



PREMIER OF TASMANIA

21 MAR 2019

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

Dear Mr Dean

Thank you for your correspondence seeking the Tasmanian Government's response to recommendations in the Report No. 34 of 2017 – Review of the *Public Accounts Committee Act 1970* (the Report). My Government recognises the Parliamentary Standing Committee of Public Accounts (the PAC)'s important work and we place great importance on our reform agenda concerning the overarching financial management of the State.

My Government has now considered the Report's recommendations in detail, and I intend to address each in turn below. In responding to the Report recommendations, I have considered the views and advice of key stakeholders, including the Department of Premier and Cabinet, the Department of Treasury and Finance, the Solicitor-General, the Auditor-General and the Clerk of the Legislative Council.

**Recommendation 1(a) – to reflect gender neutral language**

My Government is committed to adopting inclusive language that avoids bias towards a particular gender. I note that as part of its feedback provided in the Report, the Department of Treasury and Finance identified a number of gender-specific references, including 'chairman', 'vice chairman' and 'his' in section 4 of the *Public Accounts Committee Act 1970* (the PAC Act).

The Government supports, in principle, amending gender-specific references in the PAC Act. However it should be noted that a change of this nature is not a legislative priority, given section 24A of the *Acts Interpretation Act 1931* stipulates that a word or expression that indicates one or more particular genders is taken to include every other gender.

**Recommendation 1(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**

The PAC Act, s 5(1) provides that an officer of one of the Houses of Parliament be appointed by the Governor, as Secretary of the PAC on the joint recommendation of the President of the Legislative Council and the Speaker of the House of Assembly.

It is evident that, were the PAC's recommendation to be supported, it would effectively remove the Governor from the appointment process.

I am advised that the Secretary, like other parliamentary officers, is a public officer. As such, the public has an interest in the office of Secretary of the PAC given it manages the business of a significant parliamentary committee and the position is paid for using public monies.

Historically, the appointments of public officers were made by the Crown under the royal prerogative. However, it is now more usual for appointments to public office to be made under statute. This is the reason why the *Parliamentary Privilege Act 1898* makes provision for the officers of Parliament to be appointed by the Governor on the recommendation of the President, the Speaker, or both as the case may be. Importantly, a public officer is accountable to the public, through the executive and therefore the office must be discharged with complete independence. Contrary to the assertion made in the Report that such an appointment by the Governor is 'anomalous' the Government considers it reflects both a conventional and desirable requirement that appointments to public office are ultimately made by the Governor who is for this purpose the Crown but is also a constituent of the Parliament.

Moreover, the Governor's appointment of the Secretary serves to preserve the PAC's reputation and standing in the public eye – the President and the Speaker enjoy the conventional protection afforded by the Governor's functions to consult, to question and to warn.

Similarly there is an assertion within the Report that the power of presiding officers to directly appoint an acting Secretary during sickness or absence, impliedly suggests that such a power should be extended to the formal power of appointment of secretaries. This provision is not comparable to section 5(1) of the PAC Act, as it is merely for the purpose of facilitating a temporary measure to ensure that such duties are undertaken during unexpected circumstances of absence.

For these reasons, the Government does not endorse this recommendation.

**Recommendation 1(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**

Recommendation 1(c) is similar in scope to recommendation 1(b), in that an objection is being raised in relation to the current requirement that a member of the PAC must resign as a member by writing to the Governor.

Consistent with the comments above, the Government considers that this process also reflects a long standing convention. Moreover, I note that section 15 of the *Constitution Act 1934* specifies that a member of either House may resign by writing to the Governor. Furthermore, it invests the act of resignation from the PAC with a level of formality and ensures that changes to the membership of the PAC are properly recorded.

For these reasons, the Government does not endorse this recommendation.

**Recommendation 1(d) – Section 7(2) be repealed and a witnesses rights before the PAC be determined by Standing Orders**

Section 7(2) of the PAC Act stipulates that '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'. The PAC has identified this provision as part of its consideration of the Report's Term of Reference 1 – any challenges associated with fulfilling the PAC's functions under the Act.

The PAC refers to advice provided by Leigh Sealy SC in paragraph 5.5 of the Report. Relevantly, Mr Sealy acknowledges that *'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'*. He further notes that the *'differences may be more apparent than real'*.

Further to Mr Sealy's assessment, it is important to add that section 7(2) of the PAC Act is in similar terms to section 19(1) of the *Public Accounts and Audit Committee Act 1951* (Cth). Accordingly, Tasmania is not the only jurisdiction that affords witnesses before a Public Accounts Committee the same protection as witnesses in a superior court.

The relevance of this precedent of preserving witness rights in relation to an important, comparably empowered parliamentary committee is significant, particularly when considering that witnesses entering a parliamentary inquiry have no protection against self-incrimination, the abrogation of legal professional privilege and other immunities which are generally considered to be fair and in the public interest. This in turn raises the concern that a person can be held guilty of contempt by Houses of Parliament for refusing to cooperate with their committees, even where the questions of witnesses' privileges are at stake.

For these reasons, the Government does not endorse this recommendation.

**Recommendation I(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**

In responding to this recommendation, it is important to identify the relevant statutory framework currently enshrined in the *Audit Act 2008* (the Audit Act). Amongst other things, the Audit Act:

- (a) requires the Treasurer to consult with the PAC about the appointment of the Auditor-General;
- (b) requires the Auditor-General to submit a draft annual plan to the PAC, which is to consider it and comment on it and to present the annual plan to the PAC;
- (c) enables the Auditor-General to carry out audits requested by the PAC;
- (d) enables the Auditor-General to submit reports to the PAC;
- (e) enables the PAC to act on certain recommendations contained in the Auditor-General's report; and
- (f) requires the PAC to be provided with the findings of the five year review of the Tasmanian Audit Office.

Recommendation I(e), concerning the arrangements already covered within the Audit Act and the Statement of Understanding relates to matters of governance. Following a consideration of the matters raised in the Report, it remains unclear why the PAC has recommended that its relationship with the Auditor-General should be more specifically defined in the PAC Act.

The Report also refers to a power for the PAC to appoint the Auditor-General. Notwithstanding the jurisdictional comparison supplied in the body of the Report, it must be recognised that the Auditor-General is an independent statutory officer, rather than a functionary of the PAC. The matters previously canvassed in response to Recommendation I(b) concerning public officers apply, arguably with even greater force, to an office as important as the Auditor-General.

For these reasons, the Government does not endorse this recommendation.

**Recommendation 1(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**

As a general rule, the PAC Act does not include financial reporting requirements. These are contained in various other Acts including the *Financial Management and Audit Act 1990* (soon to be replaced by the *Financial Management Act 2016*), the *Government Business Enterprises Act 1986* and various enabling Acts for State-owned Companies and Statutory Authorities. These Acts determine the timing for the completion of financial statements, the combining of these with other reports to make the Annual Report required by the *State Service Act 2000* and the tabling of those Annual Reports in the Parliament. The Audit Act determines the timeframe within which the financial audit of an entity's financial statements is to occur.

As you may recall, the timing of agency financial statements was carefully reviewed as part of the development of the Financial Management Act. This included consultation with all key stakeholders, including the PAC. That consultation process helped clarify that the expectation that agencies table their Annual Report, including financial statements (together with the Auditor-General's Report), by 31 October each year, was appropriate. It should be noted that the timing and provision of such reports to Parliament is not materially out of step with other Australian jurisdictions.

I am advised that the Tasmanian Audit Office supports, wherever practicable, the timely provision of financial information to Parliament and affiliated bodies. The Tasmanian Audit Office is currently required by the Audit Act to complete all financial audits within 45 days of receipt of financial statements from State entities. Ordinarily for 30 June year audits, this means the vast majority are completed by 28 September each year. Its capacity to meet any changes to these timeframes will always be subject to its available resources and the capacity of State entities to produce the required information. The ability of State entities to meet any further compressed timeframes for publication of financial information will also be subject to their capacity. In this sense, I understand that it may not be currently feasible to provide all audited financial statements, in a form suitable for external publishing, within the proposed timeframes.

As a broader consideration, the disclosure of the audited financial statements is done at the same time as associated annual reports. Certain information within those statements may be clearer for users within the broader context of any associated annual reporting and, accordingly, I am reluctant to endorse any suggestion that the provision of this documentation to Parliament, or bodies within Parliament, should be staggered.

For these reasons, the Government does not endorse this recommendation.

**Recommendation 1(g) – to provide immunity from judicial review of Committee proceedings, recommendations, reports, or documents published**

As you are aware, the PAC's functions are to 'inquire into, consider and report to Parliament' on matters within the PAC's power. I am advised that ordinarily this would not expose the PAC to applications under the *Judicial Review Act 2000*, for example.

While it is foreseeable that the PAC could be susceptible to judicial relief in circumstances where it acted in excess of its power, I am advised that courts interfere with the proceedings of Parliament, or one of its committees, with extreme reluctance. The PAC would be no exception. As noted, it is possible that the PAC may be exposed to judicial review if it attempts to act in excess of its powers under the Act. However, even if an express immunity to the Judicial Review Act were implemented, it must be recognised that the PAC would still be susceptible (in such rare circumstances which warrant it) to other forms of judicial relief – in those circumstances, it would be a matter for the court to determine its ability to review parliamentary proceedings.

Further to this, I note the advice of Mr Sealy, as published in Attachment 2 of the Report that, in his view, there is no increased likelihood of legal proceedings merely because the Committee is constituted by statute rather than by resolution of the Parliament. To this end, it is relevant to reiterate Mr Sealy's comment that section 9 of the *Bill of Rights 1688* would prevent a decision of the PAC from lawfully becoming the subject of any legal proceedings – including an application for judicial review.

Consequently, the Government does not consider it necessary to do anything additional to ensure immunity and does not endorse this recommendation.

**Recommendation 1(h) – to provide the PAC with powers similar to section 22 of the Audit Act 2008**

In the interests of clarifying the nature of this request, I note that section 22 of the *Audit Act* provides:

*If a State entity performs any of its functions –*

- (a) in partnership or jointly with another person or body; or*
- (b) through the instrumentality of another person or body; or*
- (c) by means of a trust –*

*the accountable authority must give written notice of that fact to the Auditor-General, and the person, body or trust is referred to as a "related entity" of the State entity.*

Section 22 does not confer a power. Accordingly, I must infer that this recommendation relates more specifically to section 23(1)(f) of the *Audit Act*, which provides the following power in relation to a related entity:

- (1) The Auditor-General may at any time carry out an examination or investigation for one or more of the following purposes:*

...

- (f) examining the efficiency, effectiveness and economy with which a related entity of a State entity performs functions –*
  - i. on behalf of the State entity; or*
  - ii. in partnership or jointly with the State entity; or*
  - iii. as the delegate or agent of the State entity...*

Under section 6(1)(b) of the *PAC Act*, the PAC has a duty to inquire into, consider and report to Parliament on matters relating to 'the accounts of any public authority, or other organisation controlled by the State or *in which the State has an interest*'. Furthermore, under section 6(2), the PAC may inquire into any matter arising in connection with public sector finances as it considers appropriate and any matter referred to it by the Auditor-General. The PAC also has additional powers to summons witnesses and require documents, which, I am advised, would also include the power to summons a person, body, or entity to give evidence about the performance of its functions so far as they have a connection to public sector finances.

For these reasons, the Government considers that the PAC does not require any further powers in order to inquire into the finances of a related entity of a State entity.

**Recommendation 2 – the communications powers of the PAC require contemporizing and amendments reflected in the Act**

In reviewing this recommendation, consideration has been given to the communications powers of Public Accounts Committees in other jurisdictions to determine, in practice, if any material distinction exists between the Tasmanian PAC's communication powers and an equivalent body. For the avoidance of any doubt, I note that in raising this matter with the PAC, the Department of Treasury and Finance did not identify any omission or failure in the existing communications powers of the PAC. Rather, this point was raised as a matter for general consideration.

As part of its general discussions, the Report provides a summary of good practice indicators from the Canadian Audit Accountability Foundation, most relevant of which in relation to this recommendation is 'Good Practice 3: the PAC has a communications plan with stakeholders'. Generally speaking, public accounts committees in Australia are provided with the necessary communications powers to adequately give effect to their functions. Most of those functions link back to a duty to report to Parliament. In doing so however, the PAC has broad authority to communicate as it deems appropriate.

As also noted in relation to Recommendation 1(h), the PAC has significant implied communications powers by virtue of its powers of inquiry. Sitting in concert with these powers is the Statement of Understanding with the Auditor-General, which, as you are aware, was created to increase communication and coordination between the two parties.

The PAC has not identified a specific failure or limitation in its communications powers. Ultimately, in the absence of a particular issue of concern with respect to the communications powers of the PAC, the Government does not consider a need for any legislative remedy. However, the PAC may wish to identify a particular failure or omission which, in its view, requires rectification.

**Recommendation 3 – a formal requirement is introduced for the Government to respond to each PAC report within three months of tabling**

In support of this recommendation, the Report simply provides a footnote to Sessional Order 28 of the Legislative Council, which stipulates that:

*Clerk shall send copy of a report to Government: Government to respond within three months*

- 1) *After tabling, the Clerk shall send a copy of a report recommending action by, or seeking a response from, the Government to the responsible minister and to the Leader of the Government.*
- 2) *The Leader of the Government or the minister (if a Member of the Council) shall report the Government's response within three months by tabling the response or if the Council is not sitting by providing a copy of the response to the President who shall then arrange for its distribution to all Members and for its tabling when the Council next sits.*

Wherever practicable, matters identified in PAC reports should be promptly considered and addressed and there are certain unwritten understandings to this effect. However, it is not clear why the legislation should be amended to reflect an expectation that the Government respond within an arbitrary timeframe. As is contemplated within the Sessional Order 28, a timeframe for response could be managed by way of Sessional Order which sits in concert with the PAC Act. Indeed, the Government considers that this would be the most appropriate place to implement a requirement of this nature, if necessary.

## Conclusion

For the reasons outlined above, the Government does not intend to progress any legislative amendments at this time. However, it recognises that at an opportune time, it may be appropriate to consider amendments to implement gender neutral language and to potentially re-assess the communications powers of the PAC. Any such amendments could foreseeably be incorporated in a future miscellaneous amendment Act, to be put forward by the Department of Premier and Cabinet in due course.

Yours sincerely



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Premier