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"Financial Overseers and their Oversight – A NSW Public Accounts Committee Perspective"

OVERVIEW

Statutory Officers play central roles as financial overseers in helping hold the executive arm of governments, and sometimes potential alternative governments, accountable for promised and actual expenditure of public funds.

The NSW Auditor General (with their Audit Office) does so by providing an independent perspective on the performance and financial management of the executive arm of government via the scrutiny of public sector agencies and entities.

The NSW Parliamentary Budget Officer (with their Budget Office) does this by trying to ensure that election promises during the run-up to a general election are costed accurately and quickly so that voters can exercise their voting responsibilities in an informed manner.

The NSW Parliament's Public Accounts Committee (NSW PAC) oversees these financial overseers in NSW to maintain a healthy level of accountability on behalf of the elected Parliament. In doing so, it acts both as a scrutineer and protector. This paper examines those dynamics and recent developments in a NSW context, whilst also considering other jurisdictional relevance.

SCRUTINY AND PROTECTION

Parliaments should remain vigilant in aiming for greater transparency and accountability in government generally. Sensible checks and balances are warranted by these aims. Some of these checks and

balances involve applying parliamentary scrutiny, while others involve protecting the role of independent financial overseers.

The scrutiny of financial overseers is necessary and important. They have substantial power to oversee government, but should also be scrutinised themselves to ensure they operate as efficient and effective independent entities. Just as financial overseers question and challenge government agencies, it is appropriate to have measures which hold them to account.

Executive governments are sometimes reluctant to expose themselves to high levels of accountability from financial overseers. Governments may also seek to dilute the authority or power of financial overseers over time.

The parliamentary oversight of financial overseers should therefore extend to vigilance in maintaining desirable checks and balances that provide protection. This includes ensuring that the executive arm of government continues to be transparently overseen by independent, properly resourced bodies with appropriate powers.

So, the NSW PAC is not just a mechanism for ensuring the accountability of financial overseers; it is also a protector of them helping to ensure that they, in turn, effectively hold the Executive government to account.

In that sense the NSW PAC can be seen as both a 'shield' and a 'sword' floating above financial overseers. This paper therefore recognises the oversight role of a PAC as both scrutineer and protector of financial overseers on behalf of a parliament.

AUDIT OFFICE

At the Australasian Study of Parliament Group Conference in Sydney in October 2005 the NSW Deputy Auditor-General, Mr Tony Whitfield, presented a paper titled "An Auditor-General's Perspective of Parliamentary Oversight".

He indicated that discussions about Auditors-General oversight generally boil down to themes of independence and accountability. He also acknowledged the importance of a collaborative relationship between Auditors-General and parliamentary committees such as the NSW PAC. I broadly agree with these observations from the perspective of a PAC Chairperson.

Certainly, any parliamentary oversight should aim to respect the independence of an Auditor-General or, adopting more useful terminology for the purposes of this paper, an audit office. Fortunately, in recent years there has been a strong mutual respect between the Audit Office and PAC in NSW as part of an excellent collaborative relationship between the two bodies. They are both vitally interested in assisting each other to pursue the public interest objective of efficient and effective government.

Examples of collaboration between the NSW Audit Office and the NSW PAC include co-ordinated briefings of interested parliamentarians on relevant audit report topics as well as regular Audit Office participation in PAC inquiries.

While a level of Parliamentary oversight of the Audit Office is needed, the key question is: what level and type is appropriate? This involves balancing the desirable dual objects of independence and accountability.

The Commonwealth Joint Committee of Public Accounts (JCPA)ⁱ has previously outlined a view on what was necessary to preserve the independence of an Auditor-General:

- a wide legislative mandate to audit the complete spectrum of Commonwealth functions;
- freedom to determine the audit programme, and to decide the nature and scope of audits to be conducted;
- unrestricted access to information in performance of the audit function, together with the right to report any findings to parliament;
- personal independence in relation to appointment and tenure; and
- adequate resourcing to fulfil audit functions effectively.

None of these factors are compromised by the current nature of NSW PAC oversight. Current oversight powers include a right of veto over any new Auditor-General appointment (for a fixed term of eight years, recently increased from seven years). Also, perhaps most importantly, the PAC commissions independent quadrennial reviews of the NSW Audit Office's performance (recently changed from triennial), which is in alignment with the fixed four year term of the NSW Parliament.

The PAC has just completed one such review, where it commissioned an independent review as required under the Public Finance and Audit Act 1983 (PFAA). It also undertook a complementary inquiry process itself, whereby it considered more qualitative aspects of Audit Office performance as well as issues relating to the Audit Office's scope of authority.

The role of the PAC in this review process is different to that of other NSW committees that oversee statutory 'watchdog' offices such as the Independent Commission Against Corruption (ICAC) and the Police Integrity Commission (PIC). With the ICAC and PIC, there are less extensive but more regular reviews of annual reports by a parliamentary committee. For both commissions, there is also an independent statutory office of Inspector, whose role and function is to hold them accountable in the way they carry out their functions.

The PAC's latest inquiry report into the efficiency and effectiveness of the Audit Office, tabled in September 2013, confirmed that the Audit Office is doing a very good job. It also made various recommendations for reform.

Reforms recommended by the PAC include an increased scope of legislative authority for the Audit Office relating to compliance audits, as well as 'follow the dollar' powers to track use of public monies allocated to non-government organisations to deliver public outcomes. Such 'follow the dollar' powers already exist in most Australian jurisdictions.

Other potential Audit Office reform is also being considered, including in relation to PAC oversight. On being elected in March 2011, the new government commissioned a review of the NSW public sector financial system and position (the Lambert Report). The Lambert Report made

various recommendations, including some relating to the extension of the Auditor-General's powers and enhanced accountability measures.ⁱⁱ

It recommended the Auditor-General's powers be enhanced by:

- increasing powers of the Auditor-General to access Cabinet documents;
- providing the Auditor-General with explicit power to undertake compliance audits;
- expanding the Auditor-General role in the audit of entities not directly controlled by a statutory body, department or minister;
- empowering the Auditor-General to audit the Legislature; and
- permitting the Auditor-General to choose not to audit dormant agencies.

It recommended the Auditor-General's accountability be enhanced by:

- requiring the Auditor-General to comply with Australian Accounting Standards;
- reducing the number of days an agency has to respond to a performance audit report;
- requiring the Auditor-General to include agency comments in any report to Parliament;
- making the Auditor-General directly accountable to the PAC; and
- requiring the review of the Audit Office to be provided directly to the PAC rather than to the Auditor-General for on-passing to the PAC.

The PAC has indicated to Treasury that it is supportive of these recommendations and legislation (covering at least some of these points) is expected to be introduced to Parliament in the near future. This paper will now discuss the last two of the listed accountability measure proposals in greater detail, being those to make the Audit Office (or Auditor-General) directly accountable to the NSW Public Accounts Committee and to require independent reviews of the Audit Office to be provided directly to the PAC rather than to the Audit Office for on-passing to the PAC.

In terms of improving the accountability of the Audit Office to Parliament, it should be noted that, despite the Auditor-General traditionally being

seen as an Officer of NSW Parliament, there is no formal accountability relationship to Parliament as in other jurisdictions. The Lambert Report proposed changing the Public Finance & Audit Act 1983 (NSW) to formalise the Auditor-General's relationship with and strengthen links to the PAC as the agent of Parliament. In particular, it was proposed to:

- empower the PAC to undertake activities (hearings, submissions, etc.) and report on the performance of the Auditor-General;
- require the Auditor-General to confer with and have regard to the audit priorities of the PAC; and
- require the Auditor-General to submit an annual work plan to the PAC and allow for PAC comments.

As already mentioned, an independent review of the NSW Audit Office is now conducted every four years. However, in contrast with other jurisdictions, NSW is the only jurisdiction where the Audit Office's independent reviewer has reported to the Auditor-General instead of directly to the PAC. This requirement is currently in the PFAA. The Lambert Report proposed that the PFAA should be amended so that the Audit Office's reviewer reports directly to the PAC rather than to the Auditor-General to pass on to the PAC.

PARLIAMENTARY BUDGET OFFICE

As NSW Treasurer Mike Baird has said, it is easy for political parties on both sides to make big spending promises in the lead up to an election, but taxpayers are often left wondering how much these are going to cost and where the money is coming from to fund them.

In late 2010, the dying days of the last NSW Labor Government, Parliament passed legislation to establish a permanent Parliamentary Budget Office (PBO). Further legislation was passed in early 2013 to amend NSW's PBO model, limiting its operation to a 9-10 month period surrounding the election, but improving transparency and accountability measures regarding election promises. This followed the

recommendations of a Joint Select Committee that inquired into the future role and functions of the NSW PBO.ⁱⁱⁱ

Key features of the current NSW PBO include:

- Aligning the operation of the PBO to each election.
- Submission of policies for costings is mandatory for the Leader of the Government and the Leader of the Opposition.
- Comprehensive listing of reporting requirements to ensure that the Budget impacts are clearly reported by parliamentary leaders.
- Allowing the PBO to release more than one budget impact statement prior to each election to capture any late policy announcements.
- Parliamentary Budget Officer appointed by Presiding Officers of Parliament based on recommendation from an independent panel.
- Oversight by the NSW PAC, including post-election reporting arrangements for a parliamentary review of the PBO.

So PBO operations are now limited to once every four years, and the PBO's sole function is to prepare election policy costings. This should help provide NSW taxpayers with more accurate, timely and independent information on the cost of election commitments. In considering the 2013 amendments, it was seen by Parliament that extra resources were not justified to permit the PBO to have a broader advisory role outside each election period.

The NSW Parliamentary Budget Officer's appointment starts on 1 September in the year prior to each State election (1 September 2014 for the next NSW election) and it ends within three months after the election.

The role of Public Accounts Committee is now set out in subsections (1), (2) and (3) of section 15 of the Parliamentary Budget Officer Act, which states:

- 1) The Public Accounts Committee of the Legislative Assembly may monitor and review the operations of the Parliamentary Budget Officer appointed for a State general election and report to Parliament on any matter relating to that Officer.

- 2) The Parliamentary Budget Officer is to provide to the Public Accounts Committee a copy of the operational plan of the Parliamentary Budget Officer as soon as practicable after it is approved by the Presiding Officers.
- 3) The Parliamentary Budget Officer is required to furnish a report to the Public Accounts Committee as soon as practicable after the holding of the State general election for which he or she was appointed. The report may include recommendations on operational arrangements and activities of the Parliamentary Budget Officer in respect of future general elections.

As a statutory officeholder the Parliamentary Budget Officer obviously plays a valuable role in overseeing and scrutinising the election promises of the Executive and the potential Executive. However, there is further oversight of that overseer by the NSW PAC.

The NSW PAC is a bipartisan or non-partisan committee and operates in that fashion, even with the shadow Treasurer as a member. There is ample opportunity for the PAC to recommend changes if, having been tested, the system does not work properly. There clearly is accountability.

OVERSIGHT MODELS IN OTHER JURISDICTIONS

Audit offices are generally accountable to parliaments via parliamentary committees such as the Public Accounts Committee in NSW or the Joint Committee of Public Accounts and Audit at the Commonwealth level.

While some such oversight committees also perform other oversight functions, such as for the budget estimates process in Victoria, the parliamentary committee mechanism for overseeing audit offices is fairly universal across Australia and internationally.

In addition to overseeing the NSW Audit Office in this way, the NSW PAC oversees the NSW PBO. This is similar to the way the Commonwealth Joint Committee of Public Accounts and Audit oversees both the Australian Audit Office and Commonwealth PBO.

One difference between the Commonwealth and NSW is the post-election review process of the PBO. The NSW Act requires the budget officer to table a report after the election which the PAC may review. The Commonwealth Act provides for its Committee to request an independent review of the PBO. The purpose of these two processes may be similar, but the mechanisms are slightly different.

No other Australian state or territory has a PBO, although numerous other countries do. The mechanism for overseeing Parliamentary Budget Office type institutions is far more varied across jurisdictions than is the case for audit offices. It is worth briefly looking at some of these along with relevant oversight mechanisms.

In the US, the Congressional Budget Office gathers information on the budgets of the various governmental agencies and reports on new budgetary requests and suggestions made through the Executive Branch's Office of Management and Budget, including election policy costings.

The US Congressional Budget Office estimates budgetary costs and savings of some major policy proposals (eg. health care reform). It focuses on direct effects and behavioural responses, as well as macroeconomic effects.^{iv}

The Office is overseen by the United States House Committee on the Budget. This committee is a standing committee of the US House of Representatives in Congress.^v

The Office for Budget Responsibility became a permanent body in the UK, in 2011, under the *Budget Responsibility and National Audit Act 2011*. Their duty is to examine and report on the sustainability of public finances.

The UK Office for Budget Responsibility is overseen by an Oversight Board which consists of the Budget Responsibility Committee and two non-executive members. This Board ensures that risk management, governance and internal controls are all effectively managed by the Office. They do not appear to prepare election costings however.^{vi}

In the UK, since the 1997 election, the Institute for Fiscal Studies (IFS) has published policy briefings during election times. These briefings review and cost the policies proposed by the three main parties. The IFS is an independent body without political ties that does not appear to be subject to any oversight body.^{vii}

The Netherlands Bureau for Economic Analysis is part of the Ministry of Economic Affairs, Agriculture and Innovation. It has evaluated election platform costings since 1986 and is managed by a Director appointed by the Minister.

There are regular external reviews of the Bureau's output and organisation. Every five years, its Central Planning Committee engages a committee of independent, international experts to undertake a scientific review of the quality of its work, its management and organisation, and its work plan and practices; while a committee of policymakers and independent experts undertake a review from a policy perspective.^{viii}

Canada established a Parliamentary Budget Officer in 2008. It is one of the Independent Oversight Offices created under Canada's Federal Accountability Act. The Officer is an independent officer of the Library of Parliament who reports to the Parliament's Presiding Officers.

In what appears to be a somewhat piecemeal oversight structure, the Library of Parliament is oversighted by the Joint Committee of the Library of Parliament, while the Canadian Parliamentary Budget Officer is subject to ongoing review by two statutory budget committees, as well as having their work reviewed by an expert economics panel and an expert health panel.^{ix}

CONCLUSION

Statutory officers, such as the Auditor-General or the Parliamentary Budget Officer, play a central role as financial overseers of government. For these officers and their offices to be effective it is vital that they are independent. However, while independence is a vital ingredient in the recipe for success, it is also important that these officers and offices are properly accountable.

Parliamentary committees, such as the NSW PAC, often provide the means for statutory officers to be held accountable by a parliament. As an overseer of the overseers, a PAC has both a scrutiny and a protective function. It helps ensure that the officer and their organisation are efficient and effective; and that they remain independent, properly resourced bodies with appropriate powers.

In New South Wales, the PAC has forged a strong working relationship with the Audit Office. Recent reviews have recommended various reforms, which include extending the Auditor-General's powers and formalising the ties between the Auditor-General and the PAC.

While the NSW PAC's oversight of the Audit Office reflects a common practice across numerous jurisdictions in Australia and internationally, its oversight of the PBO is a relatively new development, which is far from standard practice in all jurisdictions. The mechanism for overseeing institutions comparable to the PBO is varied across jurisdictions, ranging from congressional committees to external reviews conducted by independent experts.

Despite the variety of mechanisms at play, the fundamental need is to ensure that these independent officers can be scrutinised and held to account; as well as to ensure that the officers are protected and afforded sufficient resources and powers to play their role in holding governments to account. This is an essential part of an effective democratic system.

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- ⁱ This view from October 1996 is referred to in the 2005 paper of Mr Tony Whitfield.
- ⁱⁱ The Lambert Report, Michael Lambert, NSW Financial Audit 2011, NSW Treasury.
- ⁱⁱⁱ Joint House Parliamentary Committee Inquiry into the Parliamentary Budget Office, NSW Parliament, December 2011.
- ^{iv} Evaluating election platforms: a task for fiscal councils? Scope and rules of the game in view of 25 years of Dutch practice. F Bos & C Teulings, June 2011.
- ^v United States House Budget on the Committee,
www.wikipedia.org/wiki/UnitedStatesHouseCommitteeontheBudget
- ^{vi} Inquiry into the Parliamentary Budget Office – Comparative Jurisdictions, December 2011.
- ^{vii} Evaluating election platforms: a task for fiscal councils? Scope and rules of the game in view of 25 years of Dutch practice. F Bos & C Teulings, June 2011.
- ^{viii} Inquiry into the Parliamentary Budget Office – Comparative Jurisdictions, December 2011.
www.wikipedia.org/wiki/UnitedStatesHouseCommitteeontheBudget,
Evaluating election platforms: a task for fiscal councils? Scope and rules of the game in view of 25 years of Dutch practice. F Bos & C Teulings, June 2011.
- ^{ix} <http://www.lgc.gc.ca/eng/content/government-appoints-parliamentary-budget-officer>