

**Submission to the
Joint Committee of Public Accounts and Audit
Review of the Auditor-General Act 1997**

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Introduction

I appreciate the opportunity to make a submission to the JCPAA's ten-year Review of the Auditor-General Act 1997. My comments relate primarily to the general provisions of the Auditor-General Act 1997, and specifically to the first and fourth terms of reference:

the governance framework as it relates to the Auditor-General and the Australian National Audit Office (ANAO), including the independence of the Auditor-General as an Officer of the Parliament and the audit independence of the ANAO, and resourcing arrangements.

the Auditor-General's capacity to initiate audits into, and examine the performance of all entities in the Australian Government sector.

My perspectives on this subject draw on research into public institutions of governmental systems, most recently comparative studies of public governance in anglophone countries, including Australia. I have made extensive use of Auditor-General reports from Australia, Canada, New Zealand and the United Kingdom, and have often drawn on parliamentary committee reports from counterparts to the Joint Committee of Public Accounts and Audit (JCPAA).¹ While these anglophone countries operate within Westminster principles there are variations among them, and this extends to how they handle the audit office. Secondly, the changing character of the public governance environment is highly important for the operations of accountability and oversight agencies, including the audit office.

The overall conclusion is that the Australian Auditor-General (AG) and the Australian National Audit Office (ANAO), have highly credible reputations and have performed very well despite severe constraints. Their place within the system of government needs to be strengthened through legislative change. There are multiple reasons for this. In some respects, best practice for AGs and their offices has moved on and Australia at the national level can be regarded as something of a laggard in several respects. Importantly, the environment in which the AG operates has changed substantially as demands on the ANAO have become greater. These challenges need to be recognised in the specification of the positions of the AG and the ANAO.

Two conceptions of governance are relevant, each with associated values. One emphasises good governance and the values of stewardship, transparency and integrity, and is most favourable towards accountability and checks and balances. The strong government perspective focuses on the political executive and government direction with the control of the

¹ J. Craft and J. Halligan, *Policy Advice and the Westminster Tradition: Policy Advisory Systems in Australia, Britain, Canada and New Zealand*, Cambridge University Press, 2020; J. Halligan, *Reforming Public Management and Governance: Impact and Lessons from Anglophone Countries*, Edward Elgar, 2020.

institutions of government being highly valued. It may reflect an expansion in the role and influence of political actors within the Executive branch.² In practice there is likely to be a mixture of the two conceptions. When the prevailing environment swings decisively to a strong government position, institutions of accountability and integrity can be less a priority.

The submission concludes that there are cogent reasons for the AG and the ANAO to be firmly located within the parliamentary branch of government.

1. Roles of the Auditor-General and the ANAO

The formal functions under legislation need not be restated here where the focus is on consideration of five roles that reflect these functions.

The first primary role is to contribute to good governance by holding government and public agencies to account. The AG is a crucial part of the checks and balances of modern government, and this becomes more important when the public service's role, another integral component, has been redefined. New Zealand's Auditor-General is described as a 'public watchdog' who 'acts as a check and balance on the public sector.' Similarly, the NAO is represented as 'UK's independent public spending watchdog'.³

A second primary role, and a corollary, is to support and reinforce the role of Parliament in holding government to account. This means making the position of the Auditor-General and the ANAO unequivocal. The nexus between the ANAO and the JCPAA is also fundamental to the system, and a comprehensive role for Parliament and the JCPAA is required.

A third role is performance: in addition to performance audits, which are central to the ANAO's work, there are performance statements focused on non-financial performance, which complement the financial statements. The AG audits financial statements which are mandated, but not the performance statements (although a pilot program has been underway). The performance statements are essential for determining whether departments and agencies are achieving their specified purposes, and that the aspirations of the PGPA Act are being realised. Studies have indicated that Australian (and overseas) politicians' focus on performance information is uneven.⁴ There is accordingly a need for the provision of independent analysis to the JCPAA and Parliament.

Recommendation 1: The review of performance statements should become a mandatory responsibility of the Auditor-General who can provide systematic advice about individual agencies and analyse the functioning of the public sector within the PGPA framework.

² J. Halligan, *Reforming Public Management and Governance: Impact and Lessons from Anglophone Countries*, Edward Elgar, 2020.

³ About the Controller and Auditor-General, Office of the Auditor-General, Wellington, 2019, 3, 5. National Audit Office, *NAO's Strategy 2020-21 to 2024-25*, NAO 2020.

⁴ For example, G. Smith, J. Halligan and M. Monir 'Does performance measurement improve public sector performance? A case of Australian government agencies', *Australian Journal of Public Administration*, online. The sample of parliamentary committees from three Australian jurisdictions did not include the JCPAA.

A fourth purpose is the provision of insights about the operations of the public sector. The mid-term reflections of the AG are valuable,⁵ and suggest the need for more regular observations and ANAO analysis of areas of public interest beyond specific audits and comments in annual reports (compare the cross-government studies undertaken by the UK's National Audit Office and the NZ's Office of the Auditor-General's focus on outcomes).

A fifth purpose operates at the symbolic level as expressed through institutional values, which may have a constitutional basis. Standard public values include the impartiality of the public service, integrity and trust, merit-based employment and institutional value to society. Symbols of good governance, while always significant, assume particular importance when public trust in the government and the APS fluctuates. The AG and the ANAO can be regarded as highly significant standard-bearers of independent scrutiny and the analysis of public organisations. They exist to provide advice to the public as well as Parliament about the functioning of the public sector, and to be public face of accountability.

Compared to other Australian systems,⁶ and to comparable (i.e., anglophone) countries internationally, there is substantial potential for enhancing the Commonwealth system. There are broader conceptions of and thinking about the roles evident elsewhere (see Annex below). The NZ case is worthy of consideration because of the language used. The New Zealand Controller and Auditor-General is regarded as 'an important part of the constitutional framework The role exists because the ultimate authority for all public sector activity stems from Parliament'.⁷

Recommendation 2: The JCPAA Review of the Auditor-General Act 1997 should revisit the roles of the Auditor-General to ensure that there is a consistent and holistic conception that reflects and reinforces the centrality of the independent watchdog on public spending and on improved outcomes.

Recommendation 3: The JCPAA consider whether it is time to reimagine how the roles of the AG are projected publicly.

2. Independence

The AG position has several of the prerequisites for an independent office, including the ten-year term appointment and the position of an Officer of Parliament. There are also several aspects of independence that are questionable.

First is the question of the status of Officer of Parliament. The Auditor-General's designation as an Officer of Parliament does not in itself secure full independence. This is the judgement of comparable systems internationally (and within Australia). Without the attendant features that reinforce independence the status is limited.

⁵ Australian National Audit Office, *Auditor-General's mid-term report*, Commonwealth of Australia, Canberra, 2020.

⁶ Australasian Council of Auditors General, *Independence of Auditors General: A 2020 update of a survey of Australian and New Zealand legislation*, 2020.

⁷ Controller and Auditor-General, *Annual report 2019/20*, Office of the Auditor-General, Wellington, 2020, 8.

Secondly, the AG's office, the ANAO is part of the Executive branch of government. The Prime Minister's department has responsibility for the administration of the Auditor-General's appointment (3.9A of the Audit Act 1997). The separation of the branches of government needs to be reflected in the employment of ANAO staff, including the Auditor General. There is a fundamental contradiction in having an 'entity' – the AG/ANAO as a portfolio entity of the department of the Prime Minister and Cabinet – a department devoted to supporting the prime minister. This does not reflect best practice in comparable international systems (New Zealand and the United Kingdom) and the largest Australian sub-national jurisdiction (New South Wales).

Overall, the independence of the audit office should be explicit in conception, funding and staffing, which are best secured by making them fully the responsibility of the legislative branch.

Recommendation 4: The JCPAA recommends that ANAO staff be transferred from being employed under the Public Service Act to the Parliamentary Service Act.

Recommendation 5: The JCPAA recommends that funding requests should be made to Parliament through the Officers of Parliament Committee (rather than through the Executive branch).

Recommendation 6: The JCPAA recommends that the AG be appointed by Parliament and on the recommendation of Parliament.

3. Resourcing

If the ANAO is simply another agency within the executive branch with staff employed as public servants there is a temptation for the political executive to treat them accordingly as another portfolio agency. For a central agency like the Department of the Prime Minister and Cabinet (PM&C) the political agendas are paramount in supporting the prime minister. Neither the department's strategic priorities nor the key performance measures encompass values and result areas that apply to the ANAO. Under PM&C's 'Purpose 5: Governing Well', we are reminded of what is integral to PM&C: 'Provide expert advice to the Prime Minister and the Cabinet, Portfolio Ministers, PM&C and other APS agencies on governance matters relating to the operation of the Executive branch of Government.'⁸

Official documents recognise that accountability (and transparency) are fundamental features of the ANAO. The demand for its services has increased by the addition of extra entities, yet fewer performance audits can be undertaken because of the resource squeeze,⁹ which amounts to a significant reduction in ANAO's capacity to hold the Executive branch to account. To cut resources and place constraints on the AG's activities can be interpreted as a symptom of a governmental system that undervalues accountability by seeking to minimise open scrutiny.

Recommendation 7: The JCPAA undertakes an evaluation of the costs to accountability in Australian government from the constraints on the capability of the ANAO.

⁸ Department of the Prime Minister and Cabinet, *Annual Report 2019-20*, Commonwealth of Australia, 2020, Key Activity 5.3.

⁹ Australian National Audit Office, *Auditor-General's mid-term report*, Commonwealth of Australia, 2020.

Efficiency is a laudable objective but problematic when it overrides other values. What seems to have been overlooked is that the Auditor-General is focused on efficiency and recommendations on the subject are the product of a surgical analysis of an agency's activities. Budget cuts have the net effect of reducing the level of activity designed to improve efficiency.

An efficiency dividend has been used by Commonwealth governments since the late 1980s. It has been subject to sustained debate over time as to its merits and limitations, most recently by the Independent Panel of the APS Review.¹⁰ There are precedents for government agencies to be exempted and there is a strong case for oversight agencies to receive an exemption where they are subject to careful parliamentary scrutiny. The potential for the ANAO to trim its budget is much more constrained than other agencies because of the nature of its work and staff composition.

Recommendation 8: The JCPAA recommends that the ANAO should be exempt from the efficiency dividend.

There is a simple logic operating here. If the AG is an Officer of the Parliament, it follows that Parliament should control the resourcing of the function through the ANAO. There is a fundamental flaw in having an oversight agency with responsibility for holding the executive branch to account being directly under its funding control. Compare New Zealand and the United Kingdom where the executive does not play a central role in funding decisions. In New Zealand, funding requests go to Parliament via the Officers of Parliament Committee.

Greater independence does not mean that the ANAO should be immune from resource constraints in times of fiscal stress. However, other agencies and departments continue to receive increased funding, and there is a long-term reduction in financial support for the office. There is also evidence of the need for scrutiny in the form of accountability issues (as well as assurance about the performance of most entities).

Recommendation 9: The JCPAA recommends that the Executive should play no direct role in the funding decisions about the ANAO which should become the sole responsibility of Parliament.

Finally, it would be extremely useful for the Senate committee to produce a cost-benefit analysis of sustained cuts over time and the loss of audits, and the impact on public accountability.

4. Governance framework

A central component of JCPAA's Review is the governance framework for the Auditor-General and the ANAO, including their independence and resourcing. There is sufficient evidence to support the argument that continuation of the current arrangements is untenable in the environment of the 21st century. Three models or variations are presented below. All entail strengthening the AG as an agency of Parliament.

1) Officer of parliament

¹⁰ Independent Panel of the APS Review, *Our Public Service Our Future: Independent Review of the Australian Public Service*, Department of the Prime Minister and Cabinet, Commonwealth of Australia, 2019.

The AG is an Officer of Parliament, but this designation has a nominal quality to it when the AG's office, the ANAO, is an 'entity' of the most political department of state. Other countries also have designated the AG as an Officer of Parliament, but this counts for much more where it is reflected institutionally by being embedded in Parliament. Compare the NZ case where the Officers of Parliament Committee in NZ recommends appointments and approves and recommends budgets. The membership is based on MPs (currently reflecting five political parties) and including the Speaker as chair of the committee.

2) UK's Comptroller and Auditor General and National Audit Office (NAO) approach

The National Audit Office is responsible for scrutiny of central government expenditure for Parliament and assisting with holding government to account. The NAO also supports scrutiny of public spending and service delivery by the Committee of Public Accounts and parliament more generally, including other select committees. By convention, the chair of the UK Public Accounts Committee is a member of the main opposition party (which is also the case in Canada). The head of the NAO, the Comptroller and Auditor General (C&AG), is an Officer of the House of Commons.¹¹

NAO's governance arrangements seek to balance 'the need for appropriate controls and oversight against the preservation of the Comptroller & Auditor General's (C&AG) independence'.¹² The NAO is independent of both the government and the civil service. NAO's governance and relationship with Parliament is more complex than elsewhere with three components, two of which are committees of the House of Commons. The third is a statutory board as the NAO is a corporate entity. The NAO Board 'supports and advises the C&AG in meeting his statutory responsibilities and oversees how we manage and use resources'. The majority of the board are non-executive members appointed by the Public Service Commission. The chair, also a non-executive member, is appointed by the Queen following parliamentary confirmation. The Public Accounts Commission is the parent department for the NAO with the main role of approving its strategy and budget and presenting the latter to the House of Commons.¹³ The chair of the Commission described the job as one of 'holding the NAO to account for' its role in 'monitoring the value for money of our public services'.¹⁴ The Commission is composed of MPs with a government majority and chair.

3) Department of Parliament

Another model is the parliamentary department. The Australian Parliamentary Budget Officer (PBO) 'works for Parliament and is independent of the government and the Australian Public Service'. It is accountable to Parliament in three ways. For management purposes, the Parliamentary Budget Officer reports to the Presiding Officers of the two chambers of

¹¹ National Audit Office, Governance and Supreme Audit Institutions: Reflections from the UK National Audit Office, NAO 2016; <https://www.nao.org.uk/about-us/our-work/governance-of-the-nao/>

¹² <https://www.nao.org.uk/about-us/our-work/governance-of-the-nao/>

¹³ The Commission also considers auditor reports, appoints non-executive members of the NAO's board, and reports to parliament.

¹⁴ <https://committees.parliament.uk/committee/207/public-accounts-commission/news/115584/mr-richard-bacon-elected-chair-of-the-public-accounts-commission/>

Parliament. The Joint Committee of Public Accounts and Audit has oversight of the operations and work plan, including consideration of its draft budget estimates. Thirdly, the Senate Finance and Public Administration Committee scrutinises the PBO in estimates hearings thrice yearly.¹⁵

Recommendation 10: The JCPAA recommends that the ANAO should be an agency or department of the Parliament.

5. Conclusion

In conclusion, there are four main reasons for amending the Auditor-General Act to make the audit function explicitly and fully a responsibility of Parliament. The provisions of the Act do not sufficiently support a fully independent Auditor-General.

1. The legislation has not kept up with the evolution of the audit office in the Westminster world when Australia should be seen as a leader. When benchmarked against comparable audit offices the ANAO does not rank well in terms of its independent standing.
2. The legislation has been outpaced by the governance environment since the last review as political pressures have become more salient.
3. Questions have been regularly raised about aspects of accountability, in particular the attrition of capacity, which have implications for the legitimacy of the public governance.
4. Legislative change is about removing ambiguities, contradictions and vulnerabilities and demonstrating beyond doubt that the core institution for checks and balance in the Australian accountability and integrity system is not being subverted. Accordingly, the AG's mandate needs to be strengthened.

The Prime Minister has signalled that reinforcing integrity is one of the six guideposts for 'honouring the Westminster foundation of the APS and ensuring ... the upmost integrity'.¹⁶ If performance scrutiny is not highly valued, then the quality of public governance is undermined. Devaluing the capacity for accountability ultimately contributes to the degradation of the democratic system. The weaknesses can be rectified by amendments to the relevant legislation and strengthening the status of the ANAO as a parliamentary agency.

Annex: Roles in New Zealand and the United Kingdom

New Zealand

The NZ system has a broad conception of the role. The CAG website has a banner: 'Improving trust, promoting value. We give Parliament and New Zealanders an independent view about public sector performance and accountability'. There is a focus on integrity and outcomes: 'As a key pillar of the national integrity system, we aim to increase trust and confidence in the public sector and in government. Our purpose is *improving trust, promoting value* in the public sector'. 'The ultimate **outcome**... is that Parliament and New Zealanders have trust and confidence in the public sector. For this to be achieved, the public sector has to be high

¹⁵ https://www.aph.gov.au/About_Parliament/Parliamentary_Departments/Parliamentary_Budget_Office

¹⁶ Australian Government, *Delivering for Australians: A world-class Australian Public Service: The Government's APS reform agenda*, Commonwealth of Australia, 2019., Foreword, 4.

performing and accountable.’ The short-term priorities include improving outcomes for New Zealanders (e.g., ‘public sector’s effectiveness in improving outcomes for Māori’) and public accountability (including ‘influencing public sector reforms to strengthen accountability to Parliament and the public’).¹⁷

United Kingdom

‘Our purpose

The National Audit Office (NAO) is the UK’s independent public spending watchdog.

We support Parliament in holding government to account and we help improve public services through our high-quality audits.

Our strategy

In order to fulfil our purpose, we have three strategic priorities:

- Improving our support for effective accountability and scrutiny
- Increasing our impact on outcomes and value for money
- Providing more accessible independent insight’¹⁸

Australia

The Australian webpage statement is overly formal.

‘About Us

The Australian National Audit Office (ANAO) is a specialist public sector practice providing a full range of audit and assurance services to the Parliament and Commonwealth public sector entities and statutory bodies.’

‘Purpose of the ANAO

The ANAO’s purpose is to support accountability and transparency in the Australian Government sector through independent reporting to the Parliament, and thereby contribute to improved public sector performance.’¹⁹

On priorities, there is a formal statement in the current Corporate Plan about reflecting Parliament/JCPAA’s priorities and a statement of functions under the 1997 Act.²⁰

¹⁷ <https://oag.parliament.nz>; Controller and Auditor-General, *Annual report 2019/20*, Office of the Auditor-General, Wellington, 2020, 8; <https://oag.parliament.nz/about-us/corporate/priorities>.

¹⁸ <https://www.nao.org.uk/about-us/>

¹⁹ <https://www.anao.gov.au/about>; <https://www.anao.gov.au/about/australian-national-audit-office>

²⁰ <https://www.anao.gov.au/work/corporate/anao-corporate-plan-2020-21>