Queensland Audit Office

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25 October 2013

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Finance and Administration Committee

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Mr S Davies MP
Chair
Finance and Administration Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Mr Davies

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

I am pleased to provide the attached submission to assist the Finance and Administration Committee in its inquiry into the legislative arrangements assuring the Queensland Auditor-General's independence.

I welcome this opportunity for Parliament to consider my independence and, where appropriate, to have the *Auditor-General Act 2009* updated to reflect recognised international best practice.

Please contact me if you would like any further information, or have your officers contact [redacted].

Yours sincerely

Andrew Greaves
Auditor-General

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

Submission by the Auditor-General

October 2013

Queensland Audit Office

Contents

1. Introduction

The role of the Auditor-General is integral to financial accountability in Westminster-style systems of government. The history of the role can be traced back to the establishment of the Auditor of the Exchequer in the United Kingdom in 1314 with the first statutory auditors, the Commissioners for Auditing the Public Accounts, appointed in the UK in the 1780s.[1] A key feature of the role is the relationship between the Auditor-General and the Parliament, with the Auditor-General often identified as an 'officer of the Parliament'.

The primary function of the Auditor-General is to assist the Parliament in holding the Executive government to account. This is achieved by the Auditor-General conducting audits on behalf of the Parliament and providing independent assurance to the Parliament on the accountability and performance of the Executive government.

To be fully effective, the Auditor-General therefore must be independent from the Executive. Limitations on the Auditor-General's independence, real or perceived, diminish the level of assurance that Parliament obtains from their work.

Auditors-General should have the functional and organisational independence required to carry out their mandate. [2] This is achieved by:

- protecting the role of the Auditor-General from the control and undue influence of the Executive government
- providing the Auditor-General with a sufficiently broad mandate to effectively discharge their functions
- giving the Auditor-General access to the human, financial, physical and information resources needed to properly discharge their mandate
- providing the Auditor-General with autonomy for administering the operations of their office.

Ideally such safeguards to independence should be provided for in legislation.

Absolute independence of Auditors-General is not realistic in the context of the prevailing political, legislative and administrative constraints in which they operate, nor is it necessary. They use public funds and should be subject to the same financial and performance accountability requirements that they help to uphold. The difference is that such accountability should be directly to the Parliament, and not to the Executive government. This can be best achieved through the Parliamentary committee discharging its oversight responsibilities for the Auditor-General[3].

Over the last 20 years in particular, the Auditor-General's independence has been strengthened through a series of legislative reforms. These reforms also have included changes to the audit mandate, such that today, the Queensland Auditor-General has one of the most progressive audit mandates in Australia. However, there is still work to be done to better match the Auditor-General's independence with this modern mandate, so that together they maximise the effectiveness of the role.

The two principal areas where opportunities remain to achieve this balance, by further strengthening the Auditor-General's independence, are:

- making the Auditor-General directly accountable to the Parliament for performing the functions of the office and use of the public resources made available
- providing the Auditor-General with greater financial and administrative autonomy from the Executive in managing the QAO.

[1] United Kingdom National Audit Office, *History of the NAO*, www.nao.org.uk/about-us/role-2/what-we-do/history-of-the-nao/
[2] International Organization of Supreme Audit Institutions, *Lima Declaration of Guidelines on Auditing Precepts,* 1977 (Section 5. Independence of Supreme Audit Institutions)
[3] s.194A, *Standing Rules and Orders of the Legislative Assembly*, Legislative Assembly of Queensland (amended 12 September 2013)

2. Background to the *Auditor-General Act 2009*

In Queensland, the first permanent Auditor-General, Henry Buckley, was appointed on 27 September 1860[4], just over four months after the first sitting of the Queensland Parliament. The statutory role of the Queensland Auditor-General was subsequently provided for on 7 August 1861 with the passing of the *Audit Act 1861*.[5]

There have been a number of significant developments in the evolution of both the role of the Auditor-General and the enabling legislation. In more recent times these developments have included:

- the Electoral and Administrative Review Commission's (EARC) 1991 review of public sector auditing in Queensland
- enactment of the *Auditor-General Act 2009* (AG Act) as stand-alone audit legislation
- expansion of the Auditor-General's audit mandate through amendments to the AG Act in 2011.

Electoral and Administrative Review Commission 1991

The EARC review included a detailed assessment of issues impacting on Auditor-General independence. Chapter 7 of the EARC report made a number of recommendations aimed at strengthening the Auditor-General's independence. [6]

While not all of EARC's recommendations were accepted, the Auditor-General's independence was subsequently strengthened through amendments to the *Financial Administration and Audit Act 1977*.[7]

Table 1 on page 5 summarises the relevant key recommendations arising from EARC. It is pertinent to this submission that many of the recommendations that were not accepted in 1993 are the matters that remain relevant today to the issue of the independence of the Auditor-General. From a reading of all the recommendations it can be discerned that the authors of that report also were framing their views based on close and clear alignment of the Auditor-General with the Parliament, and on greater, but not absolute, autonomy from the Executive.

Auditor-General Act 2009

The *Auditor-General Act 2009* enhanced the Auditor-General's independence by:

- separating the audit provisions from the financial accountability legislation
- protecting the Auditor-General's remuneration from being reduced, without the Auditor-General's written consent
- prohibiting the Auditor-General from holding another office of profit
- prohibiting recipients of draft audit reports from disclosing information contained in the draft report
- enabling the Auditor-General to include in a report to Parliament a 'fair summary' of comments received on the draft report.

The importance of the role of the Auditor-General and the need for the role to be independent of the Executive government was highlighted during debate of the *Auditor-General Bill 2009*.[8] It was also noted in the debate that there was room for improvement to give more strength to the provisions that protect the independence and effectiveness of the Auditor-General. Two areas of focus during the debate were:

- the potential for Parliament to have a greater role in the selection and appointment of the Auditor-General
- the post-appointment career of the Auditor-General

[4] R Longhurst, *The Plain Truth, A history of the Queensland Audit Office*, Queensland Audit Office, 1995, p.22
[5] Ibid, p.27
[6] Electoral and Administrative Review Commission, *Report on Review of Public Sector Auditing in Queensland,* 1991, pp.150-185
[7] *Audit Legislation Amendment Act 1993*
[8] Legislative Assembly of Queensland, *Record of Proceedings,* 19 May 2009, pp354-369

Table 1 – Key EARC recommendations

Recommendation	Adopted in FAA Act
The Auditor-General is to be appointed by the Governor in Council on an address by the Legislative Assembly.	No
The Auditor-General is to be appointed for a non-renewable term of up to seven years.	**Yes**
An independent office of the Auditor-General is to be established and that this be designated as a corporation sole.	No
The Auditor-General should have statutory power to determine the number, remuneration and employment conditions of the Auditor-General's staff.	No
The Department of the Auditor-General should be abolished and replaced by a body called the 'Queensland Audit Office'.	**Yes**
The affairs of the Queensland Audit Office should be managed by the Auditor-General.	**Yes**
The staff of the Queensland Audit Office should not be subject to the Public Service Management and Employment Act or the Public Sector management Commission Act.	No
The annual estimates of the proposed Queensland Audit Office should be laid before Parliament in a separate Appropriation Bill.	No
Legislation should require the annual estimates of the Office to be forwarded by the Auditor-General to the Public Accounts Committee.	No
The Legislative Assembly may instigate suspension of the Auditor-General as well as removal from office.	**Yes**
Any address from the Governor seeking the Auditor-General's suspension or removal from office cannot be made without the agreement of the majority of the Public Accounts Committee.	**Yes**
Suspension by the Governor in Council will automatically lapse within seven days after Parliament resumes.	**Yes**
There should be a statutory obligation for the Auditor-General to submit a statement of pecuniary interests of the Auditor-General and of persons related to the Auditor-General.	**Yes**
The Public Accounts Committee should be consulted before any determination is made by the Governor in Council in relation to the Auditor-General's salary.	**Yes**
The Public Accounts Committee is to be consulted in the determination of audit fee rates by the Treasurer.	No
A performance audit is to be conducted into the Queensland Audit Office at least once every five years.	**Yes**
The performance auditor is to be appointed by the Public Service Commission on the recommendation of the Public Accounts Committee.	No
The Public Accounts Committee has authority to give directions to the performance auditor.	No
The report of the performance auditor must be presented to the Chairperson of the Public Accounts Committee who must table the report in the Legislative Assembly.	No
The Public Accounts Committee must be consulted in respect of the appointment of the auditor for the accounts of the proposed Queensland Audit Office and the fee payable to the auditor.	No

Parliament of Queensland (Reform and Modernisation) Amendment Act 2011

In 2011 the AG Act was further amended, as part of a suite of Parliamentary reforms, to expand the Auditor-General's audit mandate. This included providing the Auditor-General with the ability to:

- conduct full performance audits of public sector entities, excluding government owned corporations
- conduct audits jointly, or in collaboration with, another Auditor-General
- conduct audits of matters relating to property given by a public sector entity to a non-public sector entity (commonly referred to as 'follow-the-dollar' audits)
- exempt public sector entities from audit by the Auditor-General where considered small in size and low in risk.

In addition, the Auditor-General's independence was further enhanced through amendments that:

- require the Auditor-General to be appointed on a fixed, non-renewable term of seven years
- ensure that audit workpapers are protected from inappropriate disclosure or access by third parties.

3. Basis for this submission and research conducted

The International Organization of Supreme Audit Institutions (INTOSAI) is the umbrella organisation of Supreme Audit Institutions (SAI) of countries that belong to the United Nations. It is an autonomous, independent and non-political organisation with special consultative status with the Economic and Social Council (ECOSOC) of the United Nations. INTOSAI aims to reinforce the independence and professionalism of external government auditing.

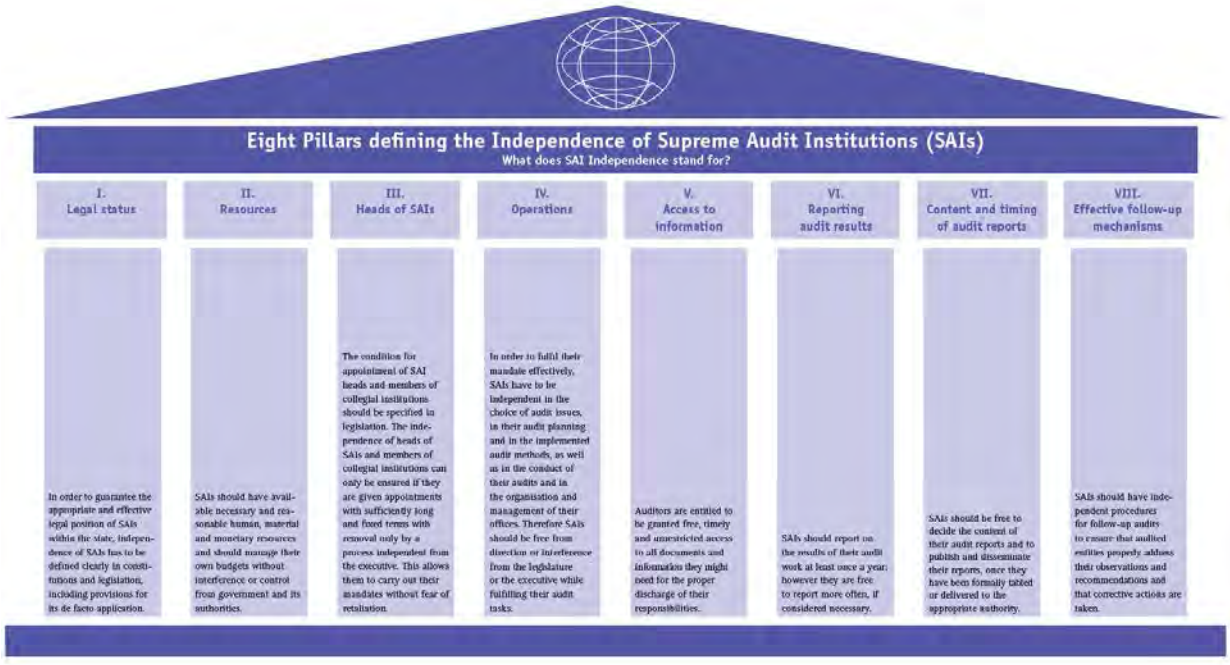
INTOSAI's 1977 Lima Declaration determined the principle of independence for government auditing and was further supported by the Mexico Declaration on SAI independence passed at the XIX Congress of INTOSAI in 2007. This declaration identified eight principles for independence that external government auditors should follow to achieve real autonomy and independence in performance of their duties.[9]

The eight principles of independence are:

1. The existence of an appropriate and effective constitutional/statutory/legal framework and of de facto application provisions of this framework.
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.
3. A sufficiently broad mandate and full discretion, in the discharge of SAI functions.
4. Unrestricted access to information.
5. The right and obligation to report on their work.
6. The freedom to decide the content and timing of audit reports and to publish and disseminate them.
7. The existence of effective follow-up mechanisms on SAI recommendations.
8. Financial and managerial/administrative autonomy and the availability of appropriate human, material, and monetary resources.

These principles are further defined in the eight pillars of independence shown in Figure 1.

Figure 1 – Eight pillars defining the independence of SAIs



Source: International Organization of Supreme Audit Institutions

[9] International Organization of Supreme Audit Institutions, *ISSAI 10: Mexico Declaration on SAI Independence,* 2007

The INTOSAI principles have underpinned submissions by the Australasian Council of Auditors-General (ACAG) to Parliamentary inquiries into audit legislation, most recently:

- Standing Committee on Public Accounts Inquiry into the ACT Auditor-General Act in February 2010
- Public Accounts and Estimates Committee Inquiry into Victoria's *Audit Act 1994* in March 2010.

A detailed analysis of the eight INTOSAI principles is included in Section 6 of this submission. Guided by these principles, and by the history of reform and Parliamentary debate in Queensland about the role of the Auditor-General, we have identified a number of opportunities for strengthening both the Auditor-General's independence and the Auditor-General's accountability to the Parliament. These are summarised in Section 5.

A survey of Australian and New Zealand legislation, commissioned by the Victorian Auditor-General's Office, assessed the legislative frameworks for Auditors-General against the eight INTOSAI principles of independence in 2009[10] and 2013.[11] A copy of the 2013 update of this survey is attached at Appendix A.

In this submission we have used the results of the 2013 survey to identify gaps where the Auditor-General's independence could be further strengthened, including examples of better practice in other ACAG jurisdictions.

Audit legislation in the United Kingdom and Canada was also considered in preparing this submission. A listing of the legislation reviewed is included as Appendix B.

We also had regard to:

- the principles of Auditor-General independence developed by ACAG[12]
- the minimum requirements for Auditor-General independence agreed by the Australasian Council of Public Accounts Committees (ACPAC) in 1997[13]
- the 1991 EARC *Review of Public Sector Auditing in Queensland*
- findings and recommendations of the strategic reviews of the QAO conducted in 1997[14], 2004[15] and 2010[16].

Our analysis of legislative arrangements performed in preparing this submission is included as additional information supporting the submission. This analysis is documented in the following appendices:

- Appendix C – Summary analysis of Queensland legislation against INTOSAI principles
- Appendix D – Detailed analysis of the 2013 survey of Australian and New Zealand legislation
- Appendix E – Comparison of key legislative provisions for Queensland integrity agencies

[10] Dr G Robertson, *Independence of Auditors General: A survey of Australian and New Zealand Legislation,* commissioned by the Victorian Auditor-General's Office, July 2009
[11] Dr G Robertson, *Independence of Auditors General: A 2013 update of a survey of Australian and New Zealand legislation,* commissioned by the Victorian Auditor-General's Office, June 2013 (www.acag.org.au/research.htm)
[12] Australasian Council of Auditors-General (ACAG), *Role of the Auditor-General* (www.acag.org.au/roag.htm)
[13] Australasian Council of Public Accounts Committees (ACPAC), *Minimum Requirements for the Independence of the Auditor-General,* February 1997 (reproduced on ACAG website www.acag.org.au/ioag.htm)
[14] T Sheridan, *Report of the Strategic Review of the Queensland Audit Office*, 19 July 1997
[15] R Anderson and H Smerdon, *Report of the Strategic Review of the Queensland Audit Office*, 4 October 2004
[16] G Carpenter and M Gray, *Report of the 2010 Strategic Review of the Queensland Audit Office*, March 2010

4. Response to the inquiry terms of reference

The following comments address the inquiry's terms of reference.

TOR 1 – The effectiveness of section 56 of the *Auditor-General Act 2009*

This matter relates to Principle 8 of INTOSAI:

> *Financial and managerial/administrative autonomy and the availability of appropriate human, material, and monetary resources.*

Most Auditors-General in Australia and New Zealand have the ability to determine the fees they charge for their audit services without the requirement for Executive approval.

Section 56 of the AG Act permits the Auditor-General to charge fees for any audit conducted. Presently fees are charged only for financial audits, with performance audits funded through Parliamentary appropriations. The fees charged for audits must be based on the basic fee rates approved by the Treasurer.

The existing requirement for the Treasurer to approve the Auditor-General's basic fee rates effectively provides the Executive government with the ability to significantly influence, if not control, the financial resources available to the Auditor-General. If requested fee rate increases needed to fully recover costs are not approved, the alternative is not to undertake necessary audit work leading to a limitation of audit scope. As audit fees represent approximately 85% of the QAO's total annual revenue, any restriction on these fees will significantly impact on the QAO's operations.

To recover operating costs, the QAO requested an increase of 3.5% in the basic fee rates in developing QAO's 2013-14 budget. This was not approved by the Treasurer. As an increase in the basic fee rates was not requested for the 2012-13 financial year, this means the rates have remained unchanged since October 2011.

In my letter to the Chair of the Finance and Administration Committee on 18 June 2013 I advised that while the budget outcomes could be sustained in the short-term, a continuation of the rate freeze beyond October 2014 had the potential to impact significantly on my ability to discharge my audit mandate under the AG Act. This issue then goes to the functional independence and effectiveness of the QAO.

The audit fees we charge recover both the direct and indirect costs associated with providing the audit services, but do not include a profit element. To ensure the audit fees are sufficient to recover the costs of providing the audit services it is imperative that the basic fee rates continue to move in line with the cost of providing the audit services.

The extent of audit work, and therefore resources, required to be applied to a financial audit are determined by the Australian Auditing Standards (ASAs) issued by the Australian Auditing and Assurance Standards Board (AUASB). These standards establish the minimum level of work necessary for an auditor to be able to form an opinion on a financial report. Required audit effort is driven by considerations of risk at each audited entity, and to this extent is out of the direct control of the auditor. The standards also identify the quality assurance requirements for these audits. It is important that quality is not compromised by the inability to adequately resource the audit.

In accordance with the ASAs, audit firms are required to consider whether they have sufficient competence, capabilities and resources to undertake an audit before agreeing to the engagement. [17] In the private sector, if a firm cannot agree a reasonable fee, they are required to refuse the engagement.

[17] ASQC 1 *Quality Control for Firms that Perform, Audits and Reviews of Financial Reports and Other Financial Information, and Other Assurance Engagements,* s.A18

As the Auditor-General is required by the AG Act to conduct financial audits of all public sector entities each year, there is no capacity for the Auditor-General to refuse an audit engagement on this basis. The AG Act provides only limited relief through the ability to exempt audits considered to be small in size and low in risk.

Where the resources available to the Auditor-General are limited or restricted, the capacity to conduct all financial audits required by the AG Act in accordance with the minimum requirements of the ASAs would be significantly impacted. Any restriction on an auditor's capacity to conduct audits in accordance with the ASAs represents a limitation of scope under the standards and impairs their ability to form an opinion on the financial statements. Limitations in scope need to be reflected in the Independent Auditor's Report issued on the financial statements.

It is acknowledged however, that the Auditor-General must remain accountable for ensuring the fees charged for audit services remain reasonable. The Auditor-General's independence can be strengthened if this accountability was to the Parliament and not the Executive government. The appropriate balance between independence and accountability could be achieved by Parliament performing its oversight functions through:

- the process for establishing the QAO's annual budget
- the 5-yearly strategic reviews of the QAO required by the AG Act.

TOR 2 – The legislative arrangements for the independence and accountability of the Auditor-General and the Queensland Audit Office

In preparing this submission we have assessed the current legislative arrangements for the independence and accountability of the Auditor-General and QAO against the eight principles of Auditor-General independence identified by INTOSAI.

While the present legislative arrangements provide the Auditor-General with a broad audit mandate and sufficient powers to discharge the mandate, our assessment identified opportunities to further strengthen the independence and accountability of the Auditor-General and QAO.

The relationship between the Auditor-General and the Parliament can be strengthened by:

- formally recognising the Auditor-General as an 'independent officer of the Parliament'
- enhancing Parliament's role in the selection and appointment of the Auditor-General
- enhancing Parliament's role in establishing QAO's annual budget
- enhancing Parliament's role in monitoring and assessing the performance of the Auditor-General and QAO through external audits and five-yearly strategic reviews.

These enhancements will better support the Auditor-General being accountable to the Parliament for how this mandate is discharged.

Our independence can be substantively strengthened also by providing the Auditor-General with greater financial and managerial autonomy in administrating the operations of the QAO including:

- creating the QAO under a legal structure (e.g. corporation sole) that removes it from the overarching legislative and policy framework that applies to the public service at large
- providing the Auditor-General with full control over staffing arrangements for the QAO.

These enhancements will better support the Auditor-General in managing the QAO to efficiently and effectively discharge the broad legislative mandate provided by the Parliament.

A summary of these opportunities is included in Section 5 and detailed analysis is in Section 6.

TOR 3 – How the Queensland arrangements compare to the arrangements in New Zealand and other Australian jurisdictions

The 2013 survey of the legislative frameworks for Auditors-General in Australia and New Zealand found that indicators of Queensland's overall independence substantially improved between 2009 and 2013 due to major amendments to the AG Act in 2011.[18] This improvement largely arose from the expansion of the Auditor-General's audit mandate to allow for the conduct of:

- full performance audits of public sector entities, excluding government owned corporations
- audits jointly, or in collaboration with, another Auditor-General
- audits of matters relating to property given by a public sector entity to a non-public sector entity (commonly referred to as 'follow-the-dollar' audits).

As a result, the audit mandate provided in the AG Act is now consistent with better practice in Australia and New Zealand.

Areas identified in the survey where Queensland was significantly below best practice in Australia and New Zealand included:

- establishing the status and rank of the Auditor-General
- the process for the selection and appointment of the Auditor-General
- the extent of financial and administrative autonomy afforded to the Auditor-General.

A more detailed analysis of how Queensland compares to other Australian and New Zealand audit offices is included in Section 6 of this submission and Appendix D.

TOR 4 – How the Queensland arrangements compare with international best practice

The Queensland arrangements are comparable to international best practice in the following areas:

- providing a sufficiently broad mandate and full discretion to enable the Auditor-General to discharge the functions of the office
- providing the Auditor-General with sufficient rights and powers for accessing information and audit evidence
- enabling the Auditor-General to report on the results of audit work performed.

However, opportunities exist to strengthen the following areas in line with international best practice:

- emphasising the role and status of the Auditor-General and the relationship with the Parliament
- providing the Auditor-General with an appropriate level of financial and administrative autonomy.

A more detailed analysis of how Queensland compares to international best practice is included in in Section 6 of this submission and Appendix D.

TOR 5 – Other independence issues

In addition to the areas considered and assessed in the 2013 survey, the following matters were also identified as impacting, or potentially impacting, on the Auditor-General's independence:

- post-appointment activities of Auditors-General (addressed under Principle 2)
- references to the Auditor-General in legislation, other than the AG Act, impacting on the Auditor-General's audit mandate (addressed under Principle 3)
- recommendations of the Queensland Commission of Audit in their final report, including:[19]
  - encouraging greater contestability as a means of achieving better value for money in the delivery of front-line-services (addressed under Principle 3)
  - proposing amendments to the budget management framework (considered under Principle 8)
  - identifying a need for greater workforce flexibility and mobility so that resources can be more readily redirected to areas of highest priority (addressed under Principle 8).

[18] Robertson, 2013, p.9
[19] Hon P Costello, Prof S Harding and Dr D McTaggart, *Queensland Commission of Audit, Final Report,* February 2013, Vol.1

5. Opportunities to further strengthen independence

Opportunities to further strengthen independence are categorised in Table 2 based on whether they:

- symbolically reflect the relationship between the Auditor-General and the Parliament
- substantively enhance the functional and organisation independence of the Auditor-General
- clarify the existing audit mandate of the Auditor-General
- provide for the administration of the QAO.

Table 2 – Opportunities to further strengthen independence

INTOSAI Principle	Area of Independence	Nature
Principle 1 - The existence of an appropriate and effective constitutional/statutory/legal framework		
1. Recognising the Auditor-General as an 'independent officer of the Parliament' in the AG Act.	Role and status of the Auditor-General and relationship with the Parliament	Symbolic
2. Requiring the Auditor-General and Deputy Auditor-General to take an oath of office administered by the Speaker or, if there is no Speaker or the Speaker is unavailable, the Clerk of the Parliament.		Symbolic
3. The Queensland Independent Remuneration Tribunal determining the remuneration and allowances to be paid to the Auditor-General. This would also need to be recognised in the *Queensland Independent Remuneration Tribunal Act 2013.*		Substantive
4. The Auditor-General being entitled to take leave upon giving notice to the Speaker or the Chair of the parliamentary committee, rather than requiring the approval of the Minister.		Substantive
5. The parliamentary committee appointing the strategic reviewer and deciding the terms of reference for the review under Part 4 of the AG Act.		Substantive
6. Requiring the strategic reviewer to provide their report on the review directly to the parliamentary committee, rather than the Minister.		Substantive
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		
7. Requiring the parliamentary committee to manage the selection and appointment process for the position of Auditor-General.	Role and status of the Auditor-General and relationship with the Parliament	Substantive
8. Requiring the Auditor-General to be appointed by Governor-in-Council on address by the Legislative Assembly.		Symbolic
9. Restricting the Auditor-General's employment in the public sector for two years after their term.		Substantive
10. Recognising in the AG Act that a person acting in the role of Deputy Auditor-General may also act as Auditor-General in the absence of both the Auditor-General and Deputy Auditor-General.		Administrative
Principle 3 - A sufficiently broad mandate and full discretion, in the discharge of SAI functions		
11. Clarifying the Auditor-General's mandate for auditing trusts created and/or used by public sector entities in performing their functions.	Mandate and powers provided to the Auditor-General	Clarification
12. Amending the AG Act to enable Parliament to request but not require the Auditor-General to conduct audits of matters relating to the financial administration of public sector entities.		Substantive

INTOSAI Principle	Area of Independence	Nature
13. Providing the Auditor-General with the discretion to initiate performance audits of government owned corporations.		Substantive
14. Reviewing other Queensland legislation to ensure any requirements for the Auditor-General to conduct audits are consistent with the discretion provided to the Auditor-General under the AG Act.		Substantive
Principle 4 - Unrestricted access to information		
15. Identifying that the Auditor-General's powers to access information is not limited by any rule of law relating to legal professional privilege. Disclosure of information to the Auditor-General should not otherwise affect the operation of the rule of law relating to the privilege.	Mandate and powers provided to the Auditor-General	Substantive
16. Giving the Auditor-General discretion in deciding whether to make information available to a commission of inquiry.		Substantive
Principle 8 - Financial and managerial/administrative autonomy and the availability of appropriate human, material, and monetary resources		
17. Establishing the Auditor-General as a corporation sole under the AG Act.	Administrative autonomy of the office of Auditor-General	Substantive
18. Establishing the Auditor-General as the employer and employing QAO staff under the AG Act and not the Public Service Act.		Substantive
19. Giving the Auditor-General authority to appoint the staff necessary to exercise the Auditor-General's functions.		Substantive
20. Enabling the Auditor-General to determine the remuneration and other terms and conditions for the appointment of QAO staff.		Substantive
21. Involving the parliamentary committee in the process for setting the QAO's budget, including: • requiring the Auditor-General to provide the annual estimates for the QAO to the parliamentary committee • the estimates being considered by the parliamentary committee and tabled in Parliament with such modifications the committee thinks fit • including the annual estimates for the QAO in the Appropriation Bill for the Parliament • adopting the same process for any supplementary funding requested by the Auditor-General during the year.		Substantive
22. Removing from the AG Act the requirement for the Treasurer to approve the basic rates of audit fees.		Substantive
23. The Auditor-General providing the QAO's annual report to the Speaker or Clerk for tabling in Parliament, instead of to the Minister.	Role and status of the Auditor-General and relationship with the Parliament	Symbolic
24. Appointing the external auditor of the QAO by resolution of the Parliament on the recommendation of the parliamentary committee.		Substantive
25. Requiring the external auditor of the QAO to report on the results of audits performed directly to Parliament or to Parliament through the parliamentary committee.		Substantive

6. INTOSAI principles of independence

Principle 1 – The existence of an appropriate and effective constitutional/statutory/legal framework

This principle recognises that the Auditor-General's independence is strengthened where the role and status of the position is clearly established and protected by legislation. In Queensland this is addressed through the AG Act. The separation of the audit requirements from the *Financial Administration and Audit Act 1977* in 2009 represented a significant development in protecting the Auditor-General's independence.

While the AG Act clearly establishes the Auditor-General's role and provides for their independence, there are a number of areas where this can be enhanced. In particular, more can be done to strengthen the special relationship that exists between the Auditor-General and the Parliament.

Auditor-General as an Independent Officer of the Parliament

The Auditor-General has a significant role in assisting the Parliament in their oversight of the Executive government and should be accountable to the Parliament for the management of the audit function.

The *Minimum Requirements for the Independence of the Auditor-General* agreed by the Australasian Council of Public Accounts Committees (the ACPAC minimum requirements) state:

> *The Auditor-General should be an Officer of the Parliament.*[20]

While the Auditor-General is often referred to as an independent officer of the Parliament this is not presently recognised in the AG Act. The recognition of the Auditor-General as an 'independent officer of the Parliament' in legislation would be a prominent symbol of both the Auditor-General's independence and their relationship with the Parliament.

In Australia, the Auditors-General of the Commonwealth, Victoria and Western Australia are all recognised in legislation as independent officers of the Parliament. In Victoria this is recognised in s.94B of the *Constitution Act 1975*. The legislation in New Zealand and the United Kingdom also recognise their Auditors-General as officers of the Parliament.

In Queensland, the Ombudsman, the Integrity Commissioner and the Information Commissioner are all recognised in their respective legislation as 'officers of the Parliament'. (Refer appendix E)

So that the Auditor-General is not seen as under the direction of the Parliament, the Speaker, the Clerk or a parliamentary committee, it is important that the Auditor-General is not only recognised as an officer of the Parliament but as an 'independent officer of the Parliament'.

The Auditor-General's independence can be strengthened by:

1. **recognising the Auditor-General as an 'independent officer of the Parliament' in the AG Act.**

[20] ACPAC, s.1.1

Oath or affirmation of office

It is common practice both in Australia and internationally for Auditors-General to take an oath of office or make a declaration that they will perform their duties independently and impartially. This can be used to reinforce the Auditor-General's personal commitment to independence and impartiality and, where provided directly to the Parliament, emphasise the special relationship the office holds with the Parliament.

The Auditor-General of Victoria is presently the only Auditor-General in Australia required to take an oath of office. However, the Auditors-General of the Northern Territory, Tasmania, Western Australia, New South Wales and South Australia are each required to make a 'declaration' on taking office.

The Deputy Auditor-General and anyone acting as either the Auditor-General or Deputy Auditor-General in Victoria are also required to take an oath of office. The Deputy Auditor-General in South Australia is also required to make a declaration on taking office.

In Victoria, the oath is taken before the Executive Council. The Auditors-General of the other jurisdictions are required to make their declarations to:

- the Executive Council (South Australia)
- the Administrator (Northern Territory)
- the Governor (Tasmania and Western Australia)
- a Judge of the Supreme Court (New South Wales).

In New Zealand, both the Auditor-General and Deputy Auditor-General are required to take an oath of office administered by the Speaker or the Clerk of the House of Representatives. All audit office employees in the Canadian provinces of Ontario and Nova Scotia are required to take an oath of office and secrecy.

A requirement for the Deputy Auditor-General to take an oath or make a declaration is consistent with a legislative requirement for the Deputy to exercise the functions, duties and powers of the Auditor-General where the position is vacant or the Auditor-General is absent from duty. The AG Act contains a requirement for the Deputy Auditor-General to act in the absence of the Auditor-General.

In Queensland, the Ombudsman, the Integrity Commissioner and the Information Commissioner are all required by their respective legislation to take an oath of office administered by the Speaker. This reflects their status as officers of the Parliament.

Legislation in New Zealand, Northern Territory, Tasmania and Western Australia also include provisions requiring the Auditor-General to act independently in performing their functions.

The Auditor-General's independence can be strengthened by:

2. requiring the Auditor-General and Deputy Auditor-General to take an oath of office administered by the Speaker or, if there is no Speaker or the Speaker is unavailable, the Clerk of the Parliament.

Process for determining the Auditor-General's remuneration and conditions of employment

An independent and transparent process for determining the Auditor-General's remuneration and other key terms of employment is considered among the statutory safeguards because it is a key determinant of status and rank, and also has a major impact on the calibre of persons who might be attracted to the role.[21]

In Queensland, the Auditor-General holds office on the terms decided by the Governor-in-Council.[22] The AG Act also requires that advice to the Governor-in-Council regarding the salary, allowances and other terms of appointment is only to be given after consultation with the parliamentary committee.

[21] Robertson, 2013, p.14
[22] s.11, *Auditor-General Act 2009*

The present arrangement provides the Executive government with the opportunity to influence the terms and conditions on which the Auditor-General is appointed, with only minimal oversight from the Parliament.

In the Commonwealth, Western Australia and New Zealand, the remuneration of the Auditor-General is determined by an independent remuneration tribunal or authority. Based on our review of Australian and international audit legislation, other independent processes for determining the remuneration and conditions of employment for the Auditor-General include:

- requiring the remuneration and conditions to be determined by a parliamentary committee
- aligning the remuneration with that of other senior public servants
- aligning the remuneration with that of other independent offices such as judges of the Supreme Court or other Auditors-General.

The Queensland Independent Remuneration Tribunal was recently established to review and determine salaries, allowances and entitlements of members of the Queensland Parliament.[23] Regard might be had by the Committee to the following observation by EARC that accompanied the recommendation to change to the Governor in Council determining the remuneration:

> *…if, in some future time, an independent remuneration tribunal is established in Queensland to determine the salaries of Parliamentarians and senior public office holders, such Tribunal could also be given responsibility for determination of the Auditor-General's salary in lieu of the arrangements proposed…[Governor in Council to determine after consultation with the Parliamentary Accounts Committee].*[24]

This would also be consistent with the ACPAC minimum requirements which state:

> *The Auditor-General's remuneration should be determined by a remuneration tribunal.*[25]

Regarding other terms of employment, presently the Minister may grant a leave of absence in accordance with the terms on which the Auditor-General holds office.[26] The Auditor-General's independence can be strengthened if the Auditor-General were entitled to take leave upon giving notice to the Speaker or the Chair of the parliamentary committee.

The Auditor-General's independence can be strengthened by:

3. **the Queensland Independent Remuneration Tribunal determining the remuneration and allowances to be paid to the Auditor-General. This would also need to be recognised in the *Queensland Independent Remuneration Tribunal Act 2013*.**
4. **the Auditor-General being entitled to take leave upon giving notice to the Speaker or the Chair of the parliamentary committee, rather than requiring the approval of the Minister.**

Strategic review of the Queensland Audit Office

The regular review of the audit office is a key control to ensure the effective operation of the Auditor-General. Part 4 of the AG Act requires a strategic review of the audit office at least every five years. The strategic review is to be conducted by a reviewer appointed by the Governor-in-Council on terms of reference decided by the Governor-in-Council. The AG Act requires the parliamentary committee to be consulted on the appointment of the reviewer and the terms of reference for the review.

While this process requires some oversight by the Parliament, it is largely administered by the Executive government. At the very least, this has the potential to lead to a perception that the Executive government could use its position to influence the review and its findings, to apply inappropriate pressure to the Auditor-General.

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[23] *Queensland Independent Remuneration Tribunal Act 2013*
[24] EARC, p.179
[25] ACPAC, s.1.7
[26] *Auditor-General Act 2009,* s.15

Western Australian legislation mandates that the Joint Standing Committee on Audit is to carry out a review of the operation and effectiveness of the *Auditor-General Act 2006* every five years. This requires the Committee to appoint a suitably qualified person to conduct the review. The reviewer is also required to prepare a report based on that review and provide it to the Committee. In Queensland the reviewer is required to report directly to the Minister.

In Victoria, the reviewer is appointed by resolution of the Legislative Council and Legislative Assembly on the recommendation of the Parliamentary Committee; while in New South Wales, the reviewer is directly appointed by the Public Accounts Committee.

The processes adopted in Western Australia, Victoria and New South Wales are consistent with the ACPAC minimum requirements which state:

> *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.*[27]

The Auditor-General's independence can be strengthened by:

5. **the parliamentary committee appointing the strategic reviewer and deciding the terms of reference for the review under Part 4 of the AG Act**
6. **requiring the strategic reviewer to provide their report on the review directly to the parliamentary committee, rather than the Minister.**

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

This principle recognises that the Auditor-General's independence is strengthened when the conditions for appointment, removal and retirement of the Auditor-General cannot be influenced by the Executive government. These conditions should be clearly identified in legislation and provide for an appropriate level of involvement by the Parliament. This allows the Auditor-General to carry out their mandate without fear of retaliation or reprisal.

The requirements relating to the appointment, suspension and removal of the Auditor-General are contained in Part 2, Division 2 of the AG Act. The Auditor-General is also protected from civil liability through s.55 of the AG Act. These provisions generally provide a good basis for supporting the Auditor-General's independence.

The provisions applying to the resignation, removal and suspension of the Auditor-General strongly support the Auditor-General's independence as they specifically require the involvement of the Parliament. The AG Act also enhances the Auditor-General's independence by requiring:

- the Minister to consult with the parliamentary committee on the process for selecting and the appointment of a person to the position of Auditor-General
- the Auditor-General to be appointed for a fixed, non-renewable term of seven years
- there to be a position of Deputy Auditor-General
- the Deputy Auditor-General to act as Auditor-General where the position is vacant or the Auditor-General is absent or unable to perform the functions of office.

While these provisions enhance the Auditor-General's independence, there is still potential for the Executive government to influence or control the appointment of the Auditor-General. This issue is considered in further detail in the sections below.

[27] ACPAC, s.3.3

Appointment of the Auditor-General

The Auditor-General of Queensland is presently appointed by the Governor-in-Council, after the Minister has consulted with the parliamentary committee. While consultation with the parliamentary committee encourages some bipartisan support for the appointment, the consultation may occur as a matter of convention only.

In debating the *Auditor-General Bill 2009* two apparent shortcomings were noted, namely:

- the process for the appointment of the Auditor-General
- their post-appointment career.[28]

In Victoria, the Constitution Act requires the Auditor-General to be appointed by the Governor-in-Council on the recommendation of the parliamentary committee. Parliamentary committees in the Commonwealth, New South Wales and Australian Capital Territory are provided with a power of veto over the appointment of the Auditor-General.

Internationally, it is common for the Parliament to have a direct role in the appointment of the Auditor-General. In New Zealand, the Controller and Auditor-General is appointed by the Governor-in-Council on the recommendation of the House of Representatives. The United Kingdom's Comptroller and Auditor-General is appointed on a motion to the House of Commons by the Prime Minister acting with the agreement of the Chairman of the Committee of Public Accounts.

In Canada, the appointment of the Auditor-General is by Governor-in-Council after consultation with the leader of every recognised party in the Senate and House of Commons and approval of the appointment by the Senate and House of Commons. It is also common for the appointment of Auditors-General in the Canadian provinces to require the support of the Parliament.

Without the direct involvement of the Parliament in the appointment of the Auditor-General there is no effective way in which the Parliament can express its view on the appointment of a particular person.

Parliament having oversight of the Auditor-General's selection and appointment is also consistent with the ACPAC minimum requirements which state:

> *Parliament should select and recommend the Auditor-General for appointment by the Governor/Governor-General/Administrator.*[29]

A similar process was also recommended in EARC's *Report on Review of Public Sector Auditing in Queensland*. In particular, EARC recommended that:

> *The Auditor-General is to be appointed by the Governor in Council on an address by the Legislative Assembly.*[30]

There are currently no legislative limitations in Queensland on the Auditor-General's post-appointment career. Whilst not yet common practice, it has been recognised in New South Wales that it is appropriate to restrict the Auditor-General from being employed by the public sector entities they had audited. This is to guard against the potential for real or perceived lack of independence. Where the Auditor-General is on a fixed term, this risk may be heightened towards the end of their term. Placing a moratorium on the Auditor-General's post-appointment career ensures that no question can be raised about the final portion of the term of the Auditor-General.

This is a requirement in the private sector for auditors conducting audits under the *Corporations Act 2001* which provides for a two-year cooling off period before they can become an officer of a former audit client.[31]

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[28] Legislative Assembly of Queensland, *Record of Proceedings,* 19 May 2009, pp354-369
[29] ACPAC, s.1.2
[30] EARC, p.342
[31] *Corporations Act 2001* (Cth) s.324CI

The Auditor-General's independence can be strengthened by:

7. **requiring the parliamentary committee to manage the selection and appointment process for the position of Auditor-General.**
8. **requiring the Auditor-General to be appointed by Governor-in-Council on address by the Legislative Assembly.**
9. **restricting the Auditor-General's employment in the Queensland public sector for two years after their term.**

Appointment of an acting Auditor-General

The AG Act requires the Deputy Auditor-General to act as Auditor-General when:

- the office is vacant
- the Auditor-General is absent from duty or Australia or is, for another reason, unable to perform the functions of office.

This requirement preserves the Auditor-General's independence by ensuring that the Executive government cannot appoint a person to act in the role where the office is vacant or the Auditor-General is absent or unable to perform the role. The Deputy Auditor-General is also a statutory position and is appointed by the Auditor-General.

However, the AG Act presumes that the Deputy Auditor-General will be available to act in the role of Auditor-General and does not presently provide for the rare circumstance where both the Auditor-General and Deputy Auditor-General are unable to fulfil the duties of office. This could provide an opportunity for the Executive government to appoint a person to act in the role of the Auditor-General.

In both Victoria and Western Australia, the legislation provides for an acting Deputy Auditor-General who may also act as the Auditor-General.

The Auditor-General's independence can be strengthened by:

10. **recognising in the AG Act that a person acting in the role of Deputy Auditor-General may also act as Auditor-General in the absence of both the Auditor-General and Deputy Auditor-General.**

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

This principle recognises that the Auditor-General's independence is strengthened when they are provided with a broad audit mandate in terms of who can be audited and the types of audits that can be performed. It also recognises that the Auditor-General should have full discretion as to how this mandate is discharged.

The AG Act provides the Auditor-General with an extremely broad mandate for conducting audits. In 2011 the AG Act was amended to provide the Auditor-General with a mandate for:

- performance audits of all public sector entities, excluding government owned corporations
- conducting audits jointly, or in collaboration, with other Auditors-General
- 'follow the dollar' audits.

These amendments represented significant enhancements to the Auditor-General's mandate, bringing it in line with world's best practice.

The AG Act also provides that the Auditor-General is not subject to direction by any person on the priority to be given to audit matters and may conduct an audit in the way the Auditor-General considers appropriate.

The mandate and discretion currently provided by the AG Act strongly supports the Auditor-General's independence. However, some areas still exist where this could be further enhanced. These areas are discussed in the following sections.

Audit scope

While the AG Act presently provides a broad mandate for conducting audits, uncertainty exists in terms of the Auditor-General's ability to audit trusts that are either established or used by public sector entities. Presently, the Auditor-General may conduct an audit of these trusts where:

- the trust is controlled by a public sector entity, thereby meeting the definition of a public sector entity in the AG Act, or
- the audit is conducted on a by-arrangement basis under s.36 of the AG Act.

Given the legal nature of a trust it is often difficult to establish that the trust is controlled by a public sector entity even where the entity is either the trustee or the primary beneficiary of the trust. Further, under s.36 of the AG Act, a by-arrangement audit can only be conducted where the Auditor-General is requested to perform the audit and the entity consents to the Auditor-General conducting the audit.

This represents a gap in the Auditor-General's ability to audit the operations of public sector entities that use trusts to conduct significant investment activities, such as QIC Limited.

In Tasmania, the *Audit Act 2008* defines a 'state entity' as including a trust or trustees that are appointed by the Governor or Minister. Further, where a state entity performs any of its functions through a trust, the trust is considered a 'related entity'. The Audit Act provides the Auditor-General with a mandate for examining the efficiency, effectiveness and economy with which a related entity performs its functions. In Victoria, the *Audit Act 1994* defines a 'public body' as including a trustee of a trust of which the State is the principal beneficiary.

The Auditor-General's independence can be strengthened by:

11. clarifying the Auditor-General's mandate for auditing trusts created and/or used by public sector entities in performing their functions.

Discretion

The AG Act provides the Auditor-General with discretion for determining audit priorities and the way in which audits are to be conducted. However, the Act imposes two restrictions on the use of this discretion.

Firstly, under s.35 of the AG Act the Auditor-General must conduct an audit of a matter relating to the financial administration of a public sector entity if requested by the Legislative Assembly. Secondly, the Auditor-General can only conduct a performance audit of a government owned corporation if requested by:

- resolution of the Legislative Assembly
- the parliamentary committee
- the Treasurer, or
- an appropriate Minister

These requirements limit the Auditor-General's ability under s.8 of the AG Act to determine the priority given to audit matters.

Further, the requirement to perform audits under legislation, other than the AG Act, is inconsistent with the discretionary powers provided to the Auditor-General under that Act.

Other Queensland legislation which may compel the Auditor-General to conduct particular audits has also been identified. For example, s.20A of the *Superannuation (State Public Sector) Act 1990* requires the Auditor-General to audit the annual financial statements of the State Public Sector Superannuation Scheme. The Scheme does not meet the definition of a public sector entity for the purpose of the AG Act and would not otherwise fall within the Auditor-General's mandate. The audit of the Scheme by the Auditor-General also raises a number of independence issues given that QAO employees are all members of the Scheme. A list of other Queensland legislation referring to the Auditor-General is included in Appendix F to this submission.

Issues have also been identified in determining the audit arrangements for national partnership schemes established under Council of Australian Governments (COAG) agreements. A recent example of this was the creation of the National Heavy Vehicle Regulator by the *Heavy Vehicle National Law Act 2012*. Under s.693 of this Act, the financial statements of the Regulator are to be audited by an auditor decided by the responsible Ministers. This could be a private or public sector auditor. As Queensland is the host jurisdiction, I was requested to perform the audit of the Regulator. As the Regulator is not a Queensland public sector entity, this audit is not required by the AG Act.

Based on the wording of s.693 it could be suggested that the Ministers can decide that the Auditor-General is to be the auditor, and that the Auditor-General is required to comply with this request. This would be inconsistent with the provisions of the AG Act. However, I am able, and have agreed, to perform the audit on a by-arrangement basis. Other national laws have also been identified that specifically require the appointment of an Auditor-General.

These issues were raised with the Transport, Housing and Local Government Committee in our submission to their inquiry on the *Heavy Vehicle National Law Bill 2012*. A copy of this submission is attached as Appendix G.

The Queensland Commission of Audit's final report identified contestability as one of the key principles to manage and deliver services. In particular, the report identified that better value for money in the delivery of front-line services can be achieved through contestability as it encourages more efficient and more innovative service delivery.[32] Further, the report stated that:

> *Across a range of functions, productivity could be enhanced by introducing contestability into the delivery of services. Many services are currently delivered under monopoly or non-contested conditions, which are not conducive to encouraging the most efficient and cost-effective solutions.*[33]

The report did not include specific observations or recommendations on the contestability of audit services delivered by the Auditor-General and QAO. Opening the delivery of audit services to contestability would reduce the discretion the Auditor-General presently has for auditing public sector entities under the legislated mandate. Consequently, this would weaken the independence of the Auditor-General.

While QAO's audit services are not subject to contestability, private sector audit firms can be engaged to deliver these on behalf of the Auditor-General under s.43 of the AG Act. This provides a degree of contestability for audit services while protecting the independence of the Auditor-General by preserving the broad mandate and discretion provided for auditing public sector entities.

The Auditor-General's independence can be strengthened by:

12. **amending the AG Act to enable Parliament to request but not require the Auditor-General to conduct audits of matters relating to the financial administration of public sector entities.**
13. **providing the Auditor-General with the discretion to initiate performance audits of government owned corporations.**

[32] Costello, Harding and McTaggart , p.1-10
[33] Ibid, p1-23

14. **reviewing other Queensland legislation to ensure any requirements for the Auditor-General to conduct audits are consistent with the discretion provided to the Auditor-General under the AG Act.**

Principle 4 – Unrestricted access to information

This principle recognises that the Auditor-General's independence is strengthened when they are empowered to obtain timely, unfettered, direct and free access to all the necessary documents and information required to discharge their statutory responsibilities.

Presently the Auditor-General is provided with broad powers for gathering audit evidence.[34] However, these powers do not abolish any other common law right, privilege or immunity. This has resulted in difficulties when trying to access information subject to a claim of legal professional privilege.

The Commonwealth *Auditor-General Act 1997* was amended in 2011 to enable the Auditor-General to access information that was subject to legal professional privilege.[35] These amendments also ensured that disclosing information to the Auditor-General did not otherwise affect the operation of a rule of law relating to the privilege.

Given the extent of the Auditor-General's powers, and the sensitive nature of the information that may be accessed, it is important that any information obtained is protected from inappropriate disclosure. To protect the confidentiality of information obtained, restrictions must be placed on:

- the Auditor-General's ability to disclose information obtained during the course of an audit
- the ability of third parties to access information held by the Auditor-General.

This provides assurance to information owners that any information made available to the Auditor-General for audit purposes cannot be used, directly or indirectly, for inappropriate or mischievous purposes.

Under s.53 of the AG Act information obtained during the course of an audit can only be disclosed in the specific circumstances identified in the section. The Auditor-General has discretion in deciding whether to make information available in the circumstances permitted by s.53. This discretion enhances the Auditor-General's independence by ensuring that the Auditor-General is not used inappropriately by third parties as a means of accessing sensitive information.

The AG Act adequately addresses this principle of independence. In recent years the operation of s.53 has been significantly enhanced by:

- expanding the definition of 'protected information' to include audit workpapers
- exempting 'protected information' from disclosure under the *Right to Information Act 2009.*

Recent amendments to s.5 of the *Commissions of Inquiry Act 1950* mean the chairperson of a commission of inquiry can now require the Auditor-General to produce information to an inquiry. This removes the discretion that the Auditor-General was previously afforded under s.53 of the AG Act and could be viewed as limiting the Auditor-General's independence.

The Auditor-General's independence can be strengthened by:

15. **identifying that the Auditor-General's power to access information is not limited by any rule of law relating to legal professional privilege. Disclosure of information to the Auditor-General should not otherwise affect the operation of the rule of law relating to the privilege.**
16. **giving the Auditor-General discretion in deciding whether to make information available to a commission of inquiry.**

[34] Part 3 Division 2, *Auditor-General Act 2009*
[35] s.30, *Auditor-General Amendment Act 2011* (Cth)

Principle 5 – The right and obligation to report on their work

This principle recognises that the Auditor-General's independence is strengthened when they are not restricted from reporting on the results of their work. As a minimum, the Auditor-General should be required by law to report at least once a year on the results of their audit work. The Auditor-General must also be able to present their reports directly to the Parliament.

This principle of independence is appropriately addressed through Part 3, Division 3 of the AG Act.

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

This principle recognises that the Auditor-General's independence is strengthened when the Auditor-General is free to decide the content of reports, including the ability to make observations and recommendations after considering, where appropriate, the views of audited entities. The Auditor-General should also have discretion for determining when to report, and reports should be made publicly available once they have been tabled in the Parliament.

This principle of independence is appropriately addressed through Part 3, Division 3 of the AG Act.

The AG Act provides the Auditor-General with the discretion to determine the format, content and timing of reports to Parliament. To ensure the reports are fairly presented, the Auditor-General is required to seek comments from relevant Ministers on proposed reports. However, the Auditor-General is only required to include in the final report a fair summary of the comments received. This ensures the responses cannot be used to divert attention away from the findings and recommendations of the report.

The AG Act also provides that once a report is provided to the Speaker or Clerk for tabling in Parliament it is taken to have been ordered to be published by the Legislative Assembly. This ensures that the reports of the Auditor-General are publicly available once provided for tabling in Parliament.

The only restriction on the Auditor-General's ability to report to Parliament is contained in s.66 of the AG Act. This section requires the Auditor-General to report directly to a parliamentary committee where a report contains certain types of sensitive information and the Auditor-General considers that disclosure of the information would not be in the public interest.

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

This principle recognises that the Auditor-General's independence is strengthened when the reports of the Auditor-General are duly considered by the Parliament. This includes assessing the findings and recommendations of the Auditor-General and holding the Executive government to account for implementing corrective action, where considered appropriate.

The *Parliament of Queensland Act 2001* requires portfolio committees to consider the annual and other reports of the Auditor-General to the extent they relate to the committee's portfolio area. The committee's consideration of the Auditor-General's reports can include examination of the report, or specific matters identified in the report, through a formal inquiry. The portfolio committee may also make recommendations based on their findings.

Neither the Auditor-General nor the portfolio committees have the ability to force the Executive government to accept their recommendations or take corrective action. However, they may conduct follow-up audits or reviews to assess the extent to which action was taken to address the Auditor-General's previous recommendations or findings. The results of follow-up audits and reviews are also tabled in Parliament.

This principle of independence is appropriately addressed through the existing mechanism for considering the Auditor-General's reports to Parliament.

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

This principle recognises that the independence of Auditors-General is strengthened when they are provided with control over the financial and human resources they deem necessary to discharge their legislative mandate effectively and efficiently. The capacity of the Auditor-General to fully discharge this mandate may be limited where the Executive government has the ability to control, or restrict, the availability or use of these resources.

To achieve a higher level of independence under this principle, it is important that the Auditor-General:

- is supported by a structure that is free from control by the Executive government
- has the authority to determine and appoint the staff required to discharge their mandate
- determines the budget required to discharge their mandate, for approval by the Parliament.

As an officer of the Parliament, the Auditor-General should be accountable to the Parliament and not to the Executive government, for the responsible use of resources.

Administrative structure of the Queensland Audit Office

The QAO is defined as a department for the purposes of the *Financial Accountability Act 2009* (FAA) and as a public service office for the purposes of the *Public Service Act 2008*. Consequently, the QAO is subject to overarching legislation and whole of government policy directives that provide the Executive government with the opportunity to exert control or influence over the operations of QAO.

This framework imposes restrictions on the Auditor-General's ability to administer and manage QAO. In particular, these restrictions impact on the Auditor-General's capacity to:

- establish the required budget for QAO
- employ the necessary staff within the office.

These matters are discussed in further detail in the following sections.

The importance of the Auditor-General being free from potential managerial or administrative influence by the Executive government was recognised in the establishment of the National Audit Office in the United Kingdom. The position of Comptroller and Auditor-General was established as a corporation sole under the *National Audit Act 1983*. New Zealand have adopted a similar model with s.10 of the *Public Audit Act 2001* identifying that the Auditor-General is a corporation sole with perpetual succession and a seal of office.

This model significantly limits the extent to which the Executive government can exercise control over the Auditor-General, either directly or indirectly, through legislative and policy requirements applicable to traditional public sector entities.

This is consistent with EARC's recommendation that:

> *An independent statutory office of the Auditor-General be established and that this be designated as a corporation sole.*[36]

The Audit Office of New South Wales was established in 2004 as a statutory body under s.33A of the *Public Finance and Audit Act 1983*. The NSW model is consistent with the ACPAC minimum requirements which state:

> *The Audit Office should be either a statutory body or established by separate legislation. The Auditor-General should be responsible for the resourcing decisions within the office.*[37]

[36] EARC, p.166
[37] ACPAC, s.2.5

Establishing the audit office as either a corporation sole or statutory body would enhance the level of managerial and administrative autonomy provided to the Auditor-General. However, as statutory bodies are required to operate within the Queensland financial accountability framework through legislation such as the FAA, the *Financial Performance and Management Standard 2009* (FPMS) and the *Statutory Bodies Financial Arrangements Act 1982* (SBFA), this could still provide the Executive government with the capacity to exercise a level of influence over the QAO.

The Auditor-General's independence can be strengthened by:

17. establishing the Auditor-General as a corporation sole under the AG Act. Consequential amendments would also be required to reflect that the audit office is not a department or public service office.

Staffing independence

The Auditor-General needs sufficient human resources to effectively and efficiently deliver the audit mandate each year. The capacity to manage staffing arrangements must also rest with the Auditor-General and not the Executive government.

This can be achieved where the Auditor-General has the capacity to:

- attract appropriately qualified and experienced staff
- take action required to retain good staff
- organise the human resources of the office in the most efficient and effective manner.

This issue goes beyond determining the remuneration of staff.

The AG Act provides for all QAO staff to be employed under the Public Service Act. This restricts the basis on which the Auditor-General can employ and manage QAO staff and could be seen as providing the Executive government, through the Public Service Commission, with the opportunity to influence, if not control, the number, classification and other conditions of the Auditor-General's staff. Further, as QAO staff are employed as part of the broader public service they could be seen as ultimately answerable to the Executive government and not the Auditor-General.

The basis for employing QAO staff was previously considered in several reviews of QAO:

- EARC recommended: [38]
  - the Auditor-General be given the statutory power to determine the number, remuneration and employment conditions of the audit office staff
  - staff not be subject to the *Public Service Management and Employment Act* or the *Public Sector Management Commission Act*
  - staff should be subject to the jurisdiction of the Industrial Commission
  - terms and conditions not determined by an industrial award should be determined by "Audit Office Rules" made by the Auditor-General and treated as subordinated legislation.
- The 1997 strategic review of the QAO recommended that the Auditor-General be given flexibility in determining the appropriate remuneration for his/her staff.[39]
- The 2004 strategic review of the QAO recommended that a more flexible remuneration structure for professional audit staff be introduced and that this matter be taken up with the Acting Public Sector Commissioner as a matter of priority.[40]
- The 2010 strategic review recommended that the QAO continue to pursue strategies for achieving a more flexible remuneration structure for professional audit staff in conjunction with the Public Service Commission and the relevant Government department.[41]

[38] EARC, p.343
[39] Sheridan, p.37
[40] Anderson and Smerdon, p.58
[41] Carpenter and Gray, p.89

In addressing the recommendations of the 2010 strategic review, in 2012 QAO's professional staff were provided with the opportunity to move from the Administrative Officer (AO) scheme to the Professional Officer (PO) scheme under the applicable Award. However, this did not impact on the rates of remuneration paid to QAO staff.

New South Wales is the only Australian jurisdiction to remove all audit office employees from the public service. Under the *Public Finance and Audit Act 1983,* the NSW Auditor-General has the authority to:

- appoint as members of staff such persons as may be necessary to enable the Auditor-General to exercise the Auditor-General's functions
- make determinations fixing the conditions and benefits of employment of the members of staff of the Audit Office and their salary, wages and other remuneration
- enter into an agreement with any association or organisation representing a group or class of staff of the Audit Office with respect to industrial matters.

Internationally, the Auditors-General of New Zealand and the United Kingdom have the authority under their respective legislation to employ the staff they consider necessary to discharge their functions and determine the conditions under which the staff are employed.

In Queensland, the staff of the Ombudsman and of the Crime and Misconduct Commission (CMC) are appointed under their enabling legislation, not the Public Service Act. However, the Governor-in-Council and the Minister, respectively, are responsible for determining the conditions of service and remuneration for the staff of the Ombudsman and CMC, which acts to limit their management autonomy.

The Auditor-General's managerial autonomy and ability to resource the office can be significantly strengthened by including a provision that specifically allows the Auditor-General, as a corporation sole, to be the employer. In determining staff terms and conditions, it may be appropriate for the Auditor-General to have regard to the general terms and conditions of the State's public service employees.

Appropriate transitional arrangements would also need to be established for managing any change in the employment conditions of QAO staff.

Providing the Auditor-General with the authority to appoint staff and determine conditions of employment is also consistent with the ACPAC minimum requirements which state:

> *The Audit Office should be either a statutory body or established by separate legislation. The Auditor-General should be responsible for the resourcing decisions within the office.*[42]

The Queensland Commission of Audit's final report included a number of recommendations aimed at providing greater workforce flexibility and mobility, so that resources can be readily redirected to areas of highest priority. These recommendations included amending the *Public Service Act 2008* to:

- incorporate core employment conditions for all persons employed in the Queensland public service[43]
- provide for employees to be appointed to a generic broadbanded level in the public service, rather than a specific position in the public service agency[44]

The Commission made this recommendation reasoning that the resultant ability to transfer or redeploy staff whenever the need arises would mean that government is better able to meet changing priorities.

[42] ACPAC, s.2.5
[43] Costello, Harding and McTaggart , recommendation 128, p.1-46
[44] Ibid , recommendation 134, p.1-47

While these amendments may be appropriate for better managing the public sector workforce as a whole, they would potentially weaken further the Auditor-General's staffing autonomy, should QAO employees remain part of the public service. For example, QAO staff may perceive themselves as members of the group whose work they scrutinize. Indeed QAO staff may have increased reason to perceive the audited entity as a future employer, creating the possibility of a conflict of interest.

In terms of INTOSAI Principles staff from across the public service having a claim on the Auditor-General for employment would severely reduce the managerial and administrative autonomy of the Auditor-General. Further concern arises from the prospect of the possible centralised deployment practices placing greater importance upon mandating the allocation of staff from other agencies, than on ensuring the independence of the Auditor-General is not compromised.

The Auditor-General's independence can be enhanced by:

18. **establishing the Auditor-General as the employer and employing QAO staff under the AG Act and not the Public Service Act**
19. **giving the Auditor-General authority to appoint the staff necessary to exercise the Auditor-General's functions**
20. **enabling the Auditor-General to determine the remuneration and other terms and conditions for the appointment of QAO staff.**

Process for establishing the budget for the Queensland Audit Office

The Auditor-General needs sufficient funding and resources to be able to discharge the legislated audit mandate. The ability of the Executive government to influence the budget of the Auditor-General and restrict the available funding represents a major threat to the Auditor-General's independence.

As the Auditor-General should be viewed as an independent officer of the Parliament, it follows that the Parliament should have a significant role in overseeing the preparation and approval of the budget for the Auditor-General. In particular, the Parliament 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.

Under the AG Act, the Auditor-General is required each financial year to prepare estimates of proposed receipts and expenditure relating to the audit office and give the estimates to the Treasurer. This reflects QAO's present administrative status as a department and not the status of an independent officer of the Parliament.

The only oversight currently provided by the Parliament in developing QAO's proposed budget is the requirement for the Treasurer to "consult with the parliamentary committee".[45] QAO's budget is also considered as part of the departmental estimates process for the State budget and is included as part of the general Appropriation Bill for the State. While the Auditor-General is required to attend estimates hearings and answer questions on the QAO budget, this is conducted as part of the estimates for the areas of responsibility administered by the Premier. The QAO budget is presented as part of the Service Delivery Statement for the Department of Premier and Cabinet.

The QAO currently receives parliamentary appropriations to fund performance audits and deliver services directly to the Parliament, including reporting on the results of financial and performance audits and assisting parliamentary committees. Financial audits are funded through the recovery of audit fees charged directly to audit clients. These fees are based on the basic rates of fees approved by the Treasurer in accordance with s.56 of the AG Act.

The current processes for setting the Auditor-General's budget and determining audit fees effectively provides the Executive government with the capacity to significantly influence, if not control, the level of funding available to the Auditor-General for discharging the legislative mandate.

[45] s.21(3), *Auditor-General Act 2009*

Parliamentary committees in a number of Australian jurisdictions have a greater role in the process for determining the Auditor-General's budget:

- In Western Australia, the Treasurer must have regard to any recommendations made by the Joint Standing Committee on Audit in determining the budget for the Office of the Auditor-General.
- In the Commonwealth, the Joint Committee of Public Accounts and Audit may request the Auditor-General to submit estimates. The Committee are to consider and may make recommendations on the estimates before the budget.
- In Victoria, the budget for the Auditor-General is to be determined in consultation with the Parliamentary Committee.
- In the ACT, the presiding member of the public accounts committee may advise the Treasurer of the appropriation the committee considers should be made and provide the Treasurer with a draft budget.

The direct involvement of parliamentary committees, and the Parliament, in developing the Auditor-General's budget also occurs in a number of international jurisdictions:

- In the United Kingdom, the Comptroller and Auditor-General is required to prepare estimates and provide them to the Public Accounts Commission who are required to examine the estimates and lay them before with the House of Commons with such modifications as they think fit. In considering the estimates the Commission is required to have regard to any advice given by the Committee of Public Accounts and the Treasury.
- In Canada, the Auditor-General is required annually to prepare an estimate of the sums that will be required to be provided by the Parliament for the payment of salaries, allowances and expenses of the office. Where the Auditor-General believes that the estimates submitted to the Parliament are inadequate to fulfil the responsibilities of the office, the Auditor-General may make a special report to the House of Commons.
- The budgets for the Auditors-General of a number of Canadian provinces are also required to be prepared by the Auditor-General and submitted directly to a parliamentary committee for consideration.

The Auditor-General's independence would be significantly enhanced if the parliamentary committee had a formal role in determining the budget for the QAO and recommending the budget for approval by the Parliament. A similar process could also be adopted for any additional budget supplementation sought by the Auditor-General. In practice, this process could be linked to the development of the strategic audit plan required by s.38A of the AG Act. This would assist in ensuring the committee is satisfied that the Auditor-General has sufficient financial resources available to deliver the audits identified in the strategic audit plan.

As the Treasurer is ultimately responsible for the State's finances, consultation between the Auditor-General, the parliamentary committee and the Treasurer would be appropriate. This would include having due regard to any fiscal parameters that may be used for developing the State's budget.

The Auditor-General's appropriation could also be provided for through the parliamentary Appropriation Bill and not the general Appropriation Bill for departments and agencies. This would reinforce the relationship between the Auditor-General and the Parliament. In the Commonwealth, the Auditor-General's right to receive amounts appropriated by the Parliament is also protected by s.50 of the *Auditor-General Act 1997*. A similar provision in Queensland would provide an additional level of assurance over the Auditor-General's financial independence.

This model would also be consistent with the ACPAC minimum requirements which state:

> *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).*[46]

The limitations imposed on the Auditor-General for determining the basic rates of audit fees for financial audits also represents a significant restriction on the Auditor-General's financial independence. Historically, these rates have been determined to enable the audits to be performed on a cost-recovery basis. As these audits are not funded by parliamentary appropriation, any restriction on the QAO's ability to recover the costs of the audit could represent a significant limitation in the scope of the audit performed.

The requirement in Queensland to have the rates approved by the Executive government is unique in Australia. In both the Commonwealth and the ACT, the Auditor-General is able to charge fees based on a 'scale of fees' determined by the Auditor-General. In Western Australia, Victoria and Tasmania the legislation provides for the payment of fees determined by the Auditor-General. In both Tasmania and Victoria disputed fees may be referred to an independent body for arbitration.

The Auditor-General of New Zealand is able to charge fees for audit services that are reasonable, having regard to:

- the nature and extent of the service provided
- the requirements of auditing standards
- the qualifications and experience of the persons necessarily engaged in providing the services
- any other matters the Auditor-General thinks fit.

Removing the requirement for the Treasurer to approve basic rates of audit fees would enhance the financial independence of the Auditor-General. Oversight of the reasonableness of audit fees charged by the Auditor-General would still be provided through annual budget reviews performed by the parliamentary committee and the strategic review of the office required every five years.

The Queensland Commission of Audit's final report recommended amendments to the FAA to enable Parliament to exercise effective control over the total level of departmental expenses, including:[47]

- all government revenues to be paid into the Consolidated Fund, to be appropriated by Parliament to fund operational and capital expenses of departments.
- a revised appropriation process by which Parliament approves a total expense limit for agencies, including a limit for employee expenses.

Such a process could impact negatively on the financial autonomy of the Auditor-General. However, the Commission of Audit also recognised that:

> *There may be a need to retain a process of deemed appropriation in special circumstances, for example where, controlled revenue forms a substantial share of an agency's overall funding, for example, the Queensland Audit Office.*[48]

This would support the need for the budget of the Auditor-General and QAO to be established under a separate process.

[46] ACPAC, s.2.6
[47] Costello, Harding and McTaggart , recommendation 51, p.1-33
[48] Ibid, p.2-278

The Auditor-General's independence can be strengthened by:

21. **involving the parliamentary committee in the process for setting the QAO's budget , including:**
    - **requiring the Auditor-General to provide the annual estimates for the QAO to the parliamentary committee**
    - **the estimates being considered by the parliamentary committee and tabled in Parliament with such modifications the committee thinks fit**
    - **including the annual estimates for the QAO in the Appropriation Bill for the Parliament**
    - **adopting the same process for any supplementary funding requested by the Auditor-General during the year.**
22. **removing from the AG Act the requirement for the Treasurer to approve the basic rates of audit fees.**

Appointment and oversight of the external auditor of the QAO and requirements for tabling the QAO's annual report

Ensuring there is an independent mechanism for appointing the external auditor of the Auditor-General is also important in enhancing the independence of both the auditor and the Auditor-General. In Victoria, the external auditor is:

- appointed by resolution of the Parliament on the recommendation of the parliamentary committee
- paid out of the consolidated fund
- required to report on the audit to each house of Parliament.

In New Zealand, the auditor is appointed by resolution of the House of Representatives.

The process adopted in both Victoria and New Zealand is consistent with the ACPAC minimum requirements which state:

> *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.*[49]

The appointment and oversight of the external auditor of the Auditor-General by the Parliament reinforces that the Auditor-General is ultimately accountable to the Parliament and not the Executive government.

As a department, the QAO is required to prepare financial statements and an annual report in accordance with the FAA and FPMS each financial year. The audit of QAO's financial statements is performed by a person appointed by the Governor-in-Council under Part 5 of the AG Act.

While it is appropriate for the QAO to prepare financial statements and have them audited and have an annual report tabled in Parliament, the current processes could be revised to better reflect the special relationship between the Auditor-General and the Parliament.

In accordance with the requirements of the FPMS the Auditor-General is presently required to provide the annual report to the Premier for tabling in Parliament. This can be contrasted to s.87 of the Ombudsman Act, which requires the Ombudsman to give a copy of the annual report to the Speaker and the parliamentary committee when providing the annual report to the Minister in accordance with the requirements of the FAA. In the ACT, the Auditor-General Act identifies that a reference to the 'responsible Minister' in the *Financial Management Act 1996* is taken to be a reference to the Speaker.

[49] ACPAC, s.3.1

A process where the Auditor-General provides the annual report to the Speaker for tabling would better reflect the accountability of the Auditor-General to the Parliament. This process would also be consistent with the existing process adopted for tabling the Auditor-General's reports to Parliament on the results of audits performed. The annual report could either be provided directly to the Speaker or to the Speaker through the parliamentary committee.

It should also be noted that if the Auditor-General is established as a corporation sole, the requirements of the FAA would no longer apply. The AG Act would need to be amended to specifically address the requirement to prepare annual financial statements and an annual report.

The Auditor-General's independence can be strengthened by:

23. **appointing the external auditor of the QAO by resolution of the Parliament on the recommendation of the parliamentary committee**
24. **requiring the external auditor of the QAO to report on the results of audits performed directly to Parliament or to Parliament through the parliamentary committee.**
25. **the Auditor-General providing the QAO's annual report to the Speaker or Clerk for tabling in Parliament, instead of to the Minister.**

Appendices

A. Independence of Auditors General: A 2013 update of a survey of Australian and New Zealand legislation

B. Listing of audit legislation reviewed

C. Summary analysis of Queensland legislation against INTOSAI principles of independence

D. Detailed analysis of the 2013 survey of Australian and New Zealand legislation

E. Comparison of legislative provisions for Queensland integrity offices

F. List of other legislation containing audit provisions

G. Auditor-General's submission to the Transport, Housing and Local Government Committee's inquiry on the *Heavy Vehicle National Law Bill 2012*

Appendix A

COMMISSIONED BY THE VICTORIAN AUDITOR GENERALS OFFICE

Independence of Auditors General

A 2013 update of a survey of
Australian and New Zealand legislation

Dr Gordon Robertson, PhD, PSM June 2013

Summary and Conclusions

Independence of Auditors General

The International Organization of Supreme Audit Institutions (INTOSAI) has declared that eight core independence principles are essential requirements for effective public sector auditing:

1. An effective statutory legal framework.
2. Independence and security of tenure for the head of the audit institution.
3. Full discretion to exercise a broad audit mandate.
4. Unrestricted access to information.
5. A right and obligation to report on audit work.
6. Freedom to decide the content and timing of audit reports and to publish them.
7. Appropriate mechanisms to follow-up on audit recommendations.
8. Financial, managerial and administrative autonomy and availability of appropriate resources.

Survey of Australian and New Zealand Legislation

In 2009 the legislative frameworks that then existed in New Zealand, in the Commonwealth of Australia, and in each Australian State and Territory were surveyed for key 'factors' that contributed to each INTOSAI independence principle. The extent to which each factor was subject to the control of Executive government was given a score ranging from zero, where legislation was silent or where the factor was directly controlled by Executive, to ten, where the factor was embedded within the jurisdiction's Constitution. The scores were aggregated to give an overall indication of the extent to which each jurisdiction's legislative framework enhanced independence and reduced the opportunity for Executive government to influence the Auditor General.

Summary of Legislative Changes since 2009

Since the 2009 survey, the legislation governing Auditors General has been amended in a number of jurisdictions. The survey has therefore been repeated to assess the extent of protection from Executive influence that exists in 2013.

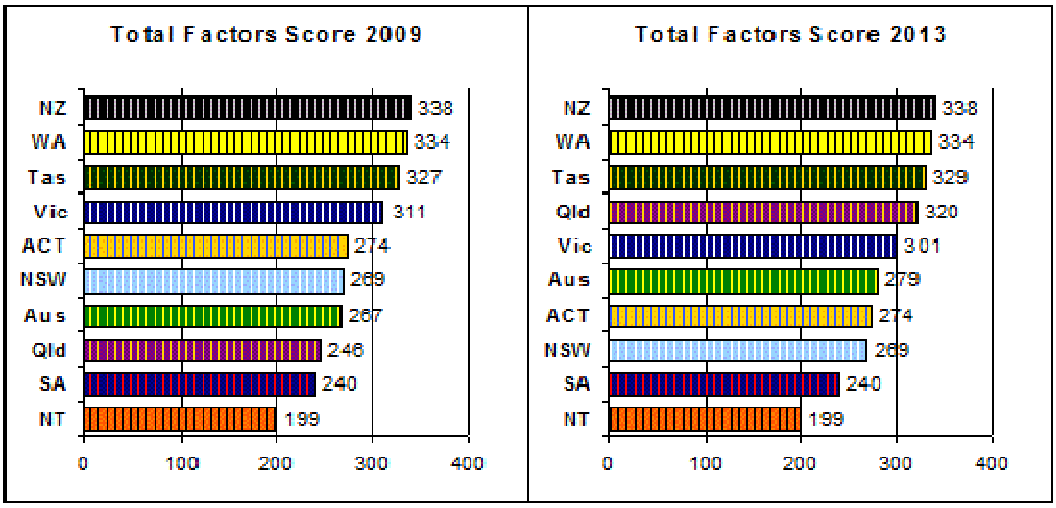
Substantial changes have occurred in the legislation governing Auditors General in the Commonwealth and Queensland since 2009. Significant changes have also been made to the legislation in Victoria, Tasmania and the Northern Territory. Relatively minor amendments have been made to the legislation in other jurisdictions.

Jurisdiction	Brief summary of Amendments since 2009	Impact on Independence
ACT	Minor amendments: definitions and terms used (consequential to amendments in other legislation). The Auditor General is now referred to as the responsible director-general of a directorate.	No effect on independence score
Aus	Major amendments: expanded mandate to include performance audits of "Commonwealth partners", to audit performance indicators and to conduct assurance reviews. Significant amendments to reporting procedures and other consequential amendments to auditing standards, use of information gathering powers, confidentiality of information and information sharing. Constitutional safety net provision added.	Substantial effect on independence score
NSW	Few amendments: review of audit office from once every 3 years to once every 4 years. Definitions of statutory bodies and controlled entities clarified. New provision relating to defraying cost of audits requested by Parliament or a Minister.	No effect on independence score
NT	Extensive amendments: term of appointment and explicitly mandating independence of Auditor General. Mandate for special audits and audit of performance management systems expanded to include Territory controlled entities. Significant amendments to reporting procedures.	No net effect on independence score
NZ	Few amendments: requirements for publishing auditing standards and new provisions ensuring persons or firms appointed as auditors for financial report audits meet minimum required standards. New provision for external quality assurance reviews of Issuers.	No effect on independence score

Qld	Major amendments: term of appointment and declaration of interests of Auditor General and Deputy; substantial changes to mandate including audit of public property given to a non-public sector entity, performance audits of most public sector entities and audit of performance management systems and performance measures of government-owned corporations, and to conduct joint or collaborative audits with the Commonwealth or another State.	Substantial effect on independence score
SA	Minor amendment: description of administrative unit established to provide assistance to the Auditor General	No effect on independence score
Tas	A number of amendments: expanded coverage mandate to include local government and the mandate for investigations and examinations; new provision enabling audits in collaboration with the Commonwealth, other State or Territory; amended reporting lines and new provisions for non disclosure of sensitive information and for confidentiality of information.	Minor effect on independence score
Vic	Extensive amendments: largely associated with a new Victorian integrity system and the introduction of a new oversight body (the Victorian Inspectorate). Significant effect on the way in which power to call for persons and documents is exercised that affects a wide range of audit activities.	Potential effects on independence score unclear
WA	Minor amendment: (consequential to amendment of other legislation)	No effect on independence score

Overall Independence Scores

The overall scores obtained from the 2009 and 2013 surveys are summarised below:



	Year	ACT	Aus	NSW	NT	NZ	Qld	SA	Tas	Vic	WA
Independence Factor Scores	**2009**	274	267	269	199	338	246	240	327	311	334
	2013	274	279	269	199	338	320	240	329	301	334

Figure 1. Overall independence factor scores 2009 versus 2013

Overall, the survey found that, under the scoring system used:

- New Zealand's Auditor General continues to have the highest overall independence score, followed by Western Australia and Tasmania.
- Queensland's overall independence score has substantially improved and the Commonwealth has also improved its position significantly.
- Victoria's overall score has fallen.
- Despite changes to its legislative framework, the Northern Territory's Auditor General continues to be more vulnerable to Executive influence than those in other jurisdictions.

Relative Independence Scores for each Principle

1. Statutory Framework:
   - Victoria continued to have the strongest independence score for its statutory framework because of the constitutional protections it affords the Auditor General, although this has been weakened by recent amendments to the *Audit Act 1994* and the introduction of other legislation as part of Victoia's new integrity system.
   - The Northern Territory improved its score by mandating the independence of its Auditor General in legislation.
   - Other jurisdictions have made no significant changes to the statutory framework.

2. Appointment and immunity:
   - New Zealand continued to have the highest independence score for appointment and immunity and is now followed by Queensland.
   - The Northern Territory has shortened the term of appointment and re-introduced the opportunity for reappointment at the Executive's discretion.
   - Scores in other jurisdictions have not changed.

3. Mandate and discretion:
   - Western Australia and Tasmania continues to have highest independence score arising from the widest audit mandate and greatest discretion.
   - Queensland has substantially improved the overall score, moving from ninth to third position by widening its mandate and discretion.
   - The Commonwealth score has also improved from a wider mandate.
   - The Northern Territory's Auditor General gained some ground but continues to have the narrowest mandate and greatest potential for Executive influence.
   - Victoria’s score has fallen because new integrity controls, could reduce the Auditor General's discretion over how to conduct an audit.

4. Access to Information:
   - Queensland has substantially improved access to information and now ranks equal first with the Commonwealth, Western Australia, Tasmania, and South Australia.
   - Victoria’s score has fallen because new integrity controls over, and external monitoring of, access to persons could constrain the Auditor General's access to information.
   - The Australian Capital Territory continues to rank poorly because of the Executive's ability to release protected information.

5. Reporting rights and obligations
   - There have been no significant changes to reporting rights and obligations in any of the jurisdictions surveyed.

6. Content timing and publication of reports
   - The Australian Capital Territory and Tasmania continue to have the strongest safeguards over the content, timing and publication of reports.
   - The Commonwealth lost ground because it is now required to include in the final report all comments received, enabling the Executive to influence this segment of its reports.
   - Victoria’s score has fallen because of the constraints imposed by new integrity controls over, and external monitoring of reporting of certain information.

7. Follow-up mechanisms
   - There have been no significant changes to follow-up mechanisms, these remaining the province of Parliamentary committees.

8. Managerial autonomy and resourcing

- There have been no significant changes to managerial autonomy and resourcing in any of the jurisdictions surveyed.
- New Zealand's audit office continues to have the greatest autonomy and most independent resourcing arrangements.
- New South Wales remains in second place largely because of its statutory separation from the public service. However, despite new provisions to enable additional resources to be made available for requests to conduct audits from either the Parliament or the Executive, financial resources remain under Executive control.
- The Commonwealth, Victoria and the Australian Capital Territory rank next largely because of more independent resource allocation processes.
- Other jurisdictions continue to remain vulnerable to Executive influence and/or control.

Independence of Auditors-General:
A 2013 update of a survey of Australian and New Zealand legislation

Background

In 2009, the Victorian Office of the Auditor General commissioned a survey to identify and compare the range of independence safeguards for Auditors General in the legislative frameworks that then existed in New Zealand, in the Commonwealth of Australia, and in each Australian State and Territory.

The survey was based upon the International Organization of Supreme Audit Institutions (INTOSAI) *Mexico Declaration on SAI Independence* which recognised eight core principles as being essential requirements for effective public sector auditing. These principles are:

1. The existence of an appropriate and effective constitutional/statutory/legal framework and of de facto application provisions of this framework.
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.
3. A sufficiently broad mandate and full discretion, in the discharge of SAI functions.
4. Unrestricted access to information.
5. The right and obligation to report on their work.
6. The freedom to decide the content and timing of audit reports and to publish and disseminate them.
7. The existence of effective follow-up mechanisms on SAI recommendations.
8. Financial and managerial/administrative autonomy and the availability of appropriate human, material, and monetary resources.

The 2009 survey identified key legislative components or 'factors' that contributed to each INTOSAI independence principle and made an assessment of the extent to which each factor was subject to the control of Executive government. Each factor was given a score ranging from zero, where legislation was silent or where the factor was directly controlled by Executive, to ten, where the factor was embedded within the jurisdiction's Constitution.

The survey found that although all of the jurisdictions had well established legislative frameworks governing the their respective Auditors General there was considerable variation in the independence safeguards provided for Auditors General and in the extent to which Auditors General, or the role they performed, could be influenced by the Executive government of the jurisdictions concerned.

In a number of jurisdictions there was room for improvements in the legislative framework especially with respect to:

- The extent to which the Executive government could influence aspects of the Auditor General's appointment and security of tenure.
- The extent of the Auditor General's functional role and mandate to scrutinise new mechanisms being used by Executive government to effect delivery of publicly funded services.
- The Auditor General's financial, managerial and administrative autonomy.

A significant risk existed in some jurisdictions that the Executive could not be adequately held to account for the use of public resources.

Since the 2009 survey, the legislation governing Auditors General has been amended in a number of jurisdictions. Major amendments have been made to the legislation in the Commonwealth of Australia and Queensland and extensive amendments have also been made to the legislation in the Northern Territory, Victoria, and Tasmania. Relatively few, more minor amendments have been made to the legislation in New Zealand, New South Wales, South Australia, Western Australia and the Australian Capital Territory.

The present study aims to update the findings of the 2009 survey by examining the legislation governing Auditors General that exist in 2013 to again identify and compare the range of independence safeguards that exist.

Factors Contributing to Independence

In the 2009 survey, 60 key 'factors' were identified in legislative components that were relevant to the Independence Principles outlined in the INTOSAI Declaration.

No attempt was made to weight the factors in terms of their relative importance to independence but each factor was ranked on the extent to which it is removed from the control of Executive government according to the following scale:

0. **Silent or Executive decides** -- the legislation is either silent about the factor or the factor is under the direct control of the Executive.
1. **Parliament consulted** -- the Executive is required to consult a Committee of Parliament and/or the leader of each political party within the Parliament before making a decision about the factor. This mechanism improves transparency, but does not shift decision making power and the decision still rests with the Executive.
2. **Parliament veto** -- the Parliament or a Committee of Parliament is able to veto a proposal from the Executive about the factor. This introduces some level of Parliamentary control, although any decision about what to propose rests with the Executive.
3. **Parliament recommends** -- the Parliament or a Committee of Parliament makes recommendations to the Executive about the factor. This enables Parliament to take the initiative but the final decision rests with Executive, which may reject the recommendation.
4. **Parliament decides** -- any decision about the factor is made by the Parliament or a Committee of Parliament. This places control within the Parliament itself where it is transparent and more difficult for Executive to influence.
5. **Independent body decides** -- any decision about the factor is made by another independent body, outside of the control of the Executive. This should remove partisan politics, although the independent body itself may or may not be subject to Executive influence.
6 **Auditor General decides** -- any decision about the factor is made by the Auditor General, free from Executive influence.
8. **Legislation mandates** -- the factor is explicitly addressed in the legislation. Any variation would require legislative amendment and Parliamentary debate and is therefore protected from Executive influence.
10. **Constitution mandates** -- the factor is embedded in the Constitution. An amendment to the Constitution would require a large Parliamentary majority and/or referendum. This gives the highest possible protection from Executive influence.

The same factors were again used in the present survey of the legislative frameworks in effect as at May 2013 and the same criteria were used to make an assessment of how or whether the factor has been addressed in legislation.

It should be noted that, as in the 2009 survey, the full range of ranking was not applicable to all of the factors examined.

The ranking for each of the factors examined for each INTOSAI principle were aggregated to give an overall score for each INTOSAI Principle, which were then aggregated to give an overall independence score. [1]

In the 2009 survey, the ranking for each of the factors examined for each INTOSAI Principle were aggregated then adjusted to reflect the number of factors grouped under each Principle to give an 'adjusted Principle score'. This adjustment has not been applied in the present survey.[1]

Results of the 2013 Survey

Summary of legislative changes since 2009

Jurisdiction	Summary of Amendments since 2009	Impact on Independence
ACT[2]	**Minor amendments** • Definitions and terms used consequential to amendments in other legislation. • The Auditor General is now referred to as the 'responsible director-general' of a 'directorate'.	No effect on independence score
Aus[3]	**Major amendments.** • Expanded mandate o performance audits of 'Commonwealth partners' o audit of performance indicators o Conduct of assurance reviews. • Significant amendments expanding the list of persons or bodies who must or may receive copies or extracts of a proposed report and who may provide comments thereon. All comments received must now be included in the final report. • Consequential amendments to auditing standards, use of information gathering powers, confidentiality of information. New section to allow information sharing. • Constitutional safety net provision added.	Substantial effect on independence score
NSW[4]	**Few amendments.** • Amended review of audit office from once every 3 years to once every 4 years. • Definitions of statutory bodies and controlled entities clarified. • New provision relating to defraying cost of audits requested by Parliament or a Minister, but at discretion of the Treasurer. • Term of appointment amended (July 2013) from 7 years non renewable to 8 years non renewable	No effect on independence score
NT[5]	**Extensive amendments.** • New definitions of 'organisation' and modified definition of 'Territory controlled entity'. • Duration of appointment amended from 7 year fixed term to 5 year renewable term. Amended ineligibility criteria. • New explicit independence mandate, but subject to Ministerial direction provisions. • Mandate for special audits and audit of performance management systems expanded to include Territory controlled entities. • Significant amendments expanding the list of persons or bodies who must or may receive copies or extracts of a proposed report and who may provide comments thereon, and who must or may receive copies of final reports.	No net effect on independence score
NZ[6]	**Few amendments.** • New interpretation definitions of 'auditing and assurance standards', 'financial reporting standards' and 'Issuer' from Financial Reporting Act 1993 • New provision for external quality assurance reviews of Issuers. • Amended requirements for publishing auditing standards. • New provisions ensuring persons or firms appointed as auditors for financial report audit meet minimum required standards.	No effect on independence score
Qld[7]	**Major amendments.** • Duration of appointment is for a fixed, non-renewable term of 7 years. • Changes to declaration of interest and new section on conflicts of interest	Substantial effect on independence score

[2] Australian Capital Territory. *Auditor-General Act 1996*, Republication No 11 Effective 1 July 2012
[3] Australia. *Auditor-General Act 1997*, Compilation prepared on 4 October 2012
[4] New South Wales. *Public Finance and Audit Act 1983*, Current version for 4 January 2013
[5] Northern Territory of Australia. *Audit Act.* As in force at 21 September 2011
[6] New Zealand. *Public Audit Act 2001*Reprinted as at1 July 2012
[7] Queensland. *Auditor-General Act 2009* Current as at 9 September 2011

	for both Auditor-General and Deputy. • Substantial changes to mandate: o Discretion to exempt entities from audit. o New provision to conduct an audit of property given to a non-public sector entity (but limited to assessment of efficiency and effectiveness). o New provision to conduct performance audits (but government owned corporations only at the request the Legislative Assembly, Parliamentary committee, Treasurer, or appropriate Minister). o New discretionary power to conduct an audit of performance management systems and performance measures of government-owned corporations. o New provision for the conduct of joint or collaborative audits with the Commonwealth or another State with power to disclose protected information. • New requirement for a 3-year strategic audit plan for performance audits. • Consequential amendments to reporting provisions	
SA[8]	**No changes**	No effect on independence score
Tas[9]	**Several amendments** • New definitions introducing 'Employer' from State Services Act 2000 and 'Joint Committee' from Integrity Commission Act 2009 and expanding meaning of 'State entity' to include entities defined by Local Government Act 1993. • Mandate for investigations and examinations expanded to include local government, Employer under State Services Act 2000. • New provisions enabling Integrity Commission to request audits and Employer to request investigations. • New provision enabling audits in collaboration with the Commonwealth, other State or Territory. • Amendments to reporting lines. • New provisions for non disclosure of sensitive information and for confidentiality of information.	Minor effect on independence score
Vic[10]	**Extensive amendments.** • New definitions associated with the recently established Victorian integrity system. • A suite of new provisions relating to obligations the integrity system imposes, including the introduction of a new oversight body (the Victorian Inspectorate) and mandatory reporting/notification of various matters to integrity bodies and provision of information to law enforcement agencies. • Significant changes to the way in which powers to call for persons and documents can be exercised with consequential amendments that affect a wide range of audit activities, including those of the independent auditor of the audit office. • New provision prohibiting the disclosure of certain information in reports.	Significant effect on independence score
WA[11]	**Minor amendment** • Consequential to amendment of Public Sector Management Act 1994.	No effect on independence score

[8] South Australia. *Public Finance and Audit Act 1987* ,Version: 15.2.2013
[9] Tasmania. *Audit Act 2008*, Tasmanian Legislation Online, Consolidated:17 May 2013
[10] Victoria. *Constitution Act 1975* Version incorporating amendments as at 15 May 2013; *Audit Act 1994* Version incorporating amendments as at 11 February 2013
[11] Western Australia. *Auditor General Act 2006*, As at 01 Dec 2010

Overall Assessment of Independence

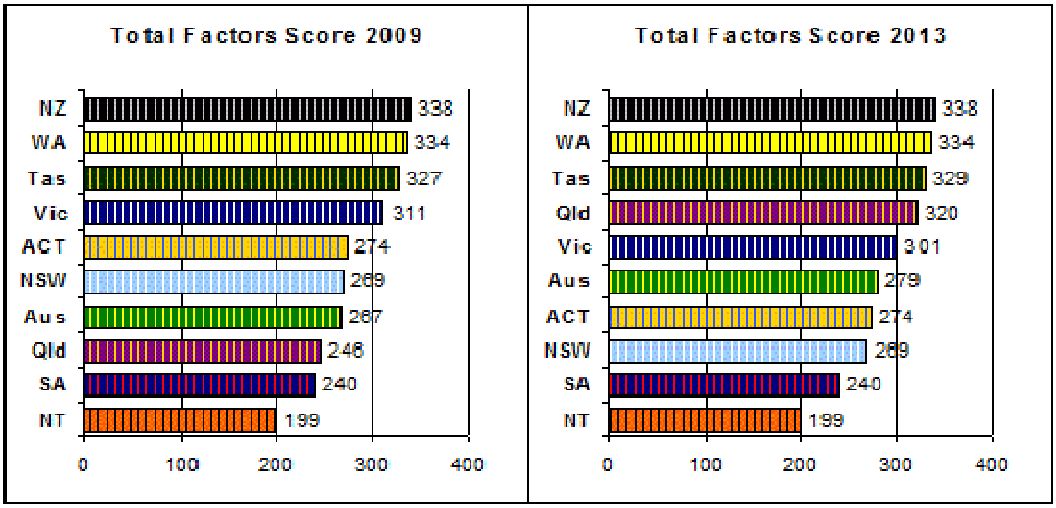
Summary of Overall Independence Factor Scores

The jurisdictions surveyed continued to show wide variation in extent to which their legislative frameworks safeguarded the independence of Auditors General with respect to the principles outlined by INTOSAI.

Based on the scoring system used:

- New Zealand continued to have the strongest independence safeguards in its overall legislative framework.
- The Australian States of Tasmania, Western Australia and Victoria followed closely.
- Substantial amendments to the legislative framework in Queensland has significantly improved its relative position, moving the overall independence score from eighth to fourth position.
- Significant amendments to the legislative framework of the Commonwealth have also improved its relative position, from seventh to sixth overall.
- Independence safeguards continue to be less well developed in other Australian jurisdictions.
- Despite changes to its legislative framework, the Auditor General for the Northern Territory continues to be more vulnerable to Executive influence than Auditors General in other jurisdictions.

The overall scores obtained from the 2009 and 2013 surveys are represented graphically and summarised below:



Year	ACT	Aus	NSW	NT	NZ	Qld	SA	Tas	Vic	WA
2009	274	267	269	199	338	246	240	327	311	334
2013	274	279	269	199	338	323	240	329	311	334

Figure 2. Overall independence factor scores 2009 versus 2013

Factors Contributing to Individual Principles of Independence

The factors scores contributing to each of the INTOSAI Principles of Independence are illustrated in Figure 3.

- New Zealand's overall position is strongly supported by its safeguards over appointment and immunity and office autonomy, whereas
- Western Australia, Tasmania and Queensland gain most from their wide mandate and discretion.

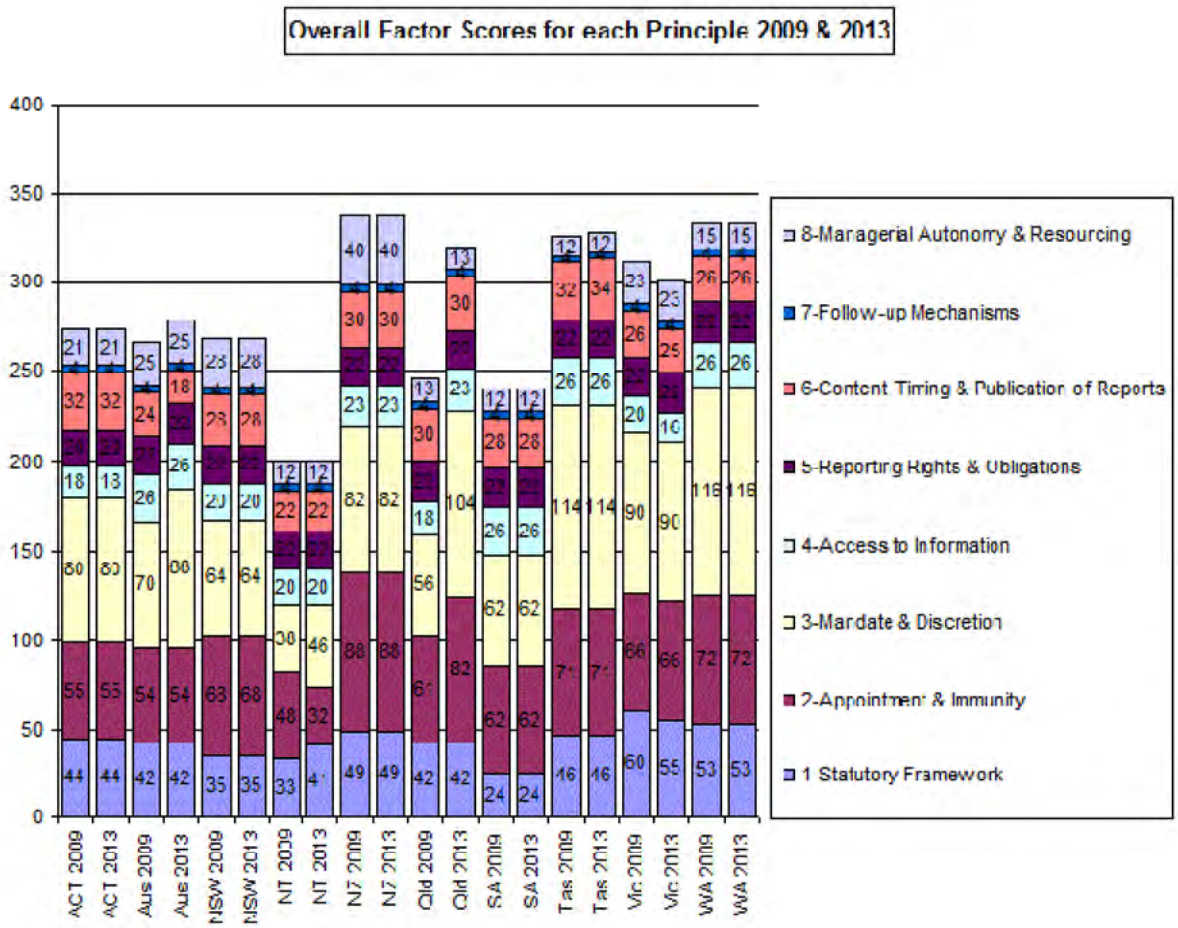


Figure 3. Overall factor scores for each INTOSAI Principle 2009 versus 2013

The variations between jurisdictions in relation to each INTOSAI Principle are discussed in more detail below.

Statutory Framework

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

Legislative changes since 2009

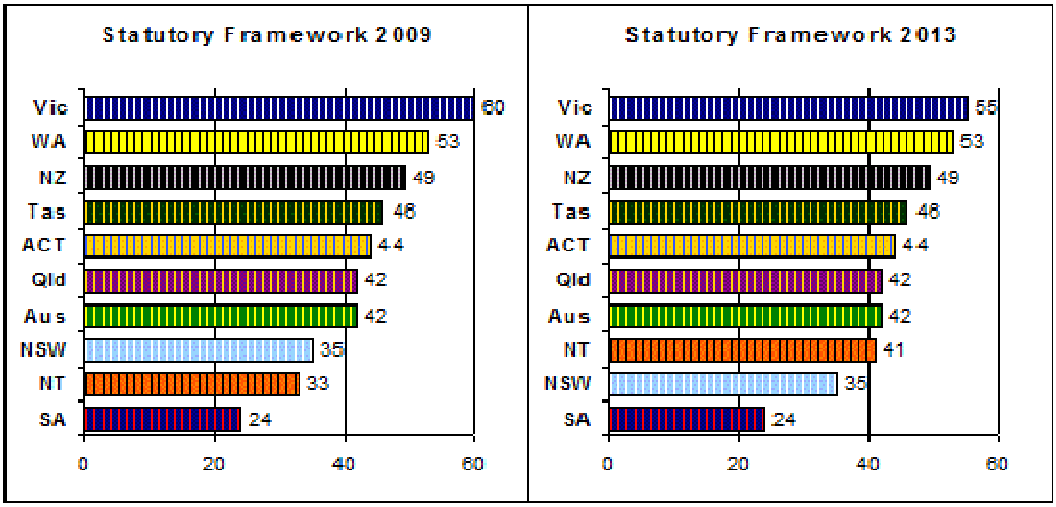
Since the 2009 survey:

- The Northern Territory has amended legislation to explicitly mandate the independence of its Auditor General.
- New South Wales has extended the period between statutory reviews of the office from 3 to 4 years.
- The statutory frameworks in other jurisdictions remain relatively unchanged.

Overall Independence Score for Statutory Framework

In the overall assessment of statutory frameworks:

- Despite the impact of new legislation and amendments to the *Audit Act 1994* Victoria continues to have the strongest independence safeguards, followed by Western Australia, New Zealand and Tasmania.
- The Northern Territory improved its position by explicitly mandating the independence of the Auditor General in legislation.



Year	ACT	Aus	NSW	NT	NZ	Qld	SA	Tas	Vic	WA
2009	44	42	35	33	49	42	24	46	60	53
2013	44	42	35	41	49	42	24	46	55	53

Figure 4. Overall assessment of statutory framework.

Factors Surveyed

Nine key legislative factors affecting independence were identified within the statutory frameworks of the jurisdictions reviewed in 2009 and again used in the 2013 survey. These are:

1. Whether **constitutional provisions and/or enabling legislation exists** which specifically address the establishment, status, mandate and powers of the Auditor General, as opposed to establishment by Executive action.
2. Whether there is **separate audit legislation** to ensure that Parliamentary debate is focused on the Auditor General's role, functions and independence rather than being diluted by broader debate on wider financial legislation.

3. Whether there is an **oath or affirmation of office** that reinforces the independence of the Auditor General and his or her relationship with the Parliament and before whom the oath is sworn or the affirmation is made.
4. Whether the **independence of the Auditor General is explicitly mandated** and/or stated as a requirement or obligation.
5. Whether the **status and/or rank** of the Auditor General is established to ensure that the independence and authority of the role is recognised and respected by other parts of government.
6. Whether the mechanism for **determining remuneration** (a key determinant of status and/or rank) of the Auditor General is established and protected from Executive influence.
7. Whether the Auditor General is **constrained from holding other positions** or gaining remuneration from other forms of employment or, where this is permitted, whether the Executive is involved in giving permission.
8. Whether there is oversight of the Auditor General's role by a **Parliamentary Committee** to ensure that the role is seen to be accountable to the Parliament.
9. Whether there is a statutory requirement for a **periodic review** of the performance of the Auditor General's role and the extent of Executive influence in determining the terms of reference or in receiving the report of the review.

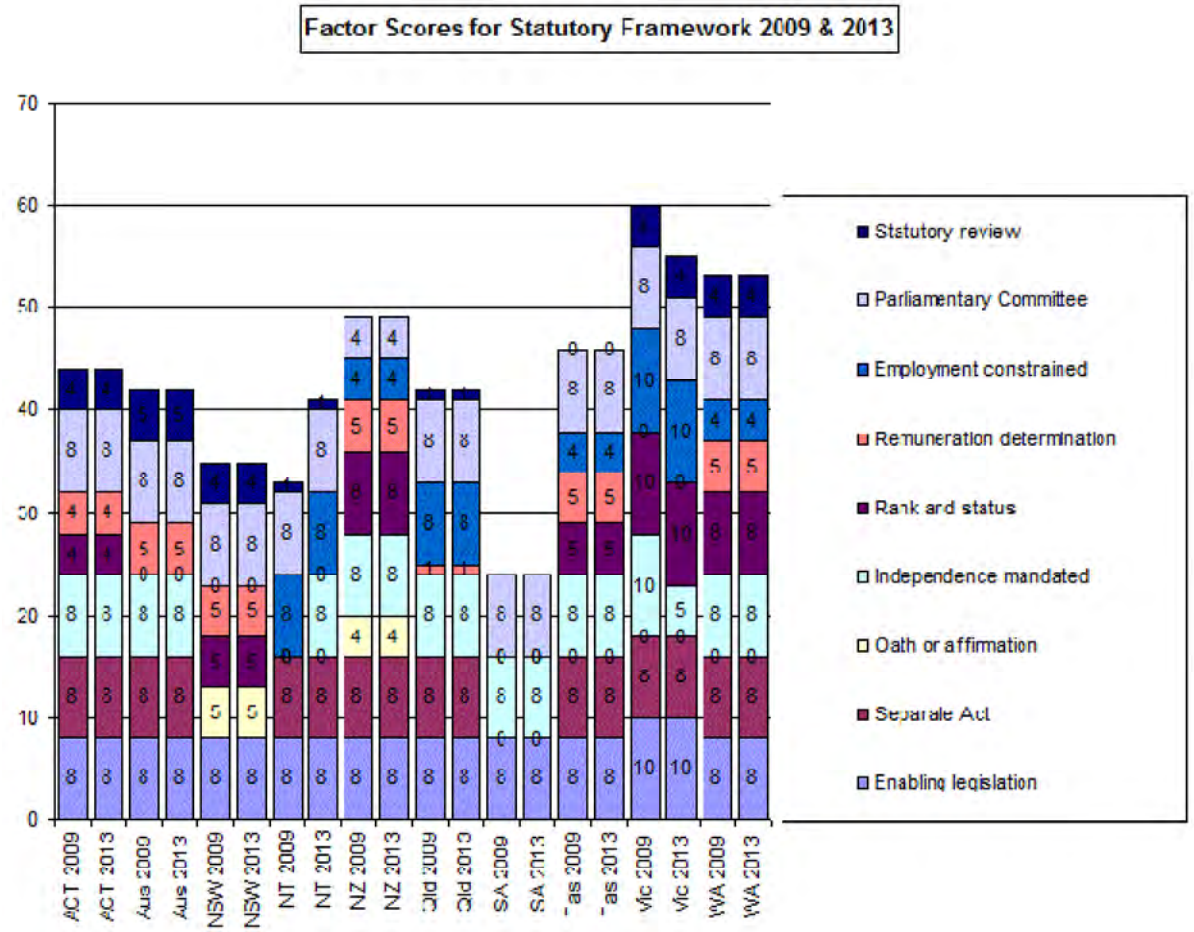


Figure 5 Assessment of factors impacting on statutory framework

Analysis and Discussion

Enabling Legislation / Separate Legislation

In all of the jurisdictions surveyed, the Auditor General continues to be created by statute, not by administrative action.

- In Victoria the Auditor General remains embedded in the Constitution as one of three 'independent officers of the Parliament', clearly establishing his or her independence and giving the office a high status.

Since the Constitution can only be amended through a motion passed by a large majority in both Houses and by a majority of voters at a referendum, including the Auditor General in the Constitution also gives the office strong protection from the Executive. Although relatively rare in Westminster-style governments, constitutional provision is used much more widely internationally. An INTOSAI survey[12] found that 79 of 113 Supreme Audit Institutions are established and have their mandates enshrined in their country's Constitution.

- Eight of the jurisdictions have a separate audit Act ensuring that any Parliamentary debate on the legislation has been focussed on the audit role rather than being subsumed in broader debate about wider legislation. However, New South Wales and South Australia continue to have the role and functions of the Auditor General defined within legislation governing broader aspects of financial management.
- In all of the jurisdictions the enabling legislation clearly specifies the functions and powers of the Auditor General, although these continue to vary considerably between jurisdictions, and also specifies the manner of appointment and provides for the circumstances under which an appointee can be removed.

Independence Mandated, Oath or Affirmation of Office

Fundamental to the effective functioning of an Auditor General is the capacity to execute the role independently and free from influence. Legislation that explicitly mandates the independence of the office is therefore an essential component of an effective legislative framework.

- The term 'independent officer of the Parliament' is used in Victoria's Constitution and in the enabling legislation in a number of other jurisdictions. Although the meaning of the term is not defined, such a provision does make clear both the importance placed on the independence of the office and the special relationship it holds with the Parliament, rather than Executive government. Although Victoria's Constitution also mandates that the Auditor General is not subject to direction, this provision is subject to both the *Audit Act 1994* and other laws of the State. Amendments to the, *Audit Act 1994* and laws associated with the establishment of the Victorian Inspectorate under Victoria's new 'integrity system' have demonstrated how readily such constitutional protection can be bypassed.
- In many jurisdictions independence is stated as a requirement or obligation on the Auditor General. Some jurisdictions also include a 'duty to act independently' and/or explicitly state that the Auditor General 'is not subject to the direction of anyone' with respect to the exercise of his or her functions.
- Since the 2009 survey, the Northern Territory has amended its Audit Act to mandate the independence of its Auditor General.

An oath or affirmation of office can be used to reinforce the Auditor General's personal commitment to independence and impartiality and may also serve to emphasise the special relationship of the office holds with the Parliament.

- There have been no changes since the 2009 survey with regard to an oath or affirmation.
- In a number of jurisdictions an oath is sworn before the Speaker or the Clerk of the Parliament, symbolically strengthening the relationship between the Auditor General and the Parliament.
- In other jurisdictions it is sworn before the Governor or the Governor in Council, which does not serve to reinforce the independence of the Auditor General from the Executive.
- The legislation continues to be silent regarding an oath in several jurisdictions.

[12] *The Independence of SAIs – Final Task Force Report.* International Organization of Supreme Audit Institutions, 2001.

Rank and Status

The status or rank of the Auditor General relative to other parts of the government or public sector is of considerable importance in determining his or her authority and the extent to which the role is acknowledged, accepted and supported by all of the parties involved (government, public servants, legislators and the public at large). If status and rank can be degraded by the Executive, the effectiveness of the Auditor General could be seriously undermined.

There have been no significant changes in this regard since the 2009 survey.

- Some jurisdictions explicitly mandate status or rank (for example 'independent officer of the Parliament'); others do so indirectly by mandating salary relativities.
- In others the legislation is silent regarding rank and status.

Other Employment Constrained

Constraints on the Auditor General holding other positions or gaining remuneration from other forms of employment is commonly included in legislation to ensure that the incumbent devotes his or her full attention to the statutory role and to reduce the opportunity for a conflict of interest.

- In Queensland the Auditor General cannot hold any other office for profit and cannot engage in remunerative employment. Queensland also requires its Auditor General to make a declaration of interests similar to the declaration required of members of its Legislative Assembly. The Queensland legislation has been amended since 2009 to strengthen this declaration, and to provide for its release to Queensland's Crime and Misconduct Commission or Integrity Commissioner. Queensland has also amended its legislation to require the Auditor General to declare conflicts of interest that may arise in the discharge of his or her responsibilities.
- Legislation regarding constraints on other employment in other jurisdictions has not changed since the 2009 survey and continues to vary considerably:
    - In most jurisdictions, any other occupation for reward is prohibited and may be grounds for removal from office.
    - In others it may be permitted subject to approval. Where such approval can only be given by Parliament it could be expected to be relatively difficult to obtain and transparency of approval is ensured. However, where approval must be sought from Executive, it could enable covert pressure to be applied to the Auditor General.
- Legislation remains silent in the Australian Capital Territory, the Commonwealth and South Australia.

Remuneration Determination

Remuneration and the determination of other terms and conditions of employment is considered among the statutory safeguards because it is a key determinant of status and rank, and also has a major impact on the calibre of persons who might be attracted to the role. Reducing remuneration could be used to effectively downgrade the status of the Auditor General. The capacity of Executives to influence remuneration is therefore of importance, as is the transparency of the process by which remuneration is determined.

There have been no changes in this aspect of legislative frameworks since the 2009 survey

- In some jurisdictions remuneration is determined by a statutory tie to other officers such as to the judiciary, or to other jurisdictions.
- In others it is determined by an independent tribunal or by a Parliamentary resolution.
- In Queensland, the Executive is obliged to consult the Parliamentary Committee.
- However, in some jurisdictions the Executive continues to have direct control over remuneration.

Parliamentary Committee

The relationship between the Auditor General and the Parliament he or she supports is of considerable importance. A strong relationship will permit the Auditor General to operate more effectively since it is through the Parliament that the Executive is held to account. Parliamentary Committees are also used to enhance the accountability of the Auditor General himself/herself. Accountability is needed to

ensure that an Auditor General continues to operate as intended and makes effective and efficient use of his or her resources.

- All jurisdictions continue to have Parliamentary Committees charged with considering reports from their Auditor General.
- Several jurisdictions have given Parliamentary Committees an active or consultative role in the appointment of Auditors General and establishing terms of conditions for employment.
- Several jurisdictions enable the Parliamentary Committee to direct or request the Auditor General to undertake an audit, and in some the Auditor General is unable to undertake certain audits unless directed or requested to do so by the Parliamentary Committee.
- Several jurisdictions also give their Parliamentary Committee a role in developing and communicating Parliament's audit priorities. The Auditor General is required to have regard for these priorities when developing his or her annual work plan and may be required to consult with the Committee about the content and timing of these plans.
- In several jurisdictions, Parliamentary Committees play an active role in advising, recommending or even determining budgets for the Auditor General
- Parliamentary Committees may undertake periodic reviews of audit legislation, either as a statutory requirement or on their own initiative, and are commonly involved in periodic reviews of the efficiency and effectiveness of the Auditor General and his or her office.

Victoria's Parliamentary Committee is unusual because of the extent of involvement the legislation requires. Not only is the Committee involved in appointment of the Auditor General and periodic review of his or her operations but the legislation also requires that the Auditor General's annual budgets and annual plans to be developed in consultation with the Committee. Similarly, the legislation requires that the number and frequency with which performance audits of authorities may be undertaken and even that the specifications for each individual performance audit are to be developed in consultation with the Committee and the relevant authority before such an audit can proceed.

Victoria has also recently amended its legislation to give its Parliamentary Committee responsibility to monitor reports from the newly established Victorian Inspectorate about the Auditor General, the Victorian Office of the Auditor General and persons or firms engaged to conduct audit work.

Statutory Review

A periodic review is a key control over the continuing effectiveness of the Auditor General's function. Where there is a capability for reviews to be undertaken, the selection of, and terms of reference for, the reviewer, and/or reporting line for the review outcome may become important because a review mechanism could allow an Executive to apply inappropriate pressure to its Auditor General.

- In Western Australia, the legislation mandates a five-yearly review of the operation and effectiveness of the *Auditor General Act* itself and the performance of the Auditor General's functions by the Auditor General and the Office of the Auditor General, with the review to be conducted by the Joint Standing Committee on Audit.
- A number of jurisdictions have introduced a statutory requirement for a review of the Auditor General and his or her Office:
    - Some require a specially appointed reviewer to conduct a review of efficiency and effectiveness of the Auditor General and his or her office on a fixed term periodic basis (every three years for the Victorian Auditor General and every five years for the Tasmanian and Queensland Auditors General).
    - Others enable the Auditor General's external auditor to conduct performance audits of the Office (Commonwealth, and the Australian Capital Territory). However, ad hoc performance audits by the external auditor do not match the accountability imposed by a scheduled, comprehensive review of the Auditor General's function by an independent person specifically tasked with conducting the statutory review.
    - Since the 2009 survey, New South Wales has amended its legislation to increase the interval between reviews from once every three years to once every four years.

However, the reviews in New South Wales remain confined to a review of compliance with practices and standards.

The selection of, and terms of reference for, the reviewer, and/or reporting line for the review outcome continues to vary widely between jurisdictions:

- Appointment and establishment of terms of reference by a Parliamentary Committee with a reporting line to the Committee.
- Appointment and establishment of terms of reference by the Executive, either with or without consulting the Parliamentary Committee and/or the incumbent Auditor General, but usually with a reporting line to the Committee.
- Specifically excluding the Auditor General's office from reviews or inquiries that may be instigated under other public service legislation by the Minister responsible for public service departments.
- Since the 2009 survey, Victoria has amended its legislation to apply the same obligations and constraints that apply to the Auditor General's use of coercive powers to the independent reviewer appointed to conduct the periodic review of the Auditor General and the Victorian Office of the Auditor General.

Appointment and Immunity

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.

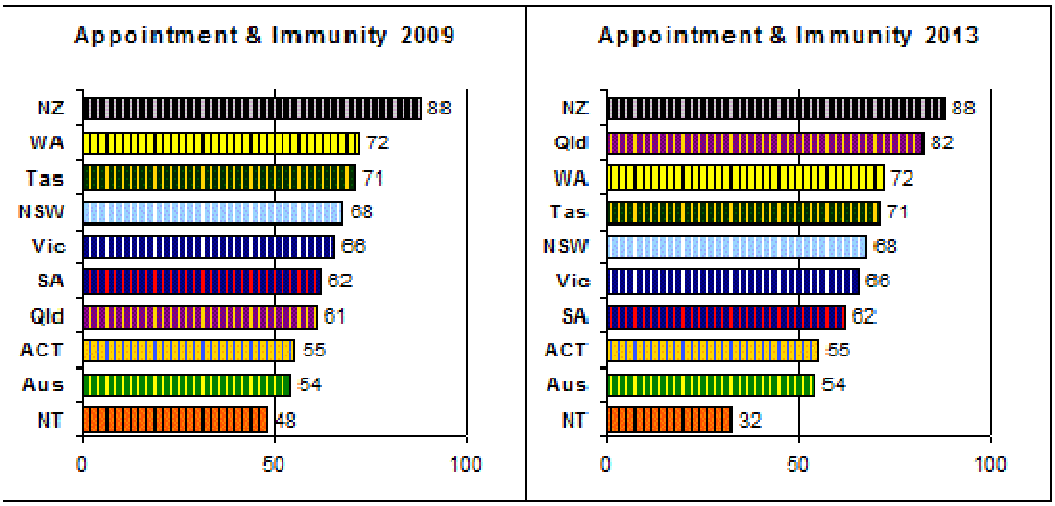
Legislative changes since 2009

- Queensland amended its legislation to mandate a fixed non-renewable term of seven years.
- The Northern Territory amended its legislation to reduce the term of appointment from seven years non-renewable to a period not exceeding five years with the opportunity for reappointment for a further period not exceeding five years.
- The legislation governing appointment and immunity in other jurisdictions has not changed since the 2009 survey.

Overall Independence Score for Appointment and Immunity

In the overall assessment of appointment and immunity factors:

- New Zealand continued to have the strongest independence safeguards over factors examined for appointment and immunity.
- Queensland has moved from seventh to second position because the opportunity for Executive to influence reappointment and term of appointment has been removed.
- The scores for other jurisdictions remain unchanged.
- Northern Territory lost ground because the term of appointment and the opportunity for reappointment are both under Executive control.



Year	ACT	Aus	NSW	NT	NZ	Qld	SA	Tas	Vic	WA
2009	55	54	68	48	88	61	62	71	66	72
2013	55	54	68	32	88	82	62	71	66	72

Figure 6. Assessment of appointment and immunity.

Factors Surveyed

The key legislative components that affected these aspects of independence in the legislation reviewed were as follows:

1. Who makes the appointment decision and the extent of Parliamentary involvement.
2. Whether the appointment process was independently supervised to increase transparency and reduce the risk of political patronage and partisan appointments.
3. Whether certain persons are ineligible for appointment as Auditor General.
4. How and by whom the term of appointment is determined.
5. Whether reappointment is possible and if so how and by whom the decision to reappoint is made.

6. Whether the Auditor General's remuneration is protected from being reduced during his or her term of office.
7. Whether remuneration is automatically appropriated to preclude Executive or bureaucratic interference.
8. Whether there is a statutory Deputy Auditor General.
9. How and by whom decisions are made about the appointment of an acting Auditor General, to reduce the risk of untoward Executive influence when there is a vacancy in the office.
10. How an Auditor General may resign and to whom the resignation is submitted to reduce the risk of Executive influencing the resignation or the timing thereof.
11. How and by whom an Auditor General can be suspended.
12. How and by whom a suspended Auditor General can be can be restored to office.
13. How and by whom an Auditor General can be removed from office.
14. Whether the Auditor General is provided with some form of legal immunity in the normal discharge of the role.

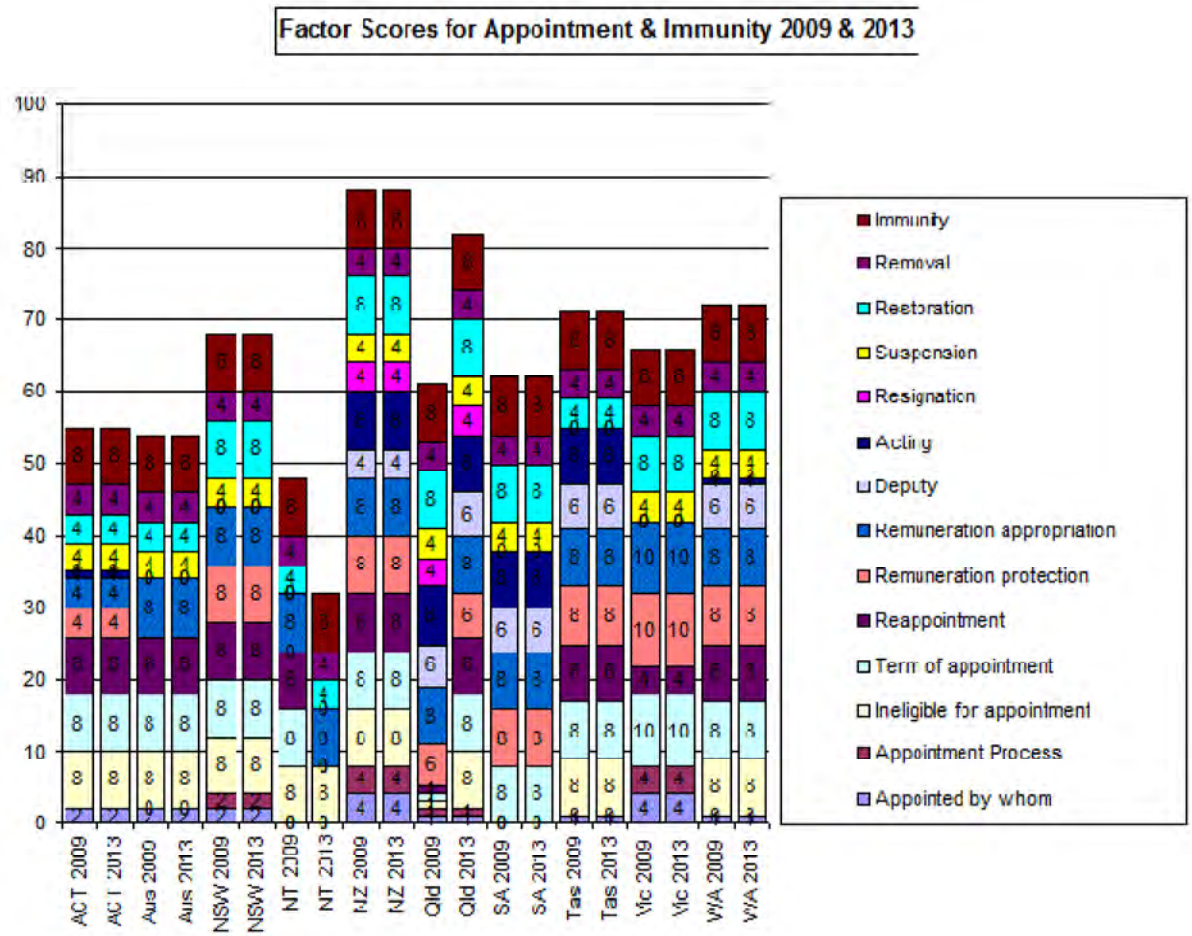


Figure 7. Assessment of factors impacting on Appointment and Immunity

Analysis and Discussion

Appointment by Whom, External Supervision, Ineligibility

The Auditor General's independence is compromised from the beginning if the selection and appointment is by the Executive itself.

In many jurisdictions it is customary for the Governor-General or the Governor to make appointments to public offices. Because the 'Governor' is usually interpreted to mean the Governor acting on advice of the Executive Council, appointment by the Governor enables the Executive to determine who will be appointed, opening the way for political patronage or appointment of a partisan government-friendly Auditor General.

Some form of consultation with leaders of political parties or Committees of the Parliament and/or the Speaker and the President during the appointment process encourages bipartisan/multi-partisan support for the appointee and reduces the risk of partisan appointments and in many jurisdiction such consultation may have been undertaken through convention in the past.

More recently there has been a clear trend to introduce stronger, statutory mechanisms to ensure some form of Parliamentary involvement in the appointment process. Alternatives include:

- A requirement for the Executive **to consult** with leaders of political parties and/or a Committee of Parliament as well as the Speaker and President.
- Capacity for Parliament or a Committee of Parliament **to veto** an appointment proposed by the Executive.
- Capacity for Parliament or a Committee of Parliament **to recommend** an appointment to the Executive.
- Appointment **directly by the Parliament** or a Committee of Parliament.
- The appointment is made from candidates recommended **by an independent external body**. (Not used in Australian or New Zealand jurisdictions but becoming more prevalent elsewhere).

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

There have been no changes in the legislative frameworks governing appointment since the 2009 survey.

- New Zealand and Victoria remain the only jurisdictions to ensure that the appointment is made directly by the legislature.
- Three Australian jurisdictions continue to enable a Parliamentary veto of an appointment proposed by Executive.
- Three Australian jurisdictions continue to mandate Parliamentary consultation before a decision is made by Executive.
- The remaining two jurisdictions leave the appointment entirely in the hands of the Executive government.

External supervision of the appointment process by an independent body can help to ensure that prospective appointees are widely canvassed, that due process is followed and that a short list of suitable candidates is presented for final selection.

There has been no change to the extent to which any of the jurisdictions examined use external supervision of the appointment. In some, the legislation continues to explicitly remove the office of Auditor General from this form of supervision (which may be applied in other parts of the public sector). However, as mentioned above:

- New Zealand and Victoria the appointment process is undertaken and supervised by a Parliamentary Committee.
- Queensland requires the Executive to consult with a Parliamentary Committee about the process to be used in making the appointment.

Acting Appointment, Statutory Deputy

Appointing an individual to act as Auditor General during the temporary absence or following the death, removal or suspension of an incumbent can provide an opportunity for the Executive to influence the position. The Acting appointment could be for an extended period if there are significant delays in filling the permanent role although some jurisdictions have imposed some form of time constraints upon the duration of an acting appointment.

The adverse impact that Executive appointment can have on the independence of the acting appointee has been recognised in some jurisdictions by providing for a statutory Deputy to automatically act as Auditor General during such periods.

There have been no changes in the legislative frameworks governing acting appointments and/or the role of a statutory Deputy. There remains considerable variation:

- Four jurisdictions mandate that the statutory Deputy will become acting Auditor General.
- Two jurisdictions require the Executive to consult with Parliament before appointing an Acting Auditor General.
- Five jurisdictions allow the Executive to appoint an acting Auditor General.
- Western Australia is unusual in that although the legislation mandates the position of Deputy Auditor General who may take on the acting role, the legislation also enables the Executive to choose who will act when the Auditor General's position becomes vacant.

Term of Appointment, Eligibility for Reappointment

The duration or term of appointments is a significant contributor to independence. The term needs to be long enough to enable the development of independence and to enable the incumbent to effectively 'steer' the Audit Office. There is also a case to be argued for keeping the term short enough to avoid the incumbent becoming complacent or 'stale' in the role and to enable the introduction of contemporary thinking. Another consideration is the length of the term in relation to the Parliamentary electoral cycle. In most jurisdictions the term has been set to exceed at least one, if not two electoral cycles.

All of the legislation examined continues to specify the term of appointment of the Auditor General:

- South Australia retains the formerly common practice of appointing the Auditor General until retirement at age 65.
- Three jurisdictions mandate a ten year fixed term of appointment.
- Five jurisdictions mandate a seven year fixed term.
- Victoria mandates the seven-year fixed term in its Constitution.

Since the 2009 survey:

- Queensland has amended the term of appointment its legislation from up to seven years, with the ability to renew appointment up to a total of seven years, to a fixed term of seven years.
- The Northern Territory has amended the term of appointment from seven years non-renewable to five years, with the possibility of renewal for a further five years at the discretion of the Executive.

Eligibility for reappointment has been recognised as an undesirable practice by INTOSAI because it might compromise independence. Where an incumbent is eligible for reappointment, as the time for reappointment approaches, the incumbent could become reluctant to criticise, or seek prominence by being overly critical or controversial. An option for reappointment could also enable the Executive to exert pressure on an incumbent. This is more likely if the Executive makes the appointment, and less so where the appointment is made through a more public Parliamentary appointment process.

There has been a clear trend against the eligibility for reappointment of an incumbent:

- All of the jurisdictions examined except Victoria (where eligibility for reappointment is mandated in the Constitution) and the Northern Territory (which has re-introduced the option for re-appointment), the Auditors General are now ineligible to be reappointed after the expiration of their term.

Removal, Suspension, Restoration, Resignation

Protection from removal from office at the whim of the Executive is paramount to security of tenure and independence. This has long been recognised and there have been no changes in the legislative frameworks of the jurisdictions in the survey.

- In all of the jurisdictions the legislation continues to mandate some form of Parliamentary involvement in removal of the Auditor General from office. Most jurisdictions also prescribe the grounds for removal.

- A number of jurisdictions continue to have legislation that also prescribes the circumstances under which the Auditor General can be suspended from office. These usually include ill health, mental capacity, bankruptcy, misconduct or incompetence.
- In some jurisdictions power to suspend has been left in the hands of the Executive, leaving open the opportunity for Executive to suspend or threaten to suspend an Auditor General it finds troublesome.

However, a number of jurisdictions further prescribe that the Auditor General will be automatically restored to office unless the Parliament either confirms the suspension or requires the removal of the Auditor General.

- In New Zealand, the legislation mandates that if the Governor General suspends the Auditor General, he or she is restored to office two months after the next session of Parliament commences.
- Most other jurisdictions have similar provisions for automatic restoration after suspension unless Parliament takes action to remove the Auditor General.
- Tasmania and the Northern Territory are unusual, not because the Executive is able to suspend the Auditor General at any time the Parliament is not sitting, but because the Auditor General is automatically removed from office unless the Parliament requests that the Auditor General is restored.

All of the jurisdictions examined provide for the resignation of the Auditor General:

- Most require the resignation to be directed to the Governor General or Governor, leaving open the possibility of Executive interference with the resignation process or delay in informing Parliament.
- Only New Zealand and Queensland ensure that the Auditor General's resignation is directed to the Parliament.

Remuneration Protection and Appropriation

There have been no changes to remuneration protection and appropriation since to 2009 survey.

The security and independence of the Auditor General is enhanced if his or her remuneration is protected from any possible influence or control by the Executive, or by the Treasury and other parts of the bureaucracy. Most jurisdictions provide this protection by appropriating the remuneration in either the enabling legislation or in the determining Tribunal legislation. In Victoria, the Constitution mandates appropriation of the Auditor General's remuneration.

Similarly, to prevent the Executive from 'punishing' the Auditor General, his or her remuneration is protected from being diminished during his or her term of office by legislation in most of the jurisdictions examined.

- In six jurisdictions the legislative framework prohibits the rate of an Auditor General's remuneration from being reduced.
- In Victoria, the Constitution protects the Auditor General's remuneration from being reduced.
- Queensland allows it to be reduced with the Auditor General's consent.
- In the Australian Capital Territory terms and conditions are determined by the resolution of the Legislative Assembly.
- The legislation is silent in the Commonwealth and the Northern Territory.

However, as mentioned previously, where the remuneration is determined by, or is subject to the influence of, the Executive, this form of protection leaves open the possibility that the Executive could affect the overall status of the office of Auditor General, whilst not, except in periods of high inflation, directly affecting the incumbent.

Immunity

The threat of litigation could weaken the independence of the Auditor General. Similarly, litigation could be used to divert attention from the Auditor General's function.

There have been no changes to the legislative frameworks in this area since the 2009 survey.

- All of the jurisdictions continue to afford their Auditor General immunity, indemnity, or protection from liability for anything done or omitted when performing the functions of the Auditor General.
- Such indemnity or immunity is also extended to the independent auditor of the Auditor General in all of the jurisdictions examined.

Mandate and Discretion

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

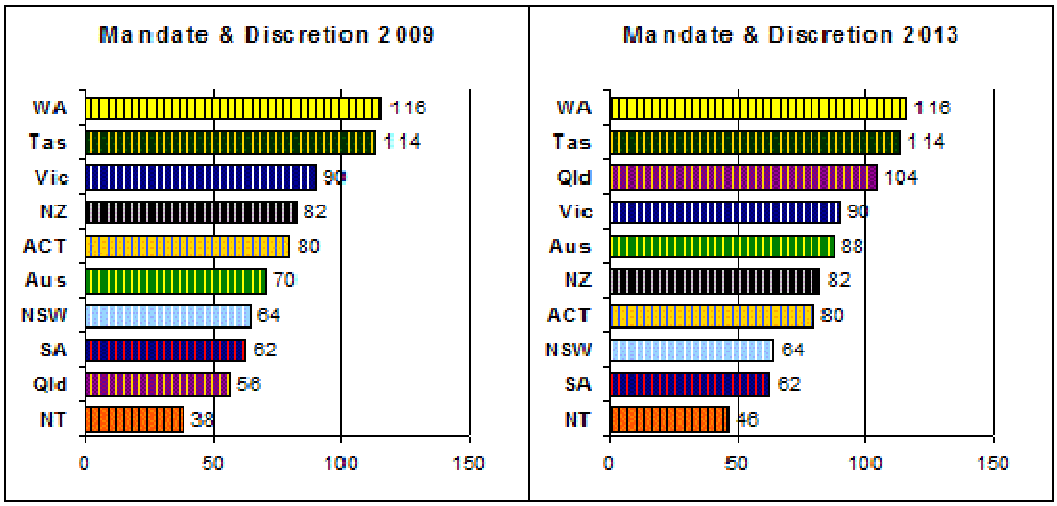
Legislative changes since 2009

Since the 2009 survey, substantial changes have occurred in this area in a number of jurisdictions.

- Queensland has substantially expanded the and both the functional and coverage mandates of the Auditor General including audit of public property given to a non-public sector entity, performance audits of most public sector entities and audit of performance management systems and performance measures of government-owned corporations, and to enable joint or collaborative audits with the Commonwealth or another State or Territory
- The Commonwealth has expanded the mandate of its Auditor General to include performance audits of 'Commonwealth partners', audits of performance indicators and to enable the conduct of assurance reviews.
- The Northern Territory has expanded the Auditor General's mandate for special audits and audit of performance management systems to include Territory controlled entities.
- Tasmania has expanded the Auditor General's coverage mandate to include local government and the functional mandate for investigations and examinations and has also introduced a new provision enabling audits in collaboration with the Commonwealth, other State or Territory.

Overall Independence Score for Mandate and Discretion

- Overall, the strongest and most comprehensive mandates continue to be provided by the legislation in Western Australia and Tasmania.
- Queensland has moved from ninth to third position
- The Commonwealth has moved from sixth to fifth position and now scores more highly than New Zealand and the Australian Capital Territory.
- The Northern Territory's mandate score has improved but its Auditor General's remains the most constrained of all the jurisdictions surveyed.



Year	ACT	Aus	NSW	NT	NZ	Qld	SA	Tas	Vic	WA
2009	80	70	64	38	82	56	62	114	90	116
2013	80	88	64	46	82	104	62	114	90	116

Figure 8. Assessment of mandate and discretion.

Factors Surveyed

The key legislative components identified in the 2009 survey that relate to mandate and discretion included the Auditor General's:

Functional mandate, which identifies the type of audit work that the Auditor General can undertake. To have a full and effective audit mandate, the Auditor General should have a functional mandate to undertake audit work that includes:

1. **Financial statements/accounts** - audit opinions that provide assurance about financial statements or accounts.
2. **Compliance with statutory obligations** – providing assurance or directly determining whether an agency has complied with its financial and non financial statutory obligations.
3. **Management reporting systems** - providing assurance about the effectiveness of management reporting systems for financial and/or non financial reporting.
4. **Performance indicators and/or performance reports** - providing assurance about performance indicators and/or performance reports.
5. **Performance audits/examinations** - directly examining or investigating any aspect of an entity's operations and/or the economy efficiency and effectiveness with which its functions were performed.

Coverage mandate, which defines the types of statements, entities, bodies, or persons or establishes other circumstances under which the Auditor General's functional mandate may be exercised. The following aspects of coverage were examined in the survey of legislation:

6. **Public ledger/whole of government finances** (audit of whole of government public ledger and/or budgets.
7. **Government departments** (audit of the use of public money, resources or assets by government departments).
8. **Statutory authorities** (audit of the use of public money, resources or assets by government statutory authorities).
9. **Instrumentalities and trusts** (audit of the use of public money resources or assets by other instrumentalities or trusts).
10. **Government owned or controlled entities** (audit of the use of public money, resources or assets by government owned business enterprises, corporations and subsidiaries).
11. **Deemed entities** (audit of entities deemed by government to be public entities because of the use of public resources whatever the extent of control).
12. **joint-venture or partnerships** (audit of public-private partnerships or joint endeavours that used significant public resources, or gain significant benefit there from).
13. **Related entities** (audit of bodies or entities that are financially dependent upon public resources and subject to operational public control).
14. **government affiliated entities** (audit of entities financially dependent upon public resources but independently controlled).
15. **Grant recipients** (audit of recipient of grants of public resources to determine if the resources have been used for the intended purposes).
16. **Beneficiaries or recipients of any public resources** (audit of the use of public money, resources or assets by a recipient or beneficiary regardless of its legal nature).

Discretion for the Auditor General to undertake audits, examinations or investigations or to otherwise exercise the mandate provided.

17. The key factor examined for discretion is whether the Auditor General is **subject to direction**, and **if so by whom**.

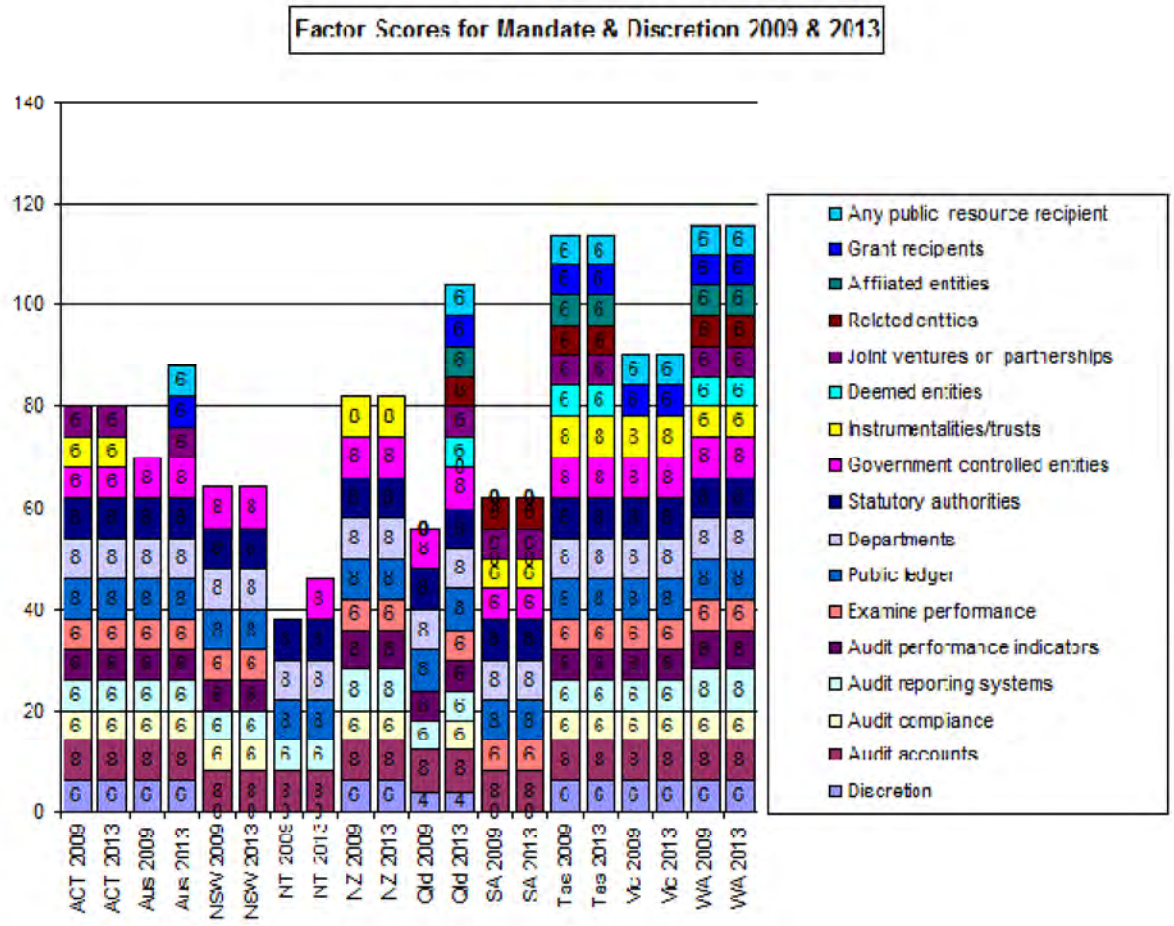


Figure 9. Assessment of factors impacting on mandate and discretion

Analysis and Discussion

Functional Mandate

The independence of the Auditor General is significantly influenced by the type of audit work enabled by the legislation. There has been a strong international trend to broaden the powers of Auditors General so that they can audit the use to which public monies, resources, or assets have been put in a way that extends well beyond the traditional role or providing assurance about the financial statements issued by various types of entities.

Financial Statements/Accounts

- All of the jurisdictions continue to mandate a major role for their Auditor General in providing audit assurance and issuing formal audit opinions about the accounts and financial statements of government entities.

Compliance with Statutory Obligations

The ability to audit the legal regularity and compliance of government spending and revenue collection and compliance with statutory obligations generally (beyond compliance with financial obligations) continues to vary across jurisdictions.

- Western Australia mandates the requirement of a formal audit opinion on compliance with financial controls.
- Most other jurisdictions (including Western Australia, but excluding South Australia and the Northern Territory) enable compliance with broader statutory obligations to be examined under a performance audit mandate.

Management Reporting Systems

The function of auditing performance management systems to determine if they enable an entity to assess whether its objectives are being achieved economically, efficiently and effectively is usually available in all jurisdictions where that Auditor General has a mandate to conduct broader performance audits.

However, a specific mandates for this type of audit has been used in some jurisdictions to constrain the extent to which the Auditor General is able to audit the non-financial performance of an entity.

- At the time of the 2009 survey the Auditor General for Queensland and the Northern Territory had this type of audit function. Queensland specifically excluded government owned corporations from this type of audit.
- Since the 2009 survey, the Northern Territory has retained this type of audit for most government entities, but has amended its legislation to enable the Minister to direct the Auditor General to undertake such an audit of an organisation if the Minister believes that a [government] agency has paid the organisation for delivering projects or services that could be delivered by the agency.
- Queensland has amended its legislation to enable full performance auditing of most types of entities but now permits the Auditor General to undertake a management systems type of audit of its government-owned corporations.

Performance Indicators and/or Performance Reports

The function of auditing performance indicators of efficiency or effectiveness and/or other non financial performance information reported by management varies widely between jurisdictions. At the time of the 2009 survey:

- Western Australia, legislation mandated an annual audit opinion about the relevance, appropriateness and fair representation of agency performance indicators. New Zealand similarly mandated auditing of 'other information' that is required to be audited whilst in Victoria the Auditor General had discretionary power to audit any performance indicators in the report on operations of a [public] authority.
- Queensland enabled the audit of performance measures of public sector entities, but specifically excluded government owned corporations from this type of audit.
- In other jurisdictions the audit of performance indicators was not explicitly provided for but was possible in those that had a broader performance audit mandate.

Since the 2009 survey:

- The Commonwealth has amended its legislation to provide for the Auditor General to audit performance indicators of Commonwealth agencies, authorities or companies, at the discretion of the Auditor General. However, the Auditor General is only able to audit performance indicators of the Commonwealth's Government Business Enterprises if requested to do so by the Parliamentary Committee.
- Queensland has amended its legislation to enable its Auditor General to audit performance measures of government owned corporations.
- Other jurisdictions enable entity performance indicators to be examined as part of a performance audit, at the discretion of the Auditor General.
- South Australia and the Northern Territory do not have a mandate to audit performance indicators although as mentioned above, the Northern Territory can audit the management systems that underpin such information.

Performance audits or examinations,

The functions that enable the Auditor General to directly review, examine or investigate aspects of an entity's operations are referred to as ***performance audits*** in many of the jurisdictions in the survey. Performance auditing usually includes the ability to assess waste of public resources, the economy, efficiency, and effectiveness with which resources have been used in achieving the purpose for which they were allocated, compliance with statutory obligations and many or any other aspect of an entity's operations.

Performance audits may be conducted of an entity, of part of an entity or of some or any functions that an entity performs. They may also be conducted across a range of entities.
At the time of the 2009 survey:

- The Auditors General in all jurisdictions except Queensland and the Northern Territory had varying abilities to conduct performance audits, with South Australia being confined to examinations of economy and efficiency.

Since 2009:

- Queensland has amended its legislation to include a mandate for the Auditor General to conduct performance audits, with the object of deciding whether the objectives of the public sector entity are being achieved economically, efficiently and effectively and in compliance with all relevant laws.

Jurisdictions continue to vary as to the types of government controlled entities that may be subjected to performance audits. These are discussed in more detail under the coverage mandate below.

Other functional mandates

Several jurisdictions have even wider mandates for their Auditors General.

- Western Australia and Tasmania both have legislatively empowered their Auditors General ***to examine or investigate any matter*** relating to public money, other money or statutory authority money or relating to public property or other property. This is discussed further below.
- The Australian Capital Territory remains the only jurisdiction to have empowered the Auditor General to consider and assess ***environmental issues and economically sustainable development.***

Coverage Mandate

There is little point in providing wide functional powers to an Auditor General if these powers can be circumvented by the types of entities he or she is empowered to audit, or if the Executive is able to exempt certain entities from the Auditor General's coverage.

Ideally, in accordance with INTOSAI Principle 3, the Auditor General should, *de facto*, be empowered to audit the use of public moneys, resources, or assets by any recipient or beneficiary regardless of its legal nature.

This has become increasingly important as new forms of public sector management, privatisation, joint ventures, outsourcing, and so on, have changed the way the public sector operates, creating a need for new ways of making both agencies and governments accountable for what they do.

The extent of the coverage mandate continues to be a vexed area and one that is quite difficult to unravel. It remains the area where there is greatest variation between jurisdictions, and the area that enables Executive to influence to what extent they can be held accountable for their use of public resources.

Some legislation deliberately excludes certain types of government entities from the scrutiny of the Auditor General, whilst in others the Executive has the capacity to either exclude or include entities or parts of entities at its whim.

- Queensland's Auditor General may only conduct a performance audit of a government owned corporation (GOC) or a government controlled entity if requested to do so by a resolution of the Legislative Assembly or by written request of a Parliamentary Committee, the Treasurer or an appropriate Minister.
- The Commonwealth has similar constraints on performance auditing of its government business enterprises (GBE) but has amended its legislation since the 2009 survey to enable such audits only at the request of the Joint Committee of Public Accounts and Audit (removing the previous provision for the responsible Minister or the Minister for Finance to make such a request).

In many jurisdictions, the legislative framework enables the Auditor General to exercise his or her functional mandate only over entities the government owns or controls. However, governments have increasingly adopted new mechanism for service delivery that result in public resources being used in joint ventures, partnerships and contracting of arrangements, often using entities that the government does not control. It has become increasingly difficult for Auditors General to assist their Parliaments to hold Executive accountable for the proper use of public resources when these mechanisms are used.

At the time of the 2009 survey, the legislation in only two Australian jurisdictions was close to the ideal expressed in INTOSAI Principle 3: *A sufficiently broad mandate and full discretion, in the discharge of SAI functions.*

- Western Australian and Tasmanian legislation includes a provision that enabled the Auditor General to ***examine*** or ***investigate any matter*** relating to public resources of any kind.

It is important to note that these investigative provisions do not depend on the Auditor General becoming the 'auditor of the entity' in the traditional sense.

Instead, they take account of the changes in the way significant quantities of public resources are being deployed by governments and address some of the more recently developed service delivery mechanisms and structures to which governments either commit public resources or forego other public benefits.

In essence, the legislation in these jurisdictions enables their Auditors General to '***follow the money'*** wherever it has gone regardless of its legal nature of any recipient or beneficiary.

- Since the 2009 survey, Queensland has amended its legislation and its Auditor General is now empowered to conduct an ***audit of a matter*** relating to property that is, or was, held or received by a public sector entity and given to a non-public sector entity with the object of the audit including deciding whether the property has been applied economically, efficiently and effectively for the purposes for which it was given to the non-public sector entity.

Victoria has provision in its legislations that enable the Auditor General

- To conduct any audit he or she considers necessary to determine whether a financial benefit given by the State or an authority to a person or body that is not an authority has been applied economically, efficiently and effectively for the purposes for which it was given.

However, the Victorian legislation specifically excludes a financial benefit received by a person or body as consideration for goods or services provided by them under an agreement entered into on commercial terms, which could potentially be used to preclude examination of contracted service provision. The Victorian legislation has been amended since the 2009 survey to clarify matters relating to the use of the Auditor General's coercive information gathering powers in these audits but remains otherwise unchanged.

In contrast, in Western Australia and Tasmania, if an agency performs any of its functions in partnership or jointly with another person or body; through the instrumentality of another person or body; or by means of a trust person, body or trust becomes a "***related entity***".

- The Auditor General for Western Australia may audit the accounts and financial statements of a related entity of an agency to the extent that they relate to functions that are being performed by the related entity and may examine the efficiency and effectiveness with which a related entity of an agency performs functions.
- Tasmania has similar provisions for examining efficiency, effectiveness and economy of performance of functions by related entities.
- South Australia has provisions in its legislation that require the Auditor General to examine the accounts of publicly funded bodies or publicly funded projects to determine the efficiency and economy of publicly funded bodies or the efficiency and cost effectiveness of the publicly funded projects. However, this power remains firmly under the control of the Executive. Such audits can only be undertaken if requested by the Treasurer.

- Since the 2009 survey, the Commonwealth has amended its legislation the enable the Auditor General to 'follow the money' to some extent. The new provisions enable the Auditor General to conduct a performance audit of a ***Commonwealth partner*** – a person or body to whom the Commonwealth has provided money for a Commonwealth purpose or who has directly or indirectly received such money, either through a contract or other means. The performance audit is limited to assessing the extent to which the operations of the partner have achieved the Commonwealth purpose.

The new Commonwealth partner provisions could have constitutional implications when a Commonwealth partner is, is part of, or is controlled by, a government of an Australian State or Territory. The amended legislation only allows a performance audit to be undertaken of these partners at the request of the responsible Minister or the Joint Committee of Public Accounts and Audit. In addition, a constitutional 'safety net' has been included in the amended legislation to address potential issues arising from these or other provisions in the Commonwealth's audit legislation.

- Other jurisdictions continue entity-focussed audits of government departments, statutory authorities and/or other predetermined types of entities.

The absence of broader investigative provisions in legislation seriously constrains the Auditor General's ability to inquire into many of the 'newer' forms of public sector management, including contracting out and public private partnerships. It also enables the cloak of 'commercial in confidence' to be used to prevent proper accountability to the public in these circumstances.

Discretion

To be fully independent, in accordance with INTOSAI Principles 2 and 3, an Auditor General requires complete discretion in exercising his or her powers and in the manner in which his or her functions are carried out. Importantly, the Auditor General should not be subject to direction from anyone as to whether or not an audit is to be conducted, how audits are conducted, or the priority any audit work is given.

Whilst all of the jurisdictions examined impose legislative obligations on Auditors General to undertake certain audits, the discretion he or she is afforded to exercise functions as he or she sees fit is an important component of independence.

In some circumstances, it may be appropriate that the independent scrutiny of the Auditor General can be brought to bear on matters of public concern by providing the capacity to request that the Auditor General examine the matter and report the findings to the Parliament. However, where the Executive is able to direct the Auditor General to undertake specific tasks it can lead to the perception that the Auditor General is simply another part of Executive government. A direction could also be used to divert attention and/or resources from the exercise of other independent audit functions.

There is considerable variation among jurisdictions about whether the Auditor General can be directed or requested to undertake specific audit tasks, and if so by whom.

- Several jurisdictions require the Auditor General to consider or have regard to audit priorities of Parliament or Parliamentary Committees when developing annual audit plans.
- Victorian legislation requires the annual audit plan to be developed 'in consultation with' the Parliamentary Committee and also requires that the specifications for individual performance audits are similarly developed 'in consultation with' it's Parliamentary Committee and with the entity to be the subject of the audit. The phrase 'in consultation with' is not defined in the Victorian legislation but could be interpreted to imply a need to consider jointly and reach agreement about a proposed course of action. If this is the intent, it could seriously impair an Auditor General's independence.
- Since the 2009 survey, Tasmania has amended its legislation to extend the list of bodies that may request the Auditor General to undertake a specific audit or investigation. In addition to requests from the Treasurer, the Public Accounts Committee and the Ombudsman, requests

for audits or investigations may now also emanate from the Integrity Commission and Integrity Tribunal or from the Employer under the *State Service Act*. However, in all cases the discretion is left with the Auditor General, who *may* undertake the requested audit or investigation. Western Australia has similar provisions concerning request audits although the list is less extensive.

- Since the 2009 survey, the Commonwealth has amended its legislation to remove some of the powers of Executive to request the Auditor General to undertake an audit whilst retaining the provisions for the Parliamentary Committee to request audits.
- In Queensland, the Auditor General must conduct audits if requested by the Legislative Assembly.
- Although the Northern Territory has amended its legislation since the 2009 survey to mandate the independence of its Auditor General, it has also strengthened provision for the Minister to direct the Auditor General to undertake certain types of audits which the Auditor General must carry out within a time frame specified by the Minister.
- South Australia and New South Wales also enable the Executive to direct the Auditor General to undertake specific audit tasks.
- New South Wales is the only jurisdiction to make provision for additional resources to be made available for directed audits, but at the discretion of the Treasurer.

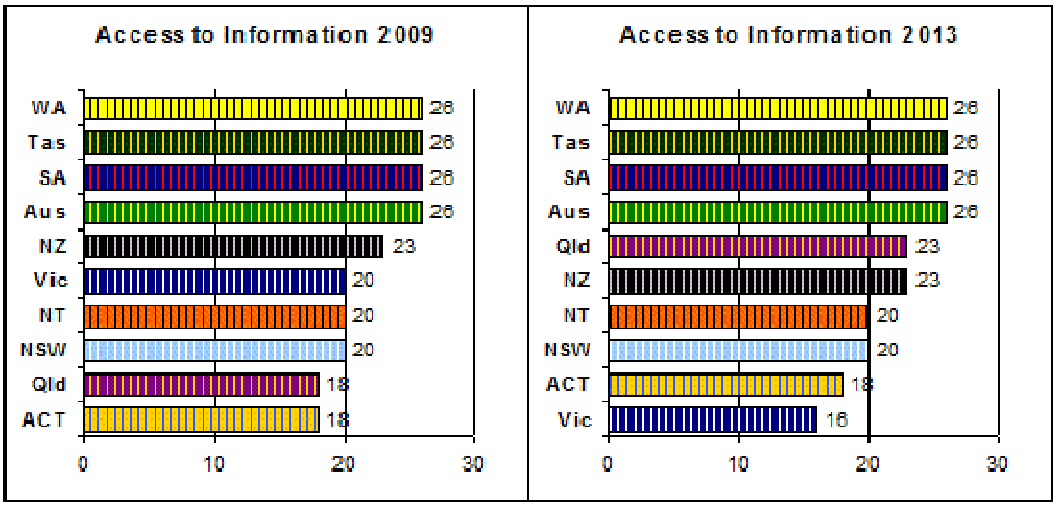
Access to Information and Confidentiality

INTOSAI Principle 4. Unrestricted access to information.

Legislative changes since 2009

- Victoria has introduced an extensive range of new controls over the use of coercive powers.
- Queensland has amended provisions constraining access to documents and premises in relation to new powers to conduct audits involving non public sector entities.
- The Commonwealth, Queensland and Tasmania have amended legislation to enable the release of confidential information to a wider range of other bodies, and to allow for joint audits.
- Queensland's new *Right to Information Act 2009* provides stronger confidentiality protection than was provided by the former *Freedom of Information Act 1992.*

Overall Independence Score for Access to Information and Confidentiality



Year	ACT	Aus	NSW	NT	NZ	Qld	SA	Tas	Vic	WA
2009	18	26	20	20	23	18	26	26	20	26
2013	18	26	20	20	23	23	26	26	16	26

Figure 10. Assessment of access to information and confidentiality of audit working papers.

Factors Surveyed

Auditors General 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. The information they obtain using their information gathering powers should be protected from inappropriate disclosure.

The key legislative components identified in the legislation reviewed with respect to access to information were:

1. The ability **to access documents** or information in any form that is relevant to an audit.
2. The ability **to call persons** to produce documents, give evidence orally, in writing or under oath.
3. The ability **to access premises** and to examine, make copies of or extracts from documents or other records.
4. The extent to which **confidentiality of information** obtained by the Auditor General is preserved and protected from inappropriate disclosure.

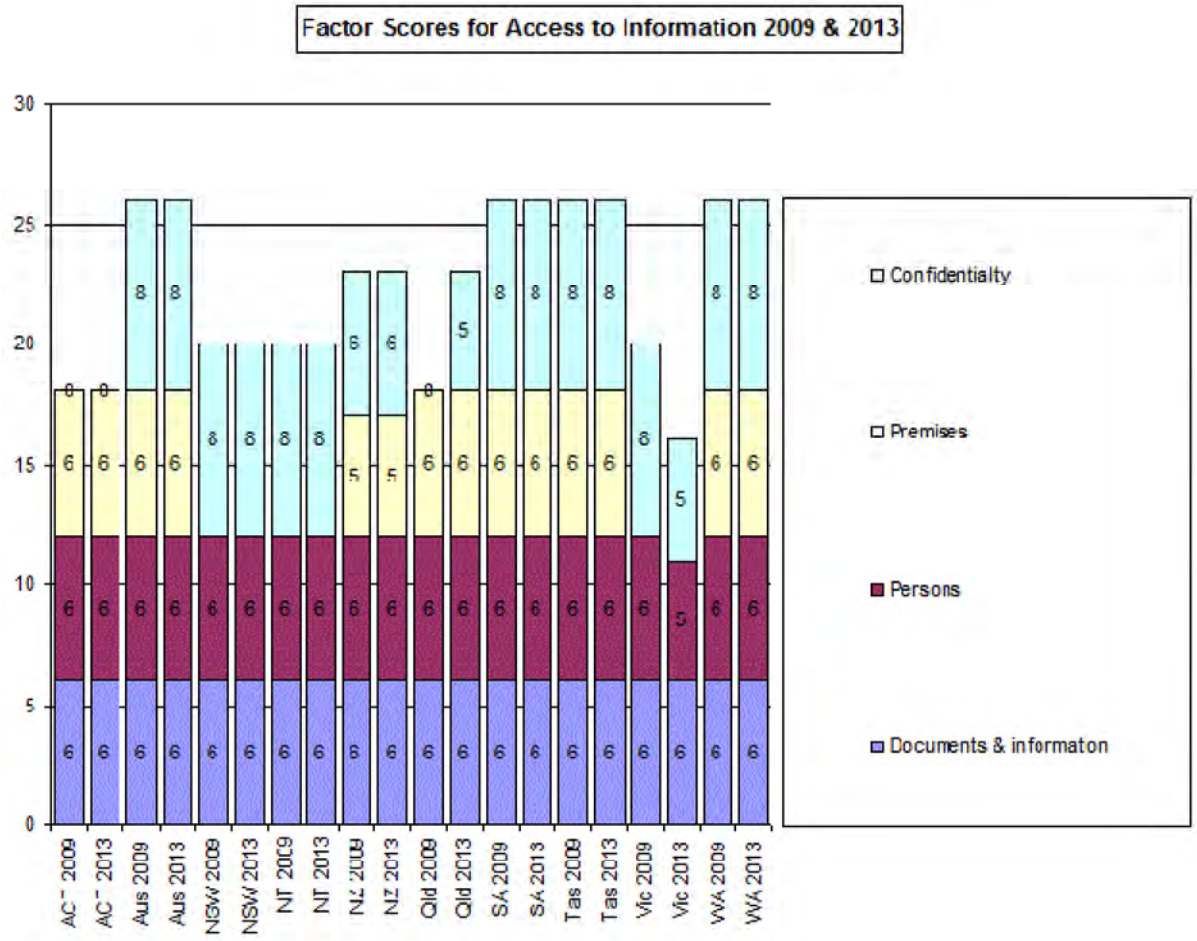


Figure 11 Assessment of factors impacting on access to information and confidentiality

Analysis and Discussion

Access to Documents, Persons and Premises

All jurisdictions have empowered their Auditor General to have access to documents and persons who may have information of value to their enquiries. Some also enable the Auditor General access to premises under the control of government entities.

Jurisdictions continue to vary concerning access to information:

- New South Wales has amended the prohibition on audit access to Cabinet documents in the *Freedom of Information Act 1989* to prohibit access to Cabinet information under the new *Government Information (Public Access) Act 2009*
- The Commonwealth has added assurance reviews (that are not priority assurance reviews) to the list of audit functions where information gathering powers may not be used
- Victoria remains the only jurisdiction to explicitly override obligations to maintain secrecy or other restriction on the disclosure of information obtained by or furnished to persons employed in the public service or by an authority, where imposed by Cabinet confidentiality

However, as with the coverage mandate mentioned above, some jurisdictions have yet to adapt the powers of their Auditor General to recent developments in the way the public sector operates. In a number of jurisdictions the Auditor General only has access to information held by government agencies or to persons employed within the public sector.

Wider powers are necessary where the coverage mandate of the Auditor General encompasses examination or investigation of any use of public resources, which may extend beyond the traditional confines of the public sector.

- Only the most recent legislation in some jurisdictions is explicit in giving the Auditor General access to any information, any person, or any premises, land or place that is relevant to an audit, examination or investigation.
- Queensland has amended legislation constraining access to premises and information when exercising new powers to audit non-public sector entities.
- Since the 2009 survey, the legislation in Victoria has been amended to introduce a wide range of controls over the use of the Auditor General's powers to gain access to information and/or persons. The Auditor General is now required to report each instance where such powers are exercised to the newly created Victorian Inspectorate, which has also been given the power to monitor compliance with the new requirements and power to investigate complaints about the Auditor General, the staff of the Victorian Auditor General's Office, or other persons or firms engaged to conduct an audit and to report his or her findings to a Parliamentary Committee. No other jurisdiction has embedded such provisions in its audit legislation.

Whilst conceptually these Victorian provisions provide a reasonable 'check and balance' on the Auditor General's wide coercive powers, the involvement of the Inspectorate could also serve to:

- limit the discretion of an Auditor General to exercise coercive powers when necessary,
- cause excessive delays or create unwieldy and unmanageable administrative processes
- enable external interference when coercive powers need to be used, or
- create the opportunity for mischievous or spurious complaints.

Confidentiality

It is important to protect the working papers that are involved in the development of the view ultimately taken by the Auditor General, and to ensure that the Auditor General's information gathering powers are not used to provide a 'back door' to sensitive information. However, in some jurisdictions the Executive can release information held by the Auditor General if it chooses to do so.

- A number of jurisdictions have exempted the Auditor General from Freedom of Information legislation for this reason, although New Zealand does allow access to certain information about individuals through its privacy legislation.
- Most jurisdictions provide for the information gathered by their Auditor General to be kept confidential. Most jurisdictions also provide for confidentiality or secrecy of information gathered during the course of an audit.
- A number of jurisdictions also prevent persons who are entitled to be asked to comment on summaries of findings, draft reports or extracts of draft reports during the final stages of a report's preparation from releasing the draft report or the extract of the draft report.
- The legislation in the Australian Capital Territory is unusual in that the Minister may direct the disclosure of the Auditor General's "protected information" if the Minister considers it to be in the public interest to do so.
- Since the 2009 survey, a similar public interest provision in the Queensland's former *Freedom of Information Act* has been dropped by the new *Right to Information Act 2009*, which now provides better protection for the Auditor General's confidential information. However, recent amendments to Queensland's *Commissions of Inquiry Act 1950* have impacted on the Auditor General's ability to keep information confidential. In particular section 5 of the Act, Power to summon witness and require production of books etc, was recently amended to enable an Inquiry chairperson *inter alia* to summon any person to attend before the commission and to produce such books, documents, writings and records or property or things of whatever description in the person's custody or control as are specified. These powers have already been used and have compromised the Auditor General's ability to protect the confidentiality of audit information.
- A number of jurisdictions enable information gathered during the course of an audit that would not otherwise be made public, to be provided to Parliamentary committees, police, various forms of integrity or misconduct bodies, other investigating bodies and the Courts.

- Victoria's new integrity legislation could enable the Victorian Inspectorate to access any information held by 'VAGO officers' which could include information held by persons or firms engaged to assist the Auditor General in conducting an audit.
- Recent amendments to legislation in some jurisdictions enable certain information sharing to take place, for example in the course of a joint audit with another jurisdiction.

Reporting Rights and Obligations

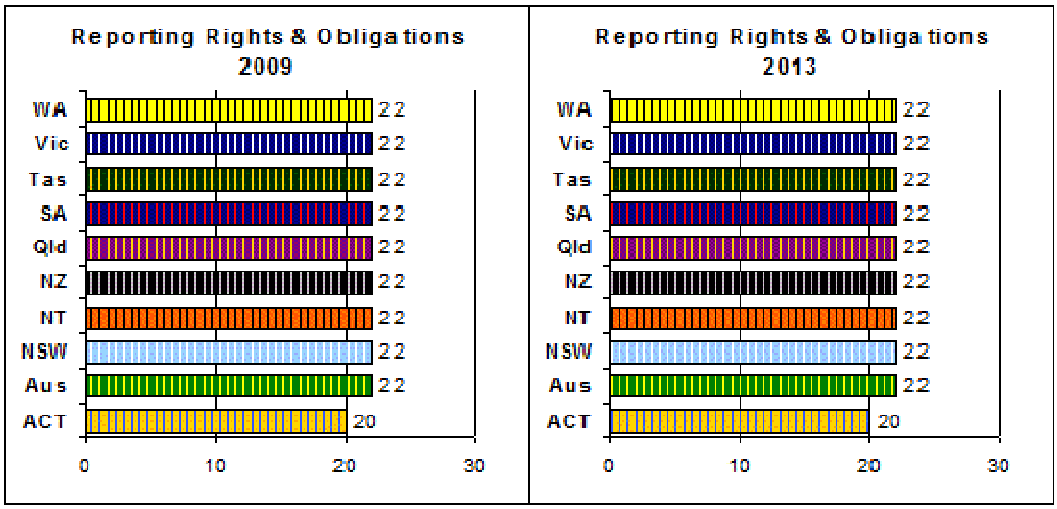
INTOSAI Principle 5. The right and obligation to report on their work.

Legislative changes since 2009

- Tasmania has amended its legislation relating to reporting rights and obligations.
- There have been no substantial changes to these aspects of independence since the 2009 survey in other jurisdictions.

Overall Independence Score for Reporting Rights and Obligations

All of the jurisdictions surveyed continue to have these reporting rights and obligations embedded in their legislative frameworks.



Year	ACT	Aus	NSW	NT	NZ	Qld	SA	Tas	Vic	WA
2009	20	22	22	22	22	22	22	22	22	22
2013	20	22	22	22	22	22	22	22	22	22

Figure 12. Assessment of reporting rights and obligations

Factors Surveyed

Openness and transparency in reporting are fundamental to the independence of the Auditors General and to their role in the overall integrity system. Auditors General should not be restricted from reporting the results of their audit work.

Auditors General should be required to report on the outcome of their work and should also be able to report significant findings at any time. The reports should be presented directly to the Parliament and should be published. The transparency this brings to accountability forms a vital part of the overall integrity of the system of government.

The key legislative components identified in the legislation reviewed with respect to reporting rights and obligations were:

1. The obligation to report to Parliament on the discharge of functions generally.
2. The ability to produce separate reports on any matter the Auditor General considers warranting such a report.
3. The ability or requirement to report directly to the Parliament.

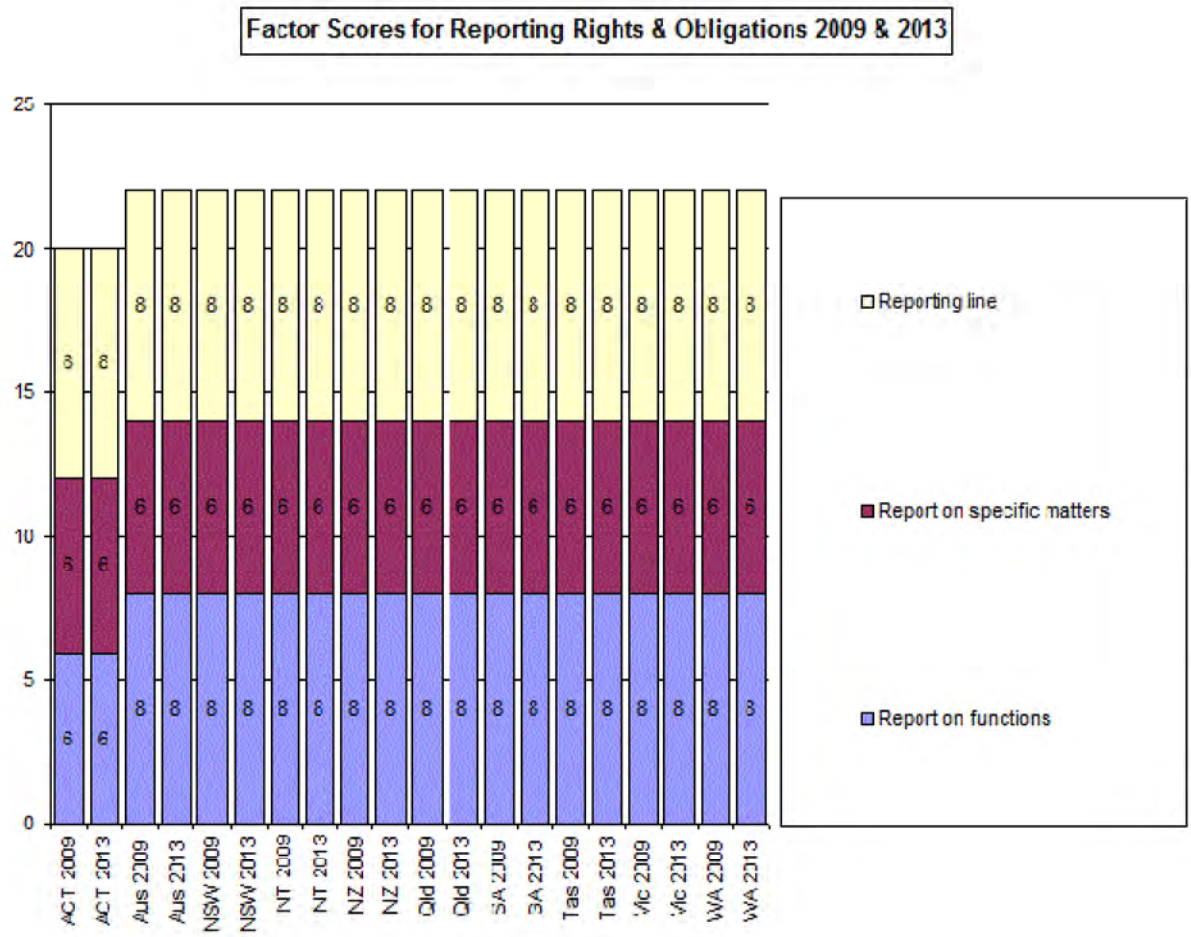


Figure 13. Assessment of factors impacting on reporting rights and obligations

Analysis and Discussion

- In most jurisdictions, legislation requires the Auditor General to report on the discharge of his or her functions and the results of audit work at least annually.
    - In the Australian Capital Territory reporting the results of audit work is at the Auditor General's discretion.
- All jurisdictions also enable the Auditor General to prepare reports on specific matters at any time.
- In all jurisdictions the Auditor General has a direct reporting line to the Parliament and reports are either tabled or, if the Parliament is not sitting, are treated by the Clerks of the Parliament is if they have been tabled.

However, a number of jurisdictions enable or require the Auditor General to direct reports elsewhere when sensitive information is involved.

- Some jurisdictions provide the Auditor General with the discretion to report only to a Committee of Parliament, to a Minister, to an entity or to some other person.
- Since the 2009 survey, Tasmania has amended its legislation to require sensitive information to be reported to the Public Accounts Committee.

Such reporting lines appear to run contrary to the principle of transparency that is usual with an Auditor General's report.

Content, Timing and Publication of Reports

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

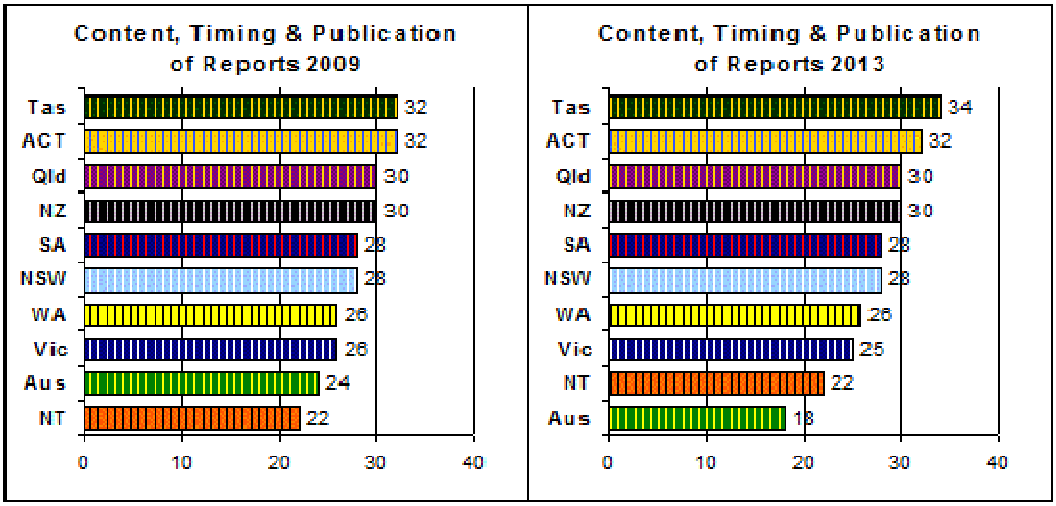
Legislative changes since 2009

There have been significant changes to the legislative frameworks of a number of jurisdictions.

- Victoria and Tasmania have amended their legislation to prohibit certain information from being included in public reports.
- The Commonwealth Northern Territory and Tasmania have amended legislation relating to responses of audited entities.

Overall Independence Score for Content, Timing and Publication of Reports

Independence scores for this principle have marginally increased in Tasmania but have been reduced in the Commonwealth.



Year	ACT	Aus	NSW	NT	NZ	Qld	SA	Tas	Vic	WA
2009	32	24	28	22	30	30	28	32	26	26
2013	32	18	28	22	30	30	28	34	25	26

Figure 14. Assessment of content timing and publication of reports

Factors Surveyed

The ability to decide the content and timing of their reports is an important aspect of the independence of Auditors General. Publication of these reports is a fundamental element of transparency.

The key legislative components identified in the legislation reviewed that related to Principle 6 were:

1. Whether the Auditor General has complete discretion over **when to report** and **what to include in, or exclude from**, a report.
2. whether the Auditor General is required to provide audited entities or persons with an **opportunity to comment** on a proposed report consider responses of and whether they have **discretion to fairly summarise any response** received so that the extent and form of a response cannot be used to subvert or divert attention from audit findings.
3. Whether **'sensitive' information** may be included in the Auditor General's report.
4. Whether the **reason for withholding** 'sensitive' information may be disclosed.
5. Whether the Auditor General's **reports are published** for general distribution to the public.

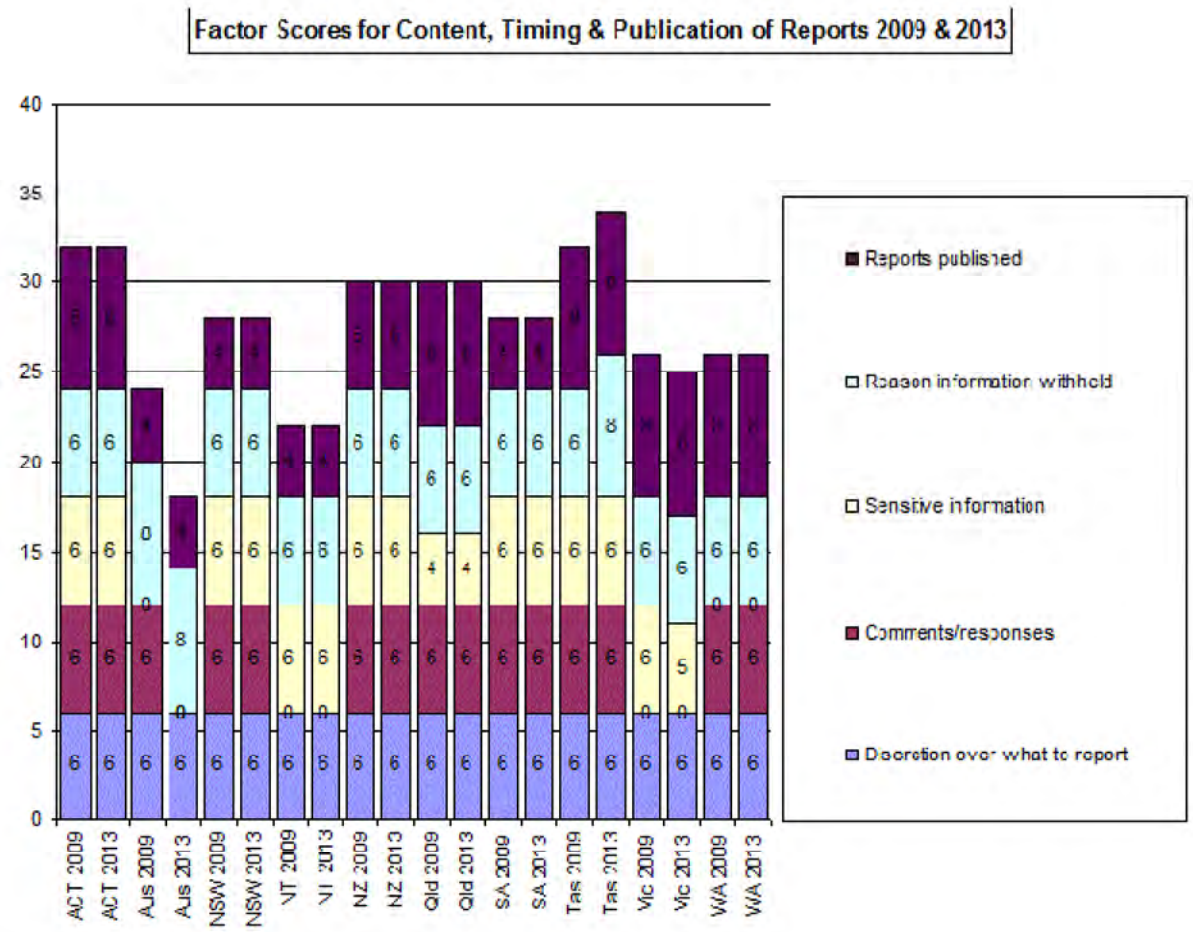


Figure15. Assessment of factors impacting on content, timing and publication of reports

Analysis and Discussion

Discretion over when to report, what to include in, or exclude from, a report

- All jurisdictions in the survey continue to provide discretion to their Auditor General to decide the content and timing of their reports.
- Since the 2009 survey, the Northern Territory has amended its legislation to explicitly provide that the Auditor General is not subject to direction in relation to what is to be included or not included in a report, bringing it into line with the other jurisdictions surveyed.

Responses from audited entities

In preparing a report, it is a natural justice requirement that Auditors General should take into consideration the views of the audited entity about the findings contained in a report.

- Since the 2009 survey, several jurisdictions have expanded provisions to ensure that any parties (as opposed to entities) affected by the audit have an opportunity to comment on the proposed report.
    - Most jurisdictions have provision that a proposed report or a relevant extract of a proposed report is provided to representative of relevant entities or persons affected by the report.
    - Most jurisdictions also prescribe time-frames for comments to be provided, and sanctions to ensure that confidentiality of the proposed report is preserved.
- Most jurisdictions require that the Auditor General considers the responses received and usually require that the comments or a *fair summary* of them is included in the Auditor General's report.

- Victoria and the Northern Territory require the Auditor General to either include comments and responses or an *agreed summary* of them.
- Since the 2009 survey, the Commonwealth has amended its legislation with respect to comments received. Instead of requiring the Auditor General to *consider* the comments he or she receives before preparing a final report, the Auditor General must now *include all written comments* received in the final report.

The need to reach agreement about the form and content of the summary of comments or to include all comments received essentially places this segment of the Auditor General's report under the control of the Executive (or any other persons consulted in the course of report preparation) because the responses from entities are under Executive control. These mechanisms therefore make what is published in an Auditor General's report vulnerable to Executive manipulation.

Sensitive information

Some jurisdictions impose constraints on the publication of 'sensitive' information, requiring exclusion of certain information from reports for reasons such as: national security, defence or international relations; deliberations of Cabinet; Commonwealth-State or intergovernmental relations; information provided by another party in confidence where disclosure is unfairly prejudicial to the commercial interests or a particular person or body; or where information relates to matters subject to criminal investigations or judicial proceedings.

- The Commonwealth Attorney-General can issue a certificate prohibiting the release of information if the Attorney-General considers that it is not in the public interest to release it but in that case the Commonwealth Auditor General is to include in the any report the reasons that the certificate was issued. The Auditor General may also prepare a report on the matters not disclosed and may provide that report to the Prime Minister, the Treasurer and to any responsible Minister.
- Similar provisions apply in Western Australia where the Minister may prohibit disclosure of information if the Minister decides its release is not in the public interest and issues a notice within 14 days to the Auditor General under provisions of the *Financial Management Act 2006*. The Auditor General is required to give an opinion about whether a decision by a Minister not to provide information to Parliament is reasonable and appropriate. If the Minister decides it is not in the public interest to disclose the information, the Auditor General cannot include the information in his report to Parliament. Other than in this circumstance the legislation is silent on the Auditor General reporting sensitive information.
- In Queensland, sensitive information may be withheld if the Auditor General decides that it is in the public interest to withhold it, but if information is withheld, it must be included in a report to the Parliamentary Committee. Queensland's legislation is silent about whether the Parliamentary Committee can then release the information.
- In Victoria, decisions about public interest are left to the Auditor General but since the 2009 survey, Victoria has amended its legislation to introduce stringent prohibitions about disclosure of certain sensitive information, including any information that the Auditor-General considers would prejudice any audit by the Auditor-General, any criminal proceedings or criminal investigation, or any investigations by the IBAC or the Victorian Inspectorate. The Victorian Inspectorate has oversight of compliance with these requirements.
- Since the 2009 survey, Tasmania has also amended its legislation with to prohibit disclosure of sensitive information when the Auditor General considers its release would be against the public interest but the Auditor General must disclose the reasons why information has been withheld. Such information is strongly protected and must not be disclosed to a House of Parliament, a member of a House or any Committee of Parliament. However, the Tasmanian Auditor General may decide to prepare a report that includes the information withheld and may to the Treasurer and to the Parliamentary Committee. Either may act on the information so provided, but the Committee can also choose to release the information if a 2/3 majority of the Committee believes it is in the public interest to do so.

In all other jurisdictions, the legislation is silent with respect to reporting reasons for withholding information, which essentially leaves reporting of reasons that information has been withheld to the discretion of the Auditor General.

Reports published

In all jurisdictions there is provision for the Auditor General to provide reports to, and usually table reports in, the Parliament, which may then order that the reports to be published. Some jurisdictions have explicit provisions for the reports to be published or made available to the public if Parliament is not sitting.

Follow-Up Mechanisms

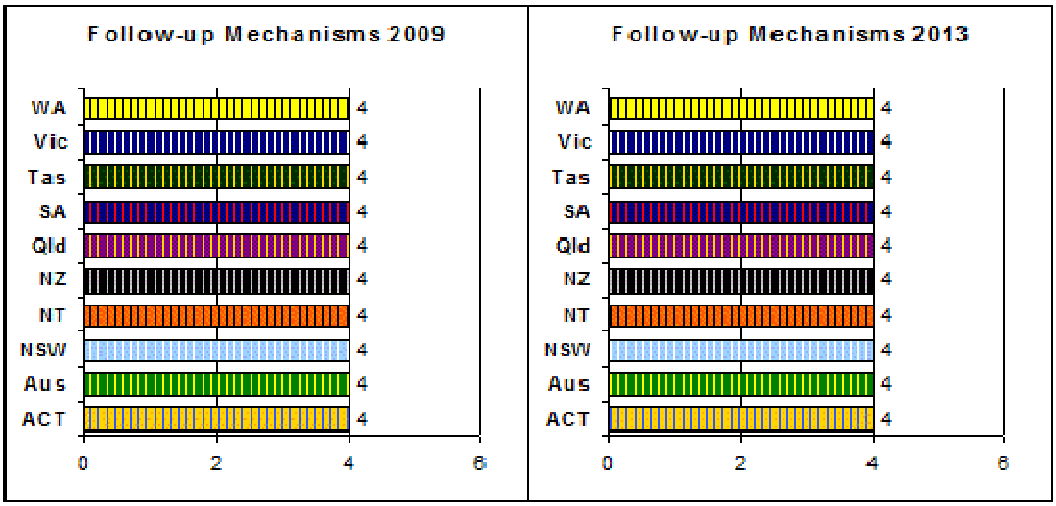
INTOSAI Principle 7. The existence of effective follow-up mechanisms on SAI recommendations

Legislative changes since 2009

- Queensland has amended legislation giving responsibility for examining the Auditor General's reports to portfolio committees.

Overall Independence Score for Follow-up mechanisms

- There have been no changes to the overall independence scores for this Principle.



Year	ACT	Aus	NSW	NT	NZ	Qld	SA	Tas	Vic	WA
2009	4	4	4	4	4	4	4	4	4	4
2013	4	4	4	4	4	4	4	4	4	4

Figure 16. Assessment of follow-up mechanisms.

Factors Surveyed

The key legislative component identified in this area is **whether the Parliament has some mechanism for considering the Auditor General's findings**, for holding the government to account and for following up on recommendations.

Analysis and Discussion

In all of the jurisdictions examined, a Parliamentary Committee has an active involvement in receiving and considering recommendations contained within reports from their Auditor General.

- Some jurisdictions mandate this role in legislation, while in others the role is included in the Committee's terms of reference under Parliamentary Standing Orders.
- Since the 2009 survey, Queensland has amended its legislation to create Portfolio Committees which have responsibilities for considering the annual and other reports of the Auditor General for the Committee's portfolio area.

These mechanisms ensure that Parliament scrutinises the Auditor General's reports and any recommendations the Auditor General may make, and may call the Executive to account.

- None of the jurisdictions examined contained explicit legislative requirements for recommendations to be followed up, this being decided by the Parliament and/or its Committees.

Similarly, none of the jurisdictions contained provisions requiring an Auditor General to follow-up on any recommendations made. Nonetheless, in some jurisdictions, the Auditor General may conduct follow-up audit to determine if previously identified issues have been resolved.

Managerial Autonomy and Resourcing

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

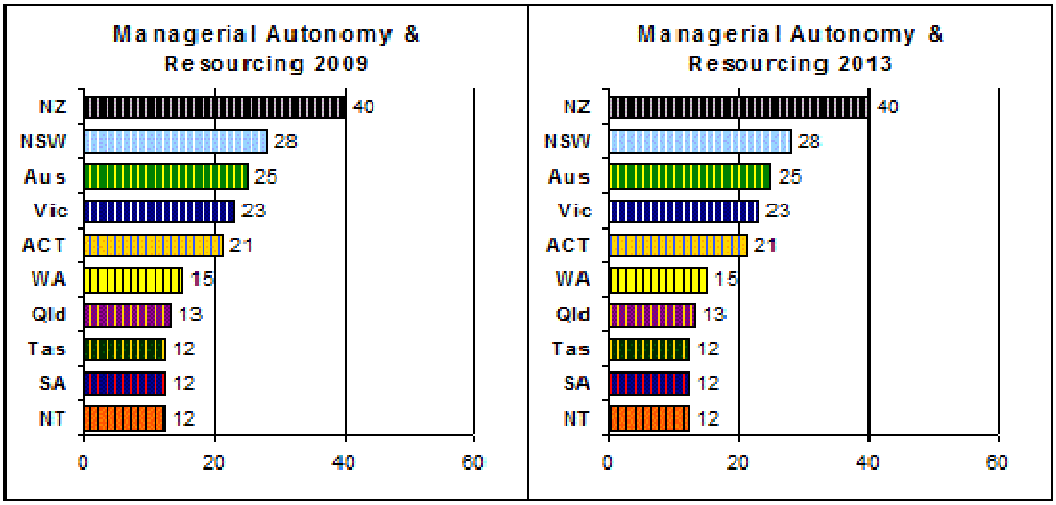
Legislative changes since 2009

Relatively minor amendments have occurred in legislation affecting this Principle

- The Australian Capital Territory has amended legislation clarifying powers of the Auditor General in relation to staff assisting the Auditor General and to retitle the supporting department to a directorate.
- and Queensland has amended legislation clarifying powers of the Auditor General in relation to staff assisting the Auditor General
- New South Wales has amended legislation regarding resources required to undertake request audits.
- Victoria has introduced constraints and controls over the information gathering powers by the auditor of the Victorian Auditor General's Office.

Overall Independence Score for Managerial Autonomy and Resourcing

- Although there have been some minor amendments to legislation since the 2009 survey, the overall independence scores regarding managerial autonomy and resourcing remain largely unchanged.
- New Zealand remains a clear leader among the jurisdictions examined in terms of the managerial and autonomy and financial independence of its Auditor General, followed by New South Wales.
- In a number of Australian jurisdictions the Auditor General remains vulnerable to decisions of the Executive.



Year	ACT	Aus	NSW	NT	NZ	Qld	SA	Tas	Vic	WA
2009	21	25	28	12	40	13	12	12	23	15
2013	21	25	28	12	40	13	12	12	23	15

Figure 17. Assessment of managerial autonomy and resourcing.

Factors Surveyed

The importance of managerial autonomy and independent resourcing for preserving the independence of Auditors General was first recognised in legislation 30 years ago when the United Kingdom established the *National Audit Act 1983*. The model developed in the United Kingdom included mechanisms designed to ensure both financial independence from the Treasury and staffing independence from the civil service.

The key legislative components identified in the legislation reviewed that contribute to managerial and resourcing independence are:

1. **Staffing autonomy** or the independence from the Executive control of the public service.
2. **Financial autonomy** or the independence of the process for of establishing the budget for the Auditor General from the Executive.
3. **Drawing rights** on appropriated resources and to whom resources are appropriated and its independence from the Executive.
4. **Office autonomy** or the independence of the structure supporting the Auditor General from Executive control.
5. Whether the Auditor General is the chief executive or accountable officer with **administrative control of** and **accountability for** his or her office;
6. Whether the Auditor General is required to produce **an annual administrative report** and financial statements.
7. Whether the appointment, terms of reference, and reporting line of the **auditor of the Auditor General's office** is subject to Executive control.

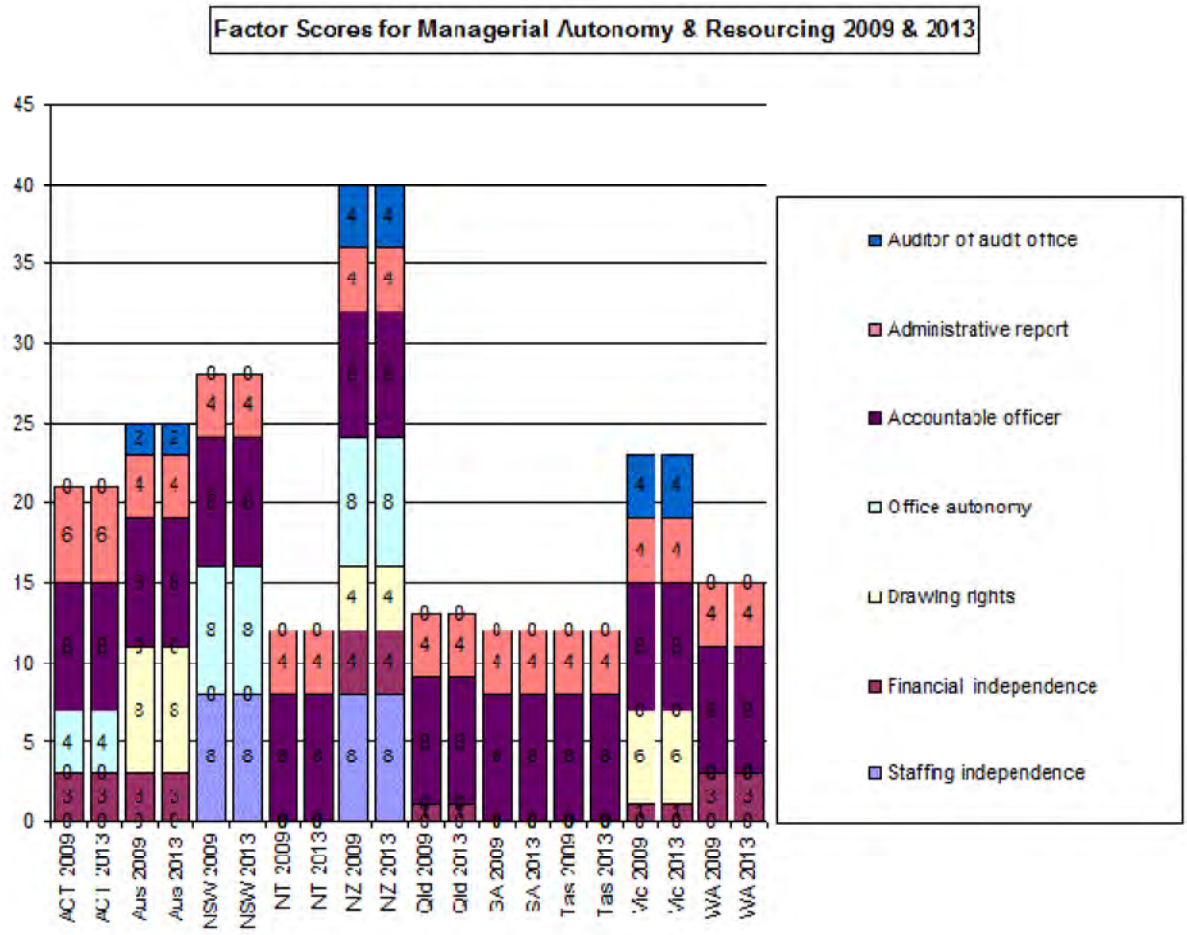


Figure 18. Assessment of factors impacting on Managerial autonomy and resourcing

Analysis and Discussion

Although a great deal of attention has been paid to assuring the independence of the Auditors General themselves, less attention has been paid to their financial independence and their capacity to manage independently.

Administrative Control and Accountability, Annual Administrative Report

The overall situation regarding the accountable officer remains unchanged in all of the jurisdictions examined since the 2009 survey.

- In each of the jurisdictions examined, the Auditor General continues to be administratively responsible for his or her supporting office structure, and is required to report annually on the administration and operations of his or her office.

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 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.

Office Autonomy

Although there have been some minor amendments to legislation since the 2009 survey, the overall situation regarding office autonomy remains unchanged in all of the jurisdictions examined..

- ***Departments***, staffed by public servants, have traditionally been created to support the Auditor General and these remain the most common form of administrative unit within the Australian jurisdictions.

A disadvantage of the departmental structure is that it is usually subject to overarching legislation developed for the public service at large. Typically this legislation includes mechanisms to govern the classification of the staff, the flexibility of staff deployment, and the method of recruitment, selection and appointment of staff. It may also bring into play whole-of-government policy directives which may enable either the Executive or the public service bureaucracy to exert more subtle control over the Auditor General. Such bureaucratic intervention into managerial or administrative matters has the potential to be misused to constrain and/or frustrate the activities of the Auditor General.

The importance of freeing the Auditor General from potential managerial or administrative interference was recognised in the United Kingdom when the National Audit Office was established. It was seen to be important to free the NAO from the influence of the civil service (particularly the Treasury) that it was required to scrutinise. The NAO is not part of the civil service and civil servants must resign from the service before taking up employment with the NAO.

- New Zealand has ensured a similar structural independence for its Auditor General, whose office is established as ***a corporation*** to which that New Zealand's State Sector Act does not apply.
- New South Wales remains the only Australian jurisdiction to have removed its Audit Office from the public service and created it as ***a statutory body***.
- The Australian Capital Territory is unusual. The supporting structure for the Auditor General is a ***directorate*** (amended from the term 'department') and the Auditor General is given the role of the ***responsible director general*** (amended from the term 'chief executive' since the 2009 survey) of his or her directorate. However, the role the responsible Minister holds for other directorates is given to the ***Speaker of the Legislative Assembly***, thereby reinforcing the relationship between the Auditor General and the legislature.
- In other jurisdictions the responsible Minister through whom the Auditor General reports administratively is part of Executive government.

Some Australian jurisdictions have developed mechanisms partially protect the Auditor General's office from overarching public service legislation or policy directives

- Victoria enables the Parliamentary Committee to, by resolution, free the Auditor General of certain requirements of that State's *Public Administration Act* and *Financial Management Act*.
- In Queensland all general rulings under the *Public Service Act* made by the industrial relations Minister or the chief executive of the Public Service Commission apply to the audit office, but specific rulings for the audit office can only be made with the consent of the Auditor General. Management reviews of the audit office under that Act can only be undertaken at the request of the Auditor General.

Staffing Independence

The capacity to employ staff is fundamental to the resources available to the Auditor General.

There have been no significant changes to staffing autonomy of Auditors General since the 2009 survey.

- The legislation in all jurisdictions makes provision for staff and the Auditor General is usually the employing authority, albeit of a department office or unit of the public service in all jurisdictions other than New Zealand and New South Wales.
- In most jurisdictions, the Executive and/or the public service bureaucracy can influence or indeed control the number, classification and remuneration and other conditions of the Auditor General's staff.

- Many jurisdictions also enable the Auditor General to use contracted professional services and some enable secondment of staff from other public sector organisations (often requiring approval from the Minister).
- New South Wales remains the only Australian jurisdiction to have removed all employees of the Audit Office, including its senior executives, from the public service. This is more closely aligned to the truly autonomous models adopted by the United Kingdom and New Zealand. However, New South Wales remains vulnerable to the Executive imposing such restrictions as salary and expense caps via administrative means.

Auditor of the Auditor General

In all jurisdictions a separate, independent auditor is appointed to audit the annual financial statements of the office of the Auditor General. The independent auditor may be confined to financial statement of the Auditor General's office but in some jurisdictions, may have a wider performance audit role or a separate appointment may be made to audit or review the performance of the Auditor General.

The mechanisms of the auditor's appointment (by whom) as well as the reporting line of the auditor are of importance in assuring independence, not only of the auditor, but also of the Auditor General, especially when performance audits may be conducted.

- In New Zealand, the independent auditor of the Auditor General is appointed each year by resolution of the House of Representatives.
- Similarly, in Victoria, the independent auditor of the Auditor General's accounts is appointed by resolution of the Legislative Council and Legislative Assembly on the recommendation of the Parliamentary Committee. Victoria separately appoints, also by resolution of the Legislative Council and Legislative Assembly on the recommendation of the Parliamentary Committee, a person to conduct the three-yearly performance audit of the Auditor General and the Victorian Auditor General's Office. The Victorian legislation has been amended since the 2009 survey to introduce similar controls to those applying to the Auditor General over the use of coercive powers by the both independent auditor and performance auditor.
- Although the independent auditor of the Commonwealth Auditor General is appointed by the Governor General on the recommendation of the Minister, the Joint Committee of Public Accounts and Audit must approve the appointment of the independent auditor giving it a veto power over the appointment.
- In Tasmania, the Treasurer must consult with the Auditor General before appointing the auditor of the Tasmanian Audit Office.
- In other jurisdictions, the Executive makes the appointment of the independent auditor.

Summary and Conclusions

The wide variation in the independence safeguards embedded in the legislation reviewed from the various Australian and New Zealand jurisdictions observed during the 2009 survey continues to be evident in the legislative frameworks in effect at the time of the present survey.

Although there has been some improvement, many jurisdictions continue to exhibit weaknesses in the overall statutory framework governing their Auditor General.

The legislative framework governing appointment and immunity has been substantially improved in Queensland, which now approaches the strength of protection from Executive influence afforded by New Zealand's legislative framework.

Queensland has also significantly improved the functional mandate given to its Auditor General bringing it into line with most other jurisdictions, but Western Australia and Tasmania continue to have the broadest functional mandate to investigate any matter relating the use of public resources. Weaknesses in the functional mandate of the Auditor General in some jurisdictions continue to constrain the role their Auditors General can perform.

At the time of the 2009 survey, only a few jurisdictions had adapted the coverage mandate of their Auditors General to take account of the changing way the public sector is operating. In most jurisdictions, the ability to scrutinise the use of public resources was largely focused on the entities the government controlled, and only three jurisdictions had provisions that enabled them to audit the use of public monies, resources, or assets, by a recipient or beneficiary regardless of its legal nature.

Since that time, the Commonwealth and Queensland have joined Western Australia, Tasmania and Victoria by introducing substantial amendments to their legislation that enable such scrutiny to take place. The jurisdictions that remain focussed on entities, or where powers to investigate remain under the control of Executive, run a significant risk that the Executive will not be adequately held to account for the use of public resources.

Whilst most jurisdictions have continued to provide their Auditor General with adequate powers to obtain information, some still lack power to enter premises should the need arise. Victoria is the first jurisdiction to introduce new controls explicitly addressing the way in which the Auditor General exercises his or her coercive powers and has also added a new body to oversight the use of these powers. Because the changes are mediated via an independent body, they do not increase the Auditor General's vulnerability to Executive influence, but they do have a significant impact on the overall independence of the Auditor General in that jurisdiction.

As yet only a few jurisdictions have responded to the financial and managerial vulnerability of their Auditors General that was recognised in the United Kingdom 30 years ago, by providing adequate protection from Executive influence to these important aspects of independence.

Appendix B – Listing of audit legislation reviewed

Australia

- Australian Capital Territory, *Auditor-General Act 1996*
- Australia, *Auditor General Act 1997*
- New South Wales, *Public Finance and Audit Act 1983*
- Northern Territory of Australia, *Audit Act*
- South Australia, *Public Finance and Audit Act 1987*
- Tasmania, *Audit Act 2008*
- Victoria, *Audit Act 1994* and *Constitution Act 1975*
- Western Australia, *Auditor General Act 2006*

International

- New Zealand, *Public Audit Act 2001*
- United Kingdom, *The National Audit Act 1983*
- Canada, *Auditor-General Act* (1985)
- British Columbia, Auditor General Act (2003)
- Alberta, Auditor-General Act (2000)
- Saskatchewan, The Provincial Auditor Act (1983)
- Manitoba, The Auditor General Act (2001)
- Ontario, Auditor General Act (1990)
- Quebec, Auditor General Act (1985)
- Labrador and Newfoundland, Auditor General Act (1991)
- Nova Scotia, Auditor General Act (Bill 90,-2010)

Appendix C – Summary analysis of Queensland legislation against INTOSAI principles of independence

The following tables provide a summary analysis of how well current Queensland legislation addresses elements of best practice supporting the eight principles of independence identified in the International Organisation of Supreme Audit Institution's Mexico Declaration of 2007.

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

In order to guarantee the appropriate and effective legal position of Auditors-General within the State, independence has to be defined clearly in constitutions and legislation, including provisions for its de facto application.

Elements of Best Practice	Adopted in Qld	Comments	Potential enhancement to independence
Enabling legislation should specifically address the establishment, status, mandate and powers of the Auditor-General. Additional protection may also be afforded by including provisions on the establishment, status and independence of the Auditor-General in the Constitution.	Yes	In Queensland the position status, mandate and powers of the Auditor-General are provided for in the *Auditor-General Act 2009*.	While including provisions in the *Constitution of Queensland Act 2001* would provide an additional level of protection, we do not presently see this as a necessary requirement at this time.
Provisions on the status, mandate and powers of the Auditor-General should be included in separate legislation to ensure that Parliamentary debate is focussed on the Auditor General's role, functions and independence i.e. audit provisions should be separate from those related to broader financial accountability requirements.	Yes	In 2009 audit requirements of the *Financial Administration and Audit Act 1977* were separated and included in the *Auditor-General Act 2009*.	No enhancement is required.
The Auditor-General should be required to take an oath or affirmation of office that reinforces their independence and their relationship with the Parliament. The oath or affirmation by the Auditor-General should be administered by the Speaker of the Parliament, or the Clerk, where Parliament is not sitting.	No	There is presently no requirement for the Auditor-General to take an oath or affirmation on taking office.	The independence of the Auditor-General would be enhanced if the Auditor-General was required to take an oath or affirmation administered by the Speaker. This could also be extended to the Deputy Auditor-General who is required to act in the role in the absence of the Auditor-General

Elements of Best Practice	Adopted in Qld	Comments	Potential enhancement to independence
The independence of the Auditor- General should be explicitly mandated and/or stated as a requirement or obligation in the legislation. This can be achieved by the legislation identifying that: • the Auditor-General is not subject to the direction of any person in the way they exercise their powers or functions; and • the Auditor-General has a duty to act independently and impartially in carrying out their functions.	Limited	The *Auditor-General Act* presently identifies that the Auditor-General is not subject to direction by any person about: • the way in which the Auditor-General's powers in relation to an audit are exercised; and • the priority given to audit matters. However, there is presently no specific provision that requires the Auditor-General to act independently or impartially.	While the independence of the Auditor-General could be reinforced by a provision requiring the Auditor-General to act independently and impartially, we would not consider this a significant amendment. The requirement for an auditor to act independently and impartially is also addressed through applicable professional auditing and ethical standards.
The legislation should establish the status and/or rank of the Auditor-General to ensure that the independence and authority of the role is recognised and respected by other parts of government. This would include identifying the Auditor-General as an "Independent Officer of the Parliament" or equivalent.	No	While the Auditor-General is often referred to as an "independent officer of the Parliament", this is not presently reflected in the *Auditor-General Act*.	The independence of the Auditor-General would be enhanced if the Auditor-General was identified as an "independent office of the Parliament" in the *Auditor-General Act*.
An appropriate mechanism exists for determining the remuneration of the Auditor-General that is protected from Executive influence. This would include having the Auditor-General's remuneration determined by an independent tribunal or the Parliament.	Limited	The Auditor-General is appointed on terms and conditions decided on the Governor in Council after consulting with the parliamentary committee.	The independence of the Auditor-General would be enhanced if the terms and conditions of the Auditor-General's appointment were determined by either: • an independent tribunal; or • a resolution of the Parliament
The legislation should specifically prohibit the Auditor-General from holding other positions or gaining remuneration from other forms of employment.	Yes	This is addressed in s.13 of the *Auditor-General Act.*	No enhancement is required.

Elements of Best Practice	Adopted in Qld	Comments	Potential enhancement to independence
An appropriate parliamentary committee should be assigned responsibility for oversight of the Auditor-General.	Yes	The *Auditor-General Act* assigns responsibilities to a parliamentary committee in a number of areas. Schedule 6 of the Standing Orders of the Legislative Assembly assigns the Finance and Administration Committee with an oversight role for the Auditor-General. The *Parliament of Queensland Act 2001* requires portfolio committees to consider the annual and other reports of the auditor-general.	No enhancement is required.
The legislation should provide for the regular review of the effectiveness of the performance of the Auditor-General. A parliamentary committee should have responsibility for: • appointment of the reviewer • establishing the terms of reference for the review • receiving the report of the reviewer.	Limited	The *Auditor-General Act* requires a strategic review of the Queensland Audit Office every five years. The appointment of the reviewer and the terms of reference are decided by Governor-in-Council after the Minister has consulted with the parliamentary committee.	The independence of the Auditor-General would be enhanced by if the Finance and Administration Committee was assigned the responsibility for appointing the strategic reviewer and overseeing the strategic review process.

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 conditions for the appointment of Auditors-General should be specified in legislation. The independence of Auditors-General is only ensured if they are given appointments with sufficiently long fixed terms with removal only by a process independent from the Executive. This allows them to carry out their mandate without fear of retaliation.

Elements of Best Practice	Adopted in Qld	Comments	Potential enhancement to independence
The decision to appoint the Auditor-General is made by the Parliament.	Limited	The Auditor-General is appointed by the Governor-in-Council after the Minister has consulted with the parliamentary committee.	The independence of the Auditor-General would be enhanced if the appointment of the Auditor-General was made or approved by resolution of the Parliament.
The appointment process is independently supervised to increase transparency and reduce the risk of political patronage and partisan appointments. This would include the Parliament or a parliamentary committee having responsibility for the appointment process.	Limited	The process for selection and appointment of the Auditor-General is managed by the Minister. The Minister is required to consult the parliamentary committee on the process for selection and appointment.	The independence of the Auditor-General would be enhanced if the parliamentary committee was responsible for the process for appointing the Auditor-General.
The legislation provides for certain persons to be ineligible for appointment as Auditor-General. This includes ensuring the Auditor-General is not eligible for reappointment.	Yes	The *Auditor-General Act* prevents the Auditor-General being reappointed to the position.	No enhancement required.
The term of appointment is determined independently of the Executive government.	Yes	The *Auditor-General Act* provides for the appointment of the Auditor-General on a fixed seven-year term.	No enhancement required.
The Auditor-General's remuneration cannot be reduced during their term of office.	Yes	The *Auditor-General Act* provides that the rate of remuneration of the Auditor-General cannot be reduced without the written consent of the Auditor-General.	The independence of the Auditor-General would be slightly enhanced by removing the words "without the written consent of the Auditor-General" from this requirement of the *Auditor-General Act*.

Elements of Best Practice	Adopted in Qld	Comments	Potential enhancement to independence
The Auditor-General's remuneration is automatically appropriated to prevent interference from the Executive government.	Yes	The *Auditor-General Act* requires the salary and allowances payable to the Auditor-General to be appropriated from the consolidated fund.	No enhancement required.
The position of Deputy Auditor-General is required by legislation.	Yes	The *Auditor-General Act* requires there to be a Deputy Auditor-General.	No enhancement required.
The process for appointing an acting Auditor-General reduces the risk of influence by the Executive government. This would include either having the Deputy Auditor-General automatically act or ensuring Parliament is involved in the appointment of the Acting Auditor-General.	Yes	The *Auditor-General Act* requires the Deputy Auditor-General to act in the absence of the Auditor-General or where the position is vacant. The Act does not identify who is to act in the absence of both the Auditor-General and Deputy Auditor-General.	The independence of the Auditor-General would be enhanced if process was identified for appointing an acting Auditor-General where the Deputy is unable to act. This could include approval of the acting Auditor-General by the Auditor-General or the parliamentary committee.
Parliament is involved in the process for the resignation of the Auditor-General to ensure the potential risk of influence by the Executive government is reduced.	Yes	The Auditor-General may resign by signed notice given to the Governor and the Speaker, or the Clerk where the Speaker is unavailable.	No enhancement required.
Parliament is involved in the process for suspending the Auditor-General to ensure the potential risk of influence by the Executive government is reduced.	Yes	The *Auditor-General Act* identifies the grounds and process for suspending the Auditor-General from office. Where Parliament is sitting, the Auditor-General can be suspended on an address of the Legislative Assembly by the Governor. When Parliament is not sitting the Auditor-General may be suspended by Governor in Council.	No enhancement required.

Elements of Best Practice	Adopted in Qld	Comments	Potential enhancement to independence
The process for restoring the Auditor-General from suspension reduces the potential risk of influence by the Executive government. This would include providing for the automatic reinstatement of the Auditor-General after a specific period of time.	Yes	The *Auditor-General Act* provides the process for restoring the Auditor-General from suspension, when the Auditor-General was suspended at a time when Parliament was not sitting.	No enhancement required.
Parliament is involved in the process for removing the Auditor-General from office to ensure the potential risk of influence by the Executive government is reduced.	Yes	The *Auditor-General Act* identifies the grounds and process for removing the Auditor-General from office. The Auditor--General can be removed only on an address of the Legislative Assembly by the Governor.	No enhancement required.
The Auditor-General is provided with a form of legal immunity in the normal discharge of their role.	Yes	The *Auditor-General Act* protects the Auditor-General from civil liability for acts or omissions done or omitted to be done honestly and without negligence.	No enhancement required.

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

In order to fulfil their mandate effectively, Auditors-General have to be independent in their choice of audit issues, in their audit planning and the implemented audit methods, as well as in the conduct of their audits. Auditors-General should be free from direction or interference from the legislature or Executive while performing their audit tasks.

Elements of Best Practice	Adopted in Qld	Comments	Potential enhancement to independence
Functional mandate			
The Auditor-General has a broad mandate to conduct audits that provide assurance over: • financial statements and accounts • compliance with financial and non-financial statutory obligations • the effectiveness of management reporting systems • performance indicators and/or performance reports • agency performance by directly examining or investigating any aspect of an their operations and/or the economy, efficiency and effectiveness with which its functions were performed.	Yes	The *Auditor-General Act* provides the Auditor-General for a broad mandate to perform audits of different types.	No enhancement required.
Scope			
The Auditor-General has a mandate to audit: • the whole-of-government public ledger and/or budget • government departments • statutory authorities • other instrumentalities or trusts. • government owned business enterprises, corporations and subsidiaries • entities deemed by the government to be public entities because of the use of public resources whatever the extent of control • public private partnerships or joint endeavours that use significant public resources, or gain significant benefit from them	Mostly	The *Auditor-General Act* provides the Auditor-General with a broad mandate to perform audits of all types of public sector entities, including controlled entities. The Auditor-General can also conduct audits of non-public sector entities that receive public funds. These are performed as either 'by-arrangement audits' or 'follow-the-dollar' audits. However, the *Auditor-General Act* does not provide a specific mandate for	The independence of the Auditor-General would be enhanced if the Act provided a clear mandate for the Auditor-General to audit trusts used by public sector entities.

Elements of Best Practice	Adopted in Qld	Comments	Potential enhancement to independence
• bodies or entities that are financially dependent on public resources and subject to operational public control. • entities that are financially dependent on public resources but are independently controlled • the recipient of grants of public resources to determine if the resources have been used for intended purposes • the use of public money, resources or assets by a recipient or beneficiary regardless of its legal nature.		auditing trusts where a public sector entity is either the trustee or the primary beneficiary.	
Discretion:			
The Auditor-General has the discretion to conduct audits, examinations or investigations and is free from direction in exercising the mandate provided.	Mostly	The *Auditor-General Act* provides that the Auditor-General cannot be directed as to the exercise of their powers and the priority of audit matters. The Auditor-General is also entitled to conduct an audit in the manner the Auditor-General considers appropriate. However, the *Auditor-General Act* limits the Auditor-General's discretionary powers for conducting audits in the following ways: • the Auditor-General must conduct audits requested by resolution of the Legislative Assembly; and • the Auditor-General may conduct a performance audit of a government owned corporation only if requested by the Legislative Assembly, the parliamentary committee, the Treasurer or an appropriate Minister.	The independence of the Auditor-General would be enhanced by providing: • that the Auditor-General **may** conduct an audit at the request of the Legislative Assembly • the Auditor-General with the discretion to conduct performance audits of GOCs without first receiving a request. All other legislation containing requirements for the Auditor-General to conduct audits should be reviewed to ensure the Auditor-General is provided with a discretionary power to conduct these audits.

Elements of Best Practice	Adopted in Qld	Comments	Potential enhancement to independence
		Other legislation also requires the Auditor-General to conduct certain audits.	

4. Unrestricted access to information

Auditors are entitled to be granted free, timely and unrestricted access to all documents and information they might need for the proper discharge of their responsibilities.

Elements of Best Practice	Adopted in Qld	Comments	Potential enhancement to independence
The Auditor-General has adequate powers to access documents or information in any form that is relevant to an audit.	Yes	The *Auditor-General Act* requires the authorised auditors to be provided with full and free access to documents and property relevant to an audit.	No enhancement required.
The Auditor-General has the power to call a person to produce documents, give evidence orally, in writing or under oath.	Yes	The *Auditor-General Act* provides the Auditor-General with the power to require information or documents to be produced and answer questions under oath or affirmation.	No enhancement required.
The Auditor-General has the ability to access premises and to examine, make copies of or extracts from documents or other records.	Yes	The *Auditor-General Act* provides authorised auditors with powers to enter premises at any reasonable time. Authorised auditors are also provided with broad powers for examining materials and documents and making copies and extracts for the purpose of gathering audit evidence.	No enhancement required.

Elements of Best Practice	Adopted in Qld	Comments	Potential enhancement to independence
The confidentiality of information obtained by the Auditor-General during the course of an audit is preserved and protected from inappropriate disclosure.	Mostly	The *Auditor-General Act* prevents the disclosure of information obtained during the course of an audit, except in the circumstances identified in the Act. The disclosure of protected information under the Act is generally at the discretion of the Auditor-General. Recent amendments to the *Commissions of Inquiry Act 1950*, have meant the Auditor-General can be compelled by the chairperson of an inquiry to produce information gathered during the course of an audit. Previously, the release of such information to an inquiry was at the discretion of the Auditor-General.	The independence of the Auditor-General would be enhanced if the Auditor-General was provided with discretionary powers for making available information requested by a Commission of Inquiry.

5. The right and obligations to report on their work

Auditors-General should report on the results of their audit work at least once a year, however, they are free to report more often, if considered necessary.

Elements of Best Practice	Adopted in Qld	Comments	Potential enhancement to independence
The Auditor-General is obliged to report to Parliament on the discharge of functions generally.	Yes	The *Auditor-General Act* requires the Auditor-General to report to Parliament annually on the results of each audit conducted of a public sector entity.	No enhancement required.
The Auditor-General has the discretion to report separately on any matters the Auditor-General considers warrant such a report.	Yes	The *Auditor-General Act* provides the Auditor-General with the discretion for identifying how to report on matters. This includes the use of interim, supplementary, separate and combined reports.	No enhancement required
The Auditor-General is able or required to report directly to Parliament.	Yes	The *Auditor-General Act* requires the Auditor-General to give each report to the Speaker or the Clerk of the Parliament for tabling in Parliament.	No enhancement required.

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

Auditors-General should be free to decide the content of their audit reports and to publish and disseminate their reports, once they have been formally tabled or delivered to the appropriate authority.

Elements of Best Practice	Adopted in Qld	Comments	Potential enhancement to independence
The Auditor-General has complete discretion over when to report and what to include in, or exclude from, the report.	Yes	The *Auditor-General Act* provides the Auditor-General with discretion for both the content and the timing of reports to Parliament.	No enhancement required.
The Auditor-General is required to provide audited entities or persons with an opportunity to comment on a proposed report and consider the responses provided on the report. The Auditor-General has discretion to fairly summarise any response received so that the response cannot be used to subvert or divert attention from audit findings.	Yes	The *Auditor-General Act* includes a process for requesting comments on proposed audit reports. If the comments are received within 21 days of the request the Auditor-General must include the comments or a fair summary of the comments in the report.	No enhancements required.
The Auditor-General has the discretion to include or exclude 'sensitive information' in a report to Parliament.	Yes	The *Auditor-General Act* enables the Auditor-General to report certain sensitive information directly to a parliamentary committee. This applies where the Auditor-General believes it would be against the public interest to disclose the information in a report tabled in Parliament.	No enhancements required.
The Auditor-General's reports are published for general distribution to the public.	Yes	Under the *Auditor-General Act*, reports given to the Speaker or Clerk are taken to have been tabled in, and ordered to be published by, the Legislative Assembly.	No enhancements required.

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

Auditors-General should have independent procedures for follow-up audits to ensure that audited entities properly address their observations and recommendations and that corrective action is taken.

Elements of Best Practice	Adopted in Qld	Comments	Potential enhancement to independence
The Parliament has a mechanism for considering the Auditor-General's findings, for holding government to account and for following up on recommendations.	Yes	The Parli*ament of Queensland Act 2001* requires portfolio committees to consider the annual and other reports of the Auditor-General. The committees have the power to hold inquiries to investigate the findings and recommendations contained in Auditor-General's Reports to Parliament.	No enhancement is required.

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

Auditors-General should have available necessary and reasonable human, material and monetary resources to fulfil their mandate. Access to these resources should not be subject to the control or direction of the Executive. The Auditor-General should be able to manage their own budget and allocate it appropriately.

Elements of Best Practice	Adopted in Qld	Comments	Potential enhancement to independence
The legislation should provide the Auditor-General with the authority to appoint staff on such terms and conditions as the Auditor-General deems appropriate.	No	The *Auditor-General Act* presently requires audit office staff be appointed under the *Public Service Act*.	The independence of the Auditor-General would be enhanced if: • QAO staff were employed under the *Auditor-General Act* and not the *Public Service Act*; and • the Auditor-General had authority for employing staff on the terms and conditions the Auditor-General considers appropriate.
The legislation should establish a process for determining the Auditor-General's budget that reduces the risk of influence by the Executive government. This would include: • the Auditor-General preparing estimates of proposed receipts and expenditure relating to the audit office for each financial year • the Auditor-General presenting the estimates to the Parliament either directly or through an appropriate parliamentary committee. • adopting the same process for any requests for unforeseen expenditure or adjustments to the original budget. The Auditor-General should have discretion as to how the approved budget is allocated.	Limited	The *Auditor-General Act* presently requires the Auditor-General to prepare estimates and give them to the Treasurer. The Treasurer is required to consult with the parliamentary committee in developing the proposed budget.	The independence of the Auditor-General would be enhanced if: • The Auditor-General prepared estimates of proposed receipts and expenditure relating to the audit office each financial and provided these to the parliamentary committee • The committee considered the estimates and arranged for the estimates to be laid before the Parliament with such modifications, if any, that the committee thinks fit.
The legislation should provide the Auditor-General with a guarantee that amounts appropriated by the Parliament in the budget will be made available to the Auditor-General.	No	There is presently no guarantee of drawing rights included in the *Auditor-General Act.*	The independence of the Auditor-General would be enhanced if the *Auditor-General Ac*t included a

Elements of Best Practice	Adopted in Qld	Comments	Potential enhancement to independence
			guarantee that amounts appropriated by the Parliament are to be made available to the Auditor-General
The office supporting the Auditor-General should be structured to reduce the risk of influence by the Executive government. This would include either establishing the Auditor-General as a corporation sole or establishing the audit office as a statutory body.	No	The Queensland Audit Office is presently considered a department for the purposes of the *Financial Accountability Ac*t and a public sector office for the purposes of the *Public Sector Ac*t.	The independence of the Auditor-General would be enhanced by establishing the Auditor-General as a corporation.
The Auditor-General should have administrative control and accountability for the office as the chief executive or equivalent.	Yes	In accordance s.7 of the *Auditor-General Act*, control of the audit office rests with the Auditor-General. The Auditor-General is also the accountable officer of the audit office for other legislation such as the *Financial Accountability Act* and *Public Service Act.*	No enhancement required.
Each year the Auditor-General should be required to produce an annual report, including audited financial statements. The Auditor-General should provide the annual report to the Speaker for tabling in Parliament.	Limited	Under the *Financial Accountability Ac*t, the Auditor-General is required to produce an annual report and financial statements each year. However, the annual report is presented to the Premier for tabling in Parliament.	The independence of the Auditor-General would be if the Auditor-General could present the office's annual report directly to the Speaker for tabling in Parliament.
The legislation should provide a processes for appointing the auditor of the Auditor-General's office and determining their terms of reference that reduces the risk of influence by the Executive government. This would include requiring the appointment to be made by resolution of the Parliament. The auditor should also report to Parliament on the results of audits performed.	Limited	Under the *Auditor-General Act* the auditor is appointed by the Governor in Council and reports to the Premier and Treasurer.	The independence of the Auditor-General would be enhanced by amending if the auditor was appointed by resolution of the Parliament. The auditor could also be required to provide reports on audits performed to the Speaker for tabling in parliament.

Appendix D - Detailed analysis of the 2013 Independence of Auditors-General survey of Australian and NZ legislation

INTOSAI Principle		CURRENT STATE					Possible enhancements	Other Comments	International	Integrity Offices	Other research
		2013 Score	Brief description of current state and reasons for QAO's score	2013 Rank	Top Score	Who					
1	***The existence of an appropriate and effective constitutional / statutory / legal framework and of de facto application provisions of this framework***	***42***		***6***	***55***	***Vic***					
1.1	Whether constitutional provisions and/or enabling legislation exists which specifically address the establishment, status, mandate and powers of the Auditor-General, as opposed to establishment by executive action	8	All jurisdictions have legislation establishing the role of the AG. In Qld this is provided for in the AG Act 2009. In Victoria, the Constitution Act 1975 also includes specific provisions on the appointment, independence and tenure of the AG.	2	10	Vic	N/A				
1.2	Whether there is separate audit legislation to ensure that Parliamentary debate on the Auditor-General's role, functions and independence, rather than being diluted by broader debate, is focused on the on wider financial legislation.	8	Since 2009 the legislative requirements applying to the AG of Qld have been provided for in separate legislation.	1	8	Qld, WA, Vic, Tas, NZ, NT, Cth, ACT	N/A				
1.3	Whether there is an oath or affirmation of office that reinforces the independence of the Auditor-General and his or her relationship with the Parliament and before whom the oath is sworn or the affirmation is made.	0	Presently the AG of Qld is not required to swear an oath or affirmation on taking office. In NSW the AG is required to provide a declaration before a Supreme Court Judge that they will "faithfully, impartially and truly execute the office and perform the duties of AG according to law." In NZ the AG is required to take an oath administered by the Speaker of the House of Representatives or the Clerk of the House of Representatives that they will "honestly and impartially perform the duties of his or her office". NSW was given a slightly higher rating on the basis that the declaration is provided to an independent body i.e. Supreme Court. In Victoria the constitution requires an oath of office to be taken before the Executive Council. AGs of Tas, SA, Vic and WA are also required to provide an oath or declaration. They have been given a score of '0' for this criteria. The reason for this is not clear.	3	5	NSW	The AG Act could be amended to require the AG to make a declaration under oath that they will perform the duties independently and impartially. Alternatively, the AG Act could be amended to include a provision that specifically states that the AG will act independently, impartially and in the public interest e.g. s.12A of the AG Act (NT); s.10 of the Audit Act (Tas); s.7 of the AG Act (WA); s.9 of the Public Audit Act (NZ). However, this would not impact on the rating for this criteria.	If the AG is required to take an oath of office, this oath should be administered by the Speaker. This would better reflect the AG's relationship with the Parliament. This could also be extended to the Deputy AG and any person required to act as AG.	In New Zealand both the AG and Deputy AG are required to take an oath administered by the Speaker or the Clerk of the House of Representatives. In the Canadian provinces of Alberta and BC, the AG must also take an oath office before either the Speaker or Clerk of the Parliament. In Quebec the oath is to be taken before the President of the National Assembly. In the Canadian provinces of Nova Scotia, Ontario and Saskatchewan all staff are required to take an oath of secrecy/confidentiality.	In Qld the Ombudsman, the Integrity Commissioner, the Information Commissioner and Parliamentary Commissioner of the CMC are all required to take an oath of office administered by the Speaker.	
1.4	Whether the independence of the AG is explicitly mandated and/or stated as a requirement or obligation.	8	The rating provided to Qld was based largely on s.8 of the AG Act which provides that the AG is not subject to direction. This was deemed to sufficiently achieve the objective of mandating the independence of the AG. It should be noted that Victoria was previously award a score of 10 on the basis the independence of the AG was addressed in the Constitution. However, this score was subsequently reduced to a 5 due to legislative provisions requiring the Victorian AG to report certain matters to IBAC and the Victorian Inspectorate.	=1st	8	Qld, WA, Tas, SA, NZ, NT, Cth, ACT	N/A				

	INTOSAI Principle	CURRENT STATE					Possible enhancements	Other Comments	International	Integrity Offices	Other research
		2013 Score	Brief description of current state and reasons for QAO's score	2013 Rank	Top Score	Who					
1.5	Whether the status and/or rank of the AG is established to ensure that the independence and authority of the role is recognised and respected by other parts of government.	0	Presently the AG of Qld is not recognised as an "independent officer of the Parliament". In Victoria the Constitution specifies that the AG is an "independent officer of the Parliament." WA and NZ were given scores of '8' on the basis their enabling legislation declares the AG to be an officer of the Parliament. Tasmania and NSW were both given a score of 5 and ACT a score of 4 but the basis for these scores is not readily apparent. However, there is a general reference in the report to jurisdictions establish the rank and status of the AG "indirectly by mandating salary relativities".	=7th	10	Vic	The AG Act could be amended to identify the AG as an 'officer of the Parliament".	While identifying the AG as "an independent officer of the Parliament" acknowledges the AG's special relationship with the Parliament, on its own, it largely a symbolic gesture. This relationship between the Parliament and the AG this recognition should be accompanied by ensuring the legislation provides Parliament with an appropriate oversight role. This should reflect that the AG is accountable to, but not controlled by, the Parliament.	The Auditors-General of both New Zealand and the United Kingdom are recognised as officers of the Parliament. The Auditors-General of the Canadian provinces of Saskatchewan, Manitoba, Ontario, Alberta, Nova Scotia and British Columbia are also recognised as officers of the Parliament.	In Qld the Ombudsman, the Integrity Commissioner and the Information Commissioner are all recognised as officers of the Parliament.	The 1991 EARC report specifically considered this issue and recommended that the AG not be identified as an officer of the Parliament. In doing so the Commission expressed a concern that this could imply that the AG could come under the direction of the Speaker, the Parliamentary Service Commission, the Clerk or a Member.
1.6	Whether the mechanism for determining remuneration (a key determinant of status and/or rank) of the AG is established and protected from Executive influence.	1	Under s.11 of the AG Act the AG is appointed on terms and conditions decided by the Governor in Council after "consulting" with the parliamentary committee. In WA, Cth and NZ the remuneration of the AG is determined by a remuneration tribunal (or equivalent). In Tasmania the AG's remuneration is based on the average of the salaries paid to the AGs of SA and WA.	7th	5	WA, Tas, NZ, NSW, Cth	Options for establishing the remuneration of the AG that would strengthen independence would include: a) tying the AGs salary to that of Judges of the Supreme Court; b) having the salary of the AG determined by an independent tribunal; c) having the terms and conditions of the AGs appointment being approved by the Parliament; or d) strengthening the role of the FAC by requiring the committee to determine the salary of the AG	The Qld Independent Remuneration Tribunal was recently established to review and determine the remuneration of Qld MPs.	In New Zealand the salary of the AG is determined by a Remuneration Authority. The salary of the Canadian AG is tied to the salary paid to judges of the Supreme Court of Canada. In the province of British Columbia the AG's salary is tied to that of the Chief Judge of the provincial court. In the province of Alberta the salary is determined by a Select Standing Committee. In the provinces of Nova Scotia, Saskatchewan, Quebec, Manitoba and Ontario the AG's salary is based on the remuneration paid to Deputy Ministers.		The salary of the AG was previously tied to the salaries paid to Directors-General. Based on the recommendations of EARC this was amended to require the remuneration to be determined by Governor in Council.
1.7	Whether the AG is constrained from holding other positions or gaining remuneration from other forms of employment or, where this is permitted, whether the Executive is involved in giving permission.	8	Presently addressed in s.13 of the AG Act. In Victoria this is provided for in s.94A of the Constitution Act.	=2nd	10	Vic	N/A				
1.8	Whether there is oversight of the AG's role by a Parliamentary Committee to ensure that the role is seen to be accountable to the Parliament.	8	The AG Act provides for oversight by a parliamentary committee in a number of areas. Schedule 6 of the Standing Orders of the Legislative Assembly has the oversight role for the AG.	=1st	8	Qld, WA, Vic, Tas, NZ, NT, NSW, Cth, ACT	N/A				

INTOSAI Principle		CURRENT STATE					Possible enhancements	Other Comments	International	Integrity Offices	Other research
		2013 Score	Brief description of current state and reasons for QAO's score	2013 Rank	Top Score	Who					
1.9	Whether there is a statutory requirement for a periodic review of the performance of the AG's role and the extent of Executive influence in determining the terms of reference or in receiving the report of the review.	1	The Qld score reflects the level of possible influence of the Executive over the strategic review process for the QAO. Under s.66 of the AG Act, the Governor in Council is responsible for appointing the reviewer and determining the remuneration and terms of appointment and determining the terms of reference for the review. The only safeguard is that the Minister must "consult" with the parliamentary committee on the appointment and terms of reference. The ANAO received a score of 5 on basis that the review can be conducted as a performance audit by their independent auditor. While the independent auditor is appointed by the Governor General there is no limitation or executive influence over the scope of the performance audit. Further their Act provides the independent auditor with a direct line of reporting to the Parliament. WA, Victoria, NSW and ACT were given a score of 4. In WA the Joint Standing Committee on Audit conducts a review of the operation and effectiveness of the AG Act. In Victoria the reviewer is appointed by resolution of the Parliament on the recommendation of the parliamentary committee. The committee is responsible for terms of appointment and providing directions to the reviewer. The process is similar in NSW but does not require a resolution of the Parliament. In ACT the review is conducted as a performance audit by a person engaged by the Minister. The independent auditor has a direct line of reporting to the Speaker	=6th	5	Cth	Options that would strengthen independence would include: a) requiring the review of QAO to be conducted as an inquiry of the parliamentary committee; b) requiring the parliamentary committee to have oversight of the strategic review including responsibility for appointing the reviewer, determining the terms of reference for the review and receiving the report of the reviewer.				The 1991 EARC Report recommended that the "performance auditor of QAO should be appointed by the Parliamentary Service Commission on the recommendation of the PAC. They further recommended that the PAC have the authority to give directions to the auditor and the auditor must present the report to the Chairperson of the PAC who must table the report in the Parliament. Presently the AG Act requires the report to be provided to the Minister.
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.**	**82**		**2nd**	**88**	**NZ**					
2.1	Who makes the appointment decision and the extent of Parliamentary involvement.	1	The Qld legislation is rated low on the basis the AG is appointed by the Governor-in Council. In making the appointment the Minister is only required to "consult" with the parliamentary committee. In Victoria the Constitution Act requires the appointment to be made by the Governor in Council on the recommendation of the parliamentary committee. In NZ the Controller and AG is appointed by the Governor in Council on the recommendation of the House of Representatives. The legislation in the Cth, NSW and ACT provide a veto power to the public accounts committee.	=6th	4	Vic, NZ	Alternative process for appointment of the AG include: a) appointment by resolution of the Parliament on recommendation of the parliamentary committee (either FAC or LAC); b) appoint by Governor-in Council on recommendation of Parliament; c) appointment by	In NZ the AG is appointed by the Governor in Council on the recommendation of the House of Representatives. In Canada, Nova Scotia, Alberta, Ontario and Newfoundland the AG is appointed by the equivalent of the Governor in Council with either an approval or recommendation of the Parliament. In the UK and		The 1991 EARC report recommended that the AG be appointed by the Governor in Council on an address by the Legislative Assembly. In debating the AG Bill 2009 the opposition proposed including an amendment that would provide the parliamentary committee with a power of veto over the appointment of the AG.

INTOSAI Principle		CURRENT STATE					Possible enhancements	Other Comments	International	Integrity Offices	Other research
		2013 Score	Brief description of current state and reasons for QAO's score	2013 Rank	Top Score	Who					
2.2	Whether the appointment process was independently supervised to increase transparency and reduce the risk of political patronage and partisan appointments.	1	As noted above, the Qld score reflects that the process requires consultation with the parliamentary committee. In Victoria and NZ the process is conducted and supervised by the parliamentary committee.	4th	4	Vic, NZ	Governor-in-Council on approval/recommendation of parliamentary committee (either FAC or LAC); d) retain existing process but with power of veto provided to the FAC		Saskatchewan the appointment is made by resolution of the Parliament with agreement of the PAC. In Quebec and British Columbia the appointment is by resolution of Parliament (requires 2/3 majority in Quebec). In Manitoba the appointment is made by the Governor in Council based on the recommendation of the Standing Committee of the Assembly on Privileges and Elections.		
2.3	Whether certain persons are ineligible for appointment as AG.	8	The survey contains no discussion on the scores for this criteria. In the 2009 survey this was worded "whether the auditor general is eligible for reappointment". As the Qld legislation specifically precludes reappointment this would support a rating of '8'. This score may also reflect the grounds for removal or suspension included in s.17 of the AG Act.	=1st	8	Qld, WA, Tas, NZ, NT, NSW, Cth, ACT	N/A				
2.4	How and by whom the term of appointment is determined.	8	In Qld the legislation provides for a fixed term of 7 years. In Victoria the term is fixed in the Constitution Act.	=2nd	10	Vic	N/A				
2.5	Whether reappointment is possible and if so how and by whom the decision to reappoint is made.	8	The Qld legislation specifically precludes reappointment of the AG.	=1st	8	Qld, WA, Tas, NZ, NT, NSW, Cth, ACT	N/A				
2.6	Whether the AG's remuneration is protected from being reduced during his or her term of office.	6	The Qld legislation prevents the AGs salary being reduced without their written consent. In Victoria the Constitution Act provides that the remuneration of the AG cannot be reduced. Legislation in Tas, SA, NZ and NSW also prevents the AGs salary or conditions being reduced. WA was also awarded a score of '8' for this criteria even though the wording is the same as Qld. However, the remuneration of the WA AG is determined by an independent tribunal.	7th	10	Vic	Remove the word's "without the AG's consent" from s.11(6) of the AG Act.		In some Canadian provinces the AG's remuneration can only be reduced with 2/3's majority vote in Parliament.		
2.7	Whether remuneration is automatically appropriated to preclude Executive or bureaucratic interference.	8	Under the Qld legislation the salary and allowances of the AG are to be appropriated from the Consolidated Fund. In Victoria this is provided for in the Constitution Act.	=2nd	10	Vic	N/A				
2.8	Whether there is a statutory Deputy AG.	6	The Qld legislation provides for the role of Deputy AG.	=1st	6	Qld, WA, TAS, SA	N/A	Appointment process for DAG would be considered as part of consideration of management autonomy and staffing of QAO under Principle 9.			

INTOSAI Principle		CURRENT STATE					Possible enhancements	Other Comments	International	Integrity Offices	Other research
		2013 Score	Brief description of current state and reasons for QAO's score	2013 Rank	Top Score	Who					
2.9	How and by whom decisions are made about the appointment of an acting AG, to reduce the risk of untoward Executive influence when there is a vacancy in the office.	8	The Qld legislation requires the Deputy AG to act in the absence of the AG.	=1st	8	Qld, Tas, SA, NZ	N/A	There is presently no process identified for the rare circumstance where neither the AG nor DAG are available.			
2.10	How an AG may resign and to whom the resignation is submitted to reduce the risk of Executive influencing the resignation or the timing thereof.	4	The Qld legislation provides that the AG may resign by notice given to the Speaker or the clerk of the Parliament where the Speaker is unavailable.	=1st	4	Qld, NZ	N/A		Practice in Qld is also consistent with legislative requirements for a number of Canadian provinces. No alternate practices identified in Canadian legislation or the National Audit Act (UK).		
2.11	How and by whom an AG can be suspended.	4	The Qld legislation provides for the suspension of the AG either on the Governor addressing the Parliament (after a motion moved by the Premier) or by the Governor in Council where Parliament is not sitting. The grounds for suspension are listed in s.17 of the Act.	=1st	4	Qld, WA, Vic, SA, NZ, NSW, Cth, ACT	N/A		In a number of Canadian promises the motion must be supported by 2/3s of the members voting on it.		
2.12	How and by whom a suspended AG can be can be restored to office.	8	The Qld legislation provides that a suspension made when Parliament is not sitting will stop having effect in particular circumstances. The score of '8' appears to reflect that where the AG is suspended when Parliament is not sitting, they will be automatically restored without further intervention of Parliament after 7 sitting days.	=1st	8	Qld, WA, Vic, SA, NZ, NSW	N/A				
2.13	How and by whom an AG can be removed from office.	4	The process for removing the auditing general is the same as for suspending the AG except the AG cannot be removed when Parliament is not sitting.	=1st	4	All	N/A		In a number of Canadian promises the motion must be supported by 2/3s of the members voting on it.		
2.14	Whether the AG is provided with some form of legal immunity in the normal discharge of the role.	8	The Qld legislation protects authorised auditors from civil liability for acts or omissions done honestly and without negligence.	=1st	8	All	N/A				
3	**A sufficiently broad mandate and full discretion, in the discharge of SAI functions**	**104**		**3rd**	**116 (WA)**	**WA**					
Functional Mandate											
3.1	Financial statements/accounts - audit opinions that provide assurance about financial statements or accounts.	8	All jurisdictions have a legislative mandate for auditing financial statements.	=1st	8	All	N/A				

	INTOSAI Principle	CURRENT STATE: 2013 Score	Brief description of current state and reasons for QAO's score	2013 Rank	Top Score	Who	Possible enhancements	Other Comments	International	Integrity Offices	Other research
3.2	Compliance with statutory obligations – providing assurance or directly determining whether an agency has complied with its financial and non financial statutory obligations.	6	This reflects that while the Qld legislation enables the AG to assess compliance with financial and non-financial statutory obligations through performance audits, it does not require such audits to be performed each year.	=1st	6	Qld, WA, Vic, Tas, NZ, NSW, Cth, ACT	The legislation could be amended to provide a requirement for the AG to provide assurance on a) compliance with financial and non-financial and non-financial statutory requirements; b) controls and/or c) performance indicators	While the AG Act does not specifically require these types of opinion to be issued, the mandate provided is broad enough to cover these. At present there is no requirement in the FA Act for departments or statutory bodies to prepare this information for auditing by the AG. The Local Government Regulation includes requirements for the preparation and audit of sustainability measures.			
3.3	Management reporting systems - providing assurance about the effectiveness of management reporting systems for financial and/or non financial reporting.	6	The Qld legislation enables the AG to perform audits of management reporting systems as part of a performance audit. These are performed at the discretion of the AG. In WA the AG is required to provide an opinion on controls and performance indicators in auditing the financial statements submitted by agencies under the Financial Management Act 2006. In NZ the AG is required to audit the financial statements, accounts and "other information" that a public sector entity is required to have audited. Under the Public Finance Act this includes a "statement of service performance".	=3rd	8	WA, NZ					
3.4	Performance indicators and/or performance reports - providing assurance about performance indicators and/or performance reports.	6		=3rd	8	WA, NZ					
3.5	Performance audits/examinations - directly examining or investigating any aspect of an entity's operations and/or the economy efficiency and effectiveness with which its functions were performed.	6	Qld legislation provides the AG with a mandate to conduct performance audits. These audits are performed at the AG's discretion.	=1st	6	Qld, WA, Vic, Tas, SA, NZ, NSW, Cth, ACT	Performance audit mandate could be expanded to provide the AG with the discretion to conduct performance audits of GOCs .	Expanding the AG's mandate for performance audit would enhance independence but would not increase survey score.			
Coverage Mandate											
3.6	Public ledger/whole of government finances (audit of whole of government public ledger and/or budgets.	8	Legislation provides for audit of WoG financial statements and consolidated fund.	=1st	8	All	N/A				
3.7	Government departments (audit of the use of public money, resources or assets by government departments).	8	Legislation provides for audit of departments	=1st	8	All	N/A				
3.8	Statutory authorities (audit of the use of public money, resources or assets by government statutory authorities).	8	Legislation provides for audit of departments	=1st	8	All	N/A				
3.9	Instrumentalities and trusts (audit of the use of public money resources or assets by other instrumentalities or trusts).	0	Qld legislation does not specifically provide a mandate for auditing trusts. Presently trusts are audited where they are considered to be a "controlled entity" of a public sector entity or on a "by-arrangement basis". In Victoria, trustees of trusts where the principal beneficiary is the State or one or more councils, are considered to be public bodies and must be audited by the AG. In Tasmania these are considered "related entities" and the AG may conduct an examination or investigation of these at any time. In NZ trusts created under particular legislation and certain identified trusts are included within the definition of "public entity" and are to be audited by the AG. In WA the legislation provides that where an agency performs its functions by means of a trust the trust is	=6th	8	Vic, Tas, NZ	As the AG is required to audit trusts that are considered "controlled entities". Any amendments should only relate to trusts that are not controlled by public sector entities. This could include a) audit of trusts where one or more public sector entities are the primary beneficiaries of the trust; b) audits of trusts that are created and used by public sector entities to carry out their functions/operations. These could either be	QAO have previously requested the Act be amended to provide a mandate for auditing trusts where the trust is not a controlled entity. While there has been general support the difficulty has been in defining the mandate in the legislation e.g. should the determining factor be whether a public sector entity is the trustee or beneficiary and should these mandatory or discretionary audits. While there are a number		

INTOSAI Principle		CURRENT STATE					Possible enhancements	Other Comments	International	Integrity Offices	Other research
		2013 Score	Brief description of current state and reasons for QAO's score	2013 Rank	Top Score	Who					
			considered a "related entity" and the AG may audit the accounts of the trust. WA was awarded a score of 6 on basis the audit is not mandated but is at the discretion of the AG. SA have a similar provision and received the same score as WA. The ACT legislation provides that the AG may audit the accounts of a trust in which the Territory or a territory entity has a controlling interest (score of 6) on basis the audit is discretionary).				mandatory audits or at the discretion of the AG.	of small community type trusts used by public sector entities, the main issue relates to the AGs mandate to audit trusts created by and used for investment purposes by QIC.			
3.10	Government owned or controlled entities (audit of the use of public money, resources or assets by government owned business enterprises, corporations and subsidiaries).	8	Legislation provides for audit of departments	=1st	8	Qld, WA, Vic, Tas, NZ, NSW, Cth, NT	N/A				
3.11	Deemed entities (audit of entities deemed by government to be public entities because of the use of public resources whatever the extent of control).	6	These criteria cover the AG's mandate for auditing non-public sector entities. These are given a score of '6' as these audits are performed at the discretion of the AG.	=1st	6	Qld, WA, Tas	N/A	The AG Act was extensively updated in 2011 to broaden the AG's mandate in these areas. This included the ability to conduct follow-the-dollar audits.	In reviewing the NZ legislation it was noted that there is a more robust process outlined for accepting these engagements. This could be considered an area of better practice that could be reflected in the AG Act.		
3.12	Joint-venture or partnerships (audit of public-private partnerships or joint endeavours that used significant public resources, or gain significant benefit there from).	6		=1st	6	Qld, WA, Tas, SA, Cth, ACT					
3.13	Related entities (audit of bodies or entities that are financially dependent upon public resources and subject to operational public control).	6		=1st	6	Qld, WA, Tas. SA					
3.14	Government affiliated entities (audit of entities financially dependent upon public resources but independently controlled).	6		=1st	6	Qld, WA, Tas					
3.15	Grant recipients (audit of recipient of grants of public resources to determine if the resources have been used for the intended purposes).	6		=1st	6	Qld, WA, Vic, Tas, Cth					
3.16	Beneficiaries or recipients of any public resources (audit of the use of public money, resources or assets by a recipient or beneficiary regardless of its legal nature).	6		=1st	6	Qld, WA, Vic, Tas, Cth					

INTOSAI Principle		CURRENT STATE					Possible enhancements	Other Comments	International	Integrity Offices	Other research
		2013 Score	Brief description of current state and reasons for QAO's score	2013 Rank	Top Score	Who					
Discretion											
3.17	The key factor examined for discretion is whether the AG is subject to direction, and if so by whom.	4	Under s.35 of the Act, the AG is required to conduct an audit of a matter relating to the financial administration of a public sector entity where requested by resolution of the Legislative Assembly. This is seen as reducing the AGs discretion. Otherwise the legislation provides that the AG is not subject to direction. A score of '6' was awarded to 6 offices on the basis that while certain individuals and/or agencies could request audits to be performed, the decision to conduct the audit was still at the discretion of the AG.	7th	6	WA, Vic, Tas, NZ, Cth, ACT	The AG Act could be enhanced by providing the AG with discretions to conduct audits requested by Parliament.	Another area that could be considered is the extent to which the AG may be required to perform audits or provide assurance through requirements of other legislation e.g. Superannuation (State Public Sector) Act. Full list of Acts provided as attachment to submission.			
4	***Unrestricted access to information***	***23***		***=5th***	***26***	***WA, Tas, SA, Cth***					
4.1	The ability to access documents or information in any form that is relevant to an audit.	6	Scores reflect that while the legislation provides broad powers in these areas, the exercise of these powers is ultimately at the discretion of the AG.	=1st	6	All	N/A	Legislation could be enhanced by specifically addressing issue of legal professional privilege. Any changes should not impact on the right to claim legal professional privilege.			
4.2	The ability to call persons to produce documents, give evidence orally, in writing or under oath.	6		=1st	6	Qld, WA, Tas, SA, NZ, NT, NSW, Cth, ACT					
4.3	The ability to access premises and to examine, make copies of or extracts from documents or other records.	6		=1st	6	Qld, WA, Tas, SA, Cth, ACT					
4.4	The extent to which confidentiality of information obtained by the AG is preserved and protected from inappropriate disclosure.	5	In the draft version of the 2013 survey the Qld legislation was awarded a score of '8' on the basis that legislation provided a reasonable level of protection. This score was subsequently reduced to a '5' reflecting amendments to the Commission of Inquiries Act.	6th	8	WA, Tas, SA, NT, NSW, Cth	Section 53 of the AG Act could be amended to identify that providing information under the Commission of Inquiry Act is at the discretion of the AG.	The AG has twice this year been required to produce documents and information under s.5 of the Commissions of Inquiry Act. Previously this information would have been protected under s.53 of the AG Act with release at the AGs discretion			
5	***The right and obligation to report on their work.***	***22***		***=1st***	***22***	***Qld, WA, Vic, Tas, SA, NZ, NT, NSW, Cth***					
5.1	The obligation to report to Parliament on the discharge of functions generally.	8	The Qld legislation requires the AG to report at least annually on each audit conducted of a public sector entity. The AG must also report on audits conducted at the request of the Legislative Assembly at audits conducted using follow-the-dollar powers.	=1st	8	Qld, WA, Vic, Tas, SA, NZ, NT, NSW, Cth	N/A				
5.2	The ability to produce separate reports on any matter the AG considers warranting such a report.	6	This legislation provides the AG with the discretion to prepare separate reports on matters that the AG considers to warrant such a report.	=1st	6	All	N/A				

	INTOSAI Principle	CURRENT STATE					Possible enhancements	Other Comments	International	Integrity Offices	Other research
		2013 Score	Brief description of current state and reasons for QAO's score	2013 Rank	Top Score	Who					
5.3	The ability or requirement to report directly to the Parliament.	8	The legislation requires the AG to report to the Parliament through either the Speaker or the Clerk if Parliament is not sitting.	=1st	8	All	N/A				
6	***The freedom to decide the content and timing of audit reports and to publish and disseminate them***	***30***		***=3rd***	***34***	***Tas***					
6.1	Whether the AG has complete discretion over when to report and what to include in, or exclude from, a report.	6	The Qld legislation provides the AG with complete discretion for determining when to report and the matters to be included in the report.	=1st	6	All	N/A				
6.2	Whether the AG is required to provide audited entities or persons with an opportunity to comment on a proposed report consider responses of and whether they have discretion to fairly summarise any response received so that the extent and form of a response cannot be used to subvert or divert attention from audit findings.	6	The Qld legislation requires the AG to provide relevant persons written advice of a proposed report item. The legislation also provides that the Treasurer and Minister are to be provided with a statement that they may provide comments in writing. The comments received or a fair summary of them are to be included in the report, if received within 21 days.	=1st	6	Qld, WA, Tas, SA, NZ, NSW, ACT	N/A	As a general comment the 21 day comment period could be reviewed, to assist with timelier finalisation of reports to Parliament.			
6.3	Whether 'sensitive' information may be included in the AG's report.	4	The Qld legislation prevents the AG from disclosing certain sensitive information in a public report if the AG considers it to be against the public interest. Instead the information is reported directly to the parliamentary committee. SA, NZ, NT, NSW, ACT appear to have been awarded a score of '6' on the basis of the general discretionary powers the AG has for reporting to Parliament. Their legislation contains no specific reference to reporting of sensitive information. Tas has similar requirements to Qld for reporting sensitive information. However, it prevents anyone receiving the reporting from making the information publicly available. The Qld legislation is silent on this matter.	8th	6	Tas, SA, NZ, NT, NSW, ACT	The relevant section could be amended to prevent the sensitive information being made publicly available by the parliamentary committee.	While this is identified as a potential enhancement in the ACAG survey, QAO do not consider this a significant issue. The ability of the parliamentary committee to release information is for consideration of the committee through the Standing Rules and Orders.			
6.4	Whether the reason for withholding 'sensitive' information may be disclosed.	6	The Qld legislation is silent as to whether the AG should disclose reasons for withholding sensitive information. However, the Ages general discretionary powers for reporting could be used to disclose the reasons. The legislation in Tas and Cth both explicitly the reasons to be disclosed.	=3rd	8	Tas, Cth					
6.5	Whether the AG's reports are published for general distribution to the public.	8	The Qld legislation requires the reports to be tabled in Parliament. Once they are tabled they are authorised for publishing.	=1st	8	Qld, WA, Vic, Tas, ACT	N/A				

	INTOSAI Principle	CURRENT STATE					Possible enhancements	Other Comments	International	Integrity Offices	Other research
		2013 Score	Brief description of current state and reasons for QAO's score	2013 Rank	Top Score	Who					
7	***The existence of effective follow-up mechanisms on SAI recommendations***	***4***		***=1st***	***4***	***All***					
7.1	Whether the Parliament has some mechanism for considering the AG's findings, for holding the government to account and for following up on recommendations.	4	The Parliament of Qld Act requires portfolio committees to consider the annual and other reports of the AG. However, there is no legislative requirement for the AG or portfolio committees to follow-up recommendations. This is similar in all jurisdictions.	=1st	4	All	N/A	The AG and parliamentary committees both have powers to follow-up on reports of the AG. How and when they do this is best left to their discretion.			
8	***Financial and managerial/ administrative autonomy and the availability of appropriate human, material, and monetary resources.***	***13***		***7th***	***40***	***NZ***					
8.1	Staffing autonomy or the independence from the Executive control of the public service.	0	The QAO score reflects the requirement of the AG Act for all staff to be appointed under the Public Service Act. This is seen as providing the Executive with the capacity to influence the staffing arrangements through the use of standard terms and conditions of employment and other requirements around staffing numbers. The NSW legislation provides a) the AG may appoint such staff as are necessary to discharge powers and duties of office b) staff are appointed at the discretion of the AG c) Chapter 2 of the Public Sector Employment and Management Act does not apply to the appointment and employment of staff; d) the AG may make determinations fixing the conditions and benefits of employment of staff; e) the AG may enter into an agreement with an association or organisation representing a group or class of staff; f) the AG is taken to be the employer of the staff for any proceedings before a competent tribunal; and g) for the employment of executive staff. In NZ the AG may employ such persons as are necessary on terms and conditions agreed by AG and employee. The legislation also provides for good employer principles and EEO requirements. All other Australian jurisdictions received a score of '0' either due to the legislation requiring staff to be employed under their equivalent of the Public Service Act or this being required as a result of the structure/nature of the Office.	=3rd	8	NZ, NSW	The AGs staffing autonomy would be enhanced by providing that employees are to be appointed under the AG Act and not the Public Service Act. The AG could also be provided with the authority for appointing the number of staff considered appropriate and for determining the terms and conditions on which staff are appointed.	This would also be linked to consideration of the structure of QAO.	UK: the CAG may appoint staff at such remuneration rates and on such other conditions as they may determine. In exercising these powers the CAG must have regard to the desirability of keeping the remuneration and other terms and conditions of employment broadly in line with those applying to persons employed in the civil service. The Saskatchewan AG may employ such persons they consider necessary to assist in carrying out duties. They are employees of the Legislative Assembly and are not members of the public service. The Ontario AG may employ officers and determine the salary and wages and the terms and conditions. Salaries and wages are to be comparable to those determined under the Public Service Act. Alberta: staff employed pursuant to the Public Service Act. However, on the recommendation of the AG the Select Standing Committee may order that regulations, directions and rules under the Public Service Act are not applicable to staff of Office of the AG.	Employees of the Ombudsman and the CMC are employed under their respective legislation and not under the Public Service Act.	The 1991 EARC report recommended that the AG should have statutory power to determine the number, remuneration and employment conditions of staff. It further recommended that staff should not be subject to the direction of the Public Service Management and Employment Act and the Public Sector Management Commission Act. The 1997 Strategic Review of QAO recommended that the AG be given flexibility in determining the appropriate remuneration for staff. The 2004 Strategic Review of QAO recommended that a more flexible remuneration structure for professional staff be introduced. The 2010 Strategic Review of QAO recommended that QAO continue to pursue strategies for achieving a more flexible remuneration for professional audit staff.

INTOSAI Principle		CURRENT STATE					Possible enhancements	Other Comments	International	Integrity Offices	Other research
		2013 Score	Brief description of current state and reasons for QAO's score	2013 Rank	Top Score	Who					
8.2	Financial autonomy or the independence of the process for establishing the budget for the AG from the Executive.	1	QAO received a score of "1" on the basis that the Treasurer is only required to "consult" with the Parliamentary committee when establishing the annual budget for QAO. NZ were awarded a score of '4' on the basis the AG submits the budget directly to Parliament through the Speaker. (This process is not set out in the Public Audit Act). In WA the Treasurer is required to have regard to any recommendations of the Parliamentary Committee. In the Cth the parliamentary committee may request draft estimates from the AG for consideration. In the ACT the committee may propose the draft budget for the audit office to the Treasurer. The committee may also advise the Treasurer on any addition amounts required by the AG during the year. WA, Cth and ACT were all awarded a score of '3'.	=5th	4	NZ	The financial autonomy of the AG would be enhanced if the Parliament was responsible for the establishment of QAOs budget. This would require the AG to prepare QAOs annual estimates and provide them for consideration by the Parliament, either directly or through the parliamentary committee. This process could also be enhanced by providing for the AGs budget to be included in the Parliamentary Appropriation Bill rather than the general Appropriation Bill.	The process for establishing QAOs budget may also need to be adjusted if any changes in the legal status/structure of QAO in order to provide greater managerial autonomy to the AG. The requirement for the Treasurer to approve QAOs basic fee rates also represents a limitation on QAOs financial autonomy/independence. This could be enhanced by providing the AG with discretion for setting the basic fee rates.	In the UK the AG is to provide the estimates to the Public Accounts Commission who are required to lay the estimates before the Parliament with such modifications as they think fit. In doing so they are to have regard to any advice given by the Committee of the Public Accounts and Treasury. The Canadian AG is also required to prepare the estimates for consideration by the Parliament. Where the estimates are considered inadequate the AG is entitled to make a special report to the House of Commons. In Saskatchewan the AG is to provide the estimates for consideration by the PAC. After considering the estimates, the PAC must give them to the Speaker for tabling in Parliament. A process is also established in the legislation for unforseen expenditure. In Quebec, Manitoba, Ontario and Nova Scotia the estimates are provided to the Office for the National Assembly, Legislative Assembly Management Committee, the Board of estimates and the House of Assembly, respectively. In British Columbia the estimates are provided to the parliamentary committee who review and amend the estimates before forwarding to the Minister for Finance and must be included by the Minister in the main estimates.		The 1991 EARC report recommended that the annual estimates of the office should be forwarded by the AG to the Public Accounts Committee, with the Committee to take into account any views conveyed by the Treasurer. It further recommended that the annual estimates for the office should be laid before the Parliament in a separate Appropriation Bill. The report also recommended that the PAC should be consulted in the determination of audit fee rates by the Treasurer. The 1997 Strategic Review of QAO recommended that the AG submit estimates to the Public Accounts Committee each financial year and that the Committee, on behalf of the Parliament, recommend to the Government the resources to be made available to the QAO. The 2010 Strategic Review of QAO recommended that there should continue to be regular annual adjustments to the basic fee rate, subject to the approval of the treasurer. It also recommended that the annual adjustment should be based on an assessment of wages and salaries and other costs relevant to the operation of QAO. It further recommended an Audit Fee Charter and a comprehensive program of benchmarking audit fees.

	INTOSAI Principle	CURRENT STATE					Possible enhancements	Other Comments	International	Integrity Offices	Other research
		2013 Score	Brief description of current state and reasons for QAO's score	2013 Rank	Top Score	Who					
8.3	Drawing rights on appropriated resources and to whom resources are appropriated and its independence from the Executive.	0	QAO received a score of '0' as there is no legislative guarantee that QAO will receive the full budgeted appropriation. The Cth legislation contains a requirement that the Finance Minister must issue drawing rights that cover in full the amounts that the Parliament appropriates. In Victoria the AG is entitled to incur any expenditure or obligations necessary for performance of functions.	=4th	8	Cth	The Qld legislation could be enhanced by either guaranteeing QAOs drawing rights o by to providing that the AG can incur expenditure necessary to perform functions and duties.				
8.4	Office autonomy or the independence of the structure supporting the AG from Executive control.	0	QAO received a score of '0' on the basis it effectively operates under the legislative framework applying to government departments. In contrast the New Zealand AG is identified as a 'corporation sole' while in NSW the audit office was operates as a statutory body. In the ACT some level of independence from the executive is provided for through the Speaker being recognised as the "responsible Minister" for the audit office.	=4th	8	NZ, NSW	The independence of the AG would be enhanced by removing the QAO from the broader public sector. This would include establishing the AG as a body corporate or creating QAO as a statutory body.	Any change to the legal structure/status of QAO should ensure the AG ultimately retains the ultimate control of the office. This may also require consideration of other financial accountability and administrative requirements presently provided for through legislation (FAA / FPMS).	In the UK the Comptroller and AG is established as a corporation sole. In NZ, the AG is a corporation sole with perpetual succession and seal of office.	The CMC was created as a statutory body.	The 1991 EARC report recommended that the office of the AG be created as a corporation sole. It further recommended that the affairs of the office should be managed by the AG.
8.5	Whether the AG is the chief executive or accountable officer with administrative control of and accountability for his or her office;	8	The AG is the accountable officer for the QAO.	=1st	8	All	N/A				
8.6	Whether the AG is required to produce an annual administrative report and financial statements.	4	As a government department, QAO is required to prepare financial statements and an annual report in accordance with the requirements of the FAA and FPMS. The annual report needs to be given to the appropriate Minister for tabling in Parliament. In the ACT the AG is not required to comply with the Annual Reports (Government Agencies) Act if they believe it would prejudice the AGs independence. It is also noted that in the ACT, the Speaker is taken to be the responsible Minister for the purposes of the Financial Management Act.	=2nd	6	ACT	The AG's independence could be enhanced if the annual report was provided directly to the Speaker or the FAC for tabling in Parliament.				
8.7	Whether the appointment, terms of reference, and reporting line of the auditor of the AG's office is subject to Executive control.	0	QAO's external auditor is presently appointed by, and on terms and conditions determined by, the Governor in Council. QAO's external auditor is required to report to the Premier and Treasurer. In NZ the external auditor is appointed by resolution of the House of Representatives. In Victoria the external auditor is a) appointed by resolution of the Legislative Council and Legislative Assembly on the recommendation of the Parliamentary Committee; b) paid out of the consolidated fund; c) required to report to each house of Parliament.	=4th	4	Vic, NZ	The AG's independence would be enhanced if QAO's auditor was appointed by: a) Resolution of Parliament based on FAC recommendation; or b) the FAC or c) Governor in Council based on FAC recommendation. Independence would also be enhanced if the auditor was required to report to Parliament, either directly, or through the FAC.				The 1991 EARC report recommended that the Public Accounts Committee be consulted on the appointment on the office's external auditor and the fee paid to the auditor.

Appendix E – Comparison of legislative provisions for Queensland integrity offices

The following table provides a comparison of key legislative provisions for Queensland integrity offices against INTOSAI principles of independence relating to:

- The role and status of the office and relationship with the Parliament
- Confidentiality of information received
- Financial and managerial autonomy of the office

INTOSAI Principles		Auditor-General Act 2009 https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/A/AuditGenA09.pdf	Ombudsman Act 2001 https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/O/OmbudsA01.pdf	Integrity Act 2009 (Integrity Commissioner) https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/I/IntegrityA09.pdf	Right to Information Act 2009 (Information Commissioner)https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/R/RightInfoA09.pdf	Crime and Misconduct Act 2001 https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/C/CrimeandMisA01.pdf
Principle 1 – The existence of an appropriate and effective constitutional/statutory/legal framework						
1.3	**Oath**	Nil	63 (1) Before performing the duties of office, the ombudsman must make an oath to the effect that he or she will faithfully and impartially perform the duties of the office. (2) The oath must be administered by the Speaker.	**79 Oath before performing duties** (1). Before performing the duties of office, the integrity commissioner must make an oath or affirmation to the effect that he or she will faithfully and impartially perform the duties of the office. (2). The oath must be administered by the Speaker.	**140 Oath before performing duties** (1). Before performing the duties of office, the information commissioner must make an oath or affirmation to the effect that he or she will faithfully and impartially perform the duties of the office. (2). The oath must be administered by the Speaker.	Commissioner – No Parliamentary Commissioner – Yes **313 Oath of parliamentary commissioner** (1). Before entering on the performance of functions as parliamentary commissioner, the commissioner must take an oath that he or she— (a) will faithfully and impartially perform the functions of the office; and (b) will not, except as provided under this Act, disclose any information received under this Act. (2). The oath is to be administered by the Speaker.
1.4	**Independence**	**8 Auditor-General not subject to direction** (1). The auditor-general is not subject to direction by any person about— (a). the way in which the auditor-general's powers in relation to audit are to be exercised; or (b). the priority to be given to audit matters.	**13 Ombudsman not subject to direction** Subject to any other Act or law, the ombudsman is not subject to direction by any person about— (a). the way the ombudsman performs the ombudsman's functions under this Act; or (b). the priority given to investigations.	Nil	**125 General power** The information commissioner has power to do all things that are necessary or convenient to be done for or in connection with the performance of the commissioner's functions under an Act. **126 Information commissioner not subject to direction** (1). The information commissioner is not subject to direction by any person about— (a). the way in which the commissioner's powers are to be exercised in the performance of a function under section 128, 129, 130 or 131; or (b). the priority to be given to investigations and reviews under this Act. (2). Subsection (1) has effect despite the Public Service Act 2008.	**57 Commission to act independently etc.** The commission must, at all times, act independently, impartially and fairly having regard to the purposes of this Act and the importance of protecting the public interest.
1.5	**Officer of Parliament**	Nil	11 (2) The ombudsman is an officer of the Parliament.	6 (2) The integrity commissioner is an officer of the Parliament.	123 (2) The commissioner is an officer of the Parliament.	Nil
1.6	**Remuneration**	**11 Terms of appointment** (2). The auditor-general is to be paid a salary at a rate decided by the Governor in Council. (3). The auditor-general is entitled to the allowances and holds office, to the extent the terms are not provided for by this Act, on the terms decided by the Governor in Council. (4). Advice to the Governor in Council regarding the salary, allowances and other terms is only to be given after consultation with the parliamentary committee. (5). The salary and allowances of the auditor-general are payable out of the consolidated fund, which is appropriated accordingly.	62 (1) The ombudsman is to be paid remuneration and travelling and other allowances decided by the Governor in Council.	**76 Remuneration and conditions** (1). The integrity commissioner is to be paid the remuneration and allowances decided by the Governor in Council	**137 Remuneration and conditions** (1). The information commissioner must be paid remuneration and other allowances decided by the Governor in Council.	**232 Terms of appointment** (1). A commissioner is to be paid the remuneration and allowances decided by the Governor in Council. (2). To the extent that a commissioner's terms and conditions are not provided for by this Act, a commissioner holds office on the terms and conditions decided by the Governor in Council.

INTOSAI Principles		Auditor-General Act 2009 https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/A/AuditGenA09.pdf	Ombudsman Act 2001 https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/O/OmbudsA01.pdf	Integrity Act 2009 (Integrity Commissioner) https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/I/IntegrityA09.pdf	Right to Information Act 2009 (Information Commissioner)https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/R/RightInfoA09.pdf	Crime and Misconduct Act 2001 https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/C/CrimeandMisA01.pdf
1.9	**Strategic Reviews**	**68 Conduct of strategic review of audit office** (1) Strategic reviews of the audit office must be conducted under this part. (2) A strategic review must be conducted at least every 5 years, counting from when the Minister makes a response to the parliamentary committee report in the Legislative Assembly for the most recent earlier strategic review, up to when the reviewer is appointed under subsection (3) to conduct the latest strategic review. (3) Each strategic review is to be conducted by an appropriately qualified person (reviewer), appointed by the Governor in Council, who is to give a report on the review. (4) The terms of reference for a strategic review are to be decided by the Governor in Council. (5) Before a reviewer is appointed to conduct a strategic review, the Minister must consult with the parliamentary committee and the auditor-general about— (a). the appointment of the reviewer; and (b). the terms of reference for the review. (6). The remuneration and other terms of appointment of the reviewer are as decided by the Governor in Council.	**83 Strategic review of ombudsman office** (2). A strategic review is to be conducted at least every 5 years, counting from when the report (the earlier report) for the most recent earlier strategic review was given to the Minister and the ombudsman under section 85(4), up to when the reviewer is appointed under subsection (4) to undertake the latest strategic review. (3). However, if the parliamentary committee reported to the Assembly about the earlier report, and the committee's report made recommendations to which a Minister was required to respond under the Parliament of Queensland Act 2001, section 107 the 5 years is counted from when the Minister's response was tabled under that section. (4). Each strategic review is to be undertaken by an appropriately qualified person (reviewer), appointed by the Governor in Council, who is to give a report on the review. (5). The terms of reference for a strategic review are to be decided by the Governor in Council. (6). Before a reviewer is appointed to conduct a strategic review, the Minister must consult with the parliamentary committee and the ombudsman about— (a) the appointment of the reviewer; and (b) the terms of reference for the review. (7). The remuneration and other terms of appointment of the reviewer are as decided by the Governor in Council.	**86 Conduct of reviews** (3). Subject to subsection (2), a strategic review must be conducted at least every 5 years, counting from when the Minister makes a response to the parliamentary committee report in the Legislative Assembly for the most recent earlier strategic review, up to when the reviewer is appointed under subsection (4) to conduct the latest strategic review. (4). Each strategic review must be conducted by an appropriately qualified person (reviewer), appointed by the Governor in Council, who must give a report on the review. (5). The terms of reference for a strategic review are to be decided by the Governor in Council. (6). Before a reviewer is appointed to conduct a strategic review, the Minister must consult with the parliamentary committee and the integrity commissioner about— (a). the appointment of the reviewer; and (b). the terms of reference for the review. (7). The remuneration and other terms of appointment of the reviewer are as decided by the Governor in Council.	**186 Strategic review of office** (3). Subject to subsection (2), a strategic review must be conducted at least every 5 years, counting from the date of the report (the earlier report) for the most recent earlier strategic review up to when the reviewer is appointed under subsection (5) to undertake the latest review. (4). However, if the parliamentary committee reported to the Assembly about the earlier report, and the committee's report made recommendations to which a Minister was required to respond under the Parliament of Queensland Act 2001, section 107 the 5 years is counted from when the Minister's response was tabled under that section. (5). Each strategic review must be undertaken by an appropriately qualified person (reviewer), appointed by the Governor in Council, who must give a report on the review. (6). The terms of reference for a strategic review are to be decided by the Governor in Council. (7). Before a reviewer is appointed to conduct a strategic review, the Minister must consult with the parliamentary committee and the information commissioner about— (1). the appointment of the reviewer; and (2). the terms of reference for the review. (8). (8) The remuneration and other terms of appointment of the reviewer are as decided by the Governor in Council.	**347 Review of Act and commission's operational and financial performance** (1) The Minister must review this Act and the commission's operational and financial performance. (2) The review must start no sooner than 2 years after the commencement of this section. **9 Parliamentary Crime and Misconduct Committee** The Parliamentary Crime and Misconduct Committee is a standing committee of the Legislative Assembly with particular responsibility for monitoring and reviewing the commission's performance. **292 Functions** The parliamentary committee has the following functions— … (f) to review the activities of the commission at a time near to the end of 3 years from the appointment of the committee's members and to table in the Legislative Assembly a report about any further action that should be taken in relation to this Act or the functions, powers and operations of the commission;
Principle 2 – The independence of SAI heads and members 9of collegial institutions), including security of tenure and legal immunity in the normal discharge of their duties						
2.1	**Appointment decision**	**9 Appointment of auditor-general** (1). The auditor-general is to be appointed by the Governor in Council.	58 (1) The ombudsman is appointed by the Governor in Council. (2) The ombudsman is appointed under this Act and not under the Public Service Act 2008.	**73 Appointment** (1). The integrity commissioner is to be appointed by the Governor in Council. (2). The integrity commissioner is to be appointed under this Act, and not under the Public Service Act 2008.	**134 Appointment** (1) The information commissioner is appointed by the Governor in Council. (2) The commissioner is appointed under this Act and not under the Public Service Act 2008.	**229 Appointment of chairperson** (1). The chairperson is to be appointed on a full-time basis by the Governor in Council. (2). The chairperson is to be appointed under this Act, and not under the Public Service Act 2008.
2.2	**Appointment process**	**9 Appointment of auditor-general** (2) A person may be appointed as the auditor-general only if— (a). press advertisements have been placed nationally calling for applications from suitably qualified persons to be considered for appointment; and (b). the Minister has consulted with the parliamentary committee about— (i) the process of selection for appointment; and (ii) the appointment of the person as the auditor-general.	**59 Procedure before appointment** (1). A person may be appointed as ombudsman only if— (a). the Minister has placed press advertisements nationally calling for applications from suitably qualified persons to be considered for appointment; and (b). the Minister has consulted with the parliamentary committee about— (i) the process of selection for appointment; and (ii) the appointment of the person as ombudsman.	**74 Procedure before appointment** (1). A person may be appointed as integrity commissioner only if— (a) the Minister has placed press advertisements nationally calling for applications from suitably qualified persons to be considered for appointment; and (b) the Minister has consulted with the parliamentary committee about— (i) the process of selection for appointment; and (ii) the appointment of the person as integrity commissioner. (2). A person is suitably qualified for appointment as the integrity commissioner if the person has knowledge, experience, personal qualities and standing within the community suitable to the office.	**135 Procedure before appointment** (i) A person may be appointed as information commissioner only if— (a) the Minister has placed press advertisements nationally calling for applications from suitably qualified persons to be considered for appointment; and (b) the Minister has consulted with the parliamentary committee about— (i) the process of selection for appointment; and (ii) the appointment of the person as commissioner.	**227 Advertising and nominations for appointment** (1). The Minister must advertise nationally for applications from suitably qualified persons to be considered for selection as the chairperson. (2). The Minister must advertise throughout the State for applications from suitably qualified persons to be considered for selection as part-time commissioners, other than the commissioner mentioned in section 225(1)(a) (the civil liberties commissioner). (3) The Minister must ask the Bar Association of Queensland and the Queensland Law Society to each nominate 2 persons having appropriate qualifications for appointment as the civil liberties commissioner. (4) Subsections (1), (2) and (3) do not apply to the reappointment of a person as a commissioner. **228 Consultation before nominating persons for appointment** (1). Before nominating a person for appointment as a commissioner, the Minister must first consult — (a) the parliamentary committee; or (b) if there is no parliamentary committee at the relevant time, the Leader of the Opposition and the Leader in the Legislative Assembly of any other political party represented in the Assembly by at least 5 members.

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						(2). If the appointment is as a part-time commissioner, the Minister must also consult with the chairperson about the proposed appointment. (3). If the Minister consults the parliamentary committee about a proposed appointment, the Minister may nominate a person for appointment as a commissioner only if the nomination is made with the bipartisan support of the parliamentary committee.
2.4	**Term/ Duration**	**10 Duration of appointment** The appointment of the auditor-general is for a fixed, non-renewable term of 7 years.	61 (1) The ombudsman holds office for the term, of not more than 5 years, stated in the instrument of appointment and may be reappointed. (2) However, a person must not be reappointed if the total of the person's terms of appointment would be more than 10 years.	**75 Term of appointment** (1). Subject to sections 78 and 82, the integrity commissioner holds office for the term, not longer than 5 years, stated in the instrument of appointment. (2). However, a person being reappointed as integrity commissioner cannot be reappointed for a term that would result in the person holding office as integrity commissioner for more than 10 years continuously.	**136 Term of appointment** (1). The information commissioner holds office for the term, of not more than 5 years, stated in the instrument of appointment. (2). However, a person being reappointed as information commissioner can not be reappointed for a term that would result in the person holding office as information commissioner for more than 10 years continuously.	**231 Duration of appointment** (1). A commissioner holds office for the term, not longer than 5 years, stated in the instrument of the commissioner's appointment. (2). A commissioner must not hold office in the commission as a commissioner for more than 5 years in total.
2.6	**Remuneration reduction**	11 (6) The rate of remuneration of the auditor-general must not be reduced during the term of office without the auditor-general's written consent.	62 (2) The remuneration paid to the ombudsman must not be reduced during the ombudsman's term of office without the ombudsman's written consent.	**76 Remuneration and conditions** (2). The remuneration paid to the integrity commissioner must not be reduced during the commissioner's term of office without the integrity commissioner's written consent.	137 (2) The remuneration paid to the commissioner must not be reduced during the commissioner's term of office without the commissioner's written consent.	Nil
2.10	**Resignation**	**16 Resignation** The auditor-general may resign by signed notice given to the Governor and the Speaker or, if there is no Speaker or the Speaker is unavailable, the clerk of the Parliament.	**71 Resignation** The ombudsman may, at any time, resign office as ombudsman by signed writing, addressed to the Governor.	**78 Resignation** (1). The integrity commissioner may resign by signed notice given to the Minister. (2). As soon as practicable after the notice is given to the Minister, the Minister must— (a) give the notice to the Governor for information; and (b) give a copy of the notice to— (i) the Speaker; and (ii) the chairperson of the parliamentary committee.	**142 Resignation** (1). The information commissioner may resign by signed notice given to the Minister. (2). As soon as practicable after the notice is given to the Minister, the Minister must— (a) give the notice to the Governor for information; and (b) give a copy of the notice to— (i) the Speaker of the Assembly; and (ii) the chairperson of the parliamentary committee.	**235 Resignation** A commissioner may resign by signed notice given to the Minister.
2.11	**Suspension**	**17 Grounds for removal or suspension from office** The following are grounds for removal or suspension of the auditor-general from office— (a) proved incapacity, incompetence or misconduct; (b) conviction of an indictable offence; (c) being an insolvent under administration as defined in the Corporations Act, section 9. **18 Removal or suspension of auditor-general on address** (1). The Governor may, on an address of the Legislative Assembly, remove or suspend the auditor-general from office on any of the grounds listed in section 17. (2). The motion for the address may only be moved by the Premier. (3). The Premier may move the motion only if— (a). the Premier has given the auditor-general a statement setting out the reasons for the motion; and (b). the statement and any written response by the auditor-general have been laid before the Legislative Assembly; and (c). the Premier has consulted with the parliamentary committee about the motion; and (d). agreement to the motion has been obtained from— (i) all members of the parliamentary committee; or (ii) a majority of members of the	**68 Suspension of ombudsman on address** (1). The Governor may, on an address from the Assembly, suspend the ombudsman from office. (2). The motion for the address may be moved only by the Premier. (3). The Premier may move the motion only if— (a). the Premier has given the ombudsman a statement setting out the reasons for the motion; and (b). the statement and any written response by the ombudsman have been tabled in the Assembly; and (c). the Premier has consulted with the parliamentary committee about the motion; and (d). agreement to the motion has been obtained from— (i) all members of the parliamentary committee; or (ii) a majority of members of the parliamentary committee, other than a majority consisting wholly of members of the political party or parties in government in the Assembly.	Nil	**162 Suspension on address** (1). The Governor may, on an address from the Assembly, suspend a commissioner from office. (2). The motion for the address may be moved only by the Premier. (3). The Premier may move the motion only if— (a). the Premier has given the commissioner a statement setting out the reasons for the motion; and (b). the statement and any written response by the commissioner have been tabled in the Assembly; and (c). the Premier has consulted with the parliamentary committee about the motion; and (d). agreement to the motion has been obtained from— (i) all members of the parliamentary committee; or (ii) a majority of members of the parliamentary committee, other than a majority consisting wholly of members of the political party or parties in government in the Assembly. (4) The commissioner is entitled to be paid salary and allowances for the period of the suspension only if— (a). the Assembly resolves that salary and allowances be paid for the period; or (b). the Assembly does not pass a resolution under paragraph (a) and the Governor in	Nil

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	parliamentary committee, other than a majority consisting only of the members of the political party or parties in government in the Legislative Assembly. **19 Suspension of auditor-general when Legislative Assembly not sitting** (1). When the Legislative Assembly is not in session, the Governor in Council may suspend the auditor-general on any of the grounds listed in section 17. (2). However the auditor-general may be suspended under subsection (1) only if— (a). the Premier has given the auditor-general a statement setting out the reasons for the suspension; and (b). the Premier has considered any response by the auditor-general to the statement. (3). The Premier must table the statement and any written response by the auditor-general in the Legislative Assembly within 3 sitting days after the day on which the suspension begins.			Council approves the payment of salary and allowances for the period. **163 Suspension if Assembly not sitting** (1). If the Assembly is not sitting, the Governor in Council may suspend a commissioner from office.	
2.13 Removal from office	As per ss.17-18 above	66 The following are grounds for removal or suspension of the ombudsman from office— (a) proved incapacity, incompetence or misconduct; (b) conviction of an indictable offence. **67 Removal of ombudsman on address** (1). The Governor may, on an address from the Assembly, remove the ombudsman from office. (2). The motion for the address may be moved only by the Premier. (3). The Premier may move the motion only if— (a) the Premier has given the ombudsman a statement setting out the reasons for the motion; and (b) the statement and any written response by the ombudsman have been tabled in the Assembly; and (c) the Premier has consulted with the parliamentary committee about the motion; and (d) agreement to the motion has been obtained from— (i) all members of the parliamentary committee; or (ii) a majority of members of the parliamentary committee, other than a majority consisting wholly of members of the political party or parties in government in the Assembly.	**82 Removal from office** (1). The following are grounds for removal of the integrity commissioner from office— (a) proved incapacity, incompetence or misconduct; (b) conviction of an indictable offence. (2). The Governor may, on an address from the Legislative Assembly, remove the integrity commissioner from office. (3). The motion for the address may be moved only by the Minister. (4). The Minister may move the motion only if— (a). the Minister has given the integrity commissioner a statement setting out the reasons for the motion; and (b). the statement and any written response by the integrity commissioner have been tabled in the Legislative Assembly; and (c). the Minister has consulted with the parliamentary committee about the motion; and (d). agreement to the motion has been obtained from— (i) all members of the parliamentary committee; or (ii) a majority of members of the parliamentary committee, other than a majority consisting entirely of members of the political party or parties in government in the Legislative Assembly.	**161 Removal on address** (1). The Governor may, on an address from the Assembly, remove a commissioner from office. (2). The motion for the address may be moved only by the Premier. (3). The Premier may move the motion only if— (a). the Premier has given the commissioner a statement setting out the reasons for the motion; and (b). the statement and any written response by the commissioner have been tabled in the Assembly; and (c). the Premier has consulted with the parliamentary committee about the motion; and (d). agreement to the motion has been obtained from— (i) all members of the parliamentary committee; or (ii) (ii) a majority of members of the parliamentary committee, other than a majority consisting wholly of members of the political party or parties in government in the Assembly.	**236 Termination of appointment** (1). The Governor in Council may terminate the appointment of a commissioner if the commissioner— (a) becomes incapable of satisfactorily performing the duties of office; or (b) is absent from 3 consecutive meetings of the commission, without the commission's prior leave and without reasonable excuse. (2). The Governor in Council must terminate the appointment of the chairperson if the chairperson engages in paid employment outside the chairperson's duties of office without the Minister's approval. (3). The Governor may terminate the appointment of a commissioner if— (a) a recommendation to the Legislative Assembly to terminate the appointment is made with the bipartisan support of the parliamentary committee; and (b) the Legislative Assembly, by resolution, approves the termination of the appointment. (4). The office of a commissioner is vacated if the commissioner becomes an ineligible person.
Principle 4 – Unrestricted access to information					
4.4 Confidentiality of information	**53 Confidentiality and related matters** (1). This section applies to a person who is or has been any of the following, including before the commencement of this subsection— (a) an authorised auditor; (b) a person engaged by the auditor-general; (c) a person engaged or employed by a contract auditor; (d) a person receiving proposed reports, or extracts of proposed reports, under section 64. (2). The person must not—	**91 Prohibiting publication of information** The ombudsman may, if the ombudsman considers it appropriate in a particular case, order that information given to the ombudsman in performing a function under this Act, or the contents of a document produced to the ombudsman in performing a function under this Act, must not be published. **92 Secrecy** (1). An officer of the ombudsman, an officer of an agency, or another person who obtains information in a preliminary inquiry or an	Nil	Nil	**66 Maintaining confidentiality of information** (1). Despite any other provision of this Act about reporting, if the commission considers that confidentiality should be strictly maintained in relation to information in its possession (confidential information)— (a). the commission need not make a report on the matter to which the information is relevant; or (b). if the commission makes a report on the matter, it need not disclose the confidential information or refer to it in the report.

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	(a). make a record of protected information; or (b). whether directly or indirectly, divulge or communicate protected information; unless the record is made, or the protected information is divulged or communicated, under this Act or in the performance of duties, as a person to whom this section applies, under this Act. Maximum penalty—200 penalty units or imprisonment for 1 year. (3). Subsection (2) does not prevent the disclosure of protected information to— (a) the parliamentary committee or a portfolio committee; or (b) the Crime and Misconduct Commission; or (c) a police officer, or an entity, responsible for the investigation or prosecution of offences in any jurisdiction; or (d) a court for the purposes of the prosecution of a person for an offence in any jurisdiction; or (e) if the auditor-general conducts an audit jointly, or in collaboration, with the auditor-general of the Commonwealth or another State under section 42A—the auditor-general of the Commonwealth or other State. (4). Compliance by a person mentioned in subsection (1) in relation to the Corporations Act, section 311 or the Australian Securities and Investments Commission Act 2001, section 30A is declared to be an excluded matter for the Corporations Act, section 5F. (5). Nothing in subsection (4) is intended to affect the power of a person mentioned in subsection (1) to disclose information to the Australian Securities and Investments Commission under subsection (3)(c). (5). In this section— protected information means information, observations, comments, suggestions or notations that— (a) are not publicly available; and (b) are disclosed to, obtained by or made by a person to whom this section applies in relation to an audit that has been, is being or will be conducted under this Act; and (c) are relevant to the audit. **65 Proposed reports to remain confidential** A person who receives a proposed audit report, or part of a proposed audit report, of the auditor-general under section 64, or a proposed report, or part of a proposed report, of the auditor-general under section 61A, must not disclose any information contained in the report unless— (a) disclosure is required for the purpose of— (i) making submissions or comments to the auditor-general in relation to the proposed report; or (a) obtaining legal advice in relation to matters raised by the proposed report; or (b) the information has been made public by the auditor-general. Maximum penalty—200 penalty units or 1 year's imprisonment.	investigation or the performance of another function of the ombudsman under this Act must not— (a). disclose the information other than as a part of— (i) the performance of the function; or (ii) formulating a report about the performance of the function; or (iii) formulating a recommendation arising out of the performance of the function; or (iv) proceedings for an offence under this Act alleged to have been committed in the performance of the function; or (v) if the information does not disclose the identity of a person, or information from which a person's identity could be deduced— A. providing information or other help to an agency for the improvement of its administrative practices and procedures; or B. undertaking research relevant to a function of the ombudsman under this Act; or (b) use the information to benefit any person. Maximum penalty—100 penalty units. (2). However, an officer of the ombudsman may disclose information obtained in the performance of a function of the ombudsman, including information obtained by way of a complaint, to an agency if— (a) the ombudsman considers the agency has a proper interest in the information for the performance of the agency's functions; and (b) the disclosure is for the purpose of protecting the health, safety or security of a person or property. **38 Contempt of ombudsman** (1). A person is in contempt of the ombudsman if, in an investigation, the person— … (g). publishes, or permits or allows to be published, information given to the ombudsman, or any contents of a document produced to the ombudsman, if the ombudsman has ordered that the information or contents must not be published. **45 Information disclosure and privilege** (1). No obligation to maintain secrecy or other restriction on the disclosure of information obtained by or given to officers of an agency, whether imposed by any Act or by a rule of law, applies to the disclosure of information relevant to a preliminary inquiry or an investigation by the ombudsman. (2). In a preliminary inquiry or an investigation, the State or an agency is not entitled to any privilege that would apply to the production of documents, or the giving of evidence, relevant to the investigation, in a legal proceeding. (3). (3) A person has, for the giving of information and the production of documents or other things relevant to a preliminary inquiry or an investigation, equivalent privileges to the			(2). If the commission decides not to make a report to which confidential information is relevant or, in a report, decides not to disclose or refer to confidential information, the commission— (a). may disclose the confidential information in a separate document to be given to— (i) the Speaker; and (ii) the Minister; and (b). must disclose the confidential information in a separate document to be given to the parliamentary committee. (3). A member of the parliamentary committee or a person appointed, engaged or assigned to help the committee must not disclose confidential information disclosed to the parliamentary committee or person under subsection (2)(b) until the commission advises the committee there is no longer a need to strictly maintain confidentiality in relation to the information. Maximum penalty—85 penalty units or 1 year's imprisonment. (4). Despite subsection (2)(b), the commission may refuse to disclose information to the parliamentary committee if— (a). a majority of the commissioners considers confidentiality should continue to be strictly maintained in relation to the information; and (b). the commission gives the committee reasons for the decision in as much detail as possible. **67 Register of confidential information** (1). The commission must maintain a register of information withheld under section 66(4) and advise the parliamentary committee immediately after the need to strictly maintain confidentiality in relation to the information ends. (2). The parliamentary committee or a person appointed, engaged or assigned to help the committee who is authorised for the purpose by the committee may, at any time, inspect in the register information the commission has advised the committee is no longer required to be strictly maintained as confidential. (3). The parliamentary commissioner may inspect information on the register at any time, regardless of whether the commission has advised the parliamentary committee the information is no longer required to be strictly maintained as confidential. (4). The parliamentary committee may not require the parliamentary commissioner to disclose to the committee information inspected by the commissioner on the register, unless the commission has advised the committee the information is no longer required to be strictly maintained as confidential. **Division 5 Confidential documents** **84 Notice may be a confidential document** (1). A notice given by the chairperson under this part may provide that it is a confidential document. (2). A person must not disclose the existence of a confidential document to anyone else, unless the person has a reasonable excuse. Maximum penalty—85 penalty units or 1 year's

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privileges the person would have as a witness in proceedings in a court.

imprisonment.

213 Secrecy

(1). This section applies to a person who is or was—
- (a). a relevant official; or
- (b). a member of the reference committee; or
- (c). a person to whom information is given either by the commission or by a person mentioned in paragraph (a) or (b) on the understanding, express or implied, that the information is confidential.

(2). A person must not make a record of, or wilfully disclose, information that has come to the person's knowledge because the person is or was a person to whom this section applies.

Maximum penalty—85 penalty units or 1 year's imprisonment.

(3). However, a person does not contravene subsection (2) if—
- (a). in the case of a record—
  - (i) the record is made for the purposes of the commission, this Act, the parliamentary committee, the parliamentary commissioner, an application or proceeding under the Criminal Organisation Act 2009 or an investigation of an alleged contravention of this section; or
  - (ii) the making of the record was lawful under a repealed Act; or
- (b). in the case of a disclosure—
  - (i) the disclosure is made—
    - A. for the purposes of the commission, this Act, the parliamentary committee, the parliamentary commissioner, an application or proceeding under the Criminal Organisation Act 2009 or an investigation of an alleged contravention of this section; or
    - B. at the direction of the parliamentary commissioner under chapter 6, part 4; or
  - (ii) the disclosure was lawful under a repealed Act; or
- (c). in the case of a record or a disclosure—the information was publicly available.

214 Unauthorised publication of commission reports

A person must not publish or give a commission report to which section 69 applies to anyone unless—
- (a) the report has been published by order of the Legislative Assembly or is taken to have been so published; or
- (b) its publication is otherwise authorised under this Act.

Maximum penalty—85 penalty units or 1 year's imprisonment.

INTOSAI Principles		Auditor-General Act 2009 https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/A/AuditGenA09.pdf	Ombudsman Act 2001 https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/O/OmbudsA01.pdf	Integrity Act 2009 (Integrity Commissioner) https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/I/IntegrityA09.pdf	Right to Information Act 2009 (Information Commissioner)https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/R/RightInfoA09.pdf	Crime and Misconduct Act 2001 https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/C/CrimeandMisA01.pdf
Principle 6 – The freedom to decide the content and timing of audit reports and to publish and disseminate them						
6.3	**Sensitive information in A-G reports**	**66 Procedure for reporting certain sensitive information** (1). If the auditor-general considers it to be against the public interest to disclose in a report under this division information that could— (a). have a serious adverse effect on the commercial interests of an entity; or (b). reveal trade secrets of an entity; or (c). prejudice the investigation of a contravention or possible contravention of the law; or (d). prejudice the fair trial of a person; or (e). cause damage to the relations between the Government of the State and another Government; the auditor-general must not disclose the information in the report but must instead include it in a report prepared and given to the parliamentary committee. (2). This section applies despite anything in this or any other Act.	**56 Report not to disclose identities in particular circumstances** (1). This section applies if— (a). the ombudsman investigates a matter involving a person; and (b). under an Act, the identity of the person must not be disclosed. (2). The ombudsman must not disclose the identity of the person, or information from which the person's identity could be deduced, in any report under section 51(4) or division 2.	Nil	Nil	See above **66 Maintaining confidentiality of information** (2). If the commission decides not to make a report to which confidential information is relevant or, in a report, decides not to disclose or refer to confidential information, the commission— (a) may disclose the confidential information in a separate document to be given to— (i) the Speaker; and (ii) the Minister; and (b). must disclose the confidential information in a separate document to be given to the parliamentary committee.
6.4	**Reason for withholding sensitive information**	Nil	Nil	Nil	Nil	See above **66 Maintaining confidentiality of information** (4). Despite subsection (2)(b), the commission may refuse to disclose information to the parliamentary committee if— (a). a majority of the commissioners considers confidentiality should continue to be strictly maintained in relation to the information; and (b). the commission gives the committee reasons for the decision in as much detail as possible. **68 Giving of reasons** Information or reasons mentioned in section 66(2) or (4) or 67(1)— (a) may be given in writing or orally; and (b) (b) are not a report or part of a report for section 69.
Principle 7 – The existence of effective follow-up mechanisms on SAI recommendations				**Principle 7**		
7.1	**Following up recommendations**	Nil	**51 Action after report making recommendations** (1). This section applies if the ombudsman gives to the principal officer of an agency a report under section 50 that makes recommendations. (2). The ombudsman may ask the agency's principal officer to notify the ombudsman within a stated time of— (a) the steps taken or proposed to be taken to give effect to the recommendations; or (b) if no steps, or only some steps, have been or are proposed to be taken to give effect to the recommendations, the reasons for not taking all the steps necessary to give effect to the recommendations. (3). If— (a) it appears to the ombudsman that no steps the ombudsman considers appropriate have been taken within a reasonable time after giving the agency's principal officer the report; and (b) within that time, the ombudsman has considered any comments made by or for the principal officer; and (c) the ombudsman considers it appropriate; the ombudsman may give the Premier a copy of	Nil	Nil	Nil

INTOSAI Principles		Auditor-General Act 2009 https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/A/AuditGenA09.pdf	Ombudsman Act 2001 https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/O/OmbudsA01.pdf	Integrity Act 2009 (Integrity Commissioner) https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/I/IntegrityA09.pdf	Right to Information Act 2009 (Information Commissioner)https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/R/RightInfoA09.pdf	Crime and Misconduct Act 2001 https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/C/CrimeandMisA01.pdf
			the report and a copy of any comments made by the agency's principal officer. (4). If the ombudsman gives the Premier a copy of a report (the original report) and a copy of any comments, the ombudsman may give the Speaker, for tabling in the Assembly, another report that deals, to the extent the ombudsman considers appropriate, with the original report and the comments.			
Principle 8 – Financial and managerial/administrative autonomy and the availability of appropriate human, material and monetary resources						
8.1	**Staffing autonomy**	**22 Deputy auditor-general employed under Public Service Act** The deputy auditor-general is to be employed under the Public Service Act 2008. **26 Staff employed under Public Service Act** The staff of the audit office are to be employed under the Public Service Act 2008. **27 Staff subject only to direction of auditor-general** (1). The staff of the audit office are not subject to direction by any person, other than the auditor-general, the deputy auditor-general or a person authorised by the auditor-general, about— (a) the way in which the auditor-general's powers in relation to audit are to be exercised; or (b) the priority to be given to audit matters. (2). Subsection (1) applies despite the Public Service Act 2008.	76 (2) Officers are appointed under this Act and not the Public Service Act 2008. (3). Subject to this Act, the conditions of service of officers of the ombudsman are those decided by the Governor in Council. 79 (1) A public service officer who is appointed to an office under this Act is entitled to retain all existing and accruing rights as if service in that office were a continuation of service as a public service officer.	Nil	**144 Staff employed under Public Service Act 2008** (1). The staff of the OIC must be employed under the Public Service Act 2008. (2). (2) However, subsection (1) does not apply to the RTI commissioner or the privacy commissioner.	**244 Appointment of assistant commissioners** (1). The assistant commissioners are to be appointed on a full-time basis by the Governor in Council. (2). The assistant commissioners are to be appointed under this Act and not under the Public Service Act 2008. **245 Senior officers** (1). The commission may employ the senior officers necessary to enable the commission to perform its functions. (2). Senior officers are to be employed under this Act and not under the Public Service Act 2008. **254 Commission staff** (1) The commission may employ the staff necessary to enable the commission to perform its functions. (2) The staff are to be employed under this Act and not under the Public Service Act 2008. (3) The staff are to be paid the remuneration and allowances decided by the Minister. (4) Staff employed at or above a level decided by the commission in consultation with the Minister must be employed under a written contract of employment with the commission. (5) Staff employed under a written contract of employment are not subject to any industrial instrument under the Industrial Relations Act 1999 or any determination or rule of an industrial tribunal. (6). The staff are subject to the direction and control of the chairperson.
8.2	**Financial autonomy**	**21 Estimates** (1). The auditor-general must prepare, for each financial year, estimates of proposed receipts and expenditure relating to the audit office. (2). The auditor-general must give the estimates to the Treasurer. (3). The Treasurer must consult with the parliamentary committee in developing the proposed budget of the audit office for each financial year.	**88 Estimates** (1). The ombudsman must prepare, for each financial year, estimates of proposed receipts and expenditure relating to the ombudsman. (2). The ombudsman must give the estimates to the Minister responsible for the administration of the Financial Accountability Act 2009. (3). The Minister mentioned in subsection (2) must consult with the parliamentary committee in developing the proposed budget of the ombudsman for each financial year.	Nil	**133 Budget and performance** (1). For each financial year, the information commissioner must develop, adopt and submit to the Minister a budget for the OIC not later than the day the Minister directs. (2). A budget has no effect until approved by the Minister. (3). During a financial year the commissioner may develop, adopt and submit to the Minister amendments to the OIC's budget. (4). An amendment has no effect until approved by the Minister. (5). The OIC must comply with its budget. (6). This section does not require the commissioner to give the Minister any details that would, if given, prejudice a current investigation or review by the commissioner.	**259 Budget and performance** (1). For each financial year, the commission must develop, adopt and submit to the Minister a budget not later than the day the Minister directs. (2). A budget has no effect until approved by the Minister. (3). During a financial year the commission may develop, adopt and submit to the Minister amendments to its budget. (4). An amendment has no effect until approved by the Minister. (5). The commission must comply with its budget.
8.3	**Drawing rights on appropriated resources**	Nil	Nil	Nil	Nil	Nil

INTOSAI Principles		Auditor-General Act 2009 https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/A/AuditGenA09.pdf	Ombudsman Act 2001 https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/O/OmbudsA01.pdf	Integrity Act 2009 (Integrity Commissioner) https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/I/IntegrityA09.pdf	Right to Information Act 2009 (Information Commissioner)https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/R/RightInfoA09.pdf	Crime and Misconduct Act 2001 https://www.legislation.qld.gov.au/LEGISLTN/CURRENT/C/CrimeandMisA01.pdf
8.4	**Office autonomy**	**6 Auditor-general and audit office** (4). The office consists of the auditor-general, the deputy auditor-general and the staff of the audit office. **7 Control of audit office** The auditor-general is to control the audit office.	**74 Control of office** The ombudsman controls the ombudsman office. **75 Officers not subject to outside direction** An officer of the ombudsman is not subject to direction by any person, other than from within the ombudsman office, about— (a) the way the ombudsman's powers for investigations are to be exercised; or (b) the priority given to investigations.	Nil	**127 Control of the office of the information commissioner** The information commissioner controls the OIC. **146 Staff subject only to direction of information commissioner** (1). The staff of the OIC are not subject to direction by any person, other than the information commissioner or a person authorised by the commissioner, about the way in which the commissioner's powers under an Act are to be exercised. (2). Subsection (1) has effect despite the Public Service Act 2008.	**221A Commission is a statutory body** The commission is a statutory body under the Financial Accountability Act 2009. **251 Role of chairperson** (1) The chairperson is the commission's chief executive officer. (2). Without limiting the chairperson's responsibilities, functions or powers, the chairperson, subject to this Act and the commission, is responsible for the administration of the commission and the proper performance of the commission's functions.
8.6	**Annual report**	Nil (general provisions of the *Financial Accountability Act and Financial and Performance Management Standard* apply).	**87 Annual report** (2). When, under the Financial Accountability Act 2009, section 63, the ombudsman gives the appropriate Minister a written report and a copy of the report to the Treasurer, the ombudsman must also give a copy of the report to the Speaker and the parliamentary committee.	**85 Annual reports of integrity commissioner** (2). The integrity commissioner must, as soon as practicable after the end of each financial year, give the Speaker and the parliamentary committee a written report about the performance of the commissioner's functions for the financial year.	**184 Reports of information commissioner** (2). The commissioner must, as soon as practicable after the end of each financial year, give the Speaker and parliamentary committee a report of the operations of the OIC during that year. (3). A report under subsection (2) must include, in relation to the financial year to which it relates, details of the matters prescribed under a regulation. (4). The parliamentary committee may require the commissioner to prepare and give the committee a report on a particular aspect of the performance of the commissioner's functions. (5). If a report of the commissioner is given to the Speaker or the parliamentary committee, the Speaker or the chairperson of the committee must cause the report to be tabled in the Assembly on the next sitting day after it is given.	**260 Performance** (1). The Minister has a responsibility to ensure that the commission operates to best practice standards. (2). To help the Minister discharge that responsibility, the commission must report to the Minister, when and in the way required by the Minister, on the efficiency, effectiveness, economy and timeliness of the commission and its systems and processes, including operational processes. (3). The report must be accompanied by any financial or other reports the Minister requires to enable the Minister to assess the efficiency, effectiveness, economy or timeliness of the commission, including, in particular, the timeliness with which the commission deals with complaints. (4). (4) The commission must comply with a Ministerial request under this section.

Appendix F – Legislation containing audit provisions (other than the *Auditor-General Act 2009*)

Table 1 - Additional audit requirements in other legislation

The following table identifies legislation where the Auditor-General is required, or may be requested, to perform additional audits. In some instances these provisions have not been utilised and would no longer appear relevant.

Legislation	Requirements	Comments
Commonwealth Aluminium Corporation Pty. Limited Agreement Act 1957	• Clause 40 of Schedule 1 specifies acquisition of certain harbour works. • The acquisition of harbour works shall be for a cash amount equivalent to 'proved cost' less deduction of an appropriate allowance. • The proved cost shall be a sum equivalent to the actual cost of the works acquired as certified by the auditors of the Company and accepted by the Auditor-General of Queensland and failing such acceptance as determined by the Tribunal.	• QAO are unsure of the status of this agreement and whether there is any ongoing impact or relevance for the Auditor-General or QAO.
Court Funds Act 1973	• Under section 15 the Auditor-General must audit the accounts kept under this Act at least once every year.	• This requirement relates to the Court Suitors Fund which is disclosed and audited as part the DJAG's financial statements.
Crime and Misconduct Act 2001	• Under section 258 the Auditor-General must audit the superannuation schemes that may be established by the commission.	• Presently CMC have not established any superannuation schemes.
Currumbin Bird Sanctuary Act 1976	• Under section 11, the National Trust is required to keep accounts and records for the Currumbin Bird Sanctuary (CBS) • At least once a year the National Trust must prepare a statement of income and expenditure and a balance sheet for the CBS • The annual report of the National Trust must contain a copy of the statements and the audit certificate provided by the Auditor-General in relation to the CBS.	• This is presently audited as part of the National Trust of Queensland audit • The National Trust is a public sector entity for the purposes of the Auditor-General Act
District Court of Queensland Act 1967	• Under section 37 the duties of the registrar include submitting the registrar's accounts to be audited by the Auditor-General or the registrar's officers.	• These accounts are audited as part of the Department of Justice and Attorney-General audit.

Legislation	Requirements	Comments
Family Services Act 1987	• Under section 13, the Chief Executive of the Department of Communities may request the Auditor-General to undertake an audit of a person to whom a grant has been paid where they suspect the conditions of the grant have not been complied with.	• An audit of this nature could be performed under s.36A of the Auditor-General Act if considered appropriate by the Auditor-General.
Land Act 1994	• Section 49 specifies that the trustee of trust land must allow the Auditor-General, person mentioned in section 47(1), or a person authorised by the chief executive of a department to audit the trust's financial accounts if asked by the Minister or required under an Act. • Person mentioned in section 47(1) includes: (a). Member of CPA Australia who is entitled to use the letters 'CPA' or 'FCPA'; or (b). Member of The Institute of Chartered Accountants in Australia who is entitled to use the letters 'CA' or 'FCA'; or (c). Member of the National Institute of Accountants who is entitled to use the letters 'MNIA', 'FNIA', 'PNA' or 'FPNA'; or (d). Person approved by the chief executive.	• This section applies to trustees of land subject to a deed of grant in trust (DOGIT) • It is unclear whether the Auditor-General has discretion in agreeing perform an audit of this nature. • QAO are unaware of any previous requests to audit accounts of trustees of trust land
Metropolitan Water Supply and Sewerage Act 1909	• This act establishes the Metropolitan Water Supply and Sewerage Board • Section 94 requires rate books to be maintained in accordance with an approved form with such modifications as approved by the Auditor-General. • Section 107 provides that the Auditor-General may make rules in relation to the keeping of accounts and duties of auditors. • Section 108 identifies that the Auditor-General to recommend to Minister appropriately qualified auditor to audit the board.	• Duties of this nature would not normally be performed by an Auditor-General. • Our research identified the following comment on the Queensland State Archives website:: *ABOLITION:* *Under section 51 of the City of Brisbane Act 1924, the Metropolitan Water Supply and Sewerage Board was to be dissolved and its responsibilities, assets and liabilities taken over by the Brisbane City Council. The Board was subsequently dissolved by proclamation on 2 April 1928.*

Legislation	Requirements	Comments
Mineral Resources Act 1989	• Under s.322 the Minister may request the Auditor-General to verify the accuracy of a royalty return.	• QAO have not received any recent requests to perform audits of this nature.
New South Wales-Queensland Border Rivers Act 1946	• Under section 31 the books, accounts and vouchers of the Dumaresq–Barwon Border Rivers Commission shall be examined and audited at least once in every year by the Auditors-General of New South Wales and Queensland or such one of them as may be agreed upon from time to time by the Premiers of NSW and QLD and a report of the result of any examination and audit shall be furnished to each of the parties hereto by the person making the same.. • A certificate by the Auditor-General making any such examination and audit as to the cost thereof shall be final and conclusive and binding upon the parties hereto and the Commission.	• The Commission was established by the New South Wales and Queensland Governments to operate and maintain jointly "owned" water infrastructure and implement agreed water sharing arrangements in the Queensland-New South Wales border region • This audit is presently conducted by QAO as a by-arrangement audit.
Petroleum and Gas (Production and Safety) Act 2004	• Under sections 615-617 the Minister may request the Auditor-General to conduct an audit of a petroleum producer in .relation to petroleum royalties	• There have been no recent Ministerial requests to conduct these audits.
Racing Act 2002	• Under section 32E Minister may request auditor-general to conduct an audit of a control body.	• This section was used in 2012 to request the Auditor-General to conduct an audit of Racing Queensland Limited. • The new Queensland All Codes Racing Industry Board is a statutory body and a public sector entity under the Auditor-General Act.
River Improvement Trust Act 1940	• Section 20A requires the Auditor-General to audit superannuation schemes created by river improvement trusts.	• To our knowledge no superannuation funds have been created for River Improvement Trusts.
Sugar Industry Act 1999	• Section 251 identifies that an entity established under this act may establish superannuation schemes which may be audited by the Auditor-General	• This act previously provided for the establishment of a range of entities including Sugar Corporation, Sugar Authority and production boards. • These provisions all appear to have now been omitted. • Accordingly section 251 may no longer be relevant.

Legislation	Requirements	Comments
Superannuation (State Public Sector) Act 1990	• Section 20A requires Board of Trustees of the State Public Sector Superannuation Scheme to have financial statements for the administration of the scheme audited by the Auditor-General.	• The Scheme does not meet the definition of a public sector entity and the audit would not otherwise be required under the Auditor-General Act.
Thiess Peabody Coal Pty. Ltd. Agreement Act 1962	• Section 38 identifies that the Governor in Council shall have the right to acquire the whole of the railway as a going concern with its equipment, rolling stock and/or plant on the expiration of 42 years from the date of this Agreement (1962) and on the expiration of any subsequent term of 21 years upon the giving of not less than 3 years' notice in writing. • The purchase price paid by the Crown to the Company shall be the value of the railway, equipment, rolling stock or plant but shall not exceed 110% the cost thereof as certified to by the Auditor-General.	• QAO are not aware of the present status of the agreement and whether this requirement remains relevant.
Townsville Breakwater Entertainment Centre Act 1991	• Under section 18 the accounts kept by the Trustee or the Manager in relation to the Townsville Breakwater Entertainment Centre must be audited by the Auditor-General, or an authorised auditor after the close of each financial year. • Section 19 identifies that if at any time it appears to the Auditor-General that an operational audit should be conducted in relation to any matter associated with the management of the Townsville Breakwater Entertainment Centre, the Auditor-General, or an authorised auditor, may conduct such an audit. • Section 11.02 of schedule 1 identifies that the Joint Venture account shall be audited by the Auditor-General or his nominee.	• This is a joint venture between Townsville City Council and the Trustee of Breakwater Island Trust. • While council has 80% interest in the JV it is not considered to be controlled by council. • Accordingly, it does not meet the definition of public sector entity in the Auditor-General and an audit by the Auditor-General would not otherwise be required.
Transport Operations (Road Use Management) Act 1995	• Under section 109, the Police Commissioner may, with approval of Minister, enter an agreement with a local government to pay costs incurred for carrying out duties under this Act. • If there is no agreement on the payment of costs, the local government shall pay annual or periodic sum as certified by Auditor-General as being fair and reasonable.	• QAO have not received any recent requests to perform an audit of this nature.

Legislation	Requirements	Comments
Trust Accounts Act 1973	• Under sections 21 and 22 the Minister may appoint an independent auditor, including the Auditor-General, to act as auditor of trustees • Sections 23-26 identify the rights and powers of the independent auditors.	• The intention of the provisions is to have an independent auditor conduct audits of trusts where an issue or concern is identified. • It is unclear whether the Auditor-General could elect not to accept such an appointment.
Workers' Compensation and Rehabilitation Act 2003	• The Auditor-General may audit superannuation schemes established by Workcover	• A separate superannuation scheme has not been established by Workcover.

Table 2 - Audit Arrangements for Public Sector Entities

The following table identifies legislation that includes audit requirements for entities already catered for under the *Auditor-General Act 2009*.

Legislation	Requirements	Comments
Aboriginal and Torres Strait Islander Communities (Justice, Land and Other Matters) Act 1984	• Section 60U requires : – The Auditor-General or person authorised by the auditor-general to undertake an annual audit of the Island Industries Board – At least once a year report to the Minister the results of the audit – Must give a copy of the above report to the chairperson • This section states that a person appointed by the auditor-general has all the powers of the auditor-general under the Auditor-General Act as if the IIB was a department.	• The Island Industries Board is considered a statutory body for the purposes of the *Financial Accountability Act 2009* • Accordingly, the Board also meets the definition of "public sector entity" for the purpose of the *Auditor-General Act* and falls within the mandate of the Auditor-General under that Act.
City of Brisbane Act 2010	• Under section 63 the provisions of the Auditor-General Act 2009 that apply to the council as a local government also apply to a corporate entity, with any necessary changes, as if- (a). a reference to a controlled entity were a reference to the corporate entity; and (b). a reference to the appropriate Minister were a reference to the council. • Under section 212(2) the audit of the superannuation scheme that is required under the Commonwealth Super Act must be carried out by the auditor-general.	• These provisions apply to beneficial enterprises of Brisbane City Council. • Assuming these beneficial enterprises are controlled entities they would automatically fall within the provisions of the AG Act. • There is no longer a separate superannuation scheme for Brisbane City Council.
Education (General Provisions) Act 2006	• Under section 133 a P&C Association is a statutory body under the Statutory Bodies Financial Arrangements Act 1982. • Under section 134 an Association must have a financial year starting on 1 January in a year and ending on 31 December in the year. • Section 135 identifies the accounts of an Association for each financial year must be audited subject to the *Auditor-General Act 2009.*	• Under the Auditor-General Regulation 2009 P&C Associations are specifically exempt from audit by the Auditor-General.

Legislation	Requirements	Comments
Grammar Schools Act 1975	• Section 19 identifies that the Auditor-General "may" undertake audits of superannuation funds established by Grammar School Boards. • Section 34(2) requires the auditor-general to audit each year the accounts and records of financial transactions of each board. • Section 34(3) requires boards to furnish to Minister each year a statement of account for each fund (identified in s.33) in such form and containing such particulars as the Minister, on the recommendation of the auditor-general, directs. • Section 34(3A) requires auditor-general to certify statement of accounts. • Section 34(4) requires auditor-general at least one a year report to board the results of the audit and make recommendations. • Section 34(4A) requires a copy of any report and recommendations to be furnished by the auditor-general to the Minister. • Section 34(5) requires the board to consider the findings of the auditor-general • Section 34(6) requires auditors to have full and free access to records • Section 34(7) requires the auditor-general to include in reports to parliament such matters as the auditor-general thinks fit.	• As Grammar Schools are statutory bodies, the majority of the requirements in section 34 are covered by the requirements of the *Financial Accountability Act 2009* and *Financial Performance and Management Standard 2009* and the *Auditor-General Act 2009.*. • The requirement in section 34(3) for boards to furnish a statement of account for each fund containing such particulars "on the recommendation of the auditor-general" would seem out-dated. QAO are unaware of any recommendations being made by the Auditor-General. • Section 34(4) is arguably inconsistent with the Auditor-General Act which identifies that the AG may report on an audit conducted. • There are no separate superannuation funds to our knowledge.
Hospital and Health Boards Act 2011	• Section 53U of the Act provides that the Auditor-General must, for each financial year audit the financial statements under this subdivision for the State pool account established under section 53B; and (b) prepare an auditor's report about the financial statements. • Section 53V of the Act provides that the auditor-general may conduct a performance audit, under the Auditor-General Act 2009, section 37A, of all or any of the particular activities of the administrator	• As the Health and Hospital Boards are considered public sector entities under the *Auditor-General Act*, these audit requirements are addressed under that Act.

Legislation	Requirements	Comments
Legal Profession Act 2007	• Section 365 requires the Auditor-General to undertake an annual audit of the Legal Practitioners' Fidelity Guarantee Fund in addition to the audit of the Queensland Law Society	• The Fund is presently considered to be controlled by the Law Society, a statutory body. • Accordingly, the Fund meets the definition of public sector entity under the Auditor-General Act and is required to be audited under that Act.
Local Government Act 2009	• Under section 58A the provisions of the Auditor-General Act 2009 that apply to the council as a local government also apply to a corporate entity, with any necessary changes, as if- (a). a reference to a controlled entity were a reference to the corporate entity; and (b). a reference to the appropriate Minister were a reference to the council.	• Section 58A applies to beneficial enterprises of local governments. • Assuming these beneficial enterprises are controlled entities they would automatically fall within the provisions of the AG Act.
Public Trustee Act 1978	• Under section 24 the *Auditor-General Act 2009* shall apply to the public trustee and the Public Trust Office.	• The Public Trust Office is considered to be a department for the purpose of the Financial Accountability Act • As such it is also a "public sector entity" for the purpose of the Auditor-General Act.
State Development and Public Works Organisation Act 1971	• Under section 123 at least once every calendar year the accounts of each project board must be audited by the auditor-general.	• Project boards have not been created under this legislation. • The legislation provides for the project boards to be considered statutory bodies for the SBFA Act. • It is not clear whether they are also statutory bodies under the Financial Accountability Act. • If they meet the definition of a statutory body under the Financial Accountability Act they would need to be audited under the A-G Act.

Table 3 - National Laws

The following table identifies Queensland legislation passed in relation to national laws where either the Auditor-General or Auditor-General Act 2009 is mentioned.

Legislation	Requirements	Comments
Education and Care Services National Law (Queensland) Act 2011	• Under section 6(3) the *Auditor-General Act 2009* does not apply to the Education and Care Services National Law (Queensland) or to instruments made under the Law.	• This act contains no other audit requirements.
Health Practitioner Regulation National Law Act 2009	• Under section 8 the financial statement of National Agency, and each National Board, is to be audited by a public sector auditor and a report is to be provided by the auditor.	• The Act excludes operation of the Auditor-General Act • The national agency to be audited by an Auditor-General of a participating jurisdiction
Heavy Vehicle National Law Act 2012 (	• This Act provides for the application of the *Auditor-General Act 2009* to the extent provided for in the national regulations under the Heavy Vehicle National Law. • The Act identifies that the Ministers are to decide the auditor for the National Heavy Vehicle Regulator. • The auditor may be either a public or private sector auditor.	• The Auditor-General of Queensland presently audits the Regulator on a by-arrangement basis at the request of the Minister.
Occupational Licensing National Law (Queensland) Act 2010	• Under section 5 the *Auditor-General Act 2009* does not apply to the Occupational Licensing National Law (Queensland) or to instruments made under the Law.	• This act excludes operation of Auditor-General Act to the extent it relates to functions being exercised under the law by a state entity. • This Act contains no other audit requirements.

Appendix G

Queensland Audit Office

Your ref:
Our ref: 10481
Mr Paul Christensen 3149 6038

7 August 2012

Ms K McGuckin
Research Director
Transport, Housing and Local Government Committee
Parliament House
George Street
BRISBANE QLD 4000

Dear Ms McGuckin

Heavy Vehicle National Law Bill 2012

The following comments are provided for consideration by the Committee in their inquiry on the *Heavy Vehicle National Law Bill 2012* (the Bill). In particular, I wish to provide comment on the operation of sections 632 and 633 of the Bill which relate to the financial management and audit of the National Heavy Vehicle Regulator (the Regulator).

These sections of the Bill require the Regulator to:

- take necessary action to ensure the preparation of accurate financial statements
- take necessary action to facilitate the audit of the financial statements
- arrange for any further audit of the books and records kept by the Regulator as directed by the responsible Ministers
- give the responsible Ministers an annual report including the audited financial statements.

The Bill is silent in relation to who is to conduct these audits other than:

- the auditor is to be a 'qualified person' (s.632(g))
- the auditor is to be decided by the responsible Ministers (s.633((2)(a)(i)
- the national regulations may provide for the auditing of the financial statements.

Under the present Bill, Ministerial discretion is provided for the appointment of the auditor, which could include either a public sector or private sector auditor. Initial discussions at an officer level with the Department of Transport and Main Roads have indicated that as Queensland is the host jurisdiction, the responsible Ministers could request that I conduct the audit.

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It is noted, however, that in other national laws enacted in both Queensland and other Australian jurisdictions, the legislation requires the appointment of a 'public sector auditor' which is defined as:

(a) *the Auditor-General (however described) of a participating jurisdiction; or*
(b) *an auditor employed, appointed or otherwise engaged by an Auditor-General of a participating jurisdiction.*

Examples of audit requirements in other national laws are included as Attachment 1 to this submission.

Should the responsible Ministers, in exercising their discretion, request that I conduct the audit, there is no current basis on which I could agree to this request. In particular s.5(1) specifically excludes the operation of the *Auditor-General Act 2009* which provides me with the necessary powers for conducting audits. Clear and well defined audit requirements are an essential element of an appropriate accountability framework for the Regulator.

In their consideration of the Bill, the Committee may wish to consider whether the lack of clarity and consistency in the audit provisions may weaken the overall accountability and transparency of the Regulator. It is also noted that there exists a number of inconsistencies in the legislation excluded from operation under national laws recently enacted in Queensland. A comparison of the excluded legislation is included as Attachment 2 to this submission.

In providing these comments it is acknowledged that this Bill forms part of a national framework with similar legislation to be enacted in other jurisdictions. It is also acknowledged that similar legislation has been enacted in relation to other national partnership agreements. The lack of clarity and consistency around the required audit arrangements for these national partnership agreements, however, has been identified by the Australasian Council of Auditors-General as an area requiring further consultation and consideration.

If you would like further information in relation to this submission please contact Paul Christensen, Director—Audit Policy and Quality on 3149 6038, in the first instance.

Yours sincerely

Andrew Greaves
Auditor-General

Attachment 1 – Audit Requirements in National Laws

Health Practitioner Regulation National Law Act 2009

As the host jurisdiction for this legislation the Queensland Act sets out in a schedule the provisions to be adopted by the other jurisdictions. Under s. 212(4) of schedule the financial statements of the National Health Practitioner Boards established by the legislation are to be audited by a 'public sector auditor' being:

(a) *the Auditor-General (however described) of a participating jurisdiction; or*
(b) *an auditor employed, appointed or otherwise engaged by an Auditor-General of a participating jurisdiction.*

Education and Care Services National Law (Queensland) Act 2011

Section 4 of this Act applies the law as set out in the schedule of the *Education and Care Services National Law Act 2010* enacted in Victoria as the host jurisdiction. Under s .279(4) of the schedule the financial statements of the Australian Children's Education and Care Quality Authority must be audited by a 'public sector auditor' being:

(a) *the Auditor-General (however described) of a participating jurisdiction or the Commonwealth; or*
(b) *an auditor employed, appointed or otherwise engaged by an Auditor-General of a participating jurisdiction or the Commonwealth.*

Occupational Licensing National Law (Queensland) Act 2010

Section 4 of this Act applies the law as set out in the schedule of the *Occupational Licensing National Law Act 2010* enacted in Victoria as the host jurisdiction. Under s.147 of the schedule the financial statements of the National Occupational Licensing Authority are to be audited by an auditor decided by the Ministerial Council. This section also identifies that the national regulations may provide for the auditing of the financial statements.

Rail Safety National Law (South Australia) Act 2012

This Act was enacted by South Australia as the host jurisdiction with provisions to be adopted by other jurisdictions identified in a schedule. Section 43 of the schedule requires the financial statement of the Office of the National Rail Safety Regulator to be audited, and reported on, by a public sector auditor. This Act defines a public sector auditor as:

(a) *the Auditor-General (however described) of a participating jurisdiction or the Commonwealth; or*
(b) *an auditor employed, appointed or otherwise engaged by an Auditor-General of a participating jurisdiction or the Commonwealth.*

There is no Queensland legislation adopting these requirements at this point in time.

Attachment 2 – Exclusion of Legislation

The following provides a comparison of legislation excluded from national laws enacted, or proposed to be enacted, in Queensland:

Excluded Legislation	***s.5 Heavy Vehicle National Law Bill 2012***	***s.6 Education and Care Services National Law (Queensland) Act 2011***	***s.7 Health Practitioner Regulation National Law Act 2009***	***s.5 Occupational Licensing National Law (Queensland) Act 2010***
Acts Interpretation Act 1954	Yes	Yes	Yes	Yes
Auditor-General Act 2009	Yes	Yes	Yes	Yes
Financial Accountability Act 2009	Yes	Yes	Yes	Yes
Information Privacy Act 2009	Yes	Yes	Yes	Yes
Public Records Act 2002	Yes	Yes	No	Yes
Public Sector Ethics Act 1994	Yes	No	No	Yes
Public Service Act 2008	Yes	Yes	Yes	Yes
Right to Information Act 2009	Yes	Yes	Yes	Yes
Statutory Bodies Financial Arrangements Act 1982	Yes	No	Yes	Yes
Statutory Instruments Act 1992	Yes	Yes	Yes	Yes
Ombudsman Act 2001	No	Yes	Yes	Yes

In relation to the Ombudsman Act 2001 it is noted that this was originally included in s.5 of the Heavy Vehicle National Law Bill 2011, but was subsequently removed in the 2012 Bill now being considered by the Committee.