

2017

No. 34



PARLIAMENTARY STANDING COMMITTEE OF PUBLIC ACCOUNTS

REPORT

ON

Review of the *Public Accounts Committee Act 1970*

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MEMBERS OF THE COMMITTEE

LEGISLATIVE COUNCIL

Hon Ivan Dean MLC (Chair)



Hon Ruth Forrest MLC



Hon Michael Gaffney MLC



HOUSE OF ASSEMBLY

Mr Scott Bacon MP



Ms Sarah Courtney MP (Deputy Chair)



Mrs Joan Rylah MP



CHAIR'S FOREWORD

The Inquiry into the *Public Accounts Committee Act 1970* (the Act) was initiated by resolution of the Committee to provide an opportunity to review and contemporise the underlying mechanism enabling its operation.

Within the parliamentary committee system the Public Accounts Committee is one of the oldest and its powers are significant.

In Tasmania the Act enabled the establishment of a joint committee in acceptance of "*the proposition that interests generally would be better served if both Houses would be represented on a single Committee on Public Accounts*"¹

Since the introduction of the Act the roles and responsibilities of PACs have continued to evolve, as has the PAC's relationship with the Auditor-General.

This review aims to address the changes which have come about with the passage of time.

I encourage the Government to support the findings and recommendations of this Inquiry and to initiate the recommended amendments to the Act.

The PAC will communicate with the Standing Orders Committees of the Parliament to consider other matters raised during this review.



The Honourable Ivan Dean APM MLC

Chair

20 November 2017

¹Tasmanian Parliamentary Library: Bills Register (1970) Public Accounts Committee Act 1970 Extrinsic Material, p. 2 (provided in full at Attachment 3)

1. ESTABLISHMENT AND CONDUCT OF THE INQUIRY TERMS OF REFERENCE

The Public Accounts Committee (PAC) is a Joint Standing Committee of the Tasmanian Parliament constituted under the *Public Accounts Committee Act 1970* (the Act).

The PAC is comprised of six Members of Parliament, three Members drawn from the Legislative Council and three Members from the House of Assembly.

Its functions under the Act (Section 6) are to inquire into, consider and report to Parliament on any matter:

- a) referred to the Committee by either House relating to:
 - i. the management, administration or use of public sector finances; or
 - ii. the accounts of any public authority or other organisation controlled by the State or in which the State has an interest;
- b) arising in connection with public sector finances that the Committee considers appropriate; and
- c) referred to the Committee by the Auditor-General.

On 16 March 2016, the PAC resolved of its own motion to inquire into and report upon the *Public Accounts Committee Act 1970* (the Act), with particular reference to:

1. Any challenges associated with fulfilling the Public Accounts Committee's functions under the Act;
2. Any amendments to the Act that would better reflect the contemporary role and scope of the Committee; and
3. Any other matters incidental thereto.

The PAC resolved at its first meeting in relation to this Inquiry, to invite by way of advertisement, interested persons and organisations to make a submission to the PAC in relation to the Terms of Reference.

The PAC received 5 submissions and held one public hearing in Hobart.

2. RECOMMENDATIONS

The Committee makes the following recommendations:

1. The Act be amended:
 - a. to reflect gender neutral language;
 - b. to enable the President of the Legislative Council and the Speaker of the House of Assembly, acting jointly, to appoint an Officer of one of the Houses of Parliament to be Secretary of the PAC with specified conditions of service;
 - c. to enable a PAC Member resigning to do so by writing to the President of the Legislative Council and/or the Speaker of the House of Assembly;
 - d. Section 7(2) be repealed and a witnesses rights before the PAC be determined by Standing Orders;
 - e. to reflect the relationship between the PAC and the Auditor-General (as currently covered within the provisions of the *Audit Act 2008* and through the Statement of Understanding) regarding matters such as the examination of Auditor-General reports; referral of matters to the Auditor-General for examination; appointment of the Auditor-General; removal of the Auditor-General; involvement in Audit Office annual budget development and work program planning; and the independent review of the Audit Office;
 - f. to introduce the requirement that agencies, Government Business Enterprises and State Owned Companies provide their audited financial statements to the PAC by 30 September of each year;
 - g. to provide immunity from judicial review of Committee proceedings, recommendations, reports, or documents published;
 - h. to provide PAC with powers similar to section 22 of the *Audit Act 2008*.

2. The communication powers of the PAC require contemporising and amendments reflected in the Act.
3. A formal requirement is introduced for the Government to respond to each PAC report within three months of tabling².
4. A review of Standing Orders should be undertaken to determine any instances where inconsistent Orders apply to PAC members. PAC members, whilst serving on the PAC, should be bound by the same requirements.
5. The review of Standing Orders consider the introduction of joint Standing Orders for joint committees.

² Refer to Sessional Order 28 of the Legislative Council

3. SUMMARY OF FINDINGS

Background Findings:

1. In Australia (National and State Parliaments), six jurisdictions have established their PACs through an Act of Parliament, the three remaining Australian jurisdictions and New Zealand establish their PACs through a parliamentary resolution governed by House Standing Orders
2. PACs established through a specific Act of Parliament must also comply with relevant House Standing Orders
3. An effective PAC holds entities publicly accountable for correcting deficiencies, implementing recommendations, and executing policies and programs in accordance with the legislature's intentions.
4. Research has identified the following good practices of effective PACs.
The PAC:
 - has legally enshrined powers;
 - is free from government interference;
 - has an established method to communicate with stakeholders;
 - has appropriate staff support;
 - has an established process to ensure continuity of work;
 - plans its work;
 - provides members with training;
 - has a positive relationship with the legislative auditor;
 - is committed to cross-party collaboration;
 - has constructive engagement with witnesses;
 - has members who understand their unique responsibilities;
 - holds public hearings;
 - issues regular reports;
 - follows up on the implementation of recommendations; and
 - examines its performance and impact.
5. A key feature of the relationship between the PAC and the Auditor General in Tasmania is the Statement of Understanding (the Statement) which was introduced on 29 March 2007.

6. The establishment of the Statement aimed to enhance the accountability mechanisms of the Parliament by improving communication and coordination between the two entities.
7. The Statement objectives were addressed in the following way:
 - support for the true independence of the Auditor-General;
 - the sharing of information and referral of matters which will assist both parties;
 - the undertaking that, where appropriate, the Public Accounts Committee will follow-up reports of the Auditor-General; and
 - that each party will respect the independent rights, obligations, decisions and responsibilities of the other.

Term of Reference 1: Any challenges associated with fulfilling the Public Accounts Committee's functions under the Act

8. The power of Australian PACs to access accounts, records and people is considerable, including the power to summon witnesses.
9. Section 7(2) of the *Public Accounts Committee Act 1970* provides that a summonsed witness appearing before the PAC has the same protections and privileges as a witness in an action tried in the Supreme Court.
10. The PAC's ability to hold accountable non-Government organisations and private sector service providers administering public monies ("follow the dollar" power) remains a continuing area of debate.
11. Where public monies are administered by these organisations, the focus of PAC activity is generally on the contract management and monitoring of the contracting Government entity.
12. Under Section 5 of the Act, the Chair, or in their absence, the Vice-Chair, has a deliberative vote only.
13. As the PAC is constituted by enabling legislation, the PAC's decisions are subject to the provisions of the *Judicial Review Act 2000*.

14. South Australian and Victorian equivalent enabling legislation includes a provision which provides immunity from judicial review³.
15. The option of dealing with witnesses and garnering evidence *in camera* is open to the PAC, as it is to any committee of the Parliament.
16. The Act was introduced to give effect to a resolution of both Houses dated 4 November 1968 which stated "*that the Legislative Council and the House of Assembly jointly recognise the autonomous role and independence of each House to the other, but in the matter of appointment of Committees on Public Accounts, accept the proposition that interests generally would be better served if both Houses were represented on a single Committee on Public Accounts.*"⁴
17. Section 7(11) of the Act provides that Section 2A of the *Parliamentary Privilege Act 1957* applies to any matter being examined by the PAC. This extends parliamentary privilege to the operation of joint committees.
18. Section 2A of the *Parliamentary Privilege Act 1957* provides that a joint committee of both Houses of Parliament duly authorised by both Houses has all the powers of a committee of either House. This reinforces the power to call witnesses, compel answers and require the production of documents.
19. The PAC has equivalent powers and privileges as committees of either House.
20. Additionally the Act extends the PACs power to allow for self-initiated inquiries under section 2(a).

Term of Reference 2: Any amendments to the Act that would better reflect the contemporary role and scope of the Committee

21. Currently the Governor appoints an Officer of the Parliament to be the Secretary of the PAC.
22. Currently PAC members are appointed to the Committee at the commencement of the first session of each Parliament according to the practice regulating the appointment of members to serve on select committees of the Legislative Council and House of Assembly respectively.

³ As provided in section 31 of the *Parliamentary Committees Act 1991 SA* and section 50 of the *Parliamentary Committees Act 2003 Vic*.

⁴ Tasmanian Parliamentary Library: Bills Register (1970) op. cit., p. 2

23. Currently Members resign from the PAC by writing, under their own hand, to the Governor.
24. Members, whilst serving on the PAC, are currently bound by the Standing Orders of the House of Assembly.
25. There is a lack of clarity regarding the communication powers of the PAC within the current Act.
26. The Act currently uses gender specific language.

Term of Reference 3: Any other matters incidental thereto

27. PACs and their equivalents across Australian jurisdictions have a core responsibility to review the Auditor-General's reports.
28. The *Public Accounts Committee Act 1970* makes no direct reference to the relationship between the PAC and the Auditor-General, rather, this is covered within the provisions of the *Audit Act 2008* and through the Statement of Understanding.

4. BACKGROUND

JURISDICTIONAL COMPARISON OF PUBLIC ACCOUNTS COMMITTEES IN AUSTRALIAN STATES AND TERRITORIES AND NEW ZEALAND

- 4.1 In 2005 and 2006 KPMG conducted research into the structures, responsibilities and working practices of Parliamentary PACs in Australia and New Zealand.
- 4.2 The study incorporated each Australian State and Territory as well as the Federal Government of Australia and New Zealand and produced the report *The Parliamentary Public Accounts Committee: an Australian and New Zealand Perspective*⁵ which provides insight into the range of structures, responsibilities and working practices adopted by PACs across Australia and New Zealand.

Establishment and Authority

- 4.3 The PACs of the jurisdictions covered in the study were established under different parliamentary structures and enabling authorities.
- 4.4 Table 1 summarises the legislative authority and referring House for each of the PACs covered by the study. The Table is reproduced from data included in the study.⁶
- 4.5 As detailed in Table 1, six jurisdictions have established their PACs through an Act of Parliament, the three remaining Australian jurisdictions and New Zealand establish their PACs through a parliamentary resolution governed by House Standing Orders.
- 4.6 The PACs established through a specific Act of Parliament must also comply with relevant House Standing Orders.⁷
- 4.7 In a number of jurisdictions the Audit Acts (that is, the primary legislation empowering the jurisdiction's Auditor-General) also contain sections giving the PAC specific powers or responsibilities in relation to the operations of the Auditor-General.⁸
- 4.8 Of the jurisdictions included in the study, six Parliaments are bicameral and four are unicameral. Of the bicameral Parliaments, three PACs are joint committees

⁵ KPMG (November 2006) *The Parliamentary Public Accounts Committee: an Australian and New Zealand Perspective*

⁶ *Ibid.*, p. 11

⁷ *Ibid.*, p. 10

⁸ *Ibid.*

and report to both Houses of Parliament. The remaining three PACs draw their membership from and report to the Lower House only.

4.9 Joint committees enable members of both Houses to work together on the same matter. However, an argument that has been made for limiting PAC membership to the Lower House is on the grounds that the Lower House is responsible for introducing money bills and, therefore, should be the House responsible for consideration of how the public account is used.⁹

Table 1: PAC authority and representation by jurisdiction

Jurisdiction	Jurisdiction - PAC Name	Referring House	Committee Type	Enabling Authority
ACT	Standing Committee on Public Accounts	Legislative Assembly (Unicameral)	Standing	Standing Orders of the Legislative Assembly (PAC also has certain powers under the <i>ACT Auditor-General Act 1996</i>)
NSW	Public Accounts Committee	Legislative Assembly	Statutory	<i>Public Finance and Audit Act 1983</i>
NT	Public Accounts Committee	Legislative Assembly (Unicameral)	Standing	Standing Orders of the Legislative Assembly (PAC also has certain powers under the <i>NT Audit Act</i>)
QLD	Portfolio committees have responsibility for examining public accounts within their area of responsibility	Legislative Assembly (Unicameral)	Statutory	<i>Parliament of Queensland Act 2001</i> (Also has certain powers under the <i>QLD Financial Administration and Audit Act 1977</i>)
	Economic and Finance Committee	Legislative Assembly	Statutory	<i>Parliamentary Committees Act 1991</i> . (The Economic and Finance Committee also has a number of statutory functions under other legislation).
SA	Statutory Authorities Review Committee	Legislative Council	Statutory	<i>Parliamentary Committees Act 1991</i> . As the Economic and Finance Committee is prohibited from inquiring into Statutory Authorities the Statutory Authorities Review Committee undertakes this function.
TAS	Public Accounts Committee	Joint	Statutory	<i>Public Accounts Committee Act 1970</i> .
VIC	Public Accounts and Estimates Committee	Joint	Statutory	<i>Parliamentary Committees Act 2003</i> . (The Public Accounts and Estimates Committee also has certain powers under the <i>Victorian Audit Act 1994</i> and <i>Constitution Act 1975</i>).
	Public Accounts Committee	Legislative Assembly	Standing	Standing Orders of the Legislative Assembly.
WA	Estimates and Financial Operations Committee	Legislative Council	Standing	Legislative Council Standing Orders (schedule 1).
AUS	Joint Committee of Public Accounts and Audit	Joint	Statutory	<i>Public Accounts and Audit Committee Act 1951</i> . (The Joint Committee of Public Accounts and Audit also has certain powers under the <i>Auditor-General Act 1977</i>).
NZ	Finance and Expenditure Committee	House of Representatives (Unicameral)	Standing	Standing Orders of the House of Representatives.

⁹ Ibid.

EFFECTIVE PACS

4.10 In undertaking an assessment of the PACs legislation it is useful to consider current research into what constitutes effective PACs.

4.11 This section is based upon a study undertaken in Canada which focussed on the committee structure in the Westminster parliamentary system of government. The resultant guidance document is titled '*Accountability in Action: Good Practices for Effective Public Accounts Committees*'¹⁰

4.12 The Study provides the following summary of an effective PAC:

- *A PAC is a committee that supports the legislature in its oversight function. Broadly, the legislature's oversight function includes ensuring that the governments implement policies and programs in accordance with the wishes and intent of the legislature. They undertake this oversight in two ways: they oversee the preparation of a given policy (ex-ante oversight), or they oversee the execution and the implementation of a given policy (ex-post oversight). Depending on the jurisdiction, committees will have different responsibilities. PACs do not deal directly with policy preparation—this is the responsibility of other legislative committees.*

*An effective PAC holds entities publicly accountable for correcting deficiencies, implementing recommendations, and executing policies and programs in accordance with the legislature's intentions.*¹¹

4.13 The study identifies practices which contribute to the effectiveness of a PACs operation which are reproduced below:

- *Good practice 1: The PAC has legally enshrined powers.*

Indicators:

- *The PAC's powers are described in, for example, the constitution, an act, or the standing orders;*
- *The PAC has explicit written terms of reference and/or mandate;*
- *Audit reports are automatically referred to the PAC;*
- *There is a requirement that committee composition reflect party representation in the legislature;*

¹⁰ Canadian Audit and Accountability Foundation (2017) *Accountability in Action: Good Practices for Effective Public Accounts Committees*. www.caaf-cfar.ca

¹¹ *Ibid.*, p. 4

- *The PAC's power to convene its own meetings is enshrined in legislation;*
- *The PAC has legal authority to call meetings when the legislature is not in session;*
- *The PAC has legal authority to call meetings when the legislature is prorogued;*
- *The PAC can subpoena witnesses if they refuse to appear, and call for the production of documents;*
- *Good practice 2: The PAC is free from government interference.*

Indicators:

- *The PAC can select topics for hearings and meetings without interference from the government;*
- *The PAC has access to credible, reliable, and appropriate information from government departments and agencies; and*
- *The PAC can call the appropriate witnesses.*
- *Good practice 3: The PAC has an established method to communicate with stakeholders.*

Indicators:

- *The PAC has a communications plan that includes legislators, witnesses, the public, and other relevant stakeholders;*
- *The PAC communicates directly with the media (through briefings and/or news releases);*
- *The PAC's work is published and made available online (through meeting minutes, verbatim transcripts, reports, and recommendations); and*
- *The PAC meets with and understands the role of the legislative auditor, Comptroller General, Treasury Board, and other relevant players.*
- *Good practice 4: The PAC has appropriate staff support.*

Indicators:

- *The PAC has a committee clerk with sufficient time to perform necessary administrative and procedural duties;*
- *The PAC has a researcher or analyst to support its activities;*

- *PAC members receive impartial briefings (including suggested questions) to help them prepare for hearings;*
- *The PAC has assistance to draft and follow up on reports;*
- *The PAC has a suitable meeting place with appropriate recording facilities and adequate seating for PAC members, staff, media, and the public; and*
- *The PAC has the budget and power to hire experts (if required).*
- *Good practice 5: The PAC has an established process to ensure continuity of work.*

Indicators:

- *PAC members are appointed for the life of a legislative session;*
- *Member turnover and substitution are discouraged, whenever possible; and*
- *Continuity of work is maintained through stable resources (such as long-serving committee clerks and researchers, and/or a “legacy” report).*
- *Good practice 6: The PAC plans its work.*

Indicators:

- *A steering or sub-committee is used to assist with planning;*
- *The PAC has a clear, preferably fixed, meeting schedule, and adheres to it;*
- *Each meeting has an agenda that is prepared and published /circulated in advance;*
- *PAC members establish and adhere to clear meeting objectives;*
- *The PAC members/steering committee (or staff) meet, in camera, with the legislative auditor (or staff) prior to a hearing; and*
- *The PAC requests that the legislative auditor provide information on planned tabling dates.*
- *Good practice 7: The PAC provides members with training.*

Indicators:

- *PAC members are provided with detailed orientation and training materials and/or workshops; and*

- *The PAC has access to training from an external body, such as the Canadian Audit & Accountability Foundation, or other independent organizations.*
- *Good practice 8: The PAC has a positive relationship with the legislative auditor.*

Indicators:

- *The PAC and legislative auditor meet regularly to discuss priorities;*
- *PAC meetings and hearings on the legislative auditor's reports are held as soon as possible after their release;*
- *The legislative auditor is invited to be present as a witness and/or as an advisor at PAC hearings;*
- *The PAC plays a role in addressing concerns regarding the mandate, resources, access to information, and independence of the legislative auditor; and*
- *The PAC adopts, supports, endorses, amends, or rejects the auditor's recommendations.*
- *Good practice 9: The PAC is committed to cross-party collaboration.*

Indicators:

- *The PAC focuses on the administration, not the merits, of policy;*
- *Ministers do not sit as PAC members;*
- *The PAC Chair is from the official opposition;*
- *The PAC finds consensus or unanimity in its decisions; and*
- *The PAC focuses on its ability to strengthen administration for public spending.*
- *Good practice 10: The PAC has constructive engagement with witnesses.*

Indicators:

- *The PAC rarely, if ever, calls ministers as witnesses;*
- *The typical organization witness is a senior public servant (such as the deputy minister, usually referred to as the accounting officer);*
- *The PAC communicates its expectations to witnesses; and*
- *PAC members encourage government officials to be forthcoming with information when they appear at a PAC hearing.*

- *Good practice 11: The PAC has members who understand their unique responsibilities.*

Indicators:

- *All PAC members attend meetings and hearings regularly;*
- *All PAC members are encouraged to, and do, participate in meetings and hearings;*
- *PAC members (or staff) seek to understand good practices from other jurisdictions;*
- *PAC members prepare in advance for hearings;*
- *PAC members ask questions that help them understand root causes of issues identified in audit reports;*
- *Members focus questions on matters stemming from or pertaining to the audit being studied; and*
- *The PAC Chair and Vice-Chair(s) have legislative experience and/or the ability to lead.*

- *Good practice 12: The PAC holds public hearings.*

Indicators:

- *The PAC holds hearings on the legislative auditor's reports;*
- *The PAC utilizes audit findings in its hearings, when applicable;*
- *The PAC makes hearings open to the public and the media; and*
- *The PAC makes transcripts or recordings publicly available.*

- *Good practice 13: The PAC issues regular reports.*

Indicators:

- *The PAC releases substantive reports on hearings that include:*
 - *details on audit findings and recommendations,*
 - *departmental actions to address recommendations, and*
 - *any applicable follow-up the committee has planned.*
- *Substantive reports include PAC recommendations that supplement the legislative auditor's recommendations;*
- *The PAC releases a summary report that details the committee's activities at least once per year;*

- *The PAC tables these reports in the legislature; and*
- *The PAC reports request a government response within a specific timeline, when applicable.*
- *Good practice 14: The PAC follows up on the implementation of recommendations.*

Indicators:

- *The PAC has an established follow-up procedure in place to keep members informed about what actions have or have not been taken;*
- *The PAC requests and reviews detailed action plans from departments;*
- *The PAC requests and examines status updates from departments;*
- *The PAC holds follow-up hearings to focus on the legislative auditor and/or PAC recommendations, when necessary; and*
- *The PAC and auditor work together to follow up on recommendations.*
- *Good practice 15: The PAC examines its performance and impact.*

Indicators:

- *The PAC has a means to regularly review and assess its effectiveness and impact;*
- *The PAC regularly reviews and assesses its work; and*
- *The PAC has a plan to maintain and/or improve its effectiveness.¹²*

¹² Ibid., pp. 7-11

PAC RELATIONSHIP WITH THE AUDITOR-GENERAL BY JURISDICTION

4.14 The relationship of each PAC with its Auditor-General is summarised in Table 2 below:¹³

	ACT	NSW	NT	QLD	SA	TAS	VIC	WA	AUS	NZ
Auditor-General inquiries and reporting:										
The committee has formal responsibility for the examination of Auditor-General reports	✓	✓	✓	✓	(a)	✓	✓	✓	✓	(b)
The committee has the formal power to refer matters to the Auditor-General for examination				✓	(a)	✓	✓		✓	(b)
Appointment of Auditor-General:										
The committee must be formally consulted in the appointment of the Auditor-General; or				✓		✓				(c)
The committee has the power to veto the appointment of the Auditor-General; or	✓	✓							✓	
The committee undertakes the selection process and recommends appointment of the Auditor-General.							✓			
Removal of the Auditor-General:										
The committee must be formally consulted prior to a motion to remove the Auditor-General.				✓						(c)
Involvement in Audit Office Funding and Planning:										
The committee has formal responsibility for the consideration of Audit Office funding/budget estimates ^(d) .	✓			✓		✓	✓		✓	(c)
The committee must formally be consulted in determination of Audit Office priorities/annual planning.				✓		✓	✓		✓	✓
Independent review of Audit Office:										
The committee is responsible, or must be formally consulted, in the appointment and removal of the independent auditor of the Audit Office.							✓		✓	
The committee is formally involved in the strategic review of Audit Office performance.		✓	✓	✓		✓	✓		✓	
<p>(a) In South Australia the terms of reference for the PAC does not formally require the review of Auditor-General reports. The Committee does however maintain a working relationship with the Auditor-General.</p> <p>(b) While the examination of Auditor-General reports is within the New Zealand Finance and Expenditure Committee's jurisdiction, the Finance and Expenditure Committee has examined only a small number of Auditor-General reports. It would also be rare that the committee would refer a matter to the Auditor-General for investigation.</p> <p>(c) The appointment, removal and appropriation of the New Zealand Auditor-General is the responsibility of a separate select committee, the Officers of Parliament Committee. This committee was established following a recommendation of the Finance and Expenditure Committee in 1989.</p> <p>(d) In some jurisdictions identified, the PAC must be formally consulted in the development of the Audit Office budget, however, the formal consideration of the Audit Office estimates is the responsibility of a separately appointed estimates committee.</p>										

¹³ KPMG, Op cit, p.17 (with some amendments due to developments as a consequence of the *Audit Act 2008* and the Statement of Understanding in Tasmania)

STATEMENT OF UNDERSTANDING BETWEEN THE COMMITTEE AND THE AUDITOR-GENERAL

- 4.15 A key feature of the relationship between the PAC and the Auditor General in Tasmania is the Statement of Understanding (the Statement) which was introduced on 29 March 2007.
- 4.16 The Statement was developed as discussion at the time about the relationship between the PAC and the Auditor-General called for the formalisation of what was an informal process.
- 4.17 The establishment of the Statement aimed to enhance the accountability mechanisms of the Parliament by improving communication and coordination between the two entities.
- 4.18 It was acknowledged that both parties had, and continue to have, common aims and objectives with the desire that public money is spent lawfully, effectively and efficiently. The Statement aimed to deliver the formal recognition of the supportive relationship of the PAC and the Auditor-General.
- 4.19 The Statement was designed to embody the basic tenet that it is essential and critical that both parties remain independent but support each other in a constructive manner.
- 4.20 The Statement objectives were addressed in the following way:
- support for the true independence of the Auditor-General;
 - the sharing of information and referral of matters which will assist both parties;
 - the undertaking that, where appropriate, the Public Accounts Committee will follow-up reports of the Auditor-General; and
 - that each party will respect the independent rights, obligations, decisions and responsibilities of the other.¹⁴
- 4.21 Since its introduction, the Statement has been reviewed and revised twice.
- 4.22 On 28 March 2012, the Statement was amended as a result of the commencement of the *Audit Act 2008* (March 2009) and the decision of the PAC in 2011 to take a more proactive role in following up reports issued by the Auditor-General.

¹⁴ Public Accounts Committee (2007) *Report on Statement of Understanding between the Auditor-General and the Tasmanian Standing Committee of Public Accounts*.

4.23 On 13 October 2015 the Statement was amended as a result of:

- A recommendation that the Auditor-General involve the PAC in the process of setting the budget, including forward estimates, of the Office of the Auditor-General; and
- Introduction of a requirement for the Auditor-General to provide an annual declaration of interests to the PAC and for the PAC to inspect the Auditor-General's gifts and benefits forms and register on a quarterly basis.

Findings:

1. In Australia (National and State Parliaments) six jurisdictions have established their PACs through an Act of Parliament; the three remaining Australian jurisdictions and New Zealand establish their PACs through a parliamentary resolution governed by House Standing Orders.
2. PACs established through a specific Act of Parliament must also comply with relevant House Standing Orders.
3. An effective PAC holds entities publicly accountable for correcting deficiencies, implementing recommendations, and executing policies and programs in accordance with the legislature's intentions.
4. Research has identified the following good practices of effective PACs.
The PAC:
 - has legally enshrined powers;
 - is free from government interference;
 - has an established method to communicate with stakeholders;
 - has appropriate staff support;
 - has an established process to ensure continuity of work;
 - plans its work;
 - provides members with training;
 - has a positive relationship with the legislative auditor;
 - is committed to cross-party collaboration;
 - has constructive engagement with witnesses;
 - has members who understand their unique responsibilities;
 - holds public hearings;
 - issues regular reports;
 - follows up on the implementation of recommendations; and
 - examines its performance and impact.
5. A key feature of the relationship between the PAC and the Auditor General in Tasmania is the Statement of Understanding (the Statement) which was introduced on 29 March 2007.

6. The establishment of the Statement aimed to enhance the accountability mechanisms of the Parliament by improving communication and coordination between the two entities.

7. The Statement objectives were addressed in the following way:
 - support for the true independence of the Auditor-General;
 - the sharing of information and referral of matters which will assist both parties;
 - the undertaking that, where appropriate, the Public Accounts Committee will follow-up reports of the Auditor-General; and
 - that each party will respect the independent rights, obligations, decisions and responsibilities of the other.

5. EVIDENCE

TERM OF REFERENCE 1: Any challenges associated with fulfilling the Public Accounts Committee's functions under the Act

5.1 The Auditor-General provided the following commentary regarding constraints to the PAC under the Act in his submission:

- *The Committee's ability to undertake inquiries is limited by two factors, the availability of its members (who are also serving Members of Parliament) and the level of staffing resources available to assist the Committee. On the second matter, the average level of staffing resources available to each PAC across Australia is relatively low, and in respect of the Committee, is ultimately a matter for the Committee and the Parliament to consider.*

The power of Australian PACs to access accounts, records and people is considerable, including the power to summon witnesses. However, the PAC's ability to hold accountable non-Government organisations and private sector service providers administering public monies remains a continuing area of debate. Where public monies are administered by these organisations, the focus of PAC activity is generally on the contract management and monitoring of the contracting Government entity. Consideration could be given to whether the Committee should be given "follow the dollar" powers similar to those provided [by] the Audit Act¹⁵.

Under Section 5 of the Act the Chair, or in their absence, the Vice-Chair, has a deliberative vote only, and when the votes on a question are equal the question passes in the negative. This is in contrast to the majority of Australian jurisdictions where the Chair also has the casting vote.

Consideration could be given as to whether the Chair, or in their absence, the Vice-Chair, is given a casting vote.¹⁶

5.2 The Department of Treasury and Finance provided the following commentary regarding constraints to the PAC under the Act in its submission:

- *I am not aware of any specific issues that are likely to significantly affect the Committee's ability to fulfil its functions under the Act. In addition, the current Act appears to be sufficiently robust and broad in its scope. In particular, section 6 of the Act provides the Public Accounts Committee with significant powers.*

¹⁵ Tasmanian Audit Office (2016) Submission to the Review of the Public Accounts Committee Act 1970 Inquiry, p. 5

¹⁶ Ibid, p. 6

However, I think consideration could be given to the scope of the Committee's powers and to the role of the Committee and, in particular, whether or not there is a legitimate argument in favour of increasing the capacity of the Committee to communicate more widely and more directly with other entities.

In this regard, I note that the Act authorises the Committee to disclose or publish information to the world at large (consistent with the default requirement for hearing evidence in public) and yet, under the Act, the Committee may only report to the Parliament. There is no authority under the Act for the Committee to refer matters to, to seek assistance from, or to enter into any memorandum of understanding with any other party.

The Inquiry may wish to consider whether it might be appropriate that the Committee be authorised to communicate more broadly, or to communicate with certain specified entities, such as the Auditor-General, the Ombudsman, the Police, the Integrity Commissioner, or with equivalent Parliamentary Public Account Committees in the Australian Government and in other States and Territories. I note that the Audit Act authorises the Auditor-General to liaise with, and undertake audits in conjunction with Auditors-General from other Australian jurisdictions. I also note that, in Queensland, the equivalent Parliamentary Committee may refer certain matters to that State's Auditor-General.¹⁷

5.3 The Clerk of the House, in his follow-up submission to the Inquiry, presents his concerns that:

- *...as with any other Act, the 'door is open' to the initiation of legal proceedings in respect of the interpretation and application of the provisions of the PAC Act. The Committee will be aware that the Judicial Review Act 2000 [sections 3 and 10] applies to the PAC Act and accordingly, any decision; or conduct (including conduct engaged in for the purpose of making a decision); or a failure to make a decision or to perform a duty properly according to the Act may be subject, upon application, to judicial review...*

Resort to legal processes is available and any decision is entirely removed from the Parliament and placed into the jurisdiction of the Courts. For example, it would be open for a party to seek a Declaratory Order from the

¹⁷ Department of Treasury and Finance (2016) Submission to the Review of the Public Accounts Committee Act 1970 Inquiry, pp. 1-2

Supreme Court pursuant to the Judicial Review Act, that an inquiry initiated by the Committee is ultra vires the PAC Act, or that a witness was not properly advised by the Committee of their privileges under the Evidence Act. In any such event, despite the probable failure of any such applications, were legal action to be initiated, it would be necessary for the Parliament to engage counsel to assert its privileges in those proceedings.

...Of most concern to me is section 7(2) of the Act. The Committee will be aware of a legal opinion that a witness appearing before the Committee is not materially different from that of any other witness appearing before any other Parliamentary committee and that given this prescription it is a matter for the Committee "to do its best" to decide the veracity of a claim of privilege made by a witness.

Notwithstanding that opinion, I reiterate my concern that this provision prescribes the expectation that the Committee is both aware of, and is able, properly to apply the rules of evidence prescribed in the Evidence Act and consequently would not seek to adduce testimony contrary to such rules. Moreover, the Committee is expected to be proactive in advising witnesses of their rights, protections and immunities afforded to them under the Evidence Act...

At the risk of stating the obvious, the proceedings of Parliamentary committees are not and in my view, should not, be conducted in the same manner a legal proceedings are conducted. The body of practice which attends the proceedings of committees together with the advice which is provided to them from Parliamentary officials, is informed by many years' experience of Parliamentary processes and proceedings, but not usually, legal expertise. Given a want of technical legal experience of members of the Committee or its Secretariat, I remain very concerned that the provision in respect of the privileges afforded to witnesses by section 7(2) in my view at least, places an unrealistic expectation of compliance by the Committee, necessitating the procurement of legal advice and more to the point, potential exposure to legal challenge.

Second, this provision provides, in certain circumstances, a witness with the capacity to refuse to answer a question, a privilege not afforded to witnesses to other Parliamentary Committees, except the Joint Standing Committee on Integrity. Putting to one side the argument that this Committee should have

an ability to compel an answer from a witness, I would submit to you the equity of treatment of witnesses and uniformity of practice across all parliamentary Committees should be a fundamental expectation of the committee process.¹⁸

5.4 The PAC sought advice from Leigh Sealy S.C regarding a number of matters which directly relate to this matter. The advice received is included at Attachment 2.

5.5 The following extract discusses section 7(2) of the Act:

7. *Rather curiously, s 7(2) of the Act provides:*

“(2) A witness who is summoned to appear, or who appears, before the Committee has the same protection and privileges as a witness in an action tried in the Supreme Court.”

8. *I say “curiously” because it would appear that, at least on the face of things, a witness appearing before the Committee may enjoy more protection and privileges than a witness who appears before a committee of either House or a joint Committee of both Houses.*

9. *On the other hand, the differences may be more apparent than real. Sections 1 to 3 of the Parliamentary Privilege[s] Act 1858 set out the obligations of a witness appearing before either of the Houses or a committee. Such a witness is not expressly given the same protection and privileges as a witness in an action tried in the Supreme Court but the obligation to answer questions is expressly limited to questions that are “lawful and relevant”. It could be argued that a question that required a witness to give an answer that incriminated the witness is not a “lawful” question although it may be doubted whether an admission made during the course of parliamentary proceedings would be admissible in legal proceedings in any case because of s 9 of the Bill of Rights 1688. (It is now generally accepted that the effect of s 9 of the Bill of Rights is to prevent, except for very limited purposes, the giving in evidence in legal proceedings of things said or done in the course of parliamentary proceedings: see *Prebble v TVNZ* [1995] 1 AC 321)*

¹⁸ Clerk of the House (2017) Submission to the Review of the Public Accounts Committee Act 1970 Inquiry, pp. 1-2

10. *All of this leads me to conclude that the provisions of the Act are intended to be directory and that the protection afforded to witnesses appearing before the Committee is, so far as possible, to mirror the protection given to a witness in proceedings in the Supreme Court. This is perhaps best understood as an instruction to the Committee to deal with witnesses fairly and as nearly as may be as though the witness was giving evidence in the Supreme Court. So, if, for example, a witness claims the privilege against self-incrimination, the Committee will need to do its best to determine whether that is a valid claim and if it is whether and under what circumstances it will nevertheless require the witness to answer. I suppose it would be a rare case indeed in which a Minister of the Crown refused to answer a question on the ground of self-incrimination!*
11. *With one notable exception, other grounds of privilege upon which a witness in the Supreme Court might rely in order to refuse to answer a question are unlikely to arise before the Committee. So-called "settlement" and "confidence" privileges are unlikely to arise and can, in any case, probably be dealt with by taking evidence in camera.*
12. *However, it is possible, if not entirely likely, that a witness representing the executive government may seek to refuse to answer one or more questions on the ground of "public interest immunity". That is, that it is not in the public interest that the answer to the question be made public. Again such an objection (if it can exist at all) could be dealt with by taking the evidence in camera but historically the executive has asserted that "public interest immunity" excuses the executive from disclosing information even to the parliament itself. Yet one of the principal functions of the Parliament is generally accepted to be to oversee the actions of the executive government!*
13. *This is a very large topic and one that is impossible to discuss adequately in the limited time available. However, the position remains as it has always has been. The executive continues to claim that it need not reveal information to the Parliament on the ground of "public interest immunity" and the Parliament continues to insist that*

in its capacity as “the Grand Inquest of the Nation” the people whom it represents are entitled to know everything!

14. *In individual cases, this difference of opinion is invariably resolved by political expediency. Either the executive judges that by withholding the information it will be made to look unnecessarily secretive or the Parliament does not press the point.*¹⁹

5.6 Key points raised in the extract include the conclusion that “*that the provisions of the Act are intended to be directory*” and “*best understood as an instruction to the Committee to deal with witnesses fairly and as nearly as may be as though the witness was giving evidence in the Supreme Court*”²⁰.

5.7 The option of dealing with witnesses and garnering evidence *in camera* to circumvent such claims is discussed, and is open to the PAC, as it is to any committee of the Parliament.

5.8 The advice provided in conclusion that:

20. *The Committee should do its best to assess any claims made by a witness that he or she is legally excused from answering a particular question or from producing a particular document or documents. If in doubt, the Committee should adjourn to consider any such claim and, if necessary obtain legal or other advice. However, if at the end of the day a witness feels aggrieved by a determination made by the Committee then, in my opinion, it is most unlikely that the witness would have any form of legal redress against the Committee, its individual members or otherwise.*²¹

5.9 In inquiring into the operations of the Act it is useful to consider the second reading speech associated with the Bill, which is provided in full at Attachment 3.

5.10 The Bill was introduced to provide for the establishment and operation of a joint Public Accounts Committee. It gave effect to the following resolution agreed to by both Houses on Tuesday, 4 November 1968:

That the Legislative Council and the House of Assembly jointly recognise the autonomous role and independence of each House to the other, but in the matter of appointment of Committees on Public Accounts, accept the

¹⁹ Leigh Sealy S.C (2016) Advice provided to the Public Accounts Committee (provided in full at Attachment 2)

²⁰ Ibid

²¹ Ibid.

*proposition that interests generally would be better served if both Houses were represented on a single Committee on Public Accounts.*²²

5.11 Prior to the Act each House had established its own Public Accounts Committee under its own Standing Orders.

5.12 With regard to Section 7 of the Act, the second reading speech provides the following detail:

Section 7 of the Bill is drafted in such a way as to enable the Parliamentary Standing Committee of Public Accounts;

1. *To summon witnesses to appear before it to give evidence and to produce documents,*

2. *To take all evidence in private except where there is considered to be good and sufficient reason to take evidence in public, and*

3. *To disclose, publish or authorize the disclosure or publication of evidence taken in private except in certain cases involving secret or confidential matters.*²³

5.13 In 1997 the Act was amended to “*establish a presumption that the committee’s hearings will be public except where there is good reason for them to be private and ... allow the committee to sit outside Tasmania without having to obtain the permission of both Houses*”²⁴

5.14 Without a reference as specific as section 7(2) to the rights of a witness in an action of the Supreme Court the PAC would rely upon Standing Orders of the House.

5.15 Section 7(11) of the Act provides that Section 2A of the *Parliamentary Privilege Act 1957* applies to any matter being examined by the PAC under this Act as it applies to the matters referred to in that Division.

5.16 Section 2A of the *Parliamentary Privilege Act 1957* provides that a joint committee of both Houses of Parliament duly authorized by both Houses has all the powers of a committee of either House duly authorized by the House and persons are required to obey its orders accordingly.

²² Tasmanian Parliamentary Library: Bills Register (1970) Op.cit, p. 2

²³ Ibid., p. 3

²⁴ Tasmanian Parliamentary Library: Bills Register (1997) Public Accounts Committee Act Amendment Act 1997 Extrinsic Material, p.1 (provided in full at Attachment 4)

- 5.17 In essence, the PAC has equivalent powers and privileges as committees of either House. Additionally the Act extends the PACs power to allow for self-initiated inquiries under section 2(a).
- 5.18 Across the ten Australian and New Zealand national and state jurisdictions there are six PACs established by legislation and four PACs established in accordance with Standing Orders. For each of the PACs established through a specific Act of Parliament there remains the requirement to also comply with relevant House Standing Orders.²⁵

²⁵ KPMG (November 2006) *op. cit.*, p. 10

Findings:

8. The power of Australian PACs to access accounts, records and people is considerable, including the power to summon witnesses.
9. Section 7(2) of the *Public Accounts Committee Act 1970* provides that a summonsed witness appearing before the PAC has the same protections and privileges as a witness in an action tried in the Supreme Court.
10. The PAC's ability to hold accountable non-Government organisations and private sector service providers administering public monies ("follow the dollar" power) remains a continuing area of debate.
11. Where public monies are administered by these organisations, the focus of PAC activity is generally on the contract management and monitoring of the contracting Government entity.
12. Under Section 5 of the Act the Chair, or in their absence, the Vice-Chair, has a deliberative vote only.
13. As the PAC is constituted by enabling legislation, the PAC's decisions are subject to the provisions of the *Judicial Review Act 2000*.
14. South Australian and Victorian equivalent enabling legislation includes a provision which provides immunity from judicial review.²⁶
15. The option of dealing with witnesses and garnering evidence *in camera* is open to the PAC, as it is to any committee of the Parliament.
16. The Act was introduced to give effect to a resolution of both Houses dated 4 November 1968 which stated "*that the Legislative Council and the House of Assembly jointly recognise the autonomous role and independence of each House to the other, but in the matter of appointment of Committees on Public Accounts, accept the proposition that interests general would be better served if both Houses were represented on a single Committee on Public Accounts.*"²⁷

²⁶ As provided in section 31 of the Parliamentary Committees Act 1991 SA and section 50 of the Parliamentary Committees Act 2003 Vic.

²⁷ Tasmanian Parliamentary Library: Bills Register (1970) op. cit, p.2

17. Section 7(11) of the Act provides that Section 2A of the *Parliamentary Privilege Act 1957* applies to any matter being examined by the PAC. This extends parliamentary privilege to the operation of joint committees.

18. Section 2A of the *Parliamentary Privilege Act 1957* provides that a joint committee of both Houses of Parliament duly authorized by both Houses has all the powers of a committee of either House. This reinforces the power to call witnesses, compel answers and require the production of documents.

19. The PAC has equivalent powers and privileges as committees of either House.

20. Additionally the Act extends the PACs power to allow for self-initiated inquiries under section 2(a).

TERM OF REFERENCE 2: Any amendments to the Act that would better reflect the contemporary role and scope of the Committee

5.20 The following suggestions were made in the submission of Mr Don Morris to the Inquiry:

- *Section 5 – Secretary of the Committee – It is anomalous that the Governor should be required to appoint an officer of the Parliament to be the secretary of the Committee. The Governor is a constituent element of the Parliament but is also at the head of the executive government of the State.*

It would be appropriate for this section to be changed to say that the President of the Legislative Council and the Speaker of the House of Assembly shall, acting jointly, appoint an officer of one of the Houses of Parliament to be secretary of the committee.

That the Governor’s involvement in this process in subsection 5(1) is anomalous is reflected by the fact that in subsection 5(2) the presiding Officers are already empowered to appoint an acting secretary.

It would also appear that the last eleven words of subsection 5(3) “...and may be paid such remuneration as the Governor may approve” is a redundant clause, since the secretary or acting Secretary must be an officer of one of the Houses of Parliament in the earlier subsections, and is remunerated in the officer’s substantive position.²⁸

- *Section 6 – Vacancies – Consistent with the practice that the two Houses of Parliament are masters of their own procedures, it is anomalous that a Committee member resigning writes to the Governor to give effect to such a resignation.²⁹*

5.21 The Auditor-General provided the following commentary regarding the Act in his submission:

- *The functions of the Committee are established in Section 6 of the Act.*

All of the Australian PACs have the mandate to review public accounts and the power to investigate any items or matters in connection with those accounts or reports. In addition, all have the capacity to initiate their own inquiries and, to a large extent, determine their own work priorities. These powers are generally unique among parliamentary committees and give the

²⁸ Mr D Morris (6 April 2016) Submission to the Review of the Public Accounts Committee Act 1970 Inquiry, p. 1

²⁹ Ibid., p. 2

PAC a significant degree of independence from the executive arm of government.³⁰

5.22 The Department of Treasury and Finance provided the following commentary regarding the Act in its submission to the Inquiry:

- *I note that the term "Agency" is given the same meaning as in the State Service Act 2000. The definition of "Agency" in the Financial Management Bill, which is currently before the Legislative Council, is different from that used in the State Service Act. In the Financial Management Bill, the definition of "Agency" now includes all entities in the General Government Sector. The Inquiry may wish to consider the most appropriate definition of this term.*

There is no provision in the current Act relating to the requirement to disclose pecuniary interest or for members to prevent potential and actual conflicts of interest. Respective Standing Orders of the two Houses do address member responsibilities in relation to pecuniary interest but they do not do this equally.

The Inquiry may wish to consider whether it is preferable that Committee members should, whilst serving on the Committee, all be bound by the same requirements. It may also be beneficial to review Standing Orders to determine if there are other instances where inconsistent Orders apply to Committee members.

As a general observation, notwithstanding the application of section 24A of the Acts Interpretation Act 1931, the Inquiry may consider modernising the gender specific language in the Act. The Inquiry may, for instance, consider replacing gender specific references to "chairman", "vicechairman" and "his" in section 4 with more contemporary references.³¹

5.23 Secretary of the Department of Treasury and Finance, Mr Tony Ferrall, in providing further advice regarding communication powers of the PAC noted:

My concern was whether the lack of any broader communication authority in the Public Accounts Committee Act could impede the Committee's authority to communicate more and widely and more directly...if the Public Accounts Committee Act were to be reviewed it, may be useful to include, in that review, the communications arrangements of the Committee.

³⁰ Tasmanian Audit Office, op. cit., p.5

³¹ Department of Treasury and Finance (2016) op. cit., pp. 1-2

I note that the equivalent enabling legislation in some other Australian jurisdictions, notably South Australia and Western Australia, and the Standing Orders in the Northern Territory, seem to variously confer a broad authority in relation to the conduct of business, proceedings or investigations. These legislative provisions may also incidentally confer an authority to communicate more broadly.³²

5.24 The Clerk of the House provided a number of options regarding the Act in his original submission to the Inquiry. The options ranged from a tidying up of the Act to contemporise the practices of the Committee through to the repeal of the Act in its entirety and the adoption by both Houses of Standing Orders for the operation of such a Committee. The submission which details these options is provided in Attachment 1.

5.25 A series of amendments to the Act were proposed in the submission of Mr Mervin Reed, and these were discussed at the hearing of 16 October 2017. The issue of introducing a requirement that Government Business Enterprises and State Owned Companies provide their audited financial statements was expanded upon:

- *Ms FORREST - ...I want to go to your comments about financial reporting and your proposal to insert clause 6(3), which is the annual financial statements to be presented to the committee. This is something I've been asking for, for a very long time. I think it has great merit, but is this the right act to have it in? Should it be in the Financial Management Act?*

Mr REED - No, this comes from an action taken by Senator John Glenn in the United States Congress many years ago. The Congress faced the same problem as you do, in that the reports provided to you are many and varied and are not the same format. Second, the formats that are used don't necessarily follow the Australian Accounting Standards.

Ms FORREST - My point is more around the timing.

Mr REED - I will get to that part. How did they solve the problem? They solved the problem by mandating to the Ways and Means Committee and the Government Oversight Committee, which is essentially what this is, that every agency of the United States government must report to that committee by a particular date every year without fail. Some of these reports the committee

³² Department of Treasury and Finance (2017) Correspondence of 7 November 2017, p.2

will never even worry about, but everybody has to report to this committee. There are no exceptions. It all comes back on the same standards, and if you wish to investigate the agency it is your right. Parliament is supreme.

...

Mr REED - This is a joint House committee that is there now. I am proposing it be solidified and expanded to increase the corporate memory, because members of the House of Assembly are elected on a four-year cycle while members of the Legislative Council are elected on a six-year cycle. Sometimes the committee, by coincidence, ends up with only one or two members who have been on the committee for a fair while. My suggestion to you is that this is the right legislation because they are empowered already. When the legislation is changed or modified a little bit and this section is put into it, it certainly gives the committee substantial extra grunt in the whole system.

Ms FORREST - When I've raised this in other forums, and particularly with treasurers past and present, there has been great resistance with them asking, 'Do you want the audited accounts or the unaudited accounts?' Clearly the Auditor-General signs off before the end of August, assuming they have done the GBE financials, so there should be no impediment. Do you agree with that?

Mr REED - Correct. There is no impediment to every agency of government, both line agencies that are off the consolidated fund or agencies that are state companies or state-owned enterprises, providing this committee with full audited accounts by 31 August. No impediment whatsoever.

Findings:

21. Currently the Governor appoints an officer of the Parliament to be the Secretary of the PAC.
22. Currently PAC Members are appointed to the Committee at the commencement of the first session of each Parliament according to the practice regulating the appointment of members to serve on select committees of the Legislative Council and House of Assembly respectively.
23. Currently Members resign from the PAC by writing, under their own hand, to the Governor.
24. Members, whilst serving on the PAC, are currently bound by the Standing Orders of the House of Assembly.
25. There is a lack of clarity regarding the communication powers of the PAC within the current Act.
26. The Act currently uses gender specific language.

TERM OF REFERENCE 3: Any other matters incidental thereto

5.26 PACs generally have the review of Auditor-General reports as a core responsibility. Across the Australian and New Zealand jurisdictions there is significant diversity in the extent to which the PAC is involved in the operations of the Auditor-General, ranging from little to no involvement, right up to the power to appoint the Auditor-General and participate in the scoping of individual Audit Office performance audits.

5.27 In Tasmania, the PACs relationship with the Auditor-General was summarised in his submission to the Inquiry as follows:

- *The relationship between the Public Accounts Committee and the Auditor-General is significant in focussing on the efficiency, economy and effectiveness of the implementation and administration of government policy, particularly from a financial management perspective. An important aspect of the Committee's work is to follow up on matters raised in various reports to Parliament. My reports draw Parliament's attention to financial concerns or issues relating to any State entity. The Committee can follow up these matters by virtue of its powers to hold hearings and take evidence. In this way, matters raised by me are subject to further scrutiny for the benefit of the Parliament and the community.*

The Public Accounts Committee Act 1970 (the Act) makes no direct reference to the relationship between the Committee and the Auditor-General, rather, this is covered within the provisions of the Audit Act 2008. A Statement of Understanding between the Committee and Auditor-General of Tasmania aims to enhance the accountability mechanisms of Parliament by committing to ongoing effective communication and coordination between the Committee and myself.³³

5.28 The Auditor-General provided the following comment on significant features of the relationship between his office and the PAC:³⁴

Auditor-General reporting: *"In most Australian jurisdictions the PAC has formal responsibility for the examination of Auditor-General reports"*. In Tasmania this is prescribed in the Statement of Understanding.

³³ Tasmanian Audit Office, Op.cit., p. 1

³⁴ Ibid., pp. 2-4

Referral of matters: *“Under the Audit Act, I may carry out any audit that the Committee requests... I give serious consideration to investigating any matter referred to me by the Committee”*

Involvement in audit office annual plan: *“In most Australian jurisdictions the PAC must formally be consulted in determination of audit office planning priorities. Whilst this requirement is also prescribed in the Audit Act, the Statement of Understanding has enhanced this process by providing greater opportunity for consultation with, and input into the plan, by the Committee”*

Involvement in audit office funding: *“In some Australian jurisdictions the PAC has formal responsibility for the consideration of the audit office funding/budget estimates. In Tasmania, the annual budget for my Office is set by the Cabinet Budget Committee without involvement of the Parliament other than via the, after the event, Budget Estimates process. This impacts my independence.*

The partial solution to this has been to include the Committee in the consideration of the annual budget for my Office and allow the Committee, at its discretion, to formally provide its observations to the Treasurer and myself.”

Independent review of Audit Office: *“In many Australian jurisdictions the PAC is formally involved in the strategic review of Audit Office performance. This is also the case for my Office...Under the Audit Act, the findings of the review are provided to the Committee together with any comments that I make in relation to the findings of the review.”*

Exemption from legislative requirement that apply to government agencies: The Auditor-General made reference to the power of the Victorian PAC to exempt the Victorian Auditor-General’s office from staff employment conditions of government agencies and states *“a similar discretion exercised by the Committee may provide my Office with greater flexibility in regard to staff employment arrangements and may enhance the ability of my Office to recruit, retain and reward staff”*

Appointment of the Auditor-General: *“In Tasmania the appointment of the Auditor-General is made by the Governor on the recommendation of the Treasurer. Under the Audit Act, the Treasurer must consult with the Committee as part of this process”*

Findings:

27. PACs and their equivalents across Australian jurisdictions have a core responsibility to review the Auditor-General's reports.

28. The *Public Accounts Committee Act 1970* makes no direct reference to the relationship between the PAC and the Auditor-General, rather, this is covered within the provisions of the *Audit Act 2008* and through the Statement of Understanding.

6. ATTACHMENTS

ATTACHMENT 1 – OPTIONS DETAILED BY CLERK OF THE HOUSE



*Parliament House,
Hobart*

4 May 2016

Hon Ivan Dean MLC
Chair
Parliamentary Standing Committee of Public Accounts
Parliament House
HOBART TAS 7000

Dear Chair,

Thank you for your letter of 11 April last and for the opportunity to make a submission to the inquiry of the Committee into the *Public Accounts Committee Act 1970* (the Act). I am pleased to provide the following options for discussion and for the consideration of the Committee.

Option 1

With the exception of the proposed amendment to section 7 which is detailed below, Option 1 is simply a 'tidying up' of the Act to contemporise the practices of the Committee and to provide some degree of consistency in the manner the work of the Committee is managed and conducted vis a vis the work of other Parliamentary Committees.

1. Section 3 – Subsection (1), leave out "Governor" and insert instead "Presiding Officer of the House of Parliament of which the member is a Member of Parliament". This amendment would provide a contemporary alternative to the cumbersome and outmoded provision currently existing in the Act.

I question the necessity of subsection (2), given that the Committee is constituted by Members of Parliament, it stands to reason that if a Member vacates their seat they consequently invalidate their membership of the Committee.

2. Section 5 – Repeal as this provision is, I expect, more honoured in the breach than the observance. Given the arrangements for the administration of all Parliamentary Committee is dealt with by the Clerks of both Houses in consideration of resourcing capabilities, such an amendment will ensure consistency of practice across Committees.
3. Section 7 – Repeal subsection (2) as first, this provision prescribes a status upon a witness to this Committee and a concomitant obligation upon the Committee itself in respect of its treatment of such a witness, which given the legal technicalities such provision entails and without access to legal advice, the Committee may not properly be able to exercise.

The statute setting out the protections and privileges of a witness in a Supreme Court action is the Evidence Act 2001 (the "Evidence Act"). The Deputy Clerk of the House of Assembly, has summarised the relevant prescriptions of the Evidence Act which are annexed hereto.

By virtue of section 7(2) of the Public Accounts Committee Act the word "court" should be read as "Committee", wherever appearing in these sections. As you will see, the provisions prescribe the expectation that the Committee is aware of and is able to apply these rules of evidence and consequently would never seek to adduce testimony contrary to such rules. Moreover, the Committee is expected to be proactive in advising witnesses of the protections and immunities afforded them under the Evidence Act. Whilst I have not personally served the Committee in any official capacity in my twenty-seven years with the House of Assembly, I am unaware of that any such practice occurs. I am aware that the Committee has at least on one occasion sought advice from senior legal counsel as to the legality of an intended course of inquiry.

Second, this provision provides a witness with the capacity to refuse to answer a question, a privilege not afforded to witnesses to other Parliamentary Committees except the Integrity. Once again, for the sake of equity of treatment of witnesses and uniformity of practice across all Parliamentary Committees, the Committee should consider what advantages, if any, there are to the inquiry process of the maintenance of this provision.

4. Section 9 – Repeal as a Parliamentary Committee may order the payment of expenses to witnesses without the need for statutory authority.
5. Section 11 – Repeal as this section is entirely unnecessary as an 'office of profit' must be an office to which appointment is made by the executive government¹, which clearly is not the case with appointments to Parliamentary Committees which are made by the Houses.
6. Gender neutralise any relevant provisions.

Option 2

An alternative to the relatively superficial amendments proposed in Option 1, this Option proposes a more substantive amendment to the Act to provide:-

- that the Committee is established;
- how it shall be constituted, quorum etc;
- permit the Committee to sit during a prorogation²; and
- for the Committee to determine the scope of its functions within broad statutory prescription.

This option provides statutory certainty that the Committee is established every Parliament and how it should be constituted. It also enables the Committee to operate during a period of prorogation of the Parliament.

This approach is, incidentally, similar in scope to a broader consideration of the entire Parliamentary Committee system undertaken by the Legislative Council in 2010.³

¹ Ibid.

² This would not be permissible under 'Option 1'. However, this is not a significant consideration as annual prorogations have fallen out of favour in the last two decades.

Option 2 is to amend the Act as follows:-

1. Section 1A – Repeal definitions consequent on amendments detailed below.
2. Section 3 – Repeal as per Option 1 above.
3. Section 5 – Repeal as per Option 1 above.
4. Section 6 – Repeal and insert the following new section:-

"6 (1) The Committee must inquire into, consider and report to the Parliament on any matter referred to the Committee by either House.

(2) The Committee may inquire into, consider and report to the Parliament on any matter connected to the financial administration of the State."

This amendment broadens the latitude of inquiry further than the current prescription and arguably puts beyond argument any scope for a legal challenge that the Committee may be acting *ultra vires* the Act.

5. Section 7 – Repeal and insert the following new section:-

"7 Unless otherwise provided for in this Act, the Rules for Select Committees of the Legislative Council shall be followed as far as they can be applied."

This amendment, again, is designed to provide uniformity of practice across all Parliamentary Committees. As this Committee will for the foreseeable future be administered by Officers of the Legislative Council, it is appropriate to utilise the practice of that House.

6. Section 9 – Amend as per Option 1 above.
7. Section 11 – Amend as per Option 1 above.
8. In order to address any concern at the risk arising from the justiciability of the activity of the Committee, consideration should be given to insert a new section, similar to that provided in the South Australian *Parliamentary Committees Act 1991* as follows:-

"Immunity from judicial review

The proceedings of this Committee or any report or recommendation of, or document published by, this Committee may not give rise to any cause of action or be made the subject of, or in any way be called into question in, any proceedings before a court."

9. Gender neutralise any relevant provisions.

Option 3

Regrettably, as the proceedings on the original Bill occurred prior to the existence of the Parliamentary Reporting Service, I have been unable to inform myself as to the motivation behind the introduction of this legislation. Absent that, one can only speculate as to the reasons it was felt necessary at that time to resort to a statutory measure⁴ when a parliamentary solution would have continued to have provided the appropriate environment in which a Committee such as the Public Accounts Committee could and should operate. This is still the case and I respectfully recommend to you that the review should consider this most fundamental question, that is, the need for the Act itself.

³ *Vide Committees of the Tasmanian Parliament Discussion Paper*, Paper No. 10 of 2010.

⁴ I note the Subordinate Legislation Committee Act commenced the previous year. To have committees established by statute may simply have been pursued as a fashionable 'innovation'.

In comparison to a Committee established by resolution, the Act provides no advantages, only disadvantages. First, notwithstanding the very wide latitude prescribed in section 6 of the Act, statutory prescription and the interpretation thereof, necessarily restricts any flexibility in the exercise by the Committee of its role and functions and more importantly, as any statute is justiciable, it exposes the operations of the Committee to the possibility of legal challenge and judicial interpretation. In circumstances which raise any doubt, the Committee needs to seek interpretative advice from legal counsel, resulting in possible delay in proceedings and of course, any such opinion is itself then open to counter-opinion and possible dispute. Committees established by resolution and the proceedings of the same, receive the absolute protection afforded by Article 9 of the *Bill of Rights 1688*⁵ which proscribes any legal action against them and additionally, any judicial adjudication upon any such proceedings. A further disadvantage of a statute founded Committee is of course that any changes or improvements identified by the Committee to assist its operation requires legislative amendment.

Option 1 is the repeal of the Act and the adoption by the Legislative Council and the House of Assembly of a Standing Order in terms similar to the following example:-

"Public Accounts Committee

XXX (1) At the commencement of the first Session of each Parliament this House shall appoint three Members to serve on a Joint Committee (to be known as the Public Accounts Committee) to inquire into, consider and report to the Parliament on any matter:-

- (a) referred to the Committee by either House; or
- (b) connected to the financial administration of the State; and
- (c) any matter referred to the Committee by the Auditor-General.

(2) A person shall not be appointed, or continue, as a member of the Committee if they become -

- (a) a Minister of the Crown;
- (b) the President of the Legislative Council⁶;
- (c) the Speaker of the House of Assembly⁷; or
- (e) the Government Leader or Deputy Government Leader in the Legislative Council⁸.

(3) The Committee shall have power to sit during any adjournment of Parliament.

(4) Three Members irrespective of the House to which they belong, shall form a Quorum of each of the said Committees, provided that the Quorum shall not consist exclusively of Members of one House only.

(5) Unless otherwise provided for in this Standing Order, the Rules for Select Committees shall be followed as far as they can be applied."

Yours sincerely,



Shane Donnelly
CLERK OF THE HOUSE

⁵ Bill of Rights (1 William and Mary) - Statute of the Parliament of the United Kingdom. This statute is sometimes cited as Bill of Rights 1689 which is the 'New Style' dating. It states that, "The freedom of speech and debate or proceedings in Parliament ought not to be impeached or questioned in any Court or place out of Parliament."

⁶ Would not be included in Assembly SO.

⁷ Would not be included in Council SO.

⁸ Would not be included in Assembly SO.

ATTACHMENT 2 – ADVICE OF LEIGH SEALY S.C.

ADVICE

Re: *Public Accounts Committee Act 1970*

1. I have been requested by the Secretary to the Public Accounts Committee of the Parliament of Tasmania (“the Committee”) to advise in relation to a number of queries which appear to have arisen regarding the operation and effect of the *Public Accounts Committee Act 1970* (“the Act”)
2. As the advice is required as a matter of urgency, I set out below each of the specific queries and my summary responses. If required, I can provide more detailed responses at a later date.
 - A. **Whether the members of the Committee are, either individually or jointly, personally liable in respect of any breach or non-compliance with the provisions of the Act.**
3. No.
4. First, it will be seen that the Act contains no provision which makes it an offence to fail to comply with any of the provisions of the Act. Nor does the language of the Act reveal any parliamentary intention that a failure to comply with the Act or any of its provisions should result in the invalidity of anything done or omitted to be done pursuant to (or even purportedly pursuant to) the Act. These matters are all powerful indicators that the provisions of the Act are intended to be directory rather than mandatory: see generally *Project Blue Sky v Australian Broadcasting Authority* [1988] HCA 28
5. Secondly, with the possible exception of sections 7 and 9 of the Act, the Act does not create any rights or obligations.
6. For present purposes the “right” of a witness to be paid fees and travelling expenses pursuant to s 9 of the Act may be put to one side.
7. Rather curiously, s 7(2) of the Act provides:

“(2) A witness who is summoned to appear, or who appears, before the Committee has the same protection and privileges as a witness in an action tried in the Supreme Court.”

8. I say “curiously” because it would appear that, at least on the face of things, a witness appearing before the Committee may enjoy more protection and privileges than a witness who appears before a committee of either House or a joint Committee of both Houses.
9. On the other hand, the differences may be more apparent than real. Sections 1 to 3 of the *Parliamentary Privilege Act 1858* set out the obligations of a witness appearing before either of the Houses or a committee. Such a witness is not expressly given the same protection and privileges as a witness in an action tried in the Supreme Court but the obligation to answer questions is expressly limited to questions that are “lawful and relevant”. It could be argued that a question that required a witness to give an answer that incriminated the witness is not a “lawful” question although it may be doubted whether an admission made during the course of parliamentary proceedings would be admissible in legal proceedings in any case because of s 9 of the *Bill of Rights 1688*. (It is now generally accepted that the effect of s 9 of the *Bill of Rights* is to prevent, except for very limited purposes, the giving in evidence in legal proceedings of things said or done in the course of parliamentary proceedings: see *Prebble v TVNZ* [1995] 1 AC 321)
10. All of this leads me to conclude that the provisions of the Act are intended to be directory and that the protection afforded to witnesses appearing before the Committee is, so far as possible, to mirror the protection given to a witness in proceedings in the Supreme Court. This is perhaps best understood as an instruction to the Committee to deal with witnesses fairly and as nearly as may be as though the witness was giving evidence in the Supreme Court. So, if, for example, a witness claims the privilege against self-incrimination, the Committee will need to do its best to determine whether that is a valid claim and if it is whether and under what circumstances it will nevertheless require the witness to answer. I suppose it would be a rare case indeed in which a Minister of the Crown refused to answer a question on the ground of self-incrimination!

11. With one notable exception, other grounds of privilege upon which a witness in the Supreme Court might rely in order to refuse to answer a question are unlikely to arise before the Committee. So-called “settlement”³⁵ and “confidence” privileges are unlikely to arise and can, in any case, probably be dealt with by taking evidence *in camera*.
12. However, it is possible, if not entirely likely, that a witness representing the executive government may seek to refuse to answer one or more questions on the ground of “public interest immunity”. That is, that it is not in the public interest that the answer to the question be made public. Again such an objection (if it can exist at all³⁶) could be dealt with by taking the evidence *in camera* but historically the executive has asserted that “public interest immunity” excuses the executive from disclosing information even to the parliament itself. Yet one of the principal functions of the Parliament is generally accepted to be to oversee the actions of the executive government!
13. This is a very large topic and one that is impossible to discuss adequately in the limited time available. However, the position remains as it has always has been. The executive continues to claim that it need not reveal information to the Parliament on the ground of “public interest immunity” and the Parliament continues to insist that in its capacity as “the Grand Inquest of the Nation”³⁷ the people whom it represents are entitled to know everything!
14. In individual cases, this difference of opinion is invariably resolved by political expediency. Either the executive judges that by withholding the information it will be made to look unnecessarily secretive or the Parliament does not press the point.

B. What is the extent of protection for the Committee and its individual members under the legislation;

³⁵ So-called “settlement privilege” only operates in respect of things said in the course of negotiations conducted in an attempt to settle the same proceedings as those before the Court.

³⁶ The courts have consistently recognised the existence of the “public interest immunity” in the context of civil legal proceedings but apart from some *dicta* in the NSW Court of Appeal in *Egan v Chadwick* (1999) NSWCA 176Willis I am not aware of any case in which a court has recognised the existence of such an immunity operating as between the executive government and the Parliament in a Westminster style parliamentary democracy.

³⁷ See: <http://onlinelibrary.wiley.com/doi/10.1111/j.1750-0206.1995.tb00218.x/abstract>

15. The Act itself provides no protection but in my view there is no basis at all for supposing that the ordinary parliamentary privileges that apply to all proceedings of the Parliament include the proceeding of lawfully constituted committees of the Parliament do not apply to the Committee.

C. Whether evidence taken by the Committee *in camera* would be discoverable in legal proceedings ;

16. This is potentially a difficult question.
17. The better view is that no record of the proceedings of Parliament is discoverable in legal proceedings or if *discoverable* then not admissible except to prove the fact that some particular thing was said or done at a particular time. Otherwise the provisions of s 9 of the *Bill of Rights* operate so as to prevent the proceedings of Parliament from becoming the subject of legal proceedings. In practice this means that if the Committee (or any committee or either House) failed to persuade a Court that it was not appropriate to make an order requiring the Committee (or committee or the House) to produce documents by way of discovery, it would still be open to argue that the documents produced are nevertheless inadmissible in the relevant proceedings. This latter proposition is now widely accepted in Australia as being correct. (I note that at the Federal level the Australian Labor Party is presently seeking to prevent the *inspection* of documents that were seized by Federal Police from Parliament House offices on the ground that those documents are privileged.)

D. The likelihood of legal proceedings arising from the Committee's proceedings as a consequence of the Committee being constituted by legislation rather than by resolution of the Parliament

18. In my opinion there is no increased likelihood of legal proceedings merely because the Committee is constituted by statute rather than by resolution of the Parliament. Theoretically some decisions made under the Act would be reviewable under the *Judicial Review Act 2000* as the Act is not excluded from the

purview of the Judicial Review Act. But again, s 9 of the *Bill of Rights 1688* would prevent any such decision from lawfully becoming the subject of any legal proceedings – including an application for judicial review.

E. What protections are provided to witnesses under the Act;

19. The protections are provided by section 7 of the Act – discussed in some detail above. In my view the position of a witness appearing before the Committee is not materially different from that of any other witness appearing before any other parliamentary committee.

F. Any other matters which you can bring to the attention of the Committee to assist them in their operations under this Act.

20. The Committee should do its best to assess any claims made by a witness that he or she is legally excused from answering a particular question or from producing a particular document or documents. If in doubt, the Committee should adjourn to consider any such claim and, if necessary obtain legal or other advice. However, if at the end of the day a witness feels aggrieved by a determination made by the Committee then, in my opinion, it is most unlikely that the witness would have any form of legal redress against the Committee, its individual members or otherwise.

Dated the 29th of August 2016



Leigh Sealy S.C.
Malthouse Chambers
Hobart

ATTACHMENT 3 - PUBLIC ACCOUNTS COMMITTEE ACT 1970 EXTRINSIC MATERIAL

Public Accounts Committee Bill, 1970.
Second Reading Notes

The purpose of the Bill is to provide for the establishment and operation of a Parliamentary Standing Committee of Public Accounts. The Bill has been designed to give effect to the following Resolution, which was agreed to by both Houses of Parliament on Tuesday, 4th November, 1968. (1969-July)

X "That the Legislative Council and the House of Assembly jointly recognise the autonomous role and independence of each House to the other, but in the matter of appointment of Committees on Public Accounts, accept the proposition that interests generally would be better served if both Houses were represented on a single Committee on Public Accounts." X

The existing Select Committee on Public Accounts and Finance of the Legislative Council was established under authority of Standing Order No. 248A that was agreed to on 11th November, 1965, as follows:

"At the beginning of every Session a Select Committee on Public Accounts and Finance shall be appointed."

The existing Committee of Public Accounts of the House of Assembly was established under authority of Standing Order No. 408A that was agreed to on 7th December, 1960, as follows:

Public Accounts Committee:

- (1) A Committee of Public Accounts to consist of seven members of whom four shall be a quorum, shall be appointed when this Standing Order becomes effective and thereafter at the commencement of each Parliament, for the examination of the accounts showing the appropriation of the sums granted by Parliament to meet public expenditure, and of such other accounts laid before Parliament as the Committee may think fit; and
- (2) The Committee shall have power to send for persons, papers, and records, to report from time to time, and to sit during any adjournment exceeding fourteen days and any recess of Parliament."

...../2

The Bill, now submitted for consideration, seeks to re-constitute the two Public Accounts Committees as a joint Committee of both Houses of Parliament. It is proposed that a single Parliamentary Standing Committee of Public Accounts should be formed and comprise six members, of whom three would be Members of the Legislative Council and three would be Members of the House of Assembly, together with a secretary appointed from among the officers of the two Houses.

Other than Clauses 6 and 7, the provisions of the Bill are largely modelled upon the Subordinate Legislation Committee Act No. 44 of 1969. However, the Subordinate Legislation Committee Act was only regarded as a general guideline in this particular case. It was, of course, necessary to make certain modifications to meet the specialised requirements of a Public Accounts Committee. For instance, it was decided that the Leader of/for and the Deputy Leader of/for the Government in the Legislative Council should also be excluded from membership of the Parliamentary Standing Committee of Public Accounts as a matter of principle. Both the Leader and Deputy Leader must be fully aware of Government policy by virtue of their role in handling financial and other legislation. To some extent the positions of the Leader and Deputy Leader are akin to that of Ministers of the Crown.

Clause 6 is based upon Standing Order No. 40BA of the House of Assembly in so far as the proposed functions of the Parliamentary Standing Committee of Public Accounts are concerned except that, in addition to examinations initiated by the Committee, either House of Parliament may also refer matters for examination.

Section 7 of the Bill is drafted in such a way as to enable the Parliamentary Standing Committee of Public Accounts;

1. To summon witnesses to appear before it to give evidence and to produce documents,
2. To take all evidence in private except where there is considered to be good and sufficient reason to take evidence in public,
- and 3. To disclose, publish or authorize the disclosure or publication of evidence taken in private except in certain cases involving secret or confidential matters.

It is considered that the effectiveness of a Public Accounts Committee might be seriously hampered, if a public hearing system were to be implemented as a general practice. In such

...../3

an event, it is quite conceivable that evidence on issues concerning or touching upon Government policy might unintentionally become public knowledge e.g. information about future policy which if revealed too soon would enable speculators to fleece the public, opinions and advice given in confidence by officers for the use of their superiors.

The Government is hopeful that the establishment of a (joint) Parliamentary Standing Committee of Public Accounts will result in keeping Members of both Houses of Parliament better informed on the State's financial affairs.

I commend the Bill to the House and move the Second Reading

4 (9) *limits sitting to the State*

Public Accounts Committee Bill, 1970

Notes on Clauses

Clause in
Bill

1. Short title
- 2 (1) Provides for the constitution of a Joint Committee of the Legislative Council and House of Assembly, to be known as the Parliamentary Standing Committee of Public Accounts.
- 2 (2) Describes the method by which members will be appointed to serve on the Committee.
- 2 (3) Provides that the Committee shall consist of six members, of whom three shall be members of the Legislative Council, and three shall be members of the House of Assembly.
- 2 (4) Debars certain persons from serving on the Committee by virtue of their positions or involvement in Government policy.
- 2 (5) Empowers the operation of the Committee for the duration of the House of Assembly for the time being. This Sub-Clause also specifies that members of the Committee will cease to hold office when the House of Assembly expires by dissolution or effluxion of time.
- 3 (1) Permits a member of the Committee to resign from office.
- 3 (2) Provides that the office of a member of the Committee will become vacant for any reason that would vacate his seat in Parliament
- 3 (3) Describes the method by which casual vacancies will be filled.
- 4 (1)(2)
(3)(4)(5)
(6)(7) and
(8) Prescribes the basis under which proceedings of the Committee will be conducted in regard to matters such as a quorum, appointment of a chairman, vice-chairman and/or temporary chairman, voting, minutes and sittings.

...../2

5 (1)(2) Provides for the appointment and remuneration of a
and (3) secretary or an acting secretary who would be required
to perform all official duties required of him by the
Committee.

6 (1)(2) Outlines the functions of the Committee. As mentioned
and (3) previously, the provisions of Clause 6 are based upon
Standing Order No. 408A of the House of Assembly. —
However, it is envisaged that, in addition to examina-
tions initiated by the Committee, either House of
Parliament may also refer matters for examination.

Standing Order No. 408A of the House of Assembly is
based on Standing Order No. 90 of the House of Commons
of the Parliament of Great Britain, whereby the
Public Accounts Committee system of financial control
was originally established. Such a Committee was
first appointed by the House of Commons in 1861 as a
result of a suggestion made by Mr. Gladstone.

A former Chairman of the Committee of Public Accounts
of the House of Commons defined the Committee's func-
tions, as first, to ensure that money is spent as
Parliament intended; second, to ensure the exercise
of due economy; and third, to maintain high standards
of public morality in all financial matters.

7 (1) Gives the Committee all the power and authority of
a Select Committee of the House of Assembly in regard
to the questions of evidence and production of docu-
ments.

7 (2) Safeguards the rights of any witness, who is summoned
to appear or who appears before the Committee.

7 (3) Requires all evidence to be taken in private unless
there is considered to be good and sufficient reason
for a public hearing.

7 (4) Permits the Committee, when requested so to do by a
witness, to take in private any evidence that, in
its opinion, relates to a secret or confidential
matter.

7 (5) Empowers the Committee to disclose or publish or
authorize the disclosure or publication of evidence
taken in private except in certain cases of secret

...../3

or confidential matters.

- 7 (6) Requires the permission of witnesses to be granted in certain cases of secret or confidential matters before any form of disclosure or publication of the evidence concerned is effected.
- 7 (7) Seeks to prevent unauthorized disclosure or publication of evidence.
- 7 (8) Defines meaning of term "evidence" as referred to in Clause 7
- 7 (9) Imposes penalties for unauthorized disclosure or publication of evidence.
- 7(10) Provides that an offence under Sub-Clause 7(9) may not be prosecuted without consent of the Attorney-General.
- 7(11) Empowers in effect the Committee to examine witnesses upon declaration. Any person examined upon declaration, that wilfully gives false evidence, would be deemed guilty of perjury.
- 8 Authorises the continuation of proceedings in any case where the Committee as so constituted has ceased to exist before reporting on any particular matter upon which evidence had already been taken.
- 9 Empowers the chairman or vice-chairman of the Committee to determine the amounts which might be paid by way of expenses to a witness appearing before the Committee to give evidence; The entitlement of a witness to receive fees and travelling expenses is to be calculated in accordance with the scale prescribed under Section 27 of the Public Works Committee Act, 1914
- 10 Authorises the members of the Committee to receive the same fees and expenses as are payable to members of the Parliamentary Standing Committee on Public Works under Section 32 of the Public Works Committee Act, 1914.
- 11 Ensures that membership of the Committee does not constitute an office of profit or emolument within the meaning of the Constitution Act, 1934.

*Section 3
of Evidence Act*

ATTACHMENT 4 – PUBLIC ACCOUNTS COMMITTEE AMENDMENT ACT 1997
EXTRINSIC MATERIAL

TASMANIAN PARLIAMENTARY LIBRARY : BILLS REGISTER

SHORT TITLE	PUBLIC ACCOUNTS COMMITTEE AMENDMENT ACT 1997
LONG TITLE:	To amend the Public Accounts Committee Act 1970
MEMBER:	George Arthur Shaw
PORTFOLIO:	Private Members Bill (Independent)
BILL NUMBER:	1997/73
HOUSE OF ASSEMBLY:	21-Oct-1997 2R 11-Dec-1997(p.40), Com 11-Dec-1997 (p.184)
LEGISLATIVE COUNCIL:	1-Oct-1997 2R 21-Oct-1997(p.26), Com 21-Oct-1997 (p.36), Ag 11-Dec-1997(p.42)
REGISTER:	1997
ACT NUMBER:	1997/89
ROYAL ASSENT:	14-Jan-1998
COMMENCEMENT:	15-Jan-1998

PUBLIC ACCOUNTS COMMITTEE AMENDMENT BILL 1997 (No. 73)

Second Reading

Mr FOLEY (Franklin - 2R) -Mr Speaker, I move -

That the bill be now read the second time.

The Public Accounts Committee Amendment Bill 1997 provides for the modernisation of the Public Accounts Committee Act 1970.

In the 27 years since the act was passed there have been significant changes to the public sector environment and there are more foreshadowed with the move towards accrual accounting and the review of the Tasmanian State Service Act.

Parliament has entrusted the Public Accounts Committee with the role of scrutinising the expenditures of public money. In this changing environment it is essential for proper accountability of the executive that the committee clearly has the power to investigate issues regardless of the nature of the public sector body involved and is able to respond pro-actively to issues as they arise. The proposed amendments will achieve this.

The committee has long operated in a tripartite or all-party fashion. The clarification of the powers will facilitate this approach by removing any doubt about the ambit of the committee's functions. The amendments reflect the Parliament's establishment of the committee as the appropriate body to consider public sector financial issues, whether particular incidents or general financial management practices.

The bill also provides for the removal of minor anomalies between the committee's procedures and those of other statutory committees of the Tasmanian Parliament. The amendments will establish a presumption that the committee's hearings will be public except where there is good reason for them to be private and will allow the committee to sit outside Tasmania without having to obtain the permission of both Houses.

Mr Speaker, as the debate has been long and extensive I will say no more and leave it to my colleagues and others. I commend this bill to the House.

Public Accounts Committee Act Amendment Bill 1997

Fact Sheet and Clause Notes

Overview

The *Public Accounts Committee Act Amendment Bill 1997* (the Bill) provides for the updating of the functions and practices of the Public Accounts Committee (the Committee) in line with best practice principles. The proposed amendments also remove anomalies between the operations of the Committee and other statutory committees of the Tasmanian Parliament.

Under the current Act the Committee's functions are essentially to scrutinise the expenditure of public funds. Under the proposed amendments this role will not change. Rather, the Bill ensures that the Committee can effectively perform its role in a changed and changing public sector environment.

The *Public Accounts Committee Act 1970* is now 27 years old and has rarely been amended. Since its passage there have been significant changes in the public sector structure and financial management. Moves towards corporatisation, privatisation and outsourcing which tend to shield organisations from public scrutiny make it increasingly important that the Public Accounts Committee has the power to investigate these bodies in relation to their expenditure of public funds. The new provisions will also ensure that the Committee has the flexibility to investigate issues as they arise in this changing environment and to ensure that a broad approach is applied to issues where appropriate. The amendments will bring the Committee's functions and powers more closely into line with those of Public Accounts Committees in other Australian jurisdictions.

Clause notes

Clause 1 - Short title

This clause provides for the short title of the Act.

Clause 2 - Commencement

Clause 2 provides for the Act to commence on the day after it receives Royal Assent.

Clause 3 - Principal Act

This clause provides for the Act being amended to be referred to as the Principal Act.

Clause 4 - Section 1A inserted

Clause 4 provides for a new section 1A which contains definitions of terms used in the Act. Proposed section 1A includes definitions of 'agency', 'Appropriation Act', 'Committee', 'Government Business Enterprise', 'public sector finances' and 'statutory authorities' for ease of reference and to clarify later provisions of the Act.

Clause 5 - Section 2 amended (Constitution of Committee)

This clause amends section 2 of the Principal Act to delete the provision for abbreviated reference to 'the Committee' because this provision is now included in proposed section 1A.

Clause 6 - Section 4 amended (Proceedings of Committee)

Clause 6 amends section 4 of the Principal Act to remove the prohibition on the Committee sitting interstate without the agreement by resolution of both Houses of Parliament. This brings the powers of the Committee into line with other Tasmanian Statutory Committees and Public Accounts Committees in other jurisdictions.

Clause 7 - Section 6 substituted

This clause provides for a new section 6 setting out the functions of the Committee. It establishes that the Committee must investigate and report on any matter referred by either House, and may investigate and report on any matter arising in connection with public sector finances that the Committee considers appropriate or that is referred by the Auditor-General.

The provision reflects the Committee's position as a Parliamentary Committee subject to direction by either House. It also indicates the close working relationship between the Committee and the Auditor-General.

The Committee's role is to scrutinise matters relating to public sector finance. This term has been broadly defined to reflect the Committee's important function in overseeing practices and procedures relating to public sector financial management. The broad definition will enable the Committee to effectively perform its scrutiny role in relation to all State government expenditure.

Clause 8 - Section 7 amended (Evidence before Committee)

Clause 8 amends section 7 to reverse the presumption that Committee hearings will generally be held in private. Section 7 will require the Committee to hold its hearings in public unless there are good reasons to take evidence in private. This will enhance the Committee's accountability role, and will bring the Committee's practices into line with other Tasmanian Statutory Committees.

