

Jurisdictional issues – ‘following the dollar’

Introduction

- 5.1 Under the final term of reference for this inquiry, the Auditor-General’s authority to ‘follow the money trail’ was examined.
- 5.2 Currently, the *Auditor-General Act 1997* does not provide the Auditor-General with the capacity to directly examine the financial and performance outcomes from Commonwealth investments in the private sector and Commonwealth grants made to State and Local governments. The lack of such capacity imposes limits on the Auditor-General in ensuring that agencies/entities are accountable in relation to the Commonwealth funding they receive.
- 5.3 The Committee received evidence indicating broad support for the enhancement of the Auditor-General’s powers to enable greater scrutiny in this area. However, the extent of those powers and the most effective form of implementation is problematic, potentially raising constitutional issues.
- 5.4 A number of suggestions were put to the Committee that would increase the Auditor-General’s access and enable a cooperative approach between the Commonwealth and States/Territories to audit these funds. These suggestions are considered below.

Cross-jurisdictional arrangements – grants to States/Territories

- 5.5 The Commonwealth provides three types of payments to the states:
- National Partnership payments to support the delivery of specified projects, facilitate reforms or reward jurisdictions that deliver on nationally significant reforms;
 - general revenue assistance which includes GST payments; and
 - National Specific Purpose Payments (SPPs) which are related to key service delivery sectors.
- 5.6 In 2010-11, the Commonwealth will make payments for five National SPPs in the areas of healthcare, schools, skills and workforce development, disability services, and affordable housing.¹
- 5.7 Most SPPs provided to the States and Territories by the Commonwealth Government are conditional and tied to federal policy objectives.² SPPs are either made 'to' the State/Territory and supplement State funding or 'through' the State/Territory and passed on to other agencies for their use.³
- 5.8 The Committee was told that historically a lack of accountability has been a problem with Commonwealth grants to States and Territories. The Institute of Public Administration Australia (IPAA) identified the issue in its written submission to the inquiry:
- There is a glaring gap in the accountability of Commonwealth grants to states – especially where specified results or performance indicators are agreed. The Commonwealth Auditor-General does not audit these programs against the agreed objectives, nor do state Auditors-General. States may report back on their claimed performance but the Commonwealth has no real check as to their validity and reliability.⁴
- 5.9 According to the ANAO, the difficulty has been compounded by the implementation of the Intergovernmental Agreement on Federal Financial Relations by the Council of Australian Governments (COAG) which has
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1 Viewed at Australian Government, Budget 2010-11 http://www.apf.gov.au/budget/2010-11/content/bp3/html/bp3_spp.htm on 26 May 2010.

2 Finance Circular No. 2005/10, Department of Finance and Administration, p 2.

3 Finance Circular No. 2005/10, Department of Finance and Administration, p 2.

4 Institute of Public Administration Australia, sub 5, npn; Mr Ian McPhee PSM, transcript, 8 February 2010, p 3, p 8.

reduced Commonwealth prescriptions on service delivery by the States thereby increasing flexibility of service delivery.⁵

- 5.10 The Auditor-General told the Committee that under these arrangements assessment of performance would become more significant to ensure accountability and transparency:

It puts even greater emphasis on the performance information that the states themselves generate to show their performance with the Commonwealth funding and some of their own funding. So I think going forward under these new regimes, performance information is going to be even more important than ever.⁶

- 5.11 To enhance accountability arrangements, the ANAO suggested four options. These options are set out as follows:

- a) Provide the authority for the Auditor-General to conduct an audit to assess the performance of bodies that receive Commonwealth funding in circumstances where there is a corresponding or reciprocal responsibility to deliver specified outcomes in accordance with agreed arrangements...
- b) Require, as a matter of government policy, legislation relating to Australian Government Special Purpose Payments (SPP) and agreements that are put in place to govern the provision of payments for specified purposes to include a provision that provides the Auditor-General with the authority to conduct an audit to assess the performance of bodies that receive Commonwealth funding where there is a corresponding or reciprocal responsibility to deliver specified outcomes in accordance with agreed arrangements...
- c) Require, as a matter of government policy, SPP legislation and agreements to provide the Auditor-General with access to information and records relating to the use to which the funds in question have been put by the parties to the legislation or agreement...
- d) Explore opportunities and any necessary legislative changes which would assist in further cooperation between the Auditor-General and State and Territory Auditors-General. Such arrangements would be designed to assist in the Commonwealth and State and Territory Auditors-General working in a complementary manner and may provide for the authority for the Auditor-General to share information obtained

5 Australian National Audit Office, sub 3, p 6.

6 Mr Ian McPhee PSM, transcript, 19 October 2009, p 11.

during the course of audits with State and Territory Auditors-General.⁷

- 5.12 In the case of options a) and b) above, which the Auditor-General submits have the 'greatest potential impact'⁸, any audit undertaken would be in the context of the purposes for which the funds are provided and could be exercised only in circumstances where the performance of relevant bodies is, in the Auditor-General's opinion, significant in the context of an audit of a Commonwealth entity.⁹
- 5.13 Providing the Auditor-General with the authority to conduct audits of the nature and in the manner outlined in options a) and b) above did not elicit a great deal of support from witnesses.
- 5.14 For example, in its written submission to the inquiry, the Australasian Council of Auditors-General (ACAG) cautioned that the Auditor-General's mandate should not be extended into States and Territories as such a move would raise constitutional issues.¹⁰ ACAG did not elaborate on the constitutional issues involved but asserted that such audits should remain the responsibility of State and Territory Auditors-General in the following circumstances:
- where the grant is made to a State or Territory Government and that State or Territory Government is required to acquit the grant in some manner to the Commonwealth, ACAG considers that any audit of that acquittal should remain the responsibility of the relevant State or Territory Auditor-General; and
 - where the grant is made to a State or Territory Government but no acquittal is required, any local audit activity should again remain the responsibility of the relevant State or Territory Auditor-General.¹¹
- 5.15 Instead, ACAG suggested to the Committee that the federal legislation be examined and steps taken to enhance the capacity for cooperation between Auditors-General across Australia and thus facilitate the conduct of joint audits across jurisdictions.¹²
- 5.16 A number of other witnesses also supported the concept of developing a framework for the conduct of joint audits by Commonwealth and State/Territory audit offices (the ANAO refer to this concept in option (d)

7 Australian National Audit Office, sub 3, pp 6-7.

8 Australian National Audit Office, sub 3.10.

9 Australian National Audit Office, sub 3, pp 6-7.

10 Mr Glenn Poole, transcript, 22 June 2009, p 23.

11 Australasian Council of Auditors-General, sub 8, npn.

12 Australasian Council of Auditors-General, sub 8, npn.

above). For example, the Commonwealth Ombudsman suggested that the *Ombudsman Act 1976*, which sets out arrangements to allow cooperation between Commonwealth and State and Territory Ombudsmen, could be used as a model to develop relevant legislation to facilitate cooperation between the Auditors-General.¹³

- 5.17 The potential for constitutional issues were options (a) or (b) to be adopted was also raised by Mr Andrew Podger AO of the IPAA at the hearing on 22 June 2009.¹⁴ In its written submission the IPAA also supported a joint-audit model as follows:

We would support the notion of developing a regime of joint audits – joint teams of Audit staff from the Commonwealth and States/Territories (supplemented by private sector audit experts if necessary). These teams could review program performance, including reports and systems used by the COAG Reform Council, and report to both or all parliaments. It would be hoped that a joint report of findings could be agreed, although provision will have to be made for the event of disagreements or different emphases.¹⁵

- 5.18 The Committee sought clarification on the current impediments to the Commonwealth and States and Territories’ audit offices undertaking joint audits. ACAG explained that secrecy provisions in the *Auditor-General Act 1997* are the chief impediment:

At the moment under the legislation – both the Commonwealth legislation and state based legislation – it would require each respective auditor-general to decide to do an audit and then to undertake that audit independently. Certainly our understanding of the Commonwealth legislation provides some restrictions around the sharing of information that might be obtained within a Commonwealth ANAO audit and the limitations on being able to share that information with us at the state level and vice versa.¹⁶

- 5.19 The Auditor-General also referred to the difficulty of information sharing across the offices of Auditors-General as follows:

...it is generally the case that each audit act requires the information to be kept confidentially. And so it is very difficult, for

13 Commonwealth Ombudsman, sub 4, npn.

14 Mr Andrew Podger AO, transcript, 22 June 2009, p 35.

15 Institute of Public Administration Australia, sub 5, npn.

16 Mr Glenn Poole, transcript, 22 June 2009, pp 23-24.

instance, for my office to share information that is not in the public arena with my state colleagues. That is one existing constraint.¹⁷

5.20 Although Mr Poole described the limits on information sharing as the ‘nub of the problem’,¹⁸ operational difficulties such as differing priorities was also identified as an impediment.¹⁹ ACAG told the Committee that each jurisdiction is responsible for reporting to its own Parliament on that Parliament’s priorities. This led to logistical and timing difficulties as each audit office pursued its own agenda and it became difficult to coordinate a reporting deadline.²⁰

5.21 By way of example, the Auditor-General cited an audit into the Building Better Cities Program, a program aimed at improving Australian cities implemented by the Commonwealth and States/Territories between 1991 and 1996.²¹ The Auditor-General told the Committee:

Because the two [offices] were working at different priorities, the timing got out of sync. We were not in control of the states’ work and the states were not in control of our work, and so it became rather challenging to deliver.²²

5.22 Rather than providing the Auditor-General with the authority to conduct performance audits (options (a) and (b)) or exploring legislative changes to facilitate cooperation between the Commonwealth and State and Territory Auditors-General (option (d)), the third option (option (c)) outlined by the ANAO above, suggests providing the Auditor-General with access to information and records relating to the use to which the funds in question have been put.

5.23 The Auditor-General advised the Committee that the Department of Finance and Deregulation has encouraged States and Territories to include standard access clauses in contracts, allowing the Auditor-General access to records and information.²³

5.24 According to Mr McPhee, the Auditor-General’s access to other party information was initially raised when outsourcing became popular. At that time, the ANAO promoted the idea that Departments should include

17 Mr Ian McPhee PSM, transcript 16 September 2009, p 1.

18 Mr Glenn Poole, transcript, 22 June 2009, p 27.

19 Mr Ian McPhee PSM, transcript, 16 September 2009, p 2.

20 Mr Glenn Poole, transcript, 22 June 2009, p 27.

21 Australian National Audit Office, Audit Report No 9 1996-97 *Building Better Cities*, p 9.

22 Mr Ian McPhee PSM, transcript, 16 September 2009, p 2.

23 Mr Ian McPhee PSM, transcript, 16 September 2009, p 2.

‘standard access clauses’ in contracts so that the Auditor-General would have access to records and information held by contractors.²⁴

- 5.25 The Auditor-General referred to the audit into the road grants program, AusLink National Network, in 2008-09²⁵ as an example of the way in which legislative provisions that allow Australian Public Service employees or persons nominated by the Commonwealth to inspect work on projects have facilitated cooperation between the Commonwealth and States/Territories.²⁶
- 5.26 The Committee also notes that the Building the Education Revolution (BER) program, part of which has recently been audited by the ANAO, was set up under a National Partnership agreement and has bilateral agreements in place which recognise that reasonable access should be provided to the Auditor-General (for further discussion see paragraph 5.35 below).²⁷
- 5.27 The Auditor-General describes the inclusion of these provisions in agreements that allow the Auditor-General access to premises and records as ‘a very positive development and a positive evolution’.²⁸ However, in both oral and written evidence to the inquiry, the ANAO emphasised that even though the inclusion of these clauses is increasingly common it is not mandatory.²⁹
- 5.28 This renders the process unreliable: inclusion is determined on a case by case basis, depends on the government of the day and varies from agreement to agreement.³⁰ As the Auditor-General stated:
- The difficulty is that it is not necessarily consistent. The clauses can all be different and cannot be relied on, because they may depend on what departments are proposing to their ministers.³¹

Committee comment

- 5.29 The Committee firmly believes that, in the first instance, there should be no impediment to the Auditor-General’s access to information and records relating to how recipients of Commonwealth funding have made use of

24 Mr Ian McPhee PSM, transcript, 16 September 2009, p 2.

25 Audit Report No 29, 2008-09.

26 Mr Ian McPhee PSM, transcript, 16 September 2009, p 2; see

27 Mr Matt Cahill, transcript, 19 October 2009, p 8-9.

28 Mr Ian McPhee PSM, transcript, 16 September 2009, p 3.

29 Australian National Audit Office, sub 3.5.

30 Mr Ian McPhee PSM, transcript, 19 October 2009, p 9.

31 Mr Ian McPhee PSM, transcript, 16 September 2009, p 3.

such funds. Nor should there be any impediment to ANAO officers inspecting project work. The Committee therefore supports the proposal that government policy should require SPP legislation and agreements to provide the Auditor-General with access to information and records related to the funds in question.

Recommendation 10

5.30 **That all funding agreements between the Commonwealth and other levels of Government include standard clauses providing the Auditor-General with access to all information and records, and a capacity to inspect work on all projects, relating to the use of Commonwealth funds under those agreements.**

5.31 That said, the Committee is aware that strengthening the Auditor-General's authority to access information and records does not fully address the limits on the Parliament's potential to investigate whether projects are providing 'value for money' for the Commonwealth and hence the Australian taxpayer.

5.32 The Auditor-General confirmed that under existing legislation he can only assess the Commonwealth's administration of the arrangements and not the use to which the funds have been put:

At the moment, that is beyond what we are able to do under our legislation. If there is an issue, we tend to say, 'How could the Commonwealth have better managed that?' rather than 'This particular jurisdiction hasn't done a good job.'³²

5.33 In providing the Auditor-General access to information related to Commonwealth funding, as set out in Recommendation 10 above, the Committee notes the Auditor-General will consistently have access to performance information, however, significantly, the integrity of that information remains unchecked.³³

5.34 As referred to above, the Building the Education Revolution (BER) program serves as an example where formal access arrangements facilitated a recent audit,³⁴ however, the BER audit also serves as a practical example of the limitations of the Auditor-General's authority.³⁵

32 Mr Ian McPhee PSM, transcript, 19 October 2009, p 10.

33 Mr Ian McPhee PSM, transcript, 19 October 2009, p 12.

34 Mr Matt Cahill, transcript, 19 October 2009, p 8.

35 Australian National Audit Office, sub 3.10.

- 5.35 That is, the objective of the BER audit³⁶ was to examine the effectiveness of the Department of Education, Employment and Workplace Relations' (DEEWR's) establishment of the P21 facet of the program. The ANAO submit that because the Auditor-General's mandate did not allow any assessment of the performance of Education Authorities in their jurisdictions, an examination of the individual BER P21 projects fell outside the scope of the audit. Despite bilateral agreements the ANAO was therefore unable to meet expectations that the audit would have examined the delivery of individual projects.³⁷
- 5.36 The Auditor-General argues that the implementation of options (a) or (b) discussed above (see paragraph 5.11) would have allowed the Auditor-General to more successfully 'follow the dollar':
- ... the ANAO's mandate did not allow an assessment to be made of the performance of Education Authorities in managing the delivery of individual projects, including tender processes, in their respective jurisdictions. An extension of our mandate along the lines outlined in Options (a) and (b) ... would have allowed the scope of audit to include such an assessment.³⁸

Committee comment

- 5.37 The Committee acknowledges the range of views provided to the inquiry. On one hand, it has been suggested that the Auditor-General should have unfettered authority to assess the performance of bodies that receive funding provided by the Commonwealth to States/Territories. On the other, it has been argued that this type of funding can already be adequately tracked and accounted for using the mechanisms provided by the existence of the State/Territory Auditors-General.
- 5.38 The Committee notes that the COAG Intergovernmental Agreement on Federal Financial Relations states that the intent of the parties to the Agreement is to improve the well-being of all Australians through improvements in the 'quality, efficiency and effectiveness of government service delivery' by reducing prescriptions on State and Territory service delivery.³⁹ However, the Committee also notes that the same intent is to be delivered by 'enhancing accountability to the public for the outcomes

36 See ANAO Report No: 33 2009-10, *Building the Education Revolution – Primary Schools for the 21st Century*.

37 Australian National Audit Office, sub 3.10.

38 Australian National Audit Office, sub 3.10.

39 Council of Australian Governments, Intergovernmental Agreement on Federal Financial Relations, p 5.

achieved or outputs delivered under National Agreements or National Partnerships'.⁴⁰

- 5.39 The Committee recognises that increasingly it will become important to establish that Commonwealth funding for programs and projects are achieving the intended results, particularly in circumstances where funding is significant. However, the Committee also believes that while the evidence suggests that there are no constitutional constraints on expanding the Auditor-General's powers in this way⁴¹ these issues have not been well articulated in evidence. Some caution therefore needs to be exercised particularly in light of the following advice provided by the Australian Government Solicitor:

...in general, we see scope from a constitutional perspective for the Auditor-General to be given a greater role in financial statements and performance audit activity of non-Commonwealth bodies...However, we emphasise that our comments are general in nature. Development of a proposal to confer [increased audit authority in relation to financial assistance to States and Territories] on the Auditor-General may give rise to the need to further consider particular constitutional issues.⁴²

- 5.40 Additionally, and perhaps more significantly, the Committee notes and respects the role of State Parliaments and State Auditors-General in scrutinising the activities of State Government agencies.
- 5.41 For these reasons, while the Committee is not prepared to recommend that the Auditor-General be provided with the absolute authority to conduct cross-jurisdictional audits to assess the performance of bodies that receive Commonwealth funding, the Committee does consider that in addition to the access provided for in Recommendation 10 that the Auditor-General should, in certain circumstances, have the power to directly assess the performance of bodies receiving Commonwealth funding.
- 5.42 However, the Committee also acknowledges that constraints need to be in place to moderate this power. In the Committee's view it is appropriate that the responsibility for moderating this power rest with a Minister or the Joint Committee of Public Accounts and Audit on behalf of the Parliament. Recommendation 11 therefore reflects the Committee's position.

40 Council of Australian Governments, Intergovernmental Agreement on Federal Financial Relations, p 6.

41 Mr Ian McPhee PSM, transcript, 19 October 2009, p 15.

42 Australian National Audit Office, sub 3.2.

- 5.43 Consistent with the ANAO’s submission, any audit undertaken would be in the context of the purposes for which the funds are provided.⁴³

Recommendation 11

- 5.44 **That the Act be amended as necessary so that the Auditor-General may conduct a performance audit to directly assess the performance of bodies that receive Commonwealth funding in circumstances where there is a corresponding or reciprocal responsibility to deliver specified outcomes in accordance with agreed arrangements if a Minister or the Joint Committee of Public Accounts and Audit requests the audit.**

The Auditor-General may ask a Minister or the Joint Committee of Public Accounts and Audit to make such a request.

- 5.45 The Committee notes the comments of the Auditor-General that inherent in the approach guiding this recommendation is a risk that the level of audit activity may be less than ideal:

I think we were saying looking forward 10 years is it a provision that would be useful, particularly with the way the COAG arrangements are going, to allow the office to audit performance of recipients of grants, the states and other parties. I think...was there a need for a constraint of some sort to say, ‘You can only do this if the committee asked you to,’ or something like that. I then used the analogy of the GBEs to say that has not really resulted in much activity...⁴⁴

- 5.46 However, the Committee reiterates that the Auditor-General will have the capacity to ask the JCPAA to request such an audit.
- 5.47 With regard to resourcing implications, the Committee expressed concern about expanding the Auditor-General’s power to conduct audits of bodies that receive Commonwealth funding. The ANAO is confident that there would be no overall increase in the number of performance audits and that, providing the performance audit program remains adequately resourced, there would be no call for budget supplementation.⁴⁵ Asked to elaborate on this statement, the Auditor-General told the Committee:

43 Australian National Audit Office, sub 3, p 7.

44 Mr Ian McPhee PSM, transcript, 8 February 2010, p 32.

45 Australian National Audit Office, sub 3.4, npn.

We are conscious that resources are finite. I think that, within a program of 50 performance audits a year, if we did decide to look at a particular audit in a state jurisdiction that would substitute for another audit that we would have ordinarily done. So within the basket of 50 performance audits we would program some of these.⁴⁶

Commonwealth jurisdiction – auditing related entities/contractors

5.48 The Committee heard that the growth in outsourcing by governments has increased the use of external parties, including contractors, to deliver government programs and services. Under current legislation, the Auditor-General is unable to directly assess the performance of these external parties and ‘follow the dollar’.⁴⁷

5.49 Oral and written evidence to the inquiry provided a general consensus that the Auditor-General should have the power to examine the expenditure of public funds when government enters into commercial arrangements with private entities for the provision of services. Reiterating the view held by a number of witnesses, the ACAG told the Committee:

This is necessary to sustain the ability of the Auditor-General to carry out audits which examine whether the operations or activities of the whole or any part of the Commonwealth public sector are being performed effectively, economically and efficiently and in compliance with all relevant Acts.⁴⁸

5.50 The Committee expressed some concern that, if the Auditor-General were provided with the power to audit contractors, an agency’s obligation to manage contracts appropriately could diminish. The Auditor-General assured the Committee that this was not the case and that contractual arrangements have been strengthened over time.⁴⁹

5.51 Using the Defence Materiel Organisation (DMO) as an example, the Auditor-General explained that an agency’s success depends on the contractor meeting its performance standards. If the contractor fails in its obligations, the agency’s performance assessment is affected:

46 Mr Ian McPhee PSM, transcript, 8 February 2010, p 33.

47 Australasian Council of Auditors-General, sub 8, npn; Australian National Audit Office, sub 3, p 8.

48 Australasian Council of Auditors-General, sub 8, npn.

49 Mr Ian McPhee PSM, transcript, 19 October 2009, p 17.

We can be critical of DMO and its performance. They in turn would say, ‘But we are relying on the contractor to meet their performance standards under the contract as well. If they do not do that, you should be saying a bit more about the contractor’s performance.’⁵⁰

- 5.52 Of further concern to the Committee is the possibility that the increasing use of contractors could undermine Ministerial accountability and Parliamentary oversight. As referred to in the AGAG submission, the Administrative Review Council addressed this issue in its Report No. 42, *The Contracting Out of Government Services* (1998). The Council found that contracting out services ‘should not result in a loss or diminution of government accountability’ provided the Auditor-General had the power to conduct audits on the contractor’s performance and had access to all relevant information.⁵¹
- 5.53 Similarly, a report prepared for the United Kingdom Treasury in 2001, *Holding to Account: The Review of Audit and Accountability for Central Government*, recommended that the UK Auditor-General should have statutory access to a range of government grant recipients, including contractors.⁵²
- 5.54 The Committee notes the evidence from the Auditor-General that there have been improvements in contractual arrangements, in particular the making of payments between public sector agencies and contractors.⁵³ However, the Committee notes further comments from the Auditor-General which suggests that while agencies are ‘getting better’⁵⁴, contracting arrangements can still be problematic:

The rhetoric is very much around the Public Service and contractors working in partnership to deliver a particular project or a particular outcome. Contractual arrangements support that. When there are circumstances where the contractor does not deliver, it is a serious issue for the department in the first place.⁵⁵

50 Mr Ian McPhee PSM, transcript, 19 October 2009, p 17.

51 Administrative Review Council (1998), *The Contracting Out of Government Services*, Report No 42, pp vii and x.

52 Lord Sharman of Redlynch (2001), *Holding to Account: The Review of Audit and Accountability for Central Government*, pp 36-37.

53 Mr Ian McPhee PSM, transcript 19 October 2009, p 17.

54 Mr Ian McPhee PSM, transcript 19 October 2009, p 17.

55 Mr Ian McPhee PSM, transcript 19 October 2009, p 17.

- 5.55 In its written submission to the inquiry the ANAO indicated that legislation in both Western Australia and Tasmania grants the Auditors-General the authority to conduct audits of certain entities (referred to as 'related entities'). However, the ANAO submits that 'related entities' in this legislation does not include contractors.⁵⁶

Committee comment

- 5.56 The Committee has a long history of reviewing audits of Defence acquisition projects. The Committee is therefore keenly aware of the significance of contractors meeting their performance obligations so that agencies are able to deliver public sector programs and projects on time and on budget.
- 5.57 The Committee also notes Dr Stephen Gumley AO, CEO of the DMO's suggestion (see submission 6) that the Auditor-General be provided with greater authority to 'examine the financial and performance outcomes associated with expenditure of Commonwealth funds, including company audits'.⁵⁷
- 5.58 Given the increasing use of contractors as an integral element of government service delivery, the Committee considers that it is appropriate that the Auditor-General have the power to scrutinise the use of Commonwealth funds by external entities including contractors.
- 5.59 Consistent with the ANAO's primary submission⁵⁸, these types of audits of external entities/contractors should only be undertaken where the entity's/contractor's performance is, in the Auditor-General's opinion, significant in the context of an audit of a Commonwealth entity. Additionally, the scope of these audits would be restricted to the work undertaken under contract to the Commonwealth.⁵⁹
- 5.60 Again, the Committee notes that no resourcing implications arise as a result of the Auditor-General conducting performance audits of entities including contractors involved in the delivery of government programs and projects:

...it is anticipated that any additional audit coverage would be accommodated within existing performance audit resources. On this basis, budget supplementation would not be required.⁶⁰

56 Australian National Audit Office, sub 3, p 8.

57 Defence Materiel Organisation, sub 6, p 1.

58 Australian National Audit Office, sub 3, p 8.

59 Australian National Audit Office, sub 3, p 8.

60 Australian National Audit Office, sub 3.4, npn.

Recommendation 12

- 5.61 **That the Act be amended so that the functions performed by entities including private contractors on behalf of the Commonwealth in the delivery of government programs can be subject to direct audit by the Auditor-General.**
- 5.62 The Committee recognises that the expanded power to undertake performance audits of related entities, including contractors, by the Auditor-General requires enhanced accountability arrangements to be put in place. To that end the Committee recommends that the Auditor-General be required to publicly disclose the reasons behind any decision to audit a non-Commonwealth entity.⁶¹

Recommendation 13

- 5.63 **That the Act be amended to ensure that when a decision is made by the Auditor-General to conduct an audit of a non-Commonwealth body, the reasons for that decision should be disclosed in the publication of the report.**

Other Commonwealth activities

- 5.64 In October 2008, in response to worsening global financial conditions, the Australian Government announced a Government guarantee of the deposits and wholesale funding of Australian banks and other deposit-taking institutions.⁶² In their written submissions to the inquiry, both the ACAG and the ANAO suggested that consideration should be given to providing the Auditor-General with the authority to audit a body's performance in meeting the terms and conditions of such investments and support.⁶³
- 5.65 The Committee asked the Auditor-General how the Commonwealth currently monitors compliance with such arrangements. The Auditor-General told the Committee that the Commonwealth relies on its prudential arrangements and the Australian Prudential Regulation

61 Australian National Audit Office, sub 3, p 9.

62 Viewed at Prime Minister of Australia, Media Release 12 October 2008, *Global Financial Crisis*, <http://www.pm.gov.au/node/5533> on 12 April 2010.

63 Australian National Audit Office, sub 3, p 8; Australasian Council of Auditors-General, sub 8, npn.

Authority (APRA) to ensure compliance.⁶⁴ On further questioning, the Auditor-General conceded that, if asked to, the ANAO had some capacity to audit these areas:

If, however, a committee was to say, 'We are concerned about a regulatory regime relating to the giving of guarantees on deposits,' or whatever, then it would be open for us to have a look at that and the effectiveness of the regime.⁶⁵

- 5.66 The Committee is satisfied with these arrangements and on that basis makes no specific recommendation in this regard.

Conclusion

- 5.67 The Committee acknowledges what the IPAA describes as the 'glaring gap in accountability of Commonwealth grants to states [and territories]'.⁶⁶ The Committee is therefore supportive of the need for changes to the *Auditor-General Act 1997* to enable the Auditor-General to access information and records relating to the use of Commonwealth funds under National Partnership payments and SPPs and auditing of that information under certain circumstances.
- 5.68 The Committee also recognises that there is an increasing use of contractors to implement government programs and services. While the Committee acknowledges that this practice has benefits for service delivery, the Committee is concerned it has the potential to undermine Ministerial responsibility and Parliamentary oversight. The Committee wants to see more accountability in this area and accordingly wants the Auditor-General to have the power to audit external entities including contractors delivering government programs and services.

64 Mr Ian McPhee PSM, transcript, 19 October 2009, p 16.

65 Mr Ian McPhee PSM, transcript, 8 February 2010, p 9.

66 Institute of Public Administration Australia, sub 5, npn.

- 5.69 The Committee considers it imperative that the Auditor-General be provided with the statutory authority to address these issues, enabling the Auditor-General to more readily 'follow the dollar' and ensure that Commonwealth funding is fully accounted for and the Commonwealth is receiving value for money.

Rob Oakeshott MP
Committee Chair
December 2010