

COMMISSIONED BY THE VICTORIAN AUDITOR GENERALS OFFICE

Independence of Auditors General

*A 2013 update of a survey of
Australian and New Zealand legislation*

Dr Gordon Robertson, PhD, PSM June 2013

The conclusions reached in this report are the product of independent research and do not necessarily represent the views of the audit offices mentioned

Summary and Conclusions

Independence of Auditors General

The International Organization of Supreme Audit Institutions (INTOSAI) has declared that eight core independence principles are essential requirements for effective public sector auditing:

1. An effective statutory legal framework.
2. Independence and security of tenure for the head of the audit institution.
3. Full discretion to exercise a broad audit mandate.
4. Unrestricted access to information.
5. A right and obligation to report on audit work.
6. Freedom to decide the content and timing of audit reports and to publish them.
7. Appropriate mechanisms to follow-up on audit recommendations.
8. Financial, managerial and administrative autonomy and availability of appropriate resources.

Survey of Australian and New Zealand Legislation

In 2009 the legislative frameworks that then existed in New Zealand, in the Commonwealth of Australia, and in each Australian State and Territory were surveyed for key ‘factors’ that contributed to each INTOSAI independence principle. The extent to which each factor was subject to the control of Executive government was given a score ranging from zero, where legislation was silent or where the factor was directly controlled by Executive, to ten, where the factor was embedded within the jurisdiction’s Constitution. The scores were aggregated to give an overall indication of the extent to which each jurisdiction's legislative framework enhanced independence and reduced the opportunity for Executive government to influence the Auditor General.

Summary of Legislative Changes since 2009

Since the 2009 survey, the legislation governing Auditors General has been amended in a number of jurisdictions. The survey has therefore been repeated to assess the extent of protection from Executive influence that exists in 2013.

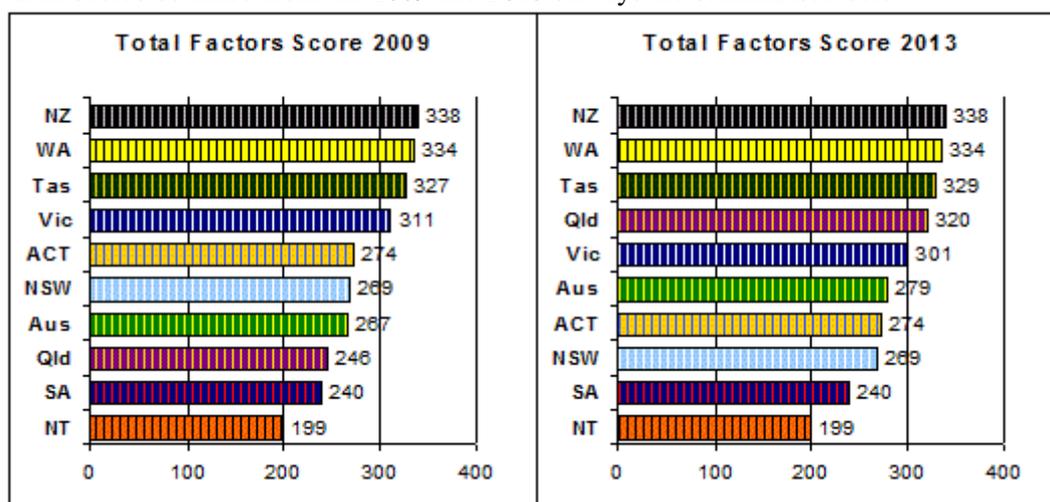
Substantial changes have occurred in the legislation governing Auditors General in the Commonwealth and Queensland since 2009. Significant changes have also been made to the legislation in Victoria, Tasmania and the Northern Territory. Relatively minor amendments have been made to the legislation in other jurisdictions.

Jurisdiction	Brief summary of Amendments since 2009	Impact on Independence
ACT	Minor amendments: definitions and terms used (consequential to amendments in other legislation). The Auditor General is now referred to as the responsible director-general of a directorate.	No effect on independence score
Aus	Major amendments: expanded mandate to include performance audits of "Commonwealth partners", to audit performance indicators and to conduct assurance reviews. Significant amendments to reporting procedures and other consequential amendments to auditing standards, use of information gathering powers, confidentiality of information and information sharing. Constitutional safety net provision added.	Substantial effect on independence score
NSW	Few amendments: review of audit office from once every 3 years to once every 4 years. Definitions of statutory bodies and controlled entities clarified. New provision relating to defraying cost of audits requested by Parliament or a Minister.	No effect on independence score
NT	Extensive amendments: term of appointment and explicitly mandating independence of Auditor General. Mandate for special audits and audit of performance management systems expanded to include Territory controlled entities. Significant amendments to reporting procedures.	No net effect on independence score
NZ	Few amendments: requirements for publishing auditing standards and new provisions ensuring persons or firms appointed as auditors for financial report audits meet minimum required standards. New provision for external quality assurance reviews of Issuers.	No effect on independence score

Qld	Major amendments: term of appointment and declaration of interests of Auditor General and Deputy; substantial changes to mandate including audit of public property given to a non-public sector entity, performance audits of most public sector entities and audit of performance management systems and performance measures of government-owned corporations, and to conduct joint or collaborative audits with the Commonwealth or another State.	Substantial effect on independence score
SA	Minor amendment: (consequential to amendment of other legislation)	No effect on independence score
Tas	A number of amendments: expanded coverage mandate to include local government and the mandate for investigations and examinations; new provision enabling audits in collaboration with the Commonwealth, other State or Territory; amended reporting lines and new provisions for non disclosure of sensitive information and for confidentiality of information.	Minor effect on independence score
Vic	Extensive amendments: largely associated with a new Victorian integrity system and the introduction of a new oversight body (the Victorian Inspectorate). Significant effect on the way in which power to call for persons and documents is exercised that affects a wide range of audit activities.	Potential effects on independence score unclear
WA	Minor amendment: (consequential to amendment of other legislation)	No effect on independence score

Overall Independence Scores

The overall scores obtained from the 2009 and 2013 surveys are summarised below:



	Year	ACT	Aus	NSW	NT	NZ	Qld	SA	Tas	Vic	WA
Independence Factor Scores	2009	274	267	269	199	338	246	240	327	311	334
	2013	274	279	269	199	338	320	240	329	301	334

Figure 1. Overall independence factor scores 2009 versus 2013

Overall, the survey found that, under the scoring system used:

- New Zealand’s Auditor General continues to have the highest overall independence score, followed by Western Australia and Tasmania.
- Queensland’s overall independence score has substantially improved and the Commonwealth has also improved its position significantly.
- Victoria's overall score has fallen.
- Despite changes to its legislative framework, the Northern Territory's Auditor General continues to be more vulnerable to Executive influence than those in other jurisdictions.

Relative Independence Scores for each Principle

1. **Statutory Framework:**

- Victoria continued to have the strongest independence score for its statutory framework because of the constitutional protections it affords the Auditor General, although this has been weakened by recent amendments to the *Audit Act 1994* and the introduction of other legislation as part of Victoria's new integrity system.
- The Northern Territory improved its score by mandating the independence of its Auditor General in legislation.
- Other jurisdictions have made no significant changes to the statutory framework.

2. **Appointment and immunity:**

- New Zealand continued to have the highest independence score for appointment and immunity and is now followed by Queensland.
- The Northern Territory has shortened the term of appointment and re-introduced the opportunity for reappointment at the Executive's discretion.
- Scores in other jurisdictions have not changed.

3. **Mandate and discretion:**

- Western Australia and Tasmania continues to have highest independence score arising from the widest audit mandate and greatest discretion.
- Queensland has substantially improved the overall score, moving from ninth to third position by widening its mandate and discretion.
- The Commonwealth score has also improved from a wider mandate.
- The Northern Territory's Auditor General gained some ground but continues to have the narrowest mandate and greatest potential for Executive influence.
- Victoria's score has fallen because new integrity controls, could reduce the Auditor General's discretion over how to conduct an audit.

4. **Access to Information:**

- Queensland has substantially improved access to information and now ranks equal first with the Commonwealth, Western Australia, Tasmania, and South Australia.
- Victoria's score has fallen because new integrity controls over, and external monitoring of, access to persons could constrain the Auditor General's access to information.
- The Australian Capital Territory continues to rank poorly because of the Executive's ability to release protected information.

5. **Reporting rights and obligations**

- There have been no significant changes to reporting rights and obligations in any of the jurisdictions surveyed.

6. **Content timing and publication of reports**

- The Australian Capital Territory and Tasmania continue to have the strongest safeguards over the content, timing and publication of reports.
- The Commonwealth lost ground because it is now required to include in the final report all comments received, enabling the Executive to influence this segment of its reports.
- Victoria's score has fallen because of the constraints imposed by new integrity controls over, and external monitoring of reporting of certain information.

7. **Follow-up mechanisms**

- There have been no significant changes to follow-up mechanisms, these remaining the province of Parliamentary committees.

8. Managerial autonomy and resourcing

- There have been no significant changes to managerial autonomy and resourcing in any of the jurisdictions surveyed.
- New Zealand's audit office continues to have the greatest autonomy and most independent resourcing arrangements.
- New South Wales remains in second place largely because of its statutory separation from the public service. However, despite new provisions to enable additional resources to be made available for requests to conduct audits from either the Parliament or the Executive, financial resources remain under Executive control.
- The Commonwealth, Victoria and the Australian Capital Territory rank next largely because of more independent resource allocation processes.
- Other jurisdictions continue to remain vulnerable to Executive influence and/or control.

Independence of Auditors-General: A 2013 update of a survey of Australian and New Zealand legislation

Background

In 2009, the Victorian Office of the Auditor General commissioned a survey to identify and compare the range of independence safeguards for Auditors General in the legislative frameworks that then existed in New Zealand, in the Commonwealth of Australia, and in each Australian State and Territory.

The survey was based upon the International Organization of Supreme Audit Institutions (INTOSAI) *Mexico Declaration on SAI Independence* which recognised eight core principles as being essential requirements for effective public sector auditing. These principles are:

1. The existence of an appropriate and effective constitutional/statutory/legal framework and of de facto application provisions of this framework.
2. The independence of SAI heads and members (of collegial institutions), including security of tenure and legal immunity in the normal discharge of their duties.
3. A sufficiently broad mandate and full discretion, in the discharge of SAI functions.
4. Unrestricted access to information.
5. The right and obligation to report on their work.
6. The freedom to decide the content and timing of audit reports and to publish and disseminate them.
7. The existence of effective follow-up mechanisms on SAI recommendations.
8. Financial and managerial/administrative autonomy and the availability of appropriate human, material, and monetary resources.

The 2009 survey identified key legislative components or ‘factors’ that contributed to each INTOSAI independence principle and made an assessment of the extent to which each factor was subject to the control of Executive government. Each factor was given a score ranging from zero, where legislation was silent or where the factor was directly controlled by Executive, to ten, where the factor was embedded within the jurisdiction’s Constitution.

The survey found that although all of the jurisdictions had well established legislative frameworks governing their respective Auditors General there was considerable variation in the independence safeguards provided for Auditors General and in the extent to which Auditors General, or the role they performed, could be influenced by the Executive government of the jurisdictions concerned.

In a number of jurisdictions there was room for improvements in the legislative framework especially with respect to:

- The extent to which the Executive government could influence aspects of the Auditor General’s appointment and security of tenure.
- The extent of the Auditor General’s functional role and mandate to scrutinise new mechanisms being used by Executive government to effect delivery of publicly funded services.
- The Auditor General’s financial, managerial and administrative autonomy.

A significant risk existed in some jurisdictions that the Executive could not be adequately held to account for the use of public resources.

Since the 2009 survey, the legislation governing Auditors General has been amended in a number of jurisdictions. Major amendments have been made to the legislation in the Commonwealth of Australia and Queensland and extensive amendments have also been made to the legislation in the Northern Territory, Victoria, and Tasmania. Relatively few, more minor amendments have been made to the legislation in New Zealand, New South Wales, South Australia, Western Australia and the Australian Capital Territory.

The present study aims to update the findings of the 2009 survey by examining the legislation governing Auditors General that exist in 2013 to again identify and compare the range of independence safeguards that exist.

Factors Contributing to Independence

In the 2009 survey, 60 key 'factors' were identified in legislative components that were relevant to the Independence Principles outlined in the INTOSAI Declaration.

No attempt was made to weight the factors in terms of their relative importance to independence but each factor was ranked on the extent to which it is removed from the control of Executive government according to the following scale:

0. **Silent or Executive decides** -- the legislation is either silent about the factor or the factor is under the direct control of the Executive.
1. **Parliament consulted** -- the Executive is required to consult a Committee of Parliament and/or the leader of each political party within the Parliament before making a decision about the factor. This mechanism improves transparency, but does not shift decision making power and the decision still rests with the Executive.
2. **Parliament veto** -- the Parliament or a Committee of Parliament is able to veto a proposal from the Executive about the factor. This introduces some level of Parliamentary control, although any decision about what to propose rests with the Executive.
3. **Parliament recommends** -- the Parliament or a Committee of Parliament makes recommendations to the Executive about the factor. This enables Parliament to take the initiative but the final decision rests with Executive, which may reject the recommendation.
4. **Parliament decides** -- any decision about the factor is made by the Parliament or a Committee of Parliament. This places control within the Parliament itself where it is transparent and more difficult for Executive to influence.
5. **Independent body decides** -- any decision about the factor is made by another independent body, outside of the control of the Executive. This should remove partisan politics, although the independent body itself may or may not be subject to Executive influence.
6. **Auditor General decides** -- any decision about the factor is made by the Auditor General, free from Executive influence.
8. **Legislation mandates** -- the factor is explicitly addressed in the legislation. Any variation would require legislative amendment and Parliamentary debate and is therefore protected from Executive influence.
10. **Constitution mandates** -- the factor is embedded in the Constitution. An amendment to the Constitution would require a large Parliamentary majority and/or referendum. This gives the highest possible protection from Executive influence.

The same factors were again used in the present survey of the legislative frameworks in effect as at May 2013 and the same criteria were used to make an assessment of how or whether the factor has been addressed in legislation.

It should be noted that, as in the 2009 survey, the full range of ranking was not applicable to all of the factors examined.

The ranking for each of the factors examined for each INTOSAI principle were aggregated to give an overall score for each INTOSAI Principle, which were then aggregated to give an overall independence score.¹

In the 2009 survey, the ranking for each of the factors examined for each INTOSAI Principle were aggregated then adjusted to reflect the number of factors grouped under each Principle to give an 'adjusted Principle score'. This adjustment has not been applied in the present survey.¹

Results of the 2013 Survey

Summary of legislative changes since 2009

Jurisdiction	Summary of Amendments since 2009	Impact on Independence
ACT ²	Minor amendments <ul style="list-style-type: none"> Definitions and terms used consequential to amendments in other legislation. The Auditor General is now referred to as the 'responsible director-general' of a 'directorate'. 	No effect on independence score
Aus ³	Major amendments. <ul style="list-style-type: none"> Expanded mandate <ul style="list-style-type: none"> performance audits of 'Commonwealth partners' audit of performance indicators Conduct of assurance reviews. Significant amendments expanding the list of persons or bodies who must or may receive copies or extracts of a proposed report and who may provide comments thereon. All comments received must now be included in the final report. Consequential amendments to auditing standards, use of information gathering powers, confidentiality of information. New section to allow information sharing. Constitutional safety net provision added. 	Substantial effect on independence score
NSW ⁴	Few amendments. <ul style="list-style-type: none"> Amended review of audit office from once every 3 years to once every 4 years. Definitions of statutory bodies and controlled entities clarified. New provision relating to defraying cost of audits requested by Parliament or a Minister, but at discretion of the Treasurer. Term of appointment amended (July 2013) from 7 years non renewable to 8 years non renewable 	No effect on independence score
NT ⁵	Extensive amendments. <ul style="list-style-type: none"> New definitions of 'organisation' and modified definition of 'Territory controlled entity'. Duration of appointment amended from 7 year fixed term to 5 year renewable term. Amended ineligibility criteria. New explicit independence mandate, but subject to Ministerial direction provisions. Mandate for special audits and audit of performance management systems expanded to include Territory controlled entities. Significant amendments expanding the list of persons or bodies who must or may receive copies or extracts of a proposed report and who may provide comments thereon, and who must or may receive copies of final reports. 	No net effect on independence score
NZ ⁶	Few amendments. <ul style="list-style-type: none"> New interpretation definitions of 'auditing and assurance standards', 'financial reporting standards' and 'Issuer' from Financial Reporting Act 1993 New provision for external quality assurance reviews of Issuers. Amended requirements for publishing auditing standards. New provisions ensuring persons or firms appointed as auditors for financial report audit meet minimum required standards. 	No effect on independence score
Qld ⁷	Major amendments. <ul style="list-style-type: none"> Duration of appointment is for a fixed, non-renewable term of 7 years. Changes to declaration of interest and new section on conflicts of interest for both Auditor-General and Deputy. 	Substantial effect on independence score

² Australian Capital Territory. *Auditor-General Act 1996*, Republication No 11 Effective 1 July 2012

³ Australia. *Auditor-General Act 1997*, Compilation prepared on 4 October 2012

⁴ New South Wales. *Public Finance and Audit Act 1983*, Current version for 4 January 2013

⁵ Northern Territory of Australia. *Audit Act*. As in force at 21 September 2011

⁶ New Zealand. *Public Audit Act 2001* Reprinted as at 1 July 2012

⁷ Queensland. *Auditor-General Act 2009* Current as at 9 September 2011

	<ul style="list-style-type: none"> • Substantial changes to mandate: <ul style="list-style-type: none"> ○ Discretion to exempt entities from audit. ○ New provision to conduct an audit of property given to a non-public sector entity (but limited to assessment of efficiency and effectiveness). ○ New provision to conduct performance audits (but government owned corporations only at the request the Legislative Assembly, Parliamentary committee, Treasurer, or appropriate Minister). ○ New discretionary power to conduct an audit of performance management systems and performance measures of government-owned corporations. ○ New provision for the conduct of joint or collaborative audits with the Commonwealth or another State with power to disclose protected information. • New requirement for a 3-year strategic audit plan for performance audits. • Consequential amendments to reporting provisions 	
SA ⁸	Minor amendment: (consequential to amendment of other legislation)	No effect on independence score
Tas ⁹	Several amendments <ul style="list-style-type: none"> • New definitions introducing ‘Employer’ from State Services Act 2000 and ‘Joint Committee’ from Integrity Commission Act 2009 and expanding meaning of ‘State entity’ to include entities defined by Local Government Act 1993. • Mandate for investigations and examinations expanded to include local government, Employer under State Services Act 2000. • New provisions enabling Integrity Commission to request audits and Employer to request investigations. • New provision enabling audits in collaboration with the Commonwealth, other State or Territory. • Amendments to reporting lines. • New provisions for non disclosure of sensitive information and for confidentiality of information. 	Minor effect on independence score
Vic ¹⁰	Extensive amendments. <ul style="list-style-type: none"> • New definitions associated with the recently established Victorian integrity system. • A suite of new provisions relating to obligations the integrity system imposes, including the introduction of a new oversight body (the Victorian Inspectorate) and mandatory reporting/notification of various matters to integrity bodies and provision of information to law enforcement agencies. • Significant changes to the way in which powers to call for persons and documents can be exercised with consequential amendments that affect a wide range of audit activities, including those of the independent auditor of the audit office. • New provision prohibiting the disclosure of certain information in reports. 	Significant effect on independence score
WA ¹¹	Minor amendment <ul style="list-style-type: none"> • Consequential to amendment of Public Sector Management Act 1994. 	No effect on independence score

⁸ South Australia. *Public Finance and Audit Act 1987*, Version: 15.2.2013

⁹ Tasmania. *Audit Act 2008*, Tasmanian Legislation Online, Consolidated:17 May 2013

¹⁰ Victoria. *Constitution Act 1975* Version incorporating amendments as at 15 May 2013; *Audit Act 1994* Version incorporating amendments as at 11 February 2013

¹¹ Western Australia. *Auditor General Act 2006*, As at 01 Dec 2010

Overall Assessment of Independence

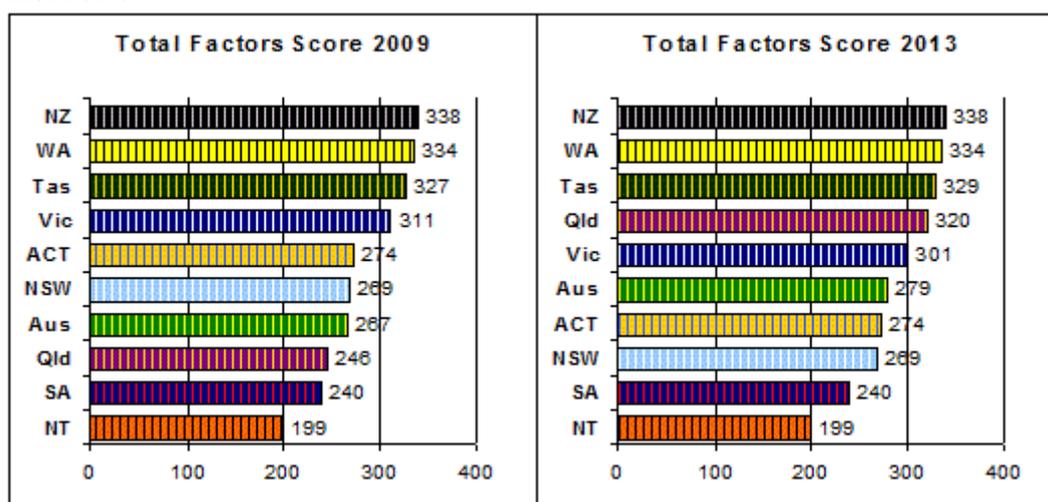
Summary of Overall Independence Factor Scores

The jurisdictions surveyed continued to show wide variation in extent to which their legislative frameworks safeguarded the independence of Auditors General with respect to the principles outlined by INTOSAI.

Based on the scoring system used:

- New Zealand continued to have the strongest independence safeguards in its overall legislative framework.
- The Australian States of Tasmania, Western Australia and Victoria followed closely.
- Substantial amendments to the legislative framework in Queensland has significantly improved its relative position, moving the overall independence score from eighth to fourth position.
- Significant amendments to the legislative framework of the Commonwealth have also improved its relative position, from seventh to sixth overall.
- Independence safeguards continue to be less well developed in other Australian jurisdictions.
- Despite changes to its legislative framework, the Auditor General for the Northern Territory continues to be more vulnerable to Executive influence than Auditors General in other jurisdictions.

The overall scores obtained from the 2009 and 2013 surveys are represented graphically and summarised below:



Year	ACT	Aus	NSW	NT	NZ	Qld	SA	Tas	Vic	WA
2009	274	267	269	199	338	246	240	327	311	334
2013	274	279	269	199	338	323	240	329	311	334

Figure 2. Overall independence factor scores 2009 versus 2013

Factors Contributing to Individual Principles of Independence

The factors scores contributing to each of the INTOSAI Principles of Independence are illustrated in Figure 3.

- New Zealand’s overall position is strongly supported by its safeguards over appointment and immunity and office autonomy, whereas
- Western Australia, Tasmania and Queensland gain most from their wide mandate and discretion.

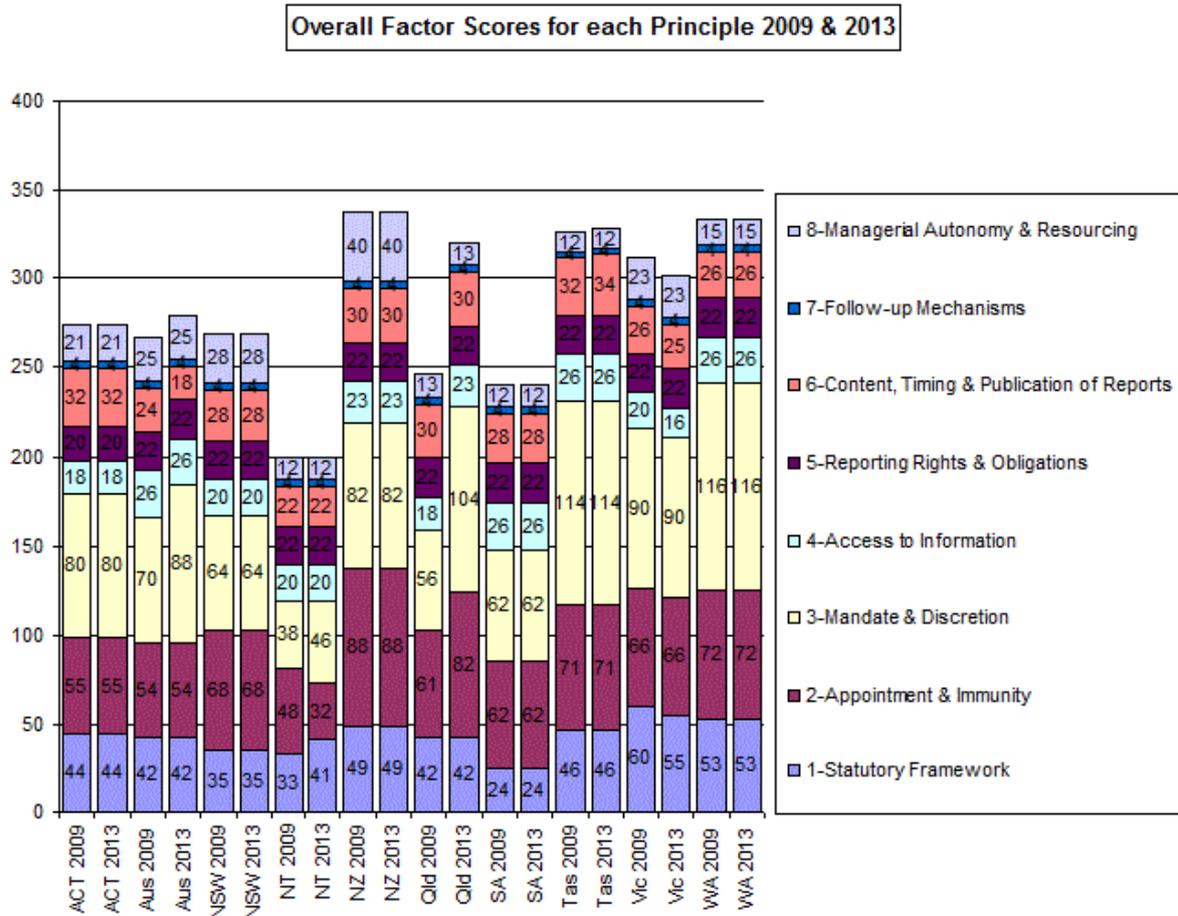


Figure 3. Overall factor scores for each INTOSAI Principle 2009 versus 2013

The variations between jurisdictions in relation to each INTOSAI Principle are discussed in more detail below.

Statutory Framework

INTOSAI Principle 1. The existence of an appropriate and effective constitutional/statutory/legal framework and of de facto application provisions of this framework.

Legislative changes since 2009

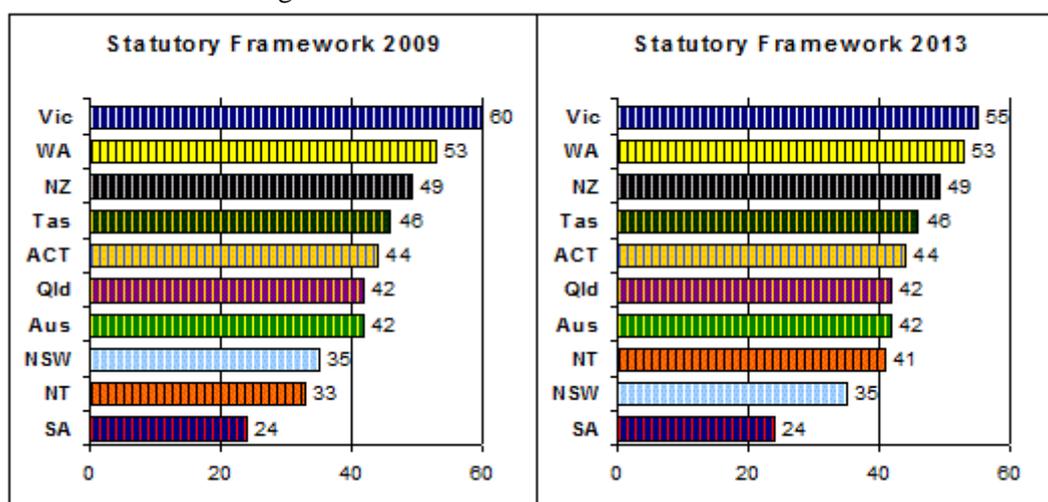
Since the 2009 survey:

- The Northern Territory has amended legislation to explicitly mandate the independence of its Auditor General.
- New South Wales has extended the period between statutory reviews of the office from 3 to 4 years.
- The statutory frameworks in other jurisdictions remain relatively unchanged.

Overall Independence Score for Statutory Framework

In the overall assessment of statutory frameworks:

- Despite the impact of new legislation and amendments to the *Audit Act 1994* Victoria continues to have the strongest independence safeguards, followed by Western Australia, New Zealand and Tasmania.
- The Northern Territory improved its position by explicitly mandating the independence of the Auditor General in legislation.



Year	ACT	Aus	NSW	NT	NZ	Qld	SA	Tas	Vic	WA
2009	44	42	35	33	49	42	24	46	60	53
2013	44	42	35	41	49	42	24	46	55	53

Figure 4. Overall assessment of statutory framework.

Factors Surveyed

Nine key legislative factors affecting independence were identified within the statutory frameworks of the jurisdictions reviewed in 2009 and again used in the 2013 survey. These are:

1. Whether **constitutional provisions and/or enabling legislation exists** which specifically address the establishment, status, mandate and powers of the Auditor General, as opposed to establishment by Executive action.
2. Whether there is **separate audit legislation** to ensure that Parliamentary debate is focused on the Auditor General's role, functions and independence rather than being diluted by broader debate on wider financial legislation.
3. Whether there is an **oath or affirmation of office** that reinforces the independence of the Auditor General and his or her relationship with the Parliament and before whom the oath is sworn or the affirmation is made.

4. Whether the **independence of the Auditor General is explicitly mandated** and/or stated as a requirement or obligation.
5. Whether the **status and/or rank** of the Auditor General is established to ensure that the independence and authority of the role is recognised and respected by other parts of government.
6. Whether the mechanism for **determining remuneration** (a key determinant of status and/or rank) of the Auditor General is established and protected from Executive influence.
7. Whether the Auditor General is **constrained from holding other positions** or gaining remuneration from other forms of employment or, where this is permitted, whether the Executive is involved in giving permission.
8. Whether there is oversight of the Auditor General's role by a **Parliamentary Committee** to ensure that the role is seen to be accountable to the Parliament.
9. Whether there is a statutory requirement for a **periodic review** of the performance of the Auditor General's role and the extent of Executive influence in determining the terms of reference or in receiving the report of the review.

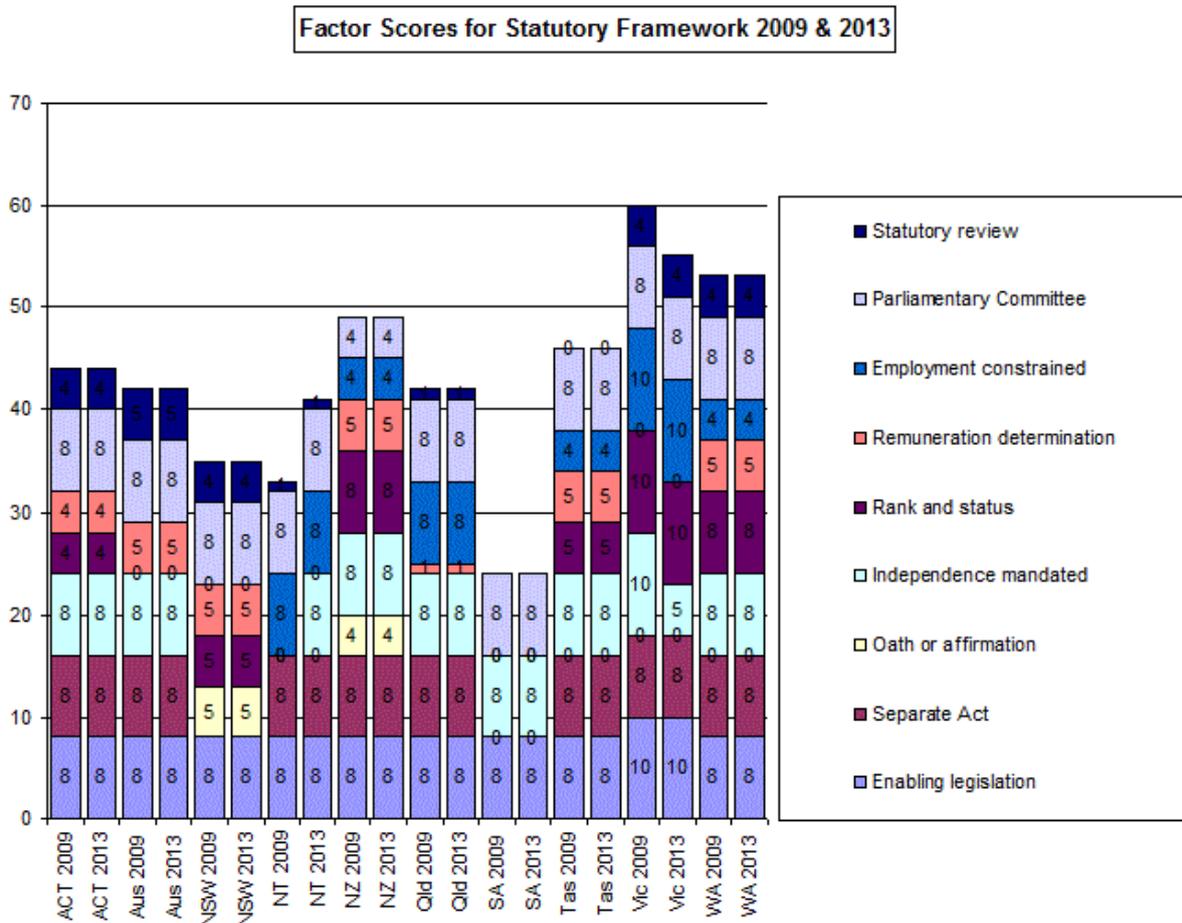


Figure 5 Assessment of factors impacting on statutory framework

Analysis and Discussion

Enabling Legislation / Separate Legislation

In all of the jurisdictions surveyed, the Auditor General continues to be created by statute, not by administrative action.

- In Victoria the Auditor General remains embedded in the Constitution as one of three ‘independent officers of the Parliament’, clearly establishing his or her independence and giving the office a high status.

Since the Constitution can only be amended through a motion passed by a large majority in both Houses and by a majority of voters at a referendum, including the Auditor General in the Constitution also gives the office strong protection from the Executive. Although relatively rare in

Westminster-style governments, constitutional provision is used much more widely internationally. An INTOSAI survey¹² found that 79 of 113 Supreme Audit Institutions are established and have their mandates enshrined in their country's Constitution.

- Eight of the jurisdictions have a separate audit Act ensuring that any Parliamentary debate on the legislation has been focussed on the audit role rather than being subsumed in broader debate about wider legislation. However, New South Wales and South Australia continue to have the role and functions of the Auditor General defined within legislation governing broader aspects of financial management.
- In all of the jurisdictions the enabling legislation clearly specifies the functions and powers of the Auditor General, although these continue to vary considerably between jurisdictions, and also specifies the manner of appointment and provides for the circumstances under which an appointee can be removed.

Independence Mandated, Oath or Affirmation of Office

Fundamental to the effective functioning of an Auditor General is the capacity to execute the role independently and free from influence. Legislation that explicitly mandates the independence of the office is therefore an essential component of an effective legislative framework.

- The term 'independent officer of the Parliament' is used in Victoria's Constitution and in the enabling legislation in a number of other jurisdictions. Although the meaning of the term is not defined, such a provision does make clear both the importance placed on the independence of the office and the special relationship it holds with the Parliament, rather than Executive government. Although Victoria's Constitution also mandates that the Auditor General is not subject to direction, this provision is subject to both the *Audit Act 1994* and other laws of the State. Amendments to the, *Audit Act 1994* and laws associated with the establishment of the Victorian Inspectorate under Victoria's new 'integrity system' have demonstrated how readily such constitutional protection can be bypassed.
- In many jurisdictions independence is stated as a requirement or obligation on the Auditor General. Some jurisdictions also include a 'duty to act independently' and/or explicitly state that the Auditor General 'is not subject to the direction of anyone' with respect to the exercise of his or her functions.
- Since the 2009 survey, the Northern Territory has amended its Audit Act to mandate the independence of its Auditor General.

An oath or affirmation of office can be used to reinforce the Auditor General's personal commitment to independence and impartiality and may also serve to emphasise the special relationship of the office holds with the Parliament.

- There have been no changes since the 2009 survey with regard to an oath or affirmation.
- In a number of jurisdictions an oath is sworn before the Speaker or the Clerk of the Parliament, symbolically strengthening the relationship between the Auditor General and the Parliament.
- In other jurisdictions it is sworn before the Governor or the Governor in Council, which does not serve to reinforce the independence of the Auditor General from the Executive.
- The legislation continues to be silent regarding an oath in several jurisdictions.

Rank and Status

The status or rank of the Auditor General relative to other parts of the government or public sector is of considerable importance in determining his or her authority and the extent to which the role is acknowledged, accepted and supported by all of the parties involved (government, public servants, legislators and the public at large). If status and rank can be degraded by the Executive, the effectiveness of the Auditor General could be seriously undermined.

There have been no significant changes in this regard since the 2009 survey.

¹² *The Independence of SAIs – Final Task Force Report*. International Organization of Supreme Audit Institutions, 2001.

- Some jurisdictions explicitly mandate status or rank (for example ‘independent officer of the Parliament’); others do so indirectly by mandating salary relativities.
- In others the legislation is silent regarding rank and status.

Other Employment Constrained

Constraints on the Auditor General holding other positions or gaining remuneration from other forms of employment is commonly included in legislation to ensure that the incumbent devotes his or her full attention to the statutory role and to reduce the opportunity for a conflict of interest.

- In Queensland the Auditor General cannot hold any other office for profit and cannot engage in remunerative employment. Queensland also requires its Auditor General to make a declaration of interests similar to the declaration required of members of its Legislative Assembly. The Queensland legislation has been amended since 2009 to strengthen this declaration, and to provide for its release to Queensland’s Crime and Misconduct Commission or Integrity Commissioner. Queensland has also amended its legislation to require the Auditor General to declare conflicts of interest that may arise in the discharge of his or her responsibilities.
- Legislation regarding constraints on other employment in other jurisdictions has not changed since the 2009 survey and continues to vary considerably:
 - In most jurisdictions, any other occupation for reward is prohibited and may be grounds for removal from office.
 - In others it may be permitted subject to approval. Where such approval can only be given by Parliament it could be expected to be relatively difficult to obtain and transparency of approval is ensured. However, where approval must be sought from Executive, it could enable covert pressure to be applied to the Auditor General.
- Legislation remains silent in the Australian Capital Territory, the Commonwealth and South Australia.

Remuneration Determination

Remuneration and the determination of other terms and conditions of employment is considered among the statutory safeguards because it is a key determinant of status and rank, and also has a major impact on the calibre of persons who might be attracted to the role. Reducing remuneration could be used to effectively downgrade the status of the Auditor General. The capacity of Executives to influence remuneration is therefore of importance, as is the transparency of the process by which remuneration is determined.

There have been no changes in this aspect of legislative frameworks since the 2009 survey

- In some jurisdictions remuneration is determined by a statutory tie to other officers such as to the judiciary, or to other jurisdictions.
- In others it is determined by an independent tribunal or by a Parliamentary resolution.
- In Queensland, the Executive is obliged to consult the Parliamentary Committee.
- However, in some jurisdictions the Executive continues to have direct control over remuneration.

Parliamentary Committee

The relationship between the Auditor General and the Parliament he or she supports is of considerable importance. A strong relationship will permit the Auditor General to operate more effectively since it is through the Parliament that the Executive is held to account. Parliamentary Committees are also used to enhance the accountability of the Auditor General himself/herself. Accountability is needed to ensure that an Auditor General continues to operate as intended and makes effective and efficient use of his or her resources.

- All jurisdictions continue to have Parliamentary Committees charged with considering reports from their Auditor General.
- Several jurisdictions have given Parliamentary Committees an active or consultative role in the appointment of Auditors General and establishing terms of conditions for employment.

- Several jurisdictions enable the Parliamentary Committee to direct or request the Auditor General to undertake an audit, and in some the Auditor General is unable to undertake certain audits unless directed or requested to do so by the Parliamentary Committee.
- Several jurisdictions also give their Parliamentary Committee a role in developing and communicating Parliament's audit priorities. The Auditor General is required to have regard for these priorities when developing his or her annual work plan and may be required to consult with the Committee about the content and timing of these plans.
- In several jurisdictions, Parliamentary Committees play an active role in advising, recommending or even determining budgets for the Auditor General
- Parliamentary Committees may undertake periodic reviews of audit legislation, either as a statutory requirement or on their own initiative, and are commonly involved in periodic reviews of the efficiency and effectiveness of the Auditor General and his or her office.

Victoria's Parliamentary Committee is unusual because of the extent of involvement the legislation requires. Not only is the Committee involved in appointment of the Auditor General and periodic review of his or her operations but the legislation also requires that the Auditor General's annual budgets and annual plans to be developed in consultation with the Committee. Similarly, the legislation requires that the number and frequency with which performance audits of authorities may be undertaken and even that the specifications for each individual performance audit are to be developed in consultation with the Committee and the relevant authority before such an audit can proceed.

Victoria has also recently amended its legislation to give its Parliamentary Committee responsibility to monitor reports from the newly established Victorian Inspectorate about the Auditor General, the Victorian Office of the Auditor General and persons or firms engaged to conduct audit work.

Statutory Review

A periodic review is a key control over the continuing effectiveness of the Auditor General's function. Where there is a capability for reviews to be undertaken, the selection of, and terms of reference for, the reviewer, and/or reporting line for the review outcome may become important because a review mechanism could allow an Executive to apply inappropriate pressure to its Auditor General.

- In Western Australia, the legislation mandates a five-yearly review of the operation and effectiveness of the *Auditor General Act* itself and the performance of the Auditor General's functions by the Auditor General and the Office of the Auditor General, with the review to be conducted by the Joint Standing Committee on Audit.
- A number of jurisdictions have introduced a statutory requirement for a review of the Auditor General and his or her Office:
 - Some require a specially appointed reviewer to conduct a review of efficiency and effectiveness of the Auditor General and his or her office on a fixed term periodic basis (every three years for the Victorian Auditor General and every five years for the Tasmanian and Queensland Auditors General).
 - Others enable the Auditor General's external auditor to conduct performance audits of the Office (Commonwealth, and the Australian Capital Territory). However, ad hoc performance audits by the external auditor do not match the accountability imposed by a scheduled, comprehensive review of the Auditor General's function by an independent person specifically tasked with conducting the statutory review.
 - Since the 2009 survey, New South Wales has amended its legislation to increase the interval between reviews from once every three years to once every four years. However, the reviews in New South Wales remain confined to a review of compliance with practices and standards.

The selection of, and terms of reference for, the reviewer, and/or reporting line for the review outcome continues to vary widely between jurisdictions:

- Appointment and establishment of terms of reference by a Parliamentary Committee with a reporting line to the Committee.

- Appointment and establishment of terms of reference by the Executive, either with or without consulting the Parliamentary Committee and/or the incumbent Auditor General, but usually with a reporting line to the Committee.
- Specifically excluding the Auditor General's office from reviews or inquiries that may be instigated under other public service legislation by the Minister responsible for public service departments.
- Since the 2009 survey, Victoria has amended its legislation to apply the same obligations and constraints that apply to the Auditor General's use of coercive powers to the independent reviewer appointed to conduct the periodic review of the Auditor General and the Victorian Office of the Auditor General.

Appointment and Immunity

INTOSAI Principle 2. The independence of SAI heads and members (of collegial institutions), including security of tenure and legal immunity in the normal discharge of their duties.

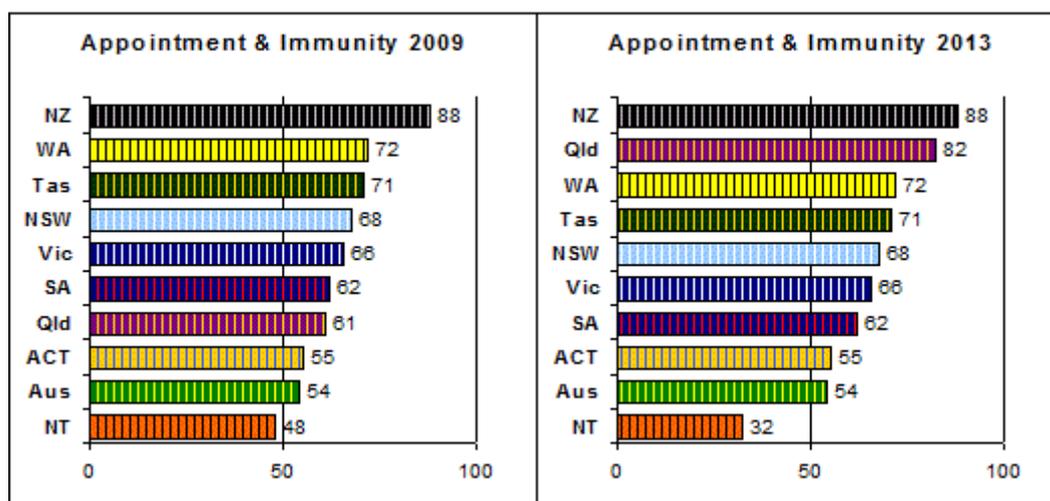
Legislative changes since 2009

- Queensland amended its legislation to mandate a fixed non-renewable term of seven years.
- The Northern Territory amended its legislation to reduce the term of appointment from seven years non-renewable to a period not exceeding five years with the opportunity for reappointment for a further period not exceeding five years.
- The legislation governing appointment and immunity in other jurisdictions has not changed since the 2009 survey.

Overall Independence Score for Appointment and Immunity

In the overall assessment of appointment and immunity factors:

- New Zealand continued to have the strongest independence safeguards over factors examined for appointment and immunity.
- Queensland has moved from seventh to second position because the opportunity for Executive to influence reappointment and term of appointment has been removed.
- The scores for other jurisdictions remain unchanged.
- Northern Territory lost ground because the term of appointment and the opportunity for reappointment are both under Executive control.



Year	ACT	Aus	NSW	NT	NZ	Qld	SA	Tas	Vic	WA
2009	55	54	68	48	88	61	62	71	66	72
2013	55	54	68	32	88	82	62	71	66	72

Figure 6. Assessment of appointment and immunity.

Factors Surveyed

The key legislative components that affected these aspects of independence in the legislation reviewed were as follows:

1. Who makes the appointment decision and the extent of Parliamentary involvement.
2. Whether the appointment process was independently supervised to increase transparency and reduce the risk of political patronage and partisan appointments.
3. Whether certain persons are ineligible for appointment as Auditor General.
4. How and by whom the term of appointment is determined.
5. Whether reappointment is possible and if so how and by whom the decision to reappoint is made.

6. Whether the Auditor General's remuneration is protected from being reduced during his or her term of office.
7. Whether remuneration is automatically appropriated to preclude Executive or bureaucratic interference.
8. Whether there is a statutory Deputy Auditor General.
9. How and by whom decisions are made about the appointment of an acting Auditor General, to reduce the risk of untoward Executive influence when there is a vacancy in the office.
10. How an Auditor General may resign and to whom the resignation is submitted to reduce the risk of Executive influencing the resignation or the timing thereof.
11. How and by whom an Auditor General can be suspended.
12. How and by whom a suspended Auditor General can be restored to office.
13. How and by whom an Auditor General can be removed from office.
14. Whether the Auditor General is provided with some form of legal immunity in the normal discharge of the role.

Factor Scores for Appointment & Immunity 2009 & 2013

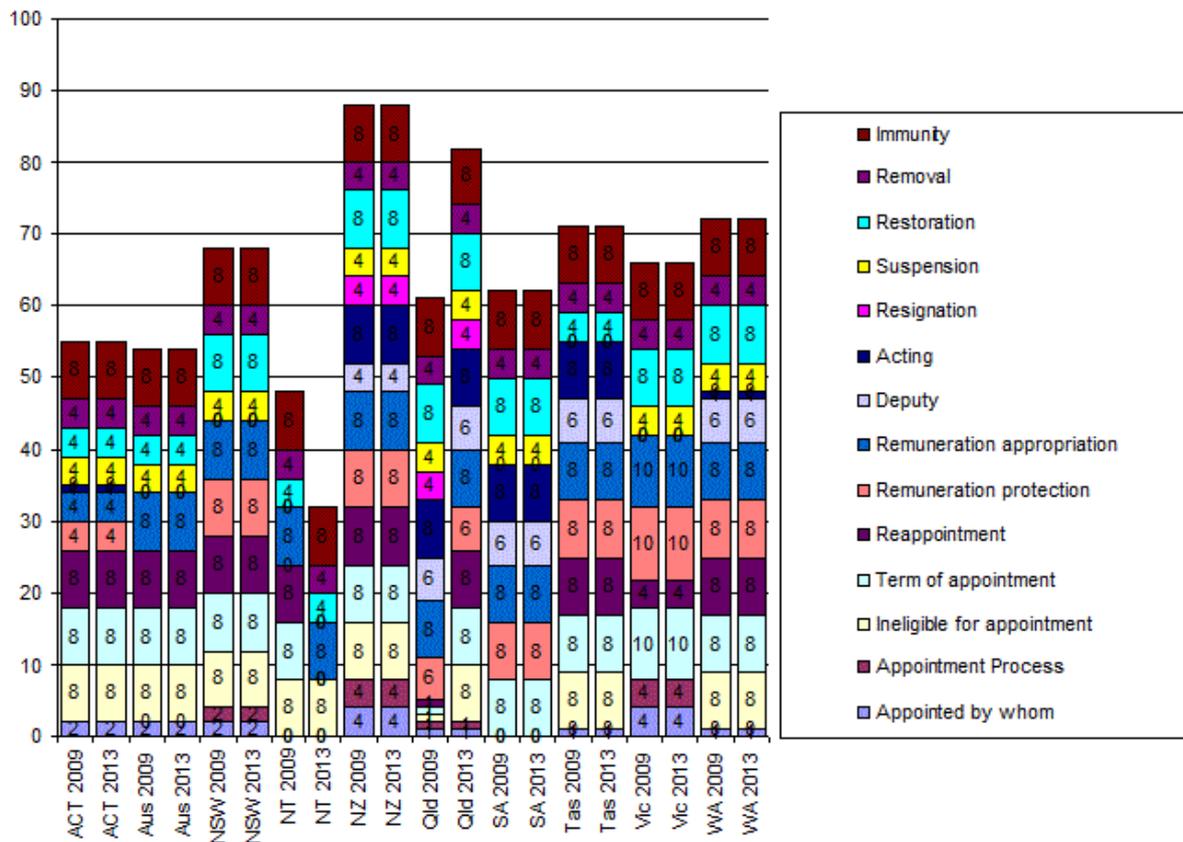


Figure 7. Assessment of factors impacting on Appointment and Immunity

Analysis and Discussion

Appointment by Whom, External Supervision, Ineligibility

The Auditor General's independence is compromised from the beginning if the selection and appointment is by the Executive itself.

In many jurisdictions it is customary for the Governor-General or the Governor to make appointments to public offices. Because the 'Governor' is usually interpreted to mean the Governor acting on advice of the Executive Council, appointment by the Governor enables the Executive to determine who will be appointed, opening the way for political patronage or appointment of a partisan government-friendly Auditor General.

Some form of consultation with leaders of political parties or Committees of the Parliament and/or the Speaker and the President during the appointment process encourages bipartisan/multi-partisan support for the appointee and reduces the risk of partisan appointments and in many jurisdiction such consultation may have been undertaken through convention in the past.

More recently there has been a clear trend to introduce stronger, statutory mechanisms to ensure some form of Parliamentary involvement in the appointment process. Alternatives include:

- A requirement for the Executive **to consult** with leaders of political parties and/or a Committee of Parliament as well as the Speaker and President.
- Capacity for Parliament or a Committee of Parliament **to veto** an appointment proposed by the Executive.
- Capacity for Parliament or a Committee of Parliament **to recommend** an appointment to the Executive.
- Appointment **directly by the Parliament** or a Committee of Parliament.
- The appointment is made from candidates recommended **by an independent external body**. (Not used in Australian or New Zealand jurisdictions but becoming more prevalent elsewhere).

If the appointment is made directly by, or on the recommendation of, the Parliament or a Committee of Parliament, it ensures that the appointee has the confidence of the Parliament, and also enhances the transparency of the appointment process.

There have been no changes in the legislative frameworks governing appointment since the 2009 survey.

- New Zealand and Victoria remain the only jurisdictions to ensure that the appointment is made directly by the legislature.
- Three Australian jurisdictions continue to enable a Parliamentary veto of an appointment proposed by Executive.
- Three Australian jurisdictions continue to mandate Parliamentary consultation before a decision is made by Executive.
- The remaining two jurisdictions leave the appointment entirely in the hands of the Executive government.

External supervision of the appointment process by an independent body can help to ensure that prospective appointees are widely canvassed, that due process is followed and that a short list of suitable candidates is presented for final selection.

There has been no change to the extent to which any of the jurisdictions examined use external supervision of the appointment. In some, the legislation continues to explicitly remove the office of Auditor General from this form of supervision (which may be applied in other parts of the public sector). However, as mentioned above:

- New Zealand and Victoria the appointment process is undertaken and supervised by a Parliamentary Committee.
- Queensland requires the Executive to consult with a Parliamentary Committee about the process to be used in making the appointment.

Acting Appointment, Statutory Deputy

Appointing an individual to act as Auditor General during the temporary absence or following the death, removal or suspension of an incumbent can provide an opportunity for the Executive to influence the position. The Acting appointment could be for an extended period if there are significant delays in filling the permanent role although some jurisdictions have imposed some form of time constraints upon the duration of an acting appointment.

The adverse impact that Executive appointment can have on the independence of the acting appointee has been recognised in some jurisdictions by providing for a statutory Deputy to automatically act as Auditor General during such periods.

There have been no changes in the legislative frameworks governing acting appointments and/or the role of a statutory Deputy. There remains considerable variation:

- Four jurisdictions mandate that the statutory Deputy will become acting Auditor General.
- Two jurisdictions require the Executive to consult with Parliament before appointing an Acting Auditor General.
- Five jurisdictions allow the Executive to appoint an acting Auditor General.
- Western Australia is unusual in that although the legislation mandates the position of Deputy Auditor General who may take on the acting role, the legislation also enables the Executive to choose who will act when the Auditor General's position becomes vacant.

Term of Appointment, Eligibility for Reappointment

The duration or term of appointments is a significant contributor to independence. The term needs to be long enough to enable the development of independence and to enable the incumbent to effectively 'steer' the Audit Office. There is also a case to be argued for keeping the term short enough to avoid the incumbent becoming complacent or 'stale' in the role and to enable the introduction of contemporary thinking. Another consideration is the length of the term in relation to the Parliamentary electoral cycle. In most jurisdictions the term has been set to exceed at least one, if not two electoral cycles.

All of the legislation examined continues to specify the term of appointment of the Auditor General:

- South Australia retains the formerly common practice of appointing the Auditor General until retirement at age 65.
- Three jurisdictions mandate a ten year fixed term of appointment.
- Five jurisdictions mandate a seven year fixed term.
- Victoria mandates the seven-year fixed term in its Constitution.

Since the 2009 survey:

- Queensland has amended the term of appointment its legislation from up to seven years, with the ability to renew appointment up to a total of seven years, to a fixed term of seven years.
- The Northern Territory has amended the term of appointment from seven years non-renewable to five years, with the possibility of renewal for a further five years at the discretion of the Executive.

Eligibility for reappointment has been recognised as an undesirable practice by INTOSAI because it might compromise independence. Where an incumbent is eligible for reappointment, as the time for reappointment approaches, the incumbent could become reluctant to criticise, or seek prominence by being overly critical or controversial. An option for reappointment could also enable the Executive to exert pressure on an incumbent. This is more likely if the Executive makes the appointment, and less so where the appointment is made through a more public Parliamentary appointment process.

There has been a clear trend against the eligibility for reappointment of an incumbent:

- All of the jurisdictions examined except Victoria (where eligibility for reappointment is mandated in the Constitution) and the Northern Territory (which has re-introduced the option for re-appointment), the Auditors General are now ineligible to be reappointed after the expiration of their term.

Removal, Suspension, Restoration, Resignation

Protection from removal from office at the whim of the Executive is paramount to security of tenure and independence. This has long been recognised and there have been no changes in the legislative frameworks of the jurisdictions in the survey.

- In all of the jurisdictions the legislation continues to mandate some form of Parliamentary involvement in removal of the Auditor General from office. Most jurisdictions also prescribe the grounds for removal.
- A number of jurisdictions continue to have legislation that also prescribes the circumstances under which the Auditor General can be suspended from office. These usually include ill health, mental capacity, bankruptcy, misconduct or incompetence.

- In some jurisdictions power to suspend has been left in the hands of the Executive, leaving open the opportunity for Executive to suspend or threaten to suspend an Auditor General it finds troublesome.

However, a number of jurisdictions further prescribe that the Auditor General will be automatically restored to office unless the Parliament either confirms the suspension or requires the removal of the Auditor General.

- In New Zealand, the legislation mandates that if the Governor General suspends the Auditor General, he or she is restored to office two months after the next session of Parliament commences.
- Most other jurisdictions have similar provisions for automatic restoration after suspension unless Parliament takes action to remove the Auditor General.
- Tasmania and the Northern Territory are unusual, not because the Executive is able to suspend the Auditor General at any time the Parliament is not sitting, but because the Auditor General is automatically removed from office unless the Parliament requests that the Auditor General is restored.

All of the jurisdictions examined provide for the resignation of the Auditor General:

- Most require the resignation to be directed to the Governor General or Governor, leaving open the possibility of Executive interference with the resignation process or delay in informing Parliament.
- Only New Zealand and Queensland ensure that the Auditor General's resignation is directed to the Parliament.

Remuneration Protection and Appropriation

There have been no changes to remuneration protection and appropriation since to 2009 survey.

The security and independence of the Auditor General is enhanced if his or her remuneration is protected from any possible influence or control by the Executive, or by the Treasury and other parts of the bureaucracy. Most jurisdictions provide this protection by appropriating the remuneration in either the enabling legislation or in the determining Tribunal legislation. In Victoria, the Constitution mandates appropriation of the Auditor General's remuneration.

Similarly, to prevent the Executive from 'punishing' the Auditor General, his or her remuneration is protected from being diminished during his or her term of office by legislation in most of the jurisdictions examined.

- In six jurisdictions the legislative framework prohibits the rate of an Auditor General's remuneration from being reduced.
- In Victoria, the Constitution protects the Auditor General's remuneration from being reduced.
- Queensland allows it to be reduced with the Auditor General's consent.
- In the Australian Capital Territory terms and conditions are determined by the resolution of the Legislative Assembly.
- The legislation is silent in the Commonwealth and the Northern Territory.

However, as mentioned previously, where the remuneration is determined by, or is subject to the influence of, the Executive, this form of protection leaves open the possibility that the Executive could affect the overall status of the office of Auditor General, whilst not, except in periods of high inflation, directly affecting the incumbent.

Immunity

The threat of litigation could weaken the independence of the Auditor General. Similarly, litigation could be used to divert attention from the Auditor General's function.

There have been no changes to the legislative frameworks in this area since the 2009 survey.

- All of the jurisdictions continue to afford their Auditor General immunity, indemnity, or protection from liability for anything done or omitted when performing the functions of the Auditor General.
- Such indemnity or immunity is also extended to the independent auditor of the Auditor General in all of the jurisdictions examined.

Mandate and Discretion

INTOSAI Principle 3. A sufficiently broad mandate and full discretion, in the discharge of SAI functions

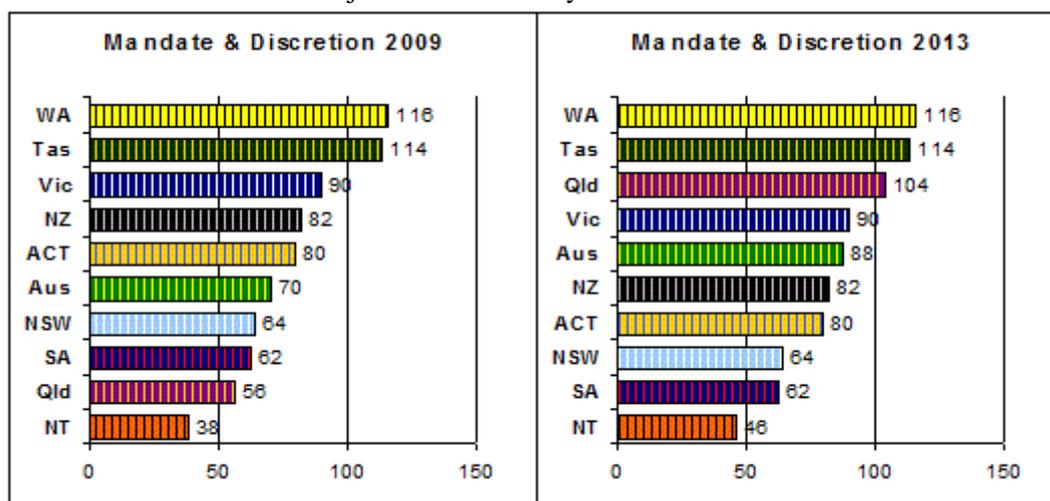
Legislative changes since 2009

Since the 2009 survey, substantial changes have occurred in this area in a number of jurisdictions.

- Queensland has substantially expanded the and both the functional and coverage mandates of the Auditor General including audit of public property given to a non-public sector entity, performance audits of most public sector entities and audit of performance management systems and performance measures of government-owned corporations, and to enable joint or collaborative audits with the Commonwealth or another State or Territory
- The Commonwealth has expanded the mandate of its Auditor General to include performance audits of ‘Commonwealth partners’, audits of performance indicators and to enable the conduct of assurance reviews.
- The Northern Territory has expanded the Auditor General’s mandate for special audits and audit of performance management systems to include Territory controlled entities.
- Tasmania has expanded the Auditor General’s coverage mandate to include local government and the functional mandate for investigations and examinations and has also introduced a new provision enabling audits in collaboration with the Commonwealth, other State or Territory.

Overall Independence Score for Mandate and Discretion

- Overall, the strongest and most comprehensive mandates continue to be provided by the legislation in Western Australia and Tasmania.
- Queensland has moved from ninth to third position
- The Commonwealth has moved from sixth to fifth position and now scores more highly than New Zealand and the Australian Capital Territory.
- The Northern Territory’s mandate score has improved but its Auditor General’s remains the most constrained of all the jurisdictions surveyed.



Year	ACT	Aus	NSW	NT	NZ	Qld	SA	Tas	Vic	WA
2009	80	70	64	38	82	56	62	114	90	116
2013	80	88	64	46	82	104	62	114	90	116

Figure 8. Assessment of mandate and discretion.

Factors Surveyed

The key legislative components identified in the 2009 survey that relate to mandate and discretion included the Auditor General's:

Functional mandate, which identifies the type of audit work that the Auditor General can undertake. To have a full and effective audit mandate, the Auditor General should have a functional mandate to undertake audit work that includes:

1. **Financial statements/accounts** - audit opinions that provide assurance about financial statements or accounts.
2. **Compliance with statutory obligations** – providing assurance or directly determining whether an agency has complied with its financial and non financial statutory obligations.
3. **Management reporting systems** - providing assurance about the effectiveness of management reporting systems for financial and/or non financial reporting.
4. **Performance indicators and/or performance reports** - providing assurance about performance indicators and/or performance reports.
5. **Performance audits/examinations** - directly examining or investigating any aspect of an entity's operations and/or the economy efficiency and effectiveness with which its functions were performed.

Coverage mandate, which defines the types of statements, entities, bodies, or persons or establishes other circumstances under which the Auditor General's functional mandate may be exercised. The following aspects of coverage were examined in the survey of legislation:

6. **Public ledger/whole of government finances** (audit of whole of government public ledger and/or budgets).
7. **Government departments** (audit of the use of public money, resources or assets by government departments).
8. **Statutory authorities** (audit of the use of public money, resources or assets by government statutory authorities).
9. **Instrumentalities and trusts** (audit of the use of public money resources or assets by other instrumentalities or trusts).
10. **Government owned or controlled entities** (audit of the use of public money, resources or assets by government owned business enterprises, corporations and subsidiaries).
11. **Deemed entities** (audit of entities deemed by government to be public entities because of the use of public resources whatever the extent of control).
12. **joint-venture or partnerships** (audit of public-private partnerships or joint endeavours that used significant public resources, or gain significant benefit there from).
13. **Related entities** (audit of bodies or entities that are financially dependent upon public resources and subject to operational public control).
14. **government affiliated entities** (audit of entities financially dependent upon public resources but independently controlled).
15. **Grant recipients** (audit of recipient of grants of public resources to determine if the resources have been used for the intended purposes).
16. **Beneficiaries or recipients of any public resources** (audit of the use of public money, resources or assets by a recipient or beneficiary regardless of its legal nature).

Discretion for the Auditor General to undertake audits, examinations or investigations or to otherwise exercise the mandate provided.

17. The key factor examined for discretion is whether the Auditor General is **subject to direction, and if so by whom.**

Factor Scores for Mandate & Discretion 2009 & 2013

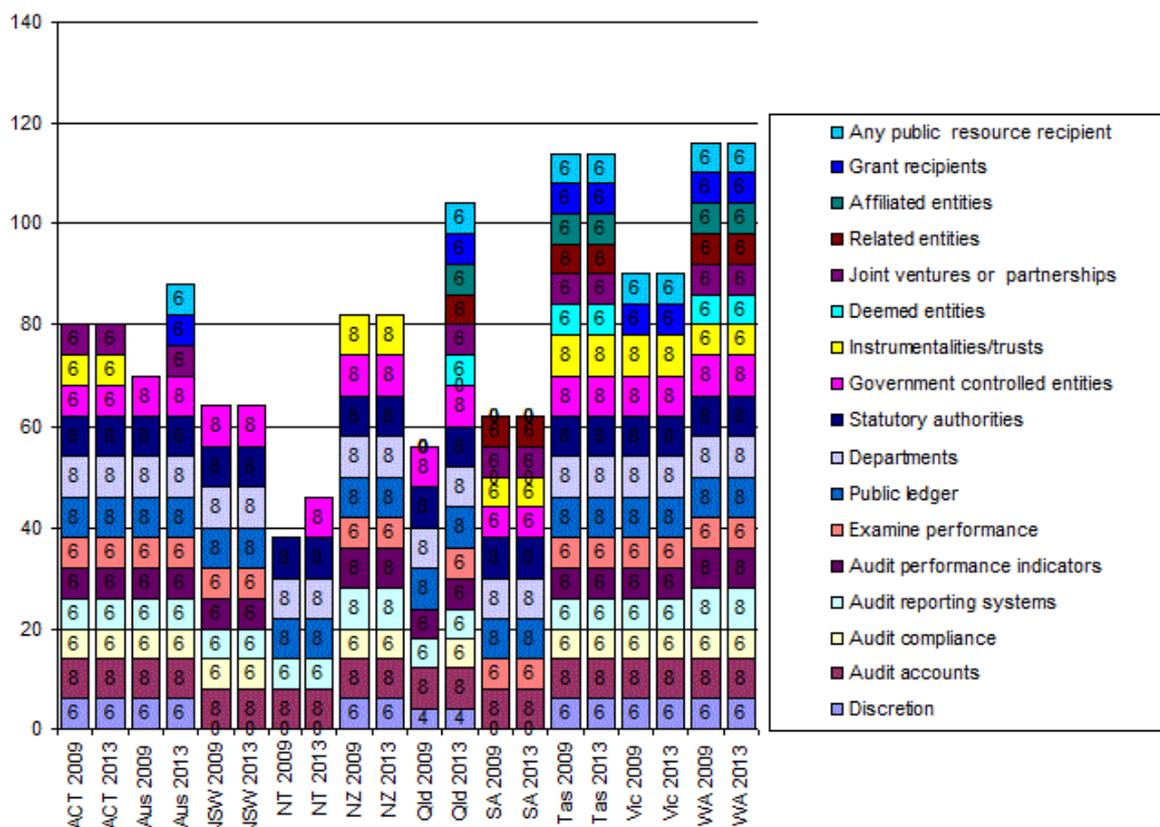


Figure 9. Assessment of factors impacting on mandate and discretion

Analysis and Discussion

Functional Mandate

The independence of the Auditor General is significantly influenced by the type of audit work enabled by the legislation. There has been a strong international trend to broaden the powers of Auditors General so that they can audit the use to which public monies, resources, or assets have been put in a way that extends well beyond the traditional role of providing assurance about the financial statements issued by various types of entities.

Financial Statements/Accounts

- All of the jurisdictions continue to mandate a major role for their Auditor General in providing audit assurance and issuing formal audit opinions about the accounts and financial statements of government entities.

Compliance with Statutory Obligations

The ability to audit the legal regularity and compliance of government spending and revenue collection and compliance with statutory obligations generally (beyond compliance with financial obligations) continues to vary across jurisdictions.

- Western Australia mandates the requirement of a formal audit opinion on compliance with financial controls.
- Most other jurisdictions (including Western Australia, but excluding South Australia and the Northern Territory) enable compliance with broader statutory obligations to be examined under a performance audit mandate.

Management Reporting Systems

The function of auditing performance management systems to determine if they enable an entity to assess whether its objectives are being achieved economically, efficiently and effectively is usually available in all jurisdictions where that Auditor General has a mandate to conduct broader performance audits.

However, a specific mandates for this type of audit has been used in some jurisdictions to constrain the extent to which the Auditor General is able to audit the non-financial performance of an entity.

- At the time of the 2009 survey the Auditor General for Queensland and the Northern Territory had this type of audit function. Queensland specifically excluded government owned corporations from this type of audit.
- Since the 2009 survey, the Northern Territory has retained this type of audit for most government entities, but has amended its legislation to enable the Minister to direct the Auditor General to undertake such an audit of an organisation if the Minister believes that a [government] agency has paid the organisation for delivering projects or services that could be delivered by the agency.
- Queensland has amended its legislation to enable full performance auditing of most types of entities but now permits the Auditor General to undertake a management systems type of audit of its government-owned corporations.

Performance Indicators and/or Performance Reports

The function of auditing performance indicators of efficiency or effectiveness and/or other non financial performance information reported by management varies widely between jurisdictions. At the time of the 2009 survey:

- Western Australia, legislation mandated an annual audit opinion about the relevance, appropriateness and fair representation of agency performance indicators. New Zealand similarly mandated auditing of ‘other information’ that is required to be audited whilst in Victoria the Auditor General had discretionary power to audit any performance indicators in the report on operations of a [public] authority.
- Queensland enabled the audit of performance measures of public sector entities, but specifically excluded government owned corporations from this type of audit.
- In other jurisdictions the audit of performance indicators was not explicitly provided for but was possible in those that had a broader performance audit mandate.

Since the 2009 survey:

- The Commonwealth has amended its legislation to provide for the Auditor General to audit performance indicators of Commonwealth agencies, authorities or companies, at the discretion of the Auditor General. However, the Auditor General is only able to audit performance indicators of the Commonwealth’s Government Business Enterprises if requested to do so by the Parliamentary Committee.
- Queensland has amended its legislation to enable its Auditor General to audit performance measures of government owned corporations.
- Other jurisdictions enable entity performance indicators to be examined as part of a performance audit, at the discretion of the Auditor General.
- South Australia and the Northern Territory do not have a mandate to audit performance indicators although as mentioned above, the Northern Territory can audit the management systems that underpin such information.

Performance audits or examinations,

The functions that enable the Auditor General to directly review, examine or investigate aspects of an entity’s operations are referred to as *performance audits* in many of the jurisdictions in the survey. Performance auditing usually includes the ability to assess waste of public resources, the economy, efficiency, and effectiveness with which resources have been used in achieving the purpose for which they were allocated, compliance with statutory obligations and many or any other aspect of an entity’s operations.

Performance audits may be conducted of an entity, of part of an entity or of some or any functions that an entity performs. They may also be conducted across a range of entities.

At the time of the 2009 survey:

- The Auditors General in all jurisdictions except Queensland and the Northern Territory had varying abilities to conduct performance audits, with South Australia being confined to examinations of economy and efficiency.

Since 2009:

- Queensland has amended its legislation to include a mandate for the Auditor General to conduct performance audits, with the object of deciding whether the objectives of the public sector entity are being achieved economically, efficiently and effectively and in compliance with all relevant laws.

Jurisdictions continue to vary as to the types of government controlled entities that may be subjected to performance audits. These are discussed in more detail under the coverage mandate below.

Other functional mandates

Several jurisdictions have even wider mandates for their Auditors General.

- Western Australia and Tasmania both have legislatively empowered their Auditors General *to examine or investigate any matter* relating to public money, other money or statutory authority money or relating to public property or other property. This is discussed further below.
- The Australian Capital Territory remains the only jurisdiction to have empowered the Auditor General to consider and assess *environmental issues and economically sustainable development*.

Coverage Mandate

There is little point in providing wide functional powers to an Auditor General if these powers can be circumvented by the types of entities he or she is empowered to audit, or if the Executive is able to exempt certain entities from the Auditor General's coverage.

Ideally, in accordance with INTOSAI Principle 3, the Auditor General should, *de facto*, be empowered to audit the use of public moneys, resources, or assets by any recipient or beneficiary regardless of its legal nature.

This has become increasingly important as new forms of public sector management, privatisation, joint ventures, outsourcing, and so on, have changed the way the public sector operates, creating a need for new ways of making both agencies and governments accountable for what they do.

The extent of the coverage mandate continues to be a vexed area and one that is quite difficult to unravel. It remains the area where there is greatest variation between jurisdictions, and the area that enables Executive to influence to what extent they can be held accountable for their use of public resources.

Some legislation deliberately excludes certain types of government entities from the scrutiny of the Auditor General, whilst in others the Executive has the capacity to either exclude or include entities or parts of entities at its whim.

- Queensland's Auditor General may only conduct a performance audit of a government owned corporation (GOC) or a government controlled entity if requested to do so by a resolution of the Legislative Assembly or by written request of a Parliamentary Committee, the Treasurer or an appropriate Minister.
- The Commonwealth has similar constraints on performance auditing of its government business enterprises (GBE) but has amended its legislation since the 2009 survey to enable such audits only at the request of the Joint Committee of Public Accounts and Audit (removing the previous provision for the responsible Minister or the Minister for Finance to make such a request).

In many jurisdictions, the legislative framework enables the Auditor General to exercise his or her functional mandate only over entities the government owns or controls. However, governments have increasingly adopted new mechanisms for service delivery that result in public resources being used in joint ventures, partnerships and contracting of arrangements, often using entities that the government does not control. It has become increasingly difficult for Auditors General to assist their Parliaments to hold Executive accountable for the proper use of public resources when these mechanisms are used.

At the time of the 2009 survey, the legislation in only two Australian jurisdictions was close to the ideal expressed in INTOSAI Principle 3: *A sufficiently broad mandate and full discretion, in the discharge of SAI functions.*

- Western Australian and Tasmanian legislation includes a provision that enabled the Auditor General to *examine or investigate any matter* relating to public resources of any kind.

It is important to note that these investigative provisions do not depend on the Auditor General becoming the ‘auditor of the entity’ in the traditional sense.

Instead, they take account of the changes in the way significant quantities of public resources are being deployed by governments and address some of the more recently developed service delivery mechanisms and structures to which governments either commit public resources or forego other public benefits.

In essence, the legislation in these jurisdictions enables their Auditors General to *‘follow the money’* wherever it has gone regardless of its legal nature of any recipient or beneficiary.

- Since the 2009 survey, Queensland has amended its legislation and its Auditor General is now empowered to conduct an *audit of a matter* relating to property that is, or was, held or received by a public sector entity and given to a non-public sector entity with the object of the audit including deciding whether the property has been applied economically, efficiently and effectively for the purposes for which it was given to the non-public sector entity.

Victoria has provision in its legislations that enable the Auditor General

- To conduct any audit he or she considers necessary to determine whether a financial benefit given by the State or an authority to a person or body that is not an authority has been applied economically, efficiently and effectively for the purposes for which it was given.

However, the Victorian legislation specifically excludes a financial benefit received by a person or body as consideration for goods or services provided by them under an agreement entered into on commercial terms, which could potentially be used to preclude examination of contracted service provision. The Victorian legislation has been amended since the 2009 survey to clarify matters relating to the use of the Auditor General’s coercive information gathering powers in these audits but remains otherwise unchanged.

In contrast, in Western Australia and Tasmania, if an agency performs any of its functions in partnership or jointly with another person or body; through the instrumentality of another person or body; or by means of a trust person, body or trust becomes a *“related entity”*.

- The Auditor General for Western Australia may audit the accounts and financial statements of a related entity of an agency to the extent that they relate to functions that are being performed by the related entity and may examine the efficiency and effectiveness with which a related entity of an agency performs functions.
- Tasmania has similar provisions for examining efficiency, effectiveness and economy of performance of functions by related entities.
- South Australia has provisions in its legislation that require the Auditor General to examine the accounts of publicly funded bodies or publicly funded projects to determine the efficiency and economy of publicly funded bodies or the efficiency and cost effectiveness of the publicly funded projects. However, this power remains firmly under the control of the Executive. Such audits can only be undertaken if requested by the Treasurer.

- Since the 2009 survey, the Commonwealth has amended its legislation to enable the Auditor General to ‘follow the money’ to some extent. The new provisions enable the Auditor General to conduct a performance audit of a *Commonwealth partner* – a person or body to whom the Commonwealth has provided money for a Commonwealth purpose or who has directly or indirectly received such money, either through a contract or other means. The performance audit is limited to assessing the extent to which the operations of the partner have achieved the Commonwealth purpose.

The new Commonwealth partner provisions could have constitutional implications when a Commonwealth partner is, is part of, or is controlled by, a government of an Australian State or Territory. The amended legislation only allows a performance audit to be undertaken of these partners at the request of the responsible Minister or the Joint Committee of Public Accounts and Audit. In addition, a constitutional ‘safety net’ has been included in the amended legislation to address potential issues arising from these or other provisions in the Commonwealth’s audit legislation.

- Other jurisdictions continue entity-focussed audits of government departments, statutory authorities and/or other predetermined types of entities.

The absence of broader investigative provisions in legislation seriously constrains the Auditor General’s ability to inquire into many of the ‘newer’ forms of public sector management, including contracting out and public private partnerships. It also enables the cloak of ‘commercial in confidence’ to be used to prevent proper accountability to the public in these circumstances.

Discretion

To be fully independent, in accordance with INTOSAI Principles 2 and 3, an Auditor General requires complete discretion in exercising his or her powers and in the manner in which his or her functions are carried out. Importantly, the Auditor General should not be subject to direction from anyone as to whether or not an audit is to be conducted, how audits are conducted, or the priority any audit work is given.

Whilst all of the jurisdictions examined impose legislative obligations on Auditors General to undertake certain audits, the discretion he or she is afforded to exercise functions as he or she sees fit is an important component of independence.

In some circumstances, it may be appropriate that the independent scrutiny of the Auditor General can be brought to bear on matters of public concern by providing the capacity to request that the Auditor General examine the matter and report the findings to the Parliament. However, where the Executive is able to direct the Auditor General to undertake specific tasks it can lead to the perception that the Auditor General is simply another part of Executive government. A direction could also be used to divert attention and/or resources from the exercise of other independent audit functions.

There is considerable variation among jurisdictions about whether the Auditor General can be directed or requested to undertake specific audit tasks, and if so by whom.

- Several jurisdictions require the Auditor General to consider or have regard to audit priorities of Parliament or Parliamentary Committees when developing annual audit plans.
- Victorian legislation requires the annual audit plan to be developed ‘in consultation with’ the Parliamentary Committee and also requires that the specifications for individual performance audits are similarly developed ‘in consultation with’ its Parliamentary Committee and with the entity to be the subject of the audit. The phrase ‘in consultation with’ is not defined in the Victorian legislation but could be interpreted to imply a need to consider jointly and reach agreement about a proposed course of action. If this is the intent, it could seriously impair an Auditor General’s independence.
- Since the 2009 survey, Tasmania has amended its legislation to extend the list of bodies that may request the Auditor General to undertake a specific audit or investigation. In addition to requests from the Treasurer, the Public Accounts Committee and the Ombudsman, requests for audits or investigations may now also emanate from the Integrity Commission and

Integrity Tribunal or from the Employer under the *State Service Act*. However, in all cases the discretion is left with the Auditor General, who *may* undertake the requested audit or investigation. Western Australia has similar provisions concerning request audits although the list is less extensive.

- Since the 2009 survey, the Commonwealth has amended its legislation to remove some of the powers of Executive to request the Auditor General to undertake an audit whilst retaining the provisions for the Parliamentary Committee to request audits.
- In Queensland, the Auditor General must conduct audits if requested by the Legislative Assembly.
- Although the Northern Territory has amended its legislation since the 2009 survey to mandate the independence of its Auditor General, it has also strengthened provision for the Minister to direct the Auditor General to undertake certain types of audits which the Auditor General must carry out within a time frame specified by the Minister.
- South Australia and New South Wales also enable the Executive to direct the Auditor General to undertake specific audit tasks.
- New South Wales is the only jurisdiction to make provision for additional resources to be made available for directed audits, but at the discretion of the Treasurer.

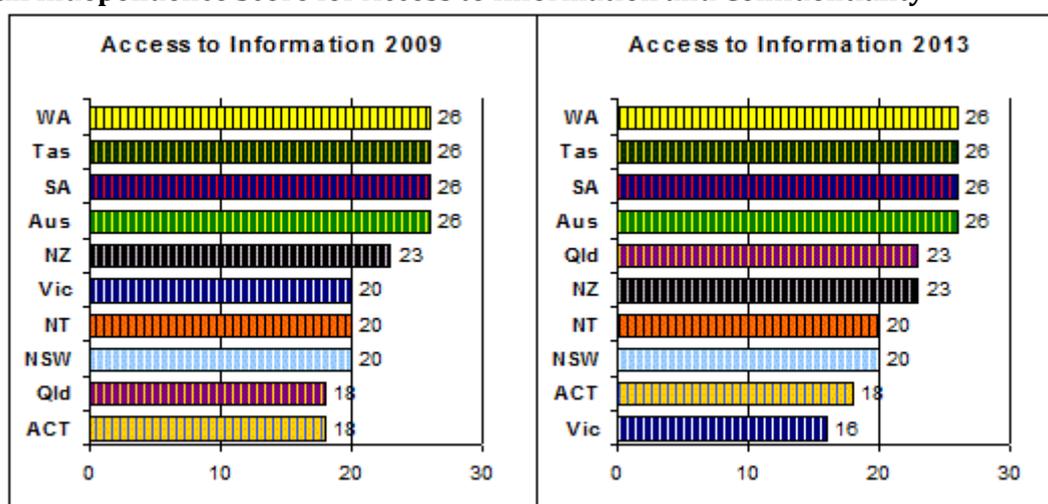
Access to Information and Confidentiality

INTOSAI Principle 4. Unrestricted access to information.

Legislative changes since 2009

- Victoria has introduced an extensive range of new controls over the use of coercive powers.
- Queensland has amended provisions constraining access to documents and premises in relation to new powers to conduct audits involving non public sector entities.
- The Commonwealth, Queensland and Tasmania have amended legislation to enable the release of confidential information to a wider range of other bodies, and to allow for joint audits.
- Queensland's new *Right to Information Act 2009* provides stronger confidentiality protection than was provided by the former *Freedom of Information Act 1992*.

Overall Independence Score for Access to Information and Confidentiality



Year	ACT	Aus	NSW	NT	NZ	Qld	SA	Tas	Vic	WA
2009	18	26	20	20	23	18	26	26	20	26
2013	18	26	20	20	23	23	26	26	16	26

Figure 10. Assessment of access to information and confidentiality of audit working papers.

Factors Surveyed

Auditors General should have adequate powers to obtain timely, unfettered, direct, and free access to all the necessary documents and information for the proper discharge of their statutory responsibilities. The information they obtain using their information gathering powers should be protected from inappropriate disclosure.

The key legislative components identified in the legislation reviewed with respect to access to information were:

1. The ability **to access documents** or information in any form that is relevant to an audit.
2. The ability **to call persons** to produce documents, give evidence orally, in writing or under oath.
3. The ability **to access premises** and to examine, make copies of or extracts from documents or other records.
4. The extent to which **confidentiality of information** obtained by the Auditor General is preserved and protected from inappropriate disclosure.

Factor Scores for Access to Information 2009 & 2013

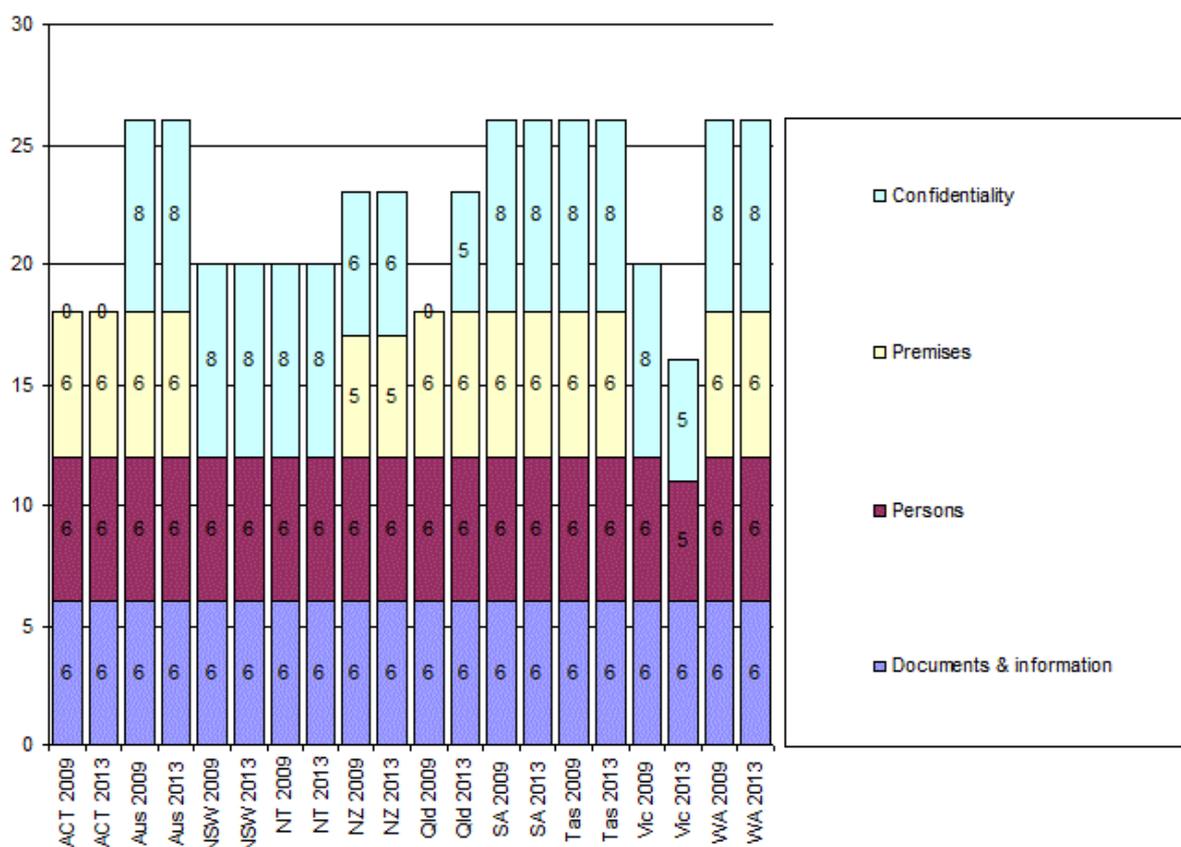


Figure 11 Assessment of factors impacting on access to information and confidentiality

Analysis and Discussion

Access to Documents, Persons and Premises

All jurisdictions have empowered their Auditor General to have access to documents and persons who may have information of value to their enquiries. Some also enable the Auditor General access to premises under the control of government entities.

Jurisdictions continue to vary concerning access to information:

- New South Wales has amended the prohibition on audit access to Cabinet documents in the *Freedom of Information Act 1989* to prohibit access to Cabinet information under the new *Government Information (Public Access) Act 2009*
- The Commonwealth has added assurance reviews (that are not priority assurance reviews) to the list of audit functions where information gathering powers may not be used
- Victoria remains the only jurisdiction to explicitly override obligations to maintain secrecy or other restriction on the disclosure of information obtained by or furnished to persons employed in the public service or by an authority, where imposed by Cabinet confidentiality

However, as with the coverage mandate mentioned above, some jurisdictions have yet to adapt the powers of their Auditor General to recent developments in the way the public sector operates. In a number of jurisdictions the Auditor General only has access to information held by government agencies or to persons employed within the public sector.

Wider powers are necessary where the coverage mandate of the Auditor General encompasses examination or investigation of any use of public resources, which may extend beyond the traditional confines of the public sector.

- Only the most recent legislation in some jurisdictions is explicit in giving the Auditor General access to any information, any person, or any premises, land or place that is relevant to an audit, examination or investigation.
- Queensland has amended legislation constraining access to premises and information when exercising new powers to audit non-public sector entities.
- Since the 2009 survey, the legislation in Victoria has been amended to introduce a wide range of controls over the use of the Auditor General's powers to gain access to information and/or persons. The Auditor General is now required to report each instance where such powers are exercised to the newly created Victorian Inspectorate, which has also been given the power to monitor compliance with the new requirements and power to investigate complaints about the Auditor General, the staff of the Victorian Auditor General's Office, or other persons or firms engaged to conduct an audit and to report his or her findings to a Parliamentary Committee. No other jurisdiction has embedded such provisions in its audit legislation.

Whilst conceptually these Victorian provisions provide a reasonable 'check and balance' on the Auditor General's wide coercive powers, the involvement of the Inspectorate could also serve to:

- limit the discretion of an Auditor General to exercise coercive powers when necessary,
- cause excessive delays or create unwieldy and unmanageable administrative processes
- enable external interference when coercive powers need to be used, or
- create the opportunity for mischievous or spurious complaints.

Confidentiality

It is important to protect the working papers that are involved in the development of the view ultimately taken by the Auditor General, and to ensure that the Auditor General's information gathering powers are not used to provide a 'back door' to sensitive information. However, in some jurisdictions the Executive can release information held by the Auditor General if it chooses to do so.

- A number of jurisdictions have exempted the Auditor General from Freedom of Information legislation for this reason, although New Zealand does allow access to certain information about individuals through its privacy legislation.
- Most jurisdictions provide for the information gathered by their Auditor General to be kept confidential. Most jurisdictions also provide for confidentiality or secrecy of information gathered during the course of an audit.
- A number of jurisdictions also prevent persons who are entitled to be asked to comment on summaries of findings, draft reports or extracts of draft reports during the final stages of a report's preparation from releasing the draft report or the extract of the draft report.
- The legislation in the Australian Capital Territory is unusual in that the Minister may direct the disclosure of the Auditor General's "protected information" if the Minister considers it to be in the public interest to do so.
- Since the 2009 survey, a similar public interest provision in the Queensland's former *Freedom of Information Act* has been dropped by the new *Right to Information Act 2009*, which now provides better protection for the Auditor General's confidential information. However, recent amendments to Queensland's *Commissions of Inquiry Act 1950* have impacted on the Auditor General's ability to keep information confidential. In particular section 5 of the Act, Power to summon witness and require production of books etc, was recently amended to enable an Inquiry chairperson *inter alia* to summon any person to attend before the commission and to produce such books, documents, writings and records or property or things of whatever description in the person's custody or control as are specified. These powers have already been used and have compromised the Auditor General's ability to protect the confidentiality of audit information.
- A number of jurisdictions enable information gathered during the course of an audit that would not otherwise be made public, to be provided to Parliamentary committees, police, various forms of integrity or misconduct bodies, other investigating bodies and the Courts.
- Victoria's new integrity legislation could enable the Victorian Inspectorate to access any information held by 'VAGO officers' which could include information held by persons or firms engaged to assist the Auditor General in conducting an audit.

- Recent amendments to legislation in some jurisdictions enable certain information sharing to take place, for example in the course of a joint audit with another jurisdiction.

Reporting Rights and Obligations

INTOSAI Principle 5. The right and obligation to report on their work.

Legislative changes since 2009

- Tasmania has amended its legislation relating to reporting rights and obligations.
- There have been no substantial changes to these aspects of independence since the 2009 survey in other jurisdictions.

Overall Independence Score for Reporting Rights and Obligations

All of the jurisdictions surveyed continue to have these reporting rights and obligations embedded in their legislative frameworks.

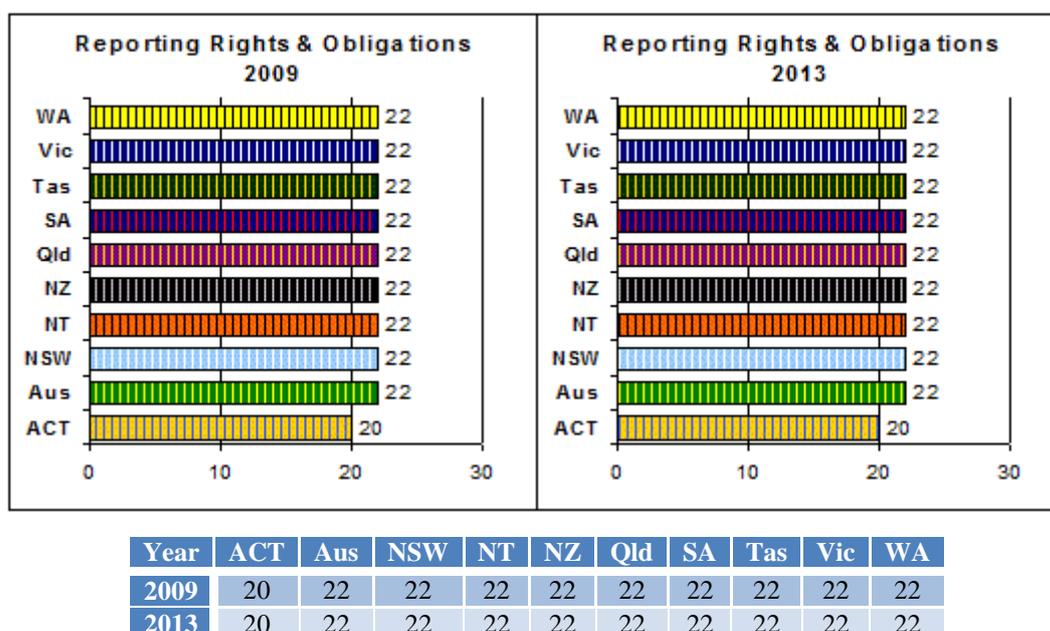


Figure 12. Assessment of reporting rights and obligations

Factors Surveyed

Openness and transparency in reporting are fundamental to the independence of the Auditors General and to their role in the overall integrity system. Auditors General should not be restricted from reporting the results of their audit work.

Auditors General should be required to report on the outcome of their work and should also be able to report significant findings at any time. The reports should be presented directly to the Parliament and should be published. The transparency this brings to accountability forms a vital part of the overall integrity of the system of government.

The key legislative components identified in the legislation reviewed with respect to reporting rights and obligations were:

1. The obligation to report to Parliament on the discharge of functions generally.
2. The ability to produce separate reports on any matter the Auditor General considers warranting such a report.
3. The ability or requirement to report directly to the Parliament.

Factor Scores for Reporting Rights & Obligations 2009 & 2013

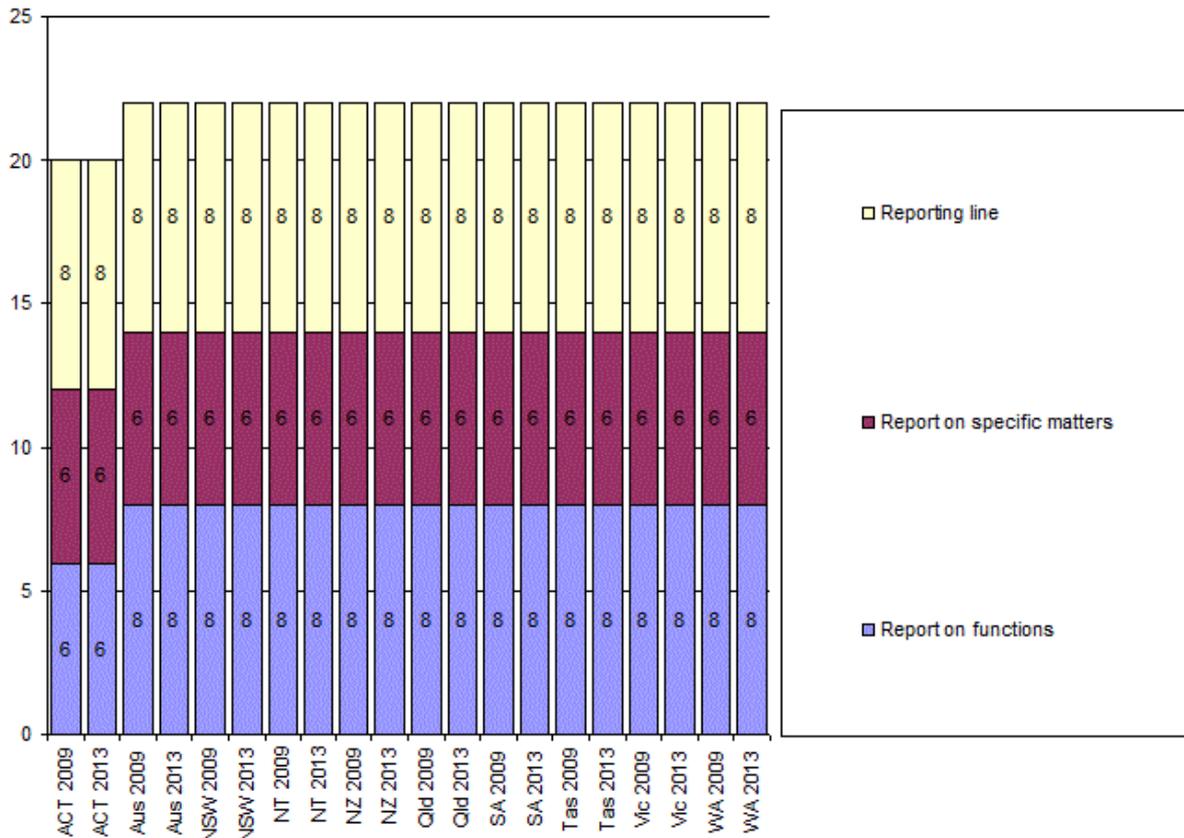


Figure 13. Assessment of factors impacting on reporting rights and obligations

Analysis and Discussion

- In most jurisdictions, legislation requires the Auditor General to report on the discharge of his or her functions and the results of audit work at least annually.
 - In the Australian Capital Territory reporting the results of audit work is at the Auditor General’s discretion.
- All jurisdictions also enable the Auditor General to prepare reports on specific matters at any time.
- In all jurisdictions the Auditor General has a direct reporting line to the Parliament and reports are either tabled or, if the Parliament is not sitting, are treated by the Clerks of the Parliament as if they have been tabled.

However, a number of jurisdictions enable or require the Auditor General to direct reports elsewhere when sensitive information is involved.

- Some jurisdictions provide the Auditor General with the discretion to report only to a Committee of Parliament, to a Minister, to an entity or to some other person.
- Since the 2009 survey, Tasmania has amended its legislation to require sensitive information to be reported to the Public Accounts Committee.

Such reporting lines appear to run contrary to the principle of transparency that is usual with an Auditor General's report.

Content, Timing and Publication of Reports

Principle 6. The freedom to decide the content and timing of audit reports and to publish and disseminate them

Legislative changes since 2009

There have been significant changes to the legislative frameworks of a number of jurisdictions.

- Victoria and Tasmania have amended their legislation to prohibit certain information from being included in public reports.
- The Commonwealth Northern Territory and Tasmania have amended legislation relating to responses of audited entities.

Overall Independence Score for Content, Timing and Publication of Reports

Independence scores for this principle have marginally increased in Tasmania but have been reduced in the Commonwealth.

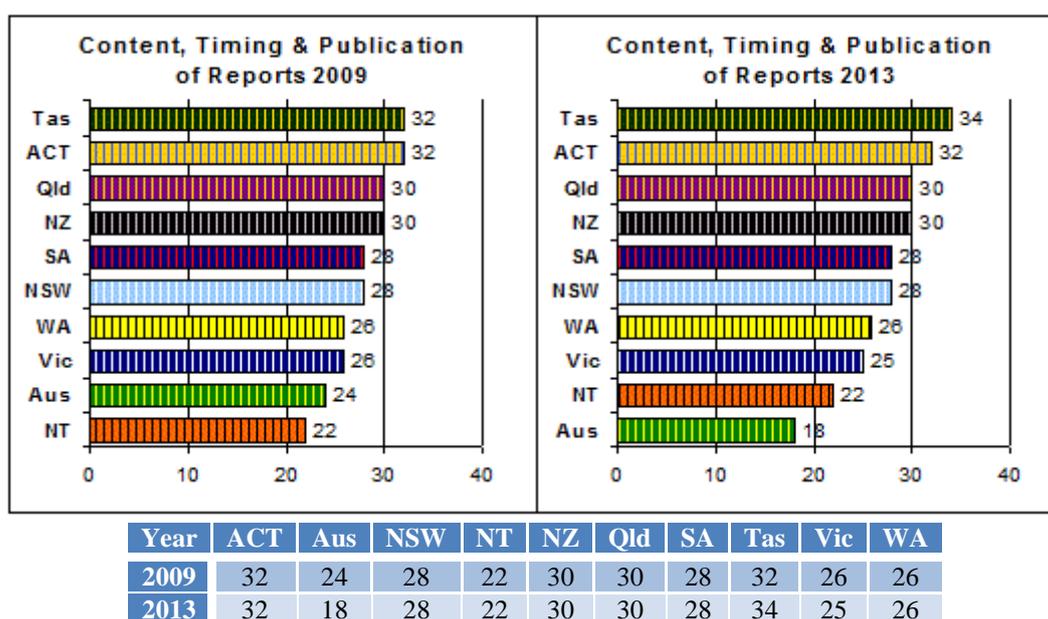


Figure 14. Assessment of content timing and publication of reports

Factors Surveyed

The ability to decide the content and timing of their reports is an important aspect of the independence of Auditors General. Publication of these reports is a fundamental element of transparency.

The key legislative components identified in the legislation reviewed that related to Principle 6 were:

1. Whether the Auditor General has complete discretion over **when to report** and **what to include in, or exclude from**, a report.
2. whether the Auditor General is required to provide audited entities or persons with an **opportunity to comment** on a proposed report consider responses of and whether they have **discretion to fairly summarise any response** received so that the extent and form of a response cannot be used to subvert or divert attention from audit findings.
3. Whether **'sensitive' information** may be included in the Auditor General's report.
4. Whether the **reason for withholding** 'sensitive' information may be disclosed.
5. Whether the Auditor General's **reports are published** for general distribution to the public.

Factor Scores for Content, Timing & Publication of Reports 2009 & 2013

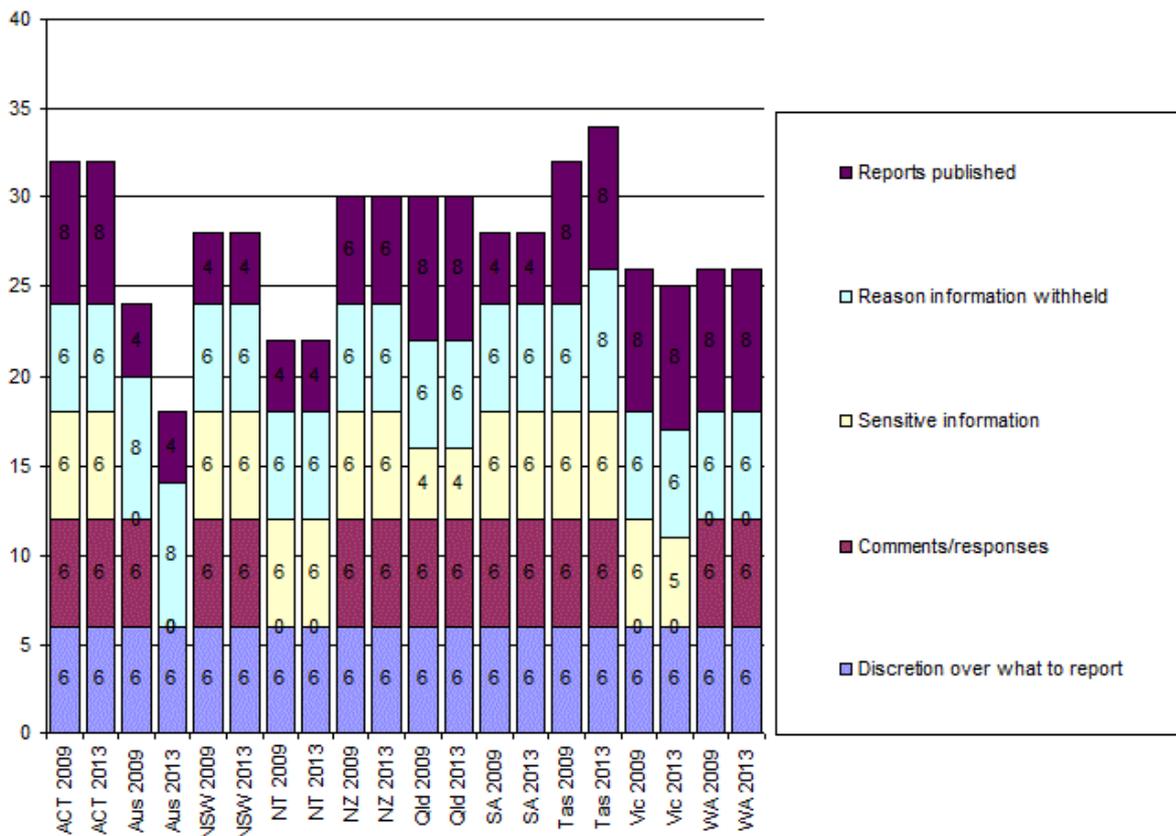


Figure 15. Assessment of factors impacting on content, timing and publication of reports

Analysis and Discussion

Discretion over when to report, what to include in, or exclude from, a report

- All jurisdictions in the survey continue to provide discretion to their Auditor General to decide the content and timing of their reports.
- Since the 2009 survey, the Northern Territory has amended its legislation to explicitly provide that the Auditor General is not subject to direction in relation to what is to be included or not included in a report, bringing it into line with the other jurisdictions surveyed.

Responses from audited entities

In preparing a report, it is a natural justice requirement that Auditors General should take into consideration the views of the audited entity about the findings contained in a report.

- Since the 2009 survey, several jurisdictions have expanded provisions to ensure that any parties (as opposed to entities) affected by the audit have an opportunity to comment on the proposed report.
 - Most jurisdictions have provision that a proposed report or a relevant extract of a proposed report is provided to representative of relevant entities or persons affected by the report.
 - Most jurisdictions also prescribe time-frames for comments to be provided, and sanctions to ensure that confidentiality of the proposed report is preserved.
- Most jurisdictions require that the Auditor General considers the responses received and usually require that the comments or a *fair summary* of them is included in the Auditor General’s report.
 - Victoria and the Northern Territory require the Auditor General to either include comments and responses or an *agreed summary* of them.

- Since the 2009 survey, the Commonwealth has amended its legislation with respect to comments received. Instead of requiring the Auditor General to *consider* the comments he or she receives before preparing a final report, the Auditor General must now *include all written comments* received in the final report.

The need to reach agreement about the form and content of the summary of comments or to include all comments received essentially places this segment of the Auditor General's report under the control of the Executive (or any other persons consulted in the course of report preparation) because the responses from entities are under Executive control. These mechanisms therefore make what is published in an Auditor General's report vulnerable to Executive manipulation.

Sensitive information

Some jurisdictions impose constraints on the publication of 'sensitive' information, requiring exclusion of certain information from reports for reasons such as: national security, defence or international relations; deliberations of Cabinet; Commonwealth-State or intergovernmental relations; information provided by another party in confidence where disclosure is unfairly prejudicial to the commercial interests of a particular person or body; or where information relates to matters subject to criminal investigations or judicial proceedings.

- The Commonwealth Attorney-General can issue a certificate prohibiting the release of information if the Attorney-General considers that it is not in the public interest to release it but in that case the Commonwealth Auditor General is to include in the any report the reasons that the certificate was issued. The Auditor General may also prepare a report on the matters not disclosed and may provide that report to the Prime Minister, the Treasurer and to any responsible Minister.
- Similar provisions apply in Western Australia where the Minister may prohibit disclosure of information if the Minister decides its release is not in the public interest and issues a notice within 14 days to the Auditor General under provisions of the *Financial Management Act 2006*. The Auditor General is required to give an opinion about whether a decision by a Minister not to provide information to Parliament is reasonable and appropriate. If the Minister decides it is not in the public interest to disclose the information, the Auditor General cannot include the information in his report to Parliament. Other than in this circumstance the legislation is silent on the Auditor General reporting sensitive information.
- In Queensland, sensitive information may be withheld if the Auditor General decides that it is in the public interest to withhold it, but if information is withheld, it must be included in a report to the Parliamentary Committee. Queensland's legislation is silent about whether the Parliamentary Committee can then release the information.
- In Victoria, decisions about public interest are left to the Auditor General but since the 2009 survey, Victoria has amended its legislation to introduce stringent prohibitions about disclosure of certain sensitive information, including any information that the Auditor-General considers would prejudice any audit by the Auditor-General, any criminal proceedings or criminal investigation, or any investigations by the IBAC or the Victorian Inspectorate. The Victorian Inspectorate has oversight of compliance with these requirements.
- Since the 2009 survey, Tasmania has also amended its legislation with to prohibit disclosure of sensitive information when the Auditor General considers its release would be against the public interest but the Auditor General must disclose the reasons why information has been withheld. Such information is strongly protected and must not be disclosed to a House of Parliament, a member of a House or any Committee of Parliament. However, the Tasmanian Auditor General may decide to prepare a report that includes the information withheld and may to the Treasurer and to the Parliamentary Committee. Either may act on the information so provided, but the Committee can also choose to release the information if a 2/3 majority of the Committee believes it is in the public interest to do so.

In all other jurisdictions, the legislation is silent with respect to reporting reasons for withholding information, which essentially leaves reporting of reasons that information has been withheld to the discretion of the Auditor General.

Reports published

In all jurisdictions there is provision for the Auditor General to provide reports to, and usually table reports in, the Parliament, which may then order that the reports to be published. Some jurisdictions have explicit provisions for the reports to be published or made available to the public if Parliament is not sitting.

Follow-Up Mechanisms

INTOSAI Principle 7. The existence of effective follow-up mechanisms on SAI recommendations

Legislative changes since 2009

- Queensland has amended legislation giving responsibility for examining the Auditor General's reports to portfolio committees.

Overall Independence Score for Follow-up mechanisms

- There have been no changes to the overall independence scores for this Principle.

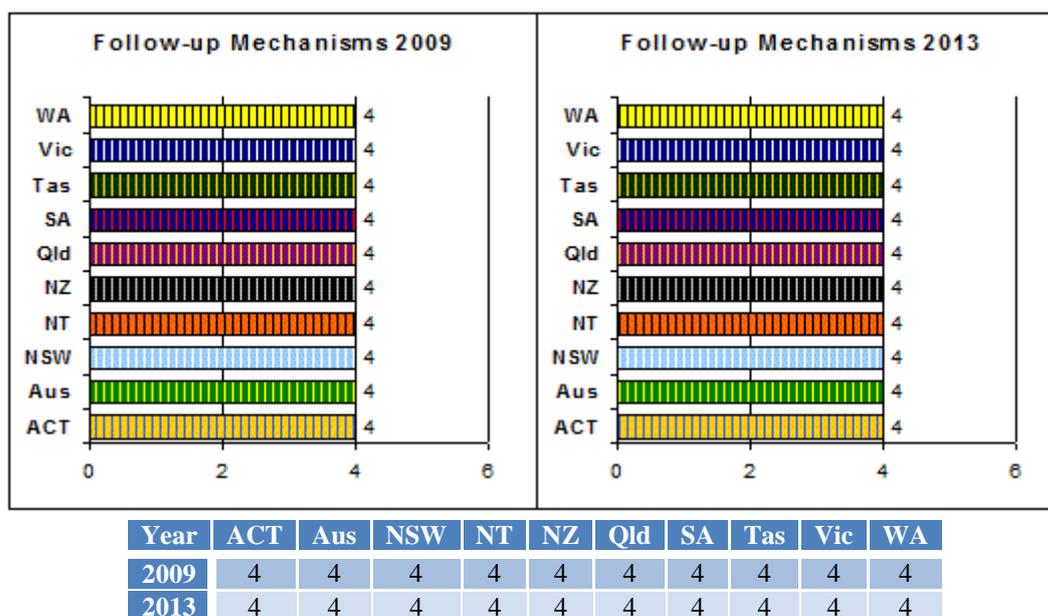


Figure 16. Assessment of follow-up mechanisms.

Factors Surveyed

The key legislative component identified in this area is **whether the Parliament has some mechanism for considering the Auditor General's findings**, for holding the government to account and for following up on recommendations.

Analysis and Discussion

In all of the jurisdictions examined, a Parliamentary Committee has an active involvement in receiving and considering recommendations contained within reports from their Auditor General.

- Some jurisdictions mandate this role in legislation, while in others the role is included in the Committee's terms of reference under Parliamentary Standing Orders.
- Since the 2009 survey, Queensland has amended its legislation to create Portfolio Committees which have responsibilities for considering the annual and other reports of the Auditor General for the Committee's portfolio area.

These mechanisms ensure that Parliament scrutinises the Auditor General's reports and any recommendations the Auditor General may make, and may call the Executive to account.

- None of the jurisdictions examined contained explicit legislative requirements for recommendations to be followed up, this being decided by the Parliament and/or its Committees.

Similarly, none of the jurisdictions contained provisions requiring an Auditor General to follow-up on any recommendations made. Nonetheless, in some jurisdictions, the Auditor General may conduct follow-up audit to determine if previously identified issues have been resolved.

Managerial Autonomy and Resourcing

INTOSAI Principle 8. Financial and managerial/administrative autonomy and the availability of appropriate human, material, and monetary resources.

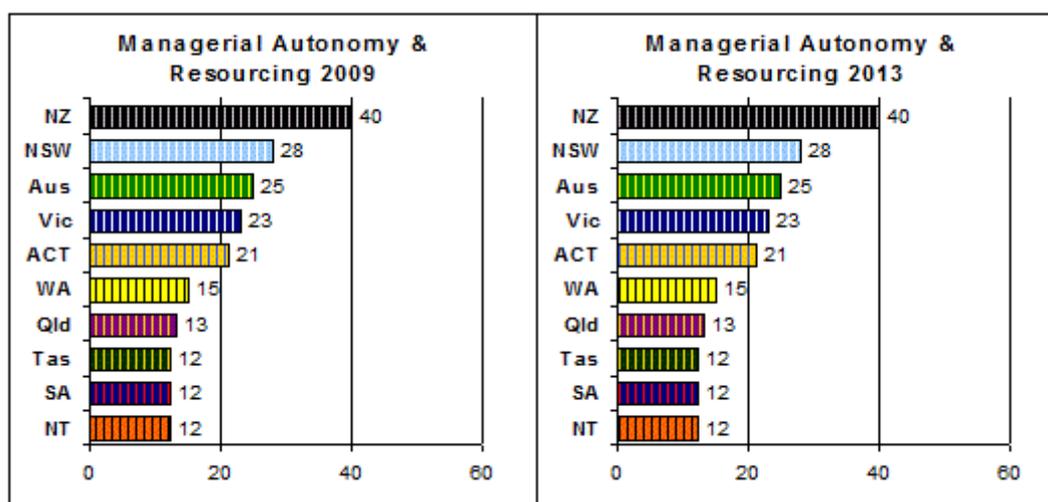
Legislative changes since 2009

Relatively minor amendments have occurred in legislation affecting this Principle

- The Australian Capital Territory has amended legislation clarifying powers of the Auditor General in relation to staff assisting the Auditor General and to retitle the supporting department to a directorate.
- and Queensland has amended legislation clarifying powers of the Auditor General in relation to staff assisting the Auditor General
- New South Wales has amended legislation regarding resources required to undertake request audits.
- Victoria has introduced constraints and controls over the information gathering powers by the auditor of the Victorian Auditor General's Office.

Overall Independence Score for Managerial Autonomy and Resourcing

- Although there have been some minor amendments to legislation since the 2009 survey, the overall independence scores regarding managerial autonomy and resourcing remain largely unchanged.
- New Zealand remains a clear leader among the jurisdictions examined in terms of the managerial and autonomy and financial independence of its Auditor General, followed by New South Wales.
- In a number of Australian jurisdictions the Auditor General remains vulnerable to decisions of the Executive.



Year	ACT	Aus	NSW	NT	NZ	Qld	SA	Tas	Vic	WA
2009	21	25	28	12	40	13	12	12	23	15
2013	21	25	28	12	40	13	12	12	23	15

Figure 17. Assessment of managerial autonomy and resourcing.

Factors Surveyed

The importance of managerial autonomy and independent resourcing for preserving the independence of Auditors General was first recognised in legislation 30 years ago when the United Kingdom established the *National Audit Act 1983*. The model developed in the United Kingdom included mechanisms designed to ensure both financial independence from the Treasury and staffing independence from the civil service.

The key legislative components identified in the legislation reviewed that contribute to managerial and resourcing independence are:

1. **Staffing autonomy** or the independence from the Executive control of the public service.
2. **Financial autonomy** or the independence of the process for of establishing the budget for the Auditor General from the Executive.
3. **Drawing rights** on appropriated resources and to whom resources are appropriated and its independence from the Executive.
4. **Office autonomy** or the independence of the structure supporting the Auditor General from Executive control.
5. Whether the Auditor General is the chief executive or accountable officer with **administrative control of and accountability for** his or her office;
6. Whether the Auditor General is required to produce **an annual administrative report** and financial statements.
7. Whether the appointment, terms of reference, and reporting line of the **auditor of the Auditor General's office** is subject to Executive control.

Factor Scores for Managerial Autonomy & Resourcing 2009 & 2013

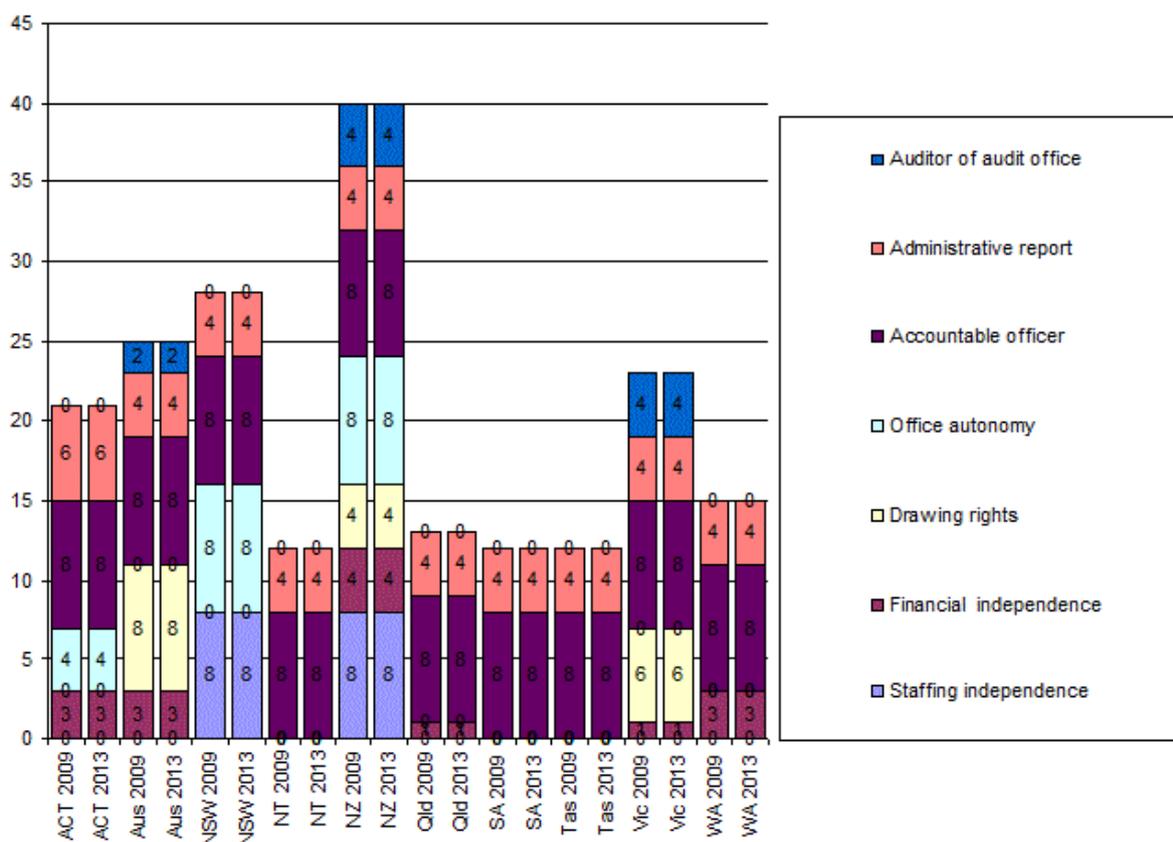


Figure 18. Assessment of factors impacting on Managerial autonomy and resourcing

Analysis and Discussion

Although a great deal of attention has been paid to assuring the independence of the Auditors General themselves, less attention has been paid to their financial independence and their capacity to manage independently.

Administrative Control and Accountability, Annual Administrative Report

The overall situation regarding the accountable officer remains unchanged in all of the jurisdictions examined since the 2009 survey.

- In each of the jurisdictions examined, the Auditor General continues to be administratively responsible for his or her supporting office structure, and is required to report annually on the administration and operations of his or her office.

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 Minister” 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 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.

Office Autonomy

Although there have been some minor amendments to legislation since the 2009 survey, the overall situation regarding office autonomy remains unchanged in all of the jurisdictions examined..

- **Departments**, staffed by public servants, have traditionally been created to support the Auditor General and these remain the most common form of administrative unit within the Australian jurisdictions.

A disadvantage of the departmental structure is that it is usually subject to overarching legislation developed for the public service at large. Typically this legislation includes mechanisms to govern the classification of the staff, the flexibility of staff deployment, and the method of recruitment, selection and appointment of staff. It may also bring into play whole-of-government policy directives which may enable either the Executive or the public service bureaucracy to exert more subtle control over the Auditor General. Such bureaucratic intervention into managerial or administrative matters has the potential to be misused to constrain and/or frustrate the activities of the Auditor General.

The importance of freeing the Auditor General from potential managerial or administrative interference was recognised in the United Kingdom when the National Audit Office was established. It was seen to be important to free the NAO from the influence of the civil service (particularly the Treasury) that it was required to scrutinise. The NAO is not part of the civil service and civil servants must resign from the service before taking up employment with the NAO.

- New Zealand has ensured a similar structural independence for its Auditor General, whose office is established as *a corporation* to which that New Zealand's State Sector Act does not apply.
- New South Wales remains the only Australian jurisdiction to have removed its Audit Office from the public service and created it as *a statutory body*.
- The Australian Capital Territory is unusual. The supporting structure for the Auditor General is a *directoriate* (amended from the term 'department') and the Auditor General is given the role of the *responsible director general* (amended from the term 'chief executive' since the 2009 survey) of his or her directorate. However, the role the responsible Minister holds for other directorates is given to the *Speaker of the Legislative Assembly*, thereby reinforcing the relationship between the Auditor General and the legislature.
- In other jurisdictions the responsible Minister through whom the Auditor General reports administratively is part of Executive government.

Some Australian jurisdictions have developed mechanisms partially protect the Auditor General's office from overarching public service legislation or policy directives

- Victoria enables the Parliamentary Committee to, by resolution, free the Auditor General of certain requirements of that State's *Public Administration Act* and *Financial Management Act*.
- In Queensland all general rulings under the *Public Service Act* made by the industrial relations Minister or the chief executive of the Public Service Commission apply to the audit office, but specific rulings for the audit office can only be made with the consent of the Auditor General. Management reviews of the audit office under that Act can only be undertaken at the request of the Auditor General.

Staffing Independence

The capacity to employ staff is fundamental to the resources available to the Auditor General.

There have been no significant changes to staffing autonomy of Auditors General since the 2009 survey.

- The legislation in all jurisdictions makes provision for staff and the Auditor General is usually the employing authority, albeit of a department office or unit of the public service in all jurisdictions other than New Zealand and New South Wales.
- In most jurisdictions, the Executive and/or the public service bureaucracy can influence or indeed control the number, classification and remuneration and other conditions of the Auditor General's staff.

- Many jurisdictions also enable the Auditor General to use contracted professional services and some enable secondment of staff from other public sector organisations (often requiring approval from the Minister).
- New South Wales remains the only Australian jurisdiction to have removed all employees of the Audit Office, including its senior executives, from the public service. This is more closely aligned to the truly autonomous models adopted by the United Kingdom and New Zealand. However, New South Wales remains vulnerable to the Executive imposing such restrictions as salary and expense caps via administrative means.

Auditor of the Auditor General

In all jurisdictions a separate, independent auditor is appointed to audit the annual financial statements of the office of the Auditor General. The independent auditor may be confined to financial statement of the Auditor General's office but in some jurisdictions, may have a wider performance audit role or a separate appointment may be made to audit or review the performance of the Auditor General.

The mechanisms of the auditor's appointment (by whom) as well as the reporting line of the auditor are of importance in assuring independence, not only of the auditor, but also of the Auditor General, especially when performance audits may be conducted.

- In New Zealand, the independent auditor of the Auditor General is appointed each year by resolution of the House of Representatives.
- Similarly, in Victoria, the independent auditor of the Auditor General's accounts is appointed by resolution of the Legislative Council and Legislative Assembly on the recommendation of the Parliamentary Committee. Victoria separately appoints, also by resolution of the Legislative Council and Legislative Assembly on the recommendation of the Parliamentary Committee, a person to conduct the three-yearly performance audit of the Auditor General and the Victorian Auditor General's Office. The Victorian legislation has been amended since the 2009 survey to introduce similar controls to those applying to the Auditor General over the use of coercive powers by the both independent auditor and performance auditor.
- Although the independent auditor of the Commonwealth Auditor General is appointed by the Governor General on the recommendation of the Minister, the Joint Committee of Public Accounts and Audit must approve the appointment of the independent auditor giving it a veto power over the appointment.
- In Tasmania, the Treasurer must consult with the Auditor General before appointing the auditor of the Tasmanian Audit Office.
- In other jurisdictions, the Executive makes the appointment of the independent auditor.

Summary and Conclusions

The wide variation in the independence safeguards embedded in the legislation reviewed from the various Australian and New Zealand jurisdictions observed during the 2009 survey continues to be evident in the legislative frameworks in effect at the time of the present survey.

Although there has been some improvement, many jurisdictions continue to exhibit weaknesses in the overall statutory framework governing their Auditor General.

The legislative framework governing appointment and immunity has been substantially improved in Queensland, which now approaches the strength of protection from Executive influence afforded by New Zealand's legislative framework.

Queensland has also significantly improved the functional mandate given to its Auditor General bringing it into line with most other jurisdictions, but Western Australia and Tasmania continue to have the broadest functional mandate to investigate any matter relating the use of public resources. Weaknesses in the functional mandate of the Auditor General in some jurisdictions continue to constrain the role their Auditors General can perform.

At the time of the 2009 survey, only a few jurisdictions had adapted the coverage mandate of their Auditors General to take account of the changing way the public sector is operating. In most jurisdictions, the ability to scrutinise the use of public resources was largely focused on the entities the government controlled, and only three jurisdictions had provisions that enabled them to audit the use of public monies, resources, or assets, by a recipient or beneficiary regardless of its legal nature.

Since that time, the Commonwealth and Queensland have joined Western Australia, Tasmania and Victoria by introducing substantial amendments to their legislation that enable such scrutiny to take place. The jurisdictions that remain focussed on entities, or where powers to investigate remain under the control of Executive, run a significant risk that the Executive will not be adequately held to account for the use of public resources.

Whilst most jurisdictions have continued to provide their Auditor General with adequate powers to obtain information, some still lack power to enter premises should the need arise. Victoria is the first jurisdiction to introduce new controls explicitly addressing the way in which the Auditor General exercises his or her coercive powers and has also added a new body to oversight the use of these powers. Because the changes are mediated via an independent body, they do not increase the Auditor General's vulnerability to Executive influence, but they do have a significant impact on the overall independence of the Auditor General in that jurisdiction.

As yet only a few jurisdictions have responded to the financial and managerial vulnerability of their Auditors General that was recognised in the United Kingdom 30 years ago, by providing adequate protection from Executive influence to these important aspects of independence.