

**EXECUTIVE SUMMARY AND RECOMMENDATION FOR THE
SPECIAL REPORT OF THE STANDING COMMITTEE ON PUBLIC ADMINISTRATION
REGARDING REPORT 14 – UNASSISTED FAILURE**

REPORT

There is one Western Power, there is one Auditor General and there is one Parliament of Western Australia. If matters come to the attention of the Auditor General that are potentially relevant to the Parliament, the special relationship that exists between the Auditor General and the Parliament places an obligation on the Auditor General to ensure that the Parliament is not misinformed. It is not acceptable for the Auditor General to draw artificial lines around his financial audit function and his other functions in such a way as to leave the Parliament materially misinformed about the operations of Government agencies and trading enterprises.

[Paragraph 2.90 below.]

EXECUTIVE SUMMARY

- 1 On 20 January 2012 we tabled Report 14 – *Unassisted Failure*. That Report contained a number of findings relating to the Auditor General, and highlighted a level of concern that we had about why, between 2006 and 2011, he did not address any of the issues that had been raised by EnergySafety and the Economic Regulation Authority (**ERA**), about Western Power’s asset management systems, processes and practices.
- 2 In Report 14, we suggested that the Parliament was owed a detailed and plausible explanation by the Auditor General about why he has never conducted a performance audit of Western Power. We also suggested that the Auditor General owed the Parliament a detailed and plausible explanation about why he has not reported on Western Power’s apparent failure to meet key statutory obligations between 2006 and 2011, to the satisfaction of both EnergySafety and the ERA.

- 3 On 25 January 2012 the Auditor General wrote to us suggesting that Report 14 contained “inaccuracies” and “misunderstandings”. We took the unusual step of replying to the Auditor General asking him to provide us with the details of those inaccuracies and misunderstandings. We did this out of respect for the Office of the Auditor General, and on the basis of its status as an independent statutory officer of the Parliament.
- 4 On 21 March 2012 the Auditor General provided us with his detailed response to Report 14 (the “Detailed Response”), outlining what he claimed were inaccuracies and misunderstandings.
- 5 We were concerned by the content of the Detailed Response for two reasons. Firstly, the Detailed Response contained no evidence that would help us to weigh up his complaints about inaccuracies and misunderstandings on our part in Report 14. Second, the Auditor General did not address any of the substantive concerns that we outlined in Report 14, about his conduct with respect to Western Power between 2006 and 2011.
- 6 Given our growing concern, we arranged a public hearing to be held with the Auditor General. A week before that hearing, we gave the Auditor General a written copy of the questions we wanted to ask him, so that he would not be caught by surprise in the hearing.
- 7 The Auditor General took the written questions we provided in advance to the legal advisor to the Government, the State Solicitor’s Office, to obtain legal advice. We question whether seeking advice from the Government’s legal advisor about how to answer questions from the Parliament as his client, is consistent with the statutory independence of the Office of Auditor General. Other sources of advice were available to the Auditor General. For example, advice could have been sought from the Clerk of the Legislative Council and Clerk of the Parliaments, or from any of the suitably qualified legal professionals operating in the private sector.
- 8 We are also concerned that the legal advice on which the Auditor General relied in the 20 June 2012 public hearing, did not address the tension that exists within the *Auditor General Act 2006*, between section 46 and section 23. Section 46 of that Act appears to prohibit disclosure of information by the Auditor General, while section 23 of the Act appears to permit disclosure of information by the Auditor General. We specifically raised this issue with the Auditor General in the 20 June 2012 public hearing. He acknowledged that this issue was not addressed in the legal advice.
- 9 We asked the Auditor General for information in his possession that could prove whether, and if so, to what extent, he had considered the issues we raised in Report 14 about his audits of Western Power between 2006 and 2011. This request was repeated approximately 35 times during the public hearing.

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- 10 In the 20 June 2012 public hearing, on every occasion that we asked the Auditor General for information in his possession that could answer our concerns about his conduct of Western Power’s audits between 2006 and 2011, the Auditor General refused to provide the information we requested. The Auditor General’s refusals were based on his legal advice from the State Solicitor’s Office – legal advice which the Auditor General acknowledged did not consider the significance of the power of disclosure at section 23 of the *Auditor General Act 2006*.
- 11 We can only make findings on the basis of evidence. Unless the Auditor General shows us the information we have requested, we have no way of knowing whether or not our concerns in Report 14 were based on “*inaccuracies*” and “*misunderstandings*”, or if they were reasonable in all the circumstance.
- 12 We do not believe it is reasonable for the Auditor General to claim that Report 14 contains “*inaccuracies*” and “*misunderstandings*”, and then refuse to provide information that we have asked for, and which is in his possession, that can prove whether or not we were accurate in what we wrote in Report 14.
- 13 We do not wish to mislead the Legislative Council, or people of Western Australia, in any respect.
- 14 In a single instance, the Auditor General has demonstrated to our satisfaction that we need to clarify one short passage in Part 9 of Report 14. An “*Erratum*” to that effect will be placed on the Committee’s website alongside Report 14.
- 15 At no time has the Auditor General supported any of his suggestions about Report 14 containing “*inaccuracies*” and “*misunderstandings*” with documentary evidence. Accordingly, with the exception of the single instance referred to in the previous paragraph, we cannot find that any of the Auditor General’s suggestions about Report 14 containing “*inaccuracies*” and “*misunderstandings*” have been proved.
- 16 Since we held the public hearing on 20 June 2012, the Auditor General has tabled an Annual Report in which he has stated that this Committee’s views represent an “*audit expectation gap*”. In other words, our level of expectation was beyond what can be expected from a financial audit. We have looked carefully at the *Auditor General Act 2006* and we find that the Auditor General has statutory duties to the parliament as his client that go beyond mere financial audit. Given the Auditor General’s repeated refusal to provide us with information in his possession, we are unable to determine whether or not the Auditor General has discharged these broader statutory duties to an appropriate standard, with respect to Western Power since 2006.

- 17 We also remain troubled by the Auditor General's repeated refusal to conduct a performance audit into Western Power, even in the light of our findings in Report 14 – *Unassisted Failure*.

Given that the Committee has been expressly denied access to relevant evidence currently in the possession of the Auditor General, the Committee continues to hold the concerns that it expressed in Report 14 relating to the performance of the Auditor General in his roles as both financial and performance auditor of Western Power, and as an independent statutory officer of the Parliament, during the 2006-07 to 2010-11 financial years. In these circumstances, the Committee does not believe that the Auditor General's objections to the Committee's findings in Report 14 are either reasonable, or acceptable.

[Paragraph 2.74 below.]

RECOMMENDATION

The recommendation is shown as it appears in the text at the page number indicated:

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Recommendation 1: The Committee recommends that the Legislative Council do require the Auditor General to provide detailed responses to the questions appearing at paragraphs 5.3.1 to 5.3.4 to this Special Report, including the provision of all relevant documentary evidence in his possession, or in possession of any auditor providing contract services to the Auditor General in connection with those questions. Further, that such responses and documentary evidence to be provided prior to 27 November 2012.