

## Introduction

### Background

- 1.1 A fully functioning and successful parliamentary democracy owes much to the accountability mechanisms that are in place to provide transparency for scrutiny of its operations. The Auditor-General, as an independent officer of the Parliament, plays a key role in the accountability framework by supporting the Parliament in its scrutiny of executive government. The *Auditor-General Act 1997* sets out the powers and functions of the Auditor-General. It is a critical piece of legislation and, therefore, requires periodic review to ensure that it is achieving its objectives.
- 1.2 On 29 November 2000 the Joint Committee of Public Accounts and Audit (the Committee) resolved to conduct an inquiry into the adequacy of the *Auditor-General Act 1997* (the Act).
- 1.3 The Act came into effect on 1 January 1998 and replaced the *Audit Act 1901*. The current legislative review is the culmination of a series of reviews by the Committee which first began in 1988. In 1994 the then Joint Committee of Public Accounts, in Report 331, reviewed the Financial Management and Accountability Bill 1994, the Commonwealth Authorities and Companies Bill 1994 and the Auditor-General Bill 1994. Report 331 also examined a proposal to establish an Audit Committee of the Parliament.<sup>1</sup>

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<sup>1</sup> Joint Committee of Public Accounts, Report 331, *An Advisory Report on the Financial Management and Accountability Bill 1994, the Commonwealth Authorities and Companies Bill 1994 and the Auditor-General Bill 1994, and on a Proposal to Establish an Audit Committee of the Parliament*, Canberra, September 1994.

- 1.4 In 1996 the Committee, in Report 346, proposed a series of measures that could be incorporated into the Auditor-General Bill to support the functional independence of the Auditor-General.<sup>2</sup> A key element of achieving functional independence was the creation of an audit committee of the Parliament.

## **The Auditor-General Act 1997**

- 1.5 The Auditor-General Act, together with two companion Acts, came into effect on 1 January 1998 and replaced the *Audit Act 1901*. The other pieces of legislation include the *Financial Management and Accountability Act 1997* and the *Commonwealth Authorities and Companies Act 1997*. This accountability framework is principles based and widely acknowledged as representing best practice. The ANAO commented that the implementation of 'this new financial legislative framework on 1 January 1998 represented a significant milestone in public sector administration.'<sup>3</sup>
- 1.6 At the same time that these Acts came into effect, the then Joint Committee of Public Accounts (JCPA) became the audit committee of the Parliament through legislative amendments to the then *Public Accounts Committee Act 1951*. Through these changes, the Committee examines the budget estimates of the Australian National Audit Office (ANAO) and makes recommendations to Parliament on the proper resourcing of the office. In addition, the Committee determines the audit priorities of the Parliament and advises the Auditor-General of those priorities. Another important function conducted by the Committee is the approval or rejection of recommendations for appointment of the Auditor-General and Independent Auditor.
- 1.7 This role of the Joint Committee of Public Accounts and Audit provides for a stronger and practical relationship between the Auditor-General and the Parliament.

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2 Joint Committee of Public Accounts, Report 346, *Guarding the Independence of the Auditor-General*, Canberra, October 1996.

3 Australian National Audit Office, *Submission No.6*, p. 2.

1.8 The main features of the Auditor-General Act include:

- the number of specific provisions which strengthen the independence of the office of the Auditor-General and the ANAO. In particular, the Act makes the Auditor-General an independent officer of the Parliament;
- the strengthening of the Auditor-General's role as external auditor of Commonwealth agencies, authorities and companies and their subsidiaries. The Act provides the Auditor-General with a comprehensive mandate to conduct, with some limited exceptions, financial statement and performance audits of all government entities; and
- clarification of the Auditor-General's mandate and powers.<sup>4</sup>

1.9 The functional independence of the Office of the Auditor-General, created through the Act, is a critical feature of the ability of the office to conduct its scrutiny and accountability role. The then Minister for Finance, the Hon John Fahey, MP, in his second reading speech introducing the Bill, stated:

The Auditor-General Bill 1996 is designed to achieve a number of related purposes: foremost, the re-establishment of the Office of the Auditor-General of the Commonwealth of Australia, but in a way that both symbolically and practically strengthens the functional independence of the office beyond that available under current laws. The bill declares the Auditor-General to be an 'independent officer of the parliament', as an expression of the primary and unique relationship which the office has with the parliament. In keeping with the government's publicly stated commitment to confer genuine functional independence on the Auditor-General, a range of statutory safeguards are included in the bill to prevent inappropriate influence being exerted on the Auditor-General by either the executive or the parliament.<sup>5</sup>

1.10 The work of the then JCPA is largely responsible for the establishment of the Auditor-General as an independent officer of the Parliament, and the inclusion of other significant features in the Act. For example, in 1989 the JCPA called for the *Audit Act 1901* to be repealed and be replaced with a Financial Administration Act and an Audit Act.<sup>6</sup> In addition, the JCPA

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4 Australian National Audit Office, *Submission No.6*, p. 2.

5 The Hon John Fahey, MP, Minister for Finance, Second Reading Speech, Auditor-General Bill 1996, House of Representatives, *Hansard*, 12 December 1996, p. 8341.

6 Joint Committee of Public Accounts and Audit, Report 296, *The Auditor-General: Ally of the People and Parliament*, Canberra, March 1989, p xvii.

recommended that the Auditor-General should be referred to as an officer of the Parliament in order to emphasise the Auditor-General's relationship with Parliament.

- 1.11 Also in 1989 the JCPA recommended that an Audit Committee be established to advise the Auditor-General on Parliament's audit priorities.<sup>7</sup> The valuable work of the JCPA was acknowledged by the Minister in his second reading speech. The Minister stated:

Many of the provisions in this bill reflect the significant and valuable work of the Joint Committee of Public Accounts in pressing for a strengthening of the role of the Auditor-General.

The JCPA following its comprehensive 1988 inquiry into the operations of the Auditor-General, produced report 296 entitled *The Auditor-General Ally of the People and Parliament*. The committee recommended profound changes to the Auditor-General's operations, including that the Audit Act be replaced by more modern legislation.<sup>8</sup>

## Reasons for the inquiry

- 1.12 In view of the Committee's significant legislative responsibilities to guard the independence of the Auditor-General, the Committee believes that it must be satisfied that the Act is achieving its stated intentions. The Act has been operating for just over three years which is sufficient time to review its effectiveness and, where necessary, suggest amendments.
- 1.13 In March 2000, for example, the Committee reported on its review of the *Financial Management and Accountability Act 1997* and the *Commonwealth Authorities Act 1997*. These Acts also came into effect on 1 January 1998 and this length of operation was sufficient time for the Committee to provide an adequate assessment through its inquiry.<sup>9</sup>
- 1.14 During the previous three years, the Committee has had the opportunity to observe and to explore its responsibilities in relation to the operation of the Act. This experience places the Committee in a very good position to review its operation. For example, the Committee's role in scrutinising the
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7 *ibid.*, pp. xvii-xviii.

8 The Hon John Fahey, MP, Minister for Finance, Second Reading Speech, Auditor-General Bill 1996, House of Representatives, *Hansard*, 12 December 1996, p. 8341.

9 Joint Committee of Public Accounts and Audit, Report 374, *Review of the Financial Management and Accountability Act 1997 and the Commonwealth Authorities and Companies Act 1997*, Canberra, March 2000.

reports of the Auditor General gives it an effective knowledge of how the Act provides the framework for the Auditor-General's performance audit function. In particular, the Committee has examined whether the information gathering powers of the office of the Auditor-General are sufficient for it to conduct its scrutiny role.

## **Objectives, scope and focus**

- 1.15 The Committee's main objective is to provide an assurance function and test whether the functions of the Act are being properly fulfilled. This examination has identified a number of sections of the Act that could be enhanced through legislative amendment. These sections, which are reflected in the chapter outline, are discussed briefly in the sections that follow.

### **Section 19 – Comments on proposed reports**

- 1.16 Section 19 of the Act provides the framework for the circulation of proposed reports on an audit of an agency conducted under section 15 of the Act. Section 15 relates to the conduct of performance audits on agencies.
- 1.17 Section 19, therefore, is an essential part of the operation of the Act relating to the conduct of performance audits. It is the process through which agencies have the opportunity to examine draft audit reports and make comments, if necessary, within 28 days.
- 1.18 Section 19(1) states that the Auditor-General 'must give a copy of the proposed report to the Chief Executive of the Agency.' Section 19(3) states that, in addition, the Auditor-General 'may give a copy of the proposed report to any person who, in the Auditor-General's opinion, has a special interest in the report.'
- 1.19 Some groups, in evidence to the inquiry, suggested section 19(3) should be amended to ensure that the Auditor-General must give a copy of a draft report to parties that have been subject to sections 32 or 33. Section 32 and 33 set out the powers of the Auditor-General to obtain information and access premises.
- 1.20 The Auditor-General proposed that section 19 be amended to provide for the circulation of extracts of reports rather than just the circulation of the full report. These issues are examined in Chapter 2.

## Sections 32 and 33 – Information gathering powers

- 1.21 Sections 32 and 33 of the Act provide the key information gathering powers of the Auditor-General, including the power to obtain information and access Commonwealth premises.
- 1.22 With the trend towards more outsourcing of government services, the role of contractors is becoming more critical. In reports 368 and 379, the Committee recommended that the Auditor-General have the power to access the premises of Commonwealth government contractors.<sup>10</sup> This is in order to preserve the integrity of documenting audit trails and ensure accountability standards are maintained in a devolved environment.
- 1.23 In response to the Committee's recommendations, the Government indicated that it will include advice in the Commonwealth Procurement Guidelines that agencies should give consideration to including standard clauses in their contracts that provide the Auditor-General with the power to access contractors' premises. As part of this inquiry, the Committee reviews the appropriateness of this approach, and suggests ways to ensure that agencies give serious attention to including access clauses in their contracts.

## Section 37 – Sensitive information not to be included in public reports

- 1.24 Section 37 sets out a framework for ensuring that sensitive information is not included in a public report. The framework provides for the Attorney-General to issue a certificate restricting the publication of information. The explanatory memorandum (EM) to the Act indicated that when the Attorney-General issues a certificate regarding the disclosure of certain information then the Auditor-General must not include that information in a report. The Auditor-General, however, suggests that there is ambiguity in the Act regarding this matter, and that amendment is necessary to reflect the intentions set out in the EM. The Committee reviews this matter.

## Other issues

- 1.25 The final part of the report brings together a range of issues focusing on parts of the Act, and on aspects of the operation and procedures of the

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<sup>10</sup> Joint Committee of Public Accounts and Audit, *Report 368, Review of Audit Report No. 34, 1997-98, New Submarine Project, Department of Defence*, June 1999; *Report 379, Contract Management in the Australian Public Service*, October 2000.

Australian National Audit Office (ANAO). For example, the circulation of audit reports to Ministers with a special interest in the report, and the Auditor-General's powers in regard to the actions of Ministers are examined.

## Conduct of the inquiry

- 1.26 The terms of reference for the inquiry were publicised in February 2001. In addition, a range of government agencies and private sector organisations were sent the terms of reference and invited to provide submissions. The terms of reference and other information about the inquiry were also advertised on the Committee's internet homepage at:
- <http://www.aph.gov.au/house/committee/jpaa/index.htm>
- 1.27 Eleven submissions were received which are listed at Appendix A. The Committee also received 3 exhibits which are listed at Appendix B.
- 1.28 Evidence was taken at a public hearing in Melbourne on 15 May 2001. A list of witnesses appearing at the hearing can be found at Appendix C.
- 1.29 Copies of the transcript of evidence from the public hearing and the submissions can be obtained through the Committee's website, and for inspection at the National Library of Australia.

## Report structure

- 1.30 The report structure reflects the key inquiry objectives. Chapter 2 examines the operation of section 19 of the Act which relates to the circulation of Auditor-General draft reports.
- 1.31 Chapter 3 reviews the information gathering powers of the Auditor-General. In particular, the Committee examines the use of contract model clauses by which agencies provide access for the Auditor-General to the premises of government contractors.
- 1.32 Chapter 4 examines section 37 of the Act which provides the framework for ensuring that sensitive information is not included in public reports.
- 1.33 The final chapter addresses a range of issues that were raised focusing on parts of the legislation and ANAO practise.