



Steve Davies MP
Chair
Finance and Administration Committee
Parliament House
George Street
Brisbane Qld 4000



26 October 2013

Dear Mr Davies

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Inquiry into Auditor-General Independence

The Australasian Council of Auditors-General (ACAG) is pleased to accept your invitation to contribute to the Finance and Administration Committee's *Inquiry into the legislative arrangements assuring the Queensland Auditor-General's independence*. This submission represents the views of the Australian and New Zealand members of our Council except for the Auditor-General of South Australia who reserves his right to respond separately where he deems it appropriate, rather than as a member of ACAG.

It is one of ACAG's objectives to represent externally, where appropriate, the collective opinion of the Auditors-General on matters to do with legislative audit, auditing standards and related matters. In recent years, ACAG has contributed to several Parliamentary inquiries into public sector audit legislation, offering the views of its members on opportunities to strengthen independence, accountability and operational effectiveness of Auditors-General. These submissions are available on our website at <http://www.acag.org.au/submissions.htm>.

One of the key contributions to such inquiries has been ACAG's *Statement of Principle on the Role of the Auditor-General*. This was developed in line with a prior Statement by the Australasian Council of Public Accounts Committee (ACPAC). The Statement provides detailed guidance on what the Council considers are the key elements of a legislative framework required to assure independence and accountability for a legislative audit function. Both the ACAG and ACPAC Statements are attached and form part of this submission to your Inquiry.

To further facilitate our capacity to make such submissions, ACAG has recently supported the development of independent research on how Australian audit legislation meets international principles and benchmarks relating to independence of legislative audit. Originally commissioned by the Victorian Auditor-General's Office in 2009 and undertaken by Dr Gordon Robertson, this research was recently updated to take account of recent amendments to Commonwealth, Tasmanian and Queensland legislation. While this is the case, there are some significant amendments to be implemented in ACT legislation in early 2014 which will likely increase the ACT ratings.

It is important to note that the conclusions reached in Dr Robertson's report are the product of independent research and do not necessarily represent the views of the audit offices mentioned. However, ACAG is happy to provide Dr Robertson's research (Attachment 3) for your Committee's consideration, as it directly addresses three of your Terms of Reference:

- *the legislative arrangements for the independence and accountability of the Auditor-General and the Queensland Audit Office*

- *how the Queensland arrangements compare to the arrangements in New Zealand and other Australian jurisdictions*
- *how the Queensland arrangements compare with international best practice.*

To assist your Committee, a short summary of this research as related to Queensland legislation follows.

Method and relationship to international best practice

Dr Robertson's research rates key aspects of the audit mandate in each Australian jurisdiction on a quantitative scale to determine how vulnerable each function is to executive influence. His method is based on the independence principles and checklists issued by the international association of legislative auditors (INTOSAI) (ISSAI 10 and ISSAI 11).

These INTOSAI principles and checklists are the result of almost eight years of research and workshops with INTOSAI's 191 members. ISSAI 10 articulates the core requirements that must be in place for an effective external audit function for the public sector, and has been instrumental in assisting many developing nations to establish or strengthen their legislative audit offices. ISSAI 11 outlines in more detail how to implement the eight core principles and provide concrete examples of good practices and structures that INTOSAI would expect to be in place, if the independence principles were fully implemented. ISSAI 10 and ISSAI 11 are available at <http://www.intosai.org/issai-executive-summaries/2-prerequisites-for-the-functioning-of-supreme-audit-institutions.html>.

Analysis of Queensland legislation

Dr Robertson's analysis shows that Queensland achieves a relatively high score with a total score of 320, compared with the highest score of 338. Recent amendments to the legislative framework in Queensland have significantly improved its relative position, moving the overall independence score from eighth to fourth position behind NZ, WA and Tasmania. There remain, however, a number of areas where the legislation could be strengthened to better assure independence.

Below is a summary of the key areas where Dr Robertson rated Queensland low against international best practice or where other Australian jurisdictions rated higher. Detail on which jurisdictions rated the highest for each factor is included in the full paper (Attachment 3)

Discretion (refer to Figure 9 (page 25) and *Discretion* (pages 28 & 29) – To be fully independent, 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 (as per s94B of the *Constitution Act (Vic)*). Whilst it is appropriate that Parliament and other parties have the opportunity to raise matters of public concern, an Auditor-General should retain discretion in how to respond to that request. Queensland scores lower than most other Australian jurisdictions in this regard, as the Parliament can direct the Auditor-General to perform an audit. Similarly, an Auditor-General should have discretion to initiate audits within mandate. However, the Queensland Auditor-General may only conduct a performance audit of a government-owned-corporation if requested by the Parliament, parliamentary committee, the Treasurer or an appropriate Minister.

Statutory Review and Independent External Audit (refer to Figure 5 (page 12); *Statutory Review* (page 15); *Auditor of the Auditor-General* (page 46)) – These key oversight and accountability mechanisms rated quite low against INTOSAI principles. In Queensland, the Executive (via the Governor in Council) sets terms of reference and appoints the Strategic Reviewer and the external financial auditor without Parliamentary consultation. The reports of these two external oversight activities are made to the Executive, with the Strategic Review report then tabled in Parliament by a Minister. This level of Executive control over a significant oversight function for an Auditor-General is unusual in Australia. Greater independence exists in other jurisdictions through Parliamentary Committees undertaking the appointment and tabling the report, and requirements to consult with the Auditor-General on terms of reference. For example,

the Australian National Audit Office (ANAO) is subject to audit by an independent auditor who audits the ANAO's financial statements and conducts performance audits of its operations that are tabled in the Federal Parliament.

Financial Independence (see figure 18 and refer to *Financial Independence* (page 44)) – INTOSAI principles also outline that independence can be easily undermined if the legislative auditor does not have access to sufficient resources. Queensland scored low in this area, as did several other Australian jurisdictions. Good practice internationally places the approval of the budget for the office of the Auditor with Parliament, whereas Queensland leaves it in the hands of the Executive, with requirement to consult with the Parliamentary Committee. In New Zealand as in the UK, this is reversed as Parliament decides on the level of funding for the Auditor-General, following advice from the Executive. The Auditor-General submits his or her annual budget through the Speaker to Parliament directly. The Speaker is the "Vote Minister" responsible for the Auditor General's appropriation, ensuring that the Executive is not in a position to constrain the use of the appropriation. This model provides strong protection to the financial independence of the Auditor General. Queensland legislation also does not protect the Auditor General's drawing rights on his or her appropriation, whereas Victorian legislation, for example, empowers their Auditor General to incur any expenditure obligations necessary for the performance of the function of the office, subject to the annual appropriation. The ANAO's appropriation is guaranteed by virtue of section 50 of the (Commonwealth) Auditor-General Act 1997.

Office Autonomy and Staffing (refer to Figure 17 & 18 (page 42 and 43); *Office Autonomy and Staffing Independence* (page 45)) – Independence requires not just legislative powers and rights but also sufficient autonomy over the management of the audit practice. Queensland scored low when rated against INTOSAI independence principles, as did several other Australian jurisdictions. Staffing autonomy scored very low, as Queensland audit office staff are employed under the *Public Service Act* and the audit office is subject to general rules that can be issued by the Executive under that Act. Only NSW and NT scored higher in this respect, with staff employed outside the public service. While this is the case, it needs to be acknowledged that audit offices through implementing recruitment processes do themselves have considerable autonomy in determining their staffing arrangements.

Confidentiality (refer to *Confidentiality* (page 33)) – It is important to protect the working papers that are involved in the development of the position 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. Recent amendments to section 5 of Queensland's *Commissions of Inquiry Act 1950* compromise the Auditor General's ability to protect the confidentiality of audit information as the Inquiry chairperson can summon the Auditor-General to attend and to produce specified documents or other items.

Sensitive information (refer to Figure 15 (page 38) and *Sensitive Information* (page 39)) – In Queensland, sensitive information may be withheld if the Auditor General decides that it is in the public interest to do so, however, it must be included in a report to the Parliamentary Committee, overriding the Auditor-General's discretion. Furthermore, Queensland's legislation is silent on whether the Parliamentary Committee can then release the information. Other Australian jurisdictions scoring higher include ACT, NSW, New Zealand, South Australia and Victoria.

Appointment and Determining Remuneration (refer to *Appointment by Whom, External Supervision, Ineligibility* (page 19) and *Remuneration Determination* (page 14)) – In Queensland, these functions are currently governed by the Executive, with the requirement to consult the Parliamentary Committee. Independence would be strengthened by greater involvement of Parliament and/or oversight by an independent external body in determining remuneration and the process for appointing the Auditor-General. Some jurisdictions protect the status of their Auditor-General by explicitly mandating salary levels relative to other public positions or the Auditor-

General's remuneration is determined by an independent body such as the Commonwealth's Remuneration Tribunal.

If the Committee would like further information, I suggest you contact ACAG Executive Director, John Rosier [REDACTED]

I wish you well in your Inquiry.

Yours sincerely



Dr Maxine Cooper
ACAG Convenor (and ACT Auditor General)

Attached:

1. ACAG *Statement of Principle on the Role of the Auditor-General* available at <http://www.acag.org.au/sop.htm>
2. Australasian Council of Public Accounts Committees *Statement on Minimum requirements for the independence of the Auditor-General* (ACPAC conference, Sydney, February 1997)
3. *Independence of Auditors General: A 2013 update of a survey of Australian and New Zealand legislation* Dr Gordon Robertson, PhD, PSM June 2013 available at <http://www.acag.org.au/research.htm> .



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Role of the Auditor-General

INTRODUCTION

The role of the Auditor-General is an important one. Parliament relies on the Auditor-General to provide independent assurance that governmental activities are carried out, and accounted for, consistent with Parliament's intentions.

The role of the Auditor-General in any jurisdiction is based on some common principles which have not always been clearly stated or understood. Those people who can make decisions that might affect the role of the Auditor-General especially need to understand these principles.

This booklet sets out the fundamental principles that underpin the role of every Auditor-General. The booklet should be useful to Members of Parliament, Ministers, policy advisors, and researchers.

THE CONSTITUTIONAL BASIS FOR THE ROLE

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

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

Parliament may scrutinise governmental performance by directly examining Ministers or officials, or by asking that certain information be presented to it. This scrutiny by Parliament is concerned with ensuring governmental activities are carried out in a manner consistent with Parliament's intentions, and are effective, efficient and economical.

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

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

INDEPENDENCE AND COMPETENCE

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

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

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

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

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

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

- the process for appointment, suspension or removal from office;
- the term of office;

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

While the particular arrangements may differ between jurisdictions, they must all ultimately be designed to provide an appropriate level of independence and competence for the office of Auditor-General.

FUNCTIONS, DUTIES AND POWERS

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

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

The functions of the Auditor-General are the range of matters that Parliament wants to fall within the purview of the Auditor-General. Although they may be expressed differently, the functions of the Auditor-General have been categorised by INTOSAI as incorporating:

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

The Performance Audit including the consideration of economy, efficiency and effectiveness.

The duties of the Auditor-General are the activities that Parliament considers the Auditor-General must perform. These duties may vary according to the extent to which Parliament feels it needs to regulate how the office's functions are discharged. A common duty of Auditors-General is to conduct an audit every year of the statements of account (which may include both financial and performance information) of each public sector entity, and to issue an audit report on those statements. Another common duty is to make at least one report to Parliament each year on any matters arising from the Auditor-General's powers, duties and functions.

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

PORTFOLIO

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

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

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

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

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

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

- Parliament can be sure that the audit role will be discharged in a manner which is independent of the Executive Government;
- Parliament derives significant benefits from having a specialist professional agency devoted to

serving the Parliament's interests; and
- Parliament would find it administratively impractical to appoint and oversee separate auditors for every public sector entity.

ACCOUNTABILITY

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

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

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

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

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

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

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

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

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

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

1. Personal Independence

- 1.1 The Auditor-General should be an Officer of the Parliament.
- 1.2 Parliament should select and recommend the Auditor-General for appointment by the Governor/Governor-General/Administrator.
- 1.3 Parliament should be responsible for the Auditor-General's termination of appointment.
- 1.4 The Auditor-General should be responsible administratively to the Prime Minister, Premier or Chief Minister.
- 1.5 The Auditor-General should not be subject to direction by the Executive.
- 1.6 Tenure should be for a non-renewable fixed term of between 7 and 10 years.
- 1.7 The Auditor-General's remuneration should be determined by a remuneration tribunal.

2. Operational Independence

- 2.1 The Auditor-General should have the sole power to carry out, or designate an auditor to carry out, the external audit on all agencies which are owned, controlled or substantially responsible to government.
- 2.2 The audit mandate should be extensive and include financial statements and controls; compliance with legislation; the efficiency and effectiveness of the use of public monies, as approved by the Parliament in each jurisdiction; performance indicators (the relevance of the indicators and/or the accuracy of performance indicator information).
- 2.3 The Auditor-General should not be subject to any direction on how to carry out these audits; the Auditor-General will be free to determine the audit programme, including the bodies to be audited, the nature and scope of audits, who will carry out the audits and the priorities for audit.

- 2.4 The Auditor-General should have access to all information necessary to carry out audits. This access should be subject to strict confidentiality requirements to ensure that all information is used only for the purposes set out in the Auditor-General's legislation.
- 2.5 The Audit Office should be either a statutory authority or established by separate legislation. The Auditor-General should be responsible for the resourcing decisions within the office.
- 2.6 In cases where the Audit Office does not raise revenue (through say audit fees), the resourcing of the Audit Office should be by means of a parliamentary allocation determined following consultation between the Executive and the Parliament (or its representative).

3. Parliamentary Oversight

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

- 3.1 The Auditor-General should report annually to Parliament. The Audit Office's financial statements should be subject to independent external audit and included in the annual report. The external auditor should be appointed by the Parliament.
- 3.2 All Auditor-General reports should be tabled or deemed to be tabled in Parliament. Legislation should set out the minimum reporting requirements and time limits for reporting.
- 3.3 The performance of the Audit Office should be subject to periodic external review at an interval of between 3 and 5 years. The external reviewer should be nominated by the Parliament or Parliamentary Committee.

4. Transitional Arrangements

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