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Audits of Commonwealth Partners

Ian McPhee
Auditor-General for Australia

Introduction

The amendments to the *Auditor-General Act 1997* (the Act) to give the Auditor-General the authority to audit Commonwealth Partners under the provisions set out in the legislation¹ are, in my view, the most significant changes to our legislation since the office was given the performance audit mandate in 1979.

Under the legislation, Commonwealth Partners include state and territory bodies, and contractors, that receive money for a Commonwealth purpose and have agreed to use the money in achieving the Commonwealth purpose

- the audits of state and territory bodies may only be undertaken by the Auditor-General following a request from the JCPAA or the responsible Minister; the Act also allows the Auditor-General to ask the JCPAA or the responsible minister to make a request
- the audits of contractors may be undertaken at the Auditor-General's discretion.

The particular amendments to the legislation, that provide for the Commonwealth Auditor-General to audit the performance of a state or territory body in achieving the Commonwealth's purpose, (sometimes referred to as 'follow the money' provisions) follow recommendations from both the JCPAA² and the Senate Education, Employment and Workplace Relations References Committee.³

- there has been a deal of concern expressed in the federal Parliament about the delivery of some Commonwealth programs involving other jurisdictions.

So there was considerable support in the federal Parliament when Mr Oakeshott, Independent Member for Lyne and Chair of the JCPAA,

¹ *Auditor-General Act 1997*, section 18B

² JCPAA, Report 419 *Inquiry into the Auditor-General Act 1997*. December 2010. (Recommendation 11 of the Report.)

³ The Committee's report *Primary Schools for the Twenty-First Century Program*, March 2011, included a recommendation that the accountability mechanisms for oversight of state expenditure of Commonwealth funding be strengthened, and this should include 'enhancing the power of the Auditor-General to 'follow the money' to ensure value for money is achieved by the Commonwealth' (Recommendation 3 of the Report.)

introduced amendments to the Auditor-General Act for the Commonwealth Auditor-General to be able to follow-the-money and audit the performance of state and territory bodies in their use of Commonwealth funds, when requested by the responsible Minister or the JCPAA.

- in the debate on the Auditor-General Amendment Bill, no members in the House or Senate spoke against this aspect of the Bill; not all speakers were in favour of the proposal that the Auditor-General's mandate be extended to the audit of contractors.

Importantly, and quite appropriately, the legislation is focused on situations where Commonwealth funding is provided to achieve a Commonwealth purpose and also makes it clear 'that the Act does not enable these powers to be exercised to the extent that it would impair the capacity of a state to exercise its constitutional powers' (section 56A).

Powers that enable Auditors-General to assess the performance of recipients of federal funding are not unique to my legislation:

- In various forms, the Office of the Auditor-General of Canada, the United States General Accounting Office, and the United Kingdom National Audit Office are able to follow-the-money to examine the performance of recipients of government funds within their respective jurisdictions or in some cases across jurisdictions.
- Closer to home, the Auditors-General in Western Australia, Tasmania, and Queensland may audit non-public sector bodies in receipt of government funds in relation to the use of those funds.

It is fair to say, however, that the scope of the abovementioned provisions is generally not as broad as those in the Commonwealth legislation, particularly with respect to undertaking audits of contractors' performance, and of course some countries do not have the same jurisdictional arrangements as Australia.

The common ground, though, is that the various legislatures have enacted provisions which allow, in certain circumstances, the Parliament (or equivalent) to be informed by their Auditor-General of whether funds appropriated by the Parliament have been used by the recipients of government funds for the purpose for which the funds were given – extending beyond the traditional public sector boundaries, and recognizing that there is

now a much heavier reliance by governments on partners, in the public and private sectors, to deliver their programs efficiently and effectively.

That said, this is but one measure to stimulate better public sector performance. A recent paper prepared following the COAG Reform Council keynote event on *Accountability for specific purpose payments*, held earlier this year, observed that:

‘The case for institutional strengthening of our system of intergovernmental relations is becoming compelling – whether it is to help develop the skills and capabilities in making the federal system work better, or the agreed gameplan for better collecting and integrating performance information, or clarifying roles and responsibilities, or greater transparency, or more coherent strategies of accountability.’⁴

These reforms to the audit arrangements relating to Commonwealth Partners are part of the journey to achieve better outcomes here.

Benefits of audits of Commonwealth Partners

The most significant benefit of these new provisions which allow audits of Commonwealth Partners is that it allows an end-to-end audit to be undertaken of the performance of programs which are funded by the Commonwealth

- in other words, an audit may consider the performance of the responsible Commonwealth entity and responsible state and territory bodies, and the way they work together to achieve the policy goals agreed to by their respective governments
- where the Commonwealth is engaging contractors to deliver major programs or platforms, an audit may consider the contractors’ performance in meeting the deliverables specified under contractual arrangements, generally as an integral part of an audit of the performance of the relevant Commonwealth entity. We will be developing our approach in this area over the next twelve months recognising that the involvement of contractors in many areas of administration, including Defence, is extensive.

⁴ Brown AJ 2012. Reflections from the COAG Reform Council Keynote Event *Accountability for Specific Purpose Payments*. p.7

One of the most significant challenges in public administration today is managing effectively across organisational borders, and an audit could assist in examining how risks and performance are managed across jurisdictions.

The other major benefit is that when multiple jurisdictions are involved in an audit, there is the ability to compare and contrast performance by state and territory bodies, and learn from the better performing jurisdictions for the benefit of all.

A further benefit of the focus on follow-the-money provisions for auditors-general is that the Australian Council of Auditors-General has agreed to work together in conducting concurrent audits whereby each of the audit offices will agree common audit objectives and complementary timelines for some audit topics. Participation in these audits is a matter for each Auditor-General having regard to their other audit priorities.

The first concurrent audit being undertaken relates to the implementation of the National Partnership Agreement on Homelessness. Currently, my office and most state and territory Auditors-General, are either planning for or undertaking concurrent audits relating to homelessness.

In this context, I should also mention that confidentiality provisions in most audit legislation in Australian jurisdictions (including at the Commonwealth level) constrain the sharing of client information between audit offices.⁵ Nevertheless, from my perspective, concurrent audits are a useful complement to my powers which allow the audit of Commonwealth Partners.

I have no doubt that the reports of these various types of audits will be of interest to not only the federal Parliament, but also to state and territory parliaments and to the wider community.

⁵ The exceptions are:

- Queensland where legislation provides that the Auditor-General is able to disclose information to the Commonwealth and other state Auditors-General where an audit is conducted jointly or in collaboration with another Auditor-General; and
- Tasmania where legislation gives the Auditor-General the authority to carry out an audit on behalf of or in collaboration with the Auditor-General of the Commonwealth or another state or territory if the Auditor-General reasonably believes the Commonwealth or that state or territory has an interest in the audit.

Extent of Commonwealth payments covered

The reach of the new provisions as far as the states and territories are concerned extends to include:

- national specific purpose payments made under the *Federal Financial Relations Act 2009* where financial assistance is payable to the states and territories on the condition that it is spent for the specified purpose
- national partnership payments made under the *Federal Financial Relations Act 2009* to support the delivery of specified outputs or projects
- grants and payments under other legislation that are made for particular purposes agreed between the Commonwealth and the recipient state or territory.

GST revenue grants and other general revenue assistance are not covered by the new provisions because this funding does not carry any responsibility, on the part of recipients, to deliver specified outcomes in accordance with agreed arrangements with the Commonwealth.

Consultative arrangements with the states and territories

I have been conscious of the need to consult with state and territory jurisdictions on our internal approach to using these new powers.

- this is new territory for all of us
- I am keen to emphasise the benefits of the approach to organisational performance and accountability, rather than having such audits viewed in negative terms

The approach my office adopts can be expected to evolve over time and will be influenced by the views of the JCPAA and other key stakeholders, including those in state and territory jurisdictions. Issues that we will work through with the states and territories include utilising the expertise of state and territory Auditors-General, and participation in state and territory Parliamentary inquiries.

We have taken a number of steps to outline our thinking on the use of the new powers and receive feedback on our intended approach. These have included:

- discussions at the Council of Australian Governments' senior officials meeting and at meetings of the Australian Council of Auditors-General
- correspondence with the heads of first ministers' departments, and state and territory Auditors-General on the amendments to the legislation in respect of Commonwealth Partners and how my office planned to approach the use of the new powers
- correspondence with the states and territories, and state and territory Auditors-General on our approach to audit planning, and seeking comments on a revised version of our Guidelines for the Conduct of Performance Audits which would apply to audits of Commonwealth Partners.

I have already received correspondence from parties in the wider community suggesting areas bearing on Commonwealth-state/territory programs that we might consider in framing our audit program. It does seem that the ability for an audit to be undertaken across jurisdictional boundaries has wider community appeal. Of course, it is important to add in this context that an audit would not extend to commenting on the merits of government policy, which is an area some correspondents also have a view on!

Frequency of audits of Commonwealth Partners

I intend to exercise these new powers judiciously. I have a finite level of resources to undertake the performance audit program of my office, and audits of Commonwealth Partners will be managed within our existing program of some 50 performance audits a year.

I also expect, subject to any views expressed by the JCPAA, that an assessment of the performance of recipients of Commonwealth funds will be undertaken as part of an audit of the performance of a Commonwealth agency, i.e. not as a stand-alone audit.

I have indicated that the first audit we will undertake with the new powers, following a request from the JCPAA, will be an audit of the administration of:

- the 2011 *Heads of Agreement for the continued management, operation and funding of the Mersey Community Hospital* as represented by the Commonwealth Department of Health and Ageing (DoHA) and the Tasmanian Department of Health and Human Services (DHHS); and
- the earlier 2008 *Heads of Agreement for the management, operation and funding of the Mersey Community Hospital* as represented by DoHA and DHHS.

The Mersey Community Hospital is managed and operated on the Commonwealth's behalf by the Tasmanian Government. Commonwealth funding under the 2011 heads of agreement is \$197.6 million over three years, while funding under the 2008 agreement was approximately \$180 million.

The JCPAA's decision follows a request from me, prompted by representations received from a member of the Federal Parliament.

As you would expect, we have corresponded with the Tasmanian Government on the proposed audit, which is expected to commence before the end of this financial year.

Conclusion

As a nation, we need to continue to develop more targeted and streamlined approaches to the delivery of government programs to drive government revenues further

- it is increasingly necessary to get better outcomes and deliver more efficient approaches to the delivery of government services
- governments in Australia are well aware of this

In this context, managing across borders is an increasingly important element in public administration today

- it introduces greater management challenges and, in the case of the Federation, it raises organisational and jurisdictional issues which need to be appropriately managed.

A performance audit that is able to consider the administration of a program involving Commonwealth Partners from end to end is one way to inform the respective legislatures on the performance of the program and, importantly, highlight any avenues for improvement that may have wider application.

I envisage my audit program will only be able to manage a very limited number of requests for audits involving state and territory organisations. In those circumstances, we will be looking to opportunities to leverage from the outcomes of those audits to inform the administration of other programs.

We will also be looking for opportunities to work with State Auditors-General on conducting concurrent audits.

Finally, I do wish to emphasise that we want to work constructively with the Commonwealth Partners in the audits we undertake – our approaches are designed to achieve balanced reports highlighting any opportunities for improvement.

Thank you.