

Supreme audit institution (pillar 8)

Summary

The supreme audit institution in New Zealand is the Office of the Auditor-General (OAG). The OAG is fully independent in the performance of all audit work and has the budget, staff, and legal powers it requires to carry out its audits. It is a trusted institution of governance and an effective watchdog of public integrity. It is able to set and enforce high standards of audit and integrity of auditors. It is subject to independent financial audit and commissions periodic independent reviews of its performance.

The OAG's reports and advice are nearly always delivered on time and made public. Its major reports generally receive significant media attention, and public officials take its findings seriously, although the direct responsiveness of Parliament to its findings depends mainly on their political salience. A few reports have a major political impact, but many findings receive only cursory attention in select committees and the House of Representatives.

The OAG plays a significant role in maintaining New Zealand's high standards of public financial management. It has supported the development of specific accounting and auditing standards for the public sector, particularly in the monitoring and reporting of service performance. Its criticisms of performance reporting are contributing to improvements in the quality of this reporting.

The OAG is required by its Act to take existing government policy as a given, and performance audits tend to focus on issues of process and service delivery and pay limited attention to effectiveness measured by outcomes. It is considering an appropriate methodology for value-for-money audits of public entities.

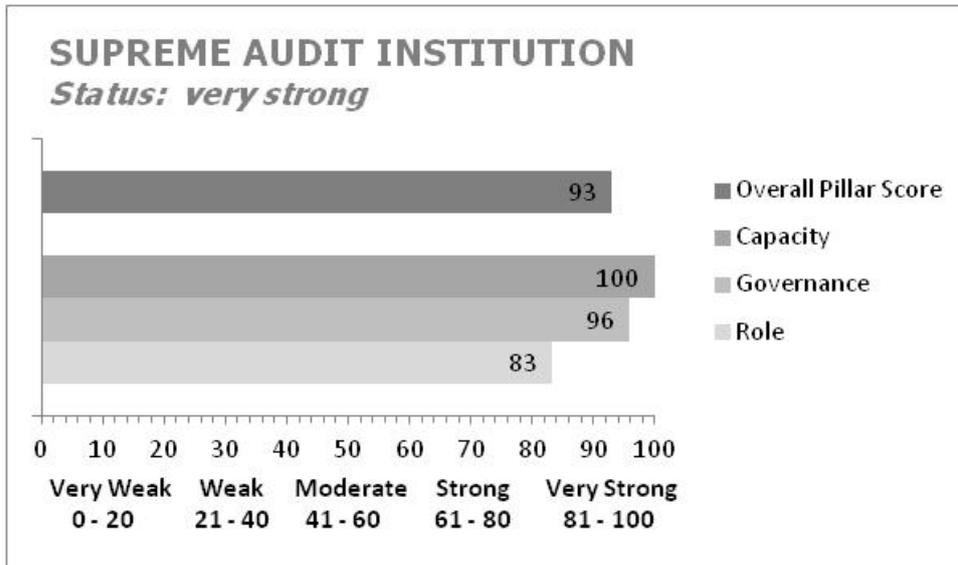
The recommendations (in Chapter 6) that flow from the analysis in this pillar report are directed more generally towards the legislature and the public sector pillars. Parliament is recommended to strengthen select committees to enable them, among other things, to follow up on findings by the OAG more consistently and effectively as a way of holding the executive to account and as part of the general emphasis for the public sector on the impact of policies. The OAG should examine those impacts in its performance reporting.

Structure and organisation

The OAG was established by the Public Audit Act 2001 and is headed by the Controller and Auditor-General, an officer of Parliament. The Controller and Auditor-General also employs the staff of Audit New Zealand, a public organisation that shares the work of public audits with private accounting firms.

As well as the responsibilities as Auditor-General, the Controller and Auditor-General has a controller function to provide assurance during a financial year that expenditure by central government has been lawfully made. This report does not cover this function. In the audit role, the Controller and Auditor-General is known simply as the Auditor-General.

Figure 10: Supreme audit institution scores



Source: Transparency International New Zealand, 25 October 2013.

The OAG is responsible for audits of over 3,900 public entities both of central and local government, including state-owned enterprises, public education institutions, and district health boards.⁷⁸⁹ Its powers of audit include mandatory annual audit of the financial statements and, where applicable, the statements of service performance of these entities, as well as discretionary audits of the performance of public entities and inquiries into matters of public interest. It also assists Parliament’s select committees with advice on financial reviews and scrutiny of annual estimates of expenditure.

The OAG allocates almost all of the annual audit work to audit service providers, either Audit New Zealand or private accounting firms, that carry out the actual audits. Annual audits are funded by fees charged to the audited entity on a scale determined by the OAG.⁷⁹⁰ In many cases, staff of the OAG lead performance audits and inquiries.

Relevant international standards

The relevant standards for assessment of the supreme audit institution in New Zealand are the International Standards of Supreme Audit Institutions (ISSAI), issued by the International Organization of Supreme Audit Institutions (INTOSAI).⁷⁹¹ The most important of these standards for this review are the prerequisite standards on supreme audit institution independence (ISSAI 10 and 11), transparency and accountability (ISSAI 20 and 21), and ethics (ISSAI 30). The Auditor-General’s Auditing Standards (AGAS)⁷⁹² also draw on the standards of the New Zealand Audit and Assurance

⁷⁸⁹ Controller and Auditor-General, *Statement of Intent 2012–2015* (Wellington: Office of the Auditor-General, 2012), p. 27.

⁷⁹⁰ Public Audit Act 2001, section 42.

⁷⁹¹ INTOSAI standards may be found at the ISSAI website: www.issai.org.

⁷⁹² Controller and Auditor-General, *The Auditor-General’s Auditing Standards* (Wellington: Office of the Auditor-General, 2011).

Standards Board),⁷⁹³ supplemented by the Auditor-General's own standards and statements.

New Zealand government financial statements are based on international financial reporting standards supplemented by requirements appropriate for the public sector.⁷⁹⁴ New Zealand is probably now moving towards adoption of International Public Sector Accounting Standards,⁷⁹⁵ which are expected to better meet the specific requirements of the public sector, including the reporting of service performance.

Capacity

8.1.1 Resources (practice)

To what extent does the audit institution have adequate resources to achieve its goals in practice?

Score: 5

The OAG is fully independent in the performance of all audit work and has the budget, staff and legal powers it requires to carry out its audits.

Money and people: The OAG controls and manages its own budget and staff.⁷⁹⁶ Resources are sufficient for the OAG to complete all financial audits required by statute and an agreed programme of performance audits as discussed below. The OAG's budget bypasses the normal process of executive budget formation. OAG presents a draft budget to the parliamentary Officers of Parliament Committee, which recommends a budget to the House. By convention, this recommended budget is included unaltered in the Appropriation (Estimates) Bill.⁷⁹⁷ Any resource constraints are due more to limits on staff time than to budget limits and (particularly for sensitive ad hoc inquiries) limits on the time available from senior OAG staff for direction and oversight.⁷⁹⁸ The OAG's annual audits absorb about 88 per cent of the budget. The OAG completes 90 per cent or more of these annual audits on time and more often than not is held up by delays in the audited entities.⁷⁹⁹

Performance audits and inquiries, covering about 8 per cent of the OAG's budget, are funded by a specific parliamentary appropriation. The OAG chooses its own audit topics, but consults with Parliament on its programme. The OAG has produced about 20 reports (performance audits, inquiries, and other matters) in each of the last five

⁷⁹³ Under the framework of the External Reporting Board (XRB) in terms of the Financial Reporting Act 1993.

Current standards can be obtained from xrb.govt.nz/Site/Auditing_Assurance_Standards/Current_Standards/default.aspx

⁷⁹⁴ Public Finance Act 1989, section 2.

⁷⁹⁵ The full conceptual framework for IPSAS is being developed by the International Federation of Accountants (IFAC) and should be complete by mid-2014 (www.ifac.org/public-sector).

⁷⁹⁶ Public Finance Act 1989, section 45F; Public Audit Act 2001, Schedule 3(8).

⁷⁹⁷ D McGee, *Parliamentary Practice in New Zealand* (Wellington: Dunmore Publishing, 2005), p. 474.

⁷⁹⁸ Interviews of David Macdonald, former Controller and Auditor-General, with author, Wellington, 13 December 2012 and 23 January 2013; interviews of Philippa Smith, Deputy Controller and Auditor-General, with author, Wellington, 20 November 2012, 14 February 2013, and 7 March 2013.

⁷⁹⁹ Controller and Auditor-General, *Annual Report 2010/11* (Wellington: Office of the Auditor-General, 2011)

years – a target number agreed with Parliament.⁸⁰⁰ It could undertake more performance audits with a larger budget, but is also considering whether its existing budget would be better spent on fewer but more in-depth audits.⁸⁰¹

Although the OAG and Audit New Zealand have a 20 per cent overall staff turnover rate,⁸⁰² they are, together with the private firms to which work is allocated, able to meet the requirement for qualified senior auditors to lead all public audits. Staff turnover is largely churn among more junior staff, which the OAG says is typical for the accounting profession in New Zealand.⁸⁰³ New recruits are immediately placed into audit teams, but study for (and generally pass) their professional exams. After a few years' experience, they are likely to seek other opportunities either in New Zealand or overseas. These "pull" factors seem to be the main reasons for leaving. Demand for positions in Audit New Zealand and staff climate surveys indicate that it remains a desirable place to work.⁸⁰⁴

Legal powers: The OAG has the legal power of access to documents and accounts, examination under oath, access to premises, and protection for people supplying information and can delegate these powers to an audit service provider.⁸⁰⁵ There are few, if any, cases where this power has had to be invoked.

The OAG audits public entities,⁸⁰⁶ which do not include non-public entities that receive public funding. Some jurisdictions also give their supreme audit institutions the legal power to inspect the accounts of any third party in receipt of public funding. The OAG's approach is to audit the public entity's management of the funding contracts or agreements, but, if necessary, it could directly inspect third-party records of public funding using its existing powers.⁸⁰⁷

8.1.2 Independence (law)

To what extent is there formal operational independence of the audit institution?

Score: 5

The OAG's empowering statute gives it full legal independence in all operational matters.

The legal basis for the OAG meets the requirements of the standards set by INTOSAI for the operational independence of a supreme audit institution. The OAG is fully independent of the executive, and the Auditor-General is required to act independently.⁸⁰⁸ The Public Audit Act 2001 "binds the Crown" to give effect to any of

⁸⁰⁰ Controller and Auditor-General, *Annual Report 2010/11*, 2011.

⁸⁰¹ Phillippa Smith interviews.

⁸⁰² Controller and Auditor-General, *Annual Report 2011/12* (Wellington: Office of the Auditor-General, 2012), p. 67.

⁸⁰³ Controller and Auditor-General, *Annual Report*, 2012.

⁸⁰⁴ OAG annual reports, for example, Controller and Auditor-General, *Annual Report 2011/12*, 2012: from p. 65.

⁸⁰⁵ Public Audit Act 2001, sections 24–31.

⁸⁰⁶ Public Audit Act 2001, section 14.

⁸⁰⁷ Public Audit Act 2001, section 25.

⁸⁰⁸ Public Audit Act 2001, section 9.

its provisions. Parliament appoints the Auditor-General, conventionally by unanimous resolution.⁸⁰⁹ The position is non-political. The incumbent generally may not hold any other public office,⁸¹⁰ may only serve a single term, and may be removed from office by Parliament only “for disability affecting the performance of duty, bankruptcy, neglect of duty, or misconduct”.⁸¹¹ Public auditors are protected from personal liability for work on public audit carried out in good faith.⁸¹²

The OAG must audit the financial statements of the government and of individual public entities. There are no other specific requirements in law for the programme of other audits or inquiries or the methods used by the OAG. The Auditor-General must consult the Speaker on a draft work programme. The OAG generally has full authority to set its own standards for audits.⁸¹³ The only exception is for its audits of public issuers of certain securities, which must meet standards set under the Financial Reporting Act 1993.⁸¹⁴

Private auditing firms undertake a substantial part of audit work on contract to the OAG. Because the OAG decides how work will be allocated, public entities, unlike firms in the private sector, have no choice of auditor. Conversely, private accountancy firms have an incentive to comply with the independence requirements of the Auditor-General’s standards in order to retain their public audit business.

8.1.3 Independence (practice)

To what extent is the audit institution free from external interference in the performance of its work in practice?

Score: 5

The OAG’s reports indicate that it is able to report frankly and fearlessly on significant matters of public governance.

The actual independence and neutrality of the OAG fully reflects its statutory independence and its duty to act independently. In accordance with the Public Audit Act 2001 (see above), no Auditor-General or Deputy Auditor-General has ever been reappointed; and none has ever been removed from office without proper cause. In the New Zealand context, political interference with the OAG’s activities would be very unlikely, although it is not inconceivable, particularly for inquiries, that the OAG could be persuaded at the draft stage to modify its findings. Findings later in this report support the view that the OAG is generally regarded as an independent and authoritative voice on standards in public governance.

⁸⁰⁹ McGee, 2005: 71–72.

⁸¹⁰ Public Audit Act 2001, section 8.

⁸¹¹ Public Audit Act 2001, Schedule 3, clause 4.

⁸¹² Public Audit Act 2001, section 41.

⁸¹³ Public Audit Act 2001, section 23.

⁸¹⁴ Public Audit Act 2001, section 15(3).

Governance

8.2.1 Transparency (law)

To what extent are there provisions in place to ensure that the public can obtain relevant information on the relevant activities and decisions by the supreme audit institution?

Score: 4

The law provides for reports on audits and inquiries and most written advice to be promptly published but not necessarily debated. There is no requirement to publish communications with audited entities.

All public entities are required to publish annual reports, which include their financial statements and the report of the OAG on its audit of the statements.⁸¹⁵ Those reports of central government entities must be tabled in Parliament with their audit reports. Other financial statements (of local authorities, education institutions, and health boards) must be published with audit reports, but are not required to be tabled in Parliament. Limited reports are published for security intelligence organisations and a special committee of Parliament reviews them. The OAG is also required to report annually to Parliament on matters arising from its public audits and inquiries⁸¹⁶ and on its own implementation of its annual plan.⁸¹⁷ All OAG reports, except those on security intelligence agencies, must be published when received.⁸¹⁸ Reports are referred to the Finance and Expenditure Committee of Parliament which may consider the reports itself or refer them to another select committee.⁸¹⁹ The Finance and Expenditure Committee also receives and reviews the Auditor-General's annual plan and report on implementation.⁸²⁰

There is no requirement for the reports of the Auditor-General to Parliament to be debated in the House. Select committees are required to conduct and report to the House on an annual financial review of every government entity, covering its performance in the previous financial year and its current operations.⁸²¹ The reports of the Auditor-General on the associated financial audits will form part of the evidence for these reviews. Other reports, for example on performance audits or inquiries, are also received and considered by a select committee. Any findings by the committee, including any recommendation, will be included in a report for consideration by the House.⁸²²

⁸¹⁵ Public Finance Act 1989, section 45; Crown Entities Act 2004, sections 150–151.

⁸¹⁶ Public Audit Act 2001, section 20.

⁸¹⁷ Public Audit Act 2001, section 37.

⁸¹⁸ Office of the Clerk of the House of Representatives, *Presentation of Papers to the House* (Wellington: Office of the Clerk, 25 September 2012), p. 5.

⁸¹⁹ House of Representatives, *Standing Orders of the House of Representatives*, 2011, No. 339. www.parliament.nz/en-nz/pb/rules/standing-orders (hereafter "*Standing Orders*, 2011").

⁸²⁰ *Standing Orders*, 2011: Standing Order 393.

⁸²¹ *Standing Orders*, 2011: Standing Order 340.

⁸²² *Standing Orders*, 2011: Standing Order 340.

Information on other activities of the OAG, such as its advisory support for select committees of Parliament or the content of its management letters to public entities, is not covered by any legal requirement for publication. The OAG is not required to make any of this information publicly available. The OAG is not subject to the Official Information Act 1982 (OIA).⁸²³ The government did not accept a recent recommendation from the Law Commission that the provisions of the OIA should apply to officers of Parliament.⁸²⁴ Information supplied by the OAG or an audit service provider to a public entity (such as management letters) would, in the hands of the entity, be covered by the OIA and be potentially discoverable.

8.2.2 Transparency (practice)

To what extent is there transparency in the activities and decisions of the audit institution in practice?

Score: 5

In practice, the OAG and Parliament between them ensure that all significant Audit findings and written advice are made public and, although the OAG will not be drawn into debate on its findings, it has a proactive communications and publications policy.

All OAG reports to Parliament on public audits and inquiries appear to be publicly available on the OAG website.⁸²⁵ Publication of other information varies. OAG written briefings for select committees are generally published on the Parliament website;⁸²⁶ issues raised in briefings for select committees may also be taken up in the financial review or be referred by the committees to the entities reviewed for written response. Oral briefings for select committees are generally not made public although may be reported in the committee's minutes. The OAG does not publish management letters to public entities but they may be discoverable in the hands of the entity, under the provisions of the OIA. The OAG publishes other information, such as high-level overviews of its findings from annual audits, which will probably reflect the substance of management letters as well as the statutory audit reports, and occasional observations on specific topics drawing on overall audit findings.⁸²⁷ Information on most activities of the OAG itself is readily obtainable from its annual report or in other reports on the OAG website.⁸²⁸

Nevertheless, other than the legal requirements for publication of public audit reports, information from the OAG in the hands of Parliament is not legally discoverable. The retiring Speaker considered that Parliament should be proactive about releasing the written advice and assessments of the OAG, but that the principle should remain that

⁸²³ Official Information Act 1982.

⁸²⁴ Law Commission, *The Public's Right to Know: Review of the official information legislation*, NZLC R125 (Wellington: Law Commission, 2012), p. 16; New Zealand Government, *Government Response to Law Commission Report on The Public's Right to Know: Review of the official information legislation* (Wellington: House of Representatives, 2013), pp. 3–4.

⁸²⁵ www.oag.govt.nz

⁸²⁶ www.parliament.nz

⁸²⁷ Philippa Smith interviews.

⁸²⁸ www.oag.govt.nz

Parliament retained control of information supplied to it. In particular, he thought that oral advice should be confidential if release might inhibit what the OAG would say.⁸²⁹

In the past, Auditors-General have generally not entered into debate on the results of their reports and have taken a generally cautious approach to opening direct channels of communication with the public, although OAG representatives would be prepared to “discuss and explain” reports with the media.⁸³⁰ The OAG does, however, have a communications strategy, closely monitors requests for information and comment, and identifies issues where a “media strategy” is necessary.⁸³¹ The retiring Speaker considered that the OAG’s responsibility to Parliament should not be compromised by broadening its reach.⁸³²

8.2.3 Accountability (law)

To what extent are there provisions in place to ensure that the supreme audit institution has to report and be answerable for its actions?

Score: 5

The OAG is subject to independent annual audit. There are limited provisions for auditees to challenge findings from annual audits.

The financial statements in the OAG’s annual report are independently audited.⁸³³ The Finance and Expenditure Committee carries out the financial review of the OAG.⁸³⁴ As the OAG reports to Parliament on public audits, and not to the governing bodies of audited entities, it is not in any sense accountable to the entities themselves. Public entities cannot choose who audits them; nor is there any legal provision for them to challenge any opinion of the OAG on those audits.⁸³⁵ Under principles of natural justice, a public entity might challenge the process by which an auditor formed an opinion, including a requirement to consult the entity during that process.⁸³⁶

8.2.4 Accountability (practice)

To what extent does the supreme audit institution have to report and be answerable for its actions in practice?

Score: 5

The OAG commissions independent reviews of its performance and it is reviewed in Parliament. It will discuss its findings in draft with affected organisations and people.

⁸²⁹ Interview of Dr Rt Hon Lockwood Smith MP, Speaker of the House of Representatives, with the author, Wellington, 13 February 2013.

⁸³⁰ David Macdonald interview.

⁸³¹ Philippa Smith interview.

⁸³² Lockwood Smith interview.

⁸³³ Public Audit Act 2001, section 38.

⁸³⁴ *Standing Orders*, 2011: Standing Order 340.

⁸³⁵ The OAG has an Opinions Review Committee (AGAS 3-4804) but this is for purely internal reviews.

⁸³⁶ Philippa Smith and David Macdonald interviews.

The OAG meets its commitments to report to Parliament, and the Finance and Expenditure Committee review will usually include substantive questions and comments by members on the activities of the OAG.⁸³⁷ How an audited entity might legally challenge an auditor's opinion is hypothetical since it has never happened. According to the OAG, the auditor would advise the entity of any modifications to the audit report or adverse comment in a management letter to give opportunity for comment.⁸³⁸ There are significant cases where the audit opinion on treatment of specific items in the financial statements has in effect been negotiated with the entity concerned.⁸³⁹ Entities are likely to be given opportunity to comment on draft reports on performance audits and inquiries, particularly where people or organisations may be criticised.⁸⁴⁰

Although there is provision for the independent auditor to audit the performance of the OAG,⁸⁴¹ there has never been a performance audit under this provision. The Finance and Expenditure Committee recently observed that there was no provision for the independent New Zealand auditor to be funded to audit performance and indicated that the OAG might need to "consider the provision it makes for inquiries or performance audits when it next reviews the contract with the independent auditor".⁸⁴² The OAG itself commissions an independent external review of its performance from time to time. The most recent, in 2008, was by a team led by a former Australian Commonwealth Auditor-General.⁸⁴³

8.2.5 Integrity mechanisms (law)

To what extent are there mechanisms in place to ensure the integrity of the audit institution?

Score: 5

The OAG has comprehensive standards to ensure its integrity and that of its appointed auditors.

The AGAS define standards of integrity and specific rules of conduct for appointed auditors. These standards conform to the INTOSAI principles of independence and objectivity. The AGAS Code of Ethics is based on that of the New Zealand Institute of Chartered Accountants with additional guidance for the public sector and applies to all public audits and other work carried out on behalf of the Auditor-General.⁸⁴⁴ The AGAS statement on independence in assurance engagements identifies potential risks to

⁸³⁷ Phillippa Smith interview.

⁸³⁸ Phillippa Smith interview.

⁸³⁹ David Macdonald and Phillippa Smith interviews.

⁸⁴⁰ AGAS:AG-5 (performance audits) and AG-6 (inquiries) set out provisions for communicating draft findings to persons and organisations affected. Also David Macdonald and Phillippa Smith interviews.

⁸⁴¹ Public Audit Act 2001, section 38(2), importing section 16 (performance audits).

⁸⁴² Finance and Expenditure Committee, *2011/12 Financial Review of the Office of the Controller and Auditor-General* (Wellington: Finance and Expenditure Committee, House of Representatives. 2013), p. 3.

⁸⁴³ International Peer Review Team, *Report on the Efficiency and Effectiveness of the Office of the Controller and Auditor-General of New Zealand*. (Wellington: Controller and Auditor-General, 2008).

⁸⁴⁴ Controller and Auditor-General, *The Auditor-General's Auditing Standards*, 2011: 3-200 et seq.

independence arising from relationships with the audited entity including financial, business, employment, or personal relationships; gifts and hospitality; and actual or threatened litigation.⁸⁴⁵ All staff engaged on audits must also make an independence declaration relating to conflict risk in terms of investments such as in shares, previous employment in audited entities, and personal relationships with employees in public entities more generally.

8.2.6 Integrity mechanisms (practice)

To what extent is the integrity of the audit institution ensured in practice?

Score: 5

In practice, the OAG and auditors observe high standards of integrity.

There are no cases of breaches of the AGAS Code of Ethics by OAG, Audit New Zealand staff, or private audit service providers. Two issues worthy of further comment are related to the employment of OAG staff and allocation of audit work.

Senior OAG officials previously employed in a public entity have a minimum two-year stand-down from audits of that entity. In some cases where an employee held a senior position in another public entity, the stand-down will be longer than two years. For example, the present Auditor-General was previously employed by New Zealand Police and is unlikely to be associated with any audit of Police during her tenure.⁸⁴⁶

On the other hand, there are no restrictions on employment of former employees of OAG or Audit New Zealand. Staff frequently take up employment in finance directorates in public entities. When former senior employees are employed in entities they may have audited, the OAG will consider whether arrangements need to be made for “firewalling” them from the team undertaking the audit (who may have worked for them).⁸⁴⁷

The OAG allocates audit work to Audit New Zealand (whose staff it employs) and to private auditors and has legal authority to set fees charged to audited entities. The OAG appoints an independent reviewer to report on the “probity and objectivity” of the “basis on which auditors are appointed and the basis on which appropriate levels of audit fees are determined”. The reviewer has raised no significant concerns with the processes in the last five years.⁸⁴⁸

⁸⁴⁵ Controller and Auditor-General, *The Auditor-General's Auditing Standards*, 2011: 3-201 et seq. and 3-302 et seq. Cite actual ranges

⁸⁴⁶ Phillippa Smith interview.

⁸⁴⁷ Phillippa Smith interview.

⁸⁴⁸ The reviewer's reports are published in the OAG's annual reports. See, for example, Controller and Auditor-General, *Annual Report 2011/12*, 2012: 109 et seq.

Role

8.3.1 Effective financial audits

To what extent does the audit institution provide effective audits of public expenditure?

Score: 4

The OAG is effective in its role of financial auditing, but could do more to evaluate the effectiveness of public spending.

In its basic role of financial auditing, the OAG is effective in maintaining high standards of financial reporting and control. A small percentage of audit opinions are modified in any way, and management letter recommendations are largely accepted.⁸⁴⁹ Between 80 per cent and 90 per cent of clients report satisfaction with audit work.

A comprehensive audit of a public entity would cover the efficiency, economy, and effectiveness of the entity and the governance and management attributes expected to contribute to these aspects of performance. Although the OAG audits statements of service performance, performance in the “comprehensive” sense is only a secondary topic in financial audits. The OAG asks financial auditors to “maintain an awareness of other performance audit matters” that can be taken up in its performance audits. These audits are an opportunity to evaluate “the extent to which a public entity is carrying out its activities effectively and efficiently”,⁸⁵⁰ but few appear to review achievement of the entity’s policy objectives. If a policy is in place, the audit is supposed to be of the efficiency and effectiveness with which it is implemented,⁸⁵¹ but the OAG has in practice interpreted this rather narrowly.⁸⁵² The independent 2008 review of the OAG also commented that “there was scope for performance audits to take a wider look at systemic issues and effectiveness”.⁸⁵³ The OAG would like to develop a better methodology for “value-for-money” evaluations of public entities’ efficiency,⁸⁵⁴ which may permit more evaluation of outcomes,⁸⁵⁵ but it seems likely that the OAG will continue to take a cautious approach to being seen to influence policy debates.

Relationship between external and internal auditor: An ongoing concern from government managers is that external audit can duplicate the work of internal audit. Legally, it is entirely up to the external auditors what use they make of the work of the internal auditors,⁸⁵⁶ but in practice an appointed auditor would usually design a work programme to take account of specific internal audit reviews.⁸⁵⁷

⁸⁴⁹ Controller and Auditor-General, *Annual Report*, 2012.

⁸⁵⁰ Public Audit Act 2001, section 16.

⁸⁵¹ Public Audit Act 2001, section 16.

⁸⁵² Philippa Smith and David Macdonald interviews

⁸⁵³ International Peer Review Team, 2008: 53.

⁸⁵⁴ Philippa Smith interview.

⁸⁵⁵ Interview with Nicola White, Assistant Auditor-General (Legal), by the author, Wellington, 20 February 2013.

⁸⁵⁶ Controller and Auditor-General, *The Auditor-General’s Auditing Standards*, 2011: 3-308.

⁸⁵⁷ David Macdonald interview.

8.3.2 Detecting and sanctioning misbehaviour

Does the audit institution detect and investigate misbehaviour of public officeholders?

Score: 5

The OAG makes a significant contribution to protecting New Zealand's high standards of probity in public life.

General role in issues of fraud and corruption: The OAG has extensive powers of access to all the information it would require to detect risk of fraud or other misuse of public funds and audited entities are legally required to cooperate in full.⁸⁵⁸ Auditors are not specifically responsible for detecting fraud, but if they encounter or suspect fraud during an audit they are required to report it to the OAG.⁸⁵⁹ Further investigation would then normally be the responsibility of the appropriate regulatory or enforcement authority. Auditors report other significant cases of non-compliance to the OAG, which will decide whether they are to be covered in the report on the audit. The OAG recently reported on a comprehensive survey of fraud awareness in the public sector.⁸⁶⁰

Investigation of misbehaviour by office-holders: Members of Parliament and ministers are subject to the law on fraud and other forms of corrupt behaviour. The sanctions for offences would be determined by the criminal code. Whether they would be applied is hypothetical because of the very small number of *prima facie* cases of corruption or other criminal offences involving national political office-holders. A rare exception (in which, however, audit investigations played no part) was the 2009 conviction and imprisonment of Taito Philip Field, a Labour member of Parliament, on charges of bribery and corruption and attempting to pervert the course of justice.⁸⁶¹

The OAG's public reputation for probity and independence in general carries sufficient weight for political office-holders to take its recommendations seriously.⁸⁶² Government continues to ask it to conduct specific inquiries into matters involving members of Parliament and ministers. In recent years, the OAG has reported on several matters touching on the ethical responsibilities of national political office-holders, including inquiries in 2006 into public funds used for party-political advertising and in 2009 and 2010 on how parliamentary and ministerial accommodation entitlements were administered. Each of these reviews was critical of some aspects of current practice by elected officials, and each resulted in changes in the rules. In response to the 2006 report the Labour Prime Minister denied that her party had spent public funds improperly, but agreed to repay the amounts found by the OAG to be unlawful.⁸⁶³ A

⁸⁵⁸ Public Audit Act 2001, sections 24 et seq.

⁸⁵⁹ Controller and Auditor-General, *The Auditor-General's Auditing Standards*, 2011: 3:2403.

⁸⁶⁰ Controller and Auditor-General, *Fraud Awareness, Prevention, and Detection in the Public Sector* (Wellington: Office of the Auditor-General, 2012).

⁸⁶¹ New Zealand Press Association, "Guilty verdicts for Taito Phillip Field", *New Zealand Herald*, 4 August 2009. www.nzherald.co.nz/nz/news/article.cfm?c_id=1&objectid=10587391 [accessed 29 March 2013].

⁸⁶² Lockwood Smith interview.

⁸⁶³ H. Clark, "Labour to refund funding", 12 October 2006.

web.archive.org/web/20061023085134/http://www.labour.org.nz/news/latest_labour_news/news-061012/index.html [accessed 25 March 2013].

more recent report on consideration of SkyCity and other proposals for building a convention centre in Auckland found no evidence of corruption, but strongly criticised the process of considering the competing bids.⁸⁶⁴

The Local Authorities (Members' Interests) Act 1968 has provisions that can preclude elected local authority members from holding office if they have a significant contract or contracts with the authority to which they are elected, and also requires them to withdraw from involvement on any issue before the authority for decision if they have a pecuniary interest relating to that issue. The OAG can investigate and prosecute breaches of these provisions.

8.3.3 Improving financial management

To what extent is the supreme audit institution effective in improving the financial management of government?

Score: 4

The OAG has made a significant contribution to the quality of financial management in New Zealand and is a trusted independent watchdog. Parliament could play a stronger role in ensuring the OAG's findings are responded to. There is scope in the wider system for improving reporting of the results of public spending.

New Zealand ranks high on international governance and financial management indicators. The OAG's own assessments indicate that there is a high quality of management control and financial information systems in the New Zealand public sector.⁸⁶⁵ The specific contributions of the OAG to those scores and to further improvement are difficult to identify because they depend on many features of the public governance system. However, the indicators reported by the OAG for the last five years suggest that public entities and stakeholders are responsive to the OAG's reports and recommendations.⁸⁶⁶

- For financial audits, about 75–80 per cent of sampled public entities accepted management report recommendations.
- For performance audits and inquiries, the percentage satisfaction rating varies, but has averaged about 80 per cent for quality and usefulness. In the last three years, the OAG has also reported annually on the uptake of recommendations in past performance audit reports.⁸⁶⁷ No clear pattern emerges from these assessments, but in most of the audits surveyed there has been at least some uptake of OAG recommendations.

⁸⁶⁴ Controller and Auditor-General, *Inquiry into the Government's Decision to Negotiate with SkyCity Entertainment Group Limited for an International Convention Centre* (Wellington: Office of the Auditor-General, 2013).

⁸⁶⁵ Controller and Auditor-General, *Statement of Intent*, 2012: 31–33.

⁸⁶⁶ The following figures are estimated from charts in Controller and Auditor-General, *Statement of Intent*, 2012: 36–46. In some cases the statistics are sampled.

⁸⁶⁷ Controller and Auditor-General, *Performance Audits from 2008: Follow-up report* (Wellington: Office of the Auditor-General, 2010); Controller and Auditor-General, *Public Entities' Progress in Implementing the Auditor-General's Recommendations* (Wellington: Office of the Auditor-General, 2011); Controller and Auditor-General, *Public Entities' Progress in Implementing the Auditor-General's Recommendations* (Wellington: Office of the Auditor-General, 2012).

The role of Parliament in backing up the OAG is uneven. On the one hand, members of Parliament say they value the OAG's work. Between 85 per cent and 100 per cent of select committee members confirmed that OAG advice assists Estimates examinations and financial reviews, 75–100 per cent of select committee members rated OAG advice highly for quality, and 80–85 per cent of members rated the advice highly for usefulness.⁸⁶⁸ These results were broadly confirmed in interviews, although it appeared that select committees may value OAG advice for financial reviews, where the OAG can draw on its audit work, more than on Estimates scrutiny.⁸⁶⁹ The Finance and Expenditure Committee also recently said it “would like to see the [OAG] work to improve the usefulness of its reports and to reduce the cost of their publication; we believe they could be shorter and do more to facilitate systematic comparisons”.⁸⁷⁰ However, an opposition party finance spokesperson added that select committee members were “absolutely reliant” on the Auditor-General for advice in both Estimates scrutiny and financial review.⁸⁷¹ Informants agreed that the OAG has “political clout” in the sense that Parliament and executive have to respond to its reports if there is public interest in them.

On the other hand, the attention received by OAG reports in Parliament depends very much on their political salience.⁸⁷² A few reports have a major political impact, but many findings receive only cursory attention in select committees and the House. The review function is spread over several committees, rather than being concentrated as in some other jurisdictions in one Public Accounts Committee or its equivalent. The OAG is often left on its own to follow up public entities' responses to its findings or recommendations such as the annual reports on uptake of recommendations mentioned above. However, matters that are not discussed or debated in Parliament could still have effects: an adverse audit report “would be a black mark for a government official” and “should have consequences”.⁸⁷³

It was also argued that the OAG (like the Ombudsman) should not spend the capital of its independence too often: there would be a danger of it being seen by the government as just another political risk to be managed.⁸⁷⁴ The “damage limitation” responses of the government to the SkyCity report⁸⁷⁵ and another on defence restructuring⁸⁷⁶ are two examples.

The major priorities for further improvement are in the relevance and use of performance information for monitoring and evaluation in the financial management

⁸⁶⁸ Estimated from charts in Controller and Auditor-General, *Statement of Intent*, 2012.

⁸⁶⁹ Interview with David McGee, Ombudsman and former Clerk of the House of Representatives, by the author, Wellington, 4 February 2013; Philippa Smith interview.

⁸⁷⁰ Finance and Expenditure Committee, 2013: 4.

⁸⁷¹ Interview with David Parker MP, Labour party finance spokesperson, with the author, Wellington, 20 February 2013.

⁸⁷² Lockwood Smith, David Parker, and David McGee interviews.

⁸⁷³ David Parker interview.

⁸⁷⁴ Lockwood Smith and David McGee interviews.

⁸⁷⁵ For the political debate on this report, see, for example, “Opposition keeps heat on Govt over SkyCity deal”, *TVNZ*, 20 February 2013. tvnz.co.nz/politics-news/opposition-keeps-heat-govt-over-skycity-deal-5346932

⁸⁷⁶ See “Minister disputes critical report on Defence restructure”, *Radio New Zealand*, 31 January 2013. www.radionz.co.nz/news/national/126854/minister-disputes-critical-report-on-defence-restructure

cycle. In recent years, the OAG has strongly criticised the quality of information about the non-financial performance of public sector entities.⁸⁷⁷ The OAG has noted some improvement in the last year or two but says that roughly half of entities' service performance information and associated systems and controls required improvement.⁸⁷⁸ In 2011, the Auditor-General released a revised (and significantly strengthened) auditing standard for service performance information⁸⁷⁹ for the first time requiring auditors to modify their audit opinion "if the performance information in the annual report does not, in their opinion, fairly reflect performance for the year".⁸⁸⁰ The standard applies to local authorities, government departments, Crown entities, and tertiary education institutions.⁸⁸¹ Auditing to this strengthened standard may contribute to further improvement.

8.4.1 Treaty of Waitangi

The Treaty of Waitangi can be understood to create obligations of partnership, respect and participation. What does the OAG do to partner with Māori, to respect and affirm Māori rights to make decisions and to enhance Māori participation in its field of activity? In particular, where the OAG has legal rights and obligations in this respect given to it by the Crown, how well does it honour them, including any Treaty obligations passed on by the Crown?

The OAG has made significant efforts to ensure its responsiveness to Māori.

The OAG is not part of the Crown,⁸⁸² so does not inherit any Treaty of Waitangi obligations from the Crown; neither are there specific provisions relating to the Treaty in legislation affecting it. The audit function is conducted according to international standards of auditing and accounting, which contain no reference to ethnicity or indigeneity. The OAG has, however, developed a policy for its relations with Māori set out most recently in an "effectiveness plan for Māori"⁸⁸³ and based on "the protection of the right of Māori to live as Māori in New Zealand". The plan includes responsiveness to the specific interests of Māori in government services, specific Treaty initiatives and the settlement of Treaty claims; consultation with Māori on effective accountability and the responsiveness of entities working for the benefit of Māori; and being a good employer.⁸⁸⁴ The Public Audit Act 2001 also requires the OAG to implement good employer and equal employment opportunities policies in language very similar to the requirements for chief executives of government departments in the State Sector Act

⁸⁷⁷ See, for example, Controller and Auditor-General, *The Auditor-General's Observations on the Quality of Performance Reporting* (Wellington: Office of the Auditor-General, 2008).

⁸⁷⁸ Controller and Auditor-General, *Statement of Intent*, 2012: 32.

⁸⁷⁹ Controller and Auditor-General, *The Auditor-General's Auditing Standards*, 2011: AG-4 (revised), "The audit of service performance reports".

⁸⁸⁰ Controller and Auditor-General, *Central Government: Results of the 2010/11 audits (Volume 1)* (Wellington: Office of the Auditor-General, 2011), p. 70.

⁸⁸¹ State-owned enterprises and schools are not required to report service performance.

⁸⁸² The Public Audit Act interpretation section defines the Crown to exclude offices of Parliament.

⁸⁸³ Controller and Auditor-General, *Effectiveness for Maori Plan: Te Mana Arotake 2007–2009* (Wellington: Office of the Auditor-General, 2007).

⁸⁸⁴ Controller and Auditor-General, 2007.

1988.⁸⁸⁵ These obligations include recognition of “the aims and aspirations of the Māori people”. Although only about 10 staff identify as Māori, the OAG has made efforts to live up to these obligations as an employer.⁸⁸⁶ The OAG has also conducted performance audits on matters of specific interest to Māori. In a recent audit of Māori housing, the OAG sought the advice of kaumātua (elders), consulted Māori in a series of hui (meetings), and reported back to those consulted.⁸⁸⁷ A similar approach is being taken with the current audit of Māori education:⁸⁸⁸ fieldwork has included individual and group interviews of teachers and parents,⁸⁸⁹ and a Māori advisory group seems to be playing an effective role in providing advice and oversight.⁸⁹⁰ Thus, in practice, the OAG’s principles for engaging with Māori are not very different from those of government departments.

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⁸⁸⁵ Public Audit Act 2001, Schedule 3, clauses 9 and 10.

⁸⁸⁶ Interview of staff of the Performance Audit Group, Office of the Auditor-General, with the author, Wellington, 5 June 2013.

⁸⁸⁷ Nicola White interview.

⁸⁸⁸ Controller and Auditor-General, *Education for Māori: Context for our proposed audit work until 2017* (Wellington: Office of the Auditor-General, 2012); Controller and Auditor-General, *Education for Māori: Implementing Ka Hikitia – Managing for success* (Wellington: Office of the Auditor-General, 2013).

⁸⁸⁹ OAG Performance Audit Group staff interview.

⁸⁹⁰ Interview of Professor Wally Penetito, Te Kura Māori, Victoria University of Wellington, with the author, Wellington, 11 June 2013.

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