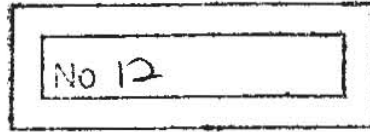




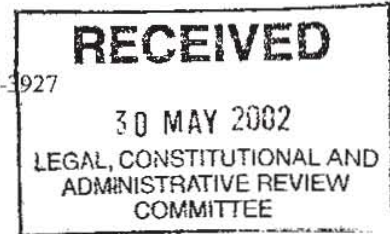
Office of the  
*Auditor-General of Queensland*



Your ref:

Our ref:

00-3927



28 May 2002

Ms K. Struthers  
Chair  
Legal, Constitutional and Administrative Review Committee  
Parliament House  
George Street  
BRISBANE QLD 4000


Dear Ms Struthers

Thank you for your letter of 18 April 2002 enclosing a copy of your committee's issues paper entitled *The Queensland Constitution: Specific Content Issues*. I have considered the provisions within the paper affecting statutory office holders in the context of my role as Auditor-General.

As an overall comment, I support initiatives which will strengthen the independence and ability of statutory office holders to act without fear or favour. Accordingly, I am supportive of most of the initiatives proposed by the Queensland Constitutional Review Commission. In relation to the recommendation for greater parliamentary committee involvement in the annual budget process for the QAO, particularly in terms of the proposed wording of cl. 97(c) of the draft *Parliament of Queensland Bill 2000*, I draw the Committee's attention to the Electoral and Administrative Review Committee's recommendation as outlined in my submission.

I would be pleased to assist the committee with any further queries in relation to this submission. Please do not hesitate to contact me on (07) 3405 1103, or alternatively your staff may wish to contact Mr John Findlay, Director – Audit Policy and Reporting, on (07) 3405 1115.

Yours sincerely

  
L J SCANLAN  
Auditor-General of Queensland



## Submission to the Legal, Constitutional and Administrative Review Committee "Issues of Constitutional Reform"

### Background

1. The ability of statutory office holders to act without fear or favour, is contingent upon the mechanisms which establish and protect their independence. The position of Auditor-General is a critical element of the accountability cycle, and like other statutory office holders, in fulfilling the responsibilities of the position, there is potential for conflict with the executive.
2. Issues relating to the position of Auditor-General in Queensland have been considered by a number of bodies, including the Electoral and Administrative Review Commission (EARC) *Review of Public Sector Auditing In Queensland*, the 1997 Strategic Review of the QAO, and the Public Accounts Committee's Report No. 44 - *Review of the Report of the Strategic Review of the Queensland Audit Office*, and of course by the Queensland Constitutional Review Commission (QCRC).
3. This inquiry provides the opportunity for a timely review of matters raised by these bodies. Accordingly, this submission addresses the following points in the issues paper –
  - Inclusion of statutory office holders in the Queensland Constitution (paragraphs 33-35);
  - Appointment, removal and tenure of statutory office holders (paragraphs 36-39); and
  - Resourcing (paragraphs 43-43).
4. While I only wish to make brief comments in relation to the first two points, I will discuss resourcing of the QAO in more detail towards the conclusion of the paper.

### Special Constitutional Provision

5. As stated in my submission of 24 September 1999 to the QCRC, I would like to reaffirm my support for the inclusion of certain statutory office holders such as the Auditor-General in the Queensland Constitution. I consider that enshrining the role of the Auditor-General in the constitution will reinforce beyond doubt the independence of this position. Consequently, I have no objection to the suggested legislation put forward by the QCRC in cl. 58 of the draft amendments to the *Constitution of Queensland 2000*.

### Appointment, Removal and Tenure of Statutory Office Holders

6. With reference to the appointment, removal and tenure of statutory office holders, the current legislative provisions relating to the Queensland Auditor-General are generally in line with those contained in a number of other Australian jurisdictions. However, I hold no objections to the amendment of appointment and removal processes in the event that they will appropriately augment the ability of the Auditor-General to discharge the mandate established by Parliament. Accordingly I have no objection to proposed cl. 59 of the draft amendments to the *Constitution of Queensland 2000*. While the QCRC has not put forward suggested amendments in terms of appointment or tenure processes, I look forward to an opportunity to comment on any proposals arising as a result of this inquiry.

### Resourcing

7. Initially, the issue of resourcing was considered in detail by EARC in 1991. EARC envisaged a separate appropriation bill for QAO to be laid before Parliament, as well as a wider role for the Public Accounts

## Submission to the Legal, Constitutional and Administrative Review Committee "Issues of Constitutional Reform"

Committee (PAC) in the budget process for the office. In relation to the PAC's role, EARC proposed that the annual estimates of QAO should be forwarded to the PAC, which would then be required to consider the estimates and take account of any views conveyed by the Treasurer. The PAC would then forward the estimates with its recommendations to the Treasurer for formal inclusion in a separate appropriation bill. The Government of the day did not accept this recommendation, citing that it would be a complex and inefficient process. Instead, amendments were made to the *Financial Administration and Audit Act 1977*, and the resulting s. 68 requires estimates to be forwarded to the Treasurer who is then required to consult with the Public Accounts Committee (PAC) in the development of the proposed QAO budget for each financial year. There is no provision for a separate appropriation bill.

8. The issue of resourcing was again considered by both the 1997 Strategic Review of the QAO and the subsequent PAC review (Report No. 44). In the context of the recommendation arising from that review, I made a detailed submission wherein I noted that the current arrangements required under s. 68 were appropriate and should continue in preference to the model suggested in the Strategic Review. Similarly, the PAC concluded that further involvement of the committee would be counterproductive.
9. However, the QCRC has recommended increased responsibilities for certain parliamentary committees with respect to the resourcing of statutory office holders. In relation to the Auditor-General, amendments to the area of responsibility of the PAC have been suggested as follows (cl. 97(c) of the draft Parliament of Queensland Bill) –

*97. The Public Accounts Committee's area of responsibility is to assess the integrity, economy efficiency and effectiveness of government financial management by –*

...

*(c) monitoring the capacity of the auditor-general to inquire into the integrity, economy, efficiency and effectiveness of government financial management.*

10. In these circumstances I would like to suggest that consideration be given to mechanisms for improving the transparency and proper working of s. 68 as an alternative to the amendments proposed by the QCRC. For example, Queensland Treasury could be required to include a statement in its annual report summarising consultation undertaken in relation to the adequacy of the Auditor-General's budget. Alternatively, the PAC may choose to report on consultation undertaken in their annual report. In any event, I reserve my ability to report to Parliament or the PAC as necessary should funding be insufficient to allow me to fulfil my responsibilities.
11. One final matter is that although being intended as a tool to broaden the role of the PAC with regard to monitoring the resources of the Auditor-General, draft cl. 97(c) implies a wider mandate than the Auditor-General is empowered to undertake. While I am a strong proponent for extending the powers of the Auditor-General to include performance audits which address matters of economy, efficiency and effectiveness, this is currently not part of my mandate – the Queensland Auditor-General is not authorised to inquire into the efficiency and effectiveness of government financial management (a performance audit mandate) but rather may report on whether entity management has systems in place to allow it to undertake this function (a performance management systems audit mandate). Consequently I reiterate my comments that the committee may wish to consider strengthening the workings of the existing s. 68 of the *Financial Administration and Audit Act*, in preference to the suggested amendments contained in draft cl. 97(c).
12. Alternatively, the model proposed by EARC in 1991 which includes provision for a separate appropriation bill, in my opinion, would provide a greater degree of transparency to the QAO budget process as well as reinforcing the real and perceived independence of the Office from Executive



## **Submission to the Legal, Constitutional and Administrative Review Committee “Issues of Constitutional Reform”**

Government. Implementation of the EARC model would disaggregate the QAO budget from the current arrangements where it is dealt with as part of the Department of Premier and Cabinet for the purposes of Ministerial Portfolio Statements and other budget related papers.

### **Concluding Comments**

13. It is my belief that the independence of statutory office holders is essential and I support mechanisms which seek to strengthen such independence. Accordingly I welcome the committee's review of the QCRC's recommendations and await the committee's determinations with interest.