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**Joint Committee of Public Accounts and Audit
Answer to Questions on Notice**

Department/Agency: Australian National Audit Office

Inquiry: Inquiry into the *Auditor-General Act 1997*

Date of inquiry: 3 September 2021

Committee Member: Ms Lucy Wicks, Chair

Type of question: Hansard

Date set by the committee for the return of answer: 17 September 2021

Question 1

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Chair: No, that's okay. Are there any other jurisdictions in Australia that have that mechanism, where the audit office sits as a department of the parliament, or is this something unique to other nations?

Mr Hehir: Not to my knowledge. No, I'm sorry, I can't answer that. I could take it on notice. It might be in the update review document that we circulated that the Australasian Council of Auditors General put together. Certainly, the New Zealand one sits in their parliament.

Chair: New Zealand is one. Yes, we saw that in their submission.

Ms Mellor: The NAO in the UK as well.

Chair: And in the UK, okay. I don't know if every state and territory jurisdiction treats their audit office in a similar way to what happens at a Commonwealth level, where it sits directly under Prime Minister and Cabinet. Would it be possible to provide an outline of whether each office therefore sits under the Premier or Chief Minister, or if it sits in different places?

Mr Hehir: I think they sit in different places, as we have. My recollection is that, when I was in the Victorian government, it sat under Treasury or the finance minister's portfolio. But that's just a recollection. But we can pull that together.

Response

A summary of the administrative arrangements for Australian and New Zealand audit offices is provided in the table below.

Audit Office	Administrative Arrangements	Source
Executive government for reporting purposes		
Commonwealth (ANAO)	Department of the Prime Minister and Cabinet	Administrative Arrangements Order - 18/03/2021 (legislation.gov.au)
Victoria	Department of Treasury and Finance	General Order dated 16 April 2021 Victorian Government (www.vic.gov.au)
South Australia	Department of Treasury and Finance	ActsCommittedToMinisters.pdf (legislation.sa.gov.au)
Tasmania	Department of Treasury and Finance	Administrative Arrangements - Tasmanian Legislation Online
Western Australia	Department of Treasury	Table13.pdf (legislation.wa.gov.au)

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Northern Territory	Department of the Chief Minister and Cabinet	Legislation Database (nt.gov.au)
Queensland	Department of the Premier and Cabinet	Administrative Arrangements Order (No. 1) 2021 (www.qld.gov.au)
Other		
Australian Capital Territory ¹	Legislative Assembly	Auditor-General Act 1996 (ACT)
New South Wales ²	Statutory body	Government Sector Audit Act 1983 (NSW)
New Zealand ³	Corporation	Public Audit Act 2001 (NZ)

¹ In the Australian Capital Territory, the Auditor General is an Officer of the Legislative Assembly responsible to the Legislative Assembly rather than a Minister.

² New South Wales remains the only Australian jurisdiction to have removed its Audit Office from the public service. The Audit Office is also defined as a “separate GSF agency” under the *Government Sector Finance Act 2018*.

³ The New Zealand office is established as a corporation to which New Zealand’s *State Sector Act* does not apply.

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Question 2 (Page 5 of Hansard)

Chair: Of course. I will finish this set and then hand to the deputy chair and come back, if that's okay. You may well have answered this, but, in their submission, they outlined that, in Victoria, for example, the legislation requires that the number and frequency with which performance audits of authorities may be undertaken—which I guess is different to the KPI approach that we discussed earlier where you said that, and then I guess asked for the budget to meet that—and even the specifications for each individual performance audit are to be developed in consultation with the parliamentary committee and the relevant authority before such an audit can proceed. Do you have any view on this model?

Mr Hehir: I think the model constrains the independence of the Audit Office and the Auditor-General. Can I just add something, Chair? My knowledge of the legal basis of it and how it's implemented isn't really strong, but, from what I understand and how you described it to me then, that's my view of it.

Chair: I might read this excerpt out and then invite any further comments on notice. The involvement of the Victorian parliamentary committee, which would be similar to ours, also extends to monitoring:
... reports from the Victorian Inspectorate about the Auditor-General, the Victorian Auditor-General's office and members of that office.

I'm happy for you to take that on notice.

Response

The independence of the Auditor-General for the Commonwealth is legislated in section 8 of the *Auditor-General Act 1997*, importantly providing for complete discretion in the performance or exercise of his or her functions or powers, in particular whether or not a particular audit is to be conducted or the way in which a particular audit is to be conducted or the priority to be given to any particular matter. Section 10 of the *Auditor-General Act 1997* provides that in exercising the functions or powers, the Auditor-General must have regard to the audit priorities of the Parliament determined by the Joint Committee of Public Accounts and Audit (JCPAA) and any reports of the JCPAA made under the Committee's legislation.

The position in Victoria is different, and falls short of the legislative approach in the Commonwealth in protecting and enhancing the independence of the Auditor-General, due to the additional procedural processes it imposes on the Auditor-General in carrying out their functions.

The legislative framework in Victoria provides for the involvement of the Victorian Public Accounts and Estimates Committee (Parliamentary Committee) in aspects of the operations of the Auditor-General and the Victorian Auditor-General's Office (VAGO).

The *Audit Act 1994* (Vic) imposes statutory obligations on the Auditor-General to consult with the Parliamentary Committee and any relevant public authority in the development of specifications for each individual performance audit before that audit can proceed. The Parliamentary Committee also considers and provides comments on the Auditor-General's proposed work program each year in accordance with the requirements in the *Audit Act 1994*.

The ANAO's understanding is that in practice, the draft work plan provided to the Parliamentary Committee includes audit scope/objectives and entities (specifications) for proposed audits to facilitate consultation in both regards. The *Audit Act 1994* imposes timeframes on both entities and the Parliamentary Committee with respect to the consultation process.

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Section 10 of the *Auditor-General Act 1997* requires that the Auditor-General must have regard to the audit priorities of the Parliament determined by the JCPAA. Long held practice has been that the ANAO provides the JCPAA with a draft list of potential audit topics and the proposed audit scope before the beginning of the financial year. The JCPAA then develops a response to the ANAO on the audit priorities of the Parliament. The outcome of the inclusion or not of topics identified by the JCPAA as Parliamentary priorities is acquitted in correspondence by the Auditor-General to the JCPAA each July. In its practical effect, the Commonwealth's legislative framework has the same outcome as the Victorian framework with respect to the draft work program, without the additional restriction on independence resulting from the additional procedural processes mandated in the Victorian legislation. From where we are today, any such legislative requirement to consult would be a diminution in the independence of the Auditor-General for the Commonwealth.

Additionally, the Parliamentary Committee is tasked with the responsibility to monitor and examine reports from the Victorian Inspectorate about the Victorian Auditor-General's Office. Established in 2013 as part of integrity reforms in Victoria, the Victorian Inspectorate oversees other integrity, accountability and investigatory bodies and their officers, including the Independent Broad-based Anti-corruption Commission (IBAC), the Victorian Ombudsman, the Office of the Victorian Information Commissioner and the Chief Examiner and Examiners, as well as Victoria Police. The Inspector as an officer of the Parliament reports directly to the Victorian Parliament on certain aspects of the operations of these bodies.

In the case of the Victorian Auditor-General's Office, the Inspectorate:

- receives and assesses complaints about the conduct of VAGO officers
- investigates conduct
- monitors the exercise of coercive powers
- monitors compliance with procedural fairness
- monitors compliance with certain sections of the Audit Act, for example mandatory notification required within the Victorian integrity framework.

The Parliamentary Committee examines reports made to it by the Inspectorate about any of these matters.

In the absence of a similarly framed integrity regime in the Commonwealth it is difficult to draw comparisons. For example, in the Commonwealth conduct issues with respect to ANAO staff are largely dealt with through the Australian Public Service framework. In addition, there is not a constraint on the use of coercive powers by the Auditor-General by legislation requiring reporting. Nonetheless it is the practice of the ANAO to include in its audit reports made to Parliament, whether certain information gathering powers have been used. Similarly, there is no positive obligation on the ANAO to report matters to an integrity agency, recognising that the Auditor-General can decide to report matters to the Commissioner of the Australian Federal Police as provided for in the *Auditor-General Act 1997*.

Procedural fairness for auditing in the Commonwealth has been dealt with by provisions in the *Auditor-General Act 1997* requiring the Auditor-General to include entity comments in response to a performance audit, within the audit report. These provisions were considered by the JCPAA in its Report 386 and the Committee's recommendations were subsequently enacted to require the inclusion of entity comments. Procedural fairness is also built into the auditing process adopted by the ANAO and occurs throughout an audit and assurance engagement. For example, the engagement is directly with an accountable authority and their nominated delegates, who receive report preparation papers (ie. issues papers) for comment before receiving the proposed final report. Active

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engagement occurs throughout the engagement, and sometimes continues even after the provision of an entity's formal response to the proposed final report.

Where an entity disagrees with the ANAO's view or where an entity considers the ANAO has not used its powers appropriately or not demonstrated procedural fairness, this can be included in the entity's response to the proposed final report. The response must be included in the report which is tabled, and as such Parliament (including through its Committees) can inquire into the matter.