

Australasian Study of Parliament Group

Annual Conference October 2013

Independent Officers and Oversight Committees

The WA Audit Experience

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Independent Officers and Oversight Committees – The WA Audit Experience

Abstract

When it passed the Auditor General Act 2006 (AG Act), the WA Parliament gave legislation to the Auditor General that was contemporary and practical in application. Powers and responsibilities of the Auditor General were expanded and clarified. The AG Act makes the Auditor General an independent officer of Parliament, requires him to act independently, allows him complete discretion and provides that he cannot be directed by anyone in the performance of his functions. The AG Act also strengthened and focused the Parliament's oversight of the Auditor General.

The AG Act, Committee standing orders, protocols and conventions go a long way to defining the relationship between the Audit Oversight Committees and the Auditor General. But also critical is sound communication and understanding of their respective roles, functions, areas of interest and forward plans. These elements provide the basis of a relationship that is truly effective in ensuring accountability and transparency in government.

This presentation will provide the WA Auditor General's perspective on effective oversight of independent Officers. It will cover issues like oversight committee roles, audit confidentiality and secrecy, communication, accountability, independence and the way forward.

Independent Officers and Oversight Committees – The WA Audit Experience

Introduction

What is “oversight” in the context of Parliament, parliamentary committees and the Auditor General?

A traditional view of the oversight role traces back to 1861, when the House of Commons at Westminster established a standing committee designated "The Committee of Public Accounts" to consider the reports of the Comptroller and Auditor General. In this context, the Public Accounts Committee and the Auditor General have complementary roles in parliamentary oversight and scrutiny of the expenditure of public moneys by government and public sector agencies.

But there is another oversight context that has emerged in recent years, and is perhaps more relevant to the theme of this conference. That is the question of who audits the Auditor General. In that context, oversight refers to the accountability of the Auditor General to the Parliament.

The relationship between parliamentary committees and the Auditor General for Western Australia is complex, and embraces both of these concepts of oversight. I therefore intend to address both of these concepts in this paper, both from a historical perspective and from my own public sector experience including seven years as Auditor General, interacting with a number of parliamentary committees over three Parliaments.

The Office of the Auditor General

The origins of the Western Australian Office of the Auditor General (OAG) date back to 1829 with the settlement of the Swan River colony when Captain Stirling appointed three auditors. Since that time the OAG has established a reputation of integrity and independence in its role as a watchdog over the expenditure of public moneys by the government and public sector agencies. It has fulfilled its role well in informing its key client, the Parliament, on public sector accountability and performance.

For most of the 180 years it has been in existence the OAG focused on the accuracy and presentation of government and public sector financial transactions and their compliance with legislation. Over the last 25 years this focus has broadened to include audits of the efficiency and effectiveness of public sector agencies' operations. These performance audits have provided significant recommendations for improving public sector governance and performance and are seen by the Parliament and its committees as key information to assist them to scrutinise government expenditure of public moneys and the efficiency and effectiveness of public sector agencies.

Today, the OAG is a relatively small organisation comprising 125 staff with an annual budget of \$22 million. About \$15.5 million is funded by audit fees charged to agencies for financial audits. The remaining \$6.5 million is funded by parliamentary appropriation and mainly represents the cost for our performance and compliance audit activities.

We are responsible for 200 annual financial audits of agencies where we provide an opinion on agencies' controls, financial statements and key performance indicators.

About 40 per cent of the financial audits are contracted to private sector accounting firms. These audits are carried out on my behalf and I sign the auditor reports or opinions.

Performance auditing represents about 30 per cent of the OAG's total audit effort and results in over 20 reports to Parliament each year. These audits take considerably more time and resources to complete and generally require a different skill set to financial audits. Staff that carry out these performance audits mostly come from professional disciplines other than accounting and auditing due to the nature of the activities audited.

Audit quality is a key goal of the OAG and as a consequence all audits, both financial and performance are conducted in accordance with Australian Auditing and Assurance Standards. Credibility and reputation are established requirements within the OAG and also I would propose are an expectation of our key client, the Parliament, and public sector agencies and other stakeholders including the community.

Historical Relationship with Parliament and its Committees

Historically, the OAG has had a strong relationship with the Parliament. The emergence of parliamentary committees provided the opportunity to strengthen this relationship. The two committees with a particular interest in the work of the OAG are the Public Accounts Committee (PAC) and the Estimates and Financial Operations Committee (EFOC). In my view, the term oversight is not an adequate description of the relationship between these committees and the OAG. Nevertheless as oversight is certainly a key part of their role, I will refer to them as the oversight committees.

The PAC was established by the Legislative Assembly in 1971 and EFOC was established by the Legislative Council in 1989. Both committees were established under the Standing Orders of the respective Houses.

A demonstration of the relationship, cooperation and information sharing between the OAG and its oversight committees was the 1996 institution of a Statement of Understanding (SOU) between the then Public Accounts and Expenditure Review Committee (PAERC) and the Auditor General.

The SOU was an important step forward, demonstrating and formalising a positive and constructive relationship between the Office and its oversight committee.

The aim of the SOU was to enhance the accountability mechanisms of the Parliament by improving communication and coordination between the Auditor General and PAERC. It also signalled that both parties recognised the commonality that had developed between their objectives i.e. to ensure that public moneys have been spent lawfully, effectively and efficiently. The need for both parties to remain independent, whilst supporting each other was identified as a critical element of the relationship.

The main components of the SOU included:

- the PAERC and Auditor General will meet on a periodic needs basis
- the Auditor General will refer matters to the PAERC that he determines warrant consideration by the Committee
- the Auditor General will brief the PAERC on key themes of a report prior to tabling
- the PAERC will respond to the Auditor General's reports in a timely manner in the House, and make known its intention to follow up matters by hearing, inquiry or other means

The resultant reviews of Auditor General's reports by PAC (PAERC was renamed PAC) increased the visibility and impact of the reports. It also acted as an incentive to agencies to address matters identified by the Auditor General in a satisfactory and timely manner.

In the late nineties the Auditor General's performance audit activities were growing and the resultant performance audit reports began to increase in number. PAC acknowledged the benefits of these efficiency and effectiveness examinations and in 2003 it established a process to review the actions of public sector agencies in addressing the recommendations in the Auditor General's performance audit reports.

Public sector agencies were required to provide to PAC, within 12 months of a report being tabled, details of actions taken to implement the Auditor General's recommendations. PAC would consider an agency's response in consultation with the OAG and it could also request additional information or convey a hearing with relevant senior agency officers or the Auditor General.

The Statement of Understanding and follow-up activities of PAC demonstrate the comprehensive nature of the relationship between the OAG and the Committee. In putting the SOU in place, the Committee noted that the major aim was to enhance the accountability mechanisms of the Parliament.

It also noted that, as part of its obligations, the Committee would encourage and support the independence of the Auditor General and would work to ensure that this independence is not compromised.

Commission on Government

The foundations for the current legislative mandate for the work of the OAG can be found in the 1995 reports of the Commission on Government (COG). COG was established in response to a recommendation made by the Royal Commission into the Commercial Activities of Government and Other Matters (Royal Commission). Given the focus on the commercial activities of government, the Royal Commission was concerned with matters of secrecy, access to information and the role and powers of the Auditor General.

The Royal Commission made a number of recommendations about the role of the Auditor General, including strengthening of the independence of the role and widening powers, particularly in relation to access to information. The Royal Commission specifically addressed the question of "who audits the Auditor General" and recognised that increased powers should come with commensurate accountability provisions.

Among those who supported this view was the then Auditor General, who stated in his written submission that:

A worthwhile addition to the audit legislation would be a requirement for periodic external review of the effectiveness and efficiency of the Audit Office, with the relevant committee of Parliament having a direct role in setting specific terms of reference and selecting and appointing the reviewers.

The Commission on Government subsequently recommended that:

*1. The proposed Auditor General Act should provide that:
(a) the performance of the Office of the Auditor General be subject to triennial external reviews, funds for which are provided in the permanent appropriation, in accordance with the directions of the proposed Joint Audit Committee*

Given COG's recommendation that expanded powers and authority be given to the Auditor General, it was critical for this be balanced by a strengthening of accountability arrangements.

Auditor General Act (AG Act)

It took some time for the separate legislation recommended by the COG to be put in place.

Independence

The enactment of a new Auditor General Act (AG Act) in 2007 significantly enhanced the independence of the Auditor General, particularly through the following provisions:

- section 7 established that:
 - the Auditor General is an independent officer of Parliament
 - the Auditor General is authorised and required to act independently in relation to the performance of the functions of the Auditor General and, subject to the AG Act and other written laws, has complete discretion in the performance of those functions
 - the Auditor General is not subject to direction from anyone in relation to whether a particular audit is conducted, how it is conducted or what is included in an audit report.
- schedule 1 established safeguards over the appointment and removal of an Auditor General:
 - PAC and EFOC were given a say for the first time in the appointment of an Auditor General with the Minister required to consult with them on the criteria for selection and on the recommended appointment
 - suspension or removal from office was put in the hands of both Houses of Parliament and the Governor.

Powers and Authority

The new legislation gave the Auditor General considerable power and authority to fulfil the broad mandate of informing Parliament about public sector accounts and operations. Not surprisingly, these powers mean that the OAG holds highly sensitive information – access to which is restricted by the AG Act, professional obligations under Australian Auditing Standards and requirements under the Public Sector Management Act.

Some of the powers provided by the AG Act are used frequently, while some, which could be regarded as reserve powers, have never been used.

These powers include:

- full and free access at all reasonable time to accounts or property
- capacity to 'follow-the-dollar' into non state government organisations when investigating any matter relating to public property. Recently, EFOC sought advice as to how often this power had been used. I was pleased to advise them that it had been used but also, that it was not frequently used
- power to direct a person to provide information or explanation or to produce documents. An aspect of this power is that a person is not excused from giving information or answering a question or producing a document even if it might tend to incriminate the person in a proceeding under the Criminal Code. Our need to cite the legislative authority to get information or documents we need is rare and there has never been a case where the issue of self-incrimination has arisen. In the event that it did, I cannot envisage any circumstance where we would not seek and follow legal advice.

Legislative Relationship with Parliament and Committees

The new AG Act also clarified the Auditor General's relationship with his key client, the Parliament.

The AG Act specifically recognised the important roles played by PAC and EFOC, but also established the Joint Committee that had been recommended by COG.

Section 43 requires Parliament to establish a Joint Standing Committee on Audit (JSCA) and section 44 gives the JSCA the following functions:

- make recommendations to the Treasurer on the OAG's budget
- make recommendations about the organisation structure and resources of the OAG

Recognising the roles of PAC and EFOC, Section 8 of the AG Act requires the Auditor General to have regard to the audit priorities of Parliament as determined by:

- either House
- Public Accounts Committee
- Estimates and Financial Operations Committee

This requirement to "have regard" is not a direction to the Auditor General by Parliament. However, it is a very elegant way to recognise and balance the need for an Auditor General's independence with the need for Parliamentary influence over the Auditor General's functions.

Secrecy

Given its focus on the commercial activities of government, it is not surprising that the Royal Commission and subsequently COG had much to say about secrecy. COG recommended that the Auditor General be given broad access to confidential information. This included the right of access to Cabinet decisions and related submissions. COG recognised that the situation might arise where it was necessary for the Auditor General to report confidential information to Parliament, in circumstances where it would not be in the public interest for the information to be tabled. In these circumstances, COG recommended the Auditor General should report to a committee, the proposed Legislative Council Standing Committee on Finance and Audit.

Much of COG's recommendations were carried forward to the AG Act. While the Auditor General's information gathering powers in the AG Act are extensive, interestingly, there is some uncertainty regarding the power to access Cabinet documents. It appears that the AG Act has not reflected the original intent to provide access to these papers.

The AG Act also has unique provisions which provide a role for the Auditor General (section 24(2)(c)) in providing an opinion as to whether a decision by a Minister not to provide information to Parliament is reasonable and appropriate. This aspect of the legislation appears to be unique, as is the rare restriction on the Auditor General's capacity to report to Parliament contained in the complementary section 37(2) preventing the Auditor General from reporting confidential information to Parliament if the Minister decides that it would not be in the public interest for it to be disclosed.

Provisions in the legislation providing broad access to information were balanced by strengthened secrecy provisions. Auditors are required under professional obligations to balance public reporting with the need to keep other client information confidential. Nevertheless, the AG Act imposed strict secrecy provisions and a penalty of \$50 000 for breach. Section 46 of the AG Act, relating to confidential information reflects the exemption foreshadowed by COG. The section contains a specific provision exempting three parliamentary committees from the secrecy provisions. The Auditor General is not restricted in providing confidential information to PAC, EFOC or the JSCA.

Public Administration Committee

While the AG Act provided specific roles for PAC, EFOC and the JSCA, it did not make reference to other committees other than to note that Parliament includes "The committees of each House and joint committees".

The AG Act was tested in June 2012 when the Public Administration Committee of the Legislative Council sought specific information and documentation relating to prior financial audits of Western Power.

The State Solicitor's advice about this request was that the Auditor General cannot communicate with Parliament or its committees other than in accordance with the specific provisions of the AG Act relating to such matters. The secrecy provisions of section 46 do not apply to the PAC, EFOC or JSCA therefore such information could be provided to them. However, as the Public Administration Committee was not named in this section, the legal advice was that the secrecy provisions applied and the Auditor General could not provide the requested information.

Our legal advice also suggested that the information could not be provided under section 23, where the Auditor General has some discretion. However, the advice also indicated that the application of section 23 was not clear and recommended legislative amendments to clarify the relationship between sections 23 and 46.

The Public Administration Committee had concerns that section 46 may be considered to qualify parliamentary privilege relating to the right for all committees to seek information. Ultimately the matter was referred to the Procedures and Privileges Committee which recommended that the JSCA include the matter in its review of the AG Act.

Current/Modern Relationship with Parliament and its Committees

Overwhelmingly, the OAG has had a strong relationship with the Parliament and its committees since the implementation of the AG Act.

An Auditor General's key client is the Parliament and the OAG's mission is "to improve public sector performance and accountability by reporting independently to Parliament". The reporting component is reflected in the AG Act which requires the Auditor General to:

- report annually to both Houses on matters arising out of the performance of the Auditor General's functions
- report on examinations and investigations to both Houses or PAC and EFOC.

An informed Parliament is crucial to the effectiveness of an Auditor General. It is through the Parliament that the effectiveness of the Auditor General is enhanced. The Auditor General can make recommendations to government and public sector agencies but without the Parliament's imprimatur to the Auditor General's findings, the recommendations have little value.

The Parliament has charged PAC and EFOC with the responsibility for the ongoing scrutiny of government and public sector expenditure of public moneys. Therefore a good relationship between these committees and an Auditor General is a critical factor that influences the effectiveness of a public accounts committee, and an Auditor General.

Public accounts committees require the right information on a timely basis to be effective. Similarly an Auditor General requires an effective public accounts committee to progress recommended improvements in public sector performance and accountability.

This is best achieved through a significant degree of cooperation and information sharing. However, at the same time, both parties must recognise that the relationship is complementary and that both parties are independent and must be seen to be independent.

Over time, PAC and EFOC have come to rely heavily on the complementary work and reports by the Auditor General to assist with their scrutiny. This reliance on work by the Auditor General reinforces the comment in Parliament when the PAC was established that most of the PAC's work would arise as a result of the Auditor General's reports.

The complementary oversight role of PAC and EFOC, and the Auditor General, is a very powerful oversight where it is done well.

The Auditor General has the powers and resources to effectively audit the expenditure of public moneys and to make recommendations to the Parliament on what needs to be fixed to improve accountability and performance. PAC and EFOC, through the Parliament, have powers to enforce the implementation of recommendations by the Auditor General. They also cause greater transparency and notice of the Auditor General's reports. These factors amplify the effectiveness of the Auditor General in improving public sector performance.

These respective powers were mentioned in Parliament in May 2011 when the then Chair of the PAC, Mr John Kobelke, stated:

When the Auditor General reports to the Parliament with advice for an agency or agencies that is intended to help improve their performance, it is not the Auditor General's role to enforce or follow up on the agency's compliance or implementation of his recommendations. For some years the Public Accounts Committee has taken on the role of following up with agencies to see how they have responded to the Auditor General's recommendations.

The use of the Auditor General's reports by PAC and EFOC to assist with their scrutiny is only one side of the equation. The committees may also request the Auditor General to carry out an audit.

A quote from the Commonwealth Parliamentary Association report "The Overseers" probably encapsulates the complementary roles of public accounts committees and Auditors General.

A PAC is one organisational form in which Parliament ensures the accountability of government. But for the PAC to function at all it requires the information essential to a proper assessment of the governance and performance issues it wishes to address. In almost all countries this is largely provided by an independent state auditor (referred to in this report as the Auditor-General). It is the Auditor-General's role to help ensure that the use of public sector resources is adequately accounted for by government, both by the extensive independent audit, and report work carried out by the Auditor-General's office, and by supporting the work of the PAC.

The complementary oversight of government and public sector expenditures by public accounts committees and the Auditor General allows both to be more effective. It results in significant improvements in public sector governance and performance and increased transparency of public sector activities than could be achieved by either parties operating separately. I believe that this complementary oversight model has worked well and produced a better outcome for the community.

In 2007 the Chair of PAC, Mr John Quigley, stated in the Parliament:

In this atmosphere of independence, the committee and the Auditor General work together for the benefit of Western Australian taxpayers to ensure that agencies comply with the Auditor General's recommendations to increase their efficiency and services to the public, and that the public gets value for money from their agencies. This process is extremely important in ensuring that the recommendations of the Auditor General are given close consideration by the public sector.

In my time as Auditor General, the relationship between the oversight committees and the OAG has grown and the outcome is better oversight of public sector operations.

The oversight committees now play an important part in the design of our forward performance audit programs and we keep them regularly informed of the status of all our audits. We are also providing more advice to the committees than ever before. The number of formal meetings with the committees has increased as has informal communication between committee staff and OAG staff. Certainly, I see and appreciate the committees' consistent interest and attentiveness in the operations and needs of the OAG.

Who Audits the Auditor General?

As noted, COG addressed the specific question of "who audits the Auditor General?" and made specific recommendations.

The WA Auditor General has wide powers of access to information, can compel people to give evidence, can follow the dollar and examine the related entities of government. These powers are necessary to meet the changing environment of the modern delivery of public services.

However the powers need to be balanced with a commensurate obligation for accountability. The independence and authority given to the role of the Auditor General make it even more important that the position is accountable. The Auditor General must be primarily accountable to Parliament, not the executive government, in a manner consistent with the Auditor General's independence.

An informal but very real aspect of oversight is provided by PAC in reviewing the Auditor General's reports and holding subsequent consultations with agencies about the progress in addressing the recommendations. A rigorous review and follow-up process such as this is welcomed as it drives an effective high quality audit report and OAG engagement with agencies over the accuracy of audit findings and recommendations for improvements. I am sure that any concerns that PAC may have with a report would be brought to my attention.

In its report to the Parliament in May 2003 titled "The 2001-2002 Annual Report of the Office of the Auditor General: A Performance Review" PAC made the following observation:

Direct monitoring of the implementation of individual recommendations would help to measure the effectiveness of the AG's work and provide insight into the impact of that work on the public sector.

PAC and EFOC can provide continuous feedback on the scope of audits, the audit process and the audit reports.

However, COG's recommendation that the performance of the OAG be subject to external review recognised the need for review of the OAG's audit practice as a separate matter, with a different focus requiring an independent and skilled external reviewer with a background in auditing. This aspect of oversight of the Auditor General and the OAG has been carried forward to the AG Act. The AG Act requires the JSCA "to appoint a suitably qualified person (the reviewer) to conduct a review (a performance and legislative review)..." and for the JSCA "to consult with the Auditor General before appointing the reviewer...".

I have been keen to see the establishment of the JSCA and the reviews required under the AG Act. Formation of the JSCA was initially delayed. However, the Committee was formed late in 2012 and then had its activities curtailed by the need for an election. Following the election, the JSCA was again formed and has recently announced the terms of reference for the first performance and legislative review under the AG Act.

Legislative reviews are the most important but not the only means of gaining feedback on audit quality. Auditors General in Australia have long welcomed independent assessment of their functions and have undertaken a number of initiatives to ensure the quality and effectiveness of their audits. For example:

- the Australasian Council of Auditors-General (ACAG) has developed an approach to quality assurance which can be used by individual audit offices to assist in demonstrating to internal and external stakeholders that they are meeting relevant legal and professional requirements. This approach is based on a framework that enables reviews to be undertaken of audit and corporate functions against a common set of questionnaires covering relevant professional standards and pronouncements. Audit offices can choose to self-assess and/or have an external review by another audit office.

The results of recent external reviews of the OAG using this framework have been provided to the PAC and EFOC.

- Australian audit offices also participate in an annual ACAG Macro Benchmarking Survey. This survey which commenced in 1994 measures and compares a number of audit office activities.
- audit offices undertake their financial and performance audits either in accordance with, or based on, Australian Auditing and Assurance Standards. The application of these standards is designed to assure the quality of an audit.

Conclusion

There is much history in the relationship between Auditors General and parliamentary committees. The same is true in Western Australia, where the Auditor General has had a strong relationship with the Parliament and oversight committees. However, the relationship is complex. The primary oversight roles of our traditional oversight committees, PAC and EFOC, relate to oversight of the executive, public sector agencies and the use of public resources. In this respect the roles of the Auditor General and the committees are complementary. The committees have the capacity to add considerably to the work of the Auditor General and I believe the reverse is also true. The committees suggest areas for examination and provide valuable feedback on our work. They also play a role in supporting the independence of the Auditor General.

These committees and the recently formed JSCA also play a critical role in holding the Auditor General to account. With increased powers come increased obligations for accountability. The Auditor General must be fully accountable for the performance and use of public resources in discharging the mandate of the office. While there is much the OAG can do to review its own performance, effective external oversight is critical to demonstrate and enhance the credibility of the OAG. In this regard the value of oversight committees is welcomed, as is the forthcoming review of the OAG and the AG Act.