



9 April 2009

Ms Sharon Grierson MP
Chair
Joint Committee of Public Accounts and Audit
Parliament House
CANBERRA ACT 2600

Dear Ms Grierson

I refer to Ms Veenstra's letter dated 5 March seeking submissions to the JCPAA Inquiry into the *Auditor-General Act 1997* (the Act). We welcome the opportunity to make a submission to this Inquiry, and look forward to participating in any hearings that may be arranged by the Committee.

In the 11 years since the Act came into effect on 1 January 1998 following on from the Committee's Report 296, the Australian National Audit Office (ANAO) considers the Act has served the Parliament and the Office well. Many provisions of the Act continue to represent best practice.

Nevertheless, the Committee's inquiry provides a very timely opportunity to reflect on the benefits of enhancing aspects of the Act to respond to developments in public administration over the last decade, and to position the Act so that it provides the Auditor-General with the mandate and powers to effectively serve the Parliament for the foreseeable future.

Areas that, in our view, warrant particular consideration are:

- the expansion of the Auditor-General's functions to encompass assurance activities; and
- whether enhancements to the Auditor-General's authority to 'follow the money trail' across jurisdictions and to certain non-government bodies within the Commonwealth, would be appropriate.

Attachment A outlines potential amendments to the Act for each of the Inquiry's terms of reference.

The ANAO's contact officer is Russell Coleman who may be contacted on 02 6203 7464, or email russell.coleman@anao.gov.au.

Yours sincerely



Ian McPhee

JCPAA Inquiry into the Auditor-General Act 1997

Introduction

Details of potential amendments to the Auditor-General Act 1997 are outlined below under each area of review set out in the terms of reference.

Also attached for the Committee's information are the eight principles of independence published by the International Organization of Supreme Audit Institutions. A copy of these principles, known as 'the Mexico Declaration on SAI Independence' is at Attachment B.

Whether the Act's focus on the Auditor-General's traditional assurance audit and performance audit roles gives the ANAO sufficient legislative backing for newer functions, for example the Defence "Major Projects Report" and, from July 2008, the Auditor-General's reviews of Government advertising to give the public confidence that campaigns are legitimately authorised, properly targeted and non-political targeted and non-political.

Assurance Activities

1. In addition to conducting performance and financial statement audits, the Auditor-General undertakes other assurance activities. These are generally in response to requests from stakeholders, including Parliamentary Committees and Ministers.
2. As noted in the Inquiry's terms of reference, the two main assurance activities that are now undertaken by the ANAO relate to Defence major acquisition projects and Government information and advertising campaigns. These activities represent significant developments in the way the ANAO is providing assurance and enhancing accountability in sensitive and important areas of public administration.
3. These reviews are currently undertaken in accordance with arrangements established pursuant to Section 20 of the Act, *Audits by arrangement*. As such, the Auditor-General's formal information-gathering powers are not used in the conduct of these reviews.
4. In addition to these two main activities, individual assurance activities may also be handled through correspondence. The reporting arrangements relating to these assurance activities vary, depending on the nature of the activity. As a minimum, reports on assurance activities are made publicly available on the ANAO's website.
5. The ANAO considers that assurance activities, which are recognised by the auditing profession in standards issued by the Australian Auditing and Assurance Standards Board, should be given explicit recognition in the Act. Some more detail on the issues that would need to be addressed through amendments to the Act is set out at paragraph 1 of the Appendix.

6. If the Act is amended to give explicit recognition to assurance activities, consequential amendments would be required to a number of other provisions. For example, sub-section 8(4) and section 24 would need to refer to audit **and assurance** activities.

Any amendments necessary to clarify the ANAO's rights and obligations in relation to conducting audits and reviews:

The Auditor-General's Functions

7. The Act currently expresses the Auditor-General's functions in terms of the conduct of "audits" (see in particular Part 4 of the Act). In practice, the Auditor-General undertakes certain functions or actions that are necessary to ensure the efficiency and effectiveness of the audit function. For example, the Auditor-General undertakes strategic planning to assist in the preparation of an annual audit program and undertakes preliminary inquiries and discussions to assist in the planning of individual audits. In the context of performance audits, such preliminary inquiries are generally undertaken prior to the formal designation of an audit under sections 16 or 18 of the Act. More broadly, the Auditor-General and staff of the ANAO participate in a wide range of activities that are designed to assist and improve public accountability and administration, both nationally and internationally.
8. It is considered that there would be benefit in amending the Act to expressly recognise that the functions of the Auditor-General include the promotion of public accountability in the Australian public sector, and the authority to do anything incidental or conducive to any of the Auditor-General's audit responsibilities.
9. A copy of Section 10 of the Australian Capital Territory *Auditor-General Act 1996* that includes such a construct is included at paragraph 2 of the Appendix.
10. We considered whether it would be beneficial for the Act to refer specifically to the contribution the ANAO makes internationally, either through organisations such as the International Organization of Supreme Audit Institutions or bilaterally, and to the accounting and auditing professions. We concluded that a broad reference to the authority to do anything 'incidental or conducive' to the Auditor-General's audit responsibilities would be sufficient.

ANAO Auditing Standards

11. Section 24 of the Act requires the Auditor-General to set auditing standards that are to be complied with by persons performing the functions specified in that section. Consistent with developments in the profession, it is considered that the Act should be amended to require the Auditor-General to set auditing **and assurance** standards.

Legal Professional Privilege

12. The Auditor-General Act provides the Auditor-General with broad powers of access to information and documents. Our legal advice has confirmed that legal professional privilege does not limit the Auditor-General's right of access. Nevertheless, agencies, directly or through their legal advisers, at times claim that certain documents are

protected by legal professional privilege and therefore are unable to be accessed by the Auditor-General. Such situations can result in delays in the conduct of an audit as protracted negotiations take place and that at times, require the involvement of legal advisers to resolve the matter.

13. Against this background, it is considered that there would be benefit in the Act making clear and putting beyond doubt that the Auditor-General's access powers are unfettered, and that the protection of legal professional privilege does not affect the Auditor-General's right of access. A number of other Commonwealth Acts that include powers of investigation, such as the *Ombudsman Act 1996*, and the *Human Rights and Equal Opportunity Commission Act 1986*, include provisions that expressly state to what extent information gathering powers are intended to over-ride legal professional privilege.
14. Our understanding is that clarification in respect of legal professional privilege could be achieved either through amendment to the Act or an appropriate reference in the Explanatory Memorandum, should the Act be amended as a result of the Committee's Inquiry.
15. Sub-section 9(4) of the *Ombudsman Act 1996*, included in paragraph 3 of the Appendix, is an example where an Act clarifies the position relating to legal professional privilege.
16. An example of where an Explanatory Memorandum has been used is the Explanatory Memorandum to the Western Australian Auditor-General Bill 2006, paragraph 59. A copy of the relevant extract of the Explanatory Memorandum is included in paragraph 3 of the Appendix.

Audit Fees for Financial Statement Audits

17. Section 14 of the Act provides for Commonwealth authorities and subsidiaries and Commonwealth companies and subsidiaries to pay audit fees for financial statement audits undertaken by the Auditor-General. As currently constructed, the Act only permits the payment of audit fees by Commonwealth authorities and companies that come within the ambit of the *Commonwealth Authorities and Companies Act 1997* (CAC Act). As a result, there are a small number of bodies where their enabling legislation is silent of the issue of audit fees that do not pay audit fees. Such bodies include the High Court, and the Commonwealth Superannuation Scheme and the Public Sector Superannuation Scheme.
18. The ANAO considers it would be appropriate to clarify whether the Auditor-General should charge audit fees for financial statement audits of statutory authorities or other bodies that fall outside the ambit of the CAC Act.

Acting as Auditor under the Corporations Act

19. Section 21 of the Act provides for the Auditor-General to accept appointment under the *Corporations Act 2001* as the auditor of:
 - a) a subsidiary of a Commonwealth authority;
 - b) a Commonwealth company; or
 - c) any other company in which the Commonwealth has a controlling interest.

20. At the time the Act was drafted, the CAC Act defined a Commonwealth company as ‘a Corporations Act company in which the Commonwealth has a controlling interest’. Recent amendments of the CAC Act have changed this definition to ‘a Corporations Act company that the company controls’. However, rather than amending the Act to reflect this change, it is considered that the policy intent, which is to allow the Auditor-General to accept appointment under the Corporations Act of all Commonwealth entities that are subject to the Corporations Act, can be achieved by amending sub-section 21(1)(c) to read ‘any subsidiary of a Commonwealth company’. Such an amendment would result in a better alignment with the relevant provisions of the CAC Act.

Audit of Performance Indicators

21. The establishment of and reporting against performance indicators represents a fundamental underpinning of the Australian Government’s Outcomes Outputs Framework. Currently, the ANAO’s coverage of performance indicators is in the context of individual programs or activities. In this context the Committee would be aware that the ANAO’s performance audit reports frequently refer to performance indicators as an area that warrants improvement.

22. From our own work and feedback from a number of State Auditors-General, it is evident that the systematic or periodic review of the appropriateness of performance indicators, as well as the accuracy and timeliness of an agency’s reporting against them, contributes to an overall increase in the quality and credibility of the indicators themselves and the reliance that can be placed on agencies’ reporting against them.

23. There are several options to enhance audit coverage of performance indicators:

(a) the conduct of a periodic review of indicators as part of the ANAO’s performance audit program; or

(b) a review of an agency’s compliance with its performance indicator responsibilities as an adjunct to the audit of an agency’s financial statements in a similar way to that undertaken by the Western Australian Auditor-General; (further details are included in paragraph 4 of the Appendix); or

(c) a review of an agency’s compliance with its responsibilities for a sub-set of indicators which the Parliament and/or the Government considers relate to critical programs or areas of public administration including, for example, environmental sustainability. This review would be undertaken as an adjunct to the audit of an agency’s financial statements.

24. Option (b) would be ideal in providing more focused assurance to the Parliament in relation to performance information published by Australian Government entities but would be resource intensive. Option (c) is a more modest proposal, acknowledging that there would need to be a process to allow the Parliament or Government to identify the critical programs or areas of public administration. In the event that the Committee considers there would be advantages in increasing audit coverage in this area, such coverage would be additional to existing audit coverage and therefore would require appropriate budget supplementation.

Whether there should be changes to the categories of agencies that the Auditor-General audits, in particular section 16 of the Act which limits the Auditor-General's capacity to audit Government Business Enterprises (GBEs)

25. Sections 16 and 17 of the Act provide the Auditor-General with the authority to conduct performance audits of Commonwealth authorities and subsidiaries and Commonwealth companies and subsidiaries unless they are a Government Business Enterprise. Commonwealth authorities and wholly owned Commonwealth companies that are GBEs can only be subject to a performance audit if the responsible Minister, the Finance Minister or the JCPAA requests such an audit. The Act also allows the Auditor-General to ask a responsible Minister, the Finance Minister or the JCPAA to make such a request. The ANAO has no record of being requested to undertake a performance audit of a GBE since the Act came into effect on 1 January 1998.
26. The Government at the time considered that the 'discipline to be efficient is imposed through the focus on targets and related performance measurement'¹ and therefore did not support the proposal that the Auditor-General be able to conduct performance audits of GBEs or their subsidiaries. Apart from the restriction relating to persons who are employed or engaged under the *Members of Parliament (Staff) Act 1984*,² this is the only exception to the Auditor-General having a comprehensive financial statement and performance audit mandate.
27. While currently the number and nature of wholly owned GBEs means they are less significant in market terms than previously, the authority to conduct performance audits in all Commonwealth entities is considered to be an important principle that is central to the Auditor-General's mandate.
28. The ANAO notes that the then Joint Committee of Public Accounts recommended in its Report No 346 that the Auditor-General have 'a general mandate to initiate the full range of audits in relation to all Commonwealth entities (including performance audits of Government Business Enterprises)'. (Recommendation 14 refers.)
29. The ANAO considers the Act should be amended to provide the Auditor-General with the authority to conduct performance audits of wholly-owned GBEs.
30. In the context of the recent announcement of the proposed establishment of a company that will be responsible for building and operating a National Broadband Network, the position concerning the conduct of performance audits of GBEs where the Commonwealth holds a majority interest warrants further consideration. The ANAO will seek legal advice on this matter to clarify whether there are any legal impediments to the Auditor-General's performance audit mandate extending to entities such as this.

¹ Government response to JCPA Report 296, November 1989

² In view of the unique nature of these persons, this restriction is not considered to be unreasonable.

Any proposed amendments to the Act which would strengthen the audit independence of the ANAO and the Auditor-General's capacity to fulfil his role as an Independent Officer of the Parliament:

31. The independence of the Auditor-General is established by the provisions of Part 3 of the Act. In summary, this Part provides for:
- the Auditor-General to be an independent officer of the Parliament
 - the Auditor-General to have complete discretion in the performance or exercise of his or her functions or powers. In particular, the Auditor-General is not subject to direction from any one in relation to:
 - (a) whether or not a particular audit is to be conducted; or
 - (b) the way in which a particular audit is to be conducted; or
 - (c) the priority to be given to any particular matter.
32. The ANAO considers these provisions represent best practice and have served the Auditor-General, the ANAO and the Parliament well. In these circumstances, the ANAO considers no changes to these provisions are necessary, except to make consequential amendments relating to assurance activities mentioned in paragraph 6 above.

The Auditor-General's capacity to examine the financial and performance outcomes from Commonwealth investments in the private sector and Commonwealth grants made to State and local governments:

Cross-jurisdiction issues

33. There are a number of options to enhance external accountability arrangements in response to recent developments in federal public administration, particularly under the umbrella of the Council of Australian Governments. These developments include the development of a new Intergovernmental Agreement that is aimed at improving the quality and effectiveness of government services by reducing Commonwealth prescriptions on service delivery by the States and Territories, providing them with increased flexibility in the way they deliver services to the Australian people.
34. The options are listed in order of their potential impact.
- (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. 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.
 - (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. As for option (a), any audit undertaken would be in the context of the purposes for which the funds are provided and could only be exercised in circumstances where the performance of the relevant bodies is, in the Auditor-General's opinion, significant in the context of an audit of a Commonwealth entity.

- (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. Instruments made under a number of existing Acts and Agreements, particularly relating to roads funding, provide for such access. Audits such as Audit Report No 31 2005-06 *Roads to Recovery*, and Audit Report No 45 2006-07 *the National Black Spot Programme* used such access arrangements to obtain information from State and Local Governments.
 - (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 during the course of audits with State and Territory Auditors-General.
35. Implementation of options (a) and (b) would require a commensurate expansion of the Auditor-General's access powers. An example of provisions that provide an Auditor-General with broad access powers that would be required to enable these abovementioned options to be effectively implemented is contained in the Western Australian Auditor-General Act. These provisions are included in paragraph 4 of the Appendix.
36. The ANAO considers that the Committee's consideration of the above options would best be done in the context of the importance of Commonwealth and State relationships which, broadly, have two elements. The first is preserving and protecting the Commonwealth's interests. The second element is the collective interests of the Commonwealth and the States and Territories in obtaining assurance about the efficiency and effectiveness in which services are delivered at all levels of government.
37. All options presented above would be an advance on current arrangements, with options (a) and (b) providing the strongest mandate to the Auditor-General to conduct audits to assess the performance of specified bodies that receive Commonwealth funds and thus providing greater assurance to the Parliament about the expenditure of public moneys.

Commonwealth jurisdictional issues

38. A well established aspect of today's administration is the use of external parties to assist in the delivery of government programs and to assist in the provision of support services. As a result, the performance of external parties can be critical to an agency's own performance in meeting a program's objectives or in the delivery of support services.

39. Currently, the Auditor-General's access powers (s32) allow access to relevant records and information held by any 'person'. This includes non-Commonwealth bodies and organisations. To reinforce these powers, Commonwealth contracts often include provisions that provide the relevant agency and the ANAO access to information and records. Such access can be used in assessing the performance of the relevant agency, but not the performance of the external party. The ANAO considers that the existing accountability regime should be enhanced by expanding the Auditor-General's mandate to allow the performance of certain external parties who are involved in the delivery of government programs or activities to be audited by the Auditor-General. The scope of any such audit would be restricted to the functions performed by these parties for the Commonwealth.
40. A useful model that warrants the Committee's consideration is the Western Australian Audit Act that provides for the audit of 'related entities'³ by the WA Auditor-General. Relevant extracts of this Act are included in paragraph 6 of the Appendix. The Tasmanian Audit Act 2008 has similar provisions.

Contractors engaged by the Commonwealth

41. As noted above, the ANAO's understanding is that the definition of 'related entities' included in the Western Australian and Tasmanian legislation does not encompass contractors engaged by government to assist in the delivery of programs and services. In view of the integral part contractors play in Commonwealth administration, the ANAO considers that the effectiveness of the audit of Commonwealth entities would, in some circumstances, be significantly enhanced if the Auditor-General's functions were broadened to allow the Auditor-General to audit a contractor's performance of their contractual obligations. We would propose that any such audit could only be undertaken in circumstances where a contractor's performance is, in the Auditor-General's opinion, significant in the context of an audit of a Commonwealth entity. Consistent with the position proposed in paragraph 36 above, the scope of any audit would necessarily be restricted to the work undertaken under contract to the Commonwealth.
42. Implementation of these arrangements would require a commensurate expansion of the Auditor-General's access powers.

Other Commonwealth Activities

43. From time to time, the Commonwealth makes investments and provides support such as guarantees and financing arrangements that are designed to protect the Commonwealth's interests. Consideration should be given to providing the authority for the Auditor-General to audit a body's performance in meeting the terms and conditions of such investments or support. Consistent with the position referred to above, any such audit could only be undertaken in circumstances where a body's performance is, in the Auditor-General's opinion, significant in the context of an audit of a Commonwealth entity.
44. Implementation of these arrangements would also require a commensurate expansion of the Auditor-General's access powers.

³ 'related entities', as defined, does not encompass contractors.

Enhanced accountability relating to audit of non-Commonwealth bodies

45. To enhance the Auditor-General's accountability in the exercise of his or her broader mandate that is explored above, it would not be unreasonable for the Act to require the Auditor-General to publicly disclose the reasons for any decision to conduct an audit of a non-Commonwealth body.

This Appendix provides additional information or references relating to certain matters referred to in the Attachment.

1. Assurance Activities

Paragraph five of our submission refers.

It would be expected that the Act would need to include provisions relating to the following matters:

- provide the Auditor-General with the explicit authority to undertake assurance activities consistent with his other functions
- provide for the coercive information-gathering powers in the Act to be used for the purpose of carrying out assurance activities, and
- provide the Auditor-General with the authority to determine arrangements, including reporting arrangements to the Parliament, to be followed in the conduct of assurance activities.

2. Auditor-General Functions

Paragraph nine of our submission refers. This extract of the ACT Auditor-General's Act is an example of a broader definition of an Auditor's general functions than currently provided for in the *Auditor-General Act 1997*.

10 *Functions*

In addition to the functions given to the auditor-general by this Act, the auditor-general has the following functions:

- (a) to promote public accountability in the public administration of the Territory;*
- (b) to audit annual financial statements of the Territory, departments and territory authorities under the Financial Management Act;*
- (c) to audit the accounts and records in relation to any person, body or thing ascertained in accordance with the regulations;*
- (d) to conduct performance audits in relation to any person, body or thing ascertained in accordance with the regulations;*
- (e) any function given to the auditor-general by or under any other law of the Territory;*
- (f) to do anything incidental or conducive to any of the auditor-general's functions.*

3. Legal Professional Privilege

Paragraph 15 of our submission refers. This extract of the *Ombudsman Act 1996* makes explicit reference to legal professional privilege in the context of the Ombudsman's information gathering powers.

9(4) Notwithstanding the provisions of any enactment, a person is not excused from furnishing any information, producing a document or other record or answering a question when required to do so under this Act on the ground that the furnishing of the information, the production of the document or record of the answer to the question:

(ab) would disclose one of the following:

(ii) a communication between an officer of a Department or of a prescribed authority and another person or body, being a communication protected against disclosure by legal professional privilege

(5A) The fact that a person is not excused under subsection (4) from furnishing information, producing a document or other record or answering a question does not otherwise affect a claim of legal professional privilege that anyone may make in relation to that information, document or other record or answer.

Paragraph 16 of our submission refers. The following clause from the Explanatory Memorandum to the WA Auditor-General Act refers specifically to legal professional privilege not limiting the Auditor-General's access powers.

59. The clause ensures that the Auditor General has the power to access all information necessary for the performance of his or her functions. Access to Cabinet documents would be available and claims of legal professional privilege would not be maintainable.

Extract of Explanatory Memorandum to the (W.A.) Auditor-General Act 2006

4. Performance Indicators

Paragraph 23(b) of our submission refers. The following references provide brief details of the reporting and auditing requirements relating to performance indicators in Western Australia.

Sub-section 61(1) of the WA Financial Management Act 2006 requires accountable authorities (of agencies) to, amongst other things, include in their annual report financial statements and key performance indicators.⁴

⁴ The WA Treasurer has issued detailed Instructions (Treasurer's Instruction 904) relating to the disclosure of performance information.

Sub-section 15(1) of the Auditor-General Act 2006 requires the WA Auditor-General to audit these financial statements and performance indicators.

The Auditor-General's audit opinion in respect of key performance indicators, required under sub-section 15(3)(c), states whether 'the indicators are relevant and appropriate to assist users to assess the agency's performance and fairly represent indicated performance for the period under review'.

5. Access Provisions

Paragraph 35 of our submission refers. The following sections of the WA Auditor-General Act provide the WA Auditor-General broad powers of access to information, records and property.

35. Access to accounts, information, money and property

(1) In this section –

“premises” means any land or place;

“written authority”, in relation to an authorised person, means a written notice signed by the Auditor General that states that the person is authorised to exercise powers under this Division.

(2) For the purpose of an audit the Auditor General, or an authorised person, is entitled to full and free access at all reasonable times to –

(a) all accounts, information, documents, systems and records that the Auditor General considers to be relevant to the audit; or

(b) public money, other money or statutory authority money; or

(c) public property or other property,

that is or are in the possession of any person and the Auditor General, or an authorised person, may make copies of or take extracts from any of the accounts, information, documents and records.

(3) For the purpose of subsection (2) the Auditor General may cause a search to be made in, and extracts to be taken from, anything in the custody of the Treasurer or in any office of an agency, without paying any fee for doing so.

(4) Subject to subsection (6), the Auditor General or an authorised person may, at all reasonable times, enter and remain on any premises in order to exercise powers under this section.

(5) If an authorised person enters, or proposes to enter, premises under this section, the occupier must provide the authorised person with all reasonable facilities for the effective exercise of powers under this section.

Penalty: a fine of \$50 000.

- (6) *An authorised person is not entitled to enter or remain on premises if the authorised person fails to produce a written authority on being asked by the occupier to produce proof that the entry is authorised.*
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Extract of the Western Australian Auditor-General Act 2006

6. Commonwealth Jurisdictional Issues

Paragraph 40 of our submission refers. The following sections of the WA Auditor-General Act 2006 give the WA Auditor-General the authority to conduct audits of certain entities that are referred to as ‘related entities’.

17. Audits of accounts of related entities

- (1) *If an agency performs any of its functions in one or more of the following ways —*

- (a) in partnership or jointly with another person or body;*
- (b) through the instrumentality of another person or body;*
- (c) by means of a trust,*

the accountable authority of the agency must give written notice of that fact to the Auditor General, and the person, body or trust is referred to as a “related entity” of the agency.

- (2) *The Auditor General may audit the accounts and financial statements of a related entity of an agency to the extent that they relate to functions that are being performed by the related entity —*

- (a) on behalf of the agency; or*
- (b) in partnership or jointly with the agency; or*
- (c) as the delegate or agent of the agency.*

- (3) *Subsection (2) does not limit the operation of section 16(3).*

18. Examinations and investigations

- (f) *examining the efficiency and effectiveness with which a related entity of an agency performs functions —*

- (i) on behalf of the agency; or*
- (ii) in partnership or jointly with the agency; or*
- (iii) as the delegate or agent of the agency.*

Extract of the Western Australian Auditor-General Act 2006

Mexico Declaration on SAI Independence

Preamble

From the XIX Congress of the International Organization of Supreme Audit Institutions (INTOSAI) meeting in Mexico:

Whereas the orderly and efficient use of public funds and resources constitutes one of the essential prerequisites for the proper handling of public finances and the effectiveness of the decisions of the responsible authorities.

Whereas the Lima Declaration of Guidelines on Auditing Precepts (the Lima Declaration) states that Supreme Audit Institutions (SAIs) can accomplish their tasks only if they are independent of the audited entity and are protected against outside influence.

Whereas, to achieve this objective, it is indispensable for a healthy democracy that each country have a SAI whose independence is guaranteed by law.

Whereas the Lima Declaration recognizes that state institutions cannot be absolutely independent, it further recognizes that SAIs should have the functional and organizational independence required to carry out their mandate.

Whereas through the application of principles of independence, SAIs can achieve independence through different means using different safeguards.

Whereas application provisions included herein serve to illustrate the principles and are considered to be ideal for an independent SAI. It is recognized that no SAI currently meets all of these application provisions, and therefore, other good practices to achieve independence are presented in the accompanying guidelines.

RESOLVES:

To adopt, publish, and distribute the document entitled "Mexico Declaration on Independence"

General

Supreme Audit Institutions generally recognize eight core principles, which flow from the Lima Declaration and decisions made at the XVIIth Congress of INTOSAI (in Seoul, Korea), as essential requirements of proper public sector auditing.

Principle 1

The existence of an appropriate and effective constitutional/statutory/legal framework and of *de facto* application provisions of this framework

Legislation that spells out, in detail, the extent of SAI independence is required.

Principle 2

The independence of SAI heads and members (of collegial institutions), including security of tenure and legal immunity in the normal discharge of their duties

The applicable legislation specifies the conditions for appointments, re-appointments, employment, removal and retirement of the head of SAI and members of collegial institutions, who are

- appointed, re-appointed, or removed by a process that ensures their independence from the Executive (see ISSAI-11 Guidelines and Good Practices Related to SAI Independence);
- given appointments with sufficiently long and fixed terms, to allow them to carry out their mandates without fear of retaliation; and
- immune to any prosecution for any act, past or present, that results from the normal discharge of their duties as the case may be.

Principle 3

A sufficiently broad mandate and full discretion, in the discharge of SAI functions

SAIs should be empowered to audit the

- use of public monies, resources, or assets, by a recipient or beneficiary regardless of its legal nature;
- collection of revenues owed to the government or public entities;
- legality and regularity of government or public entities accounts;
- quality of financial management and reporting; and
- economy, efficiency, and effectiveness of government or public entities operations.

Except when specifically required to do so by legislation, SAIs do not audit government or public entities policy but restrict themselves to the audit of policy implementation.

While respecting the laws enacted by the Legislature that apply to them, SAIs are free from direction or interference from the Legislature or the Executive in the

- selection of audit issues;
- planning, programming, conduct, reporting, and follow-up of their audits;
- organization and management of their office; and

- enforcement of their decisions where the application of sanctions is part of their mandate.

SAIs should not be involved or be seen to be involved, in any manner, whatsoever, in the management of the organizations that they audit.

SAIs should ensure that their personnel do not develop too close a relationship with the entities they audit, so they remain objective and appear objective.

SAI should have full discretion in the discharge of their responsibilities, they should cooperate with governments or public entities that strive to improve the use and management of public funds.

SAI should use appropriate work and audit standards, and a code of ethics, based on official documents of INTOSAI, International Federation of Accountants, or other recognized standard-setting bodies.

SAIs should submit an annual activity report to the Legislature and to other state bodies as required by the constitution, statutes, or legislation-which they should make available to the public.

Principle 4

Unrestricted access to information

SAIs should have adequate powers to obtain timely, unfettered, direct, and free access to all the necessary documents and information, for the proper discharge of their statutory responsibilities.

Principle 5

The right and obligation to report on their work

SAIs should not be restricted from reporting the results of their audit work. They should be required by law to report at least once a year on the results of their audit work.

Principle 6

The freedom to decide the content and timing of audit reports and to publish and disseminate them

SAIs are free to decide the content of their audit reports.

SAIs are free to make observations and recommendations in their audit reports, taking into consideration, as appropriate, the views of the audited entity.

Legislation specifies minimum audit reporting requirements of SAIs and, where appropriate, specific matters that should be subject to a formal audit opinion or certificate.

SAIs are free to decide on the timing of their audit reports except where specific reporting requirements are prescribed by law.

SAIs may accommodate specific requests for investigations or audits by the Legislature, as a whole, or one of its commissions, or the government.

SAIs are free to publish and disseminate their reports, once they have been formally tabled or delivered to the appropriate authority-as required by law.

Principle 7

The existence of effective follow-up mechanisms on SAI recommendations

SAIs submit their reports to the Legislature, one of its commissions, or an auditee's governing board, as appropriate, for review and follow-up on specific recommendations for corrective action.

SAIs have their own internal follow-up system to ensure that the audited entities properly address their observations and recommendations as well as those made by the Legislature, one of its commissions, or the auditee's governing board, as appropriate.

SAIs submit their follow-up reports to the Legislature, one of its commissions, or the auditee's governing board, as appropriate, for consideration and action, even when SAIs have their own statutory power for follow-up and sanctions.

Principle 8

Financial and managerial/administrative autonomy and the availability of appropriate human, material, and monetary resources

SAIs should have available necessary and reasonable human, material, and monetary resources-the Executive should not control or direct the access to these resources. SAIs manage their own budget and allocate it appropriately.

The Legislature or one of its commissions is responsible for ensuring that SAIs have the proper resources to fulfill their mandate.

SAIs have the right of direct appeal to the Legislature if the resources provided are insufficient to allow them to fulfill their mandate.