

# AUDITING THE INDEPENDENCE OF THE AUDITOR-GENERAL

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## Introduction

This paper arises from a study of the office of auditor-general as one of the key accountability mechanisms by which parliaments contribute to good governance, with particular reference to the Parliament of the Commonwealth of Australia (“Commonwealth”) and the Australian Capital Territory (“ACT”) Legislative Assembly.

The study had two major purposes:

At more theoretical level, the study examined the nature of the interrelationships in which the Auditor General and the associated office are involved, for evidence relevant to a theoretical approach to governance; and

At a more applied level, the study sought to identify factors contributing to the effectiveness of the role of Auditor General, in particular those affecting the independence of the office.

## Accountability

Accountability is one of the fundamental features of good governance<sup>1</sup>. Accountability mechanisms available in Australian versions of Westminster-style systems of government include parliamentary questions without notice (“question time”), questions on notice, debates on relevant legislation, motions for debate, debates on the adjournment of the House, estimates committee hearings, and the office of auditor general. The auditor general’s office was established to serve the Parliament and is one of the most potentially powerful of these mechanisms.

Like the other mechanisms, the auditor general operates within the wider context of a complex accountability network that includes accountability agents as diverse as the media and royal commissions, with powers ranging from quite informal to very formal and powerful<sup>2</sup>.

## Governance

This complex accountability network fulfils key functions in the governance of the public sector, which in turn is one of the three major sectors involved in the governance of the socio-political system. (Figure 1).

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## The socio-political system's governance sectors

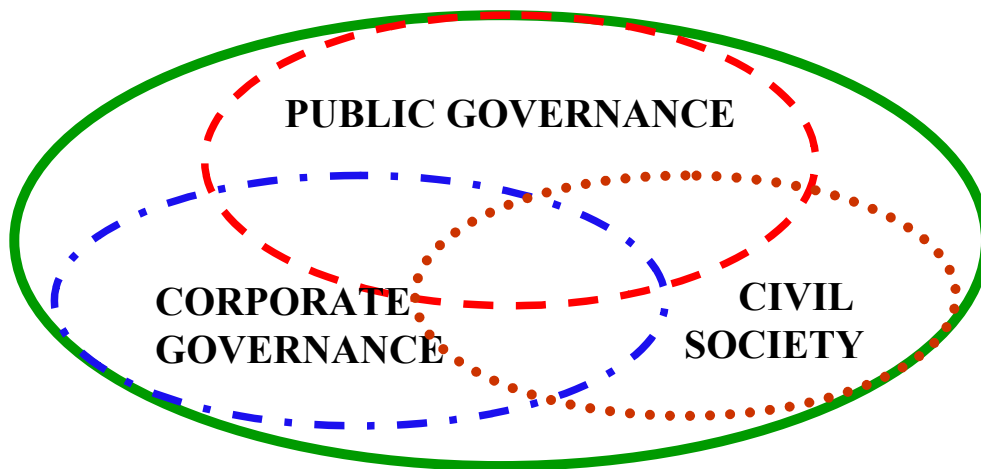


Figure 1.

The socio-political system operates as a complex evolving system (CES).<sup>3</sup> CESs are not static systems but are dynamic and constantly changing in response to changes in their environment (which they may in turn influence and change). Mitleton-Kelly argues that CESs are characterised by “inter-relationship, inter-action and inter-connectivity”, where “connectivity of elements means that a ‘decision’ or ‘action’ by any one element will affect all other related elements”.<sup>4</sup> I have argued elsewhere for a more detailed classification of the interrelationships, in which the agents are interconnected, interdependent and interactive. In this analysis:

- *inter-connectedness* refers to shared factors. Culture is one fundamental factor in interconnectedness, capable of both uniting and being the basis of division between agents;
- *interdependence* refers to the extent to which institutions are dependent on each other, such as the dependence of the Auditor General on the appropriation of funds to carry out the functions of the office; and
- *interaction* refers to the effects of one institution’s actions on the actions of one or more other institutions. Interactions are affected by interconnectedness.<sup>5</sup>

The nature of their interactions is only partly explained by formal rules affecting their behaviour. Many relationships and interactions are affected by fuzzy logic in which culture, personality, assessments, judgements and bargaining influence actions and responses.<sup>6</sup>

In the case of the auditor general, the hypothesis was that the statutory provisions were among a number of factors affecting the operation of the function and were not sufficient to fully explain its performance.

In examining the operation of auditors general, it was also possible to examine the role of the office as an agent within the complex evolving system.

One particular factor held to be fundamental to the auditing role of the office, in both the private and public sectors, is the independence of the auditor. Australian Statement of Auditing Practice AUP 32 states that:

The value of independent audit lies both in the fact that the auditor is, and is seen to be, independent of the audited entity, and hence is able to carry out the audit free of any externally imposed constraints (paragraph 6)

And further that:

independence requires a freedom from ... susceptibility to undue influence or pressure, any of which could lead to a belief that the audit opinion was determined other than by a reference to the facts of the audit alone (paragraph 8).<sup>7</sup>

Within Australia, the powers, independence and effectiveness of auditors general were revealed as significant issues by the Queensland Fitzgerald Royal Commission, WA Inc Royal Commission and Victorian Tricontinental Royal Commission<sup>8</sup> and by the short-lived and politically unpopular restrictions on the Victorian Auditor General's powers introduced by the Kennett Government. That Government was defeated in 1999 after a campaign in which the powers of the Auditor General were a prominent issue.

In introducing legislation to reverse the Kennett amendments and further strengthen the role of the Auditor General, the Victorian Premier, Steve Bracks said:

The need for an effective and independent Auditor-General is almost universally accepted as a hallmark of our democratic institutions. The Auditor-General plays a pivotal role in supporting Parliament in its function of authorising and supervising the spending of public money by the executive.<sup>9</sup>

There have been significant reforms to legislation establishing the office and powers of the auditor general in several Australian jurisdictions in recent years.

The very fact of somewhat similar reforms occurring in several Australian jurisdictions is itself evidence of a feature of governance which does not rely on any formal statutory provisions. Conferences of the Australasian Council of Auditors General<sup>10</sup> and joint meetings with the Australasian Council of Public Accounts Committees are major forums for the exchange of information and development of ideas. Australian auditors general are also active participants in their international professional institution, the International Organisation of Supreme Audit Institutions (INTOSAI).<sup>11</sup>

In addition, there are frequent informal contacts between auditors general and suggestions that, on occasion, one may take the lead in investigating a particular audit issue rather than it being duplicated in two or more jurisdictions.

Among the reforms regarded as significant has been the creation of the Auditor General as an independent officer of the parliament. An early initiative to achieve this was launched in New Zealand at least as early as 1988.<sup>12</sup> A 1989 report by the NZ Parliament's Finance and Expenditure Committee identified:

five criteria for the creation of an Officer of Parliament:

1. An Officer of Parliament must only be created to provide a check on the arbitrary use of power by the Executive.
2. An Officer of Parliament must only be discharging functions which the House of Representatives itself, if it so wished, might carry out.
3. Parliament should consider creating an Officer of Parliament only rarely.
4. Parliament should review from time to time the appropriateness of each Officer of Parliament's status as an Officer of Parliament.
5. Each Officer of Parliament should be created in separate legislation principally devoted to that Office.<sup>13</sup>

Whilst this prescription has not been invoked widely in Australian debates on adoption of the term, “Officer of the Parliament” has nonetheless been applied to the office of Auditor General in the Commonwealth, Victoria and the ACT.

The Commonwealth and ACT were chosen for more detailed study for several reasons. They represent the two ends of the size spectrum in Australian government, having largest and the smallest parliaments, they have quite different parliamentary structures and the Australian National University is located conveniently to them.

In addition, both the Commonwealth and the ACT have experienced reports by their respective Auditors General in recent years (on the sale of government buildings<sup>14</sup>; and on Bruce Stadium<sup>15</sup>) that are unlikely to have been made if the independence of those positions had been compromised.

Accordingly, the project sought to find evidence of interconnections, interdependencies and interactions between the auditor general and other accountability agents, the parliament and the executive and their effects on the nature and degree of accountability achieved by the auditor general’s function.

## **Methodology**

The study was undertaken through examination in the Commonwealth and the ACT of the legislation affecting the position of Auditor General and associated office, reports of the Auditor General and relevant parliamentary committees, media reports and commentary. Semi-structured interviews were conducted with the respective Auditors General (Barratt and Parkinson), the Commonwealth Deputy Auditor General (McPhee), the chairperson of each parliamentary public accounts committee (Commonwealth Joint Committee of Public Accounts and Audit—“JCPAA”; ACT Public Accounts Committee—“PAC”), the chairman of the Senate Standing Committee on Finance and Public Administration (“FPA”), the Clerks of each House, persons who were serving or had served as senior public service officials dealing with the Auditor General, officials, the Editor-in-Chief of the *Canberra Times* and a number of leading scholars in the field, in November and December 2002. The questions are shown in the Appendix.

Although not part of the project, an opportunity also arose to interview the Canadian Assistant (i.e., deputy) Auditor General, the Chairman of the Canadian Public Accounts Committee and the Secretary of that Committee. The paper makes brief reference to the Canadian situation.

## **Legislative provisions**

The legislation affecting the Auditor General is shown in Table 1. These provisions and their effects on auditor independence are discussed later in the paper.

Table 1. Legislation establishing the office and powers of the Auditor General and associated offices in Australian jurisdictions.

<b>Jurisdiction</b>	<b>Legislation</b>
Commonwealth of Australia	Auditor-General Act 1997 <a href="http://www.austlii.edu.au/au/legis/cth/consol_act/aa190171/index.html">http://www.austlii.edu.au/au/legis/cth/consol_act/aa190171/index.html</a>
Australian Capital Territory	Auditor-General Act 1996 <a href="http://www.austlii.edu.au/au/legis/act/consol_act/aa1996157/notes.html">http://www.austlii.edu.au/au/legis/act/consol_act/aa1996157/notes.html</a>
New South Wales	Public Finance and Audit Act 1983 <a href="http://www.austlii.edu.au/au/legis/nsw/consol_act/pfaaa1983189/">http://www.austlii.edu.au/au/legis/nsw/consol_act/pfaaa1983189/</a>
Northern Territory	Audit Act <a href="http://www.austlii.edu.au/au/legis/nt/consol_act/aa71/">http://www.austlii.edu.au/au/legis/nt/consol_act/aa71/</a>
Queensland	Financial Administration And Audit Act 1977 <a href="http://www.austlii.edu.au/au/legis/qld/consol_act/faaaa1977299/index.html">http://www.austlii.edu.au/au/legis/qld/consol_act/faaaa1977299/index.html</a>
Tasmania	Financial Management and Audit Act 1990 <a href="http://www.austlii.edu.au/au/legis/tas/consol_act/fmaaa1990230/">http://www.austlii.edu.au/au/legis/tas/consol_act/fmaaa1990230/</a>
South Australia	Public Finance & Audit Act 1987 <a href="http://www.austlii.edu.au/au/legis/sa/consol_act/pfaaa1987189.txt">http://www.austlii.edu.au/au/legis/sa/consol_act/pfaaa1987189.txt</a>
Victoria	Constitution Act 1975 <a href="http://www.austlii.edu.au/au/legis/vic/consol_act/ca1975188/">http://www.austlii.edu.au/au/legis/vic/consol_act/ca1975188/</a> Audit Act 1997
Western Australia	Financial Administration and Audit Act 1985 <a href="http://www.austlii.edu.au/au/legis/wa/consol_act/faaaa1985299/s71.html-98">http://www.austlii.edu.au/au/legis/wa/consol_act/faaaa1985299/s71.html-98</a>

## Findings

The findings are presented using the structure of the interviews.

### ***Auditor General's role***

Discussion opened with a general question asking respondents to indicate their view of the roles of the Auditor General. Whilst most respondents had understandings of the roles that were consistent with conventional views, several key issues were raised, most of which are elaborated later in this paper. The office is generally acknowledged as undertaking compliance and performance auditing of the executive in order to provide information to the Parliament.

A small number saw the Parliament as the intermediate audience rather than the body to which reports were directed. On this view, the office of Auditor General was seen as serving the community. Whilst all reports do become public documents, there is a fundamental difference between regarding the Parliament as the primary recipient and as the publishing forum. There is clear constitutional and provision for the Auditor General's role to be directed towards serving the needs of the Parliament<sup>16</sup>. Regarding the role as serving the community directly would appear to open up the potential for conflict between the Auditor General and the legislature.

However, the Auditor General's audits and reports do serve the interests of a range of institutions and groups within society.

The Commonwealth practice of issuing Better Practice Guides was widely recognized as a desirable and valuable role in supporting improved public administration.

### **Interconnectedness**

In examining evidence for interconnectedness between the Auditor General and those with whom he deals, the questions probed the extent to which there should be and are values which are shared by the respective agents.

Respect for the legitimacy of the role emerged as a key value which respondents believed should be shared. Openness and transparency in public administration are widely accepted as necessary for the role to be fulfilled. The nature of the Auditor General's specialized position and role make it more likely that he will have a more coherent set of values relevant to the role. The Auditor General himself was seen as bound by the general legislated objectives of the public service and related codes of conduct.

However, some held that there is not universal or perhaps not even sufficient general acceptance of this in the public service or among politicians. Departments are seen as varying in their commitments to accountability. This was attributed in part to a lack of leadership on these matters in the executive, especially the public service. In this context, a number of respondents felt that there should be a capacity to enforce adoption of Auditors Generals' recommendations. However, this must be reconciled with the orientation of the reports. As reports to parliament, their recommendations are matters that then fall within the parliament's responsibility to pursue. If there is a failure to enforce the implementation of desirable recommendations, then the weakness would seem to be in parliament's willingness or capacity rather than the authority of the Auditor General.

The Commonwealth Department of Finance and Administration (DOFA) is regarded as having been especially resistant to accepting the authority and findings of the Auditor General, at least in the past. There is some evidence of efforts by both DOFA and the Auditor General to overcome what both are said to recognise as a serious issue.

Ministers were acknowledged as sometimes being more welcoming of the Auditor General's role. Skilled ministers were seen as likely to use the Auditor General as an ally in tackling concerns over administrative efficiency and effectiveness within their portfolios.

Conflict with ministers and their agencies were most likely to arise over investigations that came close to reviewing policy<sup>\*17</sup>. The major example commonly cited was the sale of government buildings. This has been resolved by Auditors General steering clear of questioning policy decisions as such, but vigorously investigating the quality of the input (a public service output) to those decisions. Thus, in the case of the sale of government buildings, the practice has been to critically examine the basis of calculation of the "hurdle rate" used to determine if particular sales should proceed but not to challenge the ideological decision to sell buildings.

Good cooperative working relationships between the Auditor General and the respective public accounts committee was regarded as essential. However, the relationship must not

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\* Policy has been defined as "decisions 'which have the widest ramifications and the longest time perspective'" (Bauer 1968 quoted by Rhodes 1999). Whilst this definition may be generally accepted, it overlooks the fundamentally political nature of policy decisions as a distinguishing feature. The particular case of whether the state should own buildings or sell and lease back buildings occupied by the public service centred on an ideological decision affecting state ownership of such assets.

become cosy; the Auditor General listens to the views of the committee but must not become its captive. In practice, the Auditor General and the committee provide mutual support.

There is a tendency for politicians to want clarity and forthright conclusions that may conflict with the Auditor General's desire to present reasoned, well argued findings and sustain cooperative relationships with auditees to further improved administration. However, there is no suggestion that the Auditor General does or should compromise audit report standards in order to facilitate cooperative relationships with agencies.

### ***Executive prerogative***

Use and understanding of the concept of executive prerogative was probed. The term has remarkably little currency despite its relevance to the potential use of prerogative powers and its application to the oft-claimed right of governments to govern. The right to make policy decisions (subject to any necessary legislative approval) was the one area in which executive prerogative was accepted by most, although a small number felt that the Parliament should share that role, especially in the context of minority government.

### ***AG's role in Governance***

The role of the Auditor General was seen as providing assurance and as an aid to better public administration. In terms of the operation of the system of government, the role can be seen to be a moderating one. It acts as a unifying influence, improving interconnectedness by strengthening the influence of values of openness and transparency. That in turn enables all agents to participate and share more equitably. It guards against distortions in governance by limiting the likelihood of the executive, as the agent with effective control over resources, acting to the detriment of governance as a whole.

### ***Interdependence***

This series of question sought to identify the extent to which the Auditor General is dependent on each agent and vice versa, such as the dependence of the Auditor General on the appropriation of funds to carry out the functions of the office. Some of the responses were unexpected although not surprising.

Most fundamentally, interdependence was distinguished by respondents from anything that might compromise the independence of actions of the Auditor General. Any interdependencies must operate in ways that do not prevent the Auditor General carrying out the responsibilities of the office effectively.

Interdependencies that were identified included:

- sources of appropriation (see further discussion below);
- public accounts committee;
- auditees;
- media as a medium for communication of reports and speeches; and
- like offices, e.g. Ombudsman, Privacy Commissioner, Public Service Commission, Administrative Appeals Tribunal, etc.

### ***Independent—from whom?***

The fundamental aspect of the Auditor General's independence is the freedom from direction by the executive or influence by specific agencies.

However, independence from the parliament is a more vexed issue. The Commonwealth does not provide for direction by the parliament or the public accounts committee. Admittedly, the Commonwealth could at any time resolve to require the Auditor General to report; in practice such action is extremely unlikely.

Despite a suggestion that the Capital Territory Act makes provision for the Assembly to request the Auditor General to report on specific matters and that the power had been used from time to time, it has not been possible to confirm that this is correct.

However, the relationship with parliament and the public accounts committee is actually much more complex and subtle. It is clear that in relation to priority setting, there is a close but very proper relationship, or rather set of relationships, at play. These are discussed below.

The term “functional independence” was accepted by some but rejected by others. Those who accepted the term saw it as protecting the Auditor General from undue influence over his priorities or the preparation of specific reports; the counter argument saw independence of mind as the underlying requirement, whereby the Auditor General would not get “sucked in” to report other than in accordance with the facts.

The tenure of the Auditor General is clearly a major factor in the independence of the Auditor General. An Auditor General who is appointed for a short term could not develop an effective role. Most supported appointments for terms of from seven to ten years as “being about right”. It was noted that appointment for ten years would usually take likely appointees up to the minimum age for retirement (55 years) and that in any event, there are now often opportunities for employment after retirement from the public service. Slightly inconsistently, appointment until retirement age was rejected by all interviewees as too long because it would reduce the prospect of innovation and change of style.

An Auditor General subject to renewal of his appointment was seen as vulnerable to pressure for reports favourable to the executive in the period leading to re-appointment. Only Victoria has provision for re-appointment.

The means of recruitment, selection and appointment could have great significance but were not seen as of concern by interviewees. There appears to be general satisfaction with the arrangements in the Commonwealth and the ACT, which in each case gives the public accounts committee an effective veto over appointees proposed by the executive. Both arrangements are yet to be tested as the incumbents were appointed under previous provisions.

Victoria’s 1999 legislation provides for the Joint Public Accounts and Estimates Committee to make future appointments. It has been pointed out that that model too could be manipulated if the governing party had effective control of the committee.

The stringent requirements for removal in all jurisdictions are accepted as important to enhancing the independence of the Auditor General.

The reliance of the Auditor General on appropriations at the initiative of the executive was not seen as a problem in practice, notwithstanding its potential for executive limitation of the Auditor General’s resources and hence capacities to carry out performance audits (financial audit costs being recovered through fees). Only a small number of interviewees felt that the Auditor General in either jurisdiction had suffered from insufficient resources; those interviewees were not in a position to verify their concerns.

Both Commonwealth and ACT Auditor General resource levels seem well served by the support that they receive from their public accounts committee. It was felt by all interviewees that it would be politically very difficult to deny adequate funding to any Auditor General who was held in good standing by the community.

An alternative would be for the appropriation to be incorporated in a separate appropriation for the Parliament, as in Victoria. Whilst highly symbolic, this was felt to be of little practical significance as, in accordance with Westminster principles, appropriations must be initiated by the Crown, i.e. by a Minister as a member of the political executive.\*

A further alternative is provided in Tasmania's legislation whereby there is automatic appropriation of funds required by the Auditor General. Automatic appropriations are provided for many purposes (e.g. social security payments), so the alternative is realistic, but would doubtless require some check, such as review and right of veto by the public accounts committee.

### ***AG-Executive Relationship***

Auditing is much more difficult and may not be effective if there is not a level of cooperation between the Auditor General and auditees. This has been starkly illustrated in several cases in recent years.

In the ACT Bruce Stadium case, information appears to have been very deliberately concealed from the Auditor General; again in 2002 the ACT Auditor General reported that secrecy provisions in government contracts had not been disclosed to him as required. The latter matter is still under investigation by the Public Accounts Committee. Some evidence was provided that the Bruce Stadium case generated a high level of distrust which persisted at least until late 2002 and which seriously inhibited the potential for the Auditor General to work with agencies to improve administration.

In the Commonwealth, both the Auditor General and DOFA are said to be working to build a more constructive and productive relationship in the aftermath of the report on the sale of government buildings.

The publication of Better Practice Guides is seen as an especially valuable means of developing cooperation between the Auditor General and the public service generally, individual public servants and agencies.

The overwhelming finding that emerges is the importance of the behaviour of individuals and their institutions within the parameters set by the legislation. A frosty relationship with formal requirements for disclosure may force the Auditor General to search in dark corners for basic data; a cosy relationship may inhibit an Auditor General from upsetting his mates; an arms length but cooperative working relationship incorporating openness, transparency and "giving credit where credit is due" can result in high levels of trust, with information being volunteered and highly productive audits.

### ***Differences between auditees***

A notable aspect of the relationship between the executive and the Auditor General is how little dealing there is between ministers and the Auditor General. Most ministers have no dealings with the Auditor General; as often as not, any dealings will be to seek him as an ally, suggesting a matter on which he might report and using his findings to exercise more effective control over a portfolio area. The prudent Auditor General will expect the minister to come to his office rather than appear to be at the beck and call of a member of the political executive.

Direct expenditure by ministers such as on travel entitlements is rarely examined.

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\* This restriction does not apply in many non-Westminster jurisdictions and has been abandoned in the ACT. It may require constitutional amendments to remove it in the Commonwealth and Australian States.

Government Business Enterprises (GBEs) appear to be a little problematic. The Commonwealth Auditor General cannot undertake performance audits of GBEs unless requested to do so, e.g. by the JCPAA. The ACT Auditor General has no such restriction.

Commonwealth bodies such as the ABC and ACCC are audited similarly to departments.

### ***Limits to AG's jurisdiction***

Many interviewees regard policy as off limits in the Commonwealth, but nonetheless it is affected by the accepted right of the Auditor General to report on the quality of advice generated by the public service to assist political decisions. Similarly policy outcomes are examined to determine the extent to which objectives are being met.

The ACT Auditor General is not seen as bound by any limitations on his rights to report on the expenditure of public funds and the exercise of public powers.

The Canadian Auditor General is proscribed from reporting on policy according to Thompson (Assistant Auditor General)<sup>18</sup>. However, a review of recent reports reveal that she has not been inhibited in addressing associated audit issues in a similar way to her Australian counterparts (e.g. see 2002 Reports of the Auditor General of Canada<sup>19</sup>, 2003 Reports of the Auditor General of Canada<sup>20</sup>).

### ***AG-Parliament Relationship***

Although it is generally agreed that the Auditor General should be independent of the legislature,<sup>21</sup> the reality is more complex. The Auditor General and the relevant public accounts committee maintain a close working relationship, based on statutory provisions but extending well beyond the formal requirements. In practice, the Auditor General keeps the committee well briefed and listens attentively to comment and suggestion. Care is taken to avoid a cosy relationship with informal discussions between the Auditor General and committee members. A key element of this is trust arising from the maintenance of non-partisan behaviour by the committee.

Each committee has a key role ensuring the Auditor General has an adequate budget (see above).

The Senate Committee of Finance and Administration ("FPA") is a special case. It lacks the formal statutory relationship of the JCPAA but has achieved some significant reforms nonetheless, most notably the requirement for the disclosure of contracts entered into by Commonwealth agencies. Clearly, the Auditor General has assisted and supported the FPA. The Senate's Order is now reflected in government Procurement Guidelines and has caused a huge improvement in the management of contracts and a dramatic reduction in the use of confidentiality provisions, even though it is not yet a formal requirement of government.

In the ACT there is some concern that the Auditor General is able to report outside sitting periods (usually about 14 weeks per year). This is seen by some as disrespectful of the Assembly—a concern that was exacerbated by a case in 2002 when the Auditor General made copies of a report available to the media in advance of its tabling in the Assembly which was then in session. It is difficult to reconcile that action with the role of the Auditor General being to report to the Parliament and the importance of his maintaining a good working relationship with the Assembly and its PAC.

## **Who watches the watchdog?**

There is general satisfaction with the arrangements for independent auditing of the Auditor General, although they are not well known. The arrangements in the Commonwealth, ACT and several other jurisdictions are broadly similar.

## **Setting the AG's priorities**

The ways in which the Auditors General set their priorities and work program are very much a “black box” for those not in the know.

The basic directive is, of course, the legislation. Every agency will be subject to the annual financial compliance audit.

Beyond that, there is not a regular cycle whereby every agency or program is reviewed periodically.

It is clear that each Auditor General does pay very careful attention to comments and suggestions from politicians, especially the public accounts committee of his jurisdiction. Both Auditor Generals and committees stress that the Auditor General merely receives suggestions and makes his own decisions, but those suggestions clearly carry considerable weight. In addition, each Auditor General scans Hansard and issues reported in the media and maintains a watch on developments in other Auditor Generals' activities.

If a minister suggests an area worthy of investigation, that will not be taken as a directive but is unlikely to be ignored.

These various sources are used to prepare a program, in which particular themes are likely to be chosen, e.g. security following the events of September 2001. The public accounts committee will be consulted but will not direct to the content of the program.

## **Interactions**

Interaction refers to the effects of the Auditor General's actions on the actions of one or more other institutions and vice versa.

### **Who acts in response to AG?**

The agents who act in response to actions, chiefly reports, of the Auditor General are firstly the auditees—the departments and other agencies, and their ministers. Central agencies are also likely to pursue matters affecting functional agencies.

The public accounts committee also routinely receives and reviews each report and in turn will make its own report after receiving submissions and evidence from the auditees.

Reports are commonly used in debate in parliament, often for partisan purposes.

The media will also make selective use of reports according to their own judgement. The media may also report speeches delivered by the Auditor General—often made to raise important issues of public administration falling within his purview.

### **Whose actions influence the AG?**

The Auditor General is firstly influenced by those whose comments and suggestions influence his priorities (see above). In addition, auditing professional associations and standards setting bodies can be expected to influence technical aspects of his performance.

## **Interactions with outsourced providers to government**

There is now less concern about issues surrounding contractors to government, including access to documents, commercial in confidence, etc. A reverse onus of proof applies generally to claims of commercial confidentiality. The one area in which confidentiality is now defended is intellectual property including trade secrets and some internal costing of tenders, etc.

Some concern was expressed about the adequacy of auditing of expenditure of Commonwealth money granted to States.

## ***Measuring independence***

The information gathered through these interviews is now added to data from other sources to attempt a measure of the independence of the Auditor General as affected by the formal features of the enabling environment.

What then are the features of the statutory environment that could demonstrate the level of independence of the Auditor-General from the executive? The major factors are summarised in Table 2.

1. Appointment. The Auditor-General's independence is compromised from the beginning if the selection and appointment are by the executive itself. As Table 2 shows, all appointments are formally by the head of state on the advice of the executive.
2. Appointment role of parliament. Several Australian jurisdictions do not give the parliament any role in the selection.
3. Tenure. The Auditor-General must be secure in the knowledge that she/he could not be removed from office if the executive became unhappy with audit reports. Each jurisdiction appears to provide strong protections, although there are widely divergent models for the period of appointment.
4. Statutory independence. One practical and highly symbolic way of asserting the Auditor-General's independence from the executive is to specify in the legislation for the office that the executive may not direct her/him. Four of the nine jurisdictions have such a provision.
5. Power of direction. An almost direct opposite of statutory independence is a statutory power for a minister to direct the Auditor-General to undertake certain activities. Three jurisdictions have a very limited power, but the Northern Territory has an extraordinary power for the minister to direct the Auditor-General to undertake special audits.
6. Officer of the Parliament. A highly symbolic assertion to distinguish the Auditor-General from the executive and associate the office the parliament is to create it as an "Officer of the Parliament", as in three jurisdictions.
7. Independent budget. If the budget for the Auditor-General's office (different titles are used in various jurisdictions) is part of the parliament's appropriation or a separate appropriation, a much higher level of independence from the executive is demonstrated than if it is part of the general appropriation or, even worse, forms part of the budget for a minister's portfolio. In only one is it part of a separate appropriation for the parliament; in five is part of a minister's portfolio budget. In

Tasmania, it enjoys the special privilege of an automatic appropriation, meaning that an annual budget appropriation is not required.

(The Auditor-General's association with parliament is also shown in Table 2.)

8. Parliamentary Committee. In several jurisdictions the Auditor-General is formally linked to a parliamentary committee.
9. Parliamentary Committee independence from executive. Where a committee is chaired by a member who is not a member of the governing party it is easier for it maintain its independence from the executive. Only the ACT Committee is chaired by a non-government MP. Even the Senate Finance and Public Administration Committee is chaired by a Government party senator. (N.B. The Canadian practice is for the chair to be non-government member.) This factor is not determined by statute, but it does tend to be a stable convention in each jurisdiction.
10. Parliament's power to direct. As Table 2 shows, all jurisdictions except one either deny or do not provide any authority over the Auditor-General's functional independence; one jurisdiction's committee has some power to provide guidance or direction to the Auditor-General.

All Parliaments, of course, retain the capacity to legislate on the Auditor-General's powers.

By giving a numeric rating assessing the formal strengths of the independence of the Auditor-General from the executive and of the association between the office and the parliament, with each of the ten factors given the weightings shown as multipliers, the results for each jurisdiction are as shown in Table 2.

Table 2. Independence of Auditor General – formal factors

	Indicator																Rating /100
	1. Appointment by parliament	2. Appointment requires parliamentary committee approval	3a. Tenure: long term (10 years or until retirement age)	3b. Tenure: security from dismissal	3c. Tenure: appt non-renewable	4a. Statutory independence from Executive	4b. AG not subject to attempts to inhibit or direct by Executive	5. Executive has no authority to direct AG (100 = no capacity; 0 = provision to) direct)	6. Officer of Parliament	7a. Appropriation via Parliament	7b. Automatic appropriation	8. Associated with Parliamentary Committee (e.g. Public Accounts)	9a. Associated Parliamentary Committee under non-government control	9b. Committee operates in non-partisan manner	10a. Functional independence from Parliamentary committee	10b. Priorities may be directed by Parliamentary Committee	
Multiplier ( /1)	0	0.1	0.05	0.05	0.05	0.1	0.05	0.1	0.05	0.05	0	0.1	0.02	0.08	0.05	0.05	
<b>Jurisdiction</b>																	
Commonwealth of Australia	0	100	100	100	100	100	100	100	100	0	0	100	0	100	100	100	83
Australian Capital Territory	0	50	100	100	100	100	100	100	100	50	0	100	100	100	100	0	78
New South Wales	0	50	100	100	100	0	100	50	0	0	0	100	0	100	100	0	53
Northern Territory	0	0	100	100	100	0	100	0	0	50	0	0	0	100	100	0	36
Queensland	0	50	100	100	100	0	100	100	0	50	0	100	0	100	100	0	61
Tasmania	0	0	100	100	100	0	100	50	0	80	100	0	0	100	100	0	47
South Australia	0	0	100	100	100	100	100	100	0	0	0	100	0	100	100	0	63
Victoria	0	100	70	100	0	100	100	100	100	100	0	100	0	100	0	100	82
Western Australia	0	0	100	100	100	0	100	50	0	0	0	0	0	100	100	0	38
AVERAGE																	60

On this assessment, no jurisdiction achieves the maximum possible score. The Commonwealth, the ACT and Victoria are clear leaders, for different reasons. Victoria's position arises from reforms made in 1999 in the wake of serious public concerns over erosion of the independence of the Auditor-General under the Kennett Government (1992-99).

The Commonwealth ranks next, as a result of reforms made in 1996-97 following recommendations made in a number of reports by the Joint Public Accounts Committee.<sup>22</sup>

The ACT rates highly, a result no doubt associated with the finely balanced membership of the Assembly arising from the electoral system and its historical experience.

The remaining jurisdictions lag behind, some severely.

However, note the sensitivity of this model to the weightings assigned to individual indicators. These weightings are products of particular values attributed by one author. The model has the capacity to vary the weightings to reflect the particular values of the analyst.

Thus for example, an analyst who regards the chairmanship of the public accounts committee by a government party member as desirable, will attribute different weightings and produce a different result accordingly.

Clearly, the model at this stage has insufficient regard to the informal factors affecting the effective independence of the Auditor General. Some of those factors are referred to in this paper. Others are not. For example, there has been no examination of the process whereby draft reports are considered by auditees and any comments taken into account in the final report. At earlier stages, the cooperative relationship sought by the Auditor General should be investigated to determine any effect on the selection of facts used and their interpretation—so-called “negotiated interdependence”.<sup>23</sup>

Similarly, there has been no attempt to assess the extent to which each Auditor General has used, or failed to exploit, the capacity for independent action available to him or indeed to assess the capacity to act e.g. the adequacy of human and financial resources.

## **Conclusion**

This paper reports an examination of the nature of the interrelationships in which the Auditor General and the associated office are involved for evidence to support a theoretical model of governance and, at a more applied level, the study sought to identify the factors contributing to the effectiveness of the role of Auditor General, in particular to the independence of the office.

It demonstrates that the Auditor General operates in a governance environment in which interconnectedness, interdependence and interaction are key factors affecting outcomes.

It presents a model by which the formal provisions affecting the independence of an Auditor General may be assessed and compared in amended governance environments or with auditors general in other jurisdictions.

Further work is desirable to refine the model to take informal factors in greater account.

## Appendix

Semi-structured interview themes:

In this interview, I would like to ask you to discuss the inter-relationships between the Auditor General and the parliament and any other institutions or key individuals who may be relevant to any aspect of fulfilling the objectives of the Auditor General's office.

These inter-relationships can be divided into three types:

1. *inter-connectedness*, which refers to shared factors such as a belief in the principle of responsible, democratic government;
2. *inter-dependence*, which refers to the extent to which institutions are dependent on each other, such as the dependence of the Auditor General on the appropriation of funds to carry out the functions of the office;
3. *inter-action*, which refers to the effects of one institution's actions on the actions of one or more other institutions, such as the effect of the Auditor General's reported findings on the agency involved.

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### AG's role, in your words

To commence, could you please describe what it is that the AG does that does or may affect the accountability of the executive.

### Inter-connectedness

- What values or other factors do you believe need to be shared by the AG and other relevant institutions if the objectives of the AG's functions are to be fulfilled?
  - e.g. commitment (by executive, public service, parliamentary committee) to accountability; respect for/deference to parliament, .....
- What do you understand by "executive prerogative"?
- What do you see as the underlying reasons for the AG's role in the accountability of the executive, i.e. why are the accountability "things" that the AG does, done?

### Inter-dependence

- What are the institutions with which you believe the AG is inter-dependent?
  - e.g. Parliament, committee/s, independent auditor, departments, agencies, ministers, media, ....
- The AG is an Independent Officer. Independent from whom?
  - e.g. Selection and Appointment (Parliament v executive); tenure; statutory protection of independence; capacity for executive to direct; "Officer of the Parliament"; source of appropriation
- Could you tell me a little about what you see as the appropriate relationship between the AG and the Executive?
- Are there differences between the relationships of the AG with:

- Departments;
- Agencies; and
- Ministers?
- Does the protection of the AG's independence also bring with it limits to the range of matters that the AG has a right to investigate?
  - have those limits changed? and
  - are you aware of any differences between jurisdictions in those limits?
- Could you tell me a little about what you see as the appropriate relationship between the AG and the Parliament including relevant parliamentary committee/s?
  - e.g. parliamentary committee (NB control by government party); direction by parliament/committee
- Can you comment on the adequacy of the arrangements for holding the AG to account?
- Could you tell me a little about what you see as the appropriate relationship between the AG and the Independent Auditor?
- What effects does the present manner in which funds are appropriated for the AG's office have on the independence and capacities of the office?
- How are the AG's priorities determined, both in terms of agencies and programs to be subjected to performance audits or other special attention in any particular period (in the ACT especially)?
  - Has a performance audit of the AG been requested? When/why not?
  - Why does AG, not the Independent Auditor, conduct the survey for satisfaction?

### **Inter-action**

- Could you tell me which institutions you think take actions as a consequence of actions taken by the AG and can you describe the types of action involved?
  - Responses within the executive - departments, agencies, ministers
  - Parliament, committee/s, independent auditor, media, ....
- Could you tell me which institutions you think take actions that influence actions taken by the AG and can you describe the types of action involved e.g.
  - Parliament, committee/s, independent auditor, departments, agencies, ministers, media, ....
- Could you tell me about interactions between the AG and private sector business entities which have contractual relationships with the executive, e.g. entities providing outsourced services?

## Endnotes

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