Queensland Law Society

Law Society House, 179 Ann Street, Brisbane Qld 4000, Australia
GPO Box 1785, Brisbane Qld 4001 | ABN 33 423 389 441
P 07 3842 5943 | F 07 3221 9329 | president@qls.com.au | qls.com.au

Office of the President

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Our ref NFP/17 and DA

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The Research Director
Finance and Administration Committee
Parliament House
George Street
Brisbane QLD 4000

By Post and Email to: fac@parliament.qld.gov.au

Dear Research Director

Inquiry into the legislative arrangements assuring the Queensland Auditor-General's independence

Thank you for providing Queensland Law Society with the opportunity to comment on the legislative arrangements assuring the Queensland Auditor-General's independence.

1. General comments

The Society strongly supports the Auditor-General being personally and operationally independent, and as financially independent as possible.

The International Organisation of Supreme Audit Institutions (INTOSAI) has produced a number of reports on audit independence for the Audit Offices of member countries, including the Mexico Declaration on SAI Independence, which establishes eight core principles as essential requirements for public sector auditing. We note that Principle 8 appears to be particularly important in the context of this Inquiry:

> ***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.*

We **enclose** a submission from the Australasian Council of Auditors-General (ACAG) in 2010 to the Inquiry into Victoria's *Audit Act 1994*, which discusses general principles for ensuring the Auditor-General's independence. We trust this will be of assistance to you.

2. Independence and autonomy

In June 2013, ACAG updated its report into the survey of Australian and New Zealand legislation on the Independence of Auditors General.[1] In relation to Managerial Autonomy and Resourcing, Queensland (along with several other State jurisdictions) was assessed as weak and that the Auditor General "remains vulnerable to decisions of the Executive."[2]

We also note the comments made in relation to Financial Independence:

Financial Independence

The usual Westminster appropriation process requires the Government to be held accountable for the budget and that it therefore should determine the budget's overall make-up and composition. However, leaving the budget for the Auditor General in the hands of the Executive could enable the Executive to starve the Auditor General of financial resources, thereby rendering him or her ineffectual.

In the United Kingdom, as part of the reforms introduced in 1983, and continued under more recent legislation, the Comptroller and Auditor General presents the National Audit Office budget to the Public Accounts Commission. The Treasury is able to make submissions to the Commission about the budget but it is the Commission that makes a recommendation to the House of Commons about whether to accept the budget.

- *In New Zealand, the Parliament decides on the level of funding for the Auditor-General, who submits his annual budget through the Speaker to Parliament directly. As in the United Kingdom, this approach reverses the decision making process, with the Parliament making the decision after considering submissions from the Executive. Further, under the New Zealand approach, the Speaker is the "Vote Minster" responsible for the Auditor General's appropriation, ensuring that the Executive is not in a position to constrain the use of the appropriation.*

The New Zealand model provides much stronger protection to the financial independence of the Auditor General.

None of the Australian jurisdictions have adopted this level of separation of the budget from the control of the Executive. *In a number of jurisdictions, the financial resources available to the Auditor General are entirely controlled by the Executive, but some more recent legislation has introduced requirements that the Parliament or a Committee of Parliament can have some input into the budget process, either being consulted about or empowered to recommend on the Audit Office budget.*

- *The Commonwealth Joint Committee of Public Accounts and Audit is required to consider the draft estimates of the Auditor General and to make recommendations to both Houses of Parliament and to the Minister who administers the Auditor-General Act.*

- *In the Australian Capital Territory, the Public Accounts Committee has the ability to recommend the appropriation to the Treasurer and provide a draft budget. It may also*

[1] A 2013 update of a survey of Australian and New Zealand legislation, http://www.acag.org.au/Independence-of-Auditors-General-in-ANZ-2013.pdf
[2] Ibid, page 42

recommend additional amounts if the Auditor General is of the opinion that the appropriated funds are insufficient to enable certain audits to be undertaken promptly.

- *In Western Australia, regard is to be had for any recommendations as to the budget made to the Treasurer by the Joint Standing Committee on Audit.*
- ***In Victoria the Auditor General's budget is determined in consultation with the Parliamentary Committee, whilst in Queensland the Treasurer must consult the Parliamentary Committee in developing the proposed budget of the audit office.***
- *In other jurisdictions the legislation is silent regarding budget for the audit office, leaving it under the direct control of the Executive.*

Notwithstanding the budget allocation, most jurisdictions do not protect the Auditor General's drawing rights on his or her appropriation.

- *Only the Commonwealth Auditor General Act contains legislative guarantees on availability of the full amount of the parliamentary appropriations to the Auditor General*
- *In Victoria, the Auditor General is empowered to incur any expenditure obligations necessary for the performance of the function of his or her office, subject to the annual appropriation.*[3] [emphasis added]

We consider that these comments are important for your consideration in the context of this Inquiry.

3. Section 56 of the Auditor-General Act 2009.

This section allows the Queensland Audit Office (QAO) to charge fees for the audits undertaken.

The 2010 Strategic Review of QAO reviewed the funding structure and the provisions for charging audit fees. The review concluded that *"the current funding model for the QAO has proven to be practical, robust and sustainable, and there is no reason to change the current structural arrangements."*[4]

The QAO financial framework is that the office charges fees for all financial compliance audits. We understand that the fee revenue is retained by QAO to meet its operating costs. This effectively puts QAO outside the appropriation process and ensures that QAO is able to acquire additional resources as required to respond to changing audit demands by public sector entities.

4. Remuneration arrangements for staff

In both strategic reviews of QAO in 2004 and 2010, an issue was raised about the flexibility QAO has in its remuneration arrangements for staff. QAO staff are currently covered by the *Public Service Act* with remuneration levels set under that legislation.

The 2010 Strategic Review recommended that *"the QAO continue to pursue strategies for achieving a more flexible remuneration structure for professional audit staff. It would be*

[3] Report, page 44
[4] Strategic Review 2010, page 59

beneficial for the QAO to investigate this further in conjunction with the Public Service Commission and the relevant Government department."[5]

We consider that implementing this recommendation would have the effect of bringing the Queensland legislation closer to the independence principles adopted by INTOSAI.

Yours faithfully

Annette Bradfield
President

Enclosed:
http://www.parliament.vic.gov.au/images/stories/committees/paec/audit_act_1994/submissions/Australasian_Council_of_Auditors-General.pdf

[5] Strategic Review 2010, page 89

ACAG AUSTRALASIAN COUNCIL OF AUDITORS-GENERAL

Executive Officer
Public Accounts and Estimates Committee
Parliament House
Spring Street
East Melbourne VIC 3002

17 March 2010

Dear Sir/Madam,

PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE (PAEC) VICTORIA INQUIRY INTO VICTORIA'S *AUDIT ACT 1994*

Attached is the Australasian Council of Auditors-General (ACAG) response to the PAEC's inquiry referred to above.

The views expressed in this submission represent those of all Australian members of ACAG other than Victoria.

The PAEC's decision to inquire into Victoria's *Audit Act 1994* is timely. Much has changed in both public sector and private sector audit since 1994. ACAG also notes the considerable work done in preparing the comprehensive discussion paper.

The opportunity to comment is appreciated. Should you wish to have an ACAG representative attend any public hearings, subject to timing, the person who will attend is Tasmanian's Auditor-General Mr. Mike Blake who can be contacted in Hobart on [redacted]

Yours sincerely

Frank McGuiness
Convenor
Australasian Council Auditors-General

PO Box 275, Civic Square ACT 2608, Australia
Phone/Fax: 1800 644 102 Overseas phone/fax: +61 2 9262 5876
Email: soneill@audit.sa.gov.au
Website: www.acag.org.au
ABN 13 922 704 402

Submission by the Australian members (excluding Victoria) of the Australasian Council of Auditors-General on the

PUBLIC ACCOUNTS AND ESTIMATES COMMITTEE (PAEC) VICTORIA INQUIRY INTO VICTORIA'S *AUDIT ACT 1994*

Introduction

ACAG has reviewed the Discussion Paper (DP) regarding the PAEC's inquiry into Victoria's *Audit Act 1994* (the Act). The DP is comprehensive raising many items about which the PAEC seeks input. It also indicates that the PAEC has consulted broadly in its development and in identifying matters about which input is sought.

However, in view of the significance of independence to the functioning of Auditors-General, ACAG has decided to concentrate this submission only on matters relating to independence.

This submission is structured as follows:

1. Overall comment
2. Statement by the Australasian Council of Public Accounts Committees (ACPAC) as to the minimum requirements for the independence of the Auditor-General (1997)
3. General principles as they relate to the role of an Auditor-General as documented by ACAG in 1997
4. Principles regarding independence as applied by the International Organisation of Supreme Audit Institutions (INTOSAI) reflected in the Mexico Declaration on SAI Independence
5. General principles as they relate to external auditors more generally as documented in Australian Auditing Standards
6. The Protocol statement between the PAEC and the Victorian Auditor-General
7. Detailed responses to those sections of the DP that impact independence cross referencing these where relevant to items 2 and 3
8. Other matters relating to independence not addressed in the DP
9. Attachments –
    - Attachment 1 – ACAG's general principles
    - Attachment 2 – INTOSAI's independence principles
    - Attachment 3 – relevant extracts from ACAG's submission to the 'Inquiry into the ACT *Auditor-General Act 1996*'.

1. Overall comment

ACAG decided to focus its submission on the independence of the external auditor because of its fundamental importance in the audit process. Not only must the auditor be independent, but there must be no perceptions of any lack of independence or of any undue influence. To facilitate this, it is essential that an external auditor has complete discretion in the performance or exercise of his/her functions or powers. At the same time, and to ensure that an auditor does not abuse these powers, appropriate mechanisms are needed to hold the auditor to account.

In order to identify 'best practice' regarding independence, in preparing this submission, ACAG broadened its research into practice beyond Australia and New Zealand, hence the references below to the independence principles applied by the INTOSAI.

In recognition of the importance of independence, the Victorian Auditor-General's independence is enshrined in section 94B of the *Constitution Act 1975*. In this respect, section 94B(6) is particularly relevant and effective. However, the provisions in the Constitution Act regarding independence are "subject to the Audit Act 1994 and other (unspecified) laws of the State". Such a provision could have the effect of bypassing constitutional safeguards. This has the potential, in ACAG's view, to impact negatively on this independence because there are provisions in the Act which have the effect of reducing independence. This is dealt with further under DP item 3.2.4 in section 7 of this submission.

Because of the need for absolute independence, and the broad powers needed to conduct effective audits, mechanisms are needed to ensure that these powers are not abused and are applied competently. This is dealt with under DP items 5 and 7 of this submission.

2. ACPAC's minimum requirements for independence

It is instructive to consider the position of the Australasian Council of Public Accounts Committees (ACPAC) as to what that body considers the minimum requirements for the independence of the Auditor-General. These principles were resolved by ACPAC at its Biennial Conference held in 1997 and are reproduced in full below. Of particular relevance is principle 2.3 regarding the operational independence of the Auditor-General, which ACAG considers is likely to conflict with at least some of the current and proposed arrangements for Victoria.

MINIMUM REQUIREMENTS FOR THE INDEPENDENCE OF THE AUDITOR-GENERAL
(As amended by ACPAC conference, Sydney, February 1997)

The Australasian Council of Public Accounts Committees supports the principle that "independence is a crucial pre-requisite to the effectiveness of the Auditor-General". Furthermore the independence of the Auditor-General must both operate and be seen to operate.

ACPAC regards the following requirements as the minimum necessary to ensure the independence of the Auditor-General. Wherever possible, these requirements should be enshrined in legislation.

1. Personal Independence

1.1 The Auditor-General should be an Officer of the Parliament.

1.2 Parliament should select and recommend the Auditor-General for appointment by the Governor/Governor-General/Administrator.

1.3 Parliament should be responsible for the Auditor-General's termination of appointment.

1.4 The Auditor-General should be responsible administratively to the Prime Minister, Premier or Chief Minister.

1.5 The Auditor-General should not be subject to direction by the Executive.

1.6 Tenure should be for a non-renewable fixed term of between 7 and 10 years.

1.7 The Auditor-General's remuneration should be determined by a remuneration tribunal.

2. Operational Independence

2.1 The Auditor-General should have the sole power to carry out, or designate an auditor to carry out, the external audit on all agencies which are owned, controlled or substantially responsible to government.

2.2 The audit mandate should be extensive and include financial statements and controls; compliance with legislation; the efficiency and effectiveness of the use of public monies, as approved by the Parliament in each jurisdiction; performance indicators (the relevance of the indicators and/or the accuracy of performance indicator information).

2.3 The Auditor-General should not be subject to any direction on how to carry out these audits; the Auditor-General will be free to determine the audit programme, including the bodies to be audited, the nature and scope of audits, who will carry out the audits and the priorities for audit.

2.4 The Auditor-General should have access to all information necessary to carry out audits. This access should be subject to strict confidentiality requirements to ensure that all information is used only for the purposes set out in the Auditor-General's legislation.

2.5 The Audit Office should be either a statutory authority or established by separate legislation. The Auditor-General should be responsible for the resourcing decisions within the office.

2.6 In cases where the Audit Office does not raise revenue (through say audit fees), the resourcing of the Audit Office should be by means of a parliamentary allocation determined following consultation between the Executive and the Parliament (or its representative).

3. Parliamentary Oversight

The need for independence should not limit the accountability of the Auditor-General:

3.1 The Auditor-General should report annually to Parliament, The Audit Office's financial statements should be subject to independent external audit and included in the annual report. The external auditor should be appointed by the Parliament.

3.2 All Auditor-General reports should be tabled or deemed to be tabled in Parliament. Legislation should set out the minimum reporting requirements and time limits for reporting.

3.3 The performance of the Audit Office should be subject to periodic external review at an interval of between 3 and 5 years. The external reviewer should be nominated by the Parliament or Parliamentary Committee.

4. Transitional Arrangements

4.1 Consistent with precedent when amending core accountability provisions, transitional arrangements between old and new legislation should ensure that the independence of incumbent Auditors-General is not compromised.

3. ACAG's general principles[1]

In 1997 ACAG developed and placed on its website a paper titled "Role of the Auditor-General" which included five principles: These are noted below with further explanatory comment on each principle outlined in attachment one.

3.1 The Constitutional Basis for the Role - ***PRINCIPLE:*** *The role of the Auditor-General is derived from the functions of Parliament. The role exists to provide Parliament with independently derived audit information about the executive arm of government.*

The legislation in Victoria and the DP recognises this role for the Auditor-General.

3.2 Independence and Competence - ***PRINCIPLE:*** *To be effective the Auditor-General must been seen to be independent and competent. The Auditor-General must:*

- *be free from direction by the Executive Government, and free from political bias; and*
- *have the means to acquire the resources necessary to do the job properly.*

3.3 Functions, Duties and Powers - ***PRINCIPLE:*** *To be effective, the Auditor-General must have appropriate functions, duties and powers to achieve the tasks of auditing and reporting on the range of matters on which Parliament seeks independent assurance.*

3.4 Portfolio - ***PRINCIPLE:*** *Parliament should desirably appoint the auditor of all entities which are part of the Executive Government.*

Parliament may appropriately delegate the right to appoint the auditor to someone else if Parliament decides it does not have a primary interest in scrutinising the performance of the entity concerned.

Parliament should desirably appoint the Auditor-General whenever it exercises the right to appoint the auditor of an entity.

3.5 Accountability - ***PRINCIPLE:*** *The Auditor-General must be fully accountable for the performance and use of public resources in discharging the mandate of the office.*

The Auditor-General must be primarily accountable to Parliament (not the Executive Government) in a manner consistent with the office's independence.

These five principles, where relevant, are referred to in section 7 of this submission where we respond to the specific questions posed in the DP.

4. INTOSAI's independence principles[2]

The following information about INTOSAI was obtained from its website –

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[1] ACAG website at http://www.acag.org.au/roag.htm

[2] INTOSAI website at http://www.intosai.org/en/portal/documents/intosai/general/limaundmexikodeclaration/mexicodeclaration/

'The International Organisation of Supreme Audit Institutions (INTOSAI) operates as an umbrella organisation for the external government audit community. For more than 50 years it has provided an institutionalised framework for supreme audit institutions to promote development and transfer of knowledge, improve government auditing worldwide and enhance professional capacities, standing and influence of member SAIs in their respective countries. In keeping with INTOSAI's motto, 'Experientia mutua omnibus prodest', the exchange of experience among INTOSAI members and the findings and insights which result, are a guarantee that government auditing continuously progresses with new developments.

INTOSAI is an autonomous, independent and non-political organisation. It is a non-governmental organisation with special consultative status with the Economic and Social Council (ECOSOC) of the United Nations.

INTOSAI was founded in 1953 at the initiative of Emilio Fernandez Camus, then President of the SAI of Cuba. At that time, 34 SAIs met for the 1st INTOSAI Congress in Cuba. At present INTOSAI has 189 Full Members and 4 Associated Members.'

Further information about INTOSAI is available on its website at 'http://www.intosai.org/'. The Australian Auditor-General is a member of INTOSAI.

In view of INTOSAI's large, and therefore representative, membership, ACAG regards its pronouncements as authoritative and relevant to many of the matters under consideration by the PAEC's inquiry, in particular independence. INTOSAI's declaration on the independence of its Supreme Audit Institutions generally recognises eight core principles as essential requirements of proper public sector auditing. These are noted below with further explanatory comment on each principle outlined in attachment two:

Principle 1 The existence of an appropriate and effective constitutional/statutory/legal framework and of de facto application provisions of this framework

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

Principle 3 A sufficiently broad mandate and full discretion, in the discharge of SAI functions

Principle 4 Unrestricted access to information

Principle 5 The right and obligation to report on their work

Principle 6 The freedom to decide the content and timing of audit reports and to publish and disseminate them

Principle 7 The existence of effective follow-up mechanisms on SAI recommendations

Principle 8 Financial and managerial/administrative autonomy and the availability of appropriate human, material, and monetary resources

These eight principles, where relevant, are referred to in section 7 of this submission where we respond to the specific questions posed in the DP.

5. General principles as they relate to the independence of external auditors more generally as documented in Australian Auditing Standards

It is unusual for an Auditor-General to be explicitly required to comply with auditing standards set by a third party (see further discussion under DP item 5.2.6 "Application of Auditing Standards" in section 7 of this submission). However, the principles are relevant. In this section we discuss ethical principles, quality control, independence and the relevance of the three party relationship to external auditing.

5.1 Ethical Principles and Quality Control Standards[3]

Assurance practitioners (or, in the context of this submission, external auditors) who perform assurance engagements (such as external financial or performance audits) may be governed by:

- The applicable code of conduct of a professional accounting body, which establishes fundamental ethical principles for assurance practitioners.
- The quality control requirements for firms issued by a professional accounting body, which establish standards and provide guidance on a firm's system of quality control.
- Any relevant legislative requirement.

While an Auditor-General, or an audit office, is not a 'firm', these principles apply also to them with, in the case of Auditors-General, the third dot point being the over-riding requirement.

The fundamental ethical principles that apply to all assurance engagements include integrity, objectivity, professional competence and due care, confidentiality and professional behaviour. The applicable code of conduct of a professional accounting body provides appropriate guidance on the application of those principles to assurance engagements.

5.2 Independence[4]

An Auditor is independent. The principles of independence and objectivity impose the obligation on auditors to be fair, intellectually honest, and free of conflicts of interest in relation to clients. This ensures that an auditor is objective and, therefore, enables the public to place faith in the audit function. Although the entity is the auditor's client, the auditor has significant responsibility to users of the audit report. The auditor must not subordinate his judgment to any specific group, including his client (ACAG's emphasis).

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[3] The AUASB's "Framework for Assurance Engagements" – unless otherwise footnoted, extracts from paragraphs 5 and 6.

[4] Material extracted from the Institute of Chartered Accountants' Auditing and Assurance Handbook 2010 page 9.

For an Auditor-General Parliament is his/her primary client. In this context then, the Auditor-General must not subordinate his/her judgment to the Parliament. It is ACAG's view that, to an extent, and as we will discuss in section 6 and in DP item 3.2.4 of section 7, the Victorian Auditor-General's independent judgment could be seen to be compromised by the role of the PAEC.

5.3 Elements of an Assurance Engagement[5]

Paragraphs 21 to 31 of the AUASB's Framework for Assurance Engagements note five elements of an assurance engagement the first of which is relevant to a discussion about independence – an assurance engagement (including financial and performance audits) must involve a three party relationship being an assurance practitioner, a responsible party, and intended user. In the public sector context these parties are the Auditor-General, the state entity being audited (or auditee) and the Parliament.

Compliance with these principles will assure users of reports prepared by an auditor that the auditor is:

- Ethical and competent
- Independent from any influence, including influence by his/her client
- Competent.

In the context of this submission all of these elements are important but ACAG highlights the second – to be independent, the auditor must be free of influence by all parties including his/her client – this is explored further in section 6.

6. The Protocol statement between the PAEC and the Victorian Auditor-General and the PAEC's responsibilities as outlined on its website at http://www.parliament.vic.gov.au/paec/responsibilities.html

In drafting this section, ACAG had regard to the ACPAC Minimum Requirement item 2.3 and the INTOSAI Principle 3 referred to earlier in this submission.

Page 36, relating to DP item 3.2.4, of the Discussion Paper made reference to a Protocol between then PAEC and the Auditor-General which ACAG understands is not a public document. Despite it not being a public, in order to properly respond to DP item 3.2.4, ACAG sought access and having read it, ACAG notes how the "consult" and "confer" arrangements in sections 7D(1) and 15(2) are applied in practice.

ACAG notes that the PAEC and the Victorian Auditor-General has entered into a relationship protocol. The protocol records that in Victoria the PAEC represents Victoria's Parliament in its relationship with the Auditor-General. It details the relationships between the Auditor-General and the PAEC cross referencing to relevant sections in the *Constitution Act 1975* and the *Audit Act 1994*. Of particular relevance to this submission, that is matters relating to independence, ACAG noted the references to the PAEC's 'consultative' roles in Audit Act sections 7(2) and 15 and the PAEC's view that the existence of these provisions 'protects and supports' independence and enhances and 'ensures' the accountability of the Auditor-General

[5] The AUASB's "Framework for Assurance Engagements – unless otherwise footnoted, extracts from paragraphs 21 to 31.

to the Parliament. Allowing for consultation and conferring is, in ACAG's view, both valuable and practical so long as that facilitates the Auditor-General's performance of his/her functions and could not be seen as influencing the Auditor-General's judgement. However, ACAG suggests that the existence of these provisions has the potential to impact negatively on the independence and accountability of the Auditor-General for the following reasons:

6.1 **Terminology in the protocol** – the terminology used in the protocol suggests to ACAG that the relationship is more in the nature of one that exists between an audit committee and an internal auditor. In such a relationship, the internal auditor would have a direct reporting line with the committee with the committee able to influence audit projects by adding or deleting projects or changing project scope or objectives. Audit committees also review their own performance and that of the internal auditor. ACAG formed this view because the protocol includes terms such as[6]:

- In relation to the Annual Plan and Budget - The Auditor-General will also seek to avoid duplication of other relevant reviews within the Victorian public sector ... While this protocol is sensible, any decision along these lines should be made independently by the Auditor-General
- In relation to Specifications for performance audits in particular the final paragraph of that section of the protocol. These provisions suggest to ACAG that, contrary to the principle noted in 5.2. above, the auditor's client could be seen to be unduly influencing the work of the auditor. ACAG notes that this occurs with performance audits only and not with financial audits. Not only does this potentially impact independence but so could it impact operational efficiency particularly in a situation where the Auditor-General conducts around 30 performance audits each year. ACAG also questions the practicality of these requirements particularly where the Auditor-General chooses to:
    - quickly vary his program by wishing to initiate an audit not on the program in response to a request or other developments which may have arisen and/or
    - amend the scope of a particular project once more information is obtained as a performance audit progresses.

In ACAG's view, a better model is one where:

- as occurs presently, the Auditor-General is required to consult with the PAEC at the time of the development of the annual plan and to explain in the plan where he has not taken up suggestions made and why not
- advising the PAEC of the audit objectives of audits about to be conducted and putting information on the Auditor-General's website in relation to audits in the agreed work plan for the current year
- under 'audits in progress' on his website placing the following details of the audits he has commenced:
    - agencies involved
    - audit objectives and
    - the session of Parliament that he expects to table the report.
- at the commencement of each audit writing to the PAEC advising it of this information. These arrangements are followed by the Australian National Audit Office.

[6] As extracted from the Protocol Statement – Public Accounts and Estimates Committee and the Auditor-General , Melbourne, Victoria June 2008

Thereafter the Auditor-General should be left to get on with his program but required to acquit it later. Such acquittal should include outlining changes to the program and/or to individual projects and why these were made.

- In relation to operational accountability – bearing in mind the principles under which the Auditor-General (refer section 5 of this submission) is expected to operate and other accountability arrangements that exist (see DP item 3.2.2 under section 7) ACAG believes the operational accountability sections of the protocol to be too strong. For example:
    - The Auditor-General will maintain high standards of accountability by seeking regular feedback from the Committee on his performance issues. In addition, the Auditor-General will provide the Committee with quarterly reports against the output performance indicators ... These provisions are more in the nature of an audit committee/internal auditor relationship which ACAG's believes have the potential to be seen to negatively impact independence.

6.2 Terminology in the PAEC website – ACAG notes under the heading "Auditing Function", the PAEC's view that it has a consultative role in determining the objectives and terms of reference of performance audits and identifying any particular issues that need to be addressed (ACAG's emphasis). Where the PAEC believes that the Auditor-General 'needs to address' a particular issue and the Auditor-General does not see the need to do so, independence must be compromised.

In concluding this section, we note the PAEC's consultative role applies only to the Auditor-General's 'discretionary' mandate – performance auditing, and not to his function of conducting financial audits of, in many cases, significant public sector (including local government) entities. Reports by your current Auditor-General have seen some ground breaking work particularly in the area of local government sustainability and he does so without anyone influencing his work and therefore impacting his independence.

Further comments are made in response to DP items 3.2.4 and 3.2.7 in section 7 below.

7. Detailed responses to those sections of the DP that impact independence

The table below details ACAG's responses to the matters raised in the PAEC DP. Included where relevant are references to the ACAG and INTOSAI principles detailed in attachments 1 and 2 respectively and to audit legislation in other jurisdictions. References to A-G are to the Victorian Auditor-General.

Discussion Paper reference	ACPAC minimum requirements	ACAG Principles reference	INTOSAI Independence principles reference	Other reference	Comment Note – unless otherwise noted, references here to A-G are to the Victorian Auditor-General
3.2.2 Frequency of Parliament's performance audit of the A-G	3 Parliamentary Oversight - Item 3.3	Principle 2 - Independence and Competence, and principle 5 Accountability	Not applicable	Audit Acts in Tasmania and WA Auditor-General Act (Qld)	***Discussion issues pertaining to this subject*** *Given the already strong features of section 19 of the Audit Act, the Committee considers the main issue associated with this potential amendment relates to whether the principles of risk management and administrative convenience should be taken into account in determining what constitutes the ideal frequency of Parliament's periodic performance audit of the Auditor-General. It considers that any legislative change should not weaken the Auditor-General's accountability to Parliament for the discharge of the position's extensive operational and reporting powers.* In ACAG's view, this is less about risk management or administrative convenience than about accountability. Use of the words "risk management" suggest to ACAG that the PAEC wishes to manage the risk of the A-G abusing his/her powers. There are other mechanisms for achieving this. The A-G must be competent and accountable. In addition to performance audits of A-Gs/A-G's offices, other mechanisms to hold the A-G to account, include: • Effective appointment processes • Preparation of budgets which include the identification of outputs which must be achieved and acquitted in annual

					reports • Requirement for the preparation of annual financial statements which must be independently audited • Requirement for the triennial performance audit of the Office • Requirement to prepare annual reports for tabling in the Parliament. We note that the Victorian A-G takes this responsibility particularly seriously as evidenced by regular receipt of either gold or silver awards from the organizers of the Annual Report Awards. • Regular independently conducted surveys of relevant stakeholders about performance across a wide range of matters • Participation in benchmarking. It is rare for a government agency to be subjected to a performance audit of all of its activities at any one time. It would commonly take many years, if ever, for an A-G to cover all of the activities of an agency in a 3 or 4 or 5 year timeframe. Recent audit legislation in Australia requires independently conducted performance audits once every five years. ACAG regards five years as an appropriate period for the conduct of an office-wide performance audit of any entity. *The Committee invites discussion from interested parties on the frequency of Parliament's performance audit of the Auditor-General and specifically on the following discussion points:* • *How valid is the argument that, in terms of risk management and resource availability viewpoints, the current audit frequency of at least every three years is excessive and not cost-justified?* See earlier comments • *As raised by the Department of Treasury and Finance, what is the appropriate frequency for the performance audit?* In ACAG's view

					not less than five years. • *If an amendment was to proceed, is it desirable to retain the words 'at least' within the legislation to maintain discretion to the Committee for more frequent audits, should prevailing circumstances warrant such action?* Yes. The Tasmanian legislation reads "... at least once in every five years ..." and, the Western Australian legislation (section 48) requires reviews to be carried out "... as soon as is practicable after (a) the fifth anniversary of its commencement; and (b) the expiry of each five yearly interval after that anniversary". • *Should performance audits be more frequent if they reveal deficiencies or concerns, or alternatively less frequent if the audits are generally favourable?* This is addressed by the "at least" response above. • *Is it appropriate to take into account the resource requirements and management costs of the Committee in overseeing the independent performance audit, in addition to costs of VAGO, when assessing the optimum audit frequency?* Cost and resource implications should always be a consideration but secondary to the five year requirement referred to previously. • *Are there any other issues considered to be relevant to this potential amendment to the Audit Act?* ACAG believes there to be three other considerations: 1. The person appointed to conduct the review – the A-G should be consulted in making the appointment, as is the case, for example, in the Western Australian legislation. 2. The terms of reference for the review – the A-G should be consulted in determining the terms of reference, as is the case, for example, in the Western Australian legislation. 3. The reviewer should be precluded from commenting on audit findings, decisions or recommendations reached by the A-G during the course or conduct of an audit.

					In addition, ACAG supports the current situation whereby the A-G is given the opportunity to comment on findings and recommendations prior to the reviewer's report being finalised. ACAG also notes that the Auditor-General Act (Qld) requires that a strategic review of the audit office must be conducted at least every five years. The QAO also believe this timeframe allows an appropriate period for any issues raise to be appropriately considered and any required action implemented and monitored prior to the next review occurring.
3.2.3 Parliamentary involvement in the appointment of an Acting A-G	1. Personal Independence - Item 1.3	Principle 2 - Independence and Competence	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	Audit Acts in Tasmania, Western Australia and Queensland	*The Committee considers the main issue associated with this potential amendment is whether the Audit Act should contain provisions governing the appointment of an Acting Auditor-General similar to the approach taken in the constitution Act for the appointment of the Auditor-General. In such circumstances, the appointment of an Acting Auditor-General would be on the recommendation of the Committee.* To assure the ongoing independence of the A-G, ACAG supports the principle that the PAEC appoint the Acting A-G. ACAG is also of the view that in the absence of the A-G for any reason, and for any period, the appointed Deputy A-G should automatically be the Acting A-G (as is the case in the Western Australian legislation). The current arrangement in Victoria is that the Acting A-G is appointed by the Governor in Council. This leaves the Acting position vulnerable to Executive influence. ACAG notes further that the Western Australian legislation (Schedule 1, cl.8) provides for the Acting Auditor General to be appointed by the Governor, on the recommendation of the Minister but, before making a recommendation, 'the Minister must consult with the parliamentary leader of each political party ... within Parliament and with the Public Accounts Committee and the Estimates and Financial Operations Committee'.

					An alternative, and in ACAG's view a better model even that that where the Deputy A-G is appointed by the PAEC, is that the A-G appoints the Deputy. This assures the independence of both of these positions. That Deputy should then automatically act as the A-G in the A-G's absence. *In Victoria, past practice has been that the appointment of an acting Auditor-General is via the appointment of the Deputy Auditor-General under section 7 of the Audit Act. This process is managed within VAGO with no specified role in the legislation for Parliament.* See previous comments. *The process established under section 6 of the Audit Act for temporary appointments by the Governor in Council may have been intended to be a form of safeguard measure if circumstances ever arose, such as the unavailability within VAGO of an appointee, which precluded use of section 7. There is also no specified role for Parliament within the appointment process under section 6.* *In a paper to the Committee, the Department of Treasury and Finance has raised as a suggested question for discussion during the Inquiry that, if the previous committee's recommendation was acted upon, 'would it be appropriate and efficient for the Governor-in-Council to continue to appoint a short term Acting Auditor-General, for appointments of only a period of up to 6 months?'* *The Committee invites discussion from interested parties on this potential amendment and specifically on the following discussion points:* *• Should the Audit Act contain provisions for the appointment of an Acting Auditor-General consistent with those applying to the Auditor-General under the Constitution Act which would mean that both appointments would be on the recommendation of the Public Accounts and Estimates Committee on behalf of Parliament?* Yes, but as noted

					earlier in this DP, a better model is for the A-G to make the appointment. • *If such action occurred, would there be any justification for retaining the existing sections 6 and 7 within the Audit Act?* No, but as noted earlier in this DP, a better model is for the A-G to make the appointment. • *Should the Audit Act provide that an Acting Auditor-General be an independent officer of Parliament, although this would not provide the same protection that the Auditor-General has under the Constitution Act 1975?* The Act should provide for this status but only when in the position of Acting A-G. ACAG notes that the Western Australian legislation provides the Acting Auditor General with the same responsibilities, powers, immunities and independence as the Auditor-General (Schedule 1, cl.9(5)). • *Should the Audit Act provide for the appointment of the Deputy Auditor-General as an officer of Parliament with powers to act as in New Zealand*? See previous comment. • *Are there any other issues considered to be relevant to this potential amendment to the Audit Act?* ACAG also notes from the Auditor-General Act (Qld) that in that State, the Deputy Auditor-General is to act as Auditor-General during vacancies in the officer or where the Auditor-General is absent from duty or Australia or is for another reason unable to perform the functions of the office.
3.2.4 No direction given to the A-G from Parliament on operational matters	2 Operational Independence - Item 2.3	Principle 2 - Independence and Competence	Principle 3 - sufficiently broad mandate and full discretion, in the discharge of SAI functions	Audit act in Western Australia	*The Committee considers that the enshrining of the Auditor-General's independence in section 94B(6) of the Constitution Act is a key feature of Victoria's accountability framework and obviates the need for any explicit equivalent provisions in the Audit Act. The only reference in the Audit Act that can be linked to the 'subject to' element of section 94B(6) of the Constitution Act is section 7D(1) which protects the Auditor-General's independence but allows the Committee to convey its audit priorities to the Auditor-General for consideration.* As mentioned in the Overall Comment earlier in this

					submission, the provisions in the Constitution Act regarding independence are "subject to the Audit Act 1994 and other (unspecified) laws of the State". Such a provision could have the effect of bypassing constitutional safeguards. This has the potential, in ACAG's view, to impact negatively on the A-G's independence because there are provisions in the Audit Act which have the potential to, or at least a perception of, reduce independence. To address this, the Audit Act should be amended to include an explicit provision stating that the A-G is not subject to direction from Parliament, or any of its committees, but that the Parliament or its committees can request the undertaking of particular audits. Illustrations of where independence could be compromised were included in section 6 of this submission and below. ACAG notes that the Western Australian legislation states the Auditor General is 'not subject to direction from anyone' (section 7(6)) but 'must have regard to the audit priorities of Parliament' (section 8). Further, the Auditor General 'may carry out any audit' at the request of the two relevant Parliamentary Committees (section 20), and 'may audit any accounts' at the request of the Treasurer (section 19). These provisions effectively provide a mechanism for Parliament to convey its priorities to the Auditor General without compromising his/her independence. *The Department of Treasury and Finance, in a paper to the Committee, has also cited the constitutional protection of the Auditor-General's independence and, given that protection , whether there is a need to replicate a clause in the Audit Act. The Department also asked whether, in view of this issue, 'is there a distinction between independence, consultation and accountability? How is this distinction maintained in the current Act and is there scope to enhance such clarification?'* There certainly is a distinction between independence,

					consultation and accountability. The requirement to consult or confer has the potential to be seen to lessen independence. However, while an Auditor-General should not be subject to direction, it is still appropriate for an Auditor-general to take into account the views of the PAEC. ACAG's view is the best way to resolve this is to: a) remove the requirement for the A-G to "consult" with the PAEC in regard to the annual plan and to "confer" with the PAEC on individual performance audits. In this regard, the requirements in the Tasmanian Audit Act are regarded as superior in that it requires that A-G to submit a draft annual plan to that State's PAC who must return it with any comments within a specified timeframe. That A-G must then consider any comments provided and finalise the plan. The plan must outline any changes suggested by the PAC that were not adopted. There is then no requirement to consult or confer about any individual projects. b) remove the requirement for the A-G to confer with the PAC about any individual projects (as is the case in the Western Australian legislation, which only requires the Auditor General to 'have regard to audit priorities of Parliament' – section 8) c) hold the A-G to account by requiring the A-G to acquit the program annually in his/her annual report or in the following year's annual plan. Also, and as outlined in section 6.1, as occurs presently, the Auditor-General is required to consult with the PAEC at the time of the development of the annual plan and to explain in the plan where he has not taken up suggestions made and why not d) advise the PAEC of the audit objectives of audits about to be conducted and putting information on the A-G's website in relation to audits in the agreed work plan for the current year e) under 'audits in progress' on the A-G's website, placing the following details of the audits the A-G has commenced: o agencies involved o audit objectives and

					o the session of Parliament that the A-G expects to table the report At the commencement of each audit the A-G also writes to the PAEC advising it of this information. The letter indicates that if the PAEC has any feedback on the audit, the A-G would be happy to take it into consideration. *As mentioned in the above background narrative, the inter-relationship between these three concepts is currently addressed in the Audit Act through a requirement for the Auditor-General to confer with the Committee and have regard to its audit priorities, but not be compelled to adopt them. The Act effectively requires consultation as an element of the Auditor-General's accountability but maintains protection of the Auditor-General's independence. The point raised by the Department on whether there is scope to clarify in the legislation this inter-relationship between the three concepts may nevertheless be valid and warrants consideration.* See earlier comments. *The Department has also asked whether this legislative proposal precluding parliamentary direction on operational matters has broader application to the other independent officers of Parliament, consistent with the previous Committee's recommendation. Such an issue would involve changes to the enabling legislation of those officers and may be relevant for consideration as part of the government's recently announced review of the state's integrity and anti-corruption system.* ACAG has no comment to make. *The Committee invites discussion from interested parties on this subject and specifically on the following discussion points:* • *Is it necessary to duplicate or closely mirror the constitutional independence of the Auditor-General by having specific provisions in the*

					Audit Act? Yes but without any 'subject to' provisions. • *Is the constitutional guarantee of the independence of the Auditor-General sufficient, bearing in mind that the Constitution Act takes precedence over other acts?* No, for the reasons set out above. • *Would the placing in the Audit Act of a restriction on the Parliament from directing its appointed auditor, the Auditor-General, on operational matters undermine Parliament's supreme position as the legislative arm of government?* Any provision under which the Parliament, or a nominated committee, can direct the A-G on operational matters must reduce his/her independence. .As it relates to the conduct of audits, be they financial audits or performance audits, a better model is one where the Audit Act includes specific provision for the Parliament and/or a nominated committee to request the A-G to conduct an audit. This was addressed in the Tasmanian Audit Act by the inclusion of provisions whereby the Treasurer and/or the PAC could request that A-G to conduct a particular audit. Similar provisions were included in the Western Australian Audit Act (see comments above). Also, such provisions do not in any way preclude Parliament or indeed individual Parliamentarians from requesting audits. However, in all such cases in that State, the discretion is left to that A-G to conduct the audit or not and, importantly, to set the terms of reference for the audit. • *Is it necessary to expressly provide in the Audit Act that Parliament may submit for consideration by the Auditor-General requests for particular audits when each House of Parliament is able to formulate such requests through resolutions?* No – see previous comment. • *Rather than encompassing all parliamentary committees, is it desirable to limit the statutory right to submit requests for audits to the Auditor-General to the Public Accounts and Estimates Committee, given its key role in the public accountability process?* No, for the reasons outlined above. • *As raised by the Department of Treasury and Finance, is there a need*

					for legislative change which more explicitly addresses the inter-relationship between protection of the Auditor-General's independence, the requirement of the position to consult with the Committee on various matters, and the position's accountability to Parliament? No, for the reasons outlined previously. • *Are there any other issues considered to be relevant to this potential amendment to the Audit Act?* See comments in section 6 of this submission. ACAG also notes, and concurs with, the statement by the Victorian Government included on page 39 of the DP in relation to discussion item 3.2.5 (our emphasis): • *"In considering this recommendation, the Government will also bear in mind the potential risk that Parliamentary Committee involvement in oversight of the Electoral Commissioner may reduce the independence of the office.* • *The Government fully supports a closer relationship between Parliament and its independent statutory officers. Such a relationship is best established through protocols and existing reporting arrangements, rather than providing for such arrangements in legislation as the recommendation suggests. It is unclear exactly how such a relationship could be enshrined and mandated in the legislation. The Government believes existing processes, including appointment and selection, and reporting are sufficient.* ACAG is of the view that both dot points should apply to the Victorian A-G and his/her Office.
3.2.5 Adequacy of provisions relating to performance audits of	2 Operational Independence – Item 2.3	Principle 2 - Independence and Competence	Principle 3 - sufficiently broad mandate and full discretion, in		*In identifying this issue as a discussion point for its Inquiry, the Committee initially recognized that the Government's consideration of the above recommendations included in the previous Committee's 2006 report could ultimately lead to changes to the enabling legislation of the state's independent officers of Parliament other than the*

Victoria's officers of Parliament			the discharge of SAI functions		*Auditor-General.* *The results of the government's review of Victoria's integrity and anti-corruption systems announced by the Premier on 23 November 2009, which encompasses the Auditor-General, are now likely to be the prime basis for the government's consideration of the enabling legislation of each of the investigative officers subject to the review and of any future legislative action in this area.* *Given that the focus of the Committee's Inquiry is on the provisions of the Audit Act, this discussion paper includes one possible option for addressing within the Act some of the issues raised in 2006 by the previous Committee. This option could take the form of amendments to the Audit Act which provide for the creation of a designated frequency for performance audits by the Auditor-General of the other officers of Parliament. The Auditor-General could be required to have regard to, but not be compelled to adhere to, this benchmark in the compilation of annual audit plans under section 7A of the Audit Act.* *The setting of a designated performance audit frequency for such audits could be justified on the ground that Parliament is entitled to reasonably frequent independent audit assessments from its appointed auditor of the extent to which operations of those three officers of Parliament have been managed in an economical, efficient and effective manner. Such an accountability arrangement would be consistent with the officers' close relationship with the Parliament.* *At this discussion stage of its Inquiry, the Committee invites the views of interested parties on this subject in the context of the Audit Act and specifically on the following discussion points:* *• Should a designated audit frequency for performance audits by the*

					Auditor-General of the Ombudsman, Electoral Commissioner and the Director, Police Integrity be incorporated within the Audit Act as a formal signal to the Auditor-General of Parliament's accountability expectations of the three positions? In ACAG's view no. For reasons outlined in response to DP item 3.2.4, any such provisions must impact negatively on the independence of the A-G. Decisions about resource allocation must be made by the A-G. A better model would be to use the existing model in Victoria where the A-G must prepare an annual plan for consideration by the PAEC. As part of its review function, the PAEC could recommend a performance audit of all or any of these other independent officers with the A-G having to take this on board or explaining why he/she did not. • *What would be the ideal indicative frequency for these performance audits?* N/A • *Should such performance audits of officers of Parliament be done by an external independent auditor rather than by another officer of Parliament?* In the event that the Victorian Parliament decides that regular (say every five years) performance audits are required and that these be conducted by an auditor other than the A-G, this should not preclude the A-G from including the operations of such independent officers in his plan of work. • *Do the independent investigative powers of the Special Investigations Monitor set out in the Police Integrity Act 2008 eliminate wholly or in part any need for strengthening, via the Audit Act, the current accountability obligations of the Director, Police Integrity?* No • *Are there any other matters considered to be relevant to this discussion issue?* No
3.2.6 Parliamentary involvement in the determination	2 Operational Independence - Item 2.6		Principle 8 Financial and managerial/administrative autonomy and		*The Committee is cognisant that the government has previously expressed a view on this subject, mainly in the context of officers of Parliament other than the Auditor-General, through its response to the previous Committee's 2006 recommendation.*

of the A-G's budget			the availability of appropriate human, material, and monetary resources		*However, following receipt of the Auditor-General's views and proposal for a more decisive role for Parliament on the position's annual budget, the Committee has determined to include the issue as a discussion point for the purposes of its Inquiry. In reaching this decision, it also recognised that the component of the previous Committee's recommendation impacting on the Audit Act, the tabling of a report to Parliament on the budget, with a copy going to the Treasurer, would not impact on the Government's own view that it remains responsible for the expenditure of taxpayers' funds. The Committee is also cognisant that under the current arrangements Parliament approves the appropriation for the Auditor-General as part of the Parliamentary Appropriation Bill and not as part of the general government Appropriation Bill.* ACAG acknowledges the strength of the current arrangements in Victoria in the consultative role played by the PAEC in determining the A-G's budget and the other current arrangement whereby the Parliament approves the appropriation for the Auditor-General as part of the Parliamentary Appropriation Bill. Whilst these are sound safeguards, final budgetary decisions remain under the control of the Executive. New Zealand has adopted the UK's approach of completely removing the financial resourcing of the Auditor-General from executive control. In New Zealand, the Parliament decides on the level of funding for the Auditor-General, who submits his annual budget through the Speaker to Parliament directly. As in the UK, this approach reverses the decision making process, with the Parliament making the decision after considering submissions from the Executive rather than being merely 'consulted' by the Executive. Further, under the New Zealand approach, the Speaker is the "vote Minister" responsible for the Auditor-General's appropriation, ensuring that the Executive is not in a position to constrain the use of the appropriation. The New Zealand/UK model provides

					much stronger protection to the financial independence of the Auditor-General.[7] This approach is consistent with INTOSAI's principle 8 which suggests 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 fulfill their mandate. • SAIs have the right of direct appeal to the Legislature if the resources provided are insufficient to allow them to fulfill their mandate. *At this discussion stage of its Inquiry, the Committee invites the views of interested parties on this subject and specifically on the following discussion points:* • *Should the Audit Act be amended to provide that Parliament has the decisive role in determining the Auditor-General's annual budget, given the Auditor-General's status as Parliament's appointed auditor and, if so, what form should that decisive role take?* Yes – ACAG considers the New Zealand approach to be a good model. However, ACAG acknowledges this approach is not currently applied anywhere in Australia. In ACAG's response to the inquiry into the ACT Audit Act (see attachment 3), ACAG noted: "Providing the Auditor-General with sufficient resources to allow his/her Office to effectively discharge their responsibilities is an important consideration in ensuring the

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					Auditor-General has an appropriate level of independence from the executive government. In particular, the Auditor-General needs to be provided with sufficient funding and resources to be able to discharge their full legislative mandate. 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. This could be achieved 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 preparing the budget for the Territory under the *Financial Management Act* consultation between the Auditor-General, the Public Accounts Committee and the Treasurer would be appropriate." ACAG notes that these arrangements are similar to those applying in Victoria. However, and as noted earlier in this DP item, ACAG considers that the New Zealand model provides greater independence. *Alternatively, should the Committee's current consultative participation in the determination of the Auditor-General's annual budget be varied or extended in the Audit Act, for example, to include tabling of a report to*

					Parliament? No. • *Are there any other matters considered to be relevant to this discussion issue?* No
3.2.7 Consultation by the A-G with the Committee on performance audit specifications	2 Operational Independence – Item 2.3	Principle 2 - Independence and Competence	Principle 3 - sufficiently broad mandate and full discretion, in the discharge of SAI functions		*The Committee intends to explore this issue in more depth during its Inquiry. At this stage, it invites input from interested parties on:* • *The Auditor-General's proposal to remove the statutory requirement in section 15(2) of the Audit Act to consult with the Committee on performance audit specifications.* ACAG's supports the A-G's proposal. See further comments under the final dot point in this DP item and comments in DP 3.2.4 and in section 6. • *Would this removal substantially alter and weaken the relationship between Parliament and the Auditor-General?* In ACAG's view the removal of section 15(2) would have no impact on the relationship. • *Are there any other matters considered to be relevant to the subject?* As noted, ACAG supports the A-G's proposal to remove the statutory requirement in section 15(2) because: • Contrary to the view expressed in the DP (that this provision strengthens the independence of the A-G) and for the reasons outlined in this submission in response to item 3.2.4, this provision weakens the A-G's independence. • ACAG does not agree that this type of provision improves accountability because it appears to be "before the event" arrangement. That is, section 15(2) starts with "Before conducting a performance audit ..." perhaps indicating an accountability mechanism prior to commencement of a project. • Also, and as highlighted in section 6.1, ACAG believes this requirement may not be practical and that on occasion the consultation occurs sometime after a project has commenced. • Such an arrangement is contrary to the INTOSAI principles.
3.2.9 Production of		Principle 2 - Independence	Principle 3 - sufficiently	Auditor-General Act	*The Committee's initial view on this proposed amendment is that it could impede the investigative activities of committees established by*

documents by the A-G to the Committee		and Competence Principle 3 Functions, duties and powers.	broad mandate and full discretion, in the discharge of SAI functions Principle 4 – unrestricted access to information	(Qld)	*Parliament. The Committee also considers an amendment of this nature would be inconsistent with the special relationship of the Auditor-General with Parliament and, through Parliament, with the Committee as its representative body.* *Under the Audit Act, the Committee has been assigned a range of functions including consultation on draft audit plans and arrangement of Parliament's periodic performance audit which reinforce the accountability of the Auditor-General to Parliament. From the Committee's perspective, such functions fit neatly into the exemption on release of information set out in section 20A relating to 'functions under this Act'.* *From a wider accountability viewpoint, the Committee considers that the Auditor-General's special relationship with Parliament extends beyond the carrying out of audit functions on behalf of Parliament to encompass the flow of information and documents to the Committee to assist in upholding accountability in the public sector and maximising the efficiency and effectiveness of Parliament's scrutiny of the management of public resources in Victoria.* *The exchange of information and documents is particularly relevant to the Committee's periodic follow-up of the findings and recommendations of the Auditor-General in reports to Parliament. This follow-up process focuses on the adequacy of action taken by audited agencies on audit findings and recommendations and is a key means of reinforcing, on behalf of Parliament, the accountability of government agencies for the management of resources entrusted to their control.* *The Committee does not see the operation of this relationship as constituting a risk to the Auditor-General's independence or obligation*

					to adhere to professional standards of confidentiality in relation to audit information, given Parliament's status as the Auditor-General's principal client. *The Committee also notes that parliamentary committees have the power to hold hearings in camera[59]. By convention it is also incumbent on members of committees not to reveal the proceedings of committees prior to their reporting to Parliament. This would include making public any documents received in confidence by the Committee. Any breach by a committee member can be referred to the Privileges Committee.* *One possible amendment to the Audit Act arising from consideration of the Auditor-General's proposal would be to explicitly state within section 20A that the restriction on disclosure of information by the Auditor-General beyond the carrying out of functions under the Act does not extend to information required by the Committee. Such action would specifically recognize the Committee's special monitoring roles in relation to the Auditor-General's statutory functions and to the wider areas of public sector performance and accountability.* *The Committee intends to further consider this possible amendment and the Auditor-General's specific proposal during its Inquiry. It therefore invites the views of interested parties on the following discussion points: *Are there any grounds to remove, through legislative amendment, any obligation for the Auditor-General to produce documents or information required by a parliamentary committee?* Not surprisingly, there can be differing views on this matter, particularly noting that the issue is generally not addressed in legislation, and is handled in accordance with custom and practice followed in each jurisdiction. On balance, ACAG supports a provision that : • recognises that responding to requests from Parliamentary

					Committees for the provision of information and documentation is an integral aspect of performing an Auditor-General's functions; and • in responding to requests from Parliamentary Committees for information and documents the A-G is able to take into account considerations of public interest. In proposing this position, ACAG notes that the concept of public interest is an accepted test that many Auditors-General's are required by statute to take into consideration in determining whether to include information in a public report. The confidentiality provisions within audit acts, and similar provisions within codes of conduct applied by the private sector accounting bodies, are there for good reasons – auditees must know that information provided to their auditor will be treated confidentially. It is for this reason that in the main Auditors-General in Australia are now exempt from FOI legislation at least as it applies to information and documents obtained during the conduct of audits. Auditees also know that information or documents provided may be commented upon in public reports issued by an Auditor-General but that the documents themselves will remain confidential. It is ACAG's view that the documentation a Parliamentary Committee may seek should first be sought from the auditee, not the auditor, particularly as the auditor will normally only hold copies of documents and the A-G could not be expected to be aware of all the relevant considerations that may be applicable to whether or not to provide documents to a Committee. This does not prevent the Parliamentary Committee from inquiring of the auditor the sources of documentation or other evidence. Finally, ACAG notes also that this matter has been dealt with in at least one jurisdiction – Queensland – see final comments under this DP item. • *As raised by the Department of Treasury and Finance, can or should the doctrine of executive privilege (public interest immunity) that applies to Executive Government be extended to an independent officer of*

					Parliament, such as the Auditor-General? ACAG has not researched the legal aspects inherent in this question and cannot answer it other than to suggest that, consistent with INTOSAI 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) (our emphasis), the doctrine of executive privilege should be extended to the A-G. • *Does the special role of the Public Accounts and Estimates Committee in overseeing public accountability and as Parliament's representative in the accountability framework established for the Auditor-General reinforce the importance of ensuring there are no impediments to the flow of documents or information from the Auditor-General to the Committee?* As noted under the first dot point in this section, ACAG does not support the PAEC's views on this matter. • *As raised by the Department of Treasury and Finance, is there scope to further increase the independence of the Auditor-General in relation to the position's interaction and relationship with parliamentary committees?* See response to first dot point. • *Are there any other matters considered to be relevant to this discussion issue?* By reference to the Auditor-General Act (Qld), ACAG notes that Section 53 of that Act identifies that the Auditor-General may disclose "protected information" to the Parliamentary Committee however this is at the discretion of that A-G.
3.2.10 Audit coverage of Ministers and/or Ministers' offices	2 Operational Independence – Item 2.1	Principle 1 - The Constitutional basis for the role Principle 4 - Portfolio	Principle 3 - Sufficiently broad mandate and full discretion, in the discharge of SAI	Auditor-General Act (Qld)	*Both the Auditor-General and the Department of Treasury and Finance have not elaborated on their respective suggestions and the Committee intends to further discuss the issues with the two organisations during its Inquiry. The Committee's consideration of the issues will include their feasibility of implementation having regard to the constitutional doctrine of individual ministerial responsibility.* ACAG notes the view of the Department of Treasury and Finance which has questioned whether it is

			functions		appropriate for the powers of the Auditor-General to be extended to Ministers and, if so, should such powers be restricted to financial audits or cover the full ambit of the Auditor-General's mandate. ACAG supports the A-G's view that, through legislative change, Ministers' offices should become subject to both the financial audit and performance audit functions of the A-G. However, these functions should be limited to the administrative functions of such Offices and not policy considerations. ACAG is also of the view that, subject to the outcome of DP item 5.2.2, investigative powers be permitted because public money and public property are involved. *The Committee has also identified one further discussion issue concerning Ministers which it intends to consider during its Inquiry. This issue relates to the value or otherwise of including within the Audit Act a provision that involves the Auditor-General in expressing an opinion to Parliament on whether a decision by a Minister not to provide information, such as on the ground of commercial confidentiality, to Parliament relating to the conduct or operation of an agency is reasonable and appropriate.* *The Committee identified, during its visit to Western Australia, that a provision along these lines is set out in that state's audit legislation.* *The Committee invites input from interested parties on the above matters and specifically on:* • *Should individual ministers and/or their offices be subject to an annual financial audit by the Auditor-General?* See previous comments • *Should the activities of individual ministers be subject to periodic performance audits by the Auditor-General?* See previous comments • *Alternatively, would such audits run across the responsibility of Ministers to directly report to and be held accountable by Parliament?* N/A

					• *Would audits by the Auditor-General, whether financial or performance, of individual ministers contravene the constitutional status of ministers?* This requires legal advice and ACAG makes no comment • *The desirability or otherwise of amending the Audit Act to require the Auditor-General to express an opinion to Parliament in cases where a Minister has determined not to provide information to Parliament relating to agencies within his or her portfolio.* ACAG does not support the need for such an opinion. In ACAG's view, involving the A-G in this manner could politicize the process potentially reducing his/her independence. • *Are there any other matters considered to be relevant to the subject?* By reference to the Auditor-General Act (Qld), ACAG notes that: • That A-G is required to audit and issue an opinion on the full year report of expenditure of Ministerial offices. There is a legal requirement under the Financial Accountability Act for these statements to be prepared. • There is no specific legislative requirement identified in relation to performance audits of the Ministerial offices.
4.1.1 Judicial independence and judicial accountability and 4.1.2 The current accountability regime for Victoria's courts	2 Operational Independence – Items 2.1 and 2.3	Principle 4 - Portfolio	Principle 3 - Sufficiently broad mandate and full discretion, in the discharge of SAI functions		*The Committee seeks the views of interested parties on the appropriateness or otherwise of formalising within the Audit Act the right of the Auditor-General to enter into arrangements with Victoria's Heads of Jurisdiction (the Heads of Courts) for the conduct from time to time of performance audits of non-judicial functions of Courts. If such action is viewed as appropriate, the Committee wishes to consider during its Inquiry the extent to which the legislation could detail the scope of such performance audits.* *By way of example, the State Services Authority is precluded under its enabling legislation from conducting an Inquiry or special review into*

					the exercise of functions of a judicial or quasi-judicial nature. The legislation also requires that reviews conducted by the Authority in relation to a body which exercises judicial or quasi-judicial functions, must not impede in any way the exercise of such functions by that body. Equivalent restrictions could be inserted into the Audit Act if it is ultimately determined as feasible to formalise audit arrangements on the non-judicial functions of Courts within the Act. *Relevant to this latter point are suggested questions for the Committee's Inquiry submitted by the Department of Treasury and Finance in a recent paper to the Committee that ask whether, as a matter of principle, the Audit Act should* expressly articulate the role and nature of the relationship between the public sector auditor and the Judiciary, *and can statute* override the principle of judicial independence and the legal convention of separation of powers. *As with the discussion in the preceding chapter on the administrative functioning of Parliament, the Committee recognises that questions regarding legal provisions that directly address the Judiciary are, given the Judiciary's special constitutional status, necessarily complex and need to be addressed with caution. The Committee's visits to Western Australia and New Zealand reinforced to it the sensitivity and complexity of the matter.* *The Committee notes the views expressed to it by the Auditor-General and the increasing importance attached by the Courts to accountability and transparency in relation to their administrative operations. It recognises that the outcome of its deliberations on this matter is likely to ultimately require expert assessment by the Courts and the Chief Parliamentary Counsel.* *At this discussion stage of its Inquiry, the Committee invites the views of*

					interested parties on this subject and specifically on the following discussion points: • *To what extent should the non-judicial functions of Victoria's Courts be subject to financial and performance audits by the Auditor-General?* ACAG supports the position that the A-G should not have any implicit or explicit legislative authority or power to undertake performance audits of the Court's judicial functioning. However, ACAG does support the position recommended by the A-G as outlined in the DP – *"Notwithstanding the cooperation of the courts with audits undertaken under the protocol, I consider it to be significantly deficient in that it purports to allow the Executive, and in some circumstances, a head of jurisdiction, to determine if an audit may occur and when a report may be published. This approach impairs my independence."* The approach recommended by the A-G is consistent with the INTOSAI principle 3 that SAIs should be empowered to audit the: • use of public monies, resources, or assets, by a recipient or beneficiary regardless of its legal nature • legality and regularity of government or public entities accounts and • economy, efficiency, and effectiveness of government or public entities operations. The Courts are responsible for managing significant resources and the A-G should not be precluded from initiating a performance audit of aspects of the administrative (non-judicial) functions. In the event that the PAEC supported this position, ACAG believes it would be inappropriate to introduce legislation detailing the scope of such performance audits because that would limit the A-G's independence.

					• *Are there constitutional or legal factors which automatically rule out any proposal to establish a statutory backing within the Audit Act for audit arrangements entered into between the Heads of Jurisdictions and the Auditor-General?* This requires legal advice • *Assuming there are no insurmountable constitutional or legal impediments, would it be in the public interest to formalise within the Audit Act arrangements entered into between the Heads of Jurisdiction and the Auditor-General for the conduct, from time to time, of performance audits of the administrative functions of Courts?* ACAG does not support legislating such arrangements. For the reasons noted earlier, the A-G should not be precluded from conducting performance audits of the administrative functions of the Courts. • *If legislative provisions can be developed, should all of the powers and responsibilities assigned to the Auditor-General under the Audit Act apply to arrangements entered into between the Heads of Jurisdiction and the Auditor-General?* Yes • *If legislative provisions can be developed, would it be important to include a provision within the Audit Act which expressly precludes the Auditor-General from commenting on the judicial functioning of Victoria's Courts?* If this is the only way to resolve this matter, yes but this principle is well understood and such a provision is not needed. • *From an accountability viewpoint, are the conditions underpinning the current protocol adopted by the Heads of Jurisdiction in consultation with the Auditor-General reasonable, unduly restrictive or in need of strengthening?* In view of ACAG's earlier comments, ACAG makes no comment other than to reinforce that it should not be necessary to enter into such protocols. The A-G should have the powers to conduct performance audits of the administrative functions of the Courts. • *Are there any other matters considered to be relevant to this discussion issue?* No

5.2.1 Right of access to premises and records of private sector contractors	2 Operational Independence – Item 2.4	Principle 1 - The Constitutional basis for the role Principle 4 - Portfolio	Principle 3 - Sufficiently broad mandate and full discretion, in the discharge of SAI functions and Principle 4 - Unrestricted access to information	Audit Acts in Tasmania and Western Australia Auditor-General Act (Qld)	*It can be seen from the above commentary that the Auditor-General has drawn attention to the increasing involvement of the private sector in the delivery of public services in Victoria and the associated implications and challenges of this changing environment to the audit mandate assigned to the position as Parliament's appointed auditor.* *Some Australasian and overseas jurisdictions have responded to similar developments with the creation of a statutory basis for the Auditor-General to access, whenever deemed necessary for official audit purposes, the premises and records of private sector contractors. Other jurisdictions, including Victoria, have directed attention outside audit legislation to the quality of contract management by the responsible government agencies and clear specification of contractual obligations.* *The Committee wishes to consider input from interested parties on these respective approaches. It is particularly interested in views on the nature of any action, within the provisions of the Audit Act, that could be taken to ensure that there is no potential for any erosion of Parliament's scrutiny of public administration in Victoria from the changing patterns of service delivery in the public sector. Such action could include the assignment of complete access authority to the Auditor-General or the segmenting of access authority according to specified tiers of contracts based on criteria such as expenditure thresholds, contract categories (for example PPPs and alliance projects) etc.* In ACAG's view, the fundamental principle here relates to equity and transparency. There is evidence that relying on contract provisions has not worked with taxpayers ultimately disadvantaged. The 'follow the dollar' access principle overcomes this in the public interest. This is not therefore a wish on behalf of Auditors-General to audit the private sector. ACAG supports the recommendations made to the PAEC by the A-G noted in the DP for the reasons outlined by him. To a lesser or greater extent, all Australian jurisdictions are experiencing revised service

					delivery arrangements seeing more services provided under contract by the private sector. In Tasmania and Western Australia the 'follow the dollar' principle has been accepted as a necessary mechanism by which an Auditor-General can hold program managers and public authorities to account for the efficient and effective application of public monies. These arrangements are consistent with INTOSAI's third and fourth principles. The fourth principle establishes that 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. ACAG suggests that these powers should apply to service delivery using taxpayers' monies. ACAG acknowledges the point made that these services are delivered under contracts managed by public servants and the A-G can currently audit the effectiveness of these arrangements. However: • these arrangements can and do involve significant sums of taxpayers' money • they are currently not subject to full independent scrutiny • there have been some significant failures in these arrangements • the arrangements are not as transparent as when the services are delivered and reported upon by government entities • the arrangements may lack the scrutiny of Parliamentary processes such as by Estimates committees or equivalent. ACAG also holds the view that if the private sector wishes to participate in, and benefit from, taxpayer's monies, then they should be prepared to assist with the Principal being held to account. *In a recent paper to the Committee, the Department of Treasury and Finance has cited the following questions pertinent to this issue:* *• Do changes in the balance of public sector delivery models (for example, increased private versus public provision) change the level of accountability of the Executive and public entities to Parliament? If so, what level of assurance does Parliament expect from the auditor to*

					ensure executive accountability is not diminished? Changes in service delivery models should not in any way change the standard of accountability of the public sector to taxpayers or the Parliament. Access by the A-G is pivotal to this. • *Is it appropriate to extend the information-gathering powers of one independent officer of Parliament (the Auditor-General) beyond the public sector, without broader application to other independent officers (such as the Ombudsman and the Electoral Commissioner) so that their powers are also not limited?* ACAG makes no comment • *Could there be an impact on the future ability of government to efficiently and effectively conduct business with the private sector and to attract potential investors to Victoria, if the powers of the Auditor-General and other independent officers were to extend beyond the boundary of the Victorian public sector?* This is a reasonable question although ACAG believes the more important question to be, and as noted earlier – if the private sector wishes to participate in public sector program delivery, and benefit from taxpayer's monies, then they should be prepared to cooperate in enabling administering authorities to be held to account. • *Is it appropriate for private sector entities to be subject to additional auditing and reporting requirements, other than those required by good practice ASX disclosure rules and federal legislation relating to such entities?* Without hesitation, yes. The ASX and federal legislation makes no requirement for unlisted entities or for the private not-for-profit sector. NGOs deliver significant services on behalf of governments. None of these entities (including those that are ASX listed) are required to report publicly on how well they provided the services, or at what return. They do not report what outputs or outcomes are achieved or what the governance or risk management arrangements are for the outsourced services. • *Could the extension of powers beyond the public sector have a direct impact on the rights of individuals within the community?* Not if the

					process followed by the A-G is open and transparent. Remember that the intentions of the A-G are spelt out in an annual plan developed in consultation with the PAEC and which is a publicly available document. *During its Inquiry, the Committee intends to seek the Department's views on these questions. At this point, it invites the views of interested parties on the questions raised by the Department as well as on the following related discussion points which focus on the right of access powers:* • *Should the Audit Act be amended to assign to the Auditor-General a right of access to the premises and records of private sector contractors engaged in the delivery of public services in Victoria?* Yes • *If legislative amendments are considered to be warranted, what form should they take? For example, should complete access authority be assigned to the Auditor-General or should access authority be segmented according to specified tiers of contracts based on particular criteria such as types of contracts and expenditure thresholds etc?* Complete access authority should be assigned as happens in WA and Tasmania. • *If legislative amendments are considered to be warranted, are there any conditions that should be placed on the Auditor-General's right of access, such as the ring-fencing of access to records and systems relating to the delivery of contracted services, and an expectation of use only as a last resort measure etc?* In principle, no conditions should be placed on the A-G. Any such conditions would impact independence. However, this could be too open-ended and ACAG suggests it would be reasonable to restrict access to the activities relating to the provision of government services. That is, not to the other activities of the private sector entity. • *If legislative amendments are not deemed as necessary, should any non-statutory action be taken in Victoria to better address this issue, such as a strengthening of contractors' obligations in standard clauses to provide suitable access to the Auditor-General?* Yes • *Are there any other matters considered to be relevant to this discussion*

					issue? See previous comments. Also, and by reference to the Auditor-General Act (Qld), ACAG notes that: • that Act allows for full and free access to documents and property relevant to an audit • This includes entering of premises not belonging to public sector entities where the occupier consents • These requirements apply to general audit requirements of public sector entities as there is no specific "follow the money" provision in Queensland.
5.2.2 Extent of legislative authority to investigate and audit matters pertaining to public money and public property	2 Operational Independence – Item 2.2		Principle 3 - Sufficiently broad mandate and full discretion, in the discharge of SAI functions and Principle 4 - Unrestricted access to information	Audit Acts in Tasmania and Western Australia	*For the above reasons, the Committee regards this issue, at the discussion stage of its Inquiry, as directly connected to the preceding discussion point on right of access to private sector contractors. This connection could mean that legislative change in at least one area could be necessary to address the Auditor-General's concerns. In making this point, the Committee does not wish to understate the importance of ensuring, consistent with the Auditor-General's proposal for an explicit investigative mandate, that the statutory powers assigned by Parliament to the position are clearly outlined within the Audit Act.* ACAG concurs with the PAEC's view that this matter is similar to that outlined in DP item 5.2.1. Again, ACAG supports the position recommended by the A-G. As noted in the DP, investigative powers as they relate to public money and public property exist in WA and Tasmania. These provisions enable the auditor to conduct audit work in relation to transactions which fall outside the traditional financial audit mandate and also outside of the performance audit (efficiency and effectiveness) mandate. Areas relevant to such audit work include the following areas which are often in the forefront of Parliament and the public – wastage of public resources and lack of probity or financial prudence in the management of public resources.

					In its recent paper to the Committee concerning this Inquiry, the Department of Treasury and Finance has raised the question of whether the current scope of the Auditor-General is appropriate or should the Auditor-General, in certain circumstances, be given authority to undertake audits of entities outside Executive Government. The Department has also suggested as a discussion issue if such a notion is 'an infringement of the intended spirit of the Constitution Act 1975 and the Westminster model of Government.' *It is against the above background that the Committee invites the views of interested parties on this subject and specifically on the following discussion points:* • *Should the Audit Act be amended to assign to the Auditor-General an explicit investigative power covering all matters relating to the use of public money or public property?* Yes • *As raised by the Department of Treasury and Finance, would extension of the Auditor-General's powers to cover entities outside the Executive Government be contrary to the intended spirit of the Constitution Act and the Westminster system of government?* No • *Would the case for legislative change on this issue be reinforced, weakened or unaffected if a statutory basis was established for the Auditor-General's right of access to records and systems of private sector contractors?* It would be reinforced • *Are there any other matters considered to be relevant to this discussion issue?* No
5.2.3 Provisions relating to policy objectives of government			Principle 3 - Sufficiently broad mandate and full discretion, in		*The definition of policy objectives in the Audit Act is presented in an open-ended way on where policy might be found rather than what actually constitutes policy. The Committee considers there may be scope through its Inquiry to identify avenues for refreshing the legislative approach to this important topic without eroding the essential requirement of preserving the right of an Executive Government to*

			the discharge of SAI functions		*unfettered determination of policy.* ACAG notes the point made in the DP that an Auditor-General should restrict him/herself to the implementation of policy. This is a convention followed by all Auditors General in Australia. ACAG also concurs that differentiating between policy objectives and policy implementation is complicated by circumstances. For this reason the matter is best addressed by each circumstance and between auditor and auditee. ACAG is also of the view that including a reference to policy in legislation runs the risk of reducing the independence of Auditor-General. As the PAEC noted, the current definition is presented in an open-ended way on where policy may be found. Trying to define policy also runs the risk of agencies continually challenging proposed projects on the basis they cross boundaries leading potentially to challenge an Auditor-General's authority and therefore independence. ACAG supports removing subsections 5 and 6 of section 16 in the current Audit Act. ACAG also notes reference to this matter in the INTOSAI independence principles – principle 3 – which notes "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". *In identifying this issue as a discussion topic, the Committee recognises that the subject may ultimately require expert input by the Chief Parliamentary Counsel.* *The Committee invites the views of interested parties on this subject and specifically on the following discussion points:* • *The feasibility of defining policy at its highest or macro level within the legislation.* ACAG believes legislating in this manner could be difficult and does not support doing so. • *The feasibility of identifying the characteristics of subsets of macro*

					policy which could assist audited agencies and the Auditor-General in their reaching of agreement on the boundaries of policy and on matters of an operational nature, applicable to particular audits. See response to immediately preceding dot point. • *The extent to which the existing statutory definition of policy assists audited agencies and the Auditor-General in their deliberations on the boundaries of policy concerning particular audits.* See earlier comments • *The desirability or otherwise of removing the existing definition of policy objectives from the Audit Act* See earlier comments • *Any other matters considered to be relevant to the subject. No*
5.2.6 Application of auditing standards	2. Operational Independence – Item 2.3	All five principles	All eight principles	Various Audit Acts in other Australian jurisdictions	*The Auditor-General has no direct control over the direction and content of future standards. The Committee therefore invites input from interested parties on the following discussion issues:* • *The desirability or otherwise, of assigning to the Auditor-General within section 13 of the Audit Act a more explicit discretionary power in relation to adoption of professional auditing and assurance standards.* ACAG supports the Audit Act being changed to provide the A-G with this discretionary power. This should be on the basis of 'if not, why not'. The most common discretion is along the lines of the requirement that the auditor 'have regard to' auditing standards which ACAG supports. • *The value of inserting within the Audit Act a power for the Auditor-General to set the official standards to apply to the performance of audit functions, accompanied by a responsibility to explain in VAGO's annual report the nature of adopted standards and the reason for any departures from professional standards.* As for the response to the first dot point although ACAG sees no need to make special mention of standards applying to the performance audit functions. • *Any other matters considered to be relevant to the subject.* By reference to the Auditor-General Act (Qld), ACAG notes: • That A-G is only required to "have regard to" recognised

					standards and practices • That A-G is required to report on "general standards" applied stating the extent to which the standards are in accordance with auditing standards made by relevant bodies.
5.2.9 Audit of overseas entities	2. Operational Independence – Item 2.1	Principle 3 Functions, duties and powers and Principle 4 - Portfolio	Principle 3 - Sufficiently broad mandate and full discretion, in the discharge of SAI functions and Principle 4 - Unrestricted access to information	Audit Act in WA Auditor-General Act (Qld)	*While an entity controlled by an agency or the state, such as a company or a subsidiary company, falls within the definition of an authority within section 3 of the Audit Act, and thus is subject to audit by the Auditor-General, the position may be less clear for companies and subsidiaries incorporated under overseas legislation. The Auditor-General's proposed amendment to the Audit Act aims to clarify the issue.* ACAG notes that as Australia, and its jurisdictions, by necessity become more involved in the global workplace, so will jurisdictions increasingly transact internationally and establish international operations. Such operations increase risks and the powers and functions of the A-G in such situations should be no different as if these entities operated in Victoria. Therefore, the A-G should be appointed the auditor of all subsidiaries including those established internationally. ACAG acknowledges that this cannot always be achieved due to differing legislation in other countries. However, the principle to be achieved is one where the Victorian controlling state entity exerts influence to ensure the A-G's appointment or the appointment of an auditor suitable to the A-G. *The Committee welcomes input from interested parties on the issue, including:* • *The need or otherwise for the Audit Act to clarify the authority of the Auditor-General to conduct audits of overseas subsidiaries.* Yes – see earlier comments • *Any other matters considered to be relevant to the subject.* By reference to the Auditor-General Act (Qld), ACAG notes that a new provision was included in that Act identifying that another auditor could undertake

					audits of foreign-based controlled entities on the following conditions: o The appointment is approved by that A-G o The controlled entity must give any audit report that A-G
5.2.10 Disclosure of information to external parties	2. Operational Independence – Item 2.4			Audit Acts in Tasmania, Queensland and Western Australia	*The review announced by the Premier in November 2009 of Victoria's integrity and anti-corruption system includes consideration of the coordination of the state's integrity and anti-corruption bodies. The above issues on the adequacy of the coverage within the Audit Act of the Auditor-General's interactions with other investigative or regulatory organisations are likely to be relevant to that review.* ACAG supports the A-G's proposals that, as outlined in the DP, the A-G is permitted to provide information to external parties, such as the Commissioner of Police, if it is considered during an audit that a matter warrants further investigation. The Audit Act is amended to provide that third parties receiving audit material which is not a proposed report, be prohibited from further disclosing that material. ACAG goes on to note that similar restrictions should apply to a report, or parts of it, as provided in accordance with section 16(3) of the Audit Act. The need for this will become all the more important should the A-G be granted access powers as commented in DP item 3.2.1. This was achieved in the Tasmanian and Western Australian Audit acts by inclusion of a clause in section 46 Information confidential as follows: **(4)** A person to whom a summary of findings is given under section 30(2) must preserve confidentiality with respect to all matters that are in the summary of findings and must not – **(a)** communicate any information as to those matters to any person; or

					(b) copy or reproduce any part of the summary of findings, except as may be necessary in connection with making submissions or comments to the Auditor-General under that section or obtaining legal advice as to those matters. ACAG notes that the Western Australian legislation provides for a penalty of $50 000 for a breach of this clause. *The Committee welcomes input from interested parties on:* • *The desirability or otherwise of legislative action to strengthen within the Audit Act the provisions dealing with disclosure of information to external parties.* ACAG supports these changes for the reasons outlined above • *Are there other entities with disclosure provisions that might elucidate this issue?* ACAG has not researched this. • *Are there any other matters considered to be relevant to the subject?* By reference to the Auditor-General Act (Qld). ACAG notes that: • That Act specifically provides that protected information can be provided to certain external parties including Crime and Misconduct Commission, police or other entities with investigative powers (e.g. ASIC) or a court • Power to disclose is at that A-Gs discretion • Wording reflects that information can be disclosed to police for purpose of commencing an investigation – prior to this change, an investigation needed to be underway • That Act now requires people receiving draft reports to keep information confidential.
5.2.11 Legal issues experienced by the A-G concerning	2 Operational Independence – Item 2.1	Principle 3 Functions, duties and powers and Principle 4 -	Principle 3 - Sufficiently broad mandate and full	Auditor-General Act (Qld)	*One possible avenue for consideration with regard to this subject is the legislative approach relating to the control concept adopted in the Canadian audit legislation. That legislation, when addressing control and its underlying meaning, includes an additional subsection which looks to have some relevance to the circumstances experienced by the*

sections 3, 12 and 15(1)(b) of the Audit Act		Portfolio	discretion, in the discharge of SAI functions and Principle 4 - Unrestricted access to information		*Auditor-General with the PTO Ltd.* *The relevant provision within the Canadian audit legislation addresses corporations without a share capital and states that:* *A corporation without share capital is controlled by a municipality or government if it is able to appoint the majority of the directors of the corporation, whether or not it does so.* *This issue, which may require legal input, will be considered by the Committee during its Inquiry. The Committee welcomes the views of interested parties on the matter including:* • *Should the Audit Act be amended to address the circumstances reported by the Auditor-General to Parliament concerning the PTO Ltd and, if so, the nature of such amendment?* Yes. ACAG concurs that the Audit Act requires amendment. The Canadian solution referred to appears effective. In the Tasmanian Audit Act the definition in section 4 of State entity includes (our emphasis): (f) the council, board, trust or trustees, or other governing body (however designated) of, or for, a corporation, body of persons or institution, that is or are appointed by the Governor or a Minister of the Crown However, the Canadian solution is stronger by reference to "is able to …, whether or not it does so. • *Are there any other matters considered to be relevant to the subject?* By reference to the Auditor-General Act (Qld), ACAG notes that: • A further and related consideration could be whether or not the definition should include jointly controlled entities • In the Qld Act the definition of "public sector entity" includes entities controlled by one or more entities meeting the definition of

					public sector entity.
5.2.12 Charging of audit fees		Principle 2 - Independence and Principle 3 Competence Functions, Duties and Powers	Principle 8 - Financial and managerial/administrative autonomy and the availability of appropriate human, material, and monetary resources	Audit Acts in Tasmania, Queensland and Western Australia	*Adoption of the Auditor-General's proposal would formalise a longstanding budgetary principle underpinning the charging of audit fees in Victoria. Under this principle, the costs of mandatory attest audits are recoverable by the Auditor-General from audited entities while the costs of discretionary performance audits, which have no specific statutory timing and involve non-standard reporting on managerial and organisational performance, are borne directly, in aggregate, from the Consolidated Fund on behalf of Parliament.* *The output framework established for the Victorian Auditor-General's Office under the annual Appropriation Act reflects these two categories of audit functions.* *The Committee invites input from interested parties on this subject, including:* • *The benefit or otherwise of formalising within the Audit Act the power of the Auditor-General to charge fees for all annual attest functions, extending the current fee regime beyond financial audits.* For the reasons outlined by the PAEC above, ACAG supports the amendment proposed by the A-G including the removal of "incurred by and on behalf" in section 10(1). ACAG supports this proposal where it relates to all of the A-G's mandated functions. We note in the DP the A-G's reference to Local Government – a solution to this would be to broaden the definition of 'authority' in the Act. The Tasmanian Audit Act includes a broader definition as follows (our emphasis): **"State entity"** includes –

					(a) an agency; and **(b)** a council; and **(c)** a Government Business Enterprise; and **(d)** a State-owned company; and **(e)** a State authority that is not a Government Business Enterprise; and **(f)** the council, board, trust or trustees, or other governing body (however designated) of, or for, a corporation, body of persons or institution, that is or are appointed by the Governor or a Minister of the Crown; and **(g)** a Corporation within the meaning of the *Water and Sewerage Corporations Act 2008*; In case there is further doubt, the PAEC could also consider including in the legislation the capacity for the A-G to conduct audits by arrangements. The Tasmanian Audit Act includes section 28 – **28. Audits and other services by arrangement** **(1)** The Auditor-General may enter into an arrangement with any person or body – **(a)** to carry out an audit for or in relation to the person or body; or **(b)** to provide services to a person or body that are of a kind

					commonly performed by auditors. (2) The Auditor-General may carry out audits and provide services under an arrangement under subsection (1). (3) An arrangement under subsection (1) may provide for the payment of fees to the Auditor-General in respect of the audit or services. (4) Division 2 of Part 5 does not apply in relation to an audit carried out under this section. The Western Australian Audit Act has an identical provision at s22 (with the appropriate changes to the internal references at clause 4). • *The desirability or otherwise of statutory action which validates the use of write-ons and write-offs by the Auditor-General in the computation of audit fees.* As noted, ACAG supports changing section 10(1) – such a change allows the A-G necessary operational flexibility. There is no exact science to setting audit fees and during the conduct of an audit a number of factors can, and do, emerge, resulting in costs varying from that estimated. • *Any other matters considered to be relevant to the subject.* By reference to the Auditor-General Act (Qld), ACAG notes that: • The Qld Act is quite broad and identifies that the AG "may charge fees for an audit conducted by the auditor-general" • As such it does not restrict the types of audits for which a fee may be charged. At present fees are charged for all financial audits but are not charged for performance management systems audits. • The Qld Act also provides for "by-arrangement audits" for which fees could be charged.

5.2.13 Application of the statutory definition of 'Authority' to Administrative Offices and multiple entities	2 Operational Independence – Item 2.1	Principle 4 - Portfolio	Principle 3 – A sufficiently broad mandate and full discretion, in the discharge of SAI functions		*Of relevance to the Auditor-General's proposal is the approach taken in section 45(4) of the* Financial Management Act 1994 *which stipulates that the financial statements of an Administrative Office, other than the Environment Protection Authority (which is a statutory authority and therefore an authority for both financial management and audit purposes), must be incorporated and consolidated within the financial statements of the related department.* *A second matter raised with the Committee by the Auditor-General concerning the statutory definition of an 'Authority' relates to whether the definition extends beyond singular entities to include multiple entities. The past stance of the Victorian Auditor-General's Office has been based on earlier legal advice that the singular expression in the definition would also include the plural under section 37(c) of the* Interpretation of Legislation Act 1994. *The Auditor-General has advised the Committee that, based on more recent legal advice, a suitable amendment to the definition would remove any doubt on the matter.* *The Committee invites input from interested parties on the above two issues and on:* • *Should action be taken to include Administrative Offices and multiple entities within the statutory definition of an 'Authority' within section 3 of the Audit Act?* Yes. ACAG supports any proposed amendments that clarify what is, and what is not, an 'authority', the financial reporting responsibilities of those authorities and the resulting audit impact. ACAG notes from INTOSAI's principle 3 that 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. Consistent with this principle, and as the A-G has noted, any legislative change should be aimed at introducing safeguards that preventing "circumstances whereby the device could be used to avoid audits". • *Are there any other matters considered to be relevant to the subject?* No
5.2.14 Involvement of the A-G as the auditor of State companies	2 Operational Independence – item 2.1	Principle 4 - Portfolio	Principle 3 – A sufficiently broad mandate and full discretion, in the discharge of SAI functions	Audit Acts in Tasmania, Queensland and Western Australia	*The Auditor-General's proposal to stipulate within the Audit Act the automatic appointment of the Auditor-General as the corporations auditor of State companies would ensure there is one audit process, involving the Auditor-General as Parliament's appointed auditor, to meet the financial reporting requirements of both State and companies legislation.* *The Committee invites the views of interested parties on:* • *The appropriateness or otherwise of requiring in the Audit Act that State companies appoint the Auditor-General as their auditor under the Corporations Act.* ACAG believes this proposal is valid and supports the A-G's recommendations regarding his: • appointment as the auditor of State Owned Companies (SOCs) • capacity to conduct performance audits of such entities and • proposal that all controlled SOCs be included. ACAG believes this proposal should also relate to controlled subsidiaries of SOCs (or for that matter of Government Business Enterprises). ACAG notes that government service delivery arrangements, and the corporate structures delivering these services, are changing. ACAG

					acknowledges that in setting up SOCs a government intends that those entities compete with the private sector whose accountability arrangements may be less transparent. Ultimately however, regardless of corporate structures, these entities are owned by the people of Victoria and their accountability arrangements should not vary. Legislation needs to be sufficiently broad to capture these arrangements. In this regard, reference is again made to the definition of State entity in the Tasmanian Audit Act. Also relevant are the following definitions in that State's act: **"State-owned Company"** means a company incorporated under the Corporations Act which is controlled by – **(a)** the Crown; or **(b)** a State authority; or **(c)** another company which is itself controlled by the Crown or a State authority; **"subsidiary"**, of a State entity, means – **(a)** a company or body formed or incorporated under the Corporations Act or formed or incorporated under equivalent laws of a place other than a State or Territory – **(i)** in respect of which the State entity has the capacity to control decision making, directly or indirectly, in relation to the financial and operating policies of the company or body; and **(ii)** that is not itself a State entity; or **(b)** a body, trust or other entity formed under written law or

					under equivalent laws of the Commonwealth or a State or Territory of the Commonwealth – **(i)** in respect of which the State entity has the capacity to control decision making, directly or indirectly, in relation to the financial and operating policies of the body, trust or other entity; and **(ii)** that is not itself a State entity; or **(c)** a body that is declared under an Act to be a subsidiary of a State entity and is not itself a State entity; or **(d)** a body that is determined by the Treasurer, by written notice given to the State entity, to be a subsidiary of the State entity; The situation in Western Australian is that its legislation refers to foreign and local subsidiaries of public sector agencies (s16) and authorizes the Auditor General to be appointed as the auditor. Also relevant to this matter is where government services are provided by 'related entities. Section 22 is relevant - **22. Audits of accounts of related entities** If a State entity performs any of its functions – **(a)** in partnership or jointly with another person or body; or **(b)** through the instrumentality of another person or body; or

					(c) by means of a trust – the accountable authority must give written notice of that fact to the Auditor-General, and the person, body or trust is referred to as a "related entity" of the State entity. Section 17 of the Western Australian Audit Act is almost identical, only referring to 'an agency' rather than a 'State entity'. • *Is it appropriate for Parliament to remove the discretion of a company's Board that it holds under the Corporations Act?* This requires legal advice particularly as it relates to the position of State legislation as against Commonwealth legislation. However ACAG considers that arrangements can be introduced whereby the constitutions of all SOCs are required to include a provision requiring the A-G to be the external auditor. • *Are there any other matters considered to be relevant to the subject?* By reference to the Auditor-Genera; Act (Qld), ACAG notes that: • Under the Qld legislation the shareholders of a public sector company must ensure that AG is appointed and remains at all time the auditor of the company • This applies not only to Queensland's Government Owned Corporations but any companies which are controlled entities of other public sector entities (including where they are jointly controlled by one or more public sector entities).
5.2.15 The A-G's power to call for documents	2. Operational Independence – Item 2.4	Principle 3 Functions, Duties and Powers	Principle 4 Unrestricted access to information	Auditor-General Act (Qld)	*The Committee intends to examine during its Inquiry the information-gathering provisions of section 11 and to also consider the Auditor-General's proposal. The Committee invites the views of interested parties on:* • *The need or otherwise to clarify the Auditor-General's*

					information-gathering powers under section 11 of the Audit Act. ACAG supports the A-G's position. INTOSAI's principle 4 suggests that with out unrestricted access to information (including documents), an Auditor-General's independence is restricted. Reference is also made to the reference in ACAG principle 3 that "Perhaps the most important power of Auditors-General is that of access to information to carry out the audits". The A-G's proposal for distinct and separate powers to require authorities to produce documents would address this. Perhaps the most important power of Auditors-General is that of access to information to carry out the audits. • *Any other matters considered to be relevant to the subject.* By reference to the Auditor-General Act (Qld), ACAG notes that legislation in Queensland includes separate provision for requiring documents to be produced with and without a person being required to attend a nominated place.
5.2.16 Incorporation of comments of audit agencies in reports of the Auditor-General tabled in Parliament			Principle 5 - The right and obligation to report on their work and Principle 6 - The freedom to decide the content and timing of audit reports and to publish and disseminate them	Audit Acts in Tasmania, Queensland and Western Australia	*Given the specific purpose of section 16(4) of the Audit Act in terms of the application of natural justice and procedural fairness, the Committee's initial view, pending elaboration on the issue by the Auditor-General, is that there would need to be strong grounds for its removal.* ACAG supports the INTOSAI principle that SAIs have the "freedom to decide the content and timing of audit reports and to publish and disseminate them". Auditors-General in Australia all apply natural justice principles and ACAG supports the A-G's proposal, as set out in the DP that: "... as part of consideration of amendments to Section 16, the consultative process around proposed reports – for example, the application of natural justice to third parties named in reports – be clarified. The Audit Act does not currently address this issue." A difficulty in section 16(4) which ACAG believes restricts the A-G's

					capacity to independently report, is the inclusion of the words: "... in a form agreed between the Auditor-General and the authority or department head." (ACAG's emphasis) There may be circumstances where differing points of view make it impossible for the A-G and the auditee to reach such agreement potentially leading to the A-G's ability to independently report being compromised. The Tasmanian Audit Act (section 30) and the Western Australian Audit Act (section 25) also require those Auditors-General to include in a report any submissions or comments made or a fair summary of them. There is, however, no requirement that the inclusion be "in an agreed form". *At this stage of its Inquiry, the Committee invites input from interested parties on:* • *The soundness or otherwise of the Auditor-General's proposal that the statutory requirement to include agency comments in audit reports tabled in Parliament be removed from the Audit Act.* See earlier comments • *The need or otherwise for clarification within the Audit Act of the application of natural justice to consultations by the Auditor-General with third parties named in proposed reports.* See earlier comments • *Any other matters considered to be relevant to the subject.* By reference to the Auditor-General Act (Qld), ACAG notes that their A-G Act only requires a "fair summary" and does not require agreement with the client.
5.2.17 Reporting of sensitive material			Principle 5 - The right and obligation to report on their work and Principle 6 - The freedom to decide the content and	Audit Acts in Tasmania, Queensland and Western Australia	*The Committee invites input from interested parties on:* • *The need or otherwise for a separate provision within the Audit Act for the reporting of sensitive or other material by the Auditor-General to the Committee in lieu of Parliament.* This difficulty was recognised and addressed by the Tasmanian Parliament when it included provisions in the Tasmanian Audit Act to report to that Parliament's Public Accounts Committee or not to report at all. This provision only applies to performance audits and reads as follows:

			timing of audit reports and to publish and disseminate them		**30. Report on examination or investigation** **(1)** The Auditor-General may prepare and sign a report on an examination or investigation carried out under section 23 and may submit the report to – **(a)** both Houses of Parliament; or **(b)** the Public Accounts Committee. Section 25 of the Western Australian legislation provides similar provisions. • *Any other matters considered to be relevant to the subject.* By reference to the Auditor-General Act (Qld), ACAG notes: • That A-G Act identifies certain matters which are required to be reported directly to the Committee (PAEC equivalent) including matters which o Have a serious effect on commercial interest of a public sector entity o Reveal trade secrets of a public sector entity o Prejudice the investigation of a contravention or possible contravention of the law o Prejudice the fair trial of a person o Cause damage to relations with another government. • This section however requires such issues being reported to the Committee and prevents that A-G from disclosing the information in the report – could be seen as restricting that A-Gs ability to report openly.

5.2.18 Immunity protection			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 Committee invites the views of interested parties on:* • *The soundness or otherwise of the Auditor-General's proposed amendment to replace in the Audit Act indemnity protection with immunity protection.* ACAG supports the A-G's proposal noting the INTOSAI position that SAIs are immune to any prosecution for any act, past or present, that results from the normal discharge of their duties as the case may be. Victoria provides, via section 7H, a State indemnity for liabilities incurred for anything done in good faith by the A-G and others. Most other jurisdictions provide a more explicit protection from liability by precluding any action or claim for damages in these circumstances, thus protecting their Auditor-General from becoming embroiled in litigation[8]. • *Any other matters considered to be relevant to the subject.* No
6.2 Continuous improvement and 6.3 Risk management			Principle 5 - The right and obligation to report on their work and Principle 6 - The freedom to decide the content and timing of audit reports and to publish and disseminate		*The Committee welcomes the Department's comments and suggested questions to assist the Inquiry. The discussion issues arising from its comments and suggestions have been listed as discussion points in the earlier chapters under relevant discussion topics.* *With regard to the points pertaining to continuous improvement and risk management, while the Auditor-General's independence in determining the manner in which audit functions are conducted – including the extent of emphasis in particular areas – is protected within the Constitution Act, the Department has posed some pertinent issues which will be further considered by the Committee during the course of its Inquiry. As part of this process, it intends to seek the views of the Department on the various questions raised by it at an appropriate point in the Inquiry.*

[8] Independence of Auditors General - A survey of Australian and New Zealand Legislation - *Dr Gordon Robertson, PhD, PSM July 2009*

			them		*The Committee would welcome input from interested parties on the matters concerning continuous improvement and risk management identified by the Department.* Requirements for public entities to practice continuous improvement and risk management are activities for central agencies and any auditor should not be directly involved in setting continuous improvement or risk management agendas for these entities. Doing so places auditors in the position of having to audit what they have promoted. However, this does not prevent an auditor from commenting on these matters should there be findings resulting from audits completed. ACAG responds specifically to these two matters as follows: 1. **Continuous improvement** (CI). ACAG finds it difficult to see how CI can be legislated. This is a 'value' which should be adopted by all state entities including the A-G. Treasury suggest that: • Recent audit practice has been too 'compliance' focused. This is not ACAG's experience ACAG's review of recent reports issued by the Victorian A-G suggest they have a 'performance' rather than a 'compliance' focus. However, to an extent, this can be addressed in the A-G's annual plan but should remain the A-G's discretion. • There is a need for "collaboration" – it is ACAG's view that this collaboration should be driven by central agencies with other departments/statutory authorities in the Victorian jurisdiction. If Treasury wishes to discuss what is being proposed with the A-G, then this is supported but not as a form of 'collaboration' because this reduces independence. . ACAG supports the concept of continuous improvement and a number of Auditors-General issue best practice guides. 2. **Risk management** – ACAG concurs that managing risk is an integral and central element of public sector governance but doubts that risk management can be effectively legislated. The approach taken by the private sector is preferable with the ASX having issued its eight corporate governance principles one of which relates to risk management. These principles were not developed by auditors. The principles apply an "if not why not"

					approach. Treasury, as a central agency, could adopt a similar strategy. However, and as noted previously, the A-G must not drive this. ACAG also notes that performance and compliance audit reports issued by Australian Auditors-General frequently make reference to the need to manage risk and how this could be done. However, Auditors-General should not be involved in developing risk management requirements for application by public sector entities – the auditor must not advise and then be seen to be auditing application that advice – this reduces an auditor's independence.
7.1.1 Notification to the A-G of the creation of new public entities	2. Operational Independence – Item 2.1	Principle 4 - Portfolio		Tasmanian audit act Auditor-General Act (Qld)	*At this point, the Committee would welcome the views of interested parties on the following matters raised by the Auditor-General and on any other issue concerning the Audit Act that is not addressed in this discussion paper.* In this section, ACAG will only address item 7.1.1. ACAG supports the A-G's suggestion that his Office be informed regarding the establishment of new statutory authorities or government-owned or controlled entities. Often the existence of these new entities is identified when planning financial audits but not always. The responsibility for identifying such entities should be on those establishing such entities rather than on the auditor. We note the A-G's suggestion that this responsibility be placed on Ministers. In Tasmania, the responsibility is placed on 'accountable authorities' which are defined as: **"accountable authority"** means the person or body determined under section 14 or 15, as the case may require And, sections 14 and 15 read:

					14. State entities and audited subsidiaries of State entities to have accountable authority **(1)** A State entity, or an audited subsidiary of a State entity, is to have an accountable authority. **(2)** The Head of Agency is the accountable authority of – **(a)** a State entity that is an agency; and **(b)** subject to section 15(1), any other State entity that forms part of that agency. **(3)** Subject to section 15(1), the accountable authority of a State entity, other than a State entity referred to in subsection (2), is the person or body (however described) having the general direction and control of, and the overall responsibility for, the operations of the State entity. **(4)** The accountable authority of an audited subsidiary of a State entity is the person or body (however described) having the general direction and control of, and the overall responsibility for, the operations of the audited subsidiary of the State entity. **(5)** In this section – **"Head of Agency"** has the same meaning as in the *State Service Act 2000*. **15. Treasurer may determine accountable authority of State entity** **(1)** If the Treasurer considers that there is, or may be, some doubt as to the application of section 14(2)(b) or section 14(3) to a particular State

					entity, the Treasurer may, by notice published in the *Gazette*, appoint a person or body to be the accountable authority of that State entity. **(2)** On the publication of a notice under subsection (1), the body or person appointed is to assume and perform all the functions conferred on an accountable authority under this Act. **(3)** A notice under subsection (1) is not a statutory rule within the meaning of the *Rules Publication Act 1953*. ACAG also notes, by reference to the Auditor-General Act (Qld) that: • That A-G Act also requires that that A-G is notified where a public sector entity is created or where an existing entity becomes a public sector entity • That A-G Act, however, also requires that that AG be notified where a public sector entity is abolished or ceases to be a public sector entity • These requirements address the situation where there is a change in the control of an entity. Issues have recently been identified in Queensland where certain companies believe they no longer are controlled entities and as such have attempted to appoint their own auditors without first requesting that A-G to resign as the auditor.

8. Other matters

Detailed here are matters not addressed in the questions posed in section 7 which ACAG consider the current Audit Act may be deficient as it relates to independence:

8.1. Audit staff are employed under the *State Service Act 2004* (section 7E

While the Victorian Auditor-General is not an employee under the SSA, his/her staff are. This means that the Auditor-General cannot independently determine staff terms, conditions and obligations – these are under the control of the Executive thereby reducing independence. An alternative model is that applying in NSW where the Auditor-General's office is a statutory authority. See also ACPAC's Minimum Requirements, Operational Independence item 2.5.

8.2. Reasonable assistance (item 7.1.5 in the DP)

The Audit Act contains no requirement for auditees to provide all reasonable assistance and facilities to the Auditor-General and/or his/her staff when at their premises to conduct audits. ACAG supports the inclusion of such a provision. This will facilitate the efficient and effective completion of audit filed work, in everyone's interests.

8.3. Conduct of audits jointly with the Auditors-General in other jurisdictions

ACAG's completion of a submission to an inquiry into the audit legislation of the Commonwealth Auditor-General noted the difficulty, for confidentiality reasons, in conduction 'joint audits'. The global financial crisis resulted in a number of stimulus packages administered by Commonwealth agencies but with funding provided to the States and Territories along with the expectation they would deliver various outcomes. This is an example of a situation where Auditors-General could work effectively together to assess outcomes in the interests of the whole Australian public. The PAEC may wish to consider legislation facilitating such work including the capacity for the Victorian Auditor-General to share information in such circumstances.

Section 9 Attachments

ACAG PRINCIPLES

1. The Constitutional Basis for the Role - ***PRINCIPLE: The role of the Auditor-General is derived from the functions of Parliament. The role exists to provide Parliament with independently derived audit information about the executive arm of government.***

This principle recognizes that Parliament is supreme in our systems of government. The executive arm of government (Executive Government) relies on Parliament's authority for most of its powers and resources. The Executive Government is responsible to, and subject to scrutiny by, Parliament for its performance. The role of the Auditor-General is derived from these constitutional arrangements.

Parliament may also rely on an independent statutory officer, the Auditor-General, to provide it with information about whether governmental activities are being carried out and accounted for consistent with the Parliament's intentions.

The role of the Auditor-General is therefore an important element of helping to maintain the integrity of any systems of government. The Auditor-General ensures that Parliament has access to independent audit information as part of the framework of accountability and scrutiny of the Executive Government.

The legislation I Victoria and the DP recognizes this role for the Auditor-General.

2. Independence and Competence - ***PRINCIPLE: To be effective the Auditor-General must been seen to be independent and competent. The Auditor-General must:***

- ***be free from direction by the Executive Government, and free from political bias; and***
- ***have the means to acquire the resources necessary to do the job properly.***

The role of the Auditor-General can only be effective if the office is viewed as being independent and competent. Without these characteristics, the assurances of the Auditor-General may lack credibility.

To be seen to be independent the Auditor-General must be both free from control or direction of the Executive Government and free from political bias. Consequently, an important feature of the statutory framework that supports the office of Auditor-General should be that it provides an appropriate level of freedom for the Auditor-General to act without direction or interference.

To be seen to be competent, key stakeholders must view the Auditor-General as being the right person for the job. The Auditor-General must also have the means to acquire resources according to the skill requirements of the job to be done.

Factors that may significantly affect both the perception and the fact of the Auditor-General's independence and competence are:

- the process for appointment, suspension or removal from office
- the term of office
- the determination of the Auditor-General's salary and conditions of employment
- the ability to employ staff or other suppliers of services and
- the process for determining the budget and work plans of the office.

3. Functions, Duties and Powers - ***PRINCIPLE: To be effective, the Auditor-General must have appropriate functions, duties and powers to achieve the tasks of auditing and reporting on the range of matters on which Parliament seeks independent assurance.***

If the Auditor-General is to meet Parliament's needs for independent assurance about governmental activities, then the Auditor-General must have functions, duties and powers that reflect Parliament's range of interests. Any limitation will have the effect of reducing Parliament's ability to rely on the Auditor-General for assurance.

The functions of the Auditor-General are the range of matters that Parliament wants to fall within the purview of the Auditor-General and should incorporate:

- The Regularity Audit including the audit of the financial and other information in the accountability statements of an entity, the audit of systems of internal control, and the consideration of probity and propriety.
- The Performance Audit including the consideration of economy, efficiency and effectiveness.

The duties of the Auditor-General are the activities that Parliament considers the Auditor-General must perform.

The powers of the Auditor-General are the rights and privileges that Parliament believes are needed to properly discharge the Auditor-General's functions and duties. Perhaps the most important power of Auditors-General is that of access to information to carry out the audits. Another important power is the freedom to report to Parliament on such matters as the Auditor-General considers necessary.

4. Portfolio - ***PRINCIPLE: Parliament should desirably appoint the auditor of all entities which are part of the Executive Government.***

Parliament may appropriately delegate the right to appoint the auditor to someone else if Parliament decides it does not have a primary interest in scrutinising the performance of the entity concerned.

Parliament should desirably appoint the Auditor-General whenever it exercises the right to appoint the auditor of an entity.

The range of entities of which the Auditor-General is the auditor is a matter for Parliament to determine. Parliament will usually appoint the auditor of an entity when Parliament itself has some direct interest in the accountability and scrutiny of the entity's performance. By appointing the auditor, Parliament is ensuring it has access to independent audit assurance about the entity.

Parliament usually appoints the auditor of most public sector organisations because these organisations are, given our constitutional arrangements, accountable to Parliament. However, in some cases, Parliament has decided to delegate the right to appoint the auditor to someone else (e.g. a Board or Minister). In doing so, Parliament has limited its ability to rely on the audit function as part of Parliament's own scrutiny of governmental performance.

When Parliament exercises its right to appoint the auditor of an entity, normally it will appoint the Auditor-General because:

- Parliament can be sure that the audit role will be discharged in a manner which is independent of the Executive Government
- Parliament derives significant benefits from having a specialist professional agency devoted to serving the Parliament's interests and
- Parliament would find it administratively impractical to appoint and oversee separate auditors for every public sector entity.

5. Accountability - *PRINCIPLE: The Auditor-General must be fully accountable for the performance and use of public resources in discharging the mandate of the office.*

The Auditor-General must be primarily accountable to Parliament (not the Executive Government) in a manner consistent with the office's independence.

Auditors-General play an important role in ensuring sound and proper accountability of public sector organisations. Auditors-General must expect the same high standards of accountability and scrutiny to apply to their own performance.

The role of the Auditor-General exists to help Parliament perform its functions and to be independent of the Executive Government. Further, the functions, duties, powers, and resources of the Auditor-General are conferred by Parliament. Accordingly, the Auditor-General should be primarily accountable to Parliament not the Executive Government.

Different arrangements have been adopted for holding the Auditor-General to account. Common features include:

- arrangements that allow Parliament to scrutinise and endorse the proposed budget and performance of the Auditor-General and
- arrangements for reporting actual performance and audit of the Auditor-General's activity.

Some care is always needed to ensure that the particular arrangements adopted, while providing for effective accountability, do not impinge upon the independence of the office of Auditor-General and compromise the effectiveness of the role.

These five principles will be referred to item 6 of this submission where we respond to the specific questions posed in the DP.

Attachment 2

INTOSAI'S PRINCIPLES OF INDEPENDENCE

Preamble

From the XIX Congress of the International Organization of Supreme Audit Institutions (INTOSAI) meeting in Mexico:

Whereas the orderly and efficient use of public funds and resources constitutes one of the essential prerequisites for the proper handling of public finances and the effectiveness of the decisions of the responsible authorities.

Whereas the Lima Declaration of Guidelines on Auditing Precepts (the Lima Declaration) states that Supreme Audit Institutions (SAIs) can accomplish their tasks only if they are independent of the audited entity and are protected against outside influence.

Whereas, to achieve this objective, it is indispensable for a healthy democracy that each country have a SAI whose independence is guaranteed by law.

Whereas the Lima Declaration recognizes that state institutions cannot be absolutely independent, it further recognizes that SAIs should have the functional and organizational independence required to carry out their mandate.

Whereas through the application of principles of independence, SAIs can achieve independence through different means using different safeguards.

Whereas application provisions included herein serve to illustrate the principles and are considered to be ideal for an independent SAI. It is recognized that no SAI currently meets all of these application provisions, and therefore, other good practices to achieve independence are presented in the accompanying guidelines.

Resolves

To adopt, publish, and distribute the document entitled
'Mexico Declaration on the Independence of Supreme Audit Institutions'.

General

Supreme Audit Institutions generally recognize eight core principles, which flow from the Lima Declaration and decisions made at the XVIIth Congress of INTOSAI (in Seoul, Korea), as essential requirements of proper public sector auditing.

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.

SAIs should not be involved or be seen to be involved, in any manner, whatsoever, in the management of the organizations that they audit.

SAIs should ensure that their personnel do not develop too close a relationship with the entities they audit, so they remain objective and appear objective.

SAI should have full discretion in the discharge of their responsibilities, they should cooperate with governments or public entities that strive to improve the use and management of public funds.

SAIs should use appropriate work and audit standards, and a code of ethics, based on official documents of INTOSAI, International Federation of Accountants, or other recognized standard- setting bodies.

SAIs should submit an annual activity report to the Legislature and to other state bodies—as required by the constitution, statutes, or legislation—which they should make available to the public.

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 fulfill their mandate.

SAIs have the right of direct appeal to the Legislature if the resources provided are insufficient to allow them to fulfill their mandate.

Relevant extracts from ACAG's submission to the inquiry into the ACT *Auditor-General Act 1996*

Matters for Comment

(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

There have been significant developments in recent years in the area of auditing standards and other professional requirements such as APES 320 *Quality Control for Firms* issued by the Accounting Professional and Ethical Standard Board.

In this regard it is noted that, at present, the *Auditor-General Act 1996* is silent on the extent to which the Auditor-General must have regard to relevant auditing standards and other professional requirements. For audits conducted under the *Corporations Act 2001*, the standards issued by the Auditing and Assurance Standards Board (AUASB) carry "force of law" status by virtue of section 336 of that Act.

While the Auditor-General should have the freedom to undertake audits in the manner which they deem 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*.

(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

An Auditor-General's ability to undertake audits of non-government organisations that receive government funding is a significant public accountability issue given the increased use of such organisations to deliver government services and projects. The audit legislation in a number of Australian jurisdictions provides broad powers for the Auditor-General to undertake audits where government funds are provide to non-government entities.

In Western Australia and Tasmania the Auditor-General has the power to "*investigate any matter relating to public money, other money or statutory authority money or to public property or other property.*"

Further, both the South Australian and Tasmanian Auditors-General may undertake audits of the accounts of individuals or bodies receiving public funds where requested by the Treasurer.

Accordingly, the powers of the Auditor-General would be significantly enhanced if the legislation specifically provided for the ability 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.

In addition the Auditor-General's capacity to undertake audits of organisations that receive government funding would also be enhanced if the powers provided to enter premises and remain on premises under section 15 were extend to included premises not occupied by the Territory or a Territory entity where reasonable notice is provided and entry to the premises was necessary for the purpose of conducting the audit.

Legislation in a number of jurisdictions also provides the Auditor-General with the power to undertake audits on a "by-arrangement" basis where this is within the legislative powers of the jurisdiction concerned, and is agreed between the Auditor-General and an individual or entity that would not otherwise fall within the Auditor-General's legislated mandate. This can enhance public sector accountability by allowing the Auditor-General to undertake such audits where the there is a significant public interest (e.g. significant funding or investment in the entity from the government or through a Territory entity).

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

Providing the Auditor-General with sufficient resources to allow his/her Office to effectively discharge their responsibilities is an important consideration in ensuring the Auditor-General has an appropriate level of independence from the executive government. In particular, the Auditor-General needs to be provided with sufficient funding and resources to be able to discharge their full legislative mandate.

As the Auditor-General should be viewed as an independent officer of the Parliament (refer comments under item 5 as to how this could be enhanced) 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.

This could be achieved 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 preparing the budget for the Territory under the *Financial Management Act* consultation between the Auditor-General, the Public Accounts Committee and the Treasurer would be appropriate.

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

The level of autonomy provided to the Auditor-General in terms of staffing needs to be considered in terms of both the carrying out of the audit function and in relation to the Auditor-General's ability to attract and retain an appropriate level of resources.

As a minimum, the legislation 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 other person authorised by the Auditor-General regarding performance of the audit functions and duties under the *Auditor-General Act*.

At present the *Auditor-General Act* provides for all staff to be employed under the *Public Service Management Act* which has the potential to limit the Auditor-General's ability to recruit staff with appropriate skills and experience The Auditor-General's managerial autonomy and ability to resource the office could be strengthened by including a provision that specifically allows the Auditor-General to engage persons on terms and conditions the Auditor-General thinks fit. In determining the terms and conditions on which the Auditor-General could engage staff it would be appropriate for the Auditor-General to have regard to the general terms and conditions of the Territory's public service employees.

In this context consideration could also be given as to whether it may be more appropriate to establish the office as a statutory authority, noting, however that to date only NSW has established the Audit Office as a statutory authority and the practicalities of doing such in the ACT would need to be specifically considered.

(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

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.

(8) any other relevant matter.

Additional matters that could be considered in reviewing the legislation include:

Disclosure of protected information

Section 18 of the Act presently requires the Auditor-General to provide copies of proposed reports to certain officers prior to finalising a report for the Legislative Assembly. This section, however, does not include a specific provision restricting these officers from disclosing the information contained in the proposed report. While the Auditor-General could provide a direction under section 35 to prevent disclosure of protected information in relation to the proposed report, such protection should be afforded as a matter of course without the need for a direction under section 35.

Accordingly, 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.

Section 36 also provides circumstances in which protected information may be disclosed. This section could be expanded to specifically recognise the Auditor-General's ability to disclose information to the Legislative Assembly or relevant parliamentary committees. Further consideration should also be given to providing the Auditor-General with the ability to disclose information to police and/or other agencies (e.g. Australian Securities and Investments Commission) and the courts in relation to the investigation and prosecution of offences.