



1996

**PUBLIC ACCOUNTS AND EXPENDITURE  
REVIEW COMMITTEE**

**REPORT  
on  
MINIMUM INDEPENDENCE  
REQUIREMENTS FOR THE  
AUDITOR GENERAL**

**REPORT NO. 33**

Presented by:  
**Mr M W Trenorden, MLA**  
Laid on the Table of the Legislative Assembly  
on Thursday, 31 October 1996

ORDERED TO BE PRINTED

*Further copies available from -*

Public Accounts and Expenditure Review Committee  
34 Parliament Place  
WEST PERTH WA 6005

Telephone: (09) 222 7467  
Facsimile: (09) 321 9366

Published by the Legislative Assembly, Perth, Western Australia 6000



## **COMMITTEE'S FUNCTIONS AND POWERS**

The Committee obtains its powers and functions from the Standing Orders of the Legislative Assembly. Standing Order 412(1) states that the functions of the Committee are:

to inquire into, consider and report to the Parliament on any proposal, matter or thing connected with the receipt and expenditure of public moneys, including moneys allocated under the Annual Appropriation Bills and the Loan Fund.

Moreover, the Committee is empowered to inquire into and report to the Assembly on any question which it deems necessary to investigate and consider whether the objectives of public expenditure are being achieved or may be achieved more economically.

## **MEMBERS OF THE COMMITTEE**

<b>Chairman</b>	Mr M.W. Trenorden, MLA
<b>Deputy Chairman</b>	Mr L. Graham, MLA
<b>Members</b>	Mr B.R. Blaikie, MLA
	Mr M.F. Board, MLA
	Mr C.M. Brown, MLA

## **COMMITTEE STAFF**

<b>Acting Secretary /Research Officer</b>	Mr Andrew Young
<b>Research Officer</b>	Ms Amanda Millsom
<b>Secretary/Stenographer</b>	Mrs Patricia Roach

## **COMMITTEE ADDRESS**

Legislative Assembly Annexe  
34 Parliament Place  
WEST PERTH WA 6005

Telephone: (09) 222 7467  
Facsimile: (09) 321 9366

## **Table of Contents**

	<i>Page No.</i>
<b>COMMITTEE'S POWERS AND FUNCTIONS</b>	ii
<b>CHAIRMAN'S PREFACE</b>	iv
<b>SUMMARY OF COMMITTEE'S RESPONSES</b>	v
 <b>APPENDIX 1:</b>	 1
Public Accounts and Expenditure Review Committee's response to the submission by the Australasian Council of Auditor's General to the Australasian Council of Public Accounts Committees.	
• Introduction and Background	2
• Independence and Effectiveness	3
• Personal Independence	4
• Operational Independence	6
• Oversight by Parliament	8
• Transitional Arrangements	9
• Other Issues	10
 <b>APPENDIX 2:</b>	 11
A Submission by the Australasian Council of Auditors General to the Australasian Council of Public Accounts Committees	
 <b>APPENDIX 3:</b>	 15
PAERC Recommendations Report No. 23, 1992, on the Recommendations on Independence on the Auditor General and the Office of the Auditor General	

## **CHAIRMAN'S PREFACE**

Mr Speaker,

I have the honour to submit the Committee's Report No.33 on Minimum Independence Requirements for the Auditor General. The Report is a response to a submission by: the Australasian Council of Auditors General to the Australasian Council of Public Accounts Committees.

The tabling of this Report is timely, given the recent tabling of the Committee's Report No.32 on: *Statement of Understanding between the Auditor General and the Public Accounts and Expenditure Review Committee* (PAERC). The particular issue of the Independence of the Auditor General is one that has received enormous attention over the past 4-5 years. The Committee's Report No. 23 tabled in 1992, made several recommendations on improving the independence of the Auditor General highlighting broad principles for improving public auditing in Western Australia.

Now in 1996, the Committee has made further comment on the Independence of the Auditor General, in its response to *Minimum Independence Requirements for the Auditor General*- a submission by the Australasian Council of Auditors-General to the Australasian Council of Public Accounts Committees. Responses to the submission by the other Public Accounts Committees (including the PAERC) will be collated by the New South Wales Public Accounts Committee in readiness for discussion at the 1997 Biennial Conference of the Australasian Council of Public Accounts Committees. The Committee has made some minor adjustments to the initial response for reporting purposes, in particular the inclusion of comments on the Committee's Reports 31 & 32.

The Committee in its response, recognises that there has been a change in attitude towards the role and function of the Auditor General and that it is imperative that the Parliament has an increased role in examining these suggested changes relating to the Auditor General and the Office of the Auditor General.

The general thrust of the Committee's response advocates increased personal and operational independence of the Auditor General and the Office of the Auditor General. It also endorses an increased role for Parliament, and in some cases the PAERC in areas such as: the selection of the Auditor General; the resourcing of the Office; the appointment of an independent auditor; and the conduct of periodic external reviews of the Office.

I believe that the response by the Committee is an important step in furthering the debate on the independence of the Auditor General especially in an era of increasing emphasis on public accountability.

I would like to acknowledge the contribution of the Members of the Committee in the production of this final Report.

Finally, I would like to acknowledge the contribution of the Committee's staff, Research Officers Amanda Millsom and Andrew Young and the secretarial assistance of Mrs Patricia Roach.

MAX TRENORDEN, MLA  
CHAIRMAN

## **SUMMARY OF PAERC'S RESPONSES TO THE SUBMISSION BY THE AUSTRALASIAN COUNCIL OF AUDITORS GENERAL**

### **Independence**

The Committee concurs with the principle that the Auditor General should be independent.

### **Personal Independence**

The Committee concurs that as a minimum requirement, the Auditor General should be an Officer of the Parliament.

The Committee considers that Parliament should select the Auditor General. The relevant body should also assess the appropriate remuneration. Parliament already has a significant role in the termination of the Auditor General. Whether this involves a joint committee of both Houses is a decision that should be made by the respective Parliaments.

The Committee further concurs that as a minimum requirement the Auditor General should only be appointed for a single, non-renewable term. The length of the term can be argued and will differ across jurisdictions.

### **Operational Independence**

The Committee in principle concurs with the spirit of the operational independence of the Auditor General to the extent that he/she should have the power to externally audit, report on audits in accordance with legislative requirements (including performance examinations) and to have some flexibility in the nature of the audits conducted and by whom. Minimum reporting requirements and maximum time limits for the completion of reports should also be enshrined in the legislation, which will vary across jurisdictions.

The Committee also concurs that the Auditor General should be able to access relevant information only in the course of performing his/her duties in accordance with the stated legislation. The Committee further considers that the legislation should be clear on the parameters of this access i.e., during the conduct of investigations and/or carrying out performance examinations.

The Committee considers that the Auditor General should also have the power to investigate the efficiency and effectiveness of the use of all public monies.

The Committee considers that in the interests of promoting independence, the respective audit offices should not form part of the Public Service rather they should be restructured under a separate Act of Parliament.

With respect to the resourcing of the Audit Office, the Committee considers that Parliament should have an increased role in appropriating resources. It should be a decision of the respective Parliaments whether this role should be carried out on the advice of a Parliamentary Committee.

### **Oversight by Parliament**

The Committee concurs that respective legislation should provide for an increased oversight role by the Parliament in both the appointment of an independent auditor and the conduct of periodic external reviews of the performance of the Office of the Auditor General. The legislation should also provide for the involvement of a Parliamentary Committee ie PAERC for periodic external reviews.

The Committee further considers that the intervals of the periodic reviews should be somewhere between 3-5 years.

### **Transitional Arrangements**

The Committee concurs with the submission which states that:

Consistent with precedent when amending core accountability provisions, (transitional arrangements between old and new legislation should ensure) that the independence of incumbent Auditors Generals is not (compromised).

### **New Audit Legislation**

The Committee is in favour of separate audit legislation as a means of enhancing the independence of the Auditor General and allowing for a closer oversight role by Parliament.

---

## **APPENDIX 1**

**A Response by the Public Accounts and Expenditure Review Committee to the:**

**Submission by the Australasian Council of Auditors General  
on  
"Minimum Independence Requirements for the  
Auditor General"**

**to the**

**Australasian Council of Public Accounts Committees**

---

*[The Committee has made some modifications to the original response for tabling and editing purposes].*



## **MINIMUM INDEPENDENCE REQUIREMENTS FOR THE AUDITOR GENERAL**

**Western Australian Public Accounts and Expenditure Review Committee's (PAERC) response to the submission by the Australasian Council of Auditor's General to the Australasian Council of Public Accounts Committees.**

### **Introduction and Background**

The subject of the "Independence of the Auditor General" has been one that has received exhaustive attention over the past few years. From a Western Australian perspective the following have all commented and made recommendations on issues related to the Independence of the Auditor General:

- Report of the Royal Commission into Commercial Activities of Government and Other Matters, 1992;
- Public Accounts and Expenditure Review Committee, *Report on the Recommendations on Independence of the Auditor General and the Office of the Auditor General*, 1992;
- Commission on Government, Western Australia, Report No.1, August 1995; and
- The Joint Standing Committee on the Commission on Government, Report.3, 8 & 9.

The PAERC also acknowledges the recent report by the Commonwealth Joint Committee of Public Accounts on the Auditor General.<sup>1</sup>

The Public Accounts and Expenditure Review Committee (PAERC) in its 1992 Report, focused on highlighting broad principles for improving public auditing in Western Australia and acknowledged that the *independence of the Auditor General from the Executive government is paramount*. Although the Membership of the PAERC has changed since the tabling of this Report, the Committee is still committed to enhancing the independence of the Auditor General and sharing information on a regular basis.

To this effect, the PAERC has most recently tabled its Report No. 32, Statement of Understanding between the Auditor General and the PAERC in order to improve communication and coordination between the two bodies.

In responding to the submission by the Australasian Council of Auditors General, the PAERC recognises that there has been in recent years a change in attitude towards the role and function of the Auditor General. It is imperative that the Parliament has a role in examining these attitudes and suggested changes relating to the Auditor General and the Audit Office (Office of the Auditor General) to ensure that the enabling legislation is both modern and relevant.

---

<sup>1</sup> Joint Committee of Public Accounts, Report 336, *Guarding the Independence of the Auditor-General*, October 1996.

**Extract from the submission by the Australasian Council of Auditors General**

**1. *Independence and Effectiveness***

*Independence is a crucial pre-requisite to the effectiveness of an Auditor General. The Western Australian Report of the Royal Commission into Commercial Activities of Government and Other Matters (1992) concluded that:*

*The office of the Auditor General provides a critical link in the accountability chain between the public sector, and the Parliament and the community. It alone subjects the practical conduct and operations of the public sector as a whole to regular, independent investigations and review. This function must be fully guaranteed and its discharge facilitated. The Auditor-General is the Parliament's principal informant on the performance of the administration of the system. The Parliament therefore has a special responsibility to ensure both that the independence and the effective resourcing of the Auditor General are secured.*

**Western Australian Context**

*The Financial Administration and Audit Act (1985) (FA&AA) provides the legislative framework for the appointment and operation of the Auditor General. The Auditor General is appointed by the Governor under section 71(1) and can be best described as an “independent statutory office holder of the Crown”. He/she is also the accountable officer for the Office of the Auditor General. The Auditor General has considerable accountability to Parliament whilst at the same time carrying out his duties and powers independently.*

In the PAERC's 1992 Report, the Committee commented that:

In the course of performing his or her duties, the Auditor General is obliged to report on audits which may embarrass the Public Service and subsequently Ministers of the Crown, Thus independence of the Auditor General from the Executive government is paramount

...a closer relationship between the Auditor General and the Parliament will remove any potential influence by the Executive government over the audit of public accounts and preserve an impartial approach by Auditors General to audit responsibilities

....The Auditor General can be unequivocally independent while remaining fully accountable to the elected representatives<sup>2</sup>

**PAERC Response**

**The Committee concurs with the principle that the Auditor General should be independent.**

---

<sup>2</sup> PAERC Report No.23, p.4

**Extract from the submission by the Australasian Council of Auditors General**

**2. *Personal Independence***

*The Auditor General should be an Officer of the Parliament appointed by the Governor/Governor General and not subject to direction by the executive arm of government.*

*The Auditor General should be responsible administratively to the Parliament whilst exercising the audit mandate professionally and independently.*

*Parliament should be responsible for the selection and recommendation for appointment, remuneration and termination of appointment of the Auditor General. There should only be a single term of appointment so that there is not potential for compromising independence in relation to the renewal or extension of an appointment.*

**Western Australian Context**

As discussed, the Auditor General can be described as an independent officer and is appointed by the Governor. According to convention this appointment is upon the recommendation of the Premier, however there is no legislative provision for this recommendation.

Sections 71-75 of the *FA&AA* provides to some extent “insulation” from the executive. This can be best described in the Explanatory Memorandum to the Financial Administration and Audit Bill, 1985:para 124<sup>3</sup> which describes the intent of the sections to:

...maintain the independence of the office of the Auditor General from both the Executive and the Parliament and provide a base for the occupant to...faithfully, impartially and truly execute the office and perform the duties of Auditor General according to the law.

Analysis from various sources suggests that the Auditor General should be referred to as an “Independent Officer of the Parliament” or designated an “Independent accountability agent of the Parliament”.

In its 1992 Report, the PAERC suggested that separate legislation from the *FA&AA* would facilitate the financial and operational independence of the audit function from the Executive and an Audit Act administered by the Auditor General would remove any public perception that the incumbent is a public servant (p.13). This led to the recommendation that:

...the audit function should be exercised from the current *Financial Administration and Audit Act 1985* and become a separate Act administered by the Auditor General, a statutory office holder, answerable administratively direct to the Parliament (p.14).

The Auditor General is administratively responsible to the Parliament under section 95 of the *FA&AA* which requires him to report to both Houses of Parliament on such matters arising from his powers, duties and functions under the Act.

---

<sup>3</sup> Commission on Government, Report. No.1, 1995, p 227

The following conditions currently apply to the selection, recommendation for appointment, remuneration, termination of appointment and tenure of the Auditor General:

- The Auditor General is appointed by the Governor, by custom on the recommendation of the Premier. In the past Treasury, Premier and Cabinet and the former Public Service Commission have had a role in the recommendation for appointment.
- The Salaries and Allowances Tribunal is responsible for determining the remuneration and conditions of appointment (section 72 of the *FA&AA*).
- Under section 75 of the *FA&AA* the Auditor General may be removed by the Governor after resolution of both Houses of Parliament.
- The Auditor General's tenure is until the age of 65 ie is not appointed on the basis of fixed terms.

Analysis suggests that there is support for an increased role for Parliament in the above area. In its 1992 Report, the PAERC recommended that it perform the duties of the selection and appointment of the Auditor General, upon receiving advice from the outgoing Auditor General, the Public Service Commissioner and the auditing profession. It would then recommend a short list of suitable applicants to the Premier. It also recommended that it should determine the remuneration package of the Auditor General. Opposing views in the form of a minority report from two of the Committee Members, considered that the selection, appointment and remuneration duties should be shared by the two Houses of Parliament.

The Commission on Government in its Report No.1 considered that:

...Likewise it is generally thought that the appointment, salary and dismissal of the Auditor General should be beyond the sole discretion of the executive and that the Auditor General should have security of tenure to provide the freedom necessary to carry out audit responsibilities.<sup>4</sup>

On the issue of tenure, the PAERC in its 1992 Report, recommended that the Auditor General be appointed for a non-renewable term of seven years. The Western Australian Auditor General in his submission to the Commission on Government, recommended a fixed term tenure of 10 years with revised remuneration arrangements. The Commission on Government concurred with the Auditor General's recommendation.

### **PAERC Response**

**The Committee concurs that as a minimum requirement, the Auditor General should be an Officer of the Parliament.**

**The Committee considers that Parliament should select the Auditor General. The relevant body should also assess the appropriate remuneration. Parliament already has a significant role in the termination of the Auditor General. Whether this involves a joint committee of both Houses is a decision that should be made by the respective Parliaments.**

**The Committee further concurs that as a minimum requirement the Auditor General should only be appointed for a single, non-renewable term. The length of the term can be argued and will differ across jurisdictions.**

---

<sup>4</sup> Commission on Government, Report No.1, p. 228

**Extract from the submission by the Australasian Council of Auditor's General**

**3. *Operational Independence***

*The Auditor General should:*

- *be responsible for the external audit of all public sector agencies over which the government has control or significant influence or to which it has financial exposure;*
- *have a mandate to report on audits of financial statements and controls, compliance with legislation, performance indicators or other measures of performance, examinations of public sector effectiveness and efficiency and other matters of significance;*
- *have the exclusive power to determine which audits will be conducted, how the audits will be conducted and by whom. The legislation should specify minimum reporting requirements and a maximum time within which the reports should be made; and*
- *have the powers to access all relevant information and be subject to a stringent confidentiality requirement to ensure that the information is used only for the purposes of the legislation.*

*The Audit Office should be a statutory authority independent of the public service with Auditor General having the authority to make resourcing decisions such as:*

- *staffing including employment of staff on terms and conditions set by the Auditor General which at least comply with minimum provisions of general employment law;*
- *hiring of consultants;*
- *accommodation; and*
- *purchasing and leasing of equipment.*

*The resourcing of the audit office should be a decision of the Parliament made on the recommendations of the Auditor General independent of the executive arm of government.*

**Western Australian Context**

*Audit and reporting responsibilities*

Sections 78 and 95 of the *FA&AA* respectively empower the Auditor General to audit the Treasurer's, departmental and statutory authority accounts and to report on matters arising from his powers, duties and functions under the Act. Section 78 also enables the Treasurer to require the Auditor General to audit particular accounts. Section 93, provides for the Auditor General to issue opinions on such things as performance indicators.

The PAERC in its 1992 Report, examined the issue of audit requests by the Legislature or the Treasurer in terms of compromising the Auditor General's independence. It subsequently recommended that the Auditor General's independence be reinforced and widened to permit him to undertake audits requested by the Treasurer and the Parliament (on the referral of both Houses). This would require changes to section 78 of the *FA&AA*. Further, the PAERC recommended that these audits should be reported to the Parliament as soon as practicable.

The PAERC in its 1991 discussion paper on *Annual Reporting and the Parliament*, called for increased responsibility to ensure that reports met legislative requirements and provided useful information.

### *Access to information/Powers to investigate*

Sections 80, 83, 85 and 86 of the *FA&AA* provide the Auditor General with the power to investigate, have access to accounts, require certain information and to call for persons and powers. Section 58(c) deals with issue of prohibiting secrecy of operations. Evidence from various sources suggests that the current legislation is in some ways unclear and ambiguous with respect to the Auditor General's access to private sector records during the course of conducting investigations or carrying out performance examinations.

The PAERC in its recent Report No. 31 on Western Australian Government Financial Assistance to Industry, recommended clarifying and strengthening the Auditor General's powers under the *FA&AA* to properly audit, examine and make enquiries with respect to financial assistance.

What is clear is the power for the Auditor General to investigate the efficiency and effectiveness of the use of all public monies, which is described in section 80(b):

The Auditor General may at any time - conduct any investigation that he considers is necessary concerning any matters relating to the accounts of the Treasurer, a department or a statutory authority or to public moneys, other moneys or moneys of a statutory authority or to public property or other property and may carry out examinations of the efficiency and effectiveness of departments, statutory authorities or parts of departments or statutory authorities.

### *Statutory Authority*

The current status of the Office of the Auditor General is that of a Department of the Public Service under the *Public Sector Management Act (1994)*, thus receiving an annual appropriation from Treasury. The PAERC in its 1992 Report, recommended that the Office of the Auditor General should not be constituted as a department of the public service and considered that in the event of such a change that transitional provisions for employees of the Office should be carefully considered. Opinion from other sources went further to suggest that the Office should be established as a statutory authority to provide more autonomy and independence and that the proposed new Audit Act should reflect this intent.

### *Resourcing*

Currently the budget of the Office of the Auditor General is presented through the Treasury Department for review. The Office also has the power to report to Parliament on the adequacy of resources allocated to audit.

The PAERC in its 1992 Report was not convinced that the resourcing through the normal Budget process provided the Auditor General with *sufficient flexibility and discretion with regard to the Office's organisational structure, accommodation, information technology, budgetary and expenditure controls, audit fees and financial autonomy*".<sup>5</sup> The Committee subsequently recommended that the Parliament should appropriate resources for the Auditor General to audit as he thinks fit and to take a role in determining the budget for the Office separate of the Executive.

The Commission on Government in its first report recommended that a Joint Audit Committee determine the budget and that staffing be subject to an annual review by this Committee. The Joint Standing Committee on the Commission on Government, set up to examine the report(s) of the Commission disagreed with an increased role by Parliament, preferring that Treasury retain its legislative role.

---

<sup>5</sup> PAERC Report, 23, p.16

### **PAERC Response**

The Committee in principle concurs with the spirit of the operational independence of the Auditor General to the extent that he/she should have the power to externally audit, report on audits in accordance with legislative requirements (including performance examinations) and to have some flexibility in the nature of the audits conducted and by whom. Minimum reporting requirements and maximum time limits for the completion of reports should also be enshrined in the legislation, which will vary across jurisdictions.

The Committee also concurs that the Auditor General should be able to access relevant information only in the course of performing his/her duties in accordance with the stated legislation. The Committee further considers that the legislation should be clear on the parameters of this access ie during the conduct of investigations and/or carrying out performance examinations.

The Committee considers that the Auditor General should also have the power to investigate the efficiency and effectiveness of the use of all public monies.

The Committee considers that in the interests of promoting independence, the respective audit offices should not form part of the Public Service rather they should be restructured under a separate Act of Parliament.

With respect to the resourcing of the Audit Office, the Committee considers that Parliament should have an increased role in appropriating resources. It should be a decision of the respective Parliament's whether this role should be carried out on the advice of a Parliamentary Committee.

### **Extract from the submission by the Australasian Council of Auditor's General**

#### ***4. Oversight by Parliament***

*The performance of the Auditor General should be subject to oversight by Parliament and the Auditor General should be required to report annually on this performance and at other times as required to a standard at least equivalent to that required of public sector agencies.*

*The Parliament should:*

- *appoint an independent auditor and set fees for the audit of the financial statements and controls and legislative compliance of the audit office; and*
- *specify the terms of reference of periodic reviews of the performance of the audit office in relation to its effectiveness and efficiency and appoint the reviewers.*

### **Western Australian Context**

#### ***Appointment of an independent auditor***

Section 81 of the FA&AA prescribes the method of auditing the accounts of the Office of the Auditor General which in effect involves the Governor appointing a registered company auditor. The PAERC in its 1992 Report recommended in accordance with the general thrust of "independence" that the recommendation to the Governor should be made by the PAERC. It also

recommended that any private firm appointed should comply with the general thrust of audit independence. The minority report suggested that the Parliament, not the Committee, should assume this role.

The Auditor General in his submission to the Commission on Government agreed in principle with the PAERC recommendation, adding that *the provisions covering the audit of the Office of the Auditor General and for agents appointed by the Auditor General to conduct audits on his/her behalf should be enhanced.*<sup>6</sup>

#### *Periodic reviews*

There is an absence of a legislative requirement for a periodic external review of the Office. Self initiated peer reviews have been conducted by the Office in the absence of formal legislative requirements.

The PAERC in its 1992 Report, inferred that it would welcome the establishment of periodic reviews. Given the increasing number of reports presented to Parliament by the Auditor General, most significantly in the performance examination area, the Committee believes that it is timely that legislative amendments reflect the need for periodic external reviews of the performance of the Office.

#### **PAERC Response**

**The Committee concurs that respective legislation should provide for an increased oversight role by the Parliament in both the appointment of an independent auditor and the conduct of periodic external reviews of the performance of the Office of the Auditor General. The legislation should also provide for the involvement of a Parliamentary Committee i.e., PAERC for periodic external reviews.**

**The Committee further considers that the intervals of the periodic reviews should be somewhere between 3-5 years.**

#### **Extract from the submission by the Australasian Council of Auditor's General**

##### **5. *Transitional Arrangements***

*Consistent with precedent when amending core accountability provisions, (transitional arrangements between old and new legislation should ensure) that the independence of incumbent Auditors General is not (compromised).*

#### **PAERC Response**

**The Committee concurs with the above statement.**

---

<sup>6</sup> Submission to the Commission on Government by the Auditor General, Specified Matters 3&6 : Financial Administration and Audit Act; Powers of the Auditor General, April 1995, p.11



## **OTHER ISSUES**

### **New Audit Legislation**

As discussed under the heading of “Personal Independence”, the Committee considers that the separation of the audit act from the *FA&AA* would further promote the independence of the Auditor General and the Office. Both the PAERC in its 1992 Report and the 1992 *Royal Commission into Commercial Activities of Government and other Matters*, recommended that the Office of the Auditor General should be constituted under a separate Audit Act. It would also allow for a more closer oversight by Parliament and a clarity of understanding of the role of the Auditor General with respect to audit administration. The PAERC also recognises that the trend in other states has been directed at separate legislation.

### **PAERC Response**

**The Committee is in favour of separate audit legislation as a means of enhancing the independence of the Auditor General and allowing for a closer oversight role by Parliament.**

COPY

## **APPENDIX 2**

### **MINIMUM INDEPENDENCE REQUIREMENTS FOR THE AUDITOR GENERAL**

#### **A Submission by the Australasian Council of Auditor's General to the Australasian Council of Public Accounts Committees**

Traditionally in Australia the appointment of an Auditor General has been made in the context of the Westminster system of government. Under the system, until recently, the Auditor General was designated an Officer of the Crown and, as such, was seen to occupy a unique position in ensuring the democratic processes of government and primacy of the Parliament over the Executive Government.

In recent times, various jurisdictions have made significant amendments to the concept of the Westminster style of government and moved towards the United States congressional approach, particularly in the contractual appointment of Heads of Government Departments and Statutory Office Holders.

The Australian Council of Public Accounts Committees has invited the Australasian Council of Auditors General to advise as to the principles which should be enshrined in future legislation relating to the appointment, role and function of the Auditor General.

#### **1. Independence and Effectiveness**

Independence is a crucial prerequisite to the effectiveness of an Auditor General. The Western Australian Report of the Royal Commission into Commercial Activities of Government and Other Matters (1992) concluded that -

The office of the Auditor General provides a critical link in the accountability chain between the public sector and the Parliament and the community. It alone subjects the practical conduct and operations of the public sector as a whole to regular independent investigations and review. This function must be fully guaranteed and its discharge facilitated. The Auditor General is the Parliament's principal informant on the performance of the administration of the system. The Parliament therefore has a special responsibility to ensure both that the independence and the effective resourcing of the Auditor General are secured ...

This submission, sets forth minimum requirements for this independence in relation to person independence, operational independence and Parliamentary oversight.

#### **2. Personal Independence**

The Auditor General should be an officer of the Parliament appointed by the Governor/Governor General and not subject to direction by the executive arm of government.

The Auditor General should be responsible administratively to the Parliament whilst exercising the audit mandate professionally and independently.

Parliament should be responsible for the selection and recommendation for appointment, remuneration and termination of appointment of the Auditor General. There should only be a single term of appointment so that there is no potential for compromising independence in relation to the renewal or extension of an appointment.

### **3. Operational Independence**

The Auditor General should:

- be responsible for the external audit of all public sector agencies over which the government has control or significant influence or to which it has financial exposure;
- have a mandate to report on audits of financial statements and controls, compliance with legislation, performance indicators or other measure of performance, examinations of public sector effectiveness and efficiency and other matters of significance;
- have the exclusive power to determine which audits will be conducted, how the audits are to be conducted and by whom. The legislation should specify minimum reporting requirements and a maximum time within which the reports should be made; and
- have powers to access all relevant information and be subject to a stringent confidentiality requirement to ensure that the information is used only for the purposes of the legislation.

The audit office should be a statutory authority independent of the public service with the Auditor General having the authority to make resourcing decisions such as:

- staffing including employment of staff on terms and conditions set by the Auditor General which at least comply with minimum provisions of general employment law;
- hiring of consultants;
- accommodation; and
- purchase and leasing of equipment.

The resourcing of audit office should be a decision of the Parliament made on the recommendations of the Auditor General independent of the executive arm of government.

### **4. Oversight by Parliament**

The performance of the Auditor General should be subject to oversight by Parliament and the Auditor General should be required to report annually on this performance and at other times as required to a standard at least equivalent to that required of public sector agencies.

The Parliament should:

- appoint an independent auditor and set fees for the audit of the financial statements and controls and legislative compliance of the audit office; and
- specify the terms of reference of periodic reviews of the performance of the audit office in relation to its effectiveness and efficiency and appoint the reviewers.

## **5. Transitional Arrangements**

Consistent with precedent when amending core accountability provisions, [transitional arrangement between old and new legislation should ensure] that the independence of incumbent Auditors General is not [compromised].

---



COPY

### **APPENDIX 3**

#### **RECOMMENDATIONS**

#### **PAERC Recommendations Report No. 23, 1992, on the Recommendations on Independence of the Auditor General and the Office of the Auditor General**

##### **Recommendation 1:**

The Committee recommends that a motion be moved in the Legislative Assembly that the Public Accounts and Expenditure Review Committee perform the duties of selection and appointment of the Auditor General. The Committee to receive advice from the outgoing Auditor General, the Public Service Commissioner and the auditing profession and recommend a short list of suitable applicants to the Premier.

##### **Recommendation 2:**

The Committee recommends that the Auditor General be appointed for a non-renewable term of seven years.

##### **Recommendation 3:**

The Committee recommends to Parliament the redrafting of section 75(1)(c) of the *Financial Administration and Audit Act 1985*, deleting the present clause and replacing it with "if the Auditor General engages in any paid employment or fails to devote the whole of his or her working time and attention to the duties of Auditor General". The Auditor General and each deputy be required to provide Parliament with a signed declaration of financial independence from audited entities and membership of boards of audited bodies or any subsidiary, related or associated bodies. The Committee fully endorses recommendation three of the report of the Auditor General's Policy Advisory Committee.

##### **Recommendation 4:**

The Committee recommends that a motion be moved in the Legislative Assembly that the Public Accounts and Expenditure Review Committee determine the remuneration package of the Auditor General receiving advice from appropriate parties with reference to market forces and conditions.

##### **Recommendation 5:**

The Committee recommends to Parliament that a maximum of two deputies to the Auditor General be appointed under the Act and be automatically eligible to act in the

Auditor General's absence. The Auditor General be empowered to delegate authority for each deputy to sign audit opinions in their own name. The deputies must make declarations similar to the Auditor General [section 77(5)] and be specifically extended the protection granted to the Auditor General by section 90 of the Act. The Committee fully endorses recommendation five of the report of the Auditor General's Policy Advisory Committee.

**Recommendation 6:**

The Committee recommends that the Auditor General may at his discretion, dispense with the audit of departments and statutory authorities which do not impact on "whole of government" accountability in any major way. The Auditor General is to provide Parliament with a list of the respective departments or statutory authorities, and is to be advised within 12 sitting days if Parliament requires any of these agencies to be audited.

**Recommendation 7:**

The Committee recommends that the Auditor General's independence be reinforced to permit him or her to use discretion to undertake audits requested by the Treasurer and that the power of request be widened to include Parliament as well as the Treasurer. This power of request precludes individual Houses, committees, and individual members.

Section 78(1) be amended by deleting the words after "statutory authorities" and replacing with "and may undertake the audit of such other accounts as the Parliament or the Treasurer may request to be audited by the Auditor General." Section 78(3) be amended by replacing the "the Treasurer may require" with "the Parliament or the Treasurer may request."

Further, the Auditor General be required to report to Parliament as soon as practicable on any audit undertaken in accordance with a direction from the Treasurer or Parliament.

**Recommendation 8:**

The Committee recommends that the audit function be excised from the current *Financial Administration and Audit Act 1985* and become a separate Act administered by the Auditor General, a statutory office holder, and be answerable administratively direct to the Parliament. The Committee fully endorses recommendation eight of the Auditor General's Policy Advisory Committee.

**Recommendation 9:**

The Committee recommends that the Office of the Auditor General should not be constituted as a department of the public service. Transitional provisions for employees of the Office of the Auditor General would need to be arranged. The Committee fully endorses recommendation nine of the report of the Auditor General's Policy Advisory Committee.

**Recommendation 10:**

The Committee recommends that senior offices of the Office of the Auditor General be automatically removed from the Senior Executive Service, in accordance with recommendation nine. (If it is decided that the Office of the Auditor General remain a department of the public service, then senior audit officers should be excluded from the Senior Executive Service and their remuneration packages be set by the Salaries and Allowances Tribunal following advice from a parliamentary advisory panel). The Committee fully endorses recommendation ten of the report of the Auditor General's Policy Advisory Committee.

**Recommendation 11:**

The Committee recommends the independent resourcing of the Office of the Auditor General. Parliament must appropriate resources for the Auditor General to audit as he thinks fit and must take the initiative in determining the budget for the Office of the Auditor General separate of Executive government and central agencies in order to ensure the independent operation and resourcing of the Auditor General and his Office. The Committee fully endorses recommendation eleven of the report of the Policy Advisory Committee.

**Recommendation 12:**

The Committee recommends that the nomination to the Governor for the appointment and fees of the auditor for the Office of the Auditor General be removed from the public service and Executive government and be undertaken by the Public Accounts and Expenditure Review Committee. The Committee fully endorses recommendation twelve of the report of the Auditor General's Policy Advisory Committee.

**Recommendation 13:**

The Committee recommends that the auditor of the Office of the Auditor General must not provide other services to the Office of the Auditor General nor act as an audit agency of the Auditor General.

Any private audit firm appointed as an audit agent of the Auditor General shall comply with the professional standards on audit independence and those requirements developed by the Auditor General in relation to the provision of other services to the audited entity. The Committee fully endorses recommendation thirteen of the report of the Auditor General's Policy Advisory Committee.



