

**Recommendation 1: The Committee recommends that the Treasurer amend the *Auditor General Act 2006* to require the Treasurer's recommended Auditor General appointee have the majority support of the Legislative Assembly Public Accounts Committee and the Legislative Council Standing Committee on Estimates and Operations.**

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**Not supported**

The Government considers that the existing process for the appointment of the Auditor General as set out in Schedule 1 to the *Auditor General Act 2006* (the Act) is sufficiently robust.

**Recommendation 2: The Committee recommends that the Treasurer urgently amend the *Auditor General Act 2006* to clearly provide the Auditor General with the power to compel a person to provide any information required, including documents subject to legal and professional privilege, Cabinet confidentiality or any other public interest immunity.**

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**Supported**

The Government supports the Auditor General having access to information that is necessary for the Auditor General to properly conduct the functions conferred on the Auditor General by the Act. It is noted that this may, in some instances, include information that is subject to legal professional privilege and information that would fall under public interest immunity, including Cabinet documents. Whilst it is acknowledged that the Auditor General may need access to these documents, any legislative amendments will also need to address limitations on the further disclosures that may be made of that information.

The Government considers it imperative though that the disclosure of a document to the Auditor General pursuant to a statutory requirement should not result in a loss of legal professional privilege or public interest immunity for the document in other circumstances where the privilege or immunity could be claimed.

As the Auditor General does not have an entitlement to documents subject to legal professional privilege, Cabinet confidentiality or any other public interest immunity, Government will give consideration to amending the Act as soon as is practicable.

**Recommendation 3: The Committee recommends that, pending legislative amendments contained in Recommendation 2, the current administrative arrangements that apply to Cabinet documents should be streamlined.**

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#### **Supported**

The current protocol in place represents the Government's commitment to provide access to Cabinet materials (in the absence of a power of compulsion) to the Auditor General to facilitate the performance of the duties of the Auditor General. The process is intended to reflect the importance and rationale of Cabinet confidentiality whilst acknowledging that sometimes it may be appropriate to provide access to those documents. The Department of the Premier and Cabinet will discuss the process with the Auditor General to determine if it could be streamlined.

**Recommendation 4: The Committee recommends that the Treasurer amend the *Auditor General Act 2006* to provide that disclosure of a document to the Auditor General does not result in the loss of privilege in other circumstances where the privilege could be claimed and provides protection for the person disclosing the information in such circumstances.**

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#### **Supported**

The Government considers that this would be an essential element of any legislative amendment relating to access to documents that are subject to legal professional privilege and public interest immunity.

Suitable amendments should ensure that such documents are only used in the performance of the Auditor General's functions, and continue to be restricted from access by the general public. Further, despite disclosure to the Auditor General, there is to be no waiver of legal professional privilege, and that public interest immunity will still be maintained against third parties (including under the *Freedom of Information Act 1992*). Any amendments should also clarify when information should not be disclosed in a report on the basis that it is considered to be against the public interest.

**Recommendation 5: The Committee recommends that the Treasurer amend the "follow-the-dollar" provisions in the *Auditor General Act 2006* to clarify that the Auditor General's power to audit activities is as broad as the scope of the *Commonwealth Auditor General Act 1997*.**

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#### **Supported**

The Government notes the concerns raised by the Committee regarding the follow-the-dollar provisions and will give detailed consideration to possible legislative remedies to strengthen the provisions in the Act.

**Recommendation 6: The Committee recommends that the Treasurer implement recommendations 10, 12 and 13 in the Legislative Council Standing Committee on Estimates and Financial Operations Report 62, Provision of Information to the Parliament.**

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**Not supported**

The Government's response to the Legislative Council Standing Committee on Estimates and Financial Operations Report 62 Provision of Information to the Parliament was tabled on 23 August 2016 (p.4403).

The Government's position remains unchanged.

**Recommendation 7: The Committee recommends that the Treasurer amend the *Auditor General Act 2006* to clarify:**

- that section 23 only permits the Auditor General to provide advice or information outside the context of an audit.
  - the interaction between sections 23 and 46 of the Act.
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**Supported in principle**

The Government acknowledges that the scope of section 23 of the Act and the interaction between sections 23 and 46 of the Act should be addressed by way of legislative amendment. The precise form of those amendments will be developed with Parliamentary Counsel's Office (PCO) during drafting stage.

**Recommendation 8: The Committee recommends that the Treasurer amend the *Auditor General Act 2006* to permit the Auditor General to communicate information obtained in the course of an audit engagement without requiring it to be a report to the Parliament.**

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**Supported in principle**

The Government notes the Committee's concerns with respect to the disclosure of information about preliminary investigations and will consider options to streamline reporting in certain circumstances.

**Recommendation 9: The Committee recommends that the Auditor General advise the Legislative Assembly Public Accounts Committee and the Legislative Council Standing Committee on Estimates and Financial Operations of preliminary audits undertaken, but not pursued, as part of its regular briefings.**

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**Noted**

The Government considers that the Auditor General has sufficient power under the Act to advise on preliminary audits undertaken but not pursued.

**Recommendation 10: The Committee recommends that the Treasurer amend the *Auditor General Act 2006* to provide the Auditor General with all the necessary powers to conduct collaborative audits.**

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**Noted**

The Government acknowledges that there are limitations with section 46 regarding collaborative audits between jurisdictions. This will require consideration and collaboration with other Australian jurisdictions to ensure that a consistent approach is achieved.

**Recommendation 11: The Committee recommends that the Treasurer amend section 44 of the *Auditor General Act 2006* to replace 'the Joint Standing Committee on Audit' with 'the Legislative Council Standing Committee on Estimates and Financial Operations'.**

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**Not supported**

The Government is of the view that the existing arrangements are adequate and that a Joint Standing Committee representing both Houses of Parliament is appropriate.

The Government also notes that as the Committee is already established, it is not envisaged that there will be an additional impost in maintaining the existing arrangements.

**Recommendation 12: The Committee recommends that the Treasurer review the relevant laws to ensure that it is easier to abolish inactive agencies.**

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**Noted**

The existing mechanisms work for the abolition of agencies which will vary depending upon the specific circumstances in which an agency has ceased to operate. In some instances, it is necessary for agencies to remain in existence for a period of time notwithstanding that some of their core functions are carried out through a different entity. Government does not consider that a review of the laws in this area is necessary.

Government will consider options to provide the Auditor General with sufficient discretion in the Act in terms of the conduct of audits.

**Recommendation 13:** The Committee recommends that the Treasurer repeal section 30 of the *Auditor General Act 2006* to remove a potential or perceived conflict of interest that may arise from the Auditor General, as an independent officer of Parliament, obtaining legal advice on the scope of those powers from the State Solicitor, who is the legal adviser to the Government.

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**Not supported**

Section 30 is intended to specifically recognise that the Auditor General may have access to the legal services of the State Solicitor's Office in certain specified circumstances as appropriate. The Auditor General uses discretion to determine when it is appropriate to seek advice from the State Solicitor's Office and both the Auditor General and the State Solicitor's Office are aware of the Auditor General's role as an officer of Parliament and the need to ensure that no conflicts of interest arise. The Auditor General maintains the discretion to engage other legal providers as required.

**Recommendation 14:** The Committee recommends that the Treasurer amend section 25(2)(a) of the *Auditor General Act 2006* to provide a summary of findings of an audit to a 'related entity'.

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**Supported**

The Government supports the making of the recommended minor amendments to the Act. The Government notes for completeness that detailed consideration to the form of the amendments will be developed with PCO during the drafting stage.

**Recommendation 15:** The Committee recommends that the Treasurer amend section 35(3) of the *Auditor General Act 2006* to permit a search in an office of a subsidiary body or related entity for the purpose of an audit.

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**Supported**

See response to Recommendation 14.

**Recommendation 16:** The Committee recommends that the Treasurer amend section 35(5) of the *Auditor General Act 2006* to require the occupier of premises to provide the Auditor General with all reasonable facilities for the effective exercise of audit powers.

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**Supported**

See response to Recommendation 14.

**Recommendation 17: The Committee recommends that the Treasurer amend section 36(2) of the *Auditor General Act 2006* to insert the words: “whether made before or after the commencement of this section” after the words: “written law” first occurs.**

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**Not supported**

The Government does not consider that this amendment is necessary. The intended interaction of any secrecy provisions in any new legislation with the Act can be considered at the time such new legislation is being drafted. The Government notes that it is only in very rare and specific circumstances where a secrecy provision in legislation would not permit disclosure that is required or allowed by another written law of the State.

**Recommendation 18: The Committee recommends that the Treasurer repeal section 43 of the *Auditor General Act 2006* and transfer the prescribed functions of the Joint Standing Committee on Audit in this Act and the *Financial Management Act 2006* to the Legislative Council Standing Committee on Estimates and Financial Operations.**

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**Not supported**

The Government is of the view that it is appropriate for a Joint Standing Committee on Audit to play a role in the review of the Act.

In addition, the Joint Standing Committee on Audit is also required to play a role in the review of the *Financial Management Act 2006* (FMA).

**Recommendation 19: The Committee recommends that the Treasurer consult with the Department of the Legislative Council on the budget for the review prior to a scheduled review and allocate funding for that review in the relevant budget year.**

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**Noted**

The recommendation relates to the cost of conducting the five yearly review of the Auditor General’s functions by the Auditor General and the Office of the Auditor General (OAG), and for the funding implications to be taken into account.

The Government notes that the statutory review occurs at specific intervals, and the associated budget should be incorporated into the relevant agency’s estimates as part of the budget process.

**Recommendation 20: The Committee recommends that the Treasurer amend section 48 of the *Auditor General Act 2006* to require separate reviews into the performance of the Auditor General's functions by the Auditor General and the Office of the Auditor General and the operation and effectiveness of the *Auditor General Act 2006*.**

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**Not supported**

The Government considers that an amendment is not required to section 48 to separate out the performance and legislative review because the factors that must be taken into account overlap to some extent, that is, performance is affected by the statutory powers.

It is noted that the Joint Standing Committee on Audit engaged the services of Vista Advisory Pty Limited to conduct the performance review of the Auditor General and Office of the Auditor General, and HWL Ebsworth Lawyers to conduct the legislative review of the Act.

**Recommendation 21: The Committee recommends that the Treasurer amend the *Auditor General Act 2006* to provide the Parliament with the option to undertake the legislative review of the operation and effectiveness of the Act.**

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**Not supported**

The Government considers that the current review processes are sufficiently robust, and provide an appropriate degree of independence and expertise.

**Recommendation 22: The Committee recommends that the Treasurer amend section 48 of the *Auditor General Act 2006* to require a performance review in the second and seventh year of Auditor General's contract.**

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**Not supported**

The Government considers that more frequent performance reviews of the Auditor General's functions by the Auditor General and the OAG can be managed administratively as part of the appointment process of the Auditor General.

**Recommendation 23: The Committee recommends that the Treasurer amend section 48 of the *Auditor General Act 2006* to require a review of the Act to occur every ten years.**

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**Not supported**

The Government considers that the timeframe for the review of the Act and the FMA should be consistent due to the interaction of the Act with the FMA.

**Recommendation 24:** The Committee recommends that the Treasurer amend section 48(2) of the *Auditor General Act 2006* to remove subsections (b) to (e).

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**Not supported**

The Government considers that subsections (b) to (e) set out matters that should, at a minimum, be considered in conducting a legislative and performance review of the Act.