECOMMENDATION 11

4.54 **The Committee recommends that the *Auditor-General Act 1996* be amended to provide for power to suspend the Auditor-General in certain circumstances. The process for suspending the Auditor-General should mirror the process for removal of the Auditor-General under Schedule 1 of the Act which requires a resolution to be passed by the Legislative Assembly.**

An oath or affirmation

4.55 Evidence to the Committee proposed that consideration be given to a requirement for the Auditor-General, upon appointment to the Office, to make an oath or affirmation.

4.56 The survey of Australian and NZ audit legislation identified that:

> An oath or affirmation of office is used in some jurisdictions to reinforce the Auditor General's independence and impartiality and in some cases to symbolically mark the special relationship with an allegiance to the Parliament. In a number of jurisdictions the oath is sworn before the Speaker or the Clerk of the Parliament, symbolically strengthening the relationship between the Auditor General and the Parliament. In other jurisdictions it is sworn before the Governor. In several jurisdictions the legislation is silent regarding an oath.[138]

4.57 Both the ACAG and the Government supported consideration of an oath or affirmation of office.[139]

4.58 The Committee believes that a requirement for each newly appointed Auditor-General to make an oath or affirmation of Office before the Speaker of the Legislative Assembly would symbolically strengthen the relationship between the Auditor-General and the Assembly.

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[138] Robertson, G. (2009) *Independence of Auditors-General—A survey of Australian and New Zealand Legislation*, Commissioned by the Victorian Auditor-General's Office, July.

[139] Submission No. 4, ACT Government, February 2010, p. 6.

RECOMMENDATION 12

4.59 **The Committee recommends that the admission of an oath or affirmation of Office be referred to the Legislative Assembly's Standing Committee on Administration and Procedure.**

4.60 One Member of the Committee does not support recommendation twelve. The Auditor-General, whilst a statutory officer, is still a public servant. Affirmation by officers should be limited to elected representatives, police and the judiciary.

Holding other forms of employment

4.61 In some jurisdictions, the audit legislation prescribes that the Auditor-General is not permitted to hold other forms of remunerative employment whilst holding office.

4.62 The ACAG submitted that the status of the Auditor-General:

> …as an independent officer of the Parliament could also be seen as being enhanced by including a provision in the *Auditor-General Act* which prevents the Auditor-General from holding other forms of remunerative employment while in the position.[140]

4.63 The Committee believes that a requirement in the Act specifying that the Auditor-General cannot hold other forms of remunerative employment whilst holding office would not only enhance the independence of the Auditor-General but also the status of the Office as an independent Officer of Parliament.

RECOMMENDATION 13

4.64 **The Committee recommends that the *Auditor-General Act 1996* be amended to include a provision which prevents the Auditor-General from holding other forms of remunerative employment while in the position.**

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[140] Submission No. 3, ACAG, February 2010, p. 5.

Formal declaration

4.65 The Committee understands that the audit legislation in a number of jurisdictions also requires the Auditor-General to complete a formal declaration before undertaking the role of Auditor-General. Such a declaration is designed to recognise that the Auditor-General will act impartially and independently in carrying out the relevant functions.[141] The ACAG submitted, for example, that:

> In Queensland the Auditor-General is required to provide the Speaker with a declaration of interests within one month of commencing employment which is to be prepared on the same basis as if the Auditor-General were a member of the Legislative Assembly.[142]

4.66 The Committee believes that a provision requiring the Auditor-General to complete a formal declaration before undertaking the role of Auditor-General would be appropriate. This would enhance the independence of the Auditor-General, in terms of signalling that the Auditor-General will act impartially and independently in carrying out their role and audit functions but also enhance the status of the Office as an independent Officer of Parliament.

RECOMMENDATION 14

4.67 **The Committee recommends that the *Auditor-General Act 1996* be amended to require the Auditor-General to provide the Speaker of the ACT Legislative Assembly with a declaration of interests within one month of appointment to the Office.**

Not subject to direction by any person

4.68 Submissions to the inquiry suggested that section 9 of the Act could be further expanded to recognise that the Auditor-General is not subject to direction by 'any person'. The ACAG proposed that this amendment could take the form of, for example, that the:

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141 Submission No. 3, ACAG, February 2010, p. 5.
142 *Ibid.*

Auditor-General is not subject to direction by 'any person' in relation to:

- the way in which the Auditor-General's powers in relation to audits are to be exercised; and
- the priority to be given to meeting his or her responsibilities.[143]

4.69 Section 9 of the Act currently provides that:

> The Auditor-General is not subject to direction by the Executive or any Minister in the exercise of the functions of the auditor-general.[144]

4.70 In evidence at a public hearing, the ACAG explained why consideration should be given to expand section 9 along the lines it had suggested in its submission:

> I think it is probably an attempt to strengthen that independence by saying, "While a minister may not attempt to influence the Auditor-General, under what circumstances might senior bureaucrats or others attempt to exert influence?"[145]

4.71 The Committee acknowledges that augmenting section 9 of the Act to recognise that the Auditor-General is not subject to direction by 'any person' would assist with strengthening the independence of the Auditor-General.

RECOMMENDATION 15

4.72 **The Committee recommends that section 9 of the *Auditor-General Act 1996* be expanded to recognise that the Auditor-General is not subject to direction by 'any person'.**

Independent audit/review

4.73 A number of matters were raised in evidence regarding the provisions for an independent review of the Auditor-General and the Audit Office. This section sets out: (i) background on external reviews of Audit Offices; (ii) the current external review process as prescribed in the Act; and (iii) the proposals submitted to improve the legislative provisions under Part 5 of the Act.

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143 Submission No. 3, ACAG, February 2010, p. 5.
144 Section 9, ACT *Auditor-General Act 1996*.
145 Mr Frank McGuiness, *Transcript of evidence*, 12 March 2010, p. 33.

Background on external reviews of audit offices

4.74 All Australian jurisdictions have provisions for the conduct of a strategic review or a performance audit of their respective audit offices.

4.75 A performance audit (as is the case in the ACT, the Commonwealth and Victoria) primarily assesses whether the Audit Office conducts its functions effectively and efficiently and in compliance with the relevant legislation. A review or a strategic review (as in NSW and Queensland) may also review the Auditor-General's legislative functions and other aspects as directed by the relevant PAC.

4.76 Legislation in some jurisdictions also mandates a performance audit or review at fixed periods, typically every three years (NSW, Victoria and Northern Territory) or every five years (Queensland, Western Australia and Tasmania). For other audit offices (the Commonwealth and South Australia) there are no legislative requirements for independent reviews or performance audits of their operations at fixed periods.

4.77 As noted earlier in this report, independence is required for an Auditor-General to effectively assist the Parliament in its scrutiny of the Executive Government. However, accountability for that independence is equally important, in that the Auditor-General and their office must be accountable to Parliament for their performance. Legislative arrangements that provide for the conduct of a strategic review or a performance audit of the operations of an audit office play an important part in holding Auditors-General to account for their performance and that of their offices.

4.78 In the ACT, the Act provides for an independent performance audit of the operations of the Auditor-General and the Audit Office. The Committee notes that a well-performed independent performance audit of the Audit Office can tell the Assembly and through it, the community, whether the Office has operated efficiently and effectively and in compliance with relevant legislation. Further, any recommendations from such an audit can contribute to the continuous improvement of the Audit Office's operations.

4.79 The Auditor-General submitted that the Committee may wish to consider:

> …extending the terms of 'performance audit' to include strategic reviews or other reviews of the Office to provide more flexibility for the Assembly in deciding which form of review would be most appropriate at the time requested by the Assembly.[146]

The current external review process

4.80 Part 5 of the Act provides for audits of the Auditor-General's Office operations. This includes the audit of annual financial statements as well as performance audits.

4.81 In the case of the independent review of the Audit Office, section 29 of the Act provides for a performance audit of the Office's operations by an independent auditor, following a written request by the presiding member of the Committee. There is no legislative timeframe or frequency specified in the Act for an independent review.

4.82 Section 27 of the Act provides that the Minister may, on behalf of the Territory, engage a person as an independent auditor under a contract to conduct such an audit.

4.83 Section 31 of the Act provides that the independent auditor shall give a report about the performance audit to the Speaker as soon as practicable after completing the audit.

4.84 By way of background, pursuant to the Act, two performance audits of the operations of the Auditor-General and the Audit Office have been conducted.[147]

4.85 The first performance audit was undertaken after an Assembly resolution (May 1998) requested the Committee to engage an independent auditor to conduct the performance audit. The second performance audit was the first time the Committee, on its own motion, had requested an independent auditor to conduct the performance audit.

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[146] Submission No. 2, ACT Auditor-General's Office, January 2010, p. 14.

[147] (i) Commenced in 1998 and reported in August 1999—conducted by the Victorian Auditor-General's Office; and (ii) commenced in September 2009 and reported in May 2010—conducted by Bob Sendt and Associates.

4.86 Notwithstanding that the Auditor-General and the Audit Office have not been subject to a regular independent audit under section 29 of the Act, the Committee notes that other forums and mechanisms have been effective in ensuring accountability for performance, and also improving the audit practices and the operations of the Office. These have included:

- regular feedback from key stakeholders, including Assembly Members, internal audit committees of ACT Government agencies and Chief Executives of audited agencies
- scrutiny of the operations of the Office by Assembly Committees through the budget and annual reporting processes
- scrutiny by PAC of audit reports issued by the Office, including public inquiries into these reports
- sharing and learning better practices from other audit offices
- internal audits performed on important aspects of the Audit Office's operations. For example, audits have been conducted on the Office's records management, contract management, account payments (including financial management) and corporate governance functions. The Office's internal audit function is also chaired by an independent person, and
- participation in reciprocal review arrangements with the Tasmanian Audit Office in relation to financial audits. The purpose of these reviews is to improve the quality of the Office's financial audit work by addressing the findings and associated recommendations arising from these reviews.

4.87 In relation to the effectiveness of other forums and mechanisms, aside from an external review, in ensuring accountability for performance, Professor Wettenhall, commented:

> …I think the audit office itself makes some arrangements for this sort of check. I am told that in 2008 there was an exchange of officers between the ACT audit office and the Tasmanian audit office so that the audit staff could really benchmark each other's performance. That is excellent; there ought to be more of it, and I would have thought there should be provision in the act to allow for that.[148]

[148] Emeritus Professor Roger Wettenhall, *Transcript of evidence*, 12 March 2010, pp. 44–45.

4.88 The Audit Office is also subject to the reporting requirements of the *Annual Report (Government Agencies) Act 2004* and the Act. Under this legislation, the Office's performance, as reported in its annual report, is examined annually by the Legislative Assembly and the Committee.

Commissioning the review

4.89 Evidence received proposed that the Committee should be assigned full responsibility for setting the terms of reference for section 29 reviews and process for appointing and contracting with the reviewer.[149] This is consistent with the process that takes place in other jurisdictions—for example, in NSW the NSW PAC appoints the independent reviewer and gives directions on conducting the review, including setting the terms of reference and selecting the independent auditor.

4.90 In the Commonwealth, the Minister must consult with the Joint Committee on Public Accounts and Audit (JCPAA) on the appointment of the independent auditor and the JCPAA must approve the proposed appointment.

4.91 The current provisions provide that a review of the ACT Audit Office can only occur if both the Executive Government and the Committee take action under sections 27 and 29 of the Act respectively.

4.92 However, whilst the Committee may make a written request for the conduct of a performance audit under section 29 of the Act, the Act does not provide for the Committee to otherwise have a role in setting the terms of reference or in the selecting and appointing of the auditor.[150]

4.93 The *Report of the Independent Performance Audit of the Operations of the ACT Auditor-General and the ACT Audit Office* (the report of the independent auditor) reviewing the operations of the Auditor-General and the Audit Office noted:

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[149] Emeritus Professor Roger Wettenhall, *Transcript of evidence*, 12 March 2010, p. 44; Sendt, B. (2010) *Report of the Independent Performance Audit of the Operations of the ACT Auditor-General and the ACT Audit Office*, 3 May, p. 22.

[150] Submission No. 2, ACT Auditor-General's Office, January 2010, p. 14.

> While independent, the role of auditors-general is, to a great part, to support parliament in holding executive government accountable. In my view this makes it inappropriate for executive government to be involved in the decision-making process as to whether a review should occur.
>
> Section 27 not only gives the Minister the ability to influence the timing of any review. In allowing the Minister to engage a person under contract to conduct the review, it appears also to give the Minister a substantial role in setting its terms of reference, as they form part of the contract's terms.[151]

4.94 The Committee believes that Auditors-General (formally or otherwise) are independent Officers of Parliament and should not be subject to direction by the Executive Government. The Act recognises this independence under section 9. Notwithstanding this provision, at other parts of the Act, the Executive Government has significant influence, for example, in the timing of an independent performance audit (under section 27) or the appointment of the reviewer and in determining the terms of reference for such an audit.

4.95 The Assembly through the Committee should have a greater role in managing the arrangements for a periodic review of the operations of the Auditor-General and the Audit Office, including initiating the review, appointment of the reviewer and setting the terms of reference, with the tender process to be conducted through the Assembly's Corporate Services.

RECOMMENDATION 16

4.96 **The Committee recommends that the *Auditor-General Act 1996* be amended to prescribe a greater role for the Standing Committee on Public Accounts in managing the arrangements, on behalf of the Legislative Assembly, for a periodic independent performance audit of the operations of the Auditor-General and the Audit Office. This should include amendments that provide for the Committee to: (i) initiate the audit; (ii) determine the terms of reference; and (iii) appoint an appropriate independent auditor to undertake the audit.**

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[151] Sendt, B. (2010) *Report of the Independent Performance Audit of the Operations of the ACT Auditor-General and the ACT Audit Office*, 3 May, p. 23.

4.97 To support and strengthen the Legislative Assembly having a greater role in the arrangements for periodic audits, the Committee believes that it would also be highly appropriate for the costs involved in undertaking such audits, of the Auditor-General, be appropriated in the budget of the Assembly. This action would strengthen and heighten awareness of the important relationship between the Auditor-General and the Legislative Assembly.

RECOMMENDATION 17

4.98 **The Committee recommends that the costs involved in undertaking an independent performance audit of the operations of the Auditor-General be included in the Legislative Assembly's budget of that year.**

Frequency of the review

4.99 The report of the independent auditor noted that independent reviews of audit offices, either in the form of a performance audit or a strategic review, are provided for by legislation which generally prescribes that they be conducted at regular intervals.[152] Further, the independent auditor recommended that the Committee should consider the merits of moving to a fixed interval between section 29 reviews.[153]

4.100 The independent auditor commented:

> Given the importance of the role of an auditor-general in the public accountability framework of government, I do not believe that an interval of a decade or more between external reviews is appropriate. I also believe that having a set interval removes any influence that the timing of the review has been influenced by extraneous factors. It also allows the review to be more planned and avoids any undue compression of the time allowed for the reviewer.[154]

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152 Sendt, B. (2010) *Report of the Independent Performance Audit of the Operations of the ACT Auditor-General and the ACT Audit Office*, 3 May, p. 21.
153 *Ibid.*, pp. 21–22.
154 Sendt, B. (2010) *Report of the Independent Performance Audit of the Operations of the ACT Auditor-General and the ACT Audit Office*, 3 May, p. 22.

4.101 In terms of the interval frequency, the independent auditor also commented that:

> …any review is 'disruptive' to the ongoing operations of the audit office, notwithstanding its benefits. From my experience, triennial reviews are too frequent, given that no other area of government is reviewed with such intensity or frequency.[155]

4.102 In evidence, the Auditor-General proposed that an independent audit of the operations of the Auditor-General should occur 'at least once in the term of each Auditor-General's seven year appointment'.[156]

4.103 The ACAG submitted that:

> The provisions relating to independent performance audits of the Auditor-General would be enhanced by providing a timeframe for the regular conduct of such audits. A requirement to have such reviews conducted within a period of up to 5 years is common across a number of other jurisdictions within Australia. Having the reviews undertaken on a regular basis would provide valuable feedback to both Parliament and the Auditor-General.[157]

4.104 The Committee believes that section 29 audits should be conducted at regular intervals. The Committee also supports the independent auditor's position that conducting an independent performance audit once in the term of each Auditor-General would be a minimum requirement and that a more regular review period would be preferable.[158]

4.105 On the basis that the Legislative Assembly is subject to fixed four-year terms, there may be merit in prescribing the frequency of a review to coincide with each Assembly. The independent auditor commented that the timing of the review could take place at the mid point of each Assembly term, and if adopted, the next review would be scheduled to take place in 2014, approximately four years from the audit conducted in 2010.[159]

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[155] Sendt, B. (2010) *Report of the Independent Performance Audit of the Operations of the ACT Auditor-General and the ACT Audit Office*, 3 May, p. 22.
[156] Submission No. 2, ACT Auditor-General's Office, January 2010, p. 15.
[157] Submission No. 3, ACAG, February 2010, p. 6.
[158] Sendt, B. (2010) *Report of the Independent Performance Audit of the Operations of the ACT Auditor-General and the ACT Audit Office*, 3 May, p. 22.
[159] *Ibid.*

4.106 The Committee is of the view that a section 29 audit should take place once in each Assembly term. However, the timing of the audit should be subject to a number of considerations, such that, for example, there would not be an audit in the first two years of an Auditor-General's term. Therefore, the exact timing of an audit during an Assembly term should be at the discretion of the Committee.

RECOMMENDATION 18

4.107 **The Committee recommends that the *Auditor-General Act 1996* be amended to provide a fixed timeframe between section 29 audits of the Audit Office. Specifically, a section 29 audit should take place once in each Legislative Assembly term with the timing of the review to be at the discretion of the Standing Committee on Public Accounts.**

4.108 Further, the Committee believes that extending the terms of a section 29 review from 'performance audit' to include a strategic review option would be worthwhile in terms of providing flexibility with regard to which form of review would be most appropriate at the time a review is requested. As noted earlier, a strategic review provides scope to review legislative functions and other aspects as directed by the relevant PAC.

RECOMMENDATION 19

4.109 **The Committee recommends that section 29 of the *Auditor-General Act 1996* be amended to extend the terms of 'performance audit' to include strategic reviews, or other reviews, of the Office to provide more flexibility for the Standing Committee on Public Accounts in deciding which form of external review would be most appropriate at the time a review is requested.**

Provisions governing financial and performance audits of the Auditor-General's operations

4.110 In considering the clarity of the legislative provisions governing financial and performance audits of the operations of the Auditor-General and the Audit Office, as set out under Part 5 of the Act, Professor Roger Wettenhall commented:

> If it comes to this matter of external assessment, looking over the audit office, I found great trouble with that in your act. I really think this part of the act needs redesigning. There is a section 27, which provides for the appointment of an independent audit of annual financial statements. I think that is done by a Canberra commercial auditing firm. It is a ministerial appointment. But there is nothing in the act that lays down any qualifications for that appointment. The commonwealth act has provision for an independent auditor but there are some provisions laying down the qualifications and also providing for clearance with your equivalent, the Joint Committee of Public Accounts and Audit. So it is a much more rigorous provision relating to the independent audit in the commonwealth act than in the ACT act. I would suggest that needs attending to.[160]
>
> In section 29 there is a provision that extends the independent auditor's role to performance audits as required, I think by this committee—not regular, not every year, but as required by this committee. I gather it is not frequently done.[161]

4.111 The Committee agrees that the provisions governing financial and performance audits could be improved to provide clarity with regard to the processes prescribed in the Act for each type of audit.

4.112 Evidence submitted to the Committee was that due to the poor clarity of these provisions, parts of the Act governing performance and financial audits were open to interpretation, and where this occurs it would not be desirable for an effective and independent audit.

4.113 Section 27 of the Act suggests that an independent auditor would be engaged to undertake both financial and performance audits, however, in practice it can, and has been, a different auditor. Professor Wettenhall commented:

> But the act does not make it clear that that will be a different auditor. It reads to me as though it is the same one running through.[162]

4.114 Further, in support of an amendment to the Act to clarify that the same independent auditor does not have to be engaged to undertake both financial and performance audits, the Auditor-General noted that:

> The independent auditor engaged for the Office's financial statement audits may not have the skills and capacity to undertake a performance audit of the Office.[163]

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160 Emeritus Professor Roger Wettenhall, *Transcript of evidence*, 12 March 2010, p. 44.
161 *Ibid.*
162 *Ibid.*
163 Submission No. 2, ACT Auditor-General's Office, January 2010, p. 14.

RECOMMENDATION 20

4.115 **The Committee recommends that the *Auditor-General Act 1996* be amended to clearly state that the independent auditor engaged to undertake financial and performance audits of the operations of the Auditor-General and Audit Office does not have to be the same auditor.**

4.116 There is also scope in the Act, attributable to lack of clarity, for the responsible Minister to be able to require a performance audit of the operations of the Auditor-General regardless of whether an audit is requested by the Committee.[164]

4.117 This is on the basis that the mechanics of the review process as set out in the Act could be open to interpretation, in that, in accordance with section 29 of the Act, it would appear that a written request by the presiding member of the Committee can only be made if the Chief Minister has first appointed an 'independent auditor' under section 27 of the Act.

4.118 The Act should be amended therefore to clearly specify that a performance audit of the operations of the Auditor-General under section 29 of the Act can only occur if the Committee has formally requested such a review. The Committee notes that this may not be necessary if it is provided with a more comprehensive role in the management of the independent performance audit process, including commissioning the audit, appointing the independent auditor and determining the terms of reference for the audit (refer recommendation 16).

RECOMMENDATION 21

4.119 **The Committee recommends that the *Auditor-General Act 1996* be amended to prescribe that a performance audit of the operations of the Auditor-General and Audit Office, under section 29 of the Act, can only occur if the Standing Committee on Public Accounts has formally initiated such a review.**

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[164] Submission No. 2, ACT Auditor-General's Office, January 2010, p. 14.

4.120 Further, the Act does not set down any qualifications for the appointment of either the financial or performance auditor.[165] The Committee is aware that the Commonwealth's audit legislation details some requirements regarding qualifications. Professor Wettenhall emphasised that:

> …the qualifications are not laid down anywhere…[166]

RECOMMENDATION 22

4.121 **The Committee recommends that Part 5 of the *Auditor-General Act 1996* be amended to prescribe minimum qualifications for the appointment of the independent auditors to conduct the financial and performance audits.**

Summary

4.122 In summary, the Committee received a range of evidence suggesting that the appointment process of the independent auditor should be amended: (i) to provide a greater role for the Assembly through the Committee in that process; and (ii) to consider the merits of moving to a fixed interval between section 29 performance audits.

4.123 Further, the Committee also received evidence suggesting amendments to the Act which would assist with improving the clarity of the provisions governing financial and performance audits of the Auditor-General's operations and to minimise opportunity for these provisions to be open to interpretation.

Parliamentary committee independence from the Executive

4.124 To date, the Committee has been chaired by a non-government Member of the Legislative Assembly. Prior to the mid-point of the sixth Assembly, the Committee was chaired by a Member of the Opposition. From the mid-point of the sixth Assembly onwards, the Committee has been chaired by a Member of the Cross-benches.

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165 Submission No. 2, ACT Auditor-General's Office, January 2010, p. 14; Emeritus Professor Roger Wettenhall, *Transcript of evidence*, 12 March 2010, p. 44.

166 Emeritus Professor Roger Wettenhall, *Transcript of evidence*, 12 March 2010, p. 44.

4.125 Where a committee is comprised of a government majority, there may be potential for executive influence, for example, in decisions concerning appointment, budget and other matters.[167]

4.126 To emphasise the importance of the composition of a parliamentary oversight committee, the Committee notes that the NZ arrangements, whereby the Officers of Parliament Committee determines the budget for the Auditor-General, is chaired by the Speaker and there is no government majority on the Committee.[168]

4.127 Further, the Legislative Assembly has adopted the *Commonwealth's (Latimer House) Principles on the Accountability of and the Relationship between the Three Branches of Government*.[169] These principles state that 'parliamentary procedures should provide adequate mechanisms to enforce the accountability of the executive to parliament'.[170] These should include, amongst other things, that the:

> …
> (iv) the chair of the Public Accounts Committee should normally be an opposition member

RECOMMENDATION 23

4.128 **The Committee recommends that the Legislative Assembly's Administration and Procedure Committee should consider amending Standing Orders to formally specify that the Standing Committee on Public Accounts should: (i) be chaired by a non-Government Member; and (ii) have a membership that does not constitute a Government majority.**

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[167] Lawson, C. (2009) 'Can the Executive influence the 'independence' of the Auditor-General under the Auditor-General Act 1997 (Cth)?', *Australian Journal of Administrative Law*, **16**, pp. 90–140.

[168] Beattie, A. (2005) 'Officers of Parliament—the New Zealand Model', APSG Conference, Sydney, p. 4.

[169] ACT Legislative Assembly, Minutes of Proceedings No. 4, Thursday 11 December 2008, pp. 55–56.

[170] Commonwealth Heads of Government. (2004) *Commonwealth (Latimer House) Principles on the Accountability of and the Relationship between the Three Branches of Government*, published by the Commonwealth Secretariat, the Commonwealth Parliamentary Association, the Commonwealth Legal Education Association, the Commonwealth Magistrates' and Judges' Association and the Commonwealth Lawyers' Association, April, p. 21.

4.129 One Member of the Committee strongly disagreed with recommendation 23. The suggestion that Government members of committees cannot chair such committees without interference from the Executive is an insult to the institution of the Parliament. Any such behaviour would be a breach of the privilege of the Parliament and any suggestion that preventative measures should be enshrined in legislation suggests that Government members of committees lack integrity.

4.130 Government members have chaired standing committees when their party was in majority government and there was no suggestion that their behaviour was inappropriate. Indeed, the only case where a chair was required to relinquish the position for inappropriate behaviour and exploitation as chair of a committee was from a member of the Opposition.

Other matters

4.131 Evidence received drew the Committee's attention to an issue regarding the spread of powers in the Act. The Committee believes that addressing this issue, whilst largely symbolic, will assist in reinforcing the status of the Auditor-General as an independent Officer of Parliament.

Consolidation of references to responsible Minister

4.132 Evidence to the Committee proposed that references to the responsible Minister should be consolidated so as to give clarity with regard to the Minister responsible for the administrative actions that have to be taken by Executive Government.

4.133 Professor Wettenhall noted that:

> The spread of "powers" between the Executive, the Chief Minister, and "the Minister" (the reference to the Treasurer is probably appropriate here, as it relates only to budgetary matters) is confusing, raising again the issue of clarity in machinery-of-government matters referred to earlier in this submission. It is usual for heads of government to hold administrative authority for these "supreme integrity institutions", and it is probably never likely that the ACT would depart from that tradition. So could not "the Minister" references be consolidated with "the Chief Minister" ones, so suggesting clearer lines of authority? -- but of course requiring reinforcement that, in this case, authority relates not to the operations of the Audit office but only to a few essential administrative actions that have to be taken by executive government within the context of applicable constitutional arrangements, such as setting up the office and putting its chief in place.[171]

4.134 The Committee believes that references in the Act relating to the Executive, the Chief Minister, and 'the Minister' are confusing and at times it is not clear as to who the responsible Minister is for the necessary administrative actions that have to be taken by the Executive Government. The Committee agrees that the reference to the Treasurer should remain on the basis that it relates only to budgetary matters.

[171] Submission No. 1, Emeritus Professor Wettenhall, January 2010, pp. 4-5.

5 BUDGET APPROPRIATION

5.1 This chapter sets out background on the relationship between involvement by the Executive Government in determining the budget appropriation for the Office of the Auditor-General and independence. This is followed by an outline of the process currently used in the ACT for determining the budget appropriation for the Auditor-General's Office. The chapter then considers and discusses evidence received in response to the following inquiry terms of reference:

- whether the annual budget for the Auditor-General should be set by the Legislative Assembly and not by the Executive Government[172], and
- what amendments, if any, are required to clarify the intention of sections 22—*Proposed appropriations* and 22A—*Additional amounts for certain audits*—of the Act.

Relationship between budget appropriation and independence

5.2 Reliance of the Auditor-General on appropriations determined by the Executive has its problems in practice, because of its potential for the Executive to limit the Auditor-General's resources and hence capacity to conduct performance audits (as financial audits are recovered through fees).[173]

5.3 Principally, if the budget for the Auditor-General's office is part of the Parliament's appropriation, or a separate appropriation, a much higher level of independence from the Executive is demonstrated than if it is part of the general appropriation, or forms part of the budget for a Minister's portfolio.[174]

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[172] For example, note the objective of the Auditor-General Amendment Bill 2009—presented 24 June 2009.

[173] Coghill, K. (2004) 'Auditing the independence of the Auditor-General', paper presented as part of the Australian National University's Political Science Program, 11 February, pp. 1–19.

[174] *Ibid.*

5.4 Some in the literature regard impediments to providing for the financial autonomy of Auditors-General, as the:

> ...greatest threat to the operation of an independent public sector audit office in Australia.[175]

5.5 During the course of its inquiry, the Committee heard some arguments that the Executive Government's involvement in setting the budget for the Auditor-General had potential to limit or threaten the independence of the Auditor-General.

5.6 The Auditor-General's Office stated:

> The Auditor-General cannot be absolutely independent if the government of the day has the ability to control the resources available to the Auditor-General. Although an Auditor-General may have a sufficiently broad mandate, and discretion regarding the manner in which she or he discharges the legislated functions, the Auditor-General's capacity to properly and fully discharge those functions is limited unless there is a degree of certainty that the resources needed to do so are available.[176]

5.7 The Auditor-General further commented:

> The question of independence of the office is well known in democratic systems. The minimum basic independent principles have been declared by the International Organisation for Supreme Audit Institutions—the INTOSAI. The Australasian Council of Public Accounts Committees, for example, says that these are very basic principles to protect the independence of the auditor-general. One of the principles is to ensure that the auditor-general has the proper resources to fulfil the auditor-general's mandate. Another one is to ensure that the legislature itself or one of the committees of the legislature is responsible for ensuring that the funding of the office is adequate. For that reason, it is important that the act provides the framework so that the government of the day cannot control the resources of the audit office in such a way that it could affect the way that we perform our functions. So it does not matter which government is in office; we are talking about legislation that will be in place for years to come. So, regardless of what party is in government, it is important that that protection is in the legislation.[177]

5.8 Some submissions were also of the view that the Legislative Assembly, or the Committee, should have a greater role in setting the budget of the Auditor-

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175 Funnell, W. (1996) 'Executive Encroachments on the Independence of the Commonwealth Auditor-General', *Australian Journal of Public Administration*, **55**, 4, p. 118.
176 Submission No. 2, ACT Auditor-General's Office, January 2010, p. 7.
177 Mrs Tu Pham, *Transcript of evidence*, 12 March 2010, pp. 23–24.

General's Office. The removal of responsibility for the allocation of budget funding determinations for the Auditor-General from the Executive Government to the Assembly:

> ...would certainly lessen the likelihood of the Auditor-General's Office being "punished" by a government embarrassed or upset by revelations of corruption or wrongdoing.[178]

5.9 As noted previously, where the Executive Government has some form of financial control over the Auditor-General's Office, this provides the Executive:

> …with the opportunity indirectly and thus, less obtrusively to influence the auditor-general's independence by hampering their work.[179]

5.10 In various jurisdictions, respective executive governments have considered financial independence of their Auditor-General as inconsistent with their constitutional right to determine spending levels for all agencies requiring appropriations from Parliament.[180]

5.11 The Chief Minister was reported as saying that 'to have the Assembly, and not the Government, set the Auditor-General's budget undermined the Westminster system, and was not done anywhere else in the country'.[181]

5.12 Further, the Chief Minister commented that:

> I would regard it as a very significant departure from the notions of cabinet responsibility and executive government for the legislature to take unto itself the distribution of public monies.[182]

5.13 In its inquiry, examining a legislative framework for Officers of Parliament, the VICPAEC received evidence arguing that the involvement of the Executive Government in setting the budgets for Officers of Parliament limited or threatened the independence of these Officers and that there was strong support for the Parliament to have the final say on these matters.[183]

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[178] Editorial. (2009) 'Territory needs a rigorous auditor', *Canberra Times*, 23 June, p. 10.

[179] Funnell, W. (1996) 'Executive Encroachments on the Independence of the Commonwealth Auditor-General', *Australian Journal of Public Administration*, **55**, 4, p. 110.

[180] Violante, V. (2010) 'Auditor in bid to bypass Stanhope', *Canberra Times*, 4 February, p. 1; Lawson, C. (2009) 'Can the Executive influence the 'independence' of the Auditor-General under the Auditor-General Act 1997 (Cth)?', *Australian Journal of Administrative Law*, **16**, pp. 90–140; Coghill, K. (2004) 'Auditing the independence of the Auditor-General', paper presented as part of the Australian National University's Political Science Program, 11 February, pp. 1–19.

[181] Violante, V. (2010) 'Auditor in bid to bypass Stanhope', *Canberra Times*, 4 February, p. 1.

[182] *Ibid.*

[183] Victorian Public Accounts and Estimates Committee (VICPAEC) (2006) *Report on a Legislative Framework for Independent Officers of Parliament*, February, Parliament of Victoria.

5.14 The VICPAEC stated:

> The Committee is aware that if *[O]*officers of Parliament are not adequately resourced, it will impact on the effectiveness of their offices. Safeguarding the budget of the Ombudsman and the Auditor-General is particularly important given the crucial and strategic role they both play in scrutinising and reviewing government activities.[184]

5.15 The literature indicates that there is always potential for these 'watchdogs' to be under-funded, particularly after an adverse report on the operations of the Government.[185] Funding oversight by Parliament would safeguard against this.

5.16 The control of the resources of integrity agencies or non-executive bodies, such as the Auditor-General, by the Executive has been referred to by Normanton (1966)[186] as a 'constitutional anomaly'. This impediment is often viewed as exposing integrity agencies 'to the vagaries of the executive's mercy'.[187]

5.17 Where the Executive Government has control or influence over an Auditor-General's budget this can indirectly affect the mandated roles and responsibilities of Auditors-General in terms of parliamentary accountability. This can take a number of forms.

5.18 First, the dependence of the Auditor-General on the appropriation of funds from the Executive Government to carry out its mandated functions undermines or indirectly influences independence.[188]

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184 Victorian Public Accounts and Estimates Committee (VICPAEC) (2006) *Report on a Legislative Framework for Independent Officers of Parliament*, February, Parliament of Victoria, pp. 80–81.

185 Editorial. (2010) 'Auditor-General deserves funding', *Canberra Times*, 6 February, p. 12; Victorian Public Accounts and Estimates Committee (VICPAEC) (2006) *Report on a Legislative Framework for Independent Officers of Parliament*, February, Parliament of Victoria; Temby, I. (1993) 'Safeguarding Integrity in Government', Papers on Parliament (Australian Senate), No. 7, pp. 7–8.

186 Normanton, E. (1966) *The Accountability and Audit of Governments*, Manchester University Press, Manchester.

187 Funnell, W. (1996) 'Executive Encroachments on the Independence of the Commonwealth Auditor-General', *Australian Journal of Public Administration*, **55**, 4, pp. 109–123.

188 Coghill, K. (2004) 'Auditing the independence of the Auditor-General', paper presented as part of the Australian National University's Political Science Program, 11 February, pp. 1–19.

5.19 For example, the Auditor-General over a number of years has had repeated requests for additional appropriations not approved by the Government. The Auditor-General's submission stated:

> The Auditor-General cannot be absolutely independent if the government of the day has the ability to control resources available to the Auditor-General.
>
> In effect, the Government decisions regarding appropriation funding has constrained the Auditor-General's capacity to provide the level of audit services sought by the Legislative Assembly.[189]

5.20 In evidence, the Auditor-General further commented that independence regarding her budget appropriation was paramount to ensure that:

> ...the government of the day cannot control the resources of the audit office in such a way that it could affect the way we perform our functions.[190]

5.21 Second, control over financing can indirectly interfere with the audit program and conduct of audits. It does this by limiting the Auditor-General's resources and hence capacity to carry out performance audits (noting that financial audit costs are recovered through fees and in most jurisdictions, as with the ACT, performance audits are largely funded through direct appropriation).

5.22 For example, in its inquiry into the Commonwealth Government's efficiency dividend and its impact on small agencies, the JCPAA reported that due to current funding arrangements, the Australian National Audit Office (ANAO) had been forced to reduce its audit coverage. The ANAO had informed the JCPAA that, for the first time, its budget situation would necessitate a reduction in its planned audit program. In evidence, the Commonwealth Auditor-General told the JCPAA:

> To quantify the impact on the Audit Office, this year the impact of the efficiency dividend is just over $2 million which, in our language and in a way the committee will understand, is about five performance audits a year. This is the direct impact of the efficiency dividend on an organisation like the Audit Office.[191]

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[189] Submission No. 2, ACT Auditor-General's Office, January 2010, pp. 7–8.

[190] Mrs Tu Pham, *Transcript of evidence*, 12 March 2010, p. 24.

[191] Commonwealth Joint Committee on Public Accounts and Audit (JCPAA) (2008) *The efficiency dividend and small agencies: Size does matter*, Report No. 413, December, Parliament of the Commonwealth of Australia, Canberra.

5.23 In its submission to the JCPAA inquiry, the ANAO commented that a reduced audit program 'is not in the long-term interests of the Parliament, the Government, or the community'.[192] In its report the JCPAA agreed with this statement noting that 'the ANAO is the frontline in ensuring government accountability and integrity. The Parliament is not served well by a reduction in the ANAO's audit work program'. A curtailed performance audit capacity, attributable to a reduction in funding, accordingly has the capacity to directly impact on governance and accountability.[193]

5.24 This is on the basis that whilst financial auditing provides some assurance at a point in time, it does not provide audited agencies, Parliaments or communities with any assurances about government performance.[194] Performance auditing provides such assurances but will always be at risk when funding is reduced.

Summary

5.25 The independence of an Auditor-General has the potential to be compromised by continued reductions to the funding of their Office.[195] This influence is permitted to occur when the Executive Government can 'control the purse strings'[196] and thus gives rise to conditional independence for the Auditor-General.

5.26 Effectively when executive governments can determine the funding to Auditors-General, they have the capacity, when it may be politically advantageous, to not adequately fund their respective Auditor-General. When this occurs it can directly impact on the mandated roles and

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192 Australian National Audit Office. (ANAO) (2008) Submission to JCPAA inquiry into the efficiency dividend, July, pp. 1–11, Submission No. 60.

193 Commonwealth Joint Committee on Public Accounts and Audit (JCPAA) (2008) *The efficiency dividend and small agencies: Size does matter*, Report No. 413, December, Parliament of the Commonwealth of Australia, Canberra, p. 15.

194 Clark, H. (2005) 'Address to the 19th Commonwealth Auditors-General Conference', 31 January, New Zealand Parliament, Wellington; Sendt, B. (2002) 'Audit independence: Views from the public sector', Paper presented at the Restoring Confidence in the Australian Auditing and Accounting Industry.

195 Editorial. (2009) Territory needs a rigorous auditor, *Canberra Times*, 23 June, p. 10.

196 Violante, V. (2010) 'Auditor in bid to bypass Stanhope', *Canberra Times*, 4 February, p. 1.

responsibilities of Auditors-General. The end result is a weakening of the whole system of accountability of government.[197]

5.27 This situation is in stark contrast to other Westminster governments or Commonwealth jurisdictions, in particular the UK, NZ and Canada, where their respective Auditors-General could be considered as having substantive independence.

Substantive independence in other Westminster governments

5.28 As a consequence of reforms over the last two decades or more, the UK, NZ and Canada have all transitioned from their Auditor-General being subject to executive financial controls to direct parliamentary financial controls. Each of these is discussed below.

5.29 Reforms introduced in 1983 to the UK's *National Audit Act* (the NA Act) and in 1977 to the Canadian Auditor-General Act created for the first time, a public audit function with a high degree of independence.[198]

5.30 In the UK, amongst other things, a key reform was concerned with removing direct financial controls by the Executive Government over the Auditor-General. As a result, funding for the work of the UK National Audit Office (NAO) is now provided separately by Parliament on the basis of budgeted estimates submitted by the NAO to the Public Accounts Commission.[199]

5.31 In Canada, as a consequence of reforms, the Auditor-General is now able to present separate budget estimates for their office to the Parliament each year and is also able to indicate if they are of the view that the amounts as specified in the estimates are insufficient to fulfil their responsibilities. Principally, the Canadian reforms removed any form of dependency by the

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[197] Funnell, W. (1996) 'Executive Encroachments on the Independence of the Commonwealth Auditor-General', *Australian Journal of Public Administration*, **55**, 4, pp. 109–123; Barrett, P. (1996) 'Some Thoughts about the Roles, Responsibilities and Future Scope of Auditors-General', *Australian Journal of Public Administration*, **55**, 4, pp. 137–146; Clark, H. (2005) 'Address to the 19th Commonwealth Auditors-General Conference', 31 January, New Zealand Parliament, Wellington.

[198] Funnell, W. (1996) 'Executive Encroachments on the Independence of the Commonwealth Auditor-General', *Australian Journal of Public Administration*, **55**, 4, pp. 109–123.

[199] Funnell, W. (1996) 'Executive Encroachments on the Independence of the Commonwealth Auditor-General', *Australian Journal of Public Administration*, **55**, 4, pp. 109–123; Barrett, P. (1996) 'Some Thoughts about the Roles, Responsibilities and Future Scope of Auditors-General', *Australian Journal of Public Administration*, **55**, 4, pp. 137–146.

Auditor-General on the Executive Government either in the form of financial approval or financial assistance.[200]

5.32 Reforms to the NZ *Public Audit Act* in 2001 reinforced the independence of the NZ Auditor-General. According to then Prime Minister, the Hon. Helen Clark MP, prior to these reforms, the statutory framework governing the Auditor-General's office 'was widely regarded as unclear, and out of step with modern public sector practices'.[201]

5.33 The reforms to the NZ Audit Act severed any constitutional connection between the Audit Office and the Executive Government. This provided the statutory independence necessary for the NZ Auditor-General to effectively carry out their mandated roles and responsibilities. For example, 'the responsibility for resourcing the office is now the responsibility of the Parliament, not the executive'.[202]

The current ACT appropriation process

5.34 Sections 22 and 22A of the Act provide the Committee with a role in determining the annual appropriation funding available to the Auditor-General. The Committee considers the draft budget estimates of the Auditor-General and makes a recommendation to the Treasurer regarding the proposed appropriation and provides the Treasurer with the Auditor-General's draft budget.

5.35 In accordance with section 22A of the Act, the Auditor-General can also advise the Committee if the appropriation for the year is insufficient to conduct special financial audits and performance audits.

5.36 These provisions create a process whereby the Legislative Assembly, through the Committee, advises the Treasurer regarding the resources that should be made for the operations of the Audit Office for the year.

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[200] Funnell, W. (1996) 'Executive Encroachments on the Independence of the Commonwealth Auditor-General', *Australian Journal of Public Administration*, **55**, 4, pp. 109–123; Barrett, P. (1996) 'Some Thoughts about the Roles, Responsibilities and Future Scope of Auditors-General', *Australian Journal of Public Administration*, **55**, 4, pp. 137–146.

[201] Clark, H. (2005) 'Address to the 19th Commonwealth Auditors-General Conference', 31 January, New Zealand Parliament, Wellington.

[202] *Ibid*.

5.37 Professor Wettenhall noted that the Act:

> …is silent on what would/should happen if the Treasure*[r]* and the Auditor-General, probably communicating formally through the Public Accounts Committee, had a significant disagreement on matters relating to appropriations.[203]

5.38 Hence, while the Committee has an important consultative role, it does not have the power to approve the budget or recommend its approval to the Parliament.

The role of the ACT Legislative Assembly

5.39 One of the Committee's terms of reference was to consider whether the annual budget for the Auditor-General should be set by the Legislative Assembly and not by the Executive Government. A range of views were put forward in evidence to the Committee.

5.40 Much of the evidence received by the Committee proposed a greater role for the Legislative Assembly in determining the budget appropriation for the Auditor-General.

5.41 The Committee is of the view that budget appropriation and independence are inextricably linked. As mentioned earlier in this report, the INTOSAI, as part of its Mexico Declaration on Independence adopted eight core principles it considered fundamental for an independent SAI. Resourcing is the subject of a specific core principle:

> Principle 8—Financial and managerial/administrative autonomy and the availability of appropriate human, material, and monetary resources states that:
>
> SAIs should have available necessary and reasonable human, material, and monetary resources—the Executive should not control or direct the access to these resources.
>
> SAIs manage their own budget and allocate it appropriately.
> The Legislature or one of its commissions is responsible for ensuring that SAIs have the proper resources to fulfil their mandate.
>
> SAIs have the right of direct appeal to the Legislature if the resources provided are insufficient to allow them to fulfil their mandate.[204]

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[203] Submission No. 1, Emeritus Professor Wettenhall, January 2010, p. 4.
[204] INTOSAI. (2009) Mexico Declaration, <http://www.intosai.org/> October

5.42 The ACAG submitted:

> As the Auditor-General should be viewed as an independent officer of the Parliament…the Legislative Assembly has an important role in overseeing the preparation and approval of the budget for the Auditor-General. In particular the Legislative Assembly should ensure the transparency of the budget process and be satisfied that the Auditor-General is provided with sufficient funding to deliver the level of service expected by the Parliament and provided for by the Auditor-General's legislated mandate.[205]

5.43 The ACT Government stated that it did:

> …not support the view that the annual budget for the ACT Auditor-General should be set by the Legislative Assembly and not by the Executive Government.[206]

5.44 The Government put forward five reasons to support this view. Each reason is set out below together with related discussion and, where applicable, the Committee's position.

5.45 First, the Government submitted that there were already provisions in the current Act to ensure the independence of the Auditor-General and her office from the Executive.[207]

5.46 Notwithstanding that there are provisions in the Act that provide independence of the Auditor-General, in particular section 9, the Committee is of the view that, as noted previously, where the Executive Government controls the purse strings it can influence independence, as discussed in chapters three and four. The Auditor-General therefore has a form of conditional independence.

5.47 Second, the Government argued that there were already provisions in the current Act to allow the Committee to provide input to the development of the annual budget appropriation for the Auditor-General and her office.

5.48 Notwithstanding these provisions, the Committee notes that in recent years, the Treasurer has not approved the appropriations for the Audit Office as advised by the Committee (and the Estimates Committee).[208]

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[205] Submission No. 3, ACAG, February, p. 4.
[206] Submission No. 4, ACT Government, February 2010, p. 4.
[207] *Ibid*.
[208] Submission No. 2, ACT Auditor-General's Office, January 2010, p. 8.

5.49 Third, the Government submitted that determination of the annual budget for the Auditor-General by the Assembly runs contrary to section 65 of the *ACT (Self Government) Act (1988*) (Cwlth) (the Self Government Act) which provides that appropriations can only be introduced by Ministers. In practice, this means that the Self Government Act does not permit the legislature to initiate money or appropriation bills.[209]

5.50 In evidence, the Chief Minister submitted:

> …the government does not support the view that the budget of the ACT Auditor-General should be set by the Legislative Assembly and not by the executive. We simply do not accept or do not really understand at any level why this one office should be dragged out of executive consideration of the budget and responsibility or power vested in the legislature and not the executive—why you would select just this office in the first instance. Let us not at this stage worry about some of the constitutional impediments. I have advice, and I am sure you are aware of it, that the unequivocal view of the ACT Government Solicitor is that any proposal by the legislature to seek to legislate or appropriate an amount for, say, the Auditor-General contravenes the self-government act and it would not be possible in any event.[210]

5.51 Whilst this may well be a constitutional impediment, any proposed revisions to the Legislative Assembly having a greater role in the determination of the Auditor-General's budget appropriation are not seeking to introduce money bills into the Assembly. Rather, the Assembly would be permitted to make a recommendation to the Treasurer and would therefore not be contrary to section 65 of the Self Government Act.

5.52 In response to the Committee's discussion concerning the Assembly making a recommendation to the Treasurer, the Chief Executive of the Chief Minister's Department stated:

> The remuneration practices in the UK parliament revolve around a government-controlled committee and that government-controlled committee, which effectively represents the executive, although it does have representation from the crossbenches and other parties on it, is still a government-controlled committee. As such, that is an executive recommendation to the parliament, so it is effectively the executive recommending to the parliament for those purposes.[211]

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[209] Submission No. 4, ACT Government, February 2010, p. 4.
[210] Mr Jon Stanhope MLA, *Transcript of evidence*, 12 March 2010, p. 3.
[211] Mr Andrew Cappie-Wood, *Transcript of evidence*, 12 March 2010, pp. 9–10.

5.53 The Government argued that, as the UK Committee was a government controlled committee, the budget of the UK Auditor-General was effectively set by the Executive Government.[212]

5.54 The Committee notes that the UK Select Committee on Public Accounts may at times have a government majority, on the basis that the party proportions on the Committee have to be the same as the House, but by convention it is traditionally chaired by a member of the Opposition.[213]

5.55 However, the Committee further notes that it is not the UK Select Committee on Public Accounts that recommends to the Parliament on the budget appropriation of the UK NAO. It is a body called the Public Accounts Commission. The budget appropriation for the work of the UK NAO is provided separately by Parliament on the basis of budgeted estimates submitted by the NAO to the Public Accounts Commission. The Commission, a statutory authority, is considered the public sector auditor's advocate to Parliament.[214] Effectively, the Commission:

> …oversees the budget of the National Audit Office and appoints the independent financial auditor who audits the National Audit Office. The Commission consists of the Chairman of the Public Accounts Committee, the Leader of the House (a Cabinet Minister) and seven other Members of Parliament, none of whom can be Ministers.[215]
>
> *[Whilst]* there is nothing in the statute to guarantee independence of the Commission from Parliament or the Executive…the absence of reserve powers to direct the Commission is significant.[216]

5.56 Alternatively, the NZ arrangements, whereby the Officers of Parliament Committee determines the budget for the Auditor-General, is chaired by the

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212 *Transcript of evidence*, 12 March 2010, p. 10.

213 UK Select Committee on Public Accounts (2007) *Holding Government to Account: 150 years of the Committee of Public Accounts—1857–2007*, UK House of Commons, p. 31.

214 INTOSAI, Comptroller and Auditor General and National Audit Office—United Kingdom, accessed 26 November 2010, http://www.intosaiiaudit.org/mandates/writeups/uk.htm; Funnell, W. (1996) 'Executive Encroachments on the Independence of the Commonwealth Auditor-General', *Australian Journal of Public Administration*, **55**, 4, p. 114.

215 INTOSAI, Comptroller and Auditor General and National Audit Office—United Kingdom, accessed 26 November 2010, <http://www.intosaiiaudit.org/mandates/writeups/uk.htm>pp. 1–3; Victorian Public Accounts and Estimates Committee (VICPAEC) (2006) *Report on a Legislative Framework for Independent Officers of Parliament*, February, Parliament of Victoria, p. 34.

216 Victorian Public Accounts and Estimates Committee (VICPAEC) (2006) *Report on a Legislative Framework for Independent Officers of Parliament*, February, Parliament of Victoria, p. 35.

Speaker and there is no government majority on the Committee as a matter of principle.[217]

5.57 The Government submitted that its position was twofold with regard to it not supporting the Assembly having a greater role in determining the budget appropriation of the Auditor-General, in that: (i) why should the Auditor-General's budget be treated differently to other statutory officers?; and (ii) that the constitutional framework for budget appropriations does not permit the Assembly to have such a role.[218]

5.58 The Chief Minister further submitted that should the constitutional impediment be resolved he could see no justification for singling out the Auditor-General from other lines of appropriation:

> If one just refines it and says statutory authorities, on what basis do you independently determine that the executive not be associated with determining the level of funding appropriate for the Auditor-General and not apply the same view or attitude to, say, the Human Rights Commission or the healthcare complaints commission or the Ombudsman or the Public Advocate? What is the point of differentiation between these statutory offices and statutory office-holders: the Conservator of Flora and Fauna, the environment commissioner? I can see no basis on which to differentiate.[219]

5.59 The Committee reiterates its discussion in chapter three regarding the unique status of Officers of Parliament, as an arm of the Parliament and not of the Executive Government. The Committee's discussion in that chapter clearly sets out the grounds as to why the Auditor-General should be distinguished from other statutory office holders and appropriation lines.

5.60 Fourth, the Government submitted that the determination of the annual budget for the Auditor-General by the Legislative Assembly is likely beyond constitutional capacity of the Legislative Assembly in as much as it purports to provide for the Assembly to direct the Executive.[220]

5.61 The Committee disagrees and evidence received during its inquiry argued that as the Auditor-General is an Officer of Parliament, the Assembly (and its

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[217] Beattie, A. (2005) 'Officers of Parliament—the New Zealand Model', APSG Conference, Sydney, p. 4.
[218] *Transcript of evidence*, 12 March 2010, p. 5.
[219] Mr Jon Stanhope MLA, *Transcript of evidence*, 12 March 2010, p. 6.

delegate the PAC) should play a greater role in determining the annual appropriation of the Auditor-General.

5.62 The Committee emphasises that the position articulated by the Government is contrary to practices in other Westminster Parliaments, in particular, the UK, NZ and Canada.

5.63 The Committee is of the view that it is perfectly reasonable for the Legislative Assembly to have a greater role in determining the budget appropriation of the Auditor-General rather than just a consultative role as currently prevails. In evidence, the Auditor-General stated in relation to the Assembly having a role in approving the budget for the Auditor-General that:

> New Zealand has done so; the UK has done so. In New Zealand, the Committee for Officers of Parliament received a submission from the auditor-general and a submission from the executive, and they debated it and recommended to the parliament the funding required for the auditor-general's office. The parliament voted on that amount; the Speaker actually is the one who presented the report to the minister to put that amount in, and the amount, once agreed by the parliament, goes into the appropriation bill. So, in a sense, it can be done here.
>
> From the point of view of a practical solution, if, say, the Assembly debated and agreed to an amount which the Assembly believed was reasonable for the Auditor-General to undertake his or her duties, that amount can then be incorporated by the Treasurer into the appropriation bill. That would not in any way be contrary to the right of the Treasurer to put the appropriation bill into the parliament for debate. A similar thing happens in the UK. So other jurisdictions, especially internationally, have moved away from having the executive making the decision on funding for the auditor-general, because they know it is important to remove the control of the budget for the auditor-general from the government of the day.[221]

5.64 Five, the Government submitted that the Territory already funds the Auditor-General to an appropriate level, based on *per capita* comparisons, including with small jurisdictions, and also with previous funding history.[222]

5.65 The Committee notes the Auditor-General's comments that:

> …to use funding per capita without looking at the output and the services provided by the audit office is very simplistic and very one-sided. The mandate

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220 Submission No. 4, ACT Government, February 2010, p. 4.
221 Mrs Tu Pham, *Transcript of evidence*, 12 March 2010, p. 24.
222 Submission No. 4, ACT Government, February 2010, p. 4.

of the auditor-general varies from jurisdiction to jurisdiction. For example, the Northern Territory and South Australia do not have a performance audit function, while Queensland have a very limited performance audit function. They do not do full efficiency and effectiveness performance audits; they do what they call an audit of the performance management system rather than a performance audit. New South Wales have smaller scope for performance audits in terms of their relative importance compared to financial audits. So you cannot compare per capita funding without comparing the difference in the mandate.

Our office is required to do more than other jurisdictions in a number of areas. For example, we look into the Public Interest Disclosure Act; other jurisdictions may have anticorruption bodies to take care of this. We have a requirement under the procurement act—a special role under the procurement act. So to compare per capita without looking at the wide range of services provided is quite simplistic.[223]

5.66 In response to the Chief Minister's comment that the Audit Office received the most per capita funding in the nation, at $16.75 per ACT resident, whereas NSW was the lowest at $4.88, the Committee notes the editorial comments from the *Canberra Times* that:

…there are vast differences in the size of the populations, NSW has more than six million residents and the ACT has just more than 300, 000—a factor of 20.

The obvious burden for a tiny jurisdiction is having to fund establishment costs while relying on lower overall funding and potential revenue from clients. The NSW Audit Office generates revenue in excess of $20 million a year and has more than 400 clients. In Canberra, the Auditor-General's office receives about $3 million, or two-thirds of its income, from financial audit fees from government agencies.[224]

5.67 The Committee also reiterates the comments of the independent auditor, as detailed in Chapter 6, with regard to economies of scale.

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[223] Mrs Tu Pham, *Transcript of evidence*, 12 March 2010, p. 26.
[224] Editorial. (2009) 'Territory needs a rigorous auditor', *Canberra Times*, 23 June, p. 10.

Summary

5.68 Professor Peter Loney, has emphasised in relation to Parliament having a role in determining the budget appropriation for the Auditor-General that:

> To ensure that the Auditor General's office is able to carry out the function that is expected, it is appropriate that legislation gives the Public Accounts Committee a role in scrutinizing and recommending to the legislature on the adequacy of the annual appropriation for the audit office. While some may wish to argue that this is interfering with the Government's ability to plan and direct resources as it believes appropriate, it should be borne in mind that in the Westminster tradition the Auditor General's duties are carried out on behalf of the Parliament, and are the linchpin of parliamentary oversight.[225]

5.69 The Committee believes that the Legislative Assembly should have more of a formal role in determining the budget appropriation of the Auditor-General as compared with the consultative role that is currently in place. The majority of submissions to the inquiry also supported this on the basis that it would strengthen the independence of the Auditor-General.

5.70 The options for formalising this role can take a number of forms. Many of these have been discussed earlier in this chapter. Further, these formal options can also be supplemented by symbolic measures designed to raise awareness regarding the status of the Auditor-General as an Officer of Parliament and to emphasise the important relationship between the Assembly and the Auditor-General.

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[225] Loney, P. (2004) 'Beware the Gap! – Parliamentary Oversight or Parliament Overlooked?', Paper for The Association of Public Accounts Committees, 4 October, pp. 1–9.

5.71 The ACAG submitted that the Legislative Assembly could have a more formal role in determining the budget appropriation by:

> …ensuring that the process for setting the budget for the ACT Audit Office involves the Public Accounts Committee having a formal role in considering the Audit Office's budget and making a recommendation to the Legislative Assembly, as part of the Territory's budget process, on the level of funding required by the Auditor-General. As the Treasurer is ultimately responsible for the Territory's budget pursuant to the provisions of the *Financial Management Act*, consultation between the Auditor-General, the Public Accounts Committee and the Treasurer would be appropriate.[226]

5.72 The Commonwealth's JCPAA is responsible for considering and making recommendations to Parliament, and the responsible Minister, on draft annual funding estimates for the Auditor-General's Office. The JCPAA reports to the Parliament on its consideration of the draft budget estimates.[227] The JCPAA is of the view that its requirement to report to Parliament in this way:

> …reflects both the Committee's status as the Parliament's audit committee, and the Auditor-General's status as an independent officer of Parliament.[228]

5.73 The VICPAEC, prior to the Victorian Government's finalisation of the state budget, seeks advice from the Treasury on the overall fiscal parameters expected of departments and agencies. The VICPAEC takes this into account when recommending to government an appropriate level of funding for the Victorian Auditor-General.[229]

5.74 The Committee notes that any proposed amendments to the Act giving the Legislative Assembly a greater role in the determination of the Auditor-General's budget appropriation would not be seeking to introduce money bills into the Assembly. Rather, that the Assembly would be permitted to make a recommendation to the Treasurer and would not be in contravention to section 65 of the Self Government Act.

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[226] Submission No. 3, ACAG, February, p. 4.

[227] Section 8, *Public Accounts and Audit Committee Act 1951*; JCPAA (2008) *Report by the JCPAA on the 2008–09 Draft Budget estimates for the Audit Office*.

[228] Section 8, *Public Accounts and Audit Committee Act 1951*; JCAAA (2008) *Report by the JCPAA on the 2008–09 Draft Budget estimates for the Audit Office*, p. 1.

[229] Victorian Public Accounts and Estimates Committee (VICPAEC) (2006) *Report on a Legislative Framework for Independent Officers of Parliament*, February, Parliament of Victoria.

5.75 This is the basis on which the Auditor-General Amendment Bill 2009 is framed. The ACAG submitted that the proposed amendments in this Bill would satisfy many of the comments it had made in relation to improving the process currently in place for determining the budget of the Auditor-General's Office. In particular, the Bill:

> …would enhance the transparency of the budget process by providing greater clarity of roles and responsibilities. In particular the new provisions provide greater clarity in terms of the role of the Auditor-General and the timing of the process.[230]

5.76 The Committee emphasises that it is important to point out that when talking about financial independence, it is not advocating that the Auditor-General be provided with an 'open cheque book' but instead that there be more transparency and consultation as to how the resources of the Auditor-General are decided.[231] This can be achieved by ensuring that the funding of Auditors-General are not subject to executive financial controls but rather are subject to parliamentary financial controls.[232]

5.77 Further, whilst the Auditor-General's Office, may presently be dependent on the Executive for its budget allocation, its allocation could be made in a separate bill. For example in NSW, the ICAC is considered a 'Special Office' with its funding allocation being provided for in the Appropriation (Special Officers) Bill along with the Ombudsman and the Electoral Commission rather than as part of the General Government Sector appropriation.[233]

5.78 The Committee is of the view that when considering the draft budget estimates for the Auditor-General, in accordance with sections 22 and 22A of the Act, and any subsequent amendments to the role it has with regard to the

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230 Submission No. 3, ACAG, February 2010, pp. 5–6.

231 Funnell, W. (1996) 'Executive Encroachments on the Independence of the Commonwealth Auditor-General', *Australian Journal of Public Administration*, **55**, 4, pp. 109–123; Taylor, J. (1995) 'Parliament and the Auditor-General', Paper presented at the Senate's Occasional Lecture Series, 19 May.

232 Victorian Public Accounts and Estimates Committee (VICPAEC) (2006) *Report on a Legislative Framework for Independent Officers of Parliament*, February, Parliament of Victoria; Funnell, W. (1996) 'Executive Encroachments on the Independence of the Commonwealth Auditor-General', *Australian Journal of Public Administration*, **55**, 4, pp. 109–123.

233 Grove, R. (2002) 'Officers of Parliament and how their work impacts on the House', Paper presented by Clerk of the Legislative Assembly of NSW, 33rd Conference of Presiding Officers and Clerks, Brisbane, Queensland.

determination of the Auditor-General's budget arising from this report, it must have regard to the budget context.

RECOMMENDATION 24

5.79 **The Committee recommends that the *Auditor-General Act 1996* be amended to provide the Legislative Assembly through the Standing Committee on Public Accounts with a formal role in considering the Audit Office's draft budget estimates and making a report with recommendations to the Legislative Assembly, as part of the Australian Capital Territory's budget process, on the level of funding required by the Auditor-General.**

5.80 The Committee also notes that where the Auditor-General's performance audit capacity relies on a budget appropriation, as is the case in the ACT, in the absence of capacity to absorb unexpected costs or an ability to reprioritise or downgrade services, the Office's performance audit capacity will always be at risk.

5.81 A diminished performance audit capacity due to a reduction in funding directly impacts on governance and accountability. This is on the basis that whilst financial auditing provides some assurance at a point in time, it does not provide audited agencies, Parliaments or communities with any assurances about government performance.[234] Performance auditing provides such assurances and increasingly, on this basis, Parliaments are seeking to support growth in their respective Auditor-General's performance audit functions with the objective of achieving a 50:50 split between expenditure on financial and performance audits.

5.82 As part of its inquiry into 2008–09 Annual and Financial Reports, the Auditor-General told the Committee that:

> At the moment, we spend about $3.2 million for financial audits and we spend around $1.5 million for performance audits and other investigations.[235]

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[234] Clark, H. (2005) 'Address to the 19th Commonwealth Auditors-General Conference', 31 January, New Zealand Parliament, Wellington; Sendt, B. (2002) 'Audit independence: Views from the public sector', Paper presented at the Restoring Confidence in the Australian Auditing and Accounting Industry.

[235] Mrs Tu Pham, Standing Committee on Public Accounts, Inquiry into 2008–09 Annual and Financial reports, *Transcript of evidence*, 3 December 2009, p. 211.

> The current breakdown is that 60 per cent of our expenses goes to financial audits and about 35 per cent goes to performance audits and other investigations. About five to 10 per cent incorporates services. When we talk about performance audits, we are talking about more than just the tabling of reports that the Assembly receives. In addition to the seven reports tabled in the Assembly during the year, we also behind the scenes follow up quite a number of review investigations and work with agencies to resolve some of the issues which the community may bring to our attention. But, yes, the split at the moment is about 60 and 35 per cent.[236]

5.83 Further, in response to a question from the Committee, as to how much additional funding would be required to bring the 35:60 ratio to a 50:50 ratio, without affecting what is done with financial audits, the Auditor-General stated:

> Currently, about $1.5 million is allocated to performance audits. We get $2 million from the government. About half a million dollars goes to corporate services and other functions such as advisory services. So around $1.5 million goes into performance audits and investigation compared to $3.2 million that goes into financial audits. So the difference between $3.2 million and $1.5 million is another $1.7 million to bring that to 50 per cent of the arrangement in our office.[237]

RECOMMENDATION 25

5.84 **The Committee recommends that the Audit Office should be funded to conduct a number of performance audits that is determined by the Auditor-General and endorsed by the Standing Committee on Public Accounts within the budget context.**

Clarification of the intention of sections 22 and 22A of the Act

5.85 One of the Committee's terms of reference was to consider what amendments, if any, are required to clarify the intention of sections 22—*Proposed appropriations* and 22A—*Additional amounts for certain audits*—of the Act.

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[236] Mrs Tu Pham, Standing Committee on Public Accounts, Inquiry into 2008–09 Annual and Financial reports, *Transcript of evidence*, 3 December 2009, p. 210.
[237] *Ibid.*, p. 211.

5.86 The Government submitted that sections 22 and 22A of the Act did not require any amendments to clarify their intention on the basis that:

- section 22 of the Act clearly sets out the process by which the presiding member of the PAC may provide input into the development of a draft Budget for the operations of the Auditor-General for consideration by the Treasurer, and

- that section 22A clearly sets out the process by which the Auditor-General and the PAC may seek additional inputs for certain audits through the Treasurer's Advance.[238]

5.87 The Auditor-General's Office submitted that it:

> …interprets the policy intent of the provisions in sections 22 and 22A of the Auditor-General Act as to give to the Public Accounts Committee a role in determining the annual appropriation funding available to the Auditor-General. The provisions create a process whereby the Legislative Assembly, through the Committee, advises the Treasurer regarding the resources that should be made for the operations of the Audit Office for the year. This implies a strong role for the PAC, more than just being consulted by the Treasurer, or making a recommendation to the Treasurer.[239]

5.88 The Committee is of the view that its earlier recommendations with regard to providing the Assembly with an enhanced role in considering and determining the budget appropriation of the Auditor-General should provide greater clarity regarding section 22 of the Act.

5.89 However, in regard to section 22A of the Act, ACAG submitted that there should be consistency between any roles prescribed for the Assembly under section 22 of the Act with section 22A of the Act. Where this does not occur, it:

> …would lead to an inconsistency in the requirements whereby *[for example]* the Legislative Assembly was responsible for the initial budget of the Auditor-General but would still provide the Treasurer with responsibility for approving additional amounts requested during the year. To ensure there is consistency between these requirements the Legislative Assembly should have responsibility for approving both the initial budget, based on a recommendation of the Public Accounts Committee, and any additional funds requested by the Auditor-

[238] Submission No. 4, ACT Government, February 2010, p. 7.
[239] Submission No. 2, ACT Auditor-General's Office, January 2010, p. 8.

General during the year. It would also be appropriate for the Committee to consider any additional budget supplementation sought by the Auditor-General.

5.90 Whilst the Auditor-General has not sought any additional funding under section 22A of the Act, having met unforseen variations to the audit program by deferring planned audits or audits in train[240], the Committee believes that there should be consistency between any mandated role it has under section 22 of the Act with that of section 22A of the Act.

5.91 The Committee is therefore of the view that the Legislative Assembly should also have responsibility for approving any additional budget supplementation sought by the Auditor-General based on a recommendation of the Committee. The Committee would consider any requests for additional funding and make a recommendation to the Assembly mirroring the process it has recommended in relation to its consideration of the draft budget estimates of the Audit Office.

RECOMMENDATION 26

5.92 **The Committee recommends that the *Auditor-General Act 1996* be amended to ensure consistency between any designated role provided to the Legislative Assembly through the Standing Committee on Public Accounts in considering and recommending the draft budget estimates of the Auditor-General under section 22 of the Act and any additional budget supplementation sought by the Auditor-General under section 22A of the Act.**

Technical amendments to sections 22 and 22A

5.93 The Auditor-General submitted that both sections 22 and 22A of the Act contain references to provisions in the *Financial Management Act 1996* (the FMA Act) which were removed from the FMA Act some time ago. The applicable references in section 22 of the Act to the FMA Act were removed from the FMA Act in 2002 and the applicable references in section 22A of the Act to the FMA Act were removed from the FMA Act in 2004.[241]

[240] Submission No. 2, ACT Auditor-General's Office, January 2010.
[241] *Ibid.*, p. 9.

RECOMMENDATION 27

5.94 **The Committee recommends that the *Auditor-General Act 1996* be amended to remove redundant references to the *Financial Management Act 1996* in sections 22 and 22A of the *Auditor-General Act 1996* respectively.**

Resourcing the Office of the ACT Auditor-General

5.95 This section sets out evidence, together with the Committee's position, where applicable, concerning resourcing of the Office of the Auditor-General.

Auditor-General's staff

5.96 ACAG submitted, with regard to the relationship between the Auditor-General's managerial autonomy and resourcing, that the level of autonomy afforded needs to take account of the Office's ability to carry out its audit functions and duties together with the Auditor-General's ability to attract and retain a suitable level of resources.[242]

5.97 At a minimum, ACAG suggested that where staff are performing audit functions and duties in accordance with the Act, that the Act:

> …should include a provision recognising that the staff assisting the Auditor-General are not subject to the direction of any person other than the Auditor-General, or a person authorised by the Auditor-General…[243]

RECOMMENDATION 28

5.98 **The Committee recommends that the *Auditor-General Act 1996* be amended to recognise that staff assisting the Auditor-General are not subject to direction of any person other than the Auditor-General, or a person authorised by the Auditor-General, in relation to matters dealing with audit functions and duties performed pursuant to the *Auditor-General Act 1996*.**

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[242] Submission No. 3, ACAG, February 2010, p. 4.
[243] *Ibid.*

5.99 ACAG noted that as the Act provides for staff of the Auditor-General to be employed under the *Public Sector Management Act 1994*, there may be potential for this requirement to have a bearing on the Auditor-General's ability to recruit staff with suitable skills and experience. ACAG suggested that:

> The Auditor-General's managerial autonomy and ability to resource the Office could be strengthened by including a provision that allows the Auditor-General to engage persons on terms and conditions the Auditor-General thinks fit.[244]

5.100 However, ACAG emphasised that any determination of the terms and conditions on which staff could be engaged, it would be appropriate for the Auditor-General to have regard to the general terms and conditions of employees of the ACT Public Service (ACTPS).[245]

5.101 The Committee is of the view that given the difficulty the Audit Office, and other audit offices, have in retaining and attracting staff, on the basis that their unique skill sets are in high demand within both the public and private sectors, the Auditor-General should have the managerial autonomy and ability to engage persons on terms and conditions they consider appropriate to meet the needs of the audit work of the Office. This managerial autonomy should require the Auditor-General to have regard to the general terms and conditions of the employees of the ACTPS, in particular the provisions of the *Public Sector Management Act 1994*, the *Government Procurement Act 2001*; and be subject to funds being available.

RECOMMENDATION 29

5.102 **The Committee recommends that the *Auditor-General Act 1996* be amended to permit the Auditor-General, subject to funds being available and subject to the provisions of *the Public Sector Management Act 1994* and the *Government Procurement Act 2001*, to engage persons on terms and conditions the Auditor-General considers appropriate to meet the needs of the audit work of the Audit Office.**

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[244] Submission No. 3, ACAG, February 2010, p. 4.
[245] *Ibid.*

Funding arrangements

5.103 The funding arrangements for audit offices can be characterised by two unique features or attributes which can make it distinctive and challenging in terms of public sector funding. These attributes are further supplemented, in a small jurisdiction such as the ACT, where diseconomies of scale can also be a challenge. According to the independent auditor:

> The difficulty for a smaller jurisdiction such as the Territory is that it provides virtually the same range of services as a State such as New South Wales, certainly to a smaller scale, but nethertheless of a similar breadth. But to fund the same level of assurance via an independent performance audit function will clearly cost more in per capita terms in a smaller jurisdiction.[246]

5.104 Small technical agencies, such as audit offices, which have legislated mandates and specific responsibilities, very rarely receive new policy funds which can serve as a buffer for unexpected costs.[247]

5.105 The second attribute is the indexation gap, in that budget appropriations are adjusted for inflation using the consumer price index (CPI) and the federal minimum wage. However, 'Auditors-General and other small agencies purchase a very different basket of goods and services than the average consumer. They buy office services and professional expertise, not cars or food or clothing'.[248] This can result in an indexation gap when the cost of a small agency's inputs rises more annually than the CPI, i.e., is greater than the indexation levels applied to its resource base together with limited cash reserves.[249]

5.106 The Committee notes that for the last four financial years the Office has not received any increase in funding beyond the normal CPI increase. Furthermore, the Committee notes that notwithstanding a strong performance mandate provided to the Audit Office through the Act, the

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[246] Sendt, B. (2010) *Report of the Independent Performance Audit of the Operations of the ACT Auditor-General and the ACT Audit Office*, 3 May, p. 36.

[247] Grierson, S. (2009) 'Different models for optimising cooperation between auditors-general', public accounts committees, and other accountability agencies, Paper presented at the 10th ACPAC Biennial Conference, April 2009, p. 6–7.

[248] *Ibid.*

[249] *Ibid.*

funding to the Office in terms of whole-of-government expenditure has declined from 0.16 per cent to 0.13 per cent.[250]

5.107 In evidence to the Select Committee on Estimates 2010–11, the Auditor-General commented:

> In the last three years, though, there were no increases in funding beyond the CPI. So it depends on what period you look at. The government goes back perhaps 10 years, where it started from a very low base. There were two significant increases for various reasons. If you look at the last three years, the office did not receive any funding, even though we are required to comply with an enormous change in auditing standards. The government expenditure as a whole increased significantly from, say, a $2 billion budget to now, say, a $4 billion budget. If you are talking about an office with work related to government expenditure, as a percentage our funding as an office—as a percentage of government expenditure—has actually gone down rather than gone up.[251]

5.108 In evidence, the Chief Minister stated:

> We have, over the last 10 years, increased funding for the ACT Auditor-General by, on average, nine per cent a year. We have, over the last five years, increased funding for the ACT Auditor-General by 17 per cent a year.[252]

5.109 In response to a question from the Select Committee on Estimates 2010–11 seeking clarification as to whether the Audit Office had received a 17 per cent increase of funding year on year from the Government, the Director of Performance Audits stated:

> That money has come to us. The increases have been, on average, in the order that the Chief Minister has mentioned, but they have not been a yearly boost of 17 per cent. We also started from a very low base. If you start looking at where the performance audit capacity was in 2003, you are looking at about four staff. We have obviously improved on that, and we are very grateful for the funding we have received in that area. It has been useful, but as to whether that addresses the needs of the Assembly and the needs of the community, we obviously believe that we can do more.[253]

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[250] Select Committee on Estimates 2010–11, Inquiry into Appropriation Bill 2010–2011, *Transcript of evidence*, 24 May 2010, p. 1029.

[251] Mrs Tu Pham, Select Committee on Estimates 2010–11, 2010–11, Inquiry into Appropriation Bill 2010–2011, *Transcript of evidence*, 24 May 2010, pp. 1028–1029.

[252] Mr Jon Stanhope MLA, *Transcript of evidence*, 12 March 2010, p. 7.

[253] Mr Rod Nicholas, Select Committee on Estimates 2010–11, 2010–11, Inquiry into Appropriation Bill 2010–2011, *Transcript of evidence*, 24 May 2010, p. 1028.

5.110 Whilst the report of the independent auditor concluded that the Audit Office was efficient, effective and provided value for money, it also noted that the performance audit function was viable, but only just.[254]

5.111 The Committee acknowledges the Auditor-General's comments that:

> …any further need for us to divert funds and resources from the performance audit function could make it unviable and unsustainable going forward.
> I believe it is important that this office can maintain a viable performance audit function with appropriate staff and skills so that we can continue to provide independent services to the Assembly.[255]

5.112 The modest budgets of audit offices should be regarded as a cost effective mechanism for curbing waste and excess, and identifying areas for better public administration on behalf of their respective Parliament and community.[256]

5.113 The Committee believes that an adequately funded independent Auditor-General's office is vital to ensuring that the Legislative Assembly is able to effectively hold the executive government to account.

5.114 The Committee believes that its inquiry can assist with the implementation of an appropriate funding framework to ensure the sustainability of the funding of the Audit Office.

5.115 To ensure that the Legislative Assembly is best served by an adequately funded independent Auditor-General's Office, as a means of addressing, in part, the inherent funding challenges specific to audit offices, funding for the Audit Office should be automatically indexed to government expenditure.

5.116 The Committee is of the view that the annual funding for the Auditor-General's Office should be commensurate with the rate of growth in the public sector.

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[254] Sendt, B. (2010) *Report of the Independent Performance Audit of the Operations of the ACT Auditor-General and the ACT Audit Office*, 3 May, p. 37.

[255] Mrs Tu Pham, Select Committee on Estimates 2010–11, Inquiry into Appropriation Bill 2010–2011, *Transcript of evidence*, 24 May 2010, pp. 1013.

[256] Commonwealth Joint Committee on Public Accounts and Audit (JCPAA) (2008) *The efficiency dividend and small agencies: Size does matter*, Report No. 413, December, Parliament of the Commonwealth of Australia, Canberra; Grierson, S. (2008*) Report by the JCPAA on the 2008–09 Draft Estimates for the Audit Office*, Commonwealth Parliament of Australia.

6 BEST PRACTICE IN THE MODERN PUBLIC SECTOR ENVIRONMENT

6.1 This chapter focuses on possible amendments to the Act to make sure that the Auditor-General has the necessary legislative mandate and resourcing to carry out the Office's roles and responsibilities efficiently and effectively in the contemporary public sector environment.

The modern public sector environment

> Governments around the world are working hard to adjust to revolutionary changes in the economy, and at the same time racing to catch up with citizens' changing perceptions and expectations of government…Government responses…internationally, have embraced the importance of horizontal, "joined-up" or "whole of government" approaches to service delivery and building stronger policy capacity with a parallel emphasis on execution and delivery.[257]

6.2 The prevailing public sector reform paradigm, as outlined above, has been referred to as 'responsive government'.[258] Others in the literature refer to it as 'adaptable government', 'joined-up government' or 'government by network'.[259]

6.3 Irrespective of the nomenclature, as a paradigm it encourages public administration to focus on 'networks, greater openness and partnership'[260] and is being driven by four key attributes:

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[257] Dean, T. (2007) *Modernizing Public sector Organizations— 5 Trends that are Transforming Government,* The Canadian Public Policy Forum, p. 5.

[258] United Nations (2005) *World Public Sector Report 2005: Unlocking the Human Potential for Public Sector Performance*, Department of Economic and Social Affairs, New York.

[259] Christensen, T. & Lægried, P. (2006). 'NPM and beyond: The second generation of reforms', National Association of Schools of Public Affairs and Administration Annual Conference, Minneapolis, USA; VSSA. (2007) *Joined up government—A review of national and international experiences*, Working paper no. 1, Victorian State Services Authority (VSSA); UKNAO (2001) *Joining Up to Improve Public Services*, report by the UK Comptroller and Auditor-General, 7 December; APSC. (2007*) Tackling wicked problems—A Public policy perspective;* MAC. (2004) *Connecting Government—Whole of Government Responses to Australia's Priority Challenges*, APSC.

[260] Victorian State Services Authority (VSSA) (2008) *Towards agile government*, State Government of Victoria and Demos.

- the shift from outputs to outcomes
- the shift from welfare to social investment
- the shift from command and control to innovation and collaboration, and
- the shift from standardisation to personalisation and customisation.[261]

6.4 In summary, responsive government is concerned with:

> The complexity and uncertainty that the public sector faces is driving the need for governments to foster agility in its people, systems and outlook. Government and its institutions are increasingly pursuing more flexible, responsive, and innovative solutions to a wide range of challenges across policy, regulatory, enforcement and service delivery functions. At the heart of this, there is a stronger focus on achieving results that make a difference to the community.[262]

6.5 As a consequence, delivery by government within the new public sector paradigm, coupled with the global financial environment, has resulted in new pressures on accountability[263] with a corresponding increase in responsibilities for public audit offices. This includes:

- Recent challenges to global and national financial systems and economic downturns have increased demand for a robust independent audit function.
- An increasing pace of change and innovation, in particular the uptake of and reliance on information technology (IT) to achieve outcomes. This is further compounded, in that; IT systems are becoming increasingly complex coupled with issues concerning data integrity, security and integrity as critical considerations for auditors. This has also added to the cost and complexity of auditing.

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261 Victorian State Services Authority (VSSA) (2008) *Towards agile government*, State Government of Victoria and Demos.

262 *Ibid.*, p. 27.

263 Pearson, D. (2009) 'Issues for maintaining independence: A survey of Australia's public audit legislation', Address to the 10th Biennial Conference of Australasian Council of Public Accounts Committees, 16 April, Wellington, New Zealand; Robertson, G. (2009) *Independence of Auditors-General—A survey of Australian and New Zealand Legislation*, Commissioned by the Victorian Auditor-General's Office, July; APSC. (2007) *Tackling Wicked problems—A Public Policy Perspective*, Australian Government, Commonwealth of Australia; IBM Center for the Business of Government. (2007) *Ten Challenges Facing Public Managers;* Commonwealth Joint Committee on Public Accounts and Audit (JCPAA) (2008) *The efficiency dividend and small agencies: Size does matter*, Report No. 413, December, Parliament of the Commonwealth of Australia, Canberra.

Technology driven change is also challenging traditional accountability methods, for example, records management in an electronic age.

- The strategies being used to foster responsive government have been referred to as requiring agility and innovation in the delivery of public services. This creates the risk of agencies seeking workarounds for traditional governance structures and accountability mechanisms.
- Changes in government service delivery, as required by the responsive government paradigm, challenge traditional democratic accountability mechanisms and legislation. For example:
    - The delivery of government programs now often involves multiple agencies in order to respond to complex or 'wicked' policy problems, for example, climate change, indigenous disadvantage, land degradation and obesity.[264] The innovative and extensive solutions these problems require can challenge traditional approaches to policy making and program implementation.[265]
    - An increase in outsourcing, in particular the contracting out of services, risk-sharing and alliancing models such as Private Public Partnerships (PPPs).[266]
    - Devolving government, for example, a trend towards creating legal entities 'outside' government as a means for more flexible government management.[267]

6.6 The modern public sector environment has thus created a range of challenges for public audit offices, in particular that auditing in such an environment 'requires bigger teams, greater understanding and more resources'.[268]

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[264] APSC. (2007) *Tackling Wicked problems—A Public Policy Perspective*, Australian Government, Commonwealth of Australia.

[265] Pearson, D. (2009) 'Issues for maintaining independence: A survey of Australia's public audit legislation', Address to the 10th Biennial Conference of Australasian Council of Public Accounts Committees, 16 April, Wellington, New Zealand.

[266] *Ibid.*

[267] *Ibid.*

[268] Mr Ian McPhee, *Transcript of evidence*, Commonwealth Joint Committee on Public Accounts and Audit (JCPAA) (2008) Inquiry into the efficiency dividend, p. 8.

6.7 The Organisation for Economic Co-operation and Development (OECD) noted in its 2005 Policy Brief, that new forms of public sector management, privatisation and new technologies have not only changed the way the public sector operates, but have also created a need for new ways of making both agencies and governments accountable for what they do.[269]

Strengthening coverage and mandate

6.8 This section discusses proposed amendments to strengthen the coverage and mandate of the Auditor-General to operate effectively in the contemporary public sector environment together with evidence received and related information.

Power to audit entities receiving public money

6.9 The Auditor-General does not currently have a mandate to audit outsourced activities and services to examine whether public funds have been:

> …applied for the purposes for which it was made and whether the money has been used economically, efficiently, and effectively.[270]

Proposed amendment to audit outsourced activities—Auditor-General Amendment Bill 2004 and 1999 independent performance audit

6.10 The power to audit outsourced activities was raised in the performance audit of the Audit Office completed in August 1999 and was also suggested as an amendment by the then Auditor-General, Mr John Parkinson, as part of the proposed amendments to the *Auditor-General Act 1996* that culminated in the Auditor-General Amendment Bill 2004.[271]

6.11 The Government at the time agreed with the suggested amendment subject to consultation with relevant stakeholders. The amendment, however, was not proceeded with.[272] As a consequence, at present, access to audit

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[269] OECD.(2005) *Public Sector Modernisation: Modernising Accountability and Control*, April; Robertson, G. (2009) *Independence of Auditors-General—A survey of Australian and New Zealand Legislation*, Commissioned by the Victorian Auditor-General's Office, July.

[270] Submission No. 2, ACT Auditor-General's Office, January 2010, p. 4.

[271] *Ibid.*

[272] *Ibid.*

outsourced activities is reliant on an appropriate clause being inserted in the applicable contract that provides the Auditor-General with access to the providers' relevant records and employees.

6.12 Were such an amendment to be enacted, the Auditor-General indicated that the Audit Office would be willing to conduct seminars for non-government organisations (NGOs) and non-profit organisations on compliance requirements and on the delivery of services funded by public monies.

6.13 The ACAG submitted that the power of the Auditor-General would be significantly enhanced if the Act specifically provided for the authority to 'undertake audits of individuals or entities who receive government funds for the purposes of ascertaining whether funds have been expended economically, efficiently and effectively in relation to the purpose for which they were intended'.[273]

6.14 This power would be further enhanced by amending section 15 of the Act to permit the Audit Office to enter the premises, and remain on premises, not occupied by the Territory or a Territory entity, where reasonable notice was provided and entry of the premises was necessary for the purpose of conducting an audit.[274]

Current practice—authority to audit outsourced activities

6.15 At present, the Auditor-General's Office is limited in its ability to audit outsourced activities (sometimes known as 'following the dollar') and is reliant largely on the adequacy of access provisions in contracts between the relevant government agency and the funded body. In the absence of an express power under the Act, the Audit Office is constrained in its ability to provide assurance to the Legislative Assembly on the accountability and performance of these significant public expenses by non-government bodies.[275]

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[273] Submission No. 3, ACAG, February 2010.
[274] Submission No. 2, ACT Auditor-General's Office, January 2010.
[275] *Ibid.*

Proposed amendments to audit third party entities receiving public money

6.16 Should the Act be amended it would also be necessary to ensure that the Auditor-General's powers to gather information and access premises are also suitably amended. Section 14 of the Act appears to provide broad powers to obtain information, in that the reference to 'a person' does not limit the application of that section to government agencies or employees. Section 15, however, does limit access to 'premises occupied by the Territory or a *[T]*territory entity'.

6.17 In its submission, the Government did not agree that the audit mandate should be extended to encompass the power to audit organisations that receive funds from the Government, over and above those entities included at sections 11(1) and section 12(1) of the Act.[276]

6.18 This was on the basis that the Government considered that it was the responsibility of each individual Territory entity to ensure it had adequate checks, balances and governance arrangements in place with respect to its funding agreements with external bodies.[277]

6.19 Further, the Government noted that there were contractual provisions in most grant and other funding agreements with non-government organisations that permit the Territory to inspect or audit the records of the funded organisation, at a minimum in relation to the funded amount. The Government was therefore of the view that there were already non-legislative measures in place to ensure that government funded NGOs account for their funding.[278]

6.20 Principally, the Government submitted that in terms of an accountability framework, it should be the government agency providing the funds that is accountable rather than the third party entity receiving the dollars. That is, the Territory entity is held accountable for how it discharges public monies to third parties.[279]

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[276] Submission No. 4, ACT Government, February 2010.
[277] *Ibid.*
[278] *Ibid.*
[279] Submission No. 4, ACT Government, February 2010, p. 3; *Transcript of evidence*, 12 March 2010, pp. 18–20.

6.21 The Chief Executive of the Chief Minister's Department told the Committee:

> When it comes to the consideration of the audit of the entities—and this is the basis of government's consideration here—the Auditor-General, under sections of its act, covers in those entities departments, territory entities, public sector companies and joint ventures where the territory is the predominant controlling interest, as well as the trust in similar circumstances. In those circumstances it considered that it is reasonable that the entities have adequate checks and balances and governance arrangements in place in respect of funding agreements with external bodies. So, in other words, the entity is held accountable for how it discharges public moneys to third parties.
>
> Does it have the appropriate government structures, procedures, practices and transparency about the allocation of those funds to the appointed and the appropriated purposes? We think that that is the crux of the matter—that the entities are held accountable for how they discharge moneys to the ends which government has appropriated them.
>
> I would have to say that if you extend the audit scope to chase every dollar down every theoretical burrow, you would find that there would be a plethora of additional audit practice which would not necessarily yield what government is trying to do and, effectively, the Legislative Assembly is trying to do, which is to make sure that the dollars that are appropriated are in the appropriate way discharged, accounted for and that the processes are clearly transparent in so doing.[280]

6.22 In response to the Government's position, ACAG commented:

> I do not know whether the government's response is quite sufficient. When you look at the way government agencies sometimes work with NGOs, while there might be initial zeal in terms of monitoring NGOs' performance, that can weaken over time. You ask agencies: how is this money being spent? Are you achieving what you really want to achieve? How are you monitoring the way these NGOs perform? In other words, are you over-monitoring? Are you imposing costs on these organisations? You need to give the auditor the ability to step outside the bounds of the government agency and into the NGO to at least follow the expenditure trail through and really ask those questions. Again, you have the problem with public-private partnerships where a lot of the decisions have been made outside the government agencies but they will have real implications for future government activities, if we are looking at major infrastructure.[281]

6.23 The ACAG was of the view that the Auditor-General should have the power to follow public funds anywhere, noting that:

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[280] Mr Andrew Cappie-Wood, *Transcript of evidence*, 12 March 2010, pp. 18–19.
[281] Mr Frank McGuiness, *Transcript of evidence*, 12 March 2010, p. 39.

> If we look at the way things have evolved over the last few years, we have public-private partnerships. We have an increasing use by governments of non-government organisations to deliver services which once had been delivered by a government department or a government agency directly. It is really the old argument of follow the dollar. If your committee is to be satisfied that the public is getting value for the dollar spent then the auditor does need the ability—where that money leaves a government agency and flows, for example, to a non-government authority for the delivery of, say, a particular health service—basically, to go into the health service and ask: how is this money being spent? Is it being spent appropriately? Is it delivering what the government expects? Is the NGO as an agent acting in the best interests of the government or the agency as its principal?[282]

6.24 The report of the independent auditor noted that an express power to audit outsourced activities of government is concerned with extending the mandate of the Auditor-General to resolve what may be considered as an inappropriate constraint on their powers. This access can involve two issues: (i) access to documents of a recipient of public monies; and (ii) a recipient organisation itself or the service(s) it provides become subject to audit.[283]

6.25 The independent auditor was of the view that access to documents and financial records could be dealt with by requiring government agencies to include an appropriately worded provision in all contracts and grant agreements, allowing access by the Auditor-General; this is indeed current practice. To avoid any possibility of an accidental or deliberate omission in a contract, however, it may be useful for this to be provided for in legislation.[284]

6.26 In relation to an Auditor-General having the power to audit a grant recipient's performance, the independent auditor believed this power to be less straightforward, stating that:

> The need for such an audit presupposes the lack of an appropriate and effective accountability framework for the specific grant program(s). In my view that is a failing of government, not the private sector or not-for-profit entity involved, and auditors-general already have substantial powers to review such failings by

282 Mr Frank McGuiness, *Transcript of evidence*, 12 March 2010, p. 38.
283 Sendt, B. (2010) *Report of the Independent Performance Audit of the Operations of the ACT Auditor-General and the ACT Audit Office*, 3 May, pp. 23–24.
284 *Ibid.*

> government agencies. I would suggest there needs to be strong arguments advanced as to why an auditor-general's powers need to go beyond this.[285]

6.27 The Committee is aware that those jurisdictions with the most recent audit legislation, in particular Tasmania and Western Australia, have included an express power to audit outsourced activities of government. Further, the matter was specifically raised by the Commonwealth Auditor-General in his submission to the JCPAA inquiry into the *Auditor-General Act 1997*.[286]

6.28 The Committee is of the view that the Act should be amended to give the Auditor-General more authority to audit outsourced activities. Given the changing nature of the contemporary public sector environment and of how services are delivered, the Committee believes this authority is a necessary requisite to ensure that the Assembly is able to effectively hold the Executive Government to account.

6.29 In considering the evidence received concerning suitable amendments to the Act to provide the Auditor-General with such a mandate, the Committee acknowledges that this authority can take one of two forms: (i) authority to access documents of a recipient of public funds; and (ii) authority to audit a recipient organisation itself or the service(s) it provides.[287] Each of these forms of authority is discussed below.

Authority to access documents of a recipient of public funds

6.30 Access to documents and financial records could be resolved by requiring government agencies to include an appropriately worded provision in all contracts and grant agreements, allowing access by the Auditor-General. The Committee agrees with the independent auditor's position that to avoid any possibility of an accidental or deliberate omission in a contract, it may be useful for this 'access' to be confirmed in legislation.

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[285] Sendt, B. (2010) *Report of the Independent Performance Audit of the Operations of the ACT Auditor-General and the ACT Audit Office*, 3 May, p. 24.

[286] Submission No. 2, ACT Auditor-General's Office, January 2010.

[287] Sendt, B. (2010) *Report of the Independent Performance Audit of the Operations of the ACT Auditor-General and the ACT Audit Office*, 3 May, pp. 23–24.

Authority to audit a recipient organisation itself or the service(s) it provides

6.31 The other power, to provide the Auditor-General with the grounds to subject a recipient organisation itself or the service(s) it provides to audit is less clear-cut. This is on the basis that the requirement for such a power 'presupposes the lack of an appropriate and effective accountability framework for the specific grant program(s)', which some evidence suggested is either a failing of, or responsibility of, government, not the third party recipient.[288]

6.32 The Committee further notes that the changing nature of the delivery of services in the contemporary public sector environment may challenge the effectiveness of traditional accountability frameworks. Consequently, the Government's argument that the traditional accountability frameworks provide sufficient accountability, in that the Territory entity appropriating public monies to a third party should be accountable, is questionable. As outlined earlier in this chapter, delivery of services in the new public sector paradigm is challenging traditional accountability frameworks.

6.33 The Committee believes that outsourced activities can lead to reduced accountability for the spending of public monies. Further, it is questionable whether the traditional accountability frameworks once relied on are still effective in oversighting public monies in the contemporary public sector environment.[289]

6.34 However, in the case of an express power for the Auditor-General to audit a recipient organisation itself, or the service(s) it provides, the Committee is aware of the potential impost, in terms of costs and resources, this may have on small NGOs and non-profit organisations and (sub) contractors. Further, such an authority may act as a disincentive for small NGOs/non-profit organisations and (sub) contractors to tender for the provision of services or apply for grants within the Government public sector.

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[288] Sendt, B. (2010) *Report of the Independent Performance Audit of the Operations of the ACT Auditor-General and the ACT Audit Office*, 3 May, p. 24.

[289] Submission No. 2, ACT Auditor-General's Office, January 2010.

6.35 Accordingly, the Committee believes that where small NGOs and non-profit organisations and (sub) contractors, under a certain threshold, are subject to an audit by the Auditor-General they may seek reimbursement for reasonable costs from the Government.

RECOMMENDATION 30

6.36 **The Committee recommends that the *Auditor-General Act 1996* be amended to provide the Auditor-General with an express authority to audit outsourced activities of the Government. This should provide the Auditor-General with authority to: (i) access documents of a recipient of public money; and (ii) audit a recipient organisation itself or the service(s) it provides.**

RECOMMENDATION 31

6.37 **The Committee recommends that any other legislation, as necessary be amended to permit performance audits of organisations that receive funding from the ACT Government only in respect of those activities funded by the ACT Government.**

Auditing standards

6.38 When considering evidence received with regard to professional auditing standards, two matters were raised: (i) a formal recognition in the Act that the Auditor-General must have regard to the relevant standards when carrying out audit functions; and (ii) the impost on audit offices to ensure compliance with revised or new standards as they arise.

New or revised mandatory auditing standards

6.39 Professional auditing standards have been subject to considerable change in recent years which have required audit offices across Australia to set aside specific resources to manage compliance with new or revised mandatory auditing standards.

6.40 The application of mandatory professional standards thus creates obligations on audit offices to ensure that they have the appropriate governance and administrative framework to support consistently high quality auditing practices. This obligation is particularly pronounced and challenging for small audit offices such as the Audit Office.

6.41 The Auditor-General noted:

> It is important that the Office receives sufficient resources to support the Auditor-General's role and community expectations of that role. The Office's budget submissions in recent years have identified the challenges faced by the Office.[290]

6.42 The Committee is aware that the Audit Office has made requests to procure additional resources over the last three ACT Budgets to satisfy compliance with mandatory auditing standards. However, these requests have not been supported.

6.43 As a consequence, the Audit Office has met these mandatory compliance requirements by diverting resources from other activities, including the performance audit program.

6.44 The report of the independent auditor noted that the Office placed great importance on achieving and maintaining compliance with APES 320 and as part of the process:

> …sought additional budget funding but, when this was refused, funded the costs from its existing budget appropriation, in effect diverting resources from the other activities including the performance audit program, that are wholly reliant on the appropriation.[291]

6.45 The independent auditor was of the view that it would have been more appropriate for the Office to have:

> …apportioned the overall cost of the APES 320 project between financial and performance audit. The share relating to financial audit could have been recouped through increases in the fees charged to financial audit clients, perhaps over a 3-year period.[292]

6.46 The independent auditor recommended that where the Audit Office is unable to attract an increase in the appropriation to cover the cost of office-wide systems, to comply with auditing standards, it should set its financial

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[290] Submission No. 2, ACT Auditor-General's Office, January 2010, p. 3.

[291] Sendt, B. (2010) *Report of the Independent Performance Audit of the Operations of the ACT Auditor-General and the ACT Audit Office*, 3 May, p. 8.

[292] *Ibid.*

audit fees with the aim of recovering an appropriate share of the costs of office-wide projects and systems.[293]

6.47 The Audit Office responded that it agreed with the recommendation, subject to further consideration of the benefits and costs of the approach noting that:

> The Office's practice has been to seek additional appropriation funding to meet the costs of significant whole of office projects because this approach is more transparent than including a levy in audit fees charged to each agency for their 'fair share' of such costs.[294]

6.48 In the interests of transparency and direct accountability, the Committee is of the view that, in the first instance, increases in appropriation should be provided to cover the cost of office-wide projects and systems. Only after attempts to procure additional funds have been unsuccessful should the Office consider recouping costs, or part thereof, by increases in audit fees.

6.49 The Committee notes that there is no sliding scale of compliance that is proportional with the size of an audit office. The Audit Office is expected to comply with various standards to the same extent as would be expected of the ANAO or the NSW Audit Office.

6.50 Consequently, without additional funding, the impost on a small office is significant, especially where the performance audit function is funded by a budget appropriation as is the case in the ACT.

6.51 The Committee notes that the Audit Office receives an appropriation from the Government for corporate services, other corporate requirements, investigations and its performance audit function. The cost of financial audits is recoverable from audit fees. As part of the Select Committee on Estimates inquiry into the 2010–11 Appropriation Bill, the Auditor-General explained:

> The budget 2010-11 will provide the office with about $2.2 million. Within this funding, the office will need to deliver a performance audit program, conduct reviews and investigations of other issues raised in public representations, including issues raised under the Public Interest Disclosure Act, provide various reports to the Assembly, including our annual report and our report on the

[293] Sendt, B. (2010) *Report of the Independent Performance Audit of the Operations of the ACT Auditor-General and the ACT Audit Office*, 3 May, p. 33.

[294] *Ibid.*

> financial audit program, and various submissions to inquiries. This $2.2 million also includes the funds to pay for the share of corporate services, including accommodation and IT support. So I would like to clarify, in a sense, that the $2.2 million given to us in the budget is not only for the performance audit program but for a wide range of other activities relating to the functions of the office.
>
> As is the case in the last three budgets, the office sought a very modest increase in funding of $151,000 to comply with new auditing standards externally enforced on us. As we will not have that funding in the budget 2010-11, it will be another challenging year for us when we try to deliver the activities I have mentioned, within very limited funding.[295]

6.52 The Committee also notes the finding of the Commonwealth JCPAA's inquiry into the efficiency dividend, that departments and agencies receive new policy funding which can be used as a buffer to cross-subsidise current operations and to help meet, for example, an efficiency dividend and the 'indexation gap'.

6.53 However, the JCPAA found that small, technical agencies, such as audit offices, which have legislated mandates and specific responsibilities, very rarely receive new policy funding and find it difficult to find savings when costs are incurred that cannot be reasonably anticipated.[296] The JCPAA stated in its report:

> Smaller agencies have legislated mandates and specific responsibilities. It is difficult to find savings in their core function areas. Larger agencies have more flexibility and are often able to meet the dividend by reprioritising, or downgrading services. This is seldom an option for smaller agencies.[297]
>
> …
>
> Many oversight agencies and regulatory agencies do not have control over their workloads. They respond to requests from the Government and the public. These requests must be dealt with and these agencies can rarely reduce or find savings in core areas. Unfortunately, these core services often comprise a large part of their budgets.[298]

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[295] Mrs Tu Pham, Select Committee on Estimates 2010–11, 2010–11, Inquiry into Appropriation Bill 2010–2011, *Transcript of evidence*, 24 May 2010, p. 1024.

[296] Commonwealth Joint Committee on Public Accounts and Audit (JCPAA) (2008) *The efficiency dividend and small agencies: Size does matter*, Report No. 413, December, Parliament of the Commonwealth of Australia, Canberra.

[297] *Ibid.*, p. 16.

[298] *Ibid.*, pp. 16–17.

6.54 The Committee emphasises that without additional funding to meet mandatory compliance activities, such as professional auditing standards, resources will continue to be diverted from the performance audit program, and other activities, in order to maintain quality outcomes. Further, where such a situation prevails, there is a potential risk that the Office may not be able to effectively respond to changing auditing and accounting standards. There is also a consequent risk to the reputation of the Office.

6.55 The outcome of a reduced performance audit program, and poor compliance with mandatory professional standards is also a risk for the Assembly. The Auditor-General is responsible for assisting the Assembly to hold the Executive Government to account; any reduction in core oversight activities and risk to the Audit Office's reputation undermines the Assembly's role in accountability and good governance.[299]

Role of relevant professional standards

6.56 The Committee notes that enabling legislation for Auditors-General in most Australian jurisdictions contains a requirement for the Auditor-General to apply, or have regard for, recognised professional standards and practices.[300]

6.57 The ACAG commented that the Act was silent on the extent to which the ACT Auditor-General must have regard to relevant auditing standards and other professional requirements.[301]

6.58 The ACAG submitted that:

> While the Auditor-General should have the freedom to undertake audits in the manner which he or she deems fit, it would be appropriate to recognise in the legislation that the Auditor-General may take into consideration relevant professional standards and practices including auditing standards issued by the AUASB and other professional standards to the extent relevant. This should not be seen in any way, however, as limiting the matters that the Auditor-General may have regard to in conducting any audits including those under the *Corporations Act*.[302]

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[299] Commonwealth Joint Committee on Public Accounts and Audit (JCPAA) (2008) *The efficiency dividend and small agencies: Size does matter*, Report No. 413, December, Parliament of the Commonwealth of Australia, Canberra.

[300] Submission No. 2, ACT Auditor-General's Office, January 2010, p. 3.

[301] Submission No. 3, ACAG, February 2010, p. 2.

[302] *Ibid.*

6.59 The Government also supported consideration being given to the incorporation of passages similar to that identified in the NSW *Public Finance and Audit Act 1983* into the Act so as to take account of developments in both auditing standards and public administration in the ACT and other jurisdictions.[303]

6.60 The Committee is of the view that there is merit in having a provision in the Act, for the Auditor-General to apply, or have regard to, recognised professional standards and practices, though it should not in any way be seen as limiting the matters that the Auditor-General may have regard to in conducting any audits including those under the *Corporations Act 2001*.

RECOMMENDATION 32

6.61 **The Committee recommends that the *Auditor-General Act 1996* be amended to include a provision that the Auditor-General may take into consideration relevant professional standards and practices including auditing standards issued by the AUASB and other professional standards to the extent relevant. This provision should not in any way be seen as limiting the matters that the Auditor-General may have regard to in conducting any audits including those under the Commonwealth's *Corporations Act 2001*.**

Amendments concerning information

6.62 This section sets out evidence together with the Committee's position, where applicable, concerning proposed amendments to strengthen and clarify the legislative provisions regarding the handling of information that relates to the audit functions of the Audit Office.

Exemption from provisions of the *Freedom of Information Act 1989*

6.63 Submissions to the Committee made reference to the *Freedom of Information Act 1989* (the FOI Act) and its application to the Auditor-General. In particular, evidence received suggested that the Auditor-General should be

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303 Submission No. 4, ACT Government, February 2010, p. 2.

provided with a specific exemption from the provisions of the FOI Act, insofar as they relate to the audit functions of the Office.[304]

6.64 The FOI Act includes general provisions which exempt the disclosure of certain information, however, there are no specific exemptions provided in relation to the Auditor-General.

6.65 To resolve this would require the relationship between the confidentiality provisions of the Act, and the requirements of the FOI Act to be more clearly stated. This could be achieved by exempting the Auditor-General from the operation of the FOI Act in relation to information that relates to the audit functions of the Office.[305]

6.66 The importance of such an exemption to the work of the Auditor-General was explained by the ACAG:

> It is important because where audits are underway or planned and the auditor is privy to information that might be quite sensitive, I think it is important to protect that from freedom of information requests, if only to enable the auditor to maintain access to information. You can imagine a circumstance where a person might feel very reluctant or would resist passing information to the auditor if they were aware that third parties might get access to that information through freedom of information requests. From my own experience, the Northern Territory introduced its first equivalent of the Freedom of Information Act about three years ago and a subsequent amendment to the act—not initiated by me, by the way—recognised the risks of information being passed to statutory officers, for example me or the ombudsman, where that information could become subject to freedom of information requests. So it is really for audits that are underway and where information is considered to be quite sensitive. I think there is a good case for arguing that there should be an exemption from freedom of information for those records. But audits aside, with the normal day-to-day operations of the auditor-general's department or office, I can see no compelling reason why they cannot be subject to FOI requests.[306]

6.67 The Committee is aware that in all Australian jurisdictions, the Auditor-General is either fully or partially exempt from the provisions of their respective freedom of information legislation.

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[304] Submission No. 3, ACAG, February 2010, p. 8; Submission No. 2, ACT Auditor-General's Office, January 2010, p. 12.
[305] Submission No. 3, ACAG, February 2010, p. 8.
[306] Mr Frank McGuiness, *Transcript of evidence*, 12 March 2010, pp. 35–36.

6.68 The Committee is also aware that the Tasmanian Auditor-General is not currently exempt, but a recent review of FOI legislation in that jurisdiction agreed that an exemption was appropriate.[307]

6.69 The Committee understands that the Audit Office in it submission to the ACT Standing Committee on Justice and Community Safety's inquiry into the FOI Act submitted that:

> …To protect the integrity of the independent audit process, the Auditor-General should be able to have full access to information to undertake her or his work unimpeded, and to have the confidence of that information obtained as part of the audit process is fully protected against disclosure outside the public audit reports tabled in the Assembly.
> …there is merit in providing, in any reformed legislation, for the specific exemption of the Auditor-General from the provisions of the FOI Act, insofar as they relate to the audit functions of the Office.[308]

6.70 In evidence at a public hearing, the Auditor-General elaborated further:

> The Auditor-General Act gives a very strong power to get access to any document kept by the audited agency, so we do have power to get access to commercial-in-confidence information, cabinet-related matters. If we are subjected to the Freedom of Information Act, it may compromise the integrity of the audit process because this information is protected information. People would feel very reluctant to provide the information to us if the information cannot be protected under the Freedom of Information Act.
>
> It is not reasonable to expect us to make a decision regarding the FOI [A]act as it applies to documents created by another agency. For example, if a piece of information is requested under freedom of information, that piece of information should be requested through the agency and not through the Auditor-General's Office, because the agency is the one in a position to make the right decision about the contents of that document, whether or not that document should be or can be protected within the FOI act. We collect so many documents and information and we would not be in a better position than the agency itself to make that decision. So it means that a request for information under the Freedom of Information Act should be requested directly to the agency and not to the Auditor-General's Office.
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> …We only seek exemption in relation to audit functions; that means information collected as a part of the audit process, not about admin information.[309]

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[307] Submission No. 2, ACT Auditor-General's Office, January 2010, p. 12.
[308] *Ibid*.
[309] Mrs Tu Pham, *Transcript of evidence*, 12 March 2010, p. 22.

6.71 The Committee supports the basis on which submissions have proposed that the Auditor-General be exempted from the operation of the FOI Act in relation to information that relates to the audit functions of the Office.[310]

6.72 The Committee is of the view that this would strengthen the existing requirement under the Act to maintain confidentiality of protected information. In practice, this would mean that all information obtained as part of the audit process would be fully protected against disclosure outside the public audit reports tabled in the Legislative Assembly.

6.73 However, the Committee is aware that the Standing Committee on Justice and Community Safety is currently inquiring into the FOI Act. The Committee is therefore of the view that the application of the FOI Act with regard to the Auditor-General should be referred to the Standing Committee on Justice and Community Safety for consideration as part of its inquiry.

RECOMMENDATION 33

6.74 **The Committee recommends that the Standing Committee on Justice and Community Safety, as part of its inquiry into the *Freedom of Information Act 1989*, consider the application of the FOI Act with regard to the Auditor-General.**

Disclosure of protected information

6.75 Two matters were raised with the Committee with regard to strengthening the provisions relating to the disclosure of protected information. These were concerned with the: (i) requirements for finalising and reporting audits under sections 17 and 18 of the Act; and (ii) expanding the circumstances in which the Auditor-General may disclose protected information under section 36 of the Act.

Requirements for finalising and reporting audits

6.76 Sections 17 and 18 of the Act set out certain requirements for finalising and reporting audits. Section 18 of the Act specifically requires that, before finalising an audit report, the Auditor-General must give a copy of the

[310] Submission No. 3, ACAG, February 2010, p. 8.

proposed report to the responsible chief executive of audited agencies, offer the Chief Executive the opportunity to comment on the proposed reports, and to have the substance of any written comments made to the Auditor-General taken into account in the report.[311] This clause is a very important feature of the provisions relating to the requirements for finalising and reporting audits.

6.77 In particular, the current requirements under section 18 do not include a specific provision restricting officers, who receive a copy of a proposed report to comment on, from disclosing the information contained in the proposed report.

6.78 ACAG submitted that this could be addressed as an interim measure by the Auditor-General providing a direction under section 35 of the Act to prevent disclosure of protected information in relation to the proposed report. It was of the view, moreover, that such protection should be afforded as a matter of course without the need for a direction under section 35. [312]

6.79 Accordingly, ACAG suggested that this provision:

> …would be significantly strengthened if persons receiving proposed reports under section 18 were specifically prevented from disclosing the information received except to the extent it was necessary to provide comments or submissions to the Auditor-General or obtaining advice on matters raised. This should also be supported by appropriate penalties for non-compliance. This would ensure an appropriate level of confidentiality is maintained prior to the report being finalised and tabled in the Legislative Assembly. These requirements and penalties should apply to public servants and to boards and staff of non-government entities that may be subjected to audit under item 2 above.[313]

6.80 Another issue raised relates to section 18 specifying that the responsible person to whom the various requirements under the section must be afforded is ‘the responsible chief executive’.

6.81 However, entities subject to an audit may also include non government entities such as contractors or other service providers. To date, the Auditor-

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311 Submission No. 2, ACT Auditor-General’s Office, January 2010, pp. 16–17; Submission No. 3, ACAG, February 2010, p. 8.
312 Submission No. 3, ACAG, February 2010, p. 7.
313 *Ibid.*, p. 8.

General advised that notwithstanding the reference to 'responsible chief executive' in finalising an audit report:

> …the Auditor-General will seek comment from the chief executive (or equivalent) of all affected entities, including where appropriate, non government entities such as contractors or other service providers. To provide natural justice, it is indeed important that the Auditor-General also allows affected parties in non-government bodies or individuals who are not ACT public servants, the opportunity to respond to adverse comments and findings affecting them. To maintain the confidentiality of the report, the practice of the Audit Office is to provide related parties with an extract of the relevant sections of the proposed report. Although consistent with the intent of the Act, the provision for such practices was not included in Section 18.[314]

6.82 The Committee believes that suitable amendments to section 18 of the Act to specifically provide for the Auditor-General to give copies of proposed reports to any person or entity with an interest in the audit would clarify and strengthen the approach for finalising and reporting audits.

6.83 In this regard, a useful example on which to frame such an amendment can be drawn from the Commonwealth's *Auditor-General Act 1997* (Cwlth). Section 19(3) of that Act states:

> After preparing a proposed report on an audit , the Auditor-General may give a copy of, or an extract from, the proposed report to any person (including a Minister) who, or any body that, in the Auditor-General's opinion, has a special interest in the report or the content of the extract.
>
> The Act then requires the Auditor-General to have regard to any comments provided by the recipient of the proposed report or an extract before preparing the final report.[315]

6.84 Further, section 18 of the Act should also be amended to provide that persons receiving proposed reports under section 18 be specifically prevented from disclosing the information received except to the extent it is necessary to provide comments or submissions to the Auditor-General or obtaining advice on matters raised. This should also be supported by appropriate penalties for non-compliance.

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[314] Submission No. 2, ACT Auditor-General's Office, January 2010, pp. 16–17.
[315] *Ibid.*

6.85 The Committee is of the view that appropriate amendments to the Act would resolve the matters raised and would also clarify and strengthen the procedures and requirements for finalising and reporting audits.

RECOMMENDATION 34

6.86 **The Committee recommends that section 18 of the *Auditor-General Act 1996* be amended to reflect section 19(3) of the Commonwealth *Auditor-General Act 1997*.**

Disclosure of protected information

6.87 Section 36 of the Act sets out the situations or circumstances in which the Auditor-General may disclose protected information.

6.88 The ACAG submitted that consideration should be given to expanding the circumstances in which the Auditor-General may disclose protected information under section 36 of the Act to certain other bodies on the basis that it relates to the audit function or work of the Office.[316]

6.89 In the first instance, ACAG recommended specifically that section 36 be expanded to recognise the Auditor-General's ability to disclose information to the ACT Legislative Assembly (or relevant parliamentary committees). As a supplement, ACAG also suggested that consideration be given to extending the coverage to include the police and other agencies, such as the Australian Securities and Investment Commission (ASIC), and the courts to assist with the investigation and prosecution of offences.[317]

6.90 The Committee supports expanding the circumstances in which the Auditor-General may disclose protected information.

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[316] Submission No. 3, ACAG, February 2010, p. 8.

[317] *Ibid.*

RECOMMENDATION 35

6.91 **The Committee recommends that section 36 of the *Auditor-General Act 1996* be examined to ensure that the Auditor-General has the ability to disclose information to the Legislative Assembly (or relevant parliamentary committees); the police and other agencies, such as the Australian Securities and Investment Commission, and the courts to assist with the investigation and prosecution of offences.**

Access to legal opinions

6.92 The Auditor-General has broad powers of access to information and these powers are widely accepted as essential for the effective conduct of the Auditor-General's functions.[318]

6.93 However, the Committee is aware that some concern has been expressed in other jurisdictions that claims of legal professional privilege may inhibit an Auditor-General's access to legal documents and legal opinions.[319]

6.94 Whilst, according to the Auditor-General, this has not been an issue or significant concern in the ACT, there may be some merit in removing any doubt in such circumstances by amending the Act to make it clear that the Auditor-General has the power to access legal documents and legal opinions notwithstanding the protections afforded by legal professional privilege.[320]

6.95 The Committee is aware that that the Commonwealth Auditor-General in his submissions to the JCPAA's recent inquiry into the Commonwealth *Auditor-General Act 1997* also raised this matter for consideration with regard to the operations of the Commonwealth Auditor-General.[321]

Assurance and other services

6.96 The Auditor-General submitted that the Audit Office continues to provide a range of services, under the Act, other than financial and performance audits.

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[318] Submission No. 2, ACT Auditor-General's Office, January 2010, p. 13.
[319] *Ibid.*
[320] *Ibid.*
[321] *Ibid.*

Some of these services are functions required of the Auditor-General as prescribed by other Territory statutes, for example, under the *Government Procurement Act 2001* and the *Public Interest Disclosure Act 1994*. Other legislative functions are debated from time, for example, the Government Agencies (Campaign Advertising) Bill 2008.[322]

6.97 At times, the Auditor-General submitted that the clarity concerning these additional roles and responsibilities can range from being clear in some instances to less so in regard to other matters. These additional roles and responsibilities fall under the gambit of assurance services and activities and are recognised in the auditing standards issued by the auditing profession.[323]

6.98 To date the Committee understands that 'where the Audit Office has engaged in these types of activities (and similar activities such as reviewing or investigating matters raised in representations to the Auditor-General from the community or other parties), the Audit Office has relied on functions under section 10(a) or 10(f)' of the Act.[324]

6.99 The Auditor-General submitted that there may be merit, however, in clearly providing for the conduct of assurance activities in the functions of the Auditor-General under the Act. This outcome could be achieved, for example, by amending section 10(d) to read:

> To conduct performance audits and assurance activities in relation to any person, body or thing ascertained in accordance with the regulations.[325]

Other matters relating to coverage and mandate

Audits conducted under the *Corporations Act 2001*

6.100 The ACAG submitted that consideration be given to ensuring that audits conducted under the *Corporations Act 2001* are not seen as limiting the powers of the Auditor-General.[326]

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[322] Submission No. 2, ACT Auditor-General's Office, January 2010, pp. 3–4.
[323] *Ibid.*
[324] *Ibid.*, p. 4.
[325] *Ibid.*
[326] Submission No. 3, ACAG, February 2010, pp. 6–7.

6.101 Under section 13 of the Act, the Auditor-General is required to accept appointment under the *Corporations Act 2001* as auditor of a public sector company. Whilst section 13 recognises that this appointment does not by implication limit the Auditor-General's power to engage a person under section 24 of the Act, it does not make any reference to the effect of this appointment on any other of the Auditor-General's powers when undertaking audits under the *Corporations Act 2001*.

6.102 Accordingly, section 13 of the Act could be amended to clarify the effect of the appointment of the Auditor-General, as auditor of a public sector company, on any other of the Auditor-General's powers when undertaking audits under the *Corporations Act 2001*. A suitable provision, for example, could include:

> For the audit of a public sector company, the powers and functions conferred and imposed on the Auditor-General under this Act are in addition to the powers and functions conferred under the Corporations Act or any other written law in relation to the audit. [327]

RECOMMENDATION 36

6.103 **The Committee recommends that the ACT Government seek advice on the effect of section 13 of the *Auditor-General Act 1996* on the powers of the Auditor-General.**

Clarification of 'controlling interest'

6.104 Section 5 of the Act permits the Auditor-General to conduct 'special financial audits' (section 11) or performance audits (section 12) of any entity where the Territory has a 'controlling interest' in a company, joint venture, or trust.

6.105 However, the definition of 'Controlling interest' in the Act differs from what would conventionally be understood to mean a 'controlling interest'. The Auditor-General advised:

> 'Controlling interest' in the Auditor-General Act differs from the conventionally understood meaning of controlling interest because the Territory does not need the capacity to 'control' the company, joint venture, or trust for a 'controlling' interest to exist. Currently, a 'controlling interest' will exist for these entities

[327] Submission No. 3, ACAG, February 2010, pp. 6–7.

> where less than 50 percent interest is held by the Territory provided no other person has a greater interest than the Territory.[328]

6.106 In effect, the definition of 'Controlling interest' in the Act refers to those entities, departments, Territory entities, public sector companies and joint ventures where the Territory is the 'predominant controlling interest', as well as trusts in similar circumstances.

6.107 The Auditor-General explained that section 5 of the Act should be retained in entirety because it:

- ensures that the Auditor-General has the discretion to conduct special financial audits of entities in circumstances where the Territory would otherwise not have control (for example, land joint ventures). Further, this authority is permitted irrespective of whether the entity has appointed the Auditor-General as auditor or has appointed another auditor;
- ensures the Auditor-General can audit the financial information of entities included in the financial statements of a Territory agency that holds the controlling interest in the company, joint venture, or trust. For example, the Auditor-General has the authority to audit the information of all land joint ventures included in the financial results of the Land Development Agency; and
- provides greater assurance that the audited financial results of applicable entities will be available in time for incorporation in the financial reports of the Territory agencies with the predominant 'controlling interest' in these entities.[329]

6.108 Effectively, whilst section 5 of the Act, in practice, can be applied in a relatively workable manner to nearly all entities, as it is reasonably straightforward to determine whether the Territory is the predominant controlling interest, the Auditor-General suggested that there would be some merit in clarifying:

> …'controlling interest' in relation to companies that are limited by guarantee because the interest in such companies can be more difficult to determine. For example, legal advice was necessary to establish whether the Auditor-General had a mandate to conduct a performance audit of Community Housing Canberra Limited.[330]

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[328] Submission No. 2, ACT Auditor-General's Office, January 2010, p. 6.
[329] *Ibid.*
[330] *Ibid.*

RECOMMENDATION 37

6.109 **The Committee recommends that the ACT Government clarify its definition of the term 'controlling interest' in all applicable legislation and amend any, or all, Acts as required.**

Exemptions from audit

6.110 In relation to audits that would otherwise be required in any particular financial year, two matters were raised in evidence with regard to the Auditor-General having the ability to: (i) dispense with all or part of an audit; and (ii) exempt an entity from audit.

Dispense with all or part of an audit

6.111 The Committee is aware that audit legislation in a number of Australian jurisdictions provides the Auditor-General with the ability to dispense with all or part of an audit that would otherwise need to be undertaken in any particular financial year.[331]

6.112 The ACAG advised that provisions along these lines are:

> …beneficial in circumstances where there are a number of smaller audits undertaken on an annual basis which are considered to represent low risk to the whole of government and for which there is little, if any, public benefit in requiring the Auditor-General to undertake these audits. By dispensing with the need to undertake these audits the Auditor-General has greater flexibility and capacity in undertaking audits which have a greater impact at the whole of government level.[332]

Exempt an entity from audit

6.113 The Committee is also aware that some jurisdictions also provide for foreign subsidiaries to be exempt from audit by the Auditor-General. This exemption is subject to the auditor of the entity being approved by the Auditor-General, or at least consulted prior to appointment.[333]

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[331] Submission No. 2, ACT Auditor-General's Office, January 2010, pp. 6–7.
[332] Submission No. 3, ACAG, February 2010, p. 7.
[333] *Ibid.*

6.114 The ACAG indicated that:

> These exemptions are provided at the discretion of the Auditor-General and may be required where it is either impracticable for the Auditor-General to undertake these audits or where the powers of the Auditor-General are not recognised in the relevant foreign country. It is acknowledged, however, that issues relating to foreign subsidiaries may not present a practical difficulty for the ACT Auditor-General at this point in time.[334]

Audit fees

6.115 Section 16 of the Act provides authority for the Auditor-General to charge fees for financial audits and other special audits. This permits the costs of financial audits to be recovered from the audited entities.[335]

6.116 As mentioned earlier in this report, performance audits and other activities of the Audit Office are funded through appropriations under sections 22 (and 22A) of the Act.[336]

6.117 As to the basis on which agencies are required to pay financial audit fees, the Auditor-General explained that it:

> …provides the Auditor-General with the financial capacity to meet the significant and frequent changes to the costs of the annual financial audit program. Costs will change when agencies are created or abolished, new audit or reporting requirements are introduced, or the circumstances of individual agencies change (e.g. due to administrative restructures, implementation of major initiatives, introduction of new systems, or changes to the control environment). These costs can be passed on directly to the audited entity.[337]

6.118 The Auditor-General put forward a number of suggestions to improve the fee charging arrangements for financial and other special audits. Generally, the proposed changes were concerned with the introduction or movement towards a broad financial audit fees framework and to improve the clarity of the current provisions concerning financial and other special audit fee charging arrangements. An example of a broad fees framework can be found at section 21 of the Western Australian *Auditor-General Act 2006*. A summary of the proposed changes is below.

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334 Submission No. 3, ACAG, February 2010, p. 7.
335 Submission No. 2, ACT Auditor-General's Office, January 2010, p. 9.
336 *Ibid*.
337 *Ibid*.

Exemptions for financial audit fees

6.119 Section 16(1) of the Act is concerned with types of financial audits. In particular, it prescribes that the section is applicable to audits of the financial statements of entities under the FMA Act, the special financial audits of entities' accounts and records pursuant to section 11 of the Act, and the audit of entities' accounts and records under another Territory law.

6.120 This part of the Act as it currently stands is unclear as to whether fees can be charged for financial audits that do not fall within the categories as specified in section 16(1) and which are set out above. For example, the Auditor-General explained that the Office often conducts 'other' financial audits such as of the land joint ventures and Commonwealth grant acquittals. Such audits may not be required by legislation.[338]

6.121 Further, section 16(1) was introduced before amendments were made to the FMA Act requiring the Auditor-General to review statements of performance of authorities and departments. To date the Auditor-General has charged fees for all financial audit work, including the review of annual statements of performance, consistent with the intention of section 16 to fund the financial audit operations of the Auditor-General.

6.122 The Auditor-General said that section 16 would be improved by not prescribing the types of financial audits for which audit fees may be charged. In particular, it was suggested that section 16 should ensure the Auditor-General:

> …has the power to charge fees for any audit of a financial report, review of statement of performance, grant acquittals, or other certification as required by the Commonwealth from time to time as a condition for the Territory agencies receiving funding for specific projects (e.g. economic stimulus projects).[339]

Removing reference to a 'scale of fees'

6.123 Section 16(2) of the Act relates to audit fees 'based on a scale of fees', and section 16(5) requires the Auditor-General to include details of 'the basis on which fees … were decided' in the annual report of the Auditor-General.

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[338] Submission No. 2, ACT Auditor-General's Office, January 2010, p. 9.
[339] *Ibid.*

However, the term 'scale of fees' is open to interpretation and is problematic in its application as it is not defined in the Act, was not referred to in the Explanatory Statement for the Act, and was also not debated when the Auditor-General Bill was considered in 1996.[340]

6.124 To date, the Audit Office's long standing practice, in terms of audit fees 'based on a scale of fees' has been to:

> ...charge fees that recover the estimated costs of financial audits based on the estimated time needed to complete each audit and the hourly cost of audit staff. The Audit Office prepares these time estimates using information on the actual time taken to complete these audits in previous years and takes into account any major factors that would cause significant changes to the resources needed to complete the audit.[341]

6.125 The Committee understands that the intent of the Audit Office's longstanding practice has been to recover costs, and the term 'scale of fees' has had no particular relevance to the Office. Accordingly, the Auditor-General submitted that section 16 of the Act would be improved by removing reference to a 'scale of fees' and considering provisions that introduce or move towards a broad fees framework.[342]

6.126 The Committee acknowledges that the reference to the term 'scale of fees' in the Act has been redundant and problematic for the Audit Office in terms of clarity with regard to its application because it has not been defined in the Act. Further, the Committee believes that the Audit Office should be able to effectively recover the costs of financial audits. The longstanding practice used by the Audit Office, as outlined above, to resolve this has been transparent and accountable. Of course, the Audit Office must ensure that any fee arrangement is clarified before an audit is commenced.

6.127 However, the clarity and transparency with regard to section 16 could be vastly improved by removing reference to a 'scale of fees' and considering appropriate provisions that introduce or move towards a broad fees framework. A suitable example of a broad fees framework, from which to

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340 Submission No. 2, ACT Auditor-General's Office, January 2010, p. 10.
341 *Ibid.*
342 *Ibid.*

frame any amendments along these lines can be found in the Western Australian *Auditor-General Act 2006*, which includes the following provision:

> **21. Audit fees**
>
> (1) The Auditor General is to determine whether a fee is to be charged for an audit carried out by the Auditor General under this Division and, if so —
> (a) the amount of that fee; and
> (b) the person or body who or which is liable to pay that fee.
> (2) A fee determined under subsection (1)(a) is to be paid by the person or body determined under subsection (1)(b).

RECOMMENDATION 38

6.128 **The Committee recommends that section 16 of the *Auditor-General Act 1996* be amended to improve clarity and transparency with regard to its application. The provisions in section 21 of the Western Australian *Auditor-General Act 2006* relating to 'Audit fees' could be used to assist with framing any amendments.**

Resolving inconsistency

6.129 The *Territory-owned Corporations Act 1990* (the ToC Act) refers to the authority of the Auditor-General to charge audit fees. However the ToC Act was notified in December 1990, prior to the Act.

6.130 As a consequence, the fee charging arrangements contained in section 18(2) of the ToC Act are not consistent with the requirements of section 16 of the Act, in that the ToC Act states that:

> ..a company that has appointed the Auditor-General as its auditor must pay 'the Auditor-General's reasonable fees and expenses'. Under section 18(3), in default of an agreement, the reasonable fees and expenses of the Auditor-General are to be decided by the Treasurer.

6.131 The Auditor-General submitted that audit fee arrangements for Territory-owned corporations should be on the same basis as that which applies to other agencies (departments and authorities).[343]

6.132 The Committee supports the Auditor-General's position, in that audit fee arrangements for Territory-owned corporations should be consistent with

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[343] Submission No. 2, ACT Auditor-General's Office, January 2010, pp. 9–11.

those arrangements that apply to other agencies. In addition, the Committee considers that it would be appropriate for all financial audits fee setting arrangements to be contained within the Act. Accordingly, the ToC Act should be amended to remove sections 18(2) and (3) as they are not consistent with the requirements of section 16 of the Act.

RECOMMENDATION 39

6.133 **The Committee recommends that sections 18(2) and 18(3) of the *Territory-owned Corporations Act 1990* be removed as they are not consistent with the requirements of section 16 of the *Auditor-General Act 1996*.**

Providing advice and information

6.134 The Auditor-General submitted that an area of activity that is placing increasing pressure on the Audit Office is the provision of advice and information to various entities.[344]

6.135 Where such advice or information relates to financial statement audits of the relevant entity, there is some capacity for the Auditor-General to recover the costs involved in providing such information through the audit fees that are charged. However, the Committee understands that, in a large part the advices and services are provided at a broader level in the form of general assistance, and are subsequently funded through the budget appropriation provided to the Office.[345]

6.136 The Auditor-General submitted that:

> The Audit Office does not have specialist technical advisors, as some other larger audit offices do, and therefore has to constantly balance the extent of the general assistance against the relative priorities of other matters at hand. This is not always ideal.[346]

6.137 The Committee is of the view that there is some merit in the Audit Office having a clear mandate to recover the costs of providing advice and

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[344] Submission No. 2, ACT Auditor-General's Office, January 2010, p. 11.
[345] *Ibid.*, pp. 11–12.
[346] *Ibid.*

information. The provisions as set out in section 23 of the Western Australian *Auditor-General Act 2006* relating to 'Provision of advice or information' provides a suitable example of how any amendments may be framed to provide such a mandate.[347]

RECOMMENDATION 40

6.138 **The Committee recommends that the *Auditor-General Act 1996* be amended to provide the Audit Office with the ability to recover the costs of providing advice and information. The provisions in section 23 of the Western Australian *Auditor-General Act 2006* relating to 'Provision of advice or information' could be used to assist with framing any amendments.**

Economic and environmental issues

6.139 Section 12(3) of the Act empowers the Auditor-General to assess environmental issues and economically sustainable development. This is a functional mandate that no other Australian Auditor-General has. Specifically, the Act states:

> In the conduct of a performance audit, the auditor-general may, where appropriate, take into account environmental issues relative to the operations being reviewed or examined, having regard to the principles of ecologically sustainable development.[348]

6.140 A submission to the inquiry from the ACT Commissioner for Sustainability and the Environment commented that:

> …we could see future opportunities to work with the Auditor-General in a collaborative manner.[349]

6.141 The Commissioner suggested that collaborative opportunities could involve: (i) joint investigations, 'where a combination of public administration and environmental expertise would enhance as a result of cross sectoral understanding, investigation findings and recommendations' or (ii) assisting

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347 Submission No. 2, ACT Auditor-General's Office, January 2010, p. 12; Section 23, WA *Auditor-General Act 2006*.

348 Section 12(3), *ACT Auditor-General Act 1996*.

349 Submission No. 5, Office of the Commissioner for Sustainability and the Environment, March 2010.

the Auditor-General in relation to performance audits conducted under section 12(3) of the Act.

6.142 The Committee is aware that the Office of the Auditor-General of Canada has a specific environment and sustainable development mandate. The mandate was established through amendments in 1995 to the Canadian *Auditor-General Act 1985*. Amongst other things, the amendments created the position of the Commissioner of the Environment and Sustainable Development and added environmental effects to the considerations that the Auditor-General must take into account when reporting to Parliament.[350]

6.143 Further, under the provisions of the 1995 amendments, the Commissioner of the Environment and Sustainable Development is appointed by the Auditor General of Canada (the Commissioner holds the rank of Assistant Auditor General) and assists the Auditor General in carrying out their environmental audit responsibilities.[351]

6.144 The Committee believes that collaborative opportunities, as outlined above, could be mutually beneficial to the Auditor-General and the Commissioner for Sustainability and the Environment. Further, these arrangements may be worthwhile in encouraging and oversighting performance by the Government with regard to sustainability and environmental considerations/performance.

6.145 The Committee is therefore of the view that the Auditor-General and the Commissioner for Sustainability and the Environment should explore the feasibility of the practicalities of conducting joint investigations or performance audits and whether any legislative amendments are needed to support such collaborative arrangements.

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350 Office of the Auditor-General of Canada, accessed 15 October 2010 < http://www.oag-bvg.gc.ca/internet/English/esd_fs_e_46.html

351 Backgrounder—Commissioner of the Environment and Sustainable Development, accessed 15 October 2010, <http://www.oag-bvg.gc.ca/internet/English/cesd_fs_e_29451.html>

RECOMMENDATION 41

6.146 **The Committee recommends that the *Auditor-General Act 1996* be amended to allow the Auditor-General to conduct joint investigations and/or performance audits with other statutory office holders tasked with oversighting institutional integrity within government.**

7 CONCLUSION

7.1 The Committee wishes to thank the organisations and individuals who have contributed to its inquiry, by making submissions, by providing additional information, and by giving evidence.

7.2 The Committee recognises the significant commitment of time and resources required to participate in an inquiry of this nature and is grateful that it was able to draw on a broad range of expertise and experience in its deliberations. The Committee notes that it has adopted many of the recommendations, or variations thereof, suggested by participants as recommendations for this report.

7.3 The Committee has made 41 recommendations in relation to its inquiry into the *Auditor-General Act 1996*. The recommendations are focused on: (i) strengthening and safeguarding the independence of the Auditor-General; (ii) clarifying and strengthening provisions in the Act; and (iii) ensuring that the Auditor-General is equipped with the necessary powers and resources to carry out their role and mandate in the emerging contemporary public sector environment.

Caroline Le Couteur MLA

Chair

8 February 2011

APPENDIX A: List of written submissions

Written submissions received by the Committee:

No. 1	Individual—Emeritus Professor Roger Wettenhall
No. 2	ACT Auditor-General's Office
No. 3	Australasian Council of Auditors-General (ACAG)
No. 4	ACT Government
No. 5	ACT Commissioner for Sustainability and the Environment

APPENDIX B: Committee public hearings

List of witnesses who appeared before the Committee at public hearings:

Public hearing of Friday 12 March 2010

- Mr Jon Stanhope MLA, Chief Minister
- Mr Andrew Cappie-Wood, Chief Executive, Chief Minister's Department (CMD)
- Ms Pam Davoren, Deputy Chief Executive, CMD
- Mrs Tu Pham, Auditor-General
- Mr Bernie Sheville, Director, Financial Audits, ACT Audit Office
- Mrs Jacqui Roessgen, Acting Director, Performance Audits and Corporate Services, ACT Audit Office
- Mr Frank McGuiness, Convenor, Australasian Council of Auditors-General (ACAG)
- Emeritus Professor Roger Wettenhall, Professor of Public Administration and Visiting Professor ANZSOG Institute of Governance, University of Canberra

APPENDIX C: ACT Auditor-General and ACT Audit Office—Summary of legislative provisions[352]

Officer of Parliament in Act	Independence (Section 9 of the Act[353])	Period of appointment (Schedule 1 of Act)	Method of appointment (Section 8 of Act)	Suspension and dismissal (Schedule 1 of Act)	Remuneration and allowances	Budget (Section 22 and 22A of the Act)	External Review (Part 5 of the Act)	Reporting (Section 17 and 19 of the Act)	Legislation
No	The Act supports the independence of the Auditor-General by specifically providing that the Auditor-General is not subject to any direction by the Executive or any Minister in the exercise of the functions of the Auditor-General.	Seven years Not eligible for re-appointment.	The Executive The Minister must refer the proposed appointment to the Public Accounts Committee (PAC) inviting the PAC to respond to the proposal. PAC can veto the proposed appointment.	No provision to suspend the Auditor-General. The Executive may retire the Auditor-General. The Executive may remove the Auditor-General on a resolution from the Legislative Assembly. The Executive may remove the Auditor-General on other grounds.	Determined by the remuneration tribunal (paid from the Consolidated Revenue Fund).	The PAC advises the Treasurer of proposed appropriation and provides the Treasurer with the Auditor-General's draft budget. The Auditor-General to advise the PAC if the appropriation for the year is insufficient to conduct special financial audits and performance audits.	The Minister appoints an independent auditor to audit the Auditor-General's annual financial statement. The PAC appoints an independent auditor to conduct a performance audit of the operations of the Auditor-General.	The Auditor-General reports directly to the Legislative Assembly on any matter in connection with the exercise of their functions.	The legislation that has the greatest impact on the Auditor-General and Audit Office is the *Auditor-General Act 1996.* Other relevant legislation includes the: ▪ *Financial Management Act 1996* ▪ *Remuneration Tribunal Act 1995* ▪ *Public Sector Management Act 1994* (staff of the Audit Office are employed under this Act) ▪ *Territory-owned Corporations Act 1990* ▪ *Public Interest Disclosure Act 1994* ▪ *Government Procurement Act 2001*

[352] *Auditor-General Act 1996*; ACT Auditor-General's Office (2010), *2009–10 Annual Report*, pp. 5–6; Victorian Public Accounts and Estimates Committee (VICPAEC) (2006) *Report on a Legislative Framework for Independent Officers of Parliament*, February, Parliament of Victoria.

[353] *Auditor-General Act 1996.*

APPENDIX D: INTOSAI Mexico Declaration on SAI Independence

The International Office of Supreme Audit Institutions (INTOSAI) *Mexico Declaration 2004 on Supreme Audit Institution (SAI) Independence*[354]

[354] INTOSAI. (2009) Mexico Declaration, <http://www.intosai.org/> October.

Principle 1—The existence of an appropriate and effective constitutional/statutory/legal framework and of de facto application provisions of this framework

Legislation that spells out, in detail, the extent of SAI independence is required.

Principle 2—The independence of SAI heads and members (of collegial institutions), including security of tenure and legal immunity in the normal discharge of their duties

The applicable legislation specifies the conditions for appointments, re-appointments, employment, removal and retirement of the head of SAI and members of collegial institutions, who are:

- appointed, re-appointed, or removed by a process that ensures their independence from the Executive (see ISSAI-11 Guidelines and Good Practices Related to SAI Independence);
- given appointments with sufficiently long and fixed terms, to allow them to carry out their mandates without fear of retaliation; and
- immune to any prosecution for any act, past or present, that results from the normal discharge of their duties as the case may be.

Principle 3—A sufficiently broad mandate and full discretion, in the discharge of SAI functions

SAIs should be empowered to audit the:

- use of public monies, resources, or assets, by a recipient or beneficiary regardless of its legal nature;
- collection of revenues owed to the government or public entities; legality and regularity of government or public entities accounts;
- quality of financial management and reporting; and
- economy, efficiency, and effectiveness of government or public entities operations.

Except when specifically required to do so by legislation, SAIs do not audit government or public entities policy but restrict themselves to the audit of policy implementation.

While respecting the laws enacted by the Legislature that apply to them, SAIs are free from direction or interference from the Legislature or the Executive in the:

- selection of audit issues; planning, programming, conduct, reporting, and follow-up of their audits;
- organization and management of their office; and
- enforcement of their decisions where the application of sanctions is part of their mandate.

Principle 4—Unrestricted access to information

SAIs should have adequate powers to obtain timely, unfettered, direct, and free access to all the necessary documents and information, for the proper discharge of their statutory responsibilities.

Principle 5—The right and obligation to report on their work

SAIs should not be restricted from reporting the results of their audit work. They should be required by law to report at least once a year on the results of their audit work.

Principle 6—The freedom to decide the content and timing of audit reports and to publish and disseminate them

SAIs are free to decide the content of their audit reports.

SAIs are free to make observations and recommendations in their audit reports, taking into consideration, as appropriate, the views of the audited entity.

Legislation specifies minimum audit reporting requirements of SAIs and, where appropriate, specific matters that should be subject to a formal audit opinion or certificate.

SAIs are free to decide on the timing of their audit reports except where specific reporting requirements are prescribed by law.

SAIs may accommodate specific requests for investigations or audits by the Legislature, as a whole, or one of its commissions, or the government.

SAIs are free to publish and disseminate their reports, once they have been formally tabled or delivered to the appropriate authority—as required by law.

Principle 7—The existence of effective follow-up mechanisms on SAI recommendations

SAIs submit their reports to the Legislature, one of its commissions, or an auditee's governing board, as appropriate, for review and follow-up on specific recommendations for corrective action.

SAIs have their own internal follow-up system to ensure that the audited entities properly address their observations and recommendations as well as those made by the Legislature, one of its commissions, or the auditee's governing board, as appropriate.

SAIs submit their follow-up reports to the Legislature, one of its commissions, or the auditee's governing board, as appropriate, for consideration and action, even when SAIs have their own statutory power for follow-up and sanctions.

Principle 8—Financial and managerial/administrative autonomy and the availability of appropriate human, material, and monetary resources

SAIs should have available necessary and reasonable human, material, and monetary resources—the Executive should not control or direct the access to these resources.

SAIs manage their own budget and allocate it appropriately.

The Legislature or one of its commissions is responsible for ensuring that SAIs have the proper resources to fulfil their mandate.

SAIs have the right of direct appeal to the Legislature if the resources provided are insufficient to allow them to fulfil their mandate.

APPENDIX E: UK National Audit Office independence criteria for Commonwealth Auditors-General

The UK National Audit Office (NAO) independence criteria for Commonwealth Auditors-General.[355]

[355] UK National Audit Office (UKNAO) (1988) *Public Audit Manual.*

The UK National Audit Office (NAO) developed the following independence criteria for Commonwealth Auditors-General:

- appointment and dismissal of the Auditor-General not to be within the prerogative of the Executive
- the Auditor-General's salary to be a direct charge on public funds and not subject to annual appropriation
- the Auditor-General's right to report directly to the Legislature (rather than to or through the Executive) and to decide the nature and timing of the report
- the Auditor-General to have the power to appoint and pay staff, with regard to paid civil service conditions but subject only to budgetary approval by the Legislature or a body empowered to do so by the Legislature
- the Auditor-General to have discretion to decide the nature and conduct of the audit including value for money investigations, and to decide whether or not to accede to requests emanating from outside the Auditor-General's Office proposing matters for audit
- the Auditor-General to have a right of access to papers and information and to obtain explanations and information, and
- the audit mandate to cover all public enterprises.

APPENDIX F: Global Integrity—criteria for independent oversight officers

United States (US)-based organisation Global Integrity—criteria for independent oversight officers.[356]

[356] Global Integrity (2009) Integrity Indicators—
<http://www.globalintegrity.org/documents/IndicatorsCoding2009.xls>

The US-based organisation Global Integrity developed five criteria it considered should be included in law and practice for independent oversight officers.[357] The five criteria state that independent oversight officers should:

- be appointed in a way that supports independence
- be protected from removal without relevant justification
- be protected from political interference
- have a professional, full-time staff and receive regular funding, and
- make regular reports to the Legislature.

357 Global Integrity (2009) Integrity Indicators—<http://www.globalintegrity.org/documents/IndicatorsCoding2009.xls>; Robertson, G. (2009) *Independence of Auditors-General—A survey of Australian and New Zealand Legislation*, Commissioned by the Victorian Auditor-General's Office, July.

APPENDIX G: NZ Parliament—Procedures for the Appointment of an Officer of Parliament

I. 15A

Procedures for the Appointment of an Officer of Parliament

Report of the
Officers of Parliament Committee

FORTY-SEVENTH PARLIAMENT

Rt. Hon Jonathan Hunt

Chairperson

November 2002

Presented to the House of Representatives

Price Code: BX

Report of the Officers of Parliament Committee

The reports of the Standing Orders Committee in 1995 and 1996 on its Review of the Operation of the Standing Orders recommended that a parliamentary process be developed for all parliamentary appointments. Until now Mr Speaker has been responsible for the procedure for the appointment of an Officer of Parliament.

The Officers of Parliament Committee has approved revised procedures for the appointment of an Officer of Parliament (see Appendix). The procedures require Mr Speaker, through the Officers of Parliament Committee, consult widely with all members of Parliament and implement an appointment process.

The Officers of Parliament Committee recognises that a procedure of this nature can only be a guide. However, the committee is of the view that it is useful to codify practice. It draws attention to the procedure appended to this report in order that it may be a useful guide to good practice.

APPENDIX

Procedures for the appointment of an Officer of Parliament

Background

When a new Officer of Parliament position is established, and six months before the term of an existing Officer of Parliament is to end the Speaker, as Chairperson of the Officers of Parliament Committee, will initiate consultations with the parties represented in the House through the Officers of Parliament Committee, about an appointment. Where a party is not represented on the Officers of Parliament Committee, the Speaker will ensure that it is advised of the consultation and is able to have a representative attend meetings of the committee at which the appointment is discussed.

Consultation

It is the responsibility of the members serving on the Officers of Parliament Committee to consult directly with their party colleagues and to represent the views of those members accurately to the Officers of Parliament Committee. It is recognised, though, that any member of the House has the right to speak directly to the Speaker or the committee about the appointment of an Officer of Parliament.

The following Ministers will be specifically advised of the consultation to be undertaken through the Officers of Parliament Committee and invited to participate in it—

- Treasurer, in relation to the Controller and Auditor-General and the deputy Controller and Auditor-General
- Minister of Justice, in relation to an Ombudsman
- Minister for the Environment, in relation to the Parliamentary Commissioner for the Environment.

A Minister may nominate a substitute.

When an Office of Parliament or a new or additional Officer of Parliament position is created, the appropriate departmental Minister will be advised and invited to participate.

Nomination process

Any member of Parliament can suggest names for an appointment, but it is recognised that the responsible Government Minister will take a lead role in proposing a name or names for consideration. The Speaker will therefore give the Government sufficient time to consider possible nominees before convening any Officers of Parliament Committee meeting for the purposes of discussing the appointment. It is recognised that the responsible Government Minister will take a full participatory role in the Officers of Parliament Committee deliberations.

Each party will consider any names suggested for consideration in the light of the qualifications and qualities for appointment required by the relevant legislation and will use their best endeavours to find a person whose appointment can be supported by all parties. No public comment on proposed appointees will be made while consultations are continuing.

Recommendation

No proposal for the appointment of an Officer of Parliament will be put before the House without the unanimous agreement of the Officers of Parliament Committee unless the Speaker considers that it is impossible to secure the support of all members, it is unreasonable to prolong the consultations, and the public interest requires that an appointment be made forthwith. The Speaker will only consent to a proposal going forward in this way where, after extensive consultation, the Government and other parties agree about the proposed appointee but unanimous agreement cannot be reached due to the opposition of a party or parties representing a small minority of the members of Parliament.

A temporary appointment may be made on the Government's initiative while consultations are proceeding if the Speaker, in consultation with the Officers of Parliament Committee, agrees that it is reasonable that this should be done in any particular case.

A recommendation for an appointment that is concurred in pursuant to these procedures will be put forward to the House by way of a Government notice of motion in the name of the Leader of the House.

Costs

The costs associated with the appointment of an Officer of Parliament are the responsibility of the responsible Office of Parliament.

WELLINGTON, NEW ZEALAND:
Published by Order of the House of Representatives—2002

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APPENDIX H: UK House of Commons procedures for the appointment of the UK Comptroller and Auditor-General[358]

[358] INTOSAI, Comptroller and Auditor General and National Audit Office—United Kingdom, accessed 26 November 2010, <http://www.intosaiiaudit.org/mandates/writeups/uk.htm>

Comptroller and Auditor General and National Audit Office UNITED KINGDOM

Independence

The absence of a written constitution in the United Kingdom means that the SAI is established by Act of Parliament/Legislative body. The National Audit Office's (NAO) independence derives from the unique position of the Comptroller and Auditor General (C&AG - the head of the SAI). All statutory powers and rights governing the audit of central government finances are vested in the C&AG personally; the NAO has no independent corporate status - the NAO are the staff of the C&AG, and the C&AG himself is part of the NAO. The C&AG is appointed by HM The Queen, the Head of State, on an address from the House of Commons moved by the Prime Minister after agreement with the Chairman of the Public Accounts Committee. The C&AG can only be removed from office by HM The Queen on an address from both Houses of Parliament. The appointment of the C&AG is "without limit of time"; the officeholder cannot be a Member of Parliament, a Lord or hold any office under the Crown. The C&AG's salary is paid directly from the Consolidated fund rather than from a Departmental Vote. The staff of the NAO are not civil servants, and the C&AG, within certain guidelines, determines their salaries and conditions of service. The C&AG has ultimate discretion as to his work programme and how it is executed.

The various conditions of service of the C&AG to secure independence are:

- Special procedure for appointment
- Special procedure for removal
- Unlimited tenure
- Control over resources/budget
- Immunity/protection from the actions of others in the performance of his duties
- Independence to frame workplans

By virtue of his office the C&AG is an Officer of the House of Commons, and is independent of the Executive and the Judiciary; he has no relationship with investigating agencies. The independence of of external audit from the Executive is a key principal of Parliamentary accountability in the UK. The NAO has financial independence. The budget of the NAO is determined by the Legislature on a recommendation from the C&AG. The Public Accounts Commission, a committee of Members of Parliament established in 1983, considers the NAO's plans and budget. The Commission then makes a recommendation to the House of Commons to accept the budget. Accountability is through the Parliament - the Committee of Public Accounts and the Public Accounts Commission - and through independent auditors appointed by the Commission

Jurisdiction

The C&AG's audit remit extends to the audits of the accounts of central government and a wide range of other public bodies. He has a wide range of inspection rights at some 3,000 other public bodies. He has specific powers to carry out examinations of economy, efficiency and effectiveness (Value for Money examinations/performance audits). In summary:

- Central Government
- Bodies substantially funded by Central Government
- Audit of Receipts of the Government

[NB: The audit of the expenditure of local government authorities and the health authority accounts in England and Wales and Scotland is subject to other audit arrangements.]

Powers

The C&AG has comprehensive rights of access to the bodies that fall within his audit remit. The terms of the C&AG's access for financial audit are set out in Section 8 of the Government Resources and Accounts Act 2000 and for Value for Money examinations in Section 8 of the National Audit Act 1983. The C&AG has no powers to disallow expenditure, to impose surcharges or to take punitive action, or to follow public money wherever it goes. The terms of Section 6(2) of the National Audit Act 1983 explicitly prevent the C&AG from questioning the merits of policy objectives (but not their implementation).

Audit Procedures and Functions

The C&AG prescribes Financial, Compliance, Value for Money (Performance) and IT (EDP) audit in its scope of audit. The powers to perform these audits are mandated by the statutes governing the SAI - the Exchequer and Audit Departments Acts 1866 and 1921, the National Audit Act 1983 and the Government resources and Accounts Acts 2000. There is no express power to carry out IT (EDP) audit but its is implicit.

The NAO carries out financial audits designed to form an independent opinion on the financial statements of central government bodies and agencies. Each audit is planned to obtain sufficient, appropriate evidence on which to base the audit opinion. The form of the opinion depends on the basis on which the financial statements are produced. For financial statements produced on an accruals basis a "true and fair view" opinion is normally given. For all of the C&AG's opinions also explicitly state whether the money has been applied for the purposes intended by Parliament and whether the financial transactions conform to the authorities that govern them. The C&AG does not discharge any judicial functions.

During audit work the NAO perform a variety of procedures, depending on the judgement of the audit staff and the nature of the account. Audit policy is to comply in all respects with the Statements of Audit Standards issued by the Auditing Practices Board of the Consultative Committee of the Accountancy Bodies in the UK, particularly the guidance in Practice Note 10: Audit of the Financial Statements of Public Sector Entities in the United Kingdom. NAO staff are also guided by a Code of Conduct (ethical standard). The NAO also takes cognisance of guidance issued by INTOSAI Auditing Standards Committee and other bodies such as the International Federation of Accountants' Public Sector Committee. All reports on his work are made by the C&AG to Parliament, where they are considered by the Committee of Public Accounts. The C&AG has specific powers under Section 3 (2) of the National Audit Act 1983 which give him full discretion in appointing staff, including firms, to assist him exercise his functions.

The C&AG can collaborate with other countries' SAIs and with international organisations on matters relating to audit participating in INTOSAI, EUROSAI the Conference of Commonwealth Auditors General, UN Audit Panel and Technical Group and the Global Issues Working Group. The C&AG does not require any fraud or embezzlement to be reported statutorily to him by auditees, but may report to Parliament on cases of fraud, serious loss and waste. The C&AG has the power to share his audit reports with the public and the media. Such reports are publicly available. The NAO provides independent advice to Parliament and other audited entities as appropriate.

Organisation

The NAO is constituted as an audit office with monocratic status, headed by the C&AG. The C&AG is empowered to engage external auditors/agencies/consultants as required.

Administrative functions and miscellaneous

There are no express powers for the C&AG to expend resources budgeted independently; such expenditure is governed by the general administrative rules covered in the Accounting Officer's Memorandum and Government Accounting. The C&AG has full independence in forming his work-plan, subject to consultation with the Committee of Public Account under Section 1 of the National Audit Act 1983. Under Section 3 (2), (3) & (4)of the same Act the C&AG has powers to recruit and appoint staff and, within certain guidelines, to determine their salaries and conditions of service. The Public Accounts Commission, under Section 4 (5) and Schedule 3 of the 1983 Act, is empowered to appoint an auditor for the NAO to carry out both financial and Value for Money examinations. Although there is no express requirement, the C&AG makes an Annual General Report to Parliament on the financial audit work undertaken by the NAO.

Comptroller Function

The C&AG's Comptroller function makes him responsible for control of the Consolidated fund and the National Loans fund. The consolidated Fund was originally set up in 1787 as "one fund into which shall flow every stream of public revenue and from which shall come the supply of every service". The C&AG is required to give authority for treasury requisitions for issues from this and from the National Loans fund which covers government borrowing and lending. When authorising issues the C&AG (in practice NAO staff acting on his behalf) must assure himself that credits are requested for purposes having proper statutory authority and within amounts authorised by Parliament.