

Joint Treasury/Office of the Controller and Auditor-General Report to FEC: Independence and Accountability: The Auditor-General's Work Programme

Introduction

The Committee has asked why the Controller and Auditor-General needs “a large discretion” over the work programme, and has sought comment on ways in which Parliament can oversee the work programme. International comparisons have also been sought.

Although this paper has been jointly prepared by Treasury and the Office of the Controller and Auditor-General (OAG) the recommendations are split.

What is the Discretionary Work Programme?

Most of the work of the Audit Office involves annual financial audits. This work is non-discretionary. It is also user-pays.

The discretionary part of the work programme includes:

- the provision of advice to select committees;
- performance audits and planned special studies; and
- unplanned inquiries.

Most of this work is performed by the Office of the Auditor-General (OAG). It is funded by direct appropriation under Vote Audit.¹

How is the Discretionary Work Programme Put Together?

The OAG maintains strategic audit plans (SAPs) for the central and local government sectors. SAPs are formal planning documents, prepared on a rolling three-year basis, that identify current and emerging issues on a sector-wide or whole-of-government basis, together with potential audit implications.

The SAPs are prepared on the basis of the OAG's knowledge of each sector, and in consultation with:

- the sector, sector entities, auditors and stakeholders;
- the OAG's Local Government Advisory Group; and

¹ See Output Class D1, *Reports and advice arising from the function of legislative auditor*. Annual appropriation for this output class in 2000/01 is \$4,094 million (GST inclusive).

- central agencies.

The SAP enables the OAG to identify:

- areas of emphasis for annual statutory audits (which represent some 85% of the office's workload);
- potential special audits and studies (efficiency and effectiveness audits), and priority weightings; and
- other activities, e.g. research and development, sector liaison.

Involvement of Parliament

Ex ante Involvement

Clause 36 of the Bill requires the Auditor-General to submit a draft annual plan to the Speaker, for presentation to the House and consideration by a committee.² The annual plan will incorporate the existing Departmental Forecast Report (DFR).³

We will be recommending that clause 36(1) be amended so that the draft plan must be submitted at least 60 days before the start of the financial year. This will enable realistic consultation before it is adopted.

Under clause 36(3), the Speaker and the applicable committee will be able to comment on the draft plan and request changes to it. The Auditor-General will not be required to make these changes, but will have to indicate in the plan the nature of any changes to the “work programme priorities” requested but not made.

The question posed by clause 36(4) is whether, in those circumstances, the House ought also to have power to direct the Auditor-General on the “work programme priorities”.

We take “work programme priorities” to mean:

- the resources to be allocated to different types of OAG activity (e.g., advice to select committees as opposed to planned studies); and
- the areas of the public sector to be given greatest emphasis in performance audits and special studies (e.g., the health sector over the tertiary education sector).

The extension of the Auditor-General's performance audit mandate will require some re-prioritising – and possibly additional funding. The extent of this exercise will be influenced by whether the efficiency and effectiveness mandate is extended to include

² The particular committee, and the procedural arrangements, are a matter for Standing Orders.

³ The DFR already signals and discusses the proposed programme of special audits and studies. The OAG currently plans to do between six and eight special audits and studies each year.

SOEs. Any potential studies in that sector would have to be prioritised alongside the current SAP and issues arising in the Crown entity sector.⁴

Ex post Involvement

Clause 37 requires the Auditor-General's annual report to include an account of the implementation of the annual plan.

The annual report and ensuing financial review will achieve the same level of accountability that exists for departments, other offices of Parliament and Crown entities. The Auditor-General already reports against the discretionary work programme as identified in the DFR.

Clause 38 provides for independent audit of the Auditor-General (including performance audit).

The Balance Between Independence and Accountability

The Bill has to strike an acceptable balance between:

- the independence of the Auditor-General – in particular, the ability to act without direction or improper influence by the Executive or the Legislature;
- the need for a sound working relationship between the Auditor-General, Parliament, and the Executive; and
- the need for the Auditor-General to be properly accountable to Parliament.

The issues were summarised in chapters 5 and 7 of the paper prepared by the Auditor-General in 1996 in anticipation of the Bill. Copies are attached.

One of the main reasons for establishing an Officer of Parliament is to ensure the officer's independence. The OAG accepts that the Bill should imbed the current practice and ensure that the Controller and Auditor-General, as an Officer of Parliament and a corporation sole, has the same level of accountability as comparable entities in the public sector.

Existing accountability to the House is seen through the appointment and tenure provisions, the process of funding the Office, its relationship with select committees, the reporting requirements of the Public Finance Act 1989, and the provision for independent audit.

⁴ To date, the SAP process has not identified any potential studies in the SOE sector. However, this is not to suggest that potential studies would not be identified in the future. Several studies involving Crown entities have been identified.

Alternative Approaches For Achieving “Accountability With Consequence”

The Treasury and OAG hold alternative views on the desirability of the power to direct in clause 36(4) of the Bill. The Auditor-General believes that without clause 36(4) the Bill contains sufficient mechanisms for Parliament to appropriately hold the Auditor-General to account for the implementation of the Annual Plan and the stewardship of resources. Given these mechanisms and the risk that clause 36(4) could be used to compromise the independence of the Office the Auditor-General recommends that the power to direct should be omitted from the Bill.

Treasury argues that a power to direct on ‘broad’ work programme priorities should be retained in the Bill as it would be one of the few effective tools for Parliament to indicate its wishes about the OAG’s work priorities. The views of both OAG and Treasury are more fully outlined below.

OAG View: Strong Independence- No Power to Direct.

Clauses 36, 37 and 38 of the Bill provide a sound basis for Parliamentary scrutiny of the Auditor-General.

The Auditor-General is an Officer of Parliament, answerable to Parliament as a whole. Because of this, it is difficult to envisage how a formal rewards or sanctions process – such as that which exists for departmental chief executives – would work.

However, considerable sanctions exist informally.⁵ In an area such as this it is also important not to under-estimate the strength of convention. The current Controller and Auditor-General is of the view that resignation would be the only alternative long before any direction by the House took place.

The Auditor-General is also not unique. Neither of the other Officers of Parliament – the Ombudsmen and the Parliamentary Commissioner for the Environment – are subject to direction by the House. A number of other statutory officers – for example, the Government Statistician and the Commissioner of Police – are protected against removal from office on the ground of performance alone.

The need for a formal sanction procedure – such as a power to direct – must be considered against what is already available informally and by the strength of convention. There are considerable and obvious risks in stating expressly, in statute, what is always understood but unlikely ever to happen.

⁵ For example, the power to alter funding or, in extreme cases, to recommend removal from office – see Schedule 3, clause 4 of the Bill. The DFR already signals and discusses the proposed programme of special audits and studies. The OAG currently plans to do between six and eight special audits and studies each year.

⁵ To date, the SAP process has not identified any potential studies in the SOE sector. However, this is not to suggest that potential studies would not be identified in the future. Several studies involving Crown entities have been identified.

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Other Jurisdictions

There is no equivalent to a power to direct in the United Kingdom, Canada or Australia.

Many of these jurisdictions have dedicated Public Accounts Committees, whose function it is to interact with the Auditor-General on Parliament's behalf. The most recently established is the Joint Committee on Public Accounts and Audit (JCPAA) of the Commonwealth Parliament of Australia. The relationship between the JCPAA and the Auditor-General is one of co-operation and consultation, not direction. The attached article from an Australian accounting publication summarises this well. Also attached is a recent newsletter of the Victorian Auditor-General's office, which reveals a similar approach (see pages 3 and 5).

The OAG's aspiration is for a relationship with Parliament similar to that reflected in the Australian article. Such a relationship would:

- be constitutionally sound, because it would ensure that the Auditor-General paid heed to Parliament's wishes – while having the power to act independently and without political interference; and
- enable a select committee to be aware of any resource constraints which may affect the Auditor-General's preparation of the discretionary work programme.

OAG consider that clause 36(3) will achieve these objectives. OAG see clause 36(4) as unnecessary, and overstepping the mark.

OAG Recommendation

Clause 36(4) be omitted from the Bill.

Treasury View: Strong Independence- Limited Power to Direct on Broad Work Programme Priorities

Treasury agrees that it is important for the Auditor-General to have a high level of independence in the office's work. This is especially true in the conduct of individual audits or inquiries but also applies in having the ability to choose to conduct particular audits.

The mechanisms provided for consultation with Parliament, conventions about independence, and the Auditor-General's practices of consulting with affected agencies and key stakeholders about the office's work programme provide some safeguards that the work programme will be well targeted and effective.

Nevertheless, in developing any work programme there are likely at some point to be differences in views about priorities between the Officer concerned and Parliament.

Developing work programme priorities is an important part of ensuring effectiveness. This is as true of the Auditor General as it is of other agencies.

The degree of independence of the Auditor-General without clause 36(4) would be extremely high, leaving few effective mechanisms to ensure the officer's work priorities could be varied if the Auditor-General holds strong personal views. Budgetary processes provide some scope but Treasury considers the nature of the office limits the scope for using that mechanism. Another mechanism for achieving accountability is the ability to remove the Auditor General from office. However, this is such a draconian step that it is unlikely to offer any opportunity for Parliament to influence the office's work programme.

The Auditor General controls significant resources – greater than the Parliamentary Commissioner for the Environment and the Ombudsmen. New Zealand need not follow the precedents of overseas jurisdictions in arrangements for its own audit arrangements.

Our conclusion is that without a power to direct about broad work programme priorities, Parliament is left with few effective tools to indicate its views about the office's work priorities. The power to direct is unlikely to be used in practice, but provides a useful safeguard to Parliament's interests in the event of strong disagreement over an aspect of a proposed audit work programme. The powers in clause 36(4) provide an opportunity to enhance the effectiveness of the office's work. It also strengthens Parliament's ability to influence the work programme in any consultations.

The power should be limited to broad work priorities, to ensure that an overtly political consideration cannot influence or be seen to influence the content of particular audits or the choice of particular audits. This should also strengthen the effectiveness of the Audit Office by safeguarding its reputation.

Treasury Recommendation

Clause 36(4) be retained, but be limited to “broad work programme” priorities.