
Unheralded but indispensable. The Auditor General's role in promoting government transparency

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INTRODUCTION

I concede, that as a professional class, auditors tend to be tolerated rather than venerated. Especially at this time of the year in Western Australia (WA) as my dedicated staff conclude their financial audits of over 150 State sector entities before moving straight into their audits of 148 local governments next week.

I need to stress that as auditors we do not seek lofty levels of recognition. All we really want is to do our duty and hand over an unqualified audit opinion as quietly and efficiently as possible. I note that contrary to popular opinion, finding problems actually causes much angst for us as a breed, and a lot more work. We follow the evidence, and while we like to *trust*, it is our job to *verify* - with due professional scepticism – and if that leads us to a material problem, then report it we must.

However, I do think it is important to reflect on the unheralded (albeit sometimes unwelcome) but indispensable role auditors play in providing transparency, assurance and accountability around the performance of the governments we, as citizens, elect to govern us.

¹ Caroline Spencer has served as the 19th Auditor General for Western Australia since May 2018. This is the transcript of a speech Ms Spencer delivered in Perth, Western Australia on 29 September 2023 to the Australasian Study of Parliament Group's Annual Conference. The Conference theme was 'Freedom of Speech, Debate and Information'. Ms Spencer would like to acknowledge the work of Mr Tim Hughes in assisting with the preparation of this speech. Mr Hughes recently retired from the Office of the Auditor General, where he worked for four years as the Principal Adviser to the Auditor General. Prior to that, Mr Hughes worked in the Legislative Assembly Committee Office of the Parliament of Western Australia from 2008 to 2019.

You might pause to ponder what the public accountability landscape would look like without independent auditors, and indeed other independent integrity officers.

To assist with such reflection, I will today provide:

- An overview of the evolution of the Auditor General’s role in WA and the various ways in which my Office, the Office of the Auditor General (OAG), promotes government transparency. Humans have long known, that as a counter to the impulses and excesses of our natures, sunlight is generally the best disinfectant. And we know what happens when it is resisted for too long in any institution.
- An outline of the Auditor General’s relevant powers and responsibilities, and how I approach custodianship of the role.
- My thoughts on the current operating environment and its challenges.

EVOLUTION OF THE AUDITOR GENERAL’S ROLE IN WA

Earliest surviving references to a public audit function date back as far as 1314 with England’s then Auditor of the Exchequer. The legislation under which the current UK Comptroller and Auditor General operates has its origins in the *Exchequer and Audit Departments Act 1866* (UK).²

WA’s public audit function pre-dates the Swan River Colony’s establishment in 1829 with Captain Stirling establishing a Board of Counsel and Audit while en route at sea. He wanted to ensure structures were in place to promote transparency and probity over public property and finances before landing in the new settlement.

Captain Mark Currie was appointed WA’s first Auditor General in 1831. He also served as the Clerk of the Colony’s first Executive Council. As you may be aware from the painting hanging on one of the walls at the WA Parliament - An Early Meeting of the Legislative Council by Owen Garde OAM, 1979, Captain Currie had the makings of a good auditor and appeared to understand his place as impartial observer of government operations and decision-making. Front row seats, but never at the main table. Nonetheless, an integral apparatus of the Crown.

² National Audit Office (UK), ‘Our history’, no date. Accessed at: <<https://www.nao.org.uk/about-us/our-history/>>.

In 1881, WA's first Audit Act was passed. Eight years later, WA's constitution was enacted. Both Acts stipulated the requirement for the Auditor to inspect and report to the legislature on expenditure from the Government's consolidated account.³

In line with global trends for public auditors to move beyond financial auditing and into providing assurance on non-financial matters of interest, by 1985 the Auditor General was vested with powers to conduct performance audits around the effectiveness and efficiency of departments and statutory authorities.⁴

In 2006, the Auditor General assumed the unique function of providing opinions⁵ on notifications lodged by Ministers under section 82 of the *Financial Management Act 2006* (WA) advising why they have refused to answer questions in Parliament.

In 2018, WA's local governments were added to the Auditor General's auditing responsibilities,⁶ bringing the number of public entities we audit to around 320.

And we now have an Australian-first Forensic Audit function. This function was established in 2020 following a request from the Government in response to Australia's largest public sector fraud⁷ and allows us to go deeper than traditional financial auditing methods. Again, the increasing functions are representative of the interests of the Parliament and the people in what they would like our Office to provide transparency and assurance on. Assurance on the growing range of sustainability reporting will also be undertaken by public auditors wherever confidence in that information is sought by stakeholders.

³ *The Audit Act 1881* (WA) ss 7-12; *Constitution Act 1889* (WA) s 65.

⁴ *Financial Administration and Audit Act 1985* (WA) s 80.

⁵ Under the *Auditor General Act 2006* (WA), s 24(2)(c), the Auditor General is required 'to include an opinion as to whether a decision by a Minister not to provide information to Parliament concerning any conduct or operation of an agency is reasonable and appropriate'.

⁶ Following passage of the *Local Government Amendment (Auditing) Act 2017* (WA).

⁷ Office of the Auditor General (WA), *Annual Report 2019-20*, 24 September 2020, p 8. Accessed at: <<https://audit.wa.gov.au/wp-content/uploads/2020/09/OAG-Annual-Report-2020.pdf>>.

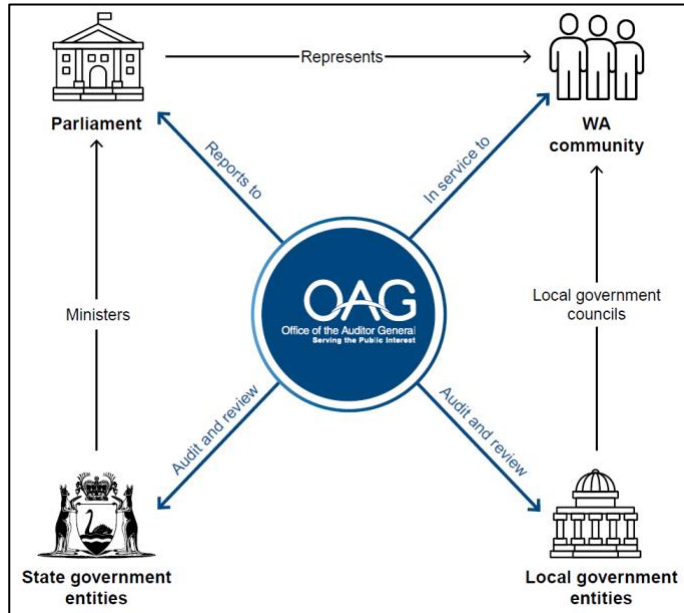


Figure 1. Role of the Auditor General and the OAG.

Apparent through this evolution is the legislature’s will to ensure accountability for executive decision-making, expenditure, and program delivery through the lens of an independent auditor serving the community by reporting directly to Parliament on matters the auditor judges to be in the public interest.

Also evident is the principle that accountability and transparency underpin the political legitimacy of those we elect periodically to govern us (either at State or local government level) under the long-standing theory of the social contract.

There is an inherent tension between governments and the Auditor General of the day due to the Auditor General’s independence provisions. At our Office’s 190th anniversary celebrations in 2019, then-Premier, Hon Mark McGowan and then-Opposition leader, Hon Liza Harvey, both joked with our staff about how much more they preferred our audits and reports when they were on the Opposition benches.

Notwithstanding this, both current and former Government members have acknowledged the Auditor General and OAG's role in promoting transparency and accountability.⁸

The transparency the Office promotes is multi-layered and serves several audiences.

Our opinions on financial statements, financial management and information systems controls are included in all departmental, statutory authority and local government annual reports, all of which are available to the public when tabled.

Parliament uses these opinions, as well as our audit results reports and performance audit reports to inform both its scrutiny of government performance and its debates around legislative proposals.

The Legislative Assembly's Public Accounts Committee periodically follows up entity responses to the recommendations in our performance audit reports, which Directors General tell me is very effective in focussing the mind on implementation!

The Legislative Council's Standing Committee on Estimates and Financial Operations retains a keen eye on our financial audit results reports as part of the planning for its Annual Report and Budget Estimates hearings.

I am also called to appear before other committees to provide expert witness testimony on audit matters within their portfolio responsibilities. As OAG auditors spend time engaging with 20 per cent of public sector entities in any given week, we offer a key source of intelligence for Parliament, and indeed for government ministers as to what is happening in their own portfolio entities.

Only this week, I have signed my Opinion on the annual financial statements for the whole-of-government accounts – another critical piece of transparency and assurance for the public, as well as WA's institutional investors, the buyers of our government bonds.

Finally, our work provides a layer of transparency for the Executive branch of government, notwithstanding the tension this can bring at times through our public

⁸ See, for example, B.S Wyatt, Western Australia, *Parliamentary Debates*, Legislative Assembly, 26 October 2006, pp 7769-7774; Hon Ben Wyatt, MLA, Treasurer, 'Treasurer congratulates new Auditor General', WA Government Media Release, 14 March 2018. Accessed at: <<https://www.wa.gov.au/government/media-statements/McGowan-Labor-Government/Treasurer-congratulates-new-WA-Auditor-General-20180314>>; J.R Quigley, Attorney General, Western Australia, *Parliamentary Debates*, Legislative Assembly, 26 October 2006, pp 4700-4702.

reporting. As part of our financial and information systems audits, we provide accountable authorities and Ministers with ‘management letters’ containing a range of audit findings and recommendations aimed at process improvements. These letters, which are generally not made public, may draw attention to operational matters of which Ministers, councillors and CEOs may otherwise be unaware. In recent years, we have been issuing an average of 2,000 management letter findings annually.

As an aside, if governments or any organisation really want to improve effectiveness, efficiency and compliance, may I suggest starting with the auditor’s management letters. Addressing the recommendations in these letters may negate much of the need to spend any further money engaging consultants to identify business and governance improvement opportunities.

There is indeed much we do behind the scenes to help build capability and support the maintenance of quality public administration and good governance in this State. And my counterparts in your jurisdictions do similarly.

AUDITOR GENERAL’S RELEVANT POWERS AND RESPONSIBILITIES AND HOW I APPROACH MY CUSTODIANSHIP OF THIS ROLE

The legislation primarily governing my activities, and those of the OAG, is the *Auditor General Act 2006* (WA) (AG Act).

The AG Act establishes the Auditor General as an ‘independent officer of Parliament’, who is ‘authorised and required to act independently in relation to the performance’ of their functions.⁹ Section 7 provides the Auditor General with complete discretion on what to audit, when and how to report, and what to include in reports.¹⁰

So how do I approach the role as Auditor General given its significant powers and responsibilities?

I have referred in previous forums to the analogy of the Auditor General and the OAG as the well-trained and disciplined watchdog of public finances carefully scanning our

⁹ *Auditor General Act 2006* (WA) ss 7(1) and 7(5).

¹⁰ *Auditor General Act 2006* (WA) s 7(6).

environment for risks to good public administration. Neither bulldog barking incessantly and soon ignored, nor timid lap dog afraid to speak out.

We know that we must use our significant powers of access, including our coercive powers in certain cases, judiciously, lest the sector, the Parliament and our community lose confidence in us. But likewise, we cannot be cowed and avoid the difficult calls. Our duty is to serve the public interest above all else.

In recent years, our performance audits have provided transparency on the efficiency or effectiveness of a range of key government services impacting large and diverse numbers of Western Australians. For example, we have identified:

- an ongoing risk of unsafe drinking water in scores of remote Aboriginal communities¹¹
- long-standing inefficiencies in the management of adult mental health services and long-stay hospital patients¹²
- significant disparities in the allocation of psychologists across public schools¹³
- an urgent need, which Government has since actioned, for a review of the Public Trustee's funding and governance model¹⁴
- an increased risk of illegal fishing and undesirable mining impacts due to numerous regulatory weaknesses.¹⁵

¹¹ Office of the Auditor General (WA), *Delivering Essential Services to Remote Aboriginal Communities*, 2 June 2021. Accessed at: <<https://audit.wa.gov.au/reports-and-publications/reports/delivering-essential-services-to-remote-aboriginal-communities-follow-up/>>.

¹² Office of the Auditor General (WA), *Access to State-managed Adult Mental Health Services*, 14 August 2019. Accessed at: <<https://audit.wa.gov.au/reports-and-publications/reports/access-to-state-managed-adult-mental-health-services/>>; Office of the Auditor General (WA), *Management of Long Stay Patients in Public Hospitals*, 16 November 2022. Accessed at: <<https://audit.wa.gov.au/reports-and-publications/reports/management-of-long-stay-patients-in-public-hospitals/>>.

¹³ Office of the Auditor General (WA), *Delivering School Psychology Services*, 23 June 2022. Accessed at: <<https://audit.wa.gov.au/reports-and-publications/reports/delivering-school-psychology-services/>>.

¹⁴ Office of the Auditor General (WA), *Public Trustee's Administration of Trusts and Deceased Estates*, 10 August 2022. Accessed at: <<https://audit.wa.gov.au/reports-and-publications/reports/public-trustees-administration-of-trust-and-deceased-estates/>>.

¹⁵ Office of the Auditor General (WA), *Regulation of Commercial Fishing*, 7 December 2022. Accessed at: <<https://audit.wa.gov.au/reports-and-publications/reports/regulation-of-commercial-fishing/>>. Accessed on 23 September 2023; Office of the Auditor General (WA), *Compliance with Mining Environmental Conditions*, 20

Our financial and information systems auditors have identified and reported on a range of significant cyber-security risks and weaknesses in local governments,¹⁶ as well as a growing number of unresolved controls issues within State sector entities.¹⁷

Finally, over the last three years, we have filled a long-standing void in the status reporting of major infrastructure projects against projected timeframes and budgeted costs.¹⁸

On occasions, I have deemed it in the public interest to report to Parliament confidentially through my oversight committees, the Legislative Assembly's Public Accounts Committee and the Legislative Council's Standing Committee on Estimates and Financial Operations. This was the case with some initial findings we made in 2019 with the system that maintains WA's Registry of Births, Deaths, and Marriages. It was not until late-2020¹⁹ that I reported publicly and at a high level on this matter, once the system weaknesses had been rectified and the threats of access to foundational identity records of Western Australians – including those that give the gift of Australian citizenship – had been mitigated. This was one instance where limiting transparency was the more prudent course of action.

Since September 2020, the OAG has tabled 12 reports on various aspects of the Government's response to the COVID-19 pandemic, including:

- our audit of the SafeWA check-in app found Police were accessing data for purposes other than contact tracing²⁰

December 2022. Accessed at: <<https://audit.wa.gov.au/reports-and-publications/reports/compliance-with-mining-environmental-conditions/>>.

¹⁶ Office of the Auditor General (WA), *Cyber Security in Local Government*, 24 November 2021. Accessed at: <<https://audit.wa.gov.au/reports-and-publications/reports/cyber-security-in-local-government/>>.

¹⁷ Office of the Auditor General (WA), *Financial Audit Results - State Government 2021-22 - Part 3: Final Results*, 30 June 2023. Accessed at: <<https://audit.wa.gov.au/reports-and-publications/reports/financial-audit-results-state-government-2021-22-part-3-final-results/>>.

¹⁸ Office of the Auditor General (WA), *2022 Transparency Report - Major Projects*, 17 June 2022. Accessed at: <<https://audit.wa.gov.au/reports-and-publications/reports/2022-transparency-report-major-projects/>>.

¹⁹ Office of the Auditor General (WA), *Western Australian Registry System – Application Controls Audit*, 26 November 2020. Accessed at: <<https://audit.wa.gov.au/reports-and-publications/reports/wars/>>.

²⁰ Office of the Auditor General (WA), *SafeWA - Application Audit*, 2 August 2021. Accessed at: <<https://audit.wa.gov.au/reports-and-publications/reports/safewa/>>.

- our contact tracing system audit found significant weaknesses in the systems used to protect sensitive personal data²¹
- our examination of the vaccine roll-out found inequitable access impacting vulnerable groups²²
- we found the procurement of Rapid Antigen Tests went from \$3 million to over half a billion dollars, without any recorded evidence of clear, considered and coordinated planning²³
- most recently, we provided transparency on how WA's Hotel Quarantine Program worked.²⁴

This was an unprecedented time for public administration across the country. In WA alone, beyond Federal stimulus measures, more than \$5.5 billion was committed by July 2020 towards 'helping restore business and consumer confidence and rebuilding the economy'.²⁵

In addition, individual liberties were curtailed under WA's State of Emergency legislation that was enacted to manage the health response and limit the pandemic's spread.

The Government and its agencies were confronted with an extremely challenging environment and operated with a heightened and prolonged sense of urgency to deliver support measures. Such environments present increased risk for inefficiency, waste, fraud, declining quality of services and unintended impacts on citizens' lives.

²¹ Office of the Auditor General (WA), *COVID-19 Contact Tracing System - Application Audit*, 18 May 2022. Accessed at: <<https://audit.wa.gov.au/reports-and-publications/reports/covid-19-contact-tracing-system-application-audit/>>.

²² Office of the Auditor General (WA), *WA's COVID-19 Vaccine Roll-out*, 18 November 2021. Accessed at: <<https://audit.wa.gov.au/reports-and-publications/reports/was-covid-19-vaccine-roll-out/>>.

²³ Office of the Auditor General (WA), *Financial Audit Results - State Government 2021-22 - Part 2: COVID-19 Impacts*, 3 May 2023, pp 14-20. Accessed at: <<https://audit.wa.gov.au/reports-and-publications/reports/financial-audit-results-state-government-2021-22-part-2-covid-19-impacts/>>.

²⁴ Office of the Auditor General (WA), *Requisitioning of COVID-19 Hotels*, 9 August 2023. Accessed at: <<https://audit.wa.gov.au/reports-and-publications/reports/requisitioning-of-covid-19-hotels/>>.

²⁵ Government of Western Australia, 'WA Recovery Plan', 23 June 2023. Accessed at: <<https://www.wa.gov.au/government/publications/wa-recovery-plan>>.

Notwithstanding the difficulties it created for the Government, audited entities, and indeed the OAG, I thought it necessary to undertake independent scrutiny of the COVID-19 response. This was important to:

- provide Parliament with timely assurance and transparency over major activities and spending;
- evaluate the quality and timeliness of advice to the Government, and to confirm whether key risks were identified and addressed as part of this process;
- check whether response initiatives were delivered in accordance with relevant legislative and policy requirements; and
- ensure governance structures, procurement and contract management practices were sound in the circumstances.

To assist entities with navigating this period, the OAG also published Better Practice Guidance on COVID-19 financial and governance matters within weeks of the outbreak in WA. This is one of dozens of Better Practice Guides we have published on our website to help State and local government entities build capability and inform Parliament and the public of ‘what good looks like’ in public administration.²⁶

I believe the assurance and transparency the OAG provided during this time will provide enduring benefit to the current and future governments of this State. Not only by helping retain public confidence in the openness of our system of government, but also, via the series of reports and findings that I trust will help inform any future emergency responses.

CURRENT CHALLENGES

Our democratic systems of government - which distribute power through various checks and balances and are underpinned by the rule of law to limit the power of the majority and the mighty, and to protect the minority - are imperfect and fragile. But for many people across the world, they have delivered an extended period of peace

²⁶ Office of the Auditor General (WA), ‘Better practice guidance’, no date. Accessed at: <https://audit.wa.gov.au/resources/better-practice-guidance/>.

and prosperity following the violence and dislocation witnessed throughout much of the last century.

Arguably, we are now in an era where memories of this period are fading, apathy is rising, and trust in our public institutions is diminishing. No doubt feeding this is the fact that misinformation, particularly via social media platforms, has never been more accessible. This has coincided with a decline in the incidence of respectful debate and deliberation, which is so necessary to addressing policy challenges in a credible and lasting way – the ability to ‘disagree well’, and more importantly learn from each other and come to the best answer in the public interest. That is, seeking truth and doing right, not needing to be right.

Also of concern, as the Royal Commission into the Robodebt Scheme has identified,²⁷ is a timidity in some senior parts of the public sector that is impacting the provision of frank and fearless advice to decision-makers in government.

In this fraught environment, the need for an informed independent opinion, duty-bound to report matters of significance in public interest to Parliament, is more critical than ever. This will likely place greater importance on the work of the OAG and other audit and integrity offices as focal points for accountability and transparency as trust is what our system relies on.

Here in WA, we are looking at the impacts on our operations following recent amendments to the AG Act.

The Government advised that the reforms in the *Auditor General Amendment Act 2022* (WA) (Amendment Act), which received Royal Assent on 29 November 2022, ‘would empower the Auditor General to further assist Parliament in holding Governments to account, strengthening the trust, transparency, and accountability of Government within the community’.²⁸

The amendments explicitly provide the basis for the Auditor General to access materials that are subject to claims of public interest immunity and legal professional

²⁷ C Holmes AC SC, *Royal Commission into the Robodebt Scheme: Report (Volume 1)*, 7 July 2023, p. 643. Accessed at: <https://robodebt.royalcommission.gov.au/system/files/2023-09/rrc-accessible-full-report.PDF>.

²⁸ Hon Mark McGowan MLA, Premier; Treasurer, and Hon John Quigley MLA, Attorney General, ‘New laws to improve Government accountability and transparency’, WA Government Media Release, 19 October 2022. Accessed at: <https://www.wa.gov.au/government/media-statements/McGowan-Labor-Government/New-laws-to-improve-Government-accountability-and-transparency-20221019>.

privilege without waiving the attached privileges and immunities. This explicit recognition should be helpful in not allowing confusion to continue in some parts of the public sector around full and free access to such documents and could ideally lead to greater audit efficiencies in this regard.

However, a number of the other provisions in the Amendment Act are novel, and untested in any Australian jurisdiction. Some of these provisions will diminish the Auditor General's discretionary powers to report directly to Parliament on matters the Auditor General considers to be in the public interest.²⁹ This is of concern to me and my colleagues, along with some other matters we have now identified in the rather extensive amendments, including an expanded scope of cabinet confidentiality which goes beyond established definitions including that within the *Freedom of Information Act 1992 (WA)*.³⁰

While I acknowledge any legislation passed reflects the will of the Parliament, the reality is that the impact of the amendments will be a diminishment of the Auditor General's current ability to promote public transparency in determining what to report to Parliament and introduces uncertainty into aspects of the relationship between the Auditor General and the Parliament. As such, it has become increasingly apparent that the amendments will not achieve the Government's stated aims.

I am keeping Parliament informed, most recently through my Office's Annual Report,³¹ which was tabled this week.

²⁹ Under the *Auditor General Amendment Act 2022 (WA)*, s8 (36D and 36E), where it relates to 'confidential material', or the 'the substance of' confidential material, the Auditor General may prepare a report containing such information and give a copy of it to the Premier, Treasurer, responsible Minister, and the Director General of the Department of the Premier and Cabinet. Under the current provisions of the *Auditor General Act 2006 (WA)*, matters that the Auditor General considers not in the public interest to be tabled in both Houses of Parliament (and therefore publicly reported), can be provided to Parliament's Public Accounts Committee and Estimates and Financial Operations Committee.

³⁰ Under the *Auditor General Amendment Act 2022 (WA)*, s 8 (32A.(2) and 36D), confidential material is defined to cover 'proceedings, deliberations or decisions of Cabinet or of any committee of Cabinet (including *proposed or contemplated* proceedings, deliberations or decisions)'.

³¹ Office of the Auditor General (WA), *Annual Report 2022-2023*, 27 September 2023, pp 11, 110-111. Accessed at: <https://audit.wa.gov.au/reports-and-publications/reports/annual-report-2022-2023/>.

My Office will also seek to continue to work with the relevant ministers and parliamentary committees to see these matters are addressed, or at least raise awareness around them so the implications are fully understood.

As we navigate sensitive and incredibly important matters such as these, contrary to perceptions that may exist, there is *never a dull moment* in the life of a public sector auditor!

CLOSING COMMENTS

I close by asking our public entities and officers to continue to embrace the process of independent review, despite the additional workload and short-term inconvenience it brings. Entities may take comfort knowing it is my turn soon, with the OAG's legislative and performance review now due.³²

I expect parts of these will prove onerous – and perhaps even some of the findings uncomfortable – as is the case with all proper reviews. But I welcome them as a means of identifying ways to improve our processes and to demonstrate our commitment to the transparency and accountability I see as so critical to maintaining capability and deserved public confidence in the institutions that support our democratic system of government.

³² As required under the *Auditor General Act 2006 (WA)*, s 48.