Queensland Law Society

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Office of the President

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Our ref NFP/17 and DA

The Research Director
Finance and Administration Committee
Parliament House
George Street
Brisbane QLD 4000

By Post and Email to: fac@parliament.qld.gov.au

Dear Research Director

Inquiry into the legislative arrangements assuring the Queensland Auditor-General's independence

Thank you for providing Queensland Law Society with the opportunity to comment on the legislative arrangements assuring the Queensland Auditor-General's independence.

1. General comments

The Society strongly supports the Auditor-General being personally and operationally independent, and as financially independent as possible.

The International Organisation of Supreme Audit Institutions (INTOSAI) has produced a number of reports on audit independence for the Audit Offices of member countries, including the Mexico Declaration on SAI Independence, which establishes eight core principles as essential requirements for public sector auditing. We note that Principle 8 appears to be particularly important in the context of this Inquiry:

> ***Principle 8***
> ***Financial and managerial/administrative autonomy and the availability of appropriate human, material, and monetary resources***
> *SAIs should have available necessary and reasonable human, material, and monetary resources—the Executive should not control or direct the access to these resources. SAIs manage their own budget and allocate it appropriately.*

We **enclose** a submission from the Australasian Council of Auditors-General (ACAG) in 2010 to the Inquiry into Victoria's *Audit Act 1994*, which discusses general principles for ensuring the Auditor-General's independence. We trust this will be of assistance to you.

2. Independence and autonomy

In June 2013, ACAG updated its report into the survey of Australian and New Zealand legislation on the Independence of Auditors General.[1] In relation to Managerial Autonomy and Resourcing, Queensland (along with several other State jurisdictions) was assessed as weak and that the Auditor General "remains vulnerable to decisions of the Executive."[2]

We also note the comments made in relation to Financial Independence:

Financial Independence

The usual Westminster appropriation process requires the Government to be held accountable for the budget and that it therefore should determine the budget's overall make-up and composition. However, leaving the budget for the Auditor General in the hands of the Executive could enable the Executive to starve the Auditor General of financial resources, thereby rendering him or her ineffectual.

In the United Kingdom, as part of the reforms introduced in 1983, and continued under more recent legislation, the Comptroller and Auditor General presents the National Audit Office budget to the Public Accounts Commission. The Treasury is able to make submissions to the Commission about the budget but it is the Commission that makes a recommendation to the House of Commons about whether to accept the budget.

> *• In New Zealand, the Parliament decides on the level of funding for the Auditor-General, who submits his annual budget through the Speaker to Parliament directly. As in the United Kingdom, this approach reverses the decision making process, with the Parliament making the decision after considering submissions from the Executive. Further, under the New Zealand approach, the Speaker is the "Vote Minster" responsible for the Auditor General's appropriation, ensuring that the Executive is not in a position to constrain the use of the appropriation.*

The New Zealand model provides much stronger protection to the financial independence of the Auditor General.

None of the Australian jurisdictions have adopted this level of separation of the budget from the control of the Executive. *In a number of jurisdictions, the financial resources available to the Auditor General are entirely controlled by the Executive, but some more recent legislation has introduced requirements that the Parliament or a Committee of Parliament can have some input into the budget process, either being consulted about or empowered to recommend on the Audit Office budget.*

> *• The Commonwealth Joint Committee of Public Accounts and Audit is required to consider the draft estimates of the Auditor General and to make recommendations to both Houses of Parliament and to the Minister who administers the Auditor-General Act.*
>
> *• In the Australian Capital Territory, the Public Accounts Committee has the ability to recommend the appropriation to the Treasurer and provide a draft budget. It may also*

[1] A 2013 update of a survey of Australian and New Zealand legislation, http://www.acag.org.au/Independence-of-Auditors-General-in-ANZ-2013.pdf
[2] Ibid, page 42

recommend additional amounts if the Auditor General is of the opinion that the appropriated funds are insufficient to enable certain audits to be undertaken promptly.

• In Western Australia, regard is to be had for any recommendations as to the budget made to the Treasurer by the Joint Standing Committee on Audit.

• In Victoria the Auditor General's budget is determined in consultation with the Parliamentary Committee, whilst in Queensland the Treasurer must consult the Parliamentary Committee in developing the proposed budget of the audit office.

• In other jurisdictions the legislation is silent regarding budget for the audit office, leaving it under the direct control of the Executive.

Notwithstanding the budget allocation, most jurisdictions do not protect the Auditor General's drawing rights on his or her appropriation.

• Only the Commonwealth Auditor General Act contains legislative guarantees on availability of the full amount of the parliamentary appropriations to the Auditor General

• In Victoria, the Auditor General is empowered to incur any expenditure obligations necessary for the performance of the function of his or her office, subject to the annual appropriation.[3] [emphasis added]

We consider that these comments are important for your consideration in the context of this Inquiry.

3. Section 56 of the Auditor-General Act 2009.

This section allows the Queensland Audit Office (QAO) to charge fees for the audits undertaken.

The 2010 Strategic Review of QAO reviewed the funding structure and the provisions for charging audit fees. The review concluded that *"the current funding model for the QAO has proven to be practical, robust and sustainable, and there is no reason to change the current structural arrangements."*[4]

The QAO financial framework is that the office charges fees for all financial compliance audits. We understand that the fee revenue is retained by QAO to meet its operating costs. This effectively puts QAO outside the appropriation process and ensures that QAO is able to acquire additional resources as required to respond to changing audit demands by public sector entities.

4. Remuneration arrangements for staff

In both strategic reviews of QAO in 2004 and 2010, an issue was raised about the flexibility QAO has in its remuneration arrangements for staff. QAO staff are currently covered by the *Public Service Act* with remuneration levels set under that legislation.

The 2010 Strategic Review recommended that "*the QAO continue to pursue strategies for achieving a more flexible remuneration structure for professional audit staff. It would be*

[3] Report, page 44
[4] Strategic Review 2010, page 59

beneficial for the QAO to investigate this further in conjunction with the Public Service Commission and the relevant Government department."[5]

We consider that implementing this recommendation would have the effect of bringing the Queensland legislation closer to the independence principles adopted by INTOSAI.

Yours faithfully

Annette Bradfield
President

Enclosed:
http://www.parliament.vic.gov.au/images/stories/committees/paec/audit_act_1994/submissions/Australasian_Council_of_Auditors-General.pdf

[5] Strategic Review 2010, page 89