



Independence of Auditors General

A 2020 update of a survey of
Australian and New Zealand legislation

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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.

The survey was updated in 2013 to assess the effect legislative amendments in the intervening years had had on the extent of protection from Executive influence in each jurisdiction.

Since the 2013 survey, the legislation governing Auditors General has been amended in several jurisdictions. The survey has therefore again been repeated to assess the extent of protection from Executive influence in the legislation that exists in 2020.

Summary of Legislative Changes

Jurisdiction	Survey	Brief summary of Amendments since 2009	Impact on Independence
ACT	2013	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
	2020	Major amendments: Auditor General is now an Officer of the Legislative Assembly appointed by the Speaker, extensive amendments to the role of the Parliamentary Committee, remuneration determined by an independent body, other paid employment constrained, not subject to direction of anyone and discretion mandated, improved managerial autonomy, statutory review of functions and performance conducted once in each Parliamentary Term.	Substantial increase
Aus	2013	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 increase
	2020	Some amendments concerning guaranteed availability of appropriations	No effect
NSW	2013	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 change
	2020	Financial management matters being moved into <i>Government Sector Finance Act 2018</i> . <i>Public Finance and Audit Act 1983</i> to be renamed Government Sector Audit Act 1983	Increased
NT	2013	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
	2020	Extensive amendments: extensive amendments to appointment and immunity but since most decisions are taken by Executive they had little effect on independence score expanded ineligibility to include local government Council, members of judiciary, recent political affiliation, expanded grounds for suspension, removal requires 2/3 majority of Legislative Assembly, remuneration now protected, but Minister may allow other employment	Minor increase
NZ	2013	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 change
	2020	Few amendments: none impacted on independence	No change



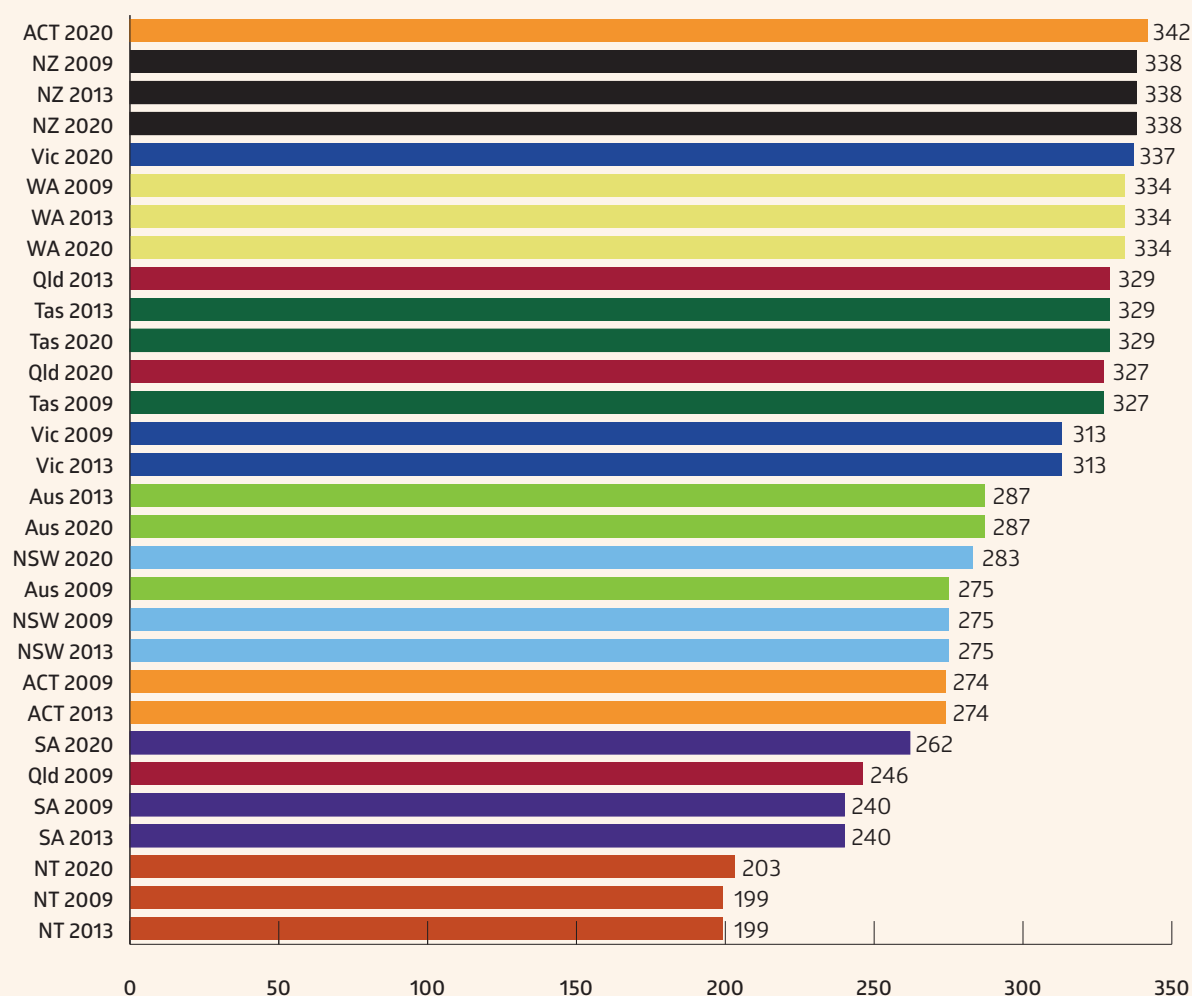
Jurisdiction	Survey	Brief summary of Amendments since 2009	Impact on Independence
Qld	2013	Major amendments: term of appointment and declaration of interests of Auditor General and Deputy; substantial changes to mandate including audit of public property given to a non-public sector entity, performance 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 increase
	2020	Amendments that enable the Auditor General to disclose confidential audit information to Executive Government impacted adversely on independence	Small decrease
SA	2013	Minor amendment: description of administrative unit established to provide assistance to the Auditor General	No change
	2020	Substantial amendments: mandate expanded to include examination of effectiveness and Auditor General may now initiate examination of publicly funded bodies; legislation mandates that reports are to be published	Significant increase
Tas	2013	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.	Small increase
	2020	Few amendments: none impacted on independence	No change
Vic	2013	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 unclear
	2020	<i>Audit Act 1994</i> extensively amended in 2016: expanded with respect to performance audits by the definition of an “associated entity” which means any person or body that provides services or performs functions for, on behalf of a public body, or on behalf of the State; significant checks and balances and oversight of new powers by Victorian Inspectorate. In 2019 <i>Audit Act 1994</i> completely restructured: mandate slightly expanded by a new definition of “public body” and extensive access now provided to premises through “Entry Notice”; removal of some of the checks and balances by the Victorian Inspectorate that do not relate to coercive powers	Significant increase Slight Increase
WA	2013	Minor amendment: (consequential to amendment of other legislation)	No change
	2020	No significant amendments	No Change

Overall Independence Scores

The overall scores obtained from the 2009, 2013 and 2020 surveys are summarised below:

Figure 1 Overall independence scores in each of the Surveys

Total Independence Scores for Each Jurisdiction



Overall, the 2020 survey found that, under the scoring system used:

- The Auditor General of the Australian Capital Territory now has the highest overall independence score, followed by New Zealand and Victoria.
- Western Australia and Tasmania have maintained strong overall independence scores, but Queensland has become more vulnerable to Executive influence.
- The independence score for Northern Territory's Auditor General has improved slightly but continues to be the most vulnerable to Executive influence of all the jurisdictions surveyed.

Independence of Auditors-General:

A 2020 update of a survey of Australian and New Zealand legislation

Background

In 2009, the Victorian Auditor General's Office commissioned a survey on behalf of the Australasian Council of Auditors General 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.

Factors Contributing to Independence

The 2009 survey identified 60 key legislative components or 'factors' that contributed to each INTOSAI independence principle and the extent to which each factor was subject to the control of Executive government was assessed.

No attempt was made to weight the factors in terms of their relative importance, but each factor was given an Executive Influence Score based on the extent to which the factor is distanced 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 deciding 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 can 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 Executive Influence scores 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

Findings from previous surveys

The 2009 survey found that all jurisdictions had well established legislative frameworks governing their respective Auditors General. However, there was considerable variation in the independence safeguards provided for Auditors General and in the extent to which they, or the role they performed, could be influenced by the Executive government of the jurisdictions concerned.

In several 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; and
- the Auditor General's financial, managerial and administrative autonomy.

The survey was repeated in 2013. In the intervening period, major amendments had been made to the legislation in the Commonwealth of Australia and Queensland and extensive amendments had also been made to the legislation in the Northern Territory, Victoria, and Tasmania. Relatively few,

more minor amendments had been made to the legislation in New South Wales, New Zealand, South Australia and Western Australia.

Overall, the 2013 survey found that, under the scoring system used:

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

2020 Survey

The 2020 survey aimed to update the findings of the 2009 and 2013 surveys by examining the legislative frameworks **in effect in each jurisdiction as at March 2020** to again identify and compare the range of safeguards that exist to support the independence of Auditors General.

The same factors and scoring system were used. It should be noted that, as in the 2009 and 2013 surveys, the full range of scoring is not applicable to all the factors examined.

It should also be noted that the scores assigned for some factors during the 2009 and 2013 surveys have been amended to correct some scoring errors or inconsistencies.

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 was not applied in either the 2013 survey or the 2020 survey.

Summary of legislative changes since 2009

Jurisdiction	Survey	Summary of Amendments since 2009	Impact on Independence
ACT ²	2013	Minor amendments <ul style="list-style-type: none"> Definitions and terms used consequential to amendments in other legislation. Is referred to as the responsible director-general of a directorate. 	No effect
ACT ³	2020	Major amendments <ul style="list-style-type: none"> The Auditor General is now an Officer of the Legislative Assembly responsible to the Legislative Assembly Not subject to direction of anyone Remuneration determined independently and appropriated Other employment constrained and declaration of interests required Greatly expanded role of Speaker and Public Accounts Committee Expanded mandate Improved follow-up of reports requiring a formal Ministerial response Improved managerial independence with respect to staff, finances and office autonomy 	Substantial increase
Aus ⁴	2013	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 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 increase
Aus ⁵	2020	Some amendments <ul style="list-style-type: none"> Most amendments do not impact on independence <ul style="list-style-type: none"> Guaranteed availability of appropriation Protection from reduction of appropriations to the Audit Office 	No effect

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

³ Australian Capital Territory *Auditor-General Act 1996 A1996-23*, Republication No 20, Effective: 22 November 2018

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

⁵ Australia *Auditor-General Act 1997* No. 151, 1997 Compilation No. 17 Compilation date: 21 February 2018

Jurisdiction	Survey	Summary of Amendments since 2009	Impact on Independence
NSW ⁶	2013	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. 	No effect
NSW ⁷	2020	Few amendments relating to audit <ul style="list-style-type: none"> Term of appointment increased to 8 years Mandate has been expanded under separate legislation to include local government Financial management aspects of legislation have been removed to <i>Government Sector Finance Act 2018</i> Legislation renaming the <i>Public Finance and Audit Act 1983</i> to <i>Government Sector Audit Act</i> has passed but has yet to commence. 	Increased
NT ⁸	2013	Extensive amendments <ul style="list-style-type: none"> New definitions of "organisation" and modified definition of "Territory controlled entity" amended from 7 year fixed term to 5 year renewable term. 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
NT ⁹	2020	Extensive amendments <ul style="list-style-type: none"> Extensive amendments to appointment and immunity but most decisions are still under control of Executive government Noteworthy amendment to ineligibility for appointment. Now excludes <ul style="list-style-type: none"> members of local government Councils members of a political party recent political affiliation including reportable donations Remuneration is protected for the term of office Minister may authorise the Auditor General to engage in other paid employment 	Small increase
NZ ¹⁰	2013	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 change
NZ ¹¹	2020	Few amendments <ul style="list-style-type: none"> No impact of independence 	No change

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

7 New South Wales *Public Finance and Audit Act 1983* No 152, Current version for 20 December 2019 to date

8 Northern Territory of Australia. *Audit Act 1995*. As in force at 21 September 2011

9 Northern Territory of Australia *Audit Act 1995*, As in force at 10 August 2019

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

11 New Zealand *Public Audit Act 2001* No 10, Reprint as at 21 March 2017

Jurisdiction	Survey	Summary of Amendments since 2009	Impact on Independence
Qld ¹²	2013	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 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 	Substantial increase
Qld ¹³	2020	Few amendments <ul style="list-style-type: none"> May disclose information (including “private information and otherwise “protected information”) about departments or other prescribed entities to the Treasurer or Treasury for financial and economic analysis and budgeting purposes 	Small decrease
SA ¹⁴	2013	Minor amendment <ul style="list-style-type: none"> Description of administrative unit established to provide assistance to the Auditor General 	No effect
SA ¹⁵	2020	Significant amendments <ul style="list-style-type: none"> Mandate has been expanded to include examination of effectiveness as well as economy and efficiency. The auditor general may now initiate audits or examinations of publicly funded bodies New requirement to describe the outcomes of examinations Legislation mandates that reports are published 	Significant increase
Tas ¹⁶	2013	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
Tas ¹⁷	2020	Few amendments <ul style="list-style-type: none"> None impact on independence 	No change

¹² Queensland. Auditor-General Act 2009 Current as at 9 September 2011

¹³ Queensland Auditor-General Act 2009 Current as at 17 June 2019

¹⁴ South Australia. Public Finance and Audit Act 1987, Version: 15.2.2013

¹⁵ South Australia Public Finance and Audit Act 1987 Version: 13.9.2018

¹⁶ Tasmania. *Audit Act 2008*, Tasmanian Legislation Online, Consolidated:17 May 2013

¹⁷ Tasmania *Audit Act 2008* Contents (2008-49) 2/13/2020 View – Tasmanian Legislation Online

Jurisdiction	Survey	Summary of Amendments since 2009	Impact on Independence
Vic ¹⁸	2013	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 coercive 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. 	No effect
Vic ¹⁹	2020	Extensive amendments <ul style="list-style-type: none"> • <i>Audit Act 1994</i> was extensively amended in 2016 and was further amended and completely restructured in 2019. • Mandate has been significantly expanded: <ul style="list-style-type: none"> - with respect to performance audits by the definition of an “associated entity” which means any person or body that provides services or performs functions for, on behalf of a public body, or on behalf of the State - new definition of “public body” now captures community health centres • Access to information substantially expanded: <ul style="list-style-type: none"> - “Information Gathering Notice” can require persons to produce documents and to attend and be questioned under oath - “Entry Notice”, gives the power to enter public body premises for the purpose of financial audit or performance audit and may also enter premises of an associated entity for a performance audit - Penalties have been increased for non-compliance with these new information gathering powers • Content of reports: <ul style="list-style-type: none"> - Expanded opportunity to comment on any proposed report consistent with the expanded mandate - Comments must be either included in full or a summary in a form agreed between the Auditor General and the entity 	
WA ²⁰	2013	Minor amendment <ul style="list-style-type: none"> • Consequential to amendment of Public Sector Management Act 1994 	No change
WA ²¹	2020	No amendments	No change

¹⁸ Victoria. *Constitution Act 1975* Version incorporating amendments as at 15 May 2013; *Audit Act 1994* Version incorporating amendments as at 11 February 2013

¹⁹ Victoria *Constitution Act 1975* Version No. 221 Version incorporating amendments as at 1 March 2019

Victoria Audit Act 1994 No. 2 of 1994 Version No. 066 Version incorporating amendments as at 1 July 2019

²⁰ Western Australia. *Auditor General Act 2006*, As at 01 Dec 2010

²¹ Western Australia *Auditor General Act 2006* unchanged from 1 Dec 2010

Overall Assessment of Independence

Overall Independence Factor Scores

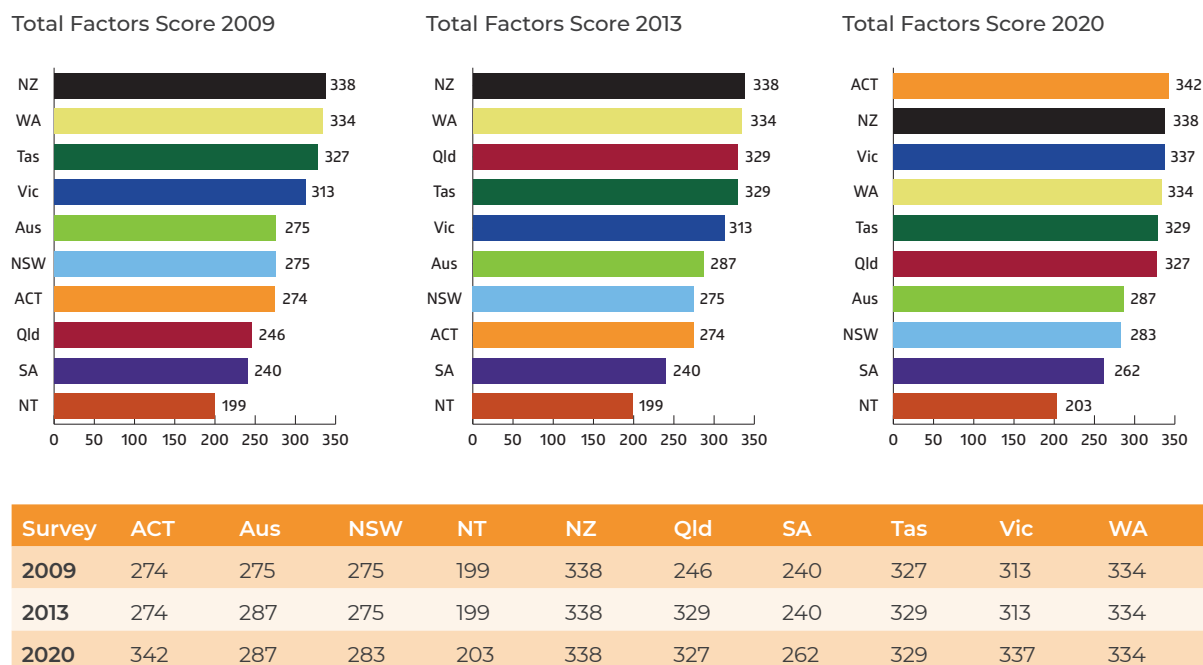
The jurisdictions surveyed continued to show wide variation in extent to which their legislative frameworks safeguarded the independence of Auditors General with respect to the principles outlined by INTOSAI.

Based on the scoring system used:

- The Australian Capital Territory now has the strongest independence safeguards as a result of the major amendments to its legislative framework.
- New Zealand strong independence score is now followed by Victoria as a result of recent extensive amendments to Victoria's legislation.
- The Australian States of Western Australia, Tasmania, and Queensland also have strong independence scores.
- Amendments to the legislative framework have potentially weakened financial independence of the Commonwealth Auditor General.
- Independence safeguards continue to be less well developed in New South Wales and, although recently somewhat improved, in South Australia.
- 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, 2013 and 2020 surveys are represented graphically and summarised below:

Figure 2 Overall independence scores for each jurisdiction²²



²² The overall scores reported for the 2009 and 2013 surveys have been amended to correct some scoring errors or inconsistencies in the scores assigned to some factors.

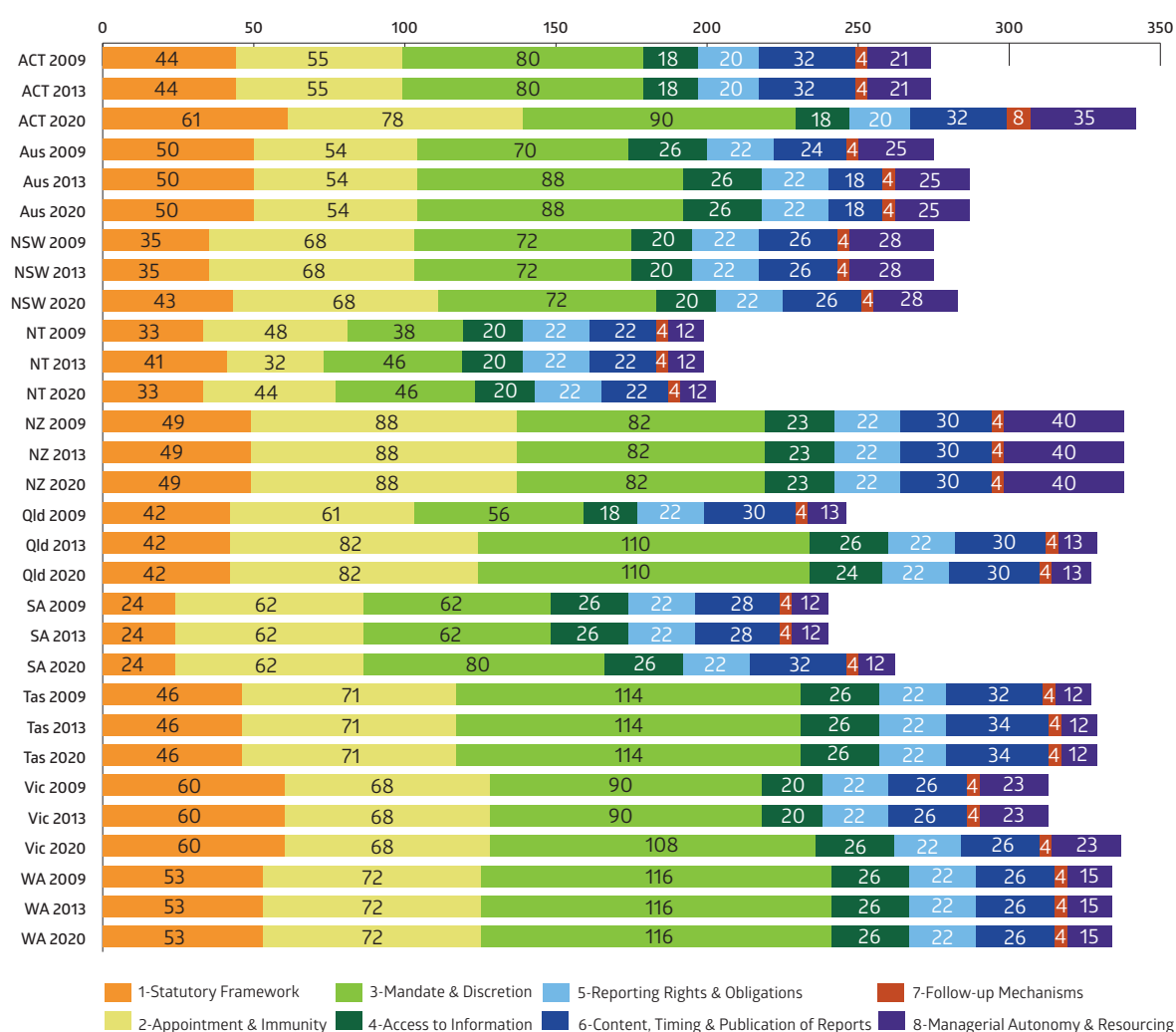
Factors Contributing to Individual Principles of Independence

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

- The Australian Capital Territory has substantially improved safeguards in its statutory framework, appointment and immunity, mandate and discretion, follow-up mechanisms and office autonomy.
- New Zealand's overall position continues to be strongly supported by its safeguards over appointment and immunity, wide mandate, and office autonomy whereas
- Victoria retains its constitutional protection from Executive influence and has added new protections through its significantly expanded mandate and greater access to information
- Western Australia, Tasmania and Queensland gain most from their wide mandate and discretion.

Figure 3 Overall independence scores for each INTOSAI Principle

Overall Scores for each INTOSAI Principle



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

Statutory Framework

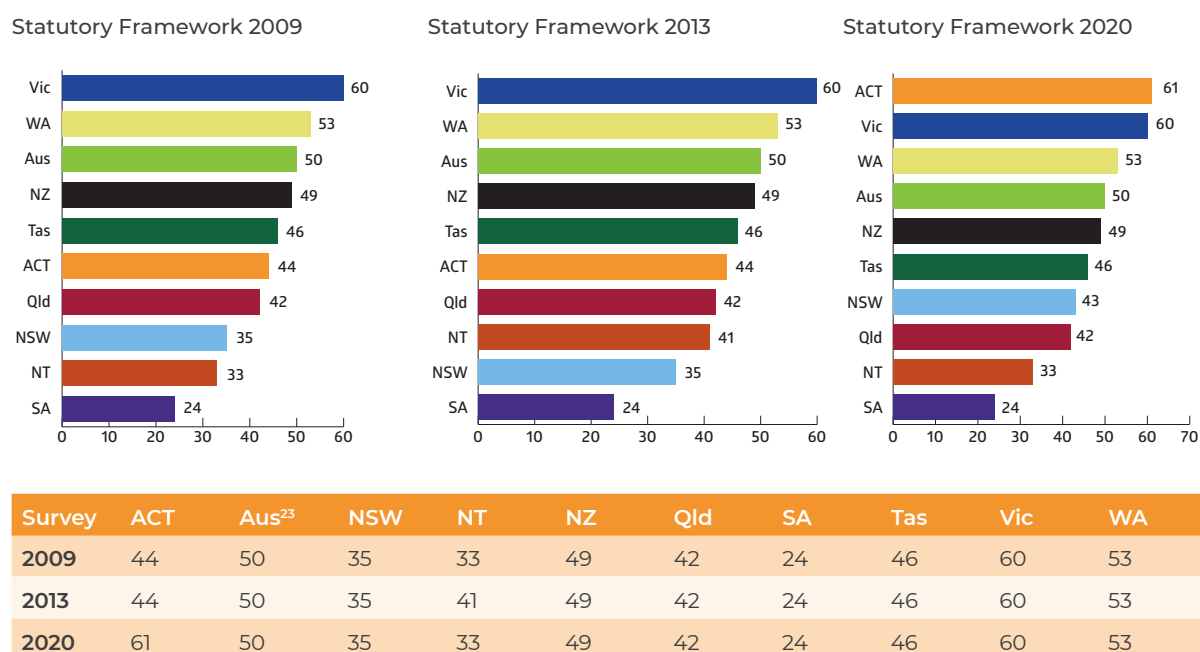
INTOSAI Principle 1. The existence of an appropriate and effective constitutional/statutory/legal framework and of de facto application provisions of this framework.

Overall Independence Score for Statutory Framework

In the overall assessment of independence safeguards in statutory frameworks:

- The Australian Capital Territory has greatly strengthened independence safeguards in the statutory framework, overtaking the strong position of Victoria.
- The Northern Territory improved its position in 2013 by explicitly mandating the independence of the Auditor General in legislation but its position has since been weakened by enabling the Minister to approve other paid employment.
- In New South Wales the *Public Finance and Audit Act 1983* is in the process of being separated into the *Government Sector Finance Act 2018* and the *Government Sector Audit Act*.
- Most other jurisdictions are unchanged.
- South Australia remains the most vulnerable to Executive influence.

Figure 4 Overall scores for 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:

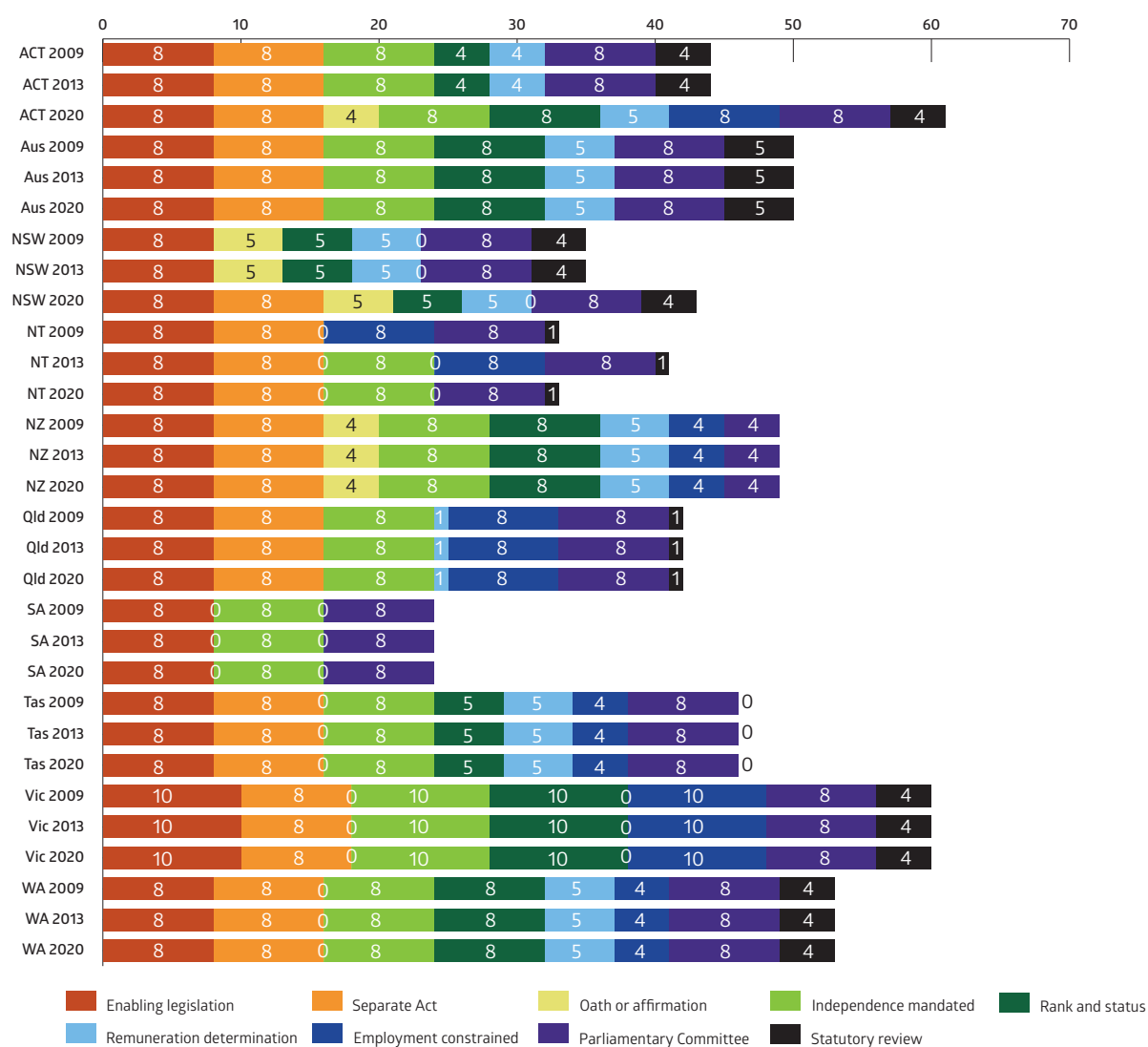
1. Whether constitutional provisions and/or enabling legislation exists which specifically address the establishment, status, mandate and powers of the Auditor General, as opposed to establishment by Executive action?
2. Whether there is separate audit legislation to ensure that Parliamentary debate is focused on the Auditor General's role, functions and independence rather than being diluted by broader debate on wider financial legislation;

²³ The scores recorded for the Commonwealth in the 2009 and 2013 surveys have been amended to correct an error which omitted the score assigned for rank and status in those surveys.

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 the 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

Factor Scores for Statutory Framework



Analysis and Discussion

Enabling Legislation / Separate Legislation

In all 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 an 'independent officer 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 survey²⁴ found that 79 of 113 Supreme Audit Institutions are established and have the mandates enshrined in their countries' Constitution.

- Most 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 financial management legislation.
- At the time of the 2020 survey New South Wales is in the process of separating financial management and audit legislation. Non-audit aspects such as budgeting, expenditure, financial management, performance information, banking and finance, delegations and roles and responsibilities etc have been removed from the *Public Finance and Audit Act 1983* and are now all in the *Government Sector Finance Act 2018*. Legislation renaming the *Public Finance and Audit Act 1983* to the *Government Sector Audit Act 1983* and further amending that Act has passed but at the time of the survey, had not commenced.²⁵
- South Australia continues 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. The legislation 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 New Zealand, the Commonwealth, Western Australia, and now the Australian Capital Territory, making clear both the importance placed on the independence of the office and the special relationship it holds with the Parliament, rather than Executive government.
- 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.
- Between the 2009 and 2013 surveys, the Northern Territory amended its legislation to mandate the independence of its Auditor General.
- Since the 2013 survey, Australian Capital Territory has amended the mandated independence from being not subject to direction of Executive or Minister to being not subject to direction of anyone.

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.

- Since the 2013 survey the Australian Capital Territory has joined New Zealand in requiring an oath or affirmation before the Speaker or the Clerk of the Parliament, symbolically strengthening the relationship between the Auditor General and the Parliament.
- In New South Wales the declaration of office is made before a Supreme Court Judge.

²⁴ The Independence of SAIs – Final Task Force Report. International Organization of Supreme Audit Institutions, 2001.

²⁵ *Government Sector Finance Legislation (Repeal and Amendment) Act 2018* as at 1 March 2020

- In four jurisdictions an oath, affirmation or declaration of office is given 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 or affirmation in Queensland and the Commonwealth.

Rank and Status

The 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 rank or status can be degraded by the Executive, the effectiveness of the Auditor General could be seriously undermined.

- Some jurisdictions explicitly mandate status or rank (for example 'independent officer of the Parliament' in the five jurisdictions mentioned above).
- New South Wales and Tasmania do so indirectly by mandating salary relativities to other high-ranking positions.
- In others the legislation is silent regarding rank and status.

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 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 the Executive to influence remuneration is therefore of importance, as is the transparency of the process by which remuneration is determined.

- Since the 2013 survey, the Australian Capital Territory has amended legislation so that remuneration is no longer determined by a Parliamentary resolution.
- In New Zealand, the Commonwealth, New South Wales, Western Australia and now the Australian Capital Territory, remuneration is determined by an independent tribunal.
- In Tasmania remuneration is determined by a statutory tie to Auditors General in other jurisdictions
- In Queensland, the Executive is obliged to consult the Parliamentary Committee before determining remuneration.
- However, the Executive continues to have direct control over remuneration in other jurisdictions, including Victoria where the Constitution mandates that remuneration is determined by the Governor in Council.

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.

- Since the 2013 survey, the Australian Capital Territory has amended legislation from previously being silent to now prohibit the Auditor General from engaging in other paid employment or engaging in unpaid activity inconsistent with functions. It has also introduced a requirement for disclosure of interests.
- 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 which may be released to Queensland's Crime and Misconduct Commission or Integrity Commissioner. Queensland also 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 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 Speaker, as in New Zealand or the Parliament, as in Western Australia it could be expected to be relatively difficult to obtain and transparency of approval is ensured.
- However, where approval may be sought from Executive, as in South Australia and, as a result of a recent amendment to Northern Territory legislation, it could enable covert pressure to be applied to the Auditor General.
- Legislation remains silent in the remaining jurisdictions.

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 publicly held to account.

Although usually dominated by the Government of the day, Parliamentary Committees may be given specific responsibilities with respect to the Auditor General under legislation or through Parliamentary Standing Orders.

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.
- Since the 2013 survey, the Australian Capital Territory legislation has extensively amended legislation regarding the role of its Public Accounts Committee.
- 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.

Since the 2013 survey, the Australian Capital Territory has extensively amended references to its Public Accounts Committee which receives and examines Auditor General's Reports, receives any reports of sensitive information from the Auditor General. The Committee must agree with appointment, suspension, etc. It may request a performance audit of a non-public sector entity, may request the independent auditor of the Auditor-General to conduct a performance audit of the Office and must conduct a review of the Auditor General at least once in each Assembly Term.

The recently amended *Audit Act 1994* in Victoria continues the extensive involvement the Parliamentary Committee has in that jurisdiction. 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 gives its Parliamentary Committee responsibility to monitor reports from the Victorian Inspectorate about the Auditor General, the Victorian the Auditor General's Office and members of that office.

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 Auditor General Act 2006 itself with the review to be conducted by the Joint Standing Committee on Audit.
- Several 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 (now every four years for the Victorian Auditor General and every five years for the Tasmanian and Queensland Auditors General).
 - Between the 2009 and 2013 surveys, New South Wales 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.
 - Since the 2013 survey, the Australian Capital Territory has amended legislation to require a strategic review of the Auditor General's functions and performance at least once in each term of the Legislative Assembly.
 - Other jurisdictions enable the Auditor General's external auditor to conduct performance audits of the Office. 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 a statutory review.

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, the Speaker or to Parliament.
- 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 2013 survey:

Victoria has amended its legislation. The Parliamentary Committee appoints an independent performance auditor to conduct the periodic review of the Auditor General and the Victorian Office of the Auditor General and the Committee prepares a specification for the performance audit in consultation with the Auditor General. The amended legislation continues to apply the same obligations and constraints that apply to the Auditor General's use of coercive powers to the independent reviewer.

The Australian Capital Territory has amended legislation to ensure that the reviewer is engaged by the Speaker at the request of the Public Accounts Committee and reports to the Speaker. Terms of reference are decided by the Committee after consultation with the Minister.

Appointment and Immunity

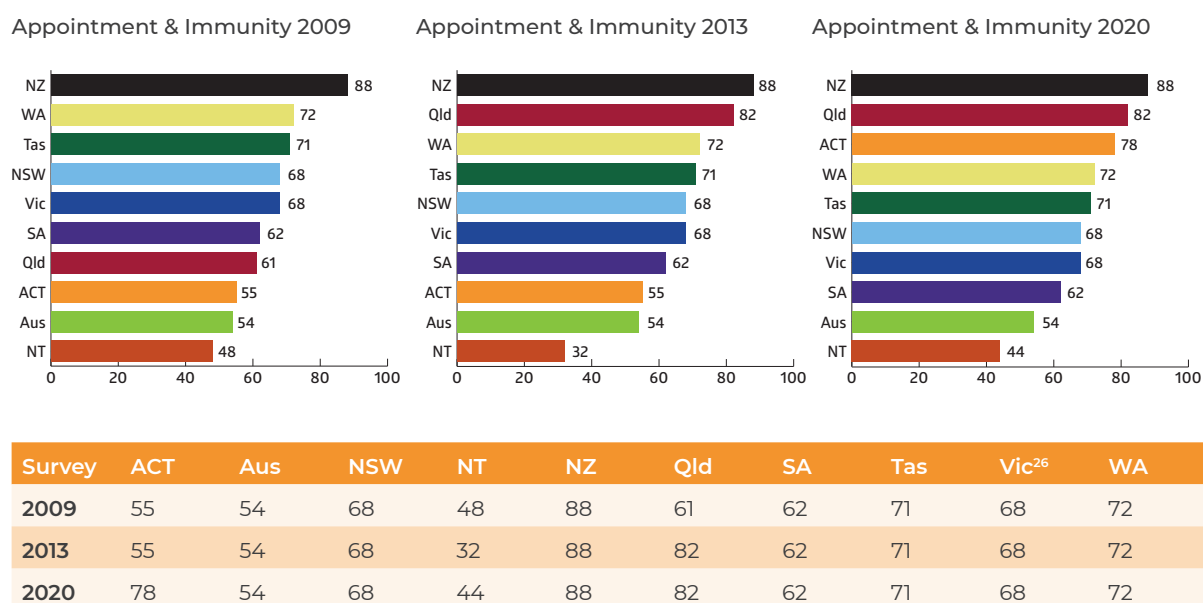
INTOSAI Principle 2. The independence of SAI heads and members (of collegial institutions), including security of tenure and legal immunity in the normal discharge of their duties.

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 Australian Capital Territory has moved from seventh to third position as a result of extensive amendments to legislation that remove the opportunity for Executive influence.
- In the Northern Territory the appointment may now be made only after receiving a recommendation of the Legislative Assembly.
- The scores for other jurisdictions remain unchanged.

Figure 6 Overall scores for 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;

²⁶ The scores recorded for Victoria in the 2009 and 2013 surveys have been amended to correct an error in the scores assigned for how an Auditor General suspended from office is restored to office. The provision in the Victorian *Constitution Act 1975* was incorrectly recorded as legislation mandates instead of Constitution mandates.

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; and
14. Whether the Auditor General is provided with some form of legal immunity in the normal discharge of the role.

Figure 7 Assessment of factors impacting on Appointment and Immunity

Factor Scores for Appointment & 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 appointees 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 and/or a Committee of Parliament as well as the Speaker and President; or
- 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 enhances the transparency of the appointment process.

There have been significant changes in the legislative frameworks governing appointment in two jurisdictions since the 2013 survey.

- The Australian Capital Territory and the Northern Territory have joined New Zealand and Victoria as the only jurisdictions that ensure that the appointment is made on a recommendation of the legislature or a Parliamentary Committee.
- The Commonwealth and New South Wales continue to enable a Parliamentary veto of an appointment proposed by Executive.
- Queensland, Tasmania and Western Australia continue to mandate Parliamentary consultation before a decision is made by Executive.
- South Australia is now the only jurisdictions where the appointment is 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.

The extent to which the jurisdictions examined use external supervision of the appointment varies. 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.
- The Australian Capital Territory now mandates that the appointment must be in accordance with an open and accountable selection process.

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 is some variation in the legislative frameworks governing acting appointments and/or the role of a statutory deputy:

- New Zealand appoints the Deputy Auditor General as an Officer of the Parliament who will Act in the absence of the Auditor General.
- In Queensland, South Australia, Tasmania, Victoria and Western Australia a Deputy Auditor General is recognised in legislation and appointed by the Auditor General. Although the Statutory Deputy would normally act in the absence of the Auditor General, in Victoria and Western Australia the Executive may appoint an Acting Auditor General after consulting with the Parliamentary Committee.
- In the Australian Capital Territory, an Acting Auditor General is appointed by the Speaker although the Auditor General may, in consultation with the Speaker, appoint an Acting Auditor General for periods of approved leave.
- In the Commonwealth, New South Wales and the Northern Territory, an Acting Auditor General may be appointed by the Executive.

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 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.
- The Commonwealth, Tasmania and Western Australia mandate a ten-year fixed term of appointment.
- New South Wales mandates an eight-year fixed term of appointment.
- The Australian Capital Territory, and Queensland mandate a seven-year fixed term.
- Victoria has mandated the fixed term of seven years in its Constitution.
- 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, 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 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.
- Several 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, several 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 Victoria such a provision is mandated in the Constitution Act 1975.

- 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. The Northern Territory has recently amended its legislation to align with this provision.
- Tasmania is 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 be restored.

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

- 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. The Northern Territory has amended its legislation to remove the option of the resignation being directed to the Minister.
- Only New Zealand and the Australian Capital Territory ensure that the Auditor General's resignation is directed to the Speaker. Queensland requires the resignation is directed to both the Governor and the Speaker or Clerk.

Remuneration Protection and Appropriation

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 now determined by the Remuneration Tribunal.
- The Northern Territory has amended its legislation so that the Auditor General's conditions of office cannot provide any conditions (for example as to remuneration) that are contingent upon the Auditor-General's performance in office and cannot be varied during the Auditor-General's term in office.
- The legislation is silent in the Commonwealth.

Protecting remuneration from being reduced still leaves open the possibility that, where the remuneration is determined by, or is subject to the influence of, the Executive the Executive could freeze remuneration, which could adversely affect an incumbent, especially during periods of high inflation.

Moreover, as mentioned previously, this form of remuneration protection also leaves open the possibility that where the remuneration is determined by, or is subject to the influence of, the Executive the Executive, the remuneration offered to an incoming Auditor General could be reduced relative to other positions thereby lowering the overall status of the office.

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 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 the jurisdictions examined.



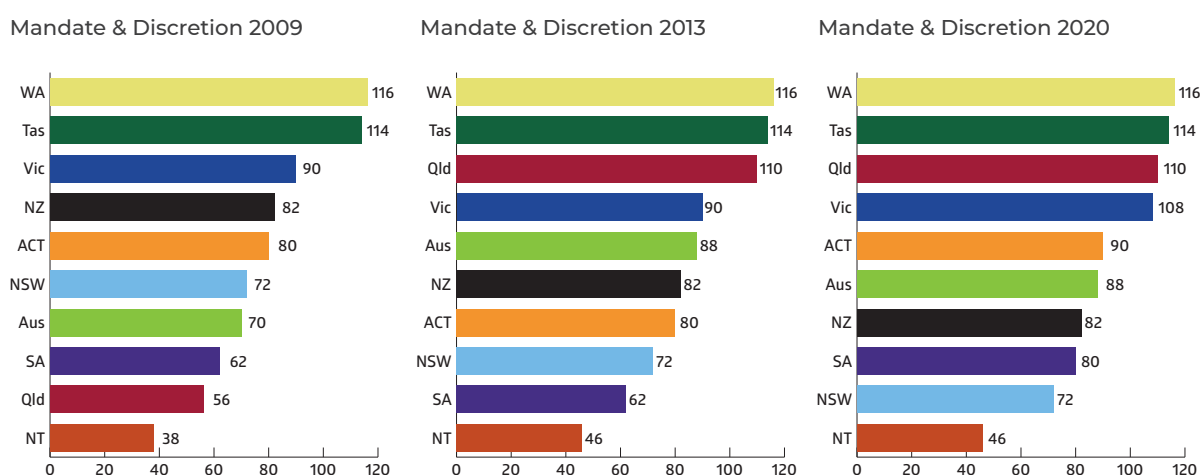
Mandate and Discretion

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

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.
- Since the 2013 survey, the mandates of Victoria the Australian Capital Territory have significantly expanded.
- South Australia has also been given a wider mandate.
- The New South Wales mandate now includes local government.
- Although the Northern Territory expanded the mandate between the 2009 and 2013 surveys there has been no more recent change and it remains the most constrained of all the jurisdictions surveyed.

Figure 8 Overall scores for Mandate and Discretion



Survey	ACT	Aus	NSW ²⁷	NT	NZ	Qld	SA	Tas	Vic	WA
2009	80	70	72	38	82	56	62	114	90	116
2013	80	88	72	46	82	110	62	114	90	116
2020	90	88	72	46	82	110	80	114	108	116

²⁷ The scores recorded for the New South Wales in the 2009 and 2013 surveys have been amended to correct an error in the scores assigned for Deemed Entities which were overlooked in those surveys.

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:

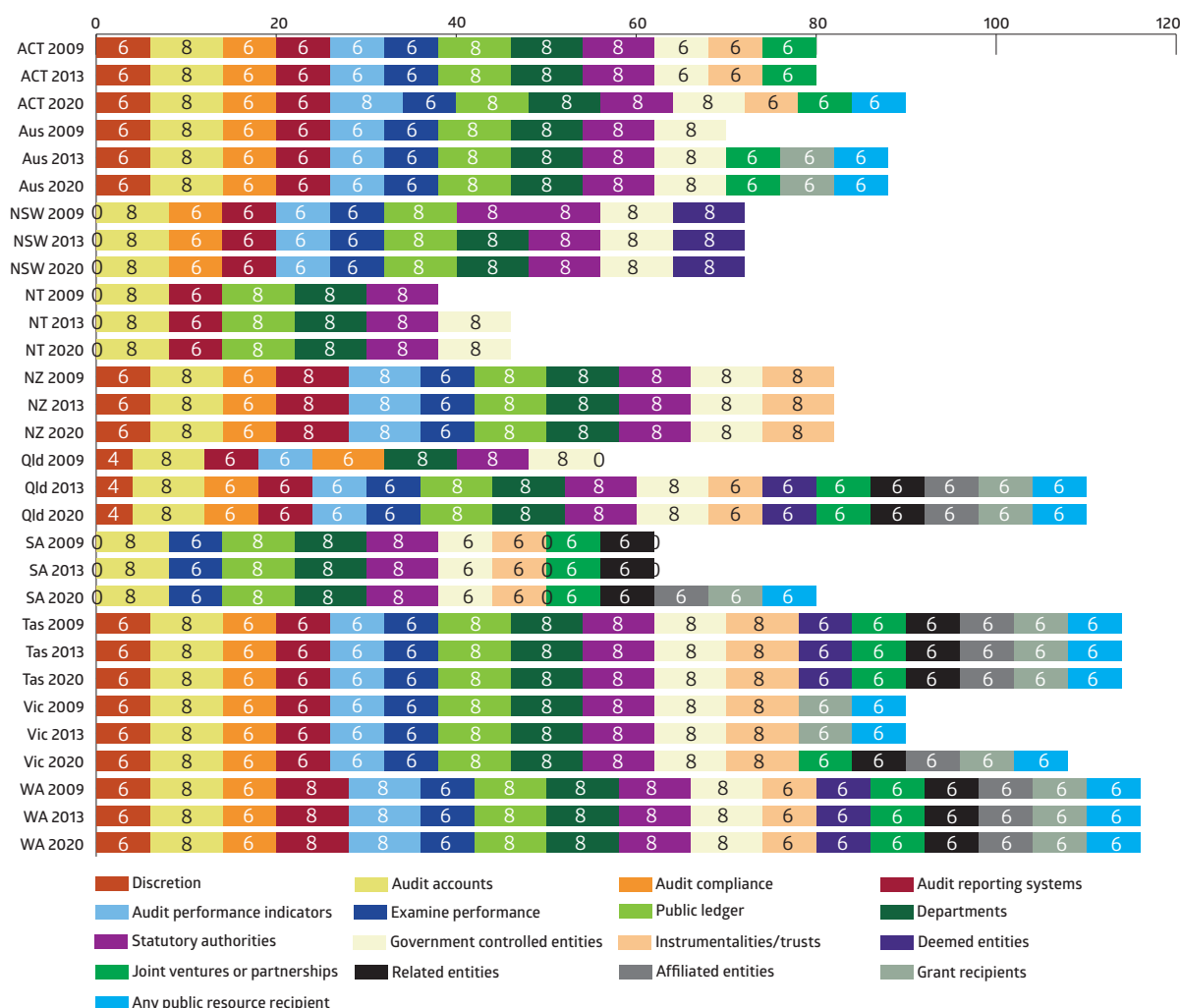
6. **Public ledger/whole of government finances** (audit of whole of government public ledger and/or budgets);
7. **Government departments** (audit of the use of public money, resources or assets by government departments);
8. **Statutory authorities** (audit of the use of public money, resources or 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**.

Figure 9 Assessment of factors impacting on Mandate and Discretion

Factor Scores for Mandate & Discretion



Analysis and Discussion

Functional Mandate

The independence of an 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 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 and public sector 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 mandate 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.
- 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 amended its legislation prior to the 2013 survey to enable full performance auditing of most types of entities but now permits the Auditor General to undertake a management system 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's 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.

By the time of the 2013 survey:

- The Commonwealth had 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.

Since the 2013 survey:

- The Australian Capital Territory Financial Management Act 1996 now requires each directorate (except the Office of the Legislative Assembly or Officers of the Assembly) to produce a Statement of Performance and the Auditor-General must issue a report on the Statement which must be included in the directorate's Annual Report.
- The Commonwealth has amended provisions for Annual Performance Statement Audits, at request of the Minister OR as part of a performance audit.

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.

By the time of the 2013 survey:

- 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.

Since the 2013 survey:

- South Australia's performance audit mandate has been expanded to include effectiveness as well as economy and efficiency, and the Auditor General may decide which bodies will be audited. However, the audit must be undertaken if requested by the Treasurer.
- Commonwealth legislation has been amended to enable performance audits of any Commonwealth entity, company or subsidiary, and may be whole or part of the Commonwealth public sector [but GBE's only if requested by the Joint Committee of Public Accounts and Audit].

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 now introduced 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**.
- Both the Commonwealth and Victoria have introduced provisions to conduct assurance reviews.

Coverage Mandate

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

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.

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.

This has become increasingly important as new forms of public sector management, 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.

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.

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).

At the time of the 2009 survey, the legislation in only two Australian jurisdictions was close to the ideal expressed in INTOSAI Principle 3.

- 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 the legal nature of any recipient or beneficiary.
- 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, the 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 had 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 remained firmly under the control of the Executive. Such audits could only be undertaken if requested by the Treasurer.

Between the 2009 and 2013 surveys:

- The Commonwealth 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.

- Queensland amended its legislation to enable its Auditor General 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 had provision in its legislations that enabled 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, at that time the Victorian legislation specifically excluded 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.

Since the 2013 survey:

- South Australia's has amended its legislation to enable the Auditor General to initiate audits or examinations of effectiveness as well as economy and efficiency of publicly funded bodies, publicly funded projects, and local government indemnity schemes, even where the body, project or scheme has ceased to exist, and must do so if requested by the Treasurer or the Independent Commissioner Against Corruption.
- Victoria has substantially amended its legislation.
 - The mandate was expanded in 2016 with respect to performance audits by the definition of an **"associated entity"** which means any person or body that provides services or performs functions for, on behalf of a public body, or on behalf of the State for which a public body is responsible. This includes:
 - » a contracted service provider or sub-contractor of the public body;
 - » an agent or delegate of the public body;
 - » the holder of a concession granted by the public body;
 - » a trustee of the public body;
 - » a person or body that has entered into—
 - a partnership; or
 - an arrangement for sharing of profits; or
 - a union of interest; or
 - a co-operative arrangement; or
 - a joint venture; or
 - a reciprocal concession—
 - » with the public body;
 - » a third party contractor;
 - The mandate also enables any performance audit to be undertaken where any financial benefit or property has been given to an entity that is not a public body.
 - The mandate was further expanded in 2019 by the new definition of **"public body"** which now includes inter alia a public sector body, a corporate or unincorporated body established for a public purpose, an entity which the State or another public body has sole or joint control, a State owned enterprise, a variety of trusts, regional libraries, registered community health centres, registered aged care service providers and other prescribed entities, but specifically excludes performance audits of the Victorian Inspectorate
- Other jurisdictions continue entity-focussed audits of government departments, statutory authorities and/or other predetermined types of public sector entities.

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 way his or her functions are carried out. Importantly, the Auditor General should not be subject to direction from anyone as to whether an audit is to be conducted, how audits are conducted, or the priority any audit work is given.

Whilst all 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 can 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 an annual plan of proposed work to be submitted to the Parliamentary Committee and the Auditor General must consider the Committee's comments when finalising the plan and must indicate any changes suggested by the Committee that have not been adopted. The legislation also requires consultation on draft specifications for individual performance audits which set out the objectives, entity coverage and issues to be considered are similarly submitted to the Parliamentary Committee and to the entities to be the subject of the audit for comment before the specifications are finalised.
- 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.
- 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.

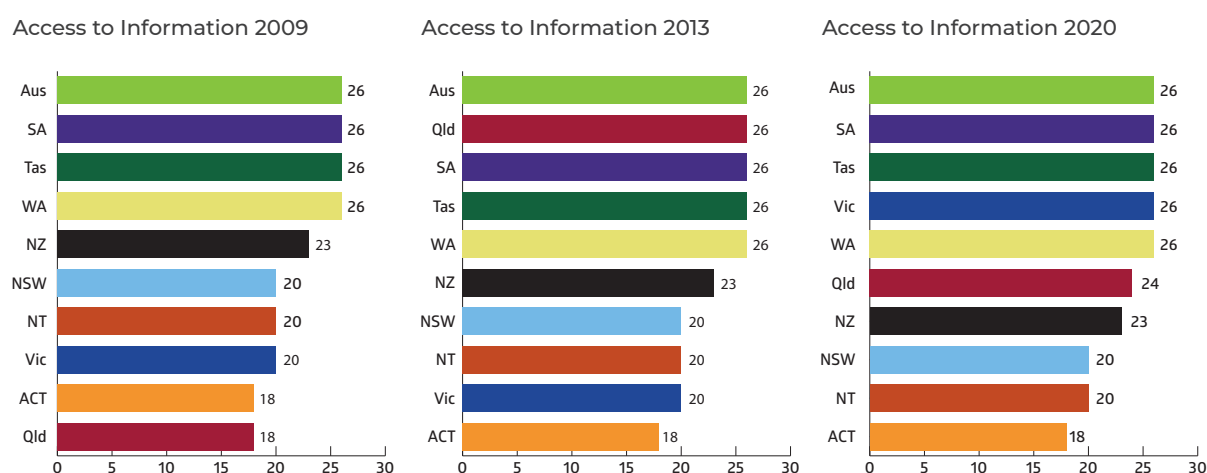
Access to Information and Confidentiality

INTOSAI Principle 4. Unrestricted access to information.

Overall Independence Scores for Access to Information and Confidentiality

- Victoria now has powers to enter premises.
- Queensland weakened confidentiality of information by enabling audit information to be shared with the Treasurer or Queensland Treasury.
- The Australian Capital Territory confidentiality remains vulnerable to Executive.

Figure 10 Overall scores for Access to Information and Confidentiality



Factors Surveyed

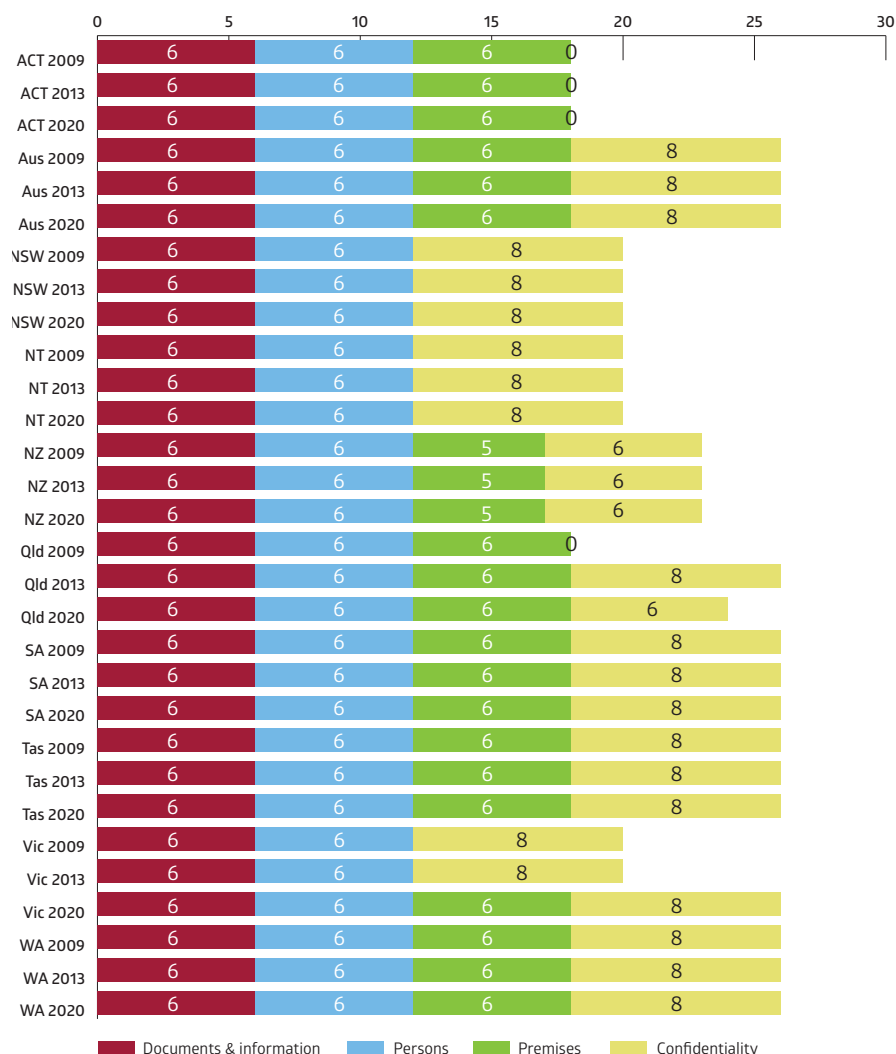
Auditors General should have adequate powers to obtain timely, unfettered, direct, and free access to all the necessary documents and information for the proper discharge of their statutory responsibilities. The information they obtain using their information gathering powers should be protected from 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; and, additionally,
4. The extent to which **confidentiality of information** obtained by the Auditor General is preserved and protected from inappropriate disclosure.

Figure 11 Assessment of factors impacting on Access to Information and Confidentiality

Factor Scores for Access to Information



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 for inspection of documents or other things relevant to an audit.

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 several jurisdictions, the Auditor General only has access to information held by government agencies or to persons employed within the public sector and to premises under the control of government entities.

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.

At the time of the 2009 survey:

- Only the most recent legislation in some jurisdictions was 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.

By the time of the 2013 survey:

- Queensland had amended legislation constraining access to premises and information when exercising new powers to audit non-public sector entities.

Since the 2013 survey

- Victoria's *Audit Act 1994* has been amended to introduce extensive new coercive powers consistent with the greatly expanded audit mandate described earlier.
 - The Auditor General or an authorised auditor may serve an **"Information Gathering Notice"** which can require persons to provide any relevant information, to produce any relevant documents in the person's possession custody or control and/or to attend and give evidence and be questioned under oath. The amended legislation contains extensive provisions relating to secrecy and confidentiality of information as well as checks, balances and safeguards when these powers are used.
 - The Auditor General or an authorised auditor may serve an **"Entry Notice"** which gives power to enter and remain on premises owned or occupied by a **public body** to inspect the premises and any document or thing if it is necessary for the purpose of a financial audit or performance audit and, for a performance audit, gives power to enter, remain on and inspect the premises of an **associated entity** that are used for providing services or functions on behalf of the State or which contain property of a public body or the State.
 - Penalties for non-compliance with these new information gathering powers have been increased and may include imprisonment for two years.
 - The Auditor General is required to report each instance where such powers are exercised to the Victorian Inspectorate, which also has the power to monitor compliance and to investigate complaints about the Auditor General or the staff of the Victorian Auditor General's Office, reporting findings to the Parliamentary Committee. No other jurisdiction has embedded such oversight provisions in its audit legislation.
 - Notwithstanding the information gathering powers in the Victorian audit legislation, access to information is not necessarily completely unfettered. The provisions of the *Audit Act 1994* can and have been explicitly overridden in other legislation.

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.

- 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 an audit.
- Several 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.
- Several jurisdictions also forbid persons who are entitled to be asked to comment on 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.
- Several 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.
- Recent amendments to audit legislation in some jurisdictions also enable certain information sharing to take place, for example in the course of a joint audit with another jurisdiction.
- Victoria's legislation enables collaboration and information sharing with the Auditor General of another jurisdiction but does not empower the Auditor General to conduct a joint audit.

- 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.
- Between the 2009 and 2013 surveys, a similar public interest provision in Queensland's former *Freedom of Information Act 1992* was removed in the new *Right to Information Act 2009*, providing better protection for the Auditor General's confidential information.
- However, in 2019, Queensland's Auditor-General Act 2009 was amended to enable sharing audit information with the Treasurer or Queensland Treasury. The Auditor General may now disclose any information about departments or other prescribed entities (including 'personal information' and otherwise 'protected information') obtained during an audit to the Treasurer or Treasury who may use the information only for conducting economic and financial analysis or for budgeting purposes.
- Although the Queensland Auditor General has the discretion to decide whether to share, what to share, how to share and when and how often to share information, these amendments create an expectation that information can, and in the normal course of events will, be disclosed. The amendments could therefore provide Executive Government with a 'back door' to information that would otherwise be confidential. This has the potential to undermine trust in the audit process and has a negative impact on independence.



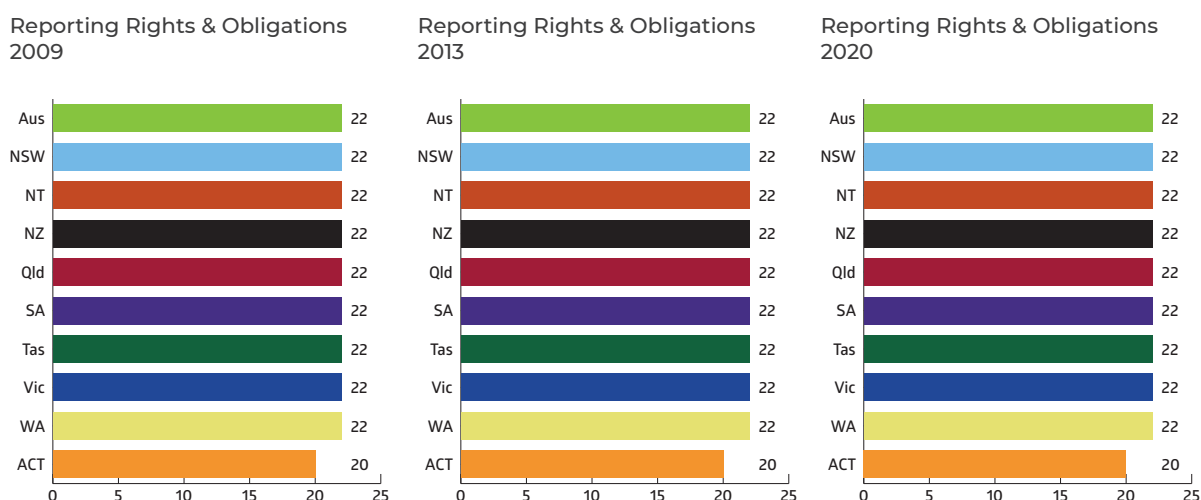
Reporting Rights and Obligations

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

Overall Independence Score for Reporting Rights and Obligations

All the jurisdictions surveyed continue to have reporting rights and obligations consistent with INTOSAI Principle 5 embedded in their legislative frameworks.

Figure 12 Overall scores for Reporting Rights and Obligations



Year	ACT	Aus	NSW	NT	NZ	Qld	SA	Tas	Vic	WA
2009	20	22	22	22	22	22	22	22	22	22
2013	20	22	22	22	22	22	22	22	22	22
2020	20	22	22	22	22	22	22	22	22	22

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; and
3. The ability or requirement to report directly to the Parliament.

Figure 13 Assessment of factors impacting on Reporting Rights and Obligations

Factor Scores for Reporting Rights & 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.
 - South Australia has amended its legislation to introduced new provisions to describe the outcomes of any examinations of publicly funded bodies and projects and local government indemnity schemes.
- 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, several 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.
- Tasmania has amended its legislation to require sensitive information to be reported to the Public Accounts Committee.



Content, Timing and Publication of Reports

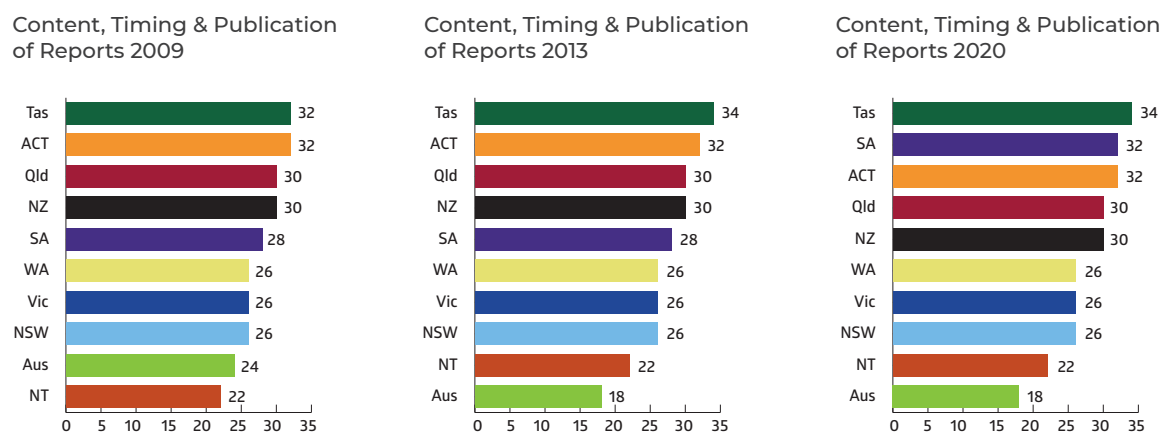
INTOSAI Principle 6. The freedom to decide the content and timing of audit reports and to publish and disseminate them

Overall Independence Score for Content, Timing and Publication of Reports

Independence scores for INTOSAI Principle 6 continue to vary considerably between jurisdictions.

- Victoria and Tasmania have amended 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.

Figure 14 Overall scores for Content, Timing and Publication of Reports



Year	ACT	Aus	NSW ²⁸	NT	NZ	Qld	SA	Tas	Vic	WA
2009	32	24	26	22	30	30	28	32	26	26
2013	32	18	26	22	30	30	28	34	26	26
2020	32	18	26	22	30	30	32	34	26	26

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.

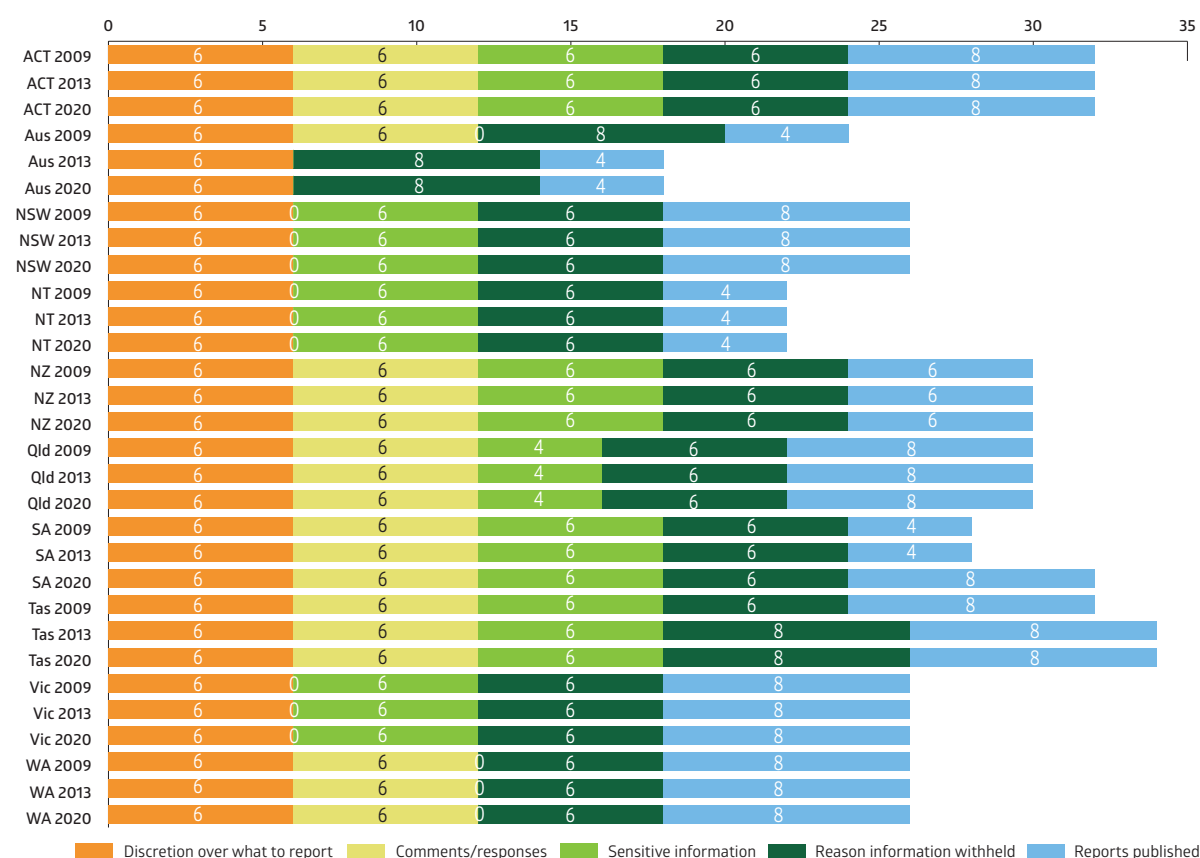
The key legislative components identified in the legislation reviewed that related to Principle 6 were:

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 responses** 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; and
5. Whether the Auditor General's **reports are published** for general distribution to the public.

²⁸ The scores recorded for New South Wales in the 2009 and 2013 surveys have been amended to correct errors in the scores assigned for two factors in those surveys. Publication of reports is legislative mandated but was incorrectly recorded as Parliament Decides. The score for Responses of audited entities was also amended to be consistent with scores assigned in other jurisdictions.

Figure 15 Assessment of factors impacting on Content, Timing and Publication of Reports

Factor Scores for 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 provide discretion to their Auditor General to decide the content and timing of their reports.

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.

- Most jurisdictions have provisions that require a proposed report or a relevant extract of a proposed report to be provided to representative of relevant entities or persons affected by the report.
- Most jurisdictions also prescribe timeframes 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.
 - New South Wales²⁹, Victoria and the Northern Territory require the Auditor General to either include comments and responses or an *agreed summary* of them.
 - The Commonwealth Auditor General *must include all written comments* received in the final report.

²⁹ In previous surveys, New South Wales this factor was scored as 'AG decides'. This was incorrectly based on a score for reports prepared under s52 where the Auditor-General *may include* any comments. The Auditor General *is to include* in a report on performance audits prepared under 38C any comments or a summary in an agreed form. The scores have been reduced to 'Executive decides' to be consistent with other jurisdictions where similar provisions apply.

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 an Auditor General's report under the control of the Executive (or any other persons consulted in the course of report preparation). 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 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 under provisions of the Financial Management Act 2006. The Western Australian audit legislation is silent about whether reasons for withholding information can be disclosed by the Auditor General although the Minister is separately required to disclose reason for issuing a notice.
- 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.
- Tasmania prohibits 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 provide the report 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.
- Victoria has amended its legislation regarding "certain commercial or protected information" which must not be disclosed unless in the Auditor General's opinion it is relevant and 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 Parliament, which may then order that the reports to be published.

- Most jurisdictions have explicit provisions for the reports to be published or made available to the public if Parliament is not sitting³⁰. South Australia has recently amended its legislation to require that the Auditor General's reports, and other annexed documents be published.
- Legislation in the Commonwealth and the Northern Territory is silent on the matter of publication.

30 The scores for New South Wales have been corrected in all surveys to take note of the provision in s63C

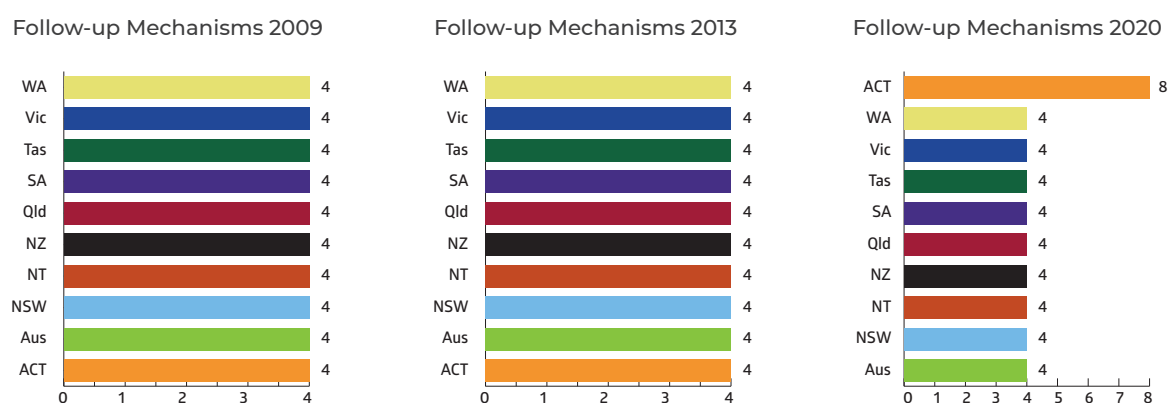
Follow-Up Mechanisms

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

Overall Independence Score for Follow-up mechanisms

- The Australian Capital Territory has amended legislation to require a response from the Minister. There have been no changes to the overall independence scores for this Principle

Figure 16 Overall Scores for Follow-up Mechanisms



Survey	ACT	Aus	NSW	NT	NZ	Qld	SA	Tas	Vic	WA
2009	4	4	4	4	4	4	4	4	4	4
2013	4	4	4	4	4	4	4	4	4	4
2020	8	4	4	4	4	4	4	4	4	4

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 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.
- 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 have made and may call the Executive to account.

- The Australian Capital Territory has amended its legislation to require the Minister to prepare a written response to an Auditor General's report within 4 months after the day the report is presented to the Assembly.
- None of the other 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 audits to determine if previously identified issues have been resolved.



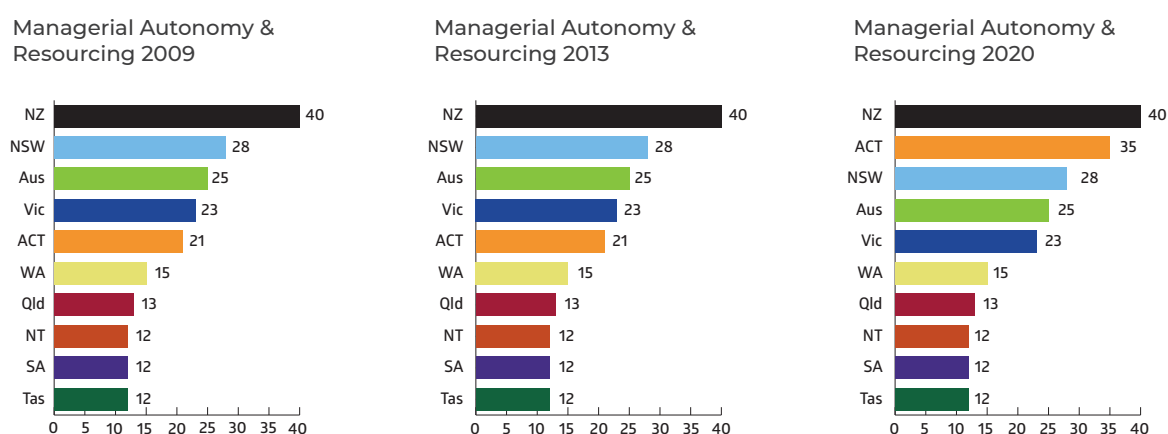
Managerial Autonomy and Resourcing

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

Overall Independence Score for Managerial Autonomy and Resourcing

- New Zealand continues to be the leader among the jurisdictions examined in terms of the managerial and autonomy and financial independence of its Auditor General.
- The Australian Capital Territory has made extensive amendment to legislation as a consequence of the creation of the Auditor General as an Officer of the Assembly.
- The overall independence scores regarding managerial autonomy and resourcing of the other jurisdictions remain unchanged.
- In a number of Australian jurisdictions the Auditor General remains vulnerable to decisions of the Executive.

Figure 17 Overall scores for Managerial Autonomy and Resourcing



Survey	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
2020	35	25	28	12	40	13	12	12	23	15

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.

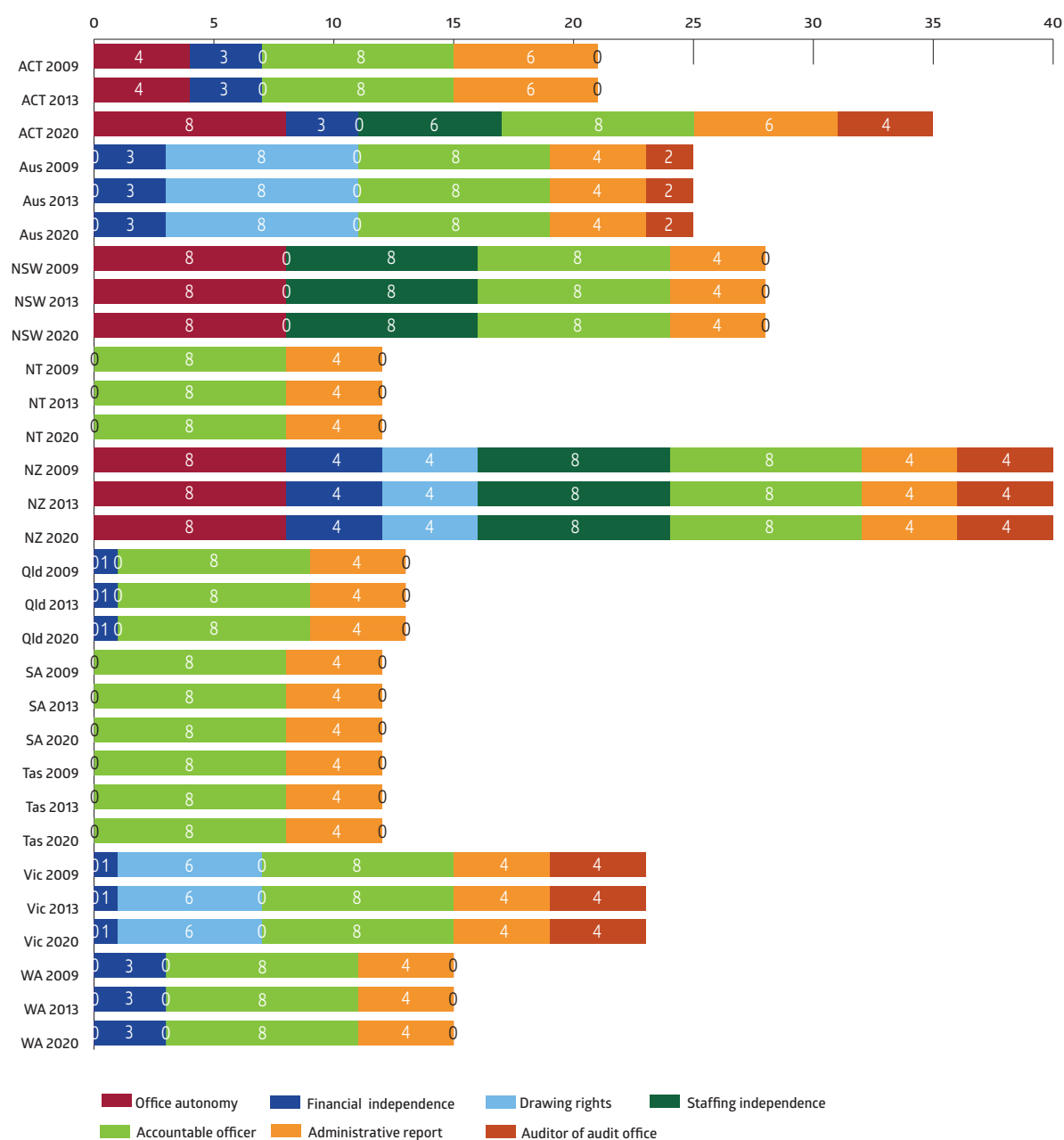
The key legislative components identified in the legislation reviewed that contribute to managerial and resourcing independence are:

1. **Staffing autonomy** or the independence from the Executive control of the public service;
2. **Financial autonomy** or the independence of the process for 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; and
7. Whether the appointment, terms of reference, and reporting line of the **auditor of the Auditor General's office** is subject to Executive control.

Figure 18 Assessment of factors impacting on Managerial Autonomy and Resourcing

Factor Scores for Managerial Autonomy & 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.

Staffing Independence

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

- 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 independent staffing models adopted by the United Kingdom and New Zealand.

Since the 2013 survey:

- In the Australian Capital Territory, as a statutory officer holder with the powers of a director-general, the Auditor General is empowered to employ staff on behalf of the Territory and although staff must be employed under the *Public Sector Management Act 1994*, the *Audit Act 1996* has been amended to specify that such staff are not subject to direction of anyone other than the Auditor General or an authorised member of the Auditor-General's staff in relation to the exercise of the Auditor General's functions.

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 or her 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 able 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.

- In the Commonwealth the 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 1997*.

- In the Australian Capital Territory, the Public Accounts Committee through the Speaker recommends financial appropriation the Officers of the Parliament and if the Appropriation Bill is less than the recommended appropriation the Treasurer must present a statement to the Assembly on the reasons. The Committee 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, and, despite anything to the contrary in the *Financial Management Act 1994* or in regulations or directions under that Act but subject to any relevant appropriation Act, the Auditor-General may incur any expenditure or obligations necessary for the performance of the functions of the Victorian Auditor-General's Office.
- 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.

- 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.
- Only the Commonwealth *Auditor General Act 1997*:
 - guarantees availability of the full amount of the parliamentary appropriations to the Audit Office³¹
 - ensure that provisions of an Appropriation Act that authorises the Finance Minister to determine that a departmental item or an administer item is to be reduced do not apply to the Audit Office
 - gives the Auditor General the authority to approve a proposal to spend money under an appropriation for the Audit Office.

Office Autonomy

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 in 1983. 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 the New Zealand's *State Sector Act* does not apply.
- New South Wales remains the only Australian jurisdiction to have removed its Audit Office

³¹ Since the 2013 survey the Commonwealth *Auditor-General Act 1997* has been amended to reflect reforms to the Commonwealth resource management framework under the *Public Governance, Performance and Accountability Act 2013* The previous reference to drawing rights has been substituted with new wording. Although the Finance Minister can issue directions that set the amounts in which and times at which an appropriation will be paid, this is described as administrative in nature and involves determining a schedule for the release of funds to allow the Auditor-General and his organisation to meet their liabilities as they fall due, with the sum of the amounts to equal the total approved by Parliament.

from the public service and created it as a **statutory body**. The Audit Office is also defined as a “**separate GSF agency**” under the *Government Sector Finance Act 2018*. Being defined as a separate GSF agency brings with it an ability to not comply with a direction from the Treasurer or a Minister if the Auditor-General considers that the requirement is not consistent with the exercise of the statutory functions of the agency.

- In the Australian Capital Territory, the Auditor General is an Officer of the Legislative Assembly responsible to the Legislative Assembly rather than a Minister.
- In other jurisdictions the responsible Minister through whom the Auditor General reports administratively is part of Executive government.

Some Australian jurisdictions have developed mechanisms to 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.

Annual (Administrative) Report

The overall situation regarding the annual administrative reporting remains unchanged.

- In each of the jurisdictions examined, the Auditor General is administratively responsible for his or her supporting office structure and is required to report annually to Parliament on the administration and operations of his or her office.
- However, in the Australian Capital Territory if the Auditor General considers that compliance with the *Annual Reports (Government Agencies) Act 2004* would prejudice the Auditor General's independence, the Auditor General is not required to comply with that Act to that extent.

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 audits 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.
- 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.

Since the 2013 survey:

- In the Australian Capital Territory, the legislation has been amended
 - the auditor of the Audit Office is appointed by the Speaker instead of the Minister
 - a statutory review of functions and performance conducted once in each Parliamentary Term

- In Victoria, the *Audit Act 1994* has been amended and restructured
 - The independent financial 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 independent performance audit of the Auditor General and the Victorian Auditor General's Office.
 - The frequency of the performance audit has been amended to four-yearly.
 - Similar controls to those applying to the Auditor General over the use of coercive powers by now apply to both the independent financial auditor and the independent performance auditor of the Victorian Auditor General's Office.

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 and 2013 surveys continue to be evident in the legislative frameworks in effect at the time of the present survey.

Although there has been further improvement, several jurisdictions continue to exhibit weaknesses in the overall statutory frameworks governing their Auditors General.

The Australian Capital Territory's overall independence score now exceeds, and Victoria has strengthened its score to approach New Zealand's overall independence score.

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.

Western Australia and Tasmania continue to have the broadest functional mandate to investigate any matter relating the use of public resources. However, since the 2009 survey, Victoria and Queensland have significantly expanded the functional mandate given to their Auditors General and the mandates of both the Commonwealth and South Australia have also been improved

Weaknesses in the functional mandate of the Auditor General in New South Wales and the Northern Territory continue to constrain the role their Auditors General can perform. The jurisdictions that remain focussed on public sector entities 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 has substantially improved access to information and premises with much stronger coercive powers. It remains the only jurisdiction in which a separate body oversees the use of these powers.

Only a few jurisdictions have responded to the financial and managerial vulnerability of their Auditors General that was recognised in the United Kingdom almost 40 years ago, by providing adequate protection from Executive influence on these important aspects of independence.





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