



Our ref: 7777

7th Floor, Albert Facey House  
469 Wellington Street, Perth

[REDACTED]  
Senior Assistant State Solicitor  
State Solicitor's Office

Mail to: Perth BC  
PO Box 8489  
PERTH WA 6849

Tel: 08 6557 7500  
Fax: 08 6557 7600  
Email: [ag@audit.wa.gov.au](mailto:ag@audit.wa.gov.au)

Via email: [REDACTED]

Cc: [REDACTED]

Dear [REDACTED]

**CONSULTATION – AMENDMENTS TO THE CHARITABLE TRUSTS ACT 1962 (WA)**

Thank you for your correspondence and subsequent contact to my Office inviting comments on the Attorney General's proposed amendments to the above Act, particularly those concerning the powers and functions of the Auditor General. I appreciate the time afforded my Office to consider the proposed amendments and provide a response.

As past inquiries have shown, including the *Report on Njamal People's Trust*, without sufficient and appropriate oversight, charitable trusts can hold heightened risk of misconduct and corruption. I therefore strongly support efforts by the Attorney General to strengthen and further clarify governance and oversight mechanisms in this area.

My comments in Appendix 1 aim to demonstrate this support, while also taking into account the intent of the *Auditor General Act 2006* to establish my role as an independent officer of the Parliament, not subject to direction from anyone. Preserving and demonstrating independence must be central in considering any recommendations relevant to the role of the Auditor General.

Where appropriate, I would be pleased to provide any further information to assist your consultation process and to discuss my attached comments in further detail.

Yours sincerely

CAROLINE SPENCER  
AUDITOR GENERAL  
24 May 2019

Attach

## APPENDIX 1 – OAG submission – Inquiry into charitable trusts

The Auditor General has not sought a specific or expanded role in providing independent assurance on charitable trusts.

A suite of recommendations in the December 2018 Inquiry into a charitable trust commissioned by the Attorney General of Western Australia under section 20 of the *Charitable Trusts Act 1962 (WA) Report on Njamal People's Trust*, includes recommendations concerning the role of the Auditor General in oversight of charitable trusts.

Recommendation 54 of the Inquiry report recommends that:

- a) section 20 of the Charitable Trusts Act be amended to enable the Auditor General or a delegate to be appointed by the Attorney General to make an inquiry or examination
- b) the Charitable Trusts Act be amended to give the Auditor General or a delegate generally, or by arrangement with the Attorney General, powers to perform audits or audit-like services in relation to trustees of charitable trusts with such powers to be as extensive as those conferred upon the Auditor General in relation to the auditing of public accounts under the Auditor General Act
- c) the Attorney General, or an examiner or inquirer be empowered under the Charitable Trusts Act to require the trustee of a charitable trust to:
  - i. cause the accounts of the charitable trust to be audited by an appropriately qualified auditor (including the Auditor General); and
  - ii. provide the audited report to the Attorney General, examiner or inquirer.

### OAG position

Under the *Auditor General Act 2006* (AG Act), the Auditor General is an independent officer of Parliament with responsibility for auditing the public sector. The Auditor General has complete discretion in the performance of these functions (AG Act s7(6)). This independence and freedom from direction, pressure, influence or interference is the cornerstone of credible public sector audit.

The Auditor General's primary role is to provide Parliament with legislated outputs and services (AG Act Part 3). This cannot be compromised by the provision of assurance on charitable trusts, which would be in addition to the Auditor General's existing responsibilities and work program. Delivering assurance on charitable trusts without affecting existing responsibilities would require additional resources.

Any proposal to:

- *require* the Auditor General to provide independent assurance of charitable trusts
- amend the Charitable Trusts Act to allow the Attorney General to *appoint* or *direct* the Auditor General to provide that assurance

would compromise the independence of the Auditor General and potentially impact the ability of the Auditor General to deliver a comprehensive audit program that provides the level of assurance across public sector activity required by Parliament.

There are however already existing provisions that support the intent of the Inquiry report recommendations. Under section 22(1) of the AG Act, the Auditor General may enter into a fee-based arrangement with the Attorney General to carry out an audit of a charitable trust. This allows such work to occur, at the discretion of the Auditor General in consideration of existing resourcing and audit program requirements. To our knowledge, there has never been an occasion where the Auditor General has declined such a request under s22 and the Office has previously supported the use of s22 for this purpose.

In summary, we do not support amending the Charitable Trusts Act as recommended, as it directly contradicts the intent of the AG Act regarding independence and would potentially

impact the ability of the OAG to deliver its core functions on behalf of the Parliament, as outlined above. Section 22(1) of the AG Act already allows the Auditor General to enter into an arrangement with the Attorney General to conduct this work.

**Appointment of an appropriate auditor**

My Office would be pleased to assist in developing guidance for the Attorney General to consider when appointing an auditor of a charitable trust. This could include identifying appropriate skills that would be required for an auditor to provide assurance services over charitable trusts. Such advice may be useful for the Attorney General to consider should the case arise where this Office is not in a position to accept engagement under s22(1).

A Charities Guide Report prepared by one of the professional accounting bodies, CPA Australia, covers some competencies requirements of audit firms performing assurance work of charities and charitable trusts:

<https://www.cpaaustralia.com.au/~media/corporate/allfiles/document/professional-resources/auditing-assurance/charities-guide-report.pdf>