

**Parliament
Innovation**

by
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The Constitution Unit

April 2003

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A note on sources

Many parliaments publish most of their official proceedings and reports, but not all may be as transparent as the Parliament in

- publishing background papers, including internal procedural guidance or committee briefing papers, or
- providing up-to-date version of all these and more on a public website.

Further, not all sources of other relevant bodies—including Auditors, Audit Offices, governments, audit or PAC associations, and international agencies—are either published at all, or easily available on websites. Time constraints meant that we have had to be selective as to what comparative sources we could reasonably expect to access. Some sources used

Foreword

This report was prepared for the Scottish Parliament's Audit Committee. It had commissioned The Constitution Unit in November 2002 to undertake comparative research on how parliamentary audit or public accounts committee operate, so as to assist it in assessing how well it has been performing in its first 4 years, and what lessons its successor committee in the second session of the Parliament could learn from its fellow committees' experience. Because of the imminent end of the parliamentary session, the research was to be submitted by the end of January 2003. The report was discussed by the Audit Committee in February 2003 and formed part of its 'Legacy Paper', published in March.

We are grateful to the Parliament for permission to publish this research as a Constitution Unit report. Notwithstanding the necessarily limited scale of the research, we believe that the issues and questions it raises will be of interest to all those interested in how democratic parliaments undertake one of their most important functions, that of scrutinising the proper spending of public money. This was a particular challenge for a parliament such as the Scottish Parliament, which was created with a commitment to innovation and an operating culture of power-sharing, accountability, openness and public participation, and equal opportunities.¹ How could it operate a robust and effective system of parliament audit, based substantially on the Westminster PAC model, while remaining true to the distinctive ethos of its parliament and its fellow committees?

This research was greatly assisted by the cooperation of the Parliament's staff, especially those its clerking and research services who were responsible for this commissioned research project. We were also encouraged by the support from the convener and members of the Audit Committee itself, who bravely initiated this form of self-examination. We received much assistance and cooperation, often at extremely short notice, from parliamentary staff around the world, and from academics and others in the UK and elsewhere. It goes without saying that any errors are our own.

Oonagh Gay and
Barry K Winetrobe
April 2003

¹

Summary

The audit function forms a vital part of the work of a parliamentary body. The parliamentary audit process closes the circle of the parliamentary accountability of public money, which begins with the granting of funds by a parliament to its government. This report assesses the practice of parliamentary audit in comparable jurisdictions, using a set sample of comparators.

Two themes should underpin parliamentary audit and ensure that the parliamentary body adds some value to the process of public audit. These are:

- Independence—by which is meant the ability to consider and report on any circumstances connected with reports of the Auditor-General, and the preservation of the independence of the Auditor and Audit Service, especially in terms of their appointment, removal and resourcing.
- Effectiveness—this means a measurement in terms of outcomes, in the extent to which parliamentary audit (as part of the wider public audit process) makes a difference to the public administration goal of improvement

We assessed how far parliamentary audit committees (PACs) ‘add value’ to the public audit function, and to parliamentary governance generally. For the Scottish Parliament, independent and effective audit scrutiny must also be achieved as far as possible within the Parliament’s ethos of accountability, power-sharing, equal opportunities, openness and participativeness. Thus we have concentrated on some key areas, such as the PAC’s

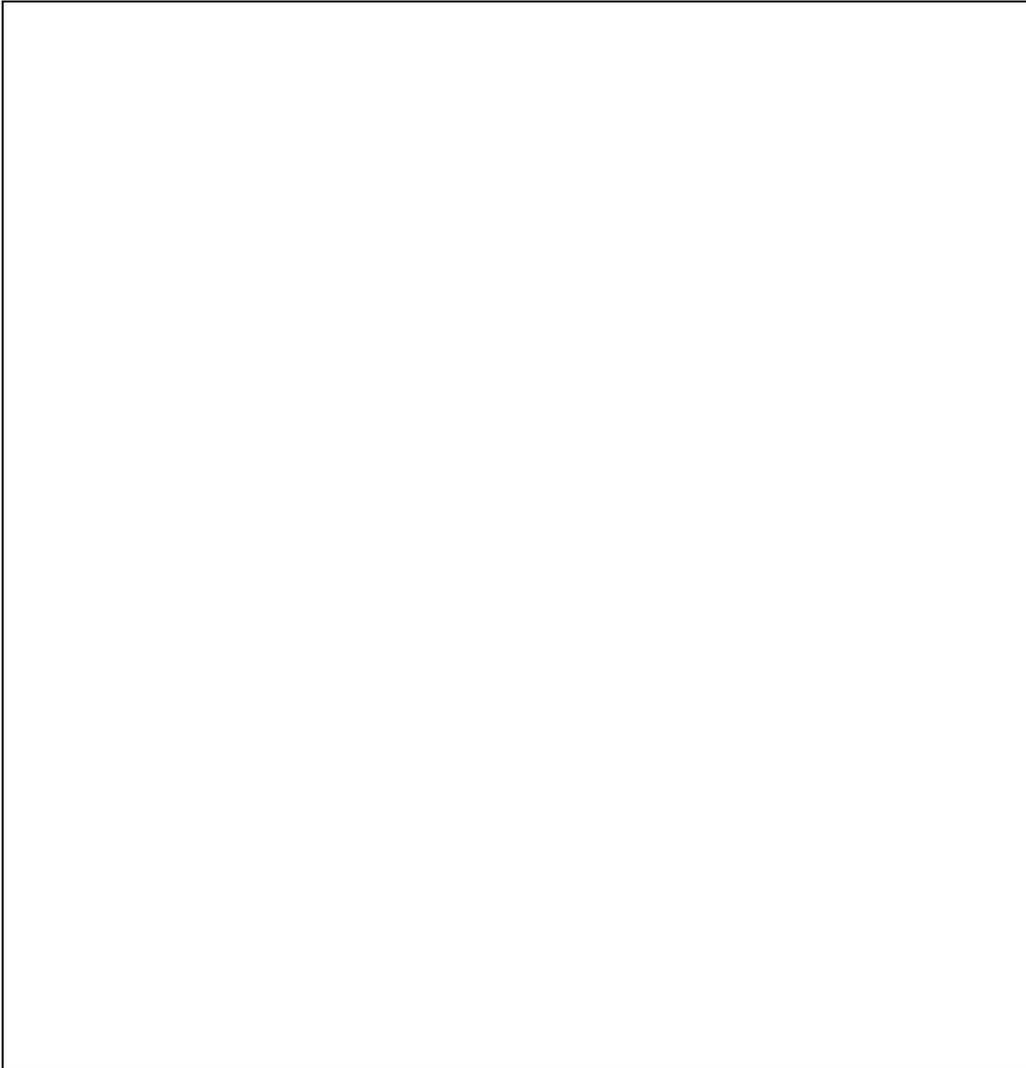
- structure, composition and remit;
- resources, including staffing and sources of information and advice;
- operating procedures and practices;
- relationship with the Auditor and Audit Office;
- relationship with other parliamentary committees, and
- relationship with the public and the media.

Some PACs are, like the Audit Committee, parliamentary committees with a function relating to the audit of public accounts, and some form of ‘value for money’ scrutiny. At the other end of the spectrum are those, outwith the ‘Westminster’ tradition, which, though connected with their parliament in various ways, are not parliamentary committees. These can be regarded as independent public audit bodies, more Audit Office than PAC. In between these extremes are parliamentary committees which have a PAC function, but also have more general public finance or budgetary roles. The main findings are set out below, together with a boxed series of issues for consideration by the Committee, grouped by subject matter.

(i) Structural Issues

There is neither a correct size for a PAC, nor any standard correlation between it and the size of a parliament. While in general, the composition of PACs reflects the party balance within

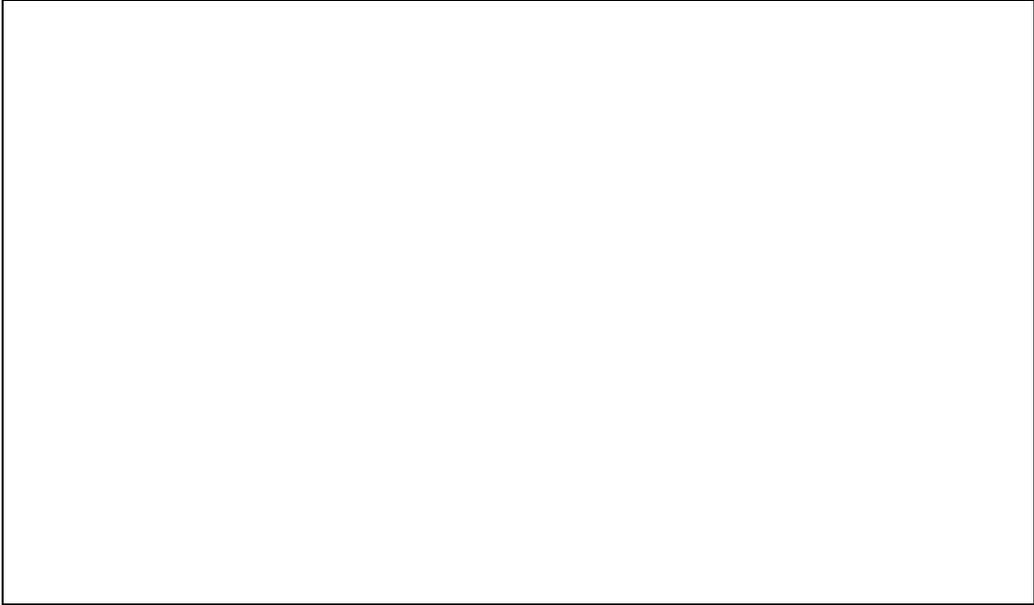
the parliament, not all 'Westminster' type committees follow the UK convention of an Opposition chair.



(iii) Outputs and Outcomes

The number of reports produced varies greatly, and is not necessarily a good measure of a PAC's activity or effectiveness. Drafting can be undertaken either by Audit Office staff or by committee staff. Unlike most parliamentary commi

would almost certainly have a wider effect on the operation of the Audit Committee. It may then have to address whether it wishes to retain the essence of its existing ways of operating or whether it regards a fundamentally different model as potentially more effective and appropriate for devolved Scotland.

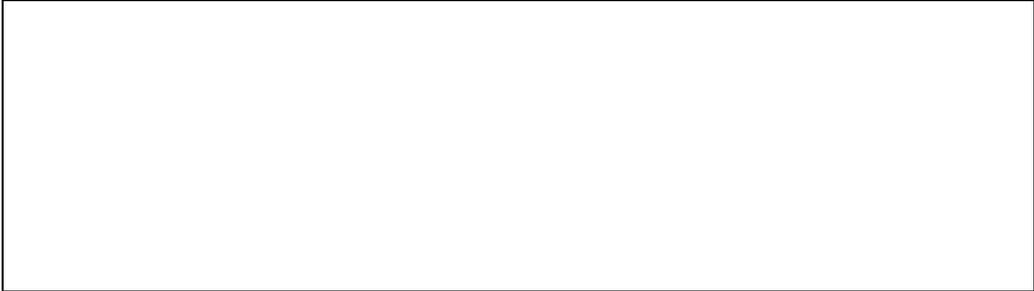


(iv) Key Relationships

The central relationship in parliamentary audit is that between the PAC on the one hand and the Auditor and Audit Service on the other. Far from them being independent of each other, it is the degree of their interdependence that characterises a particular parliamentary audit system. It is the interdependence which is the key to the effectiveness of the system.

How far a parliament's other committees can make use of the audit office's expertise and resources is often a sensitive issue. New Zealand has adopted a detailed code of practice on assistance from the auditor to other committees and MPs.

by a thorough review of the Parliament’s financial scrutiny role, by way of a review of the 2000 Act system, within which the parliamentary audit function operates.



responsibility on everyone within the Parliament, and those who interact and engage with it, to be aware of their responsibility to parliamentary posterity.

The Parliament's Committees have a particular responsibility, in this respect. They were at the heart of the innovative design that the Parliament's founders wished it to have. They represent the primary way in which the distinctive culture and ethos, as expressed in the key principles of the Consultative Steering Group (CSG)—sharing the power, accountability, access and participativeness, and equal opportunities—is given practical expression in the day-to-day working of the Parliament.

Within this context, the idea that all Committees, and other parts of the Parliament, should draw up 'legacy papers' which can pass on experience and advice to their successors after the forthcoming election, is an excellent one, perhaps even a necessary one. The Audit Committee, as part of its legacy strategy, has commissioned this comparative research, and it is in this spirit, that this research has been undertaken.

The Audit Committee is the lynchpin of the parliamentary audit function, which is generally agreed to be one of the more important roles that any parliament can fulfil. Along with the other mandatory committees, its role and function were examined in some detail, at least in comparison with the subject committees, prior to the establishment of the Parliament in the spring of 1999. Some of this was explicit, especially through the work of the CSG and the Financial Issues Advisory Group (FIAG), but also there was a certain amount of implicit discussion during Westminster's examination of the Scotland Bill in 1998, mainly in the context of the need or otherwise of specifying the mechanics of parliamentary audit on the face of the devolution legislation.

A key aspect to be borne in mind for the purposes of this study, is the centrality of the Westminster-style 'public accounts committee' model in influencing the shape of parliamentary audit in the Scottish Parliament. This can be seen in the CSG and FIAG reports, as well as in the Scotland Bill debates. Crucially, this is demonstrated by the procedures and practices of the Audit Committee itself, especially in its relationship with the AGS, much of which is based on what were initially described by the parliamentary clerks as 'conventions' developed at Westminster. Along with the Scottish Parliamentary Corporate Body (SPCB), the Audit Committee is the one part of the parliamentary architecture that owes its existence and form to a Westminster model.

Another major consideration is the extent to which the parliamentary audit function is undertaken in the Parliament, within the accepted principles of the Parliament's operation. We have already noted the centrality of committees in that respect, and the presumption must be that the Audit Committee is expected to adhere to, and to operate within, these principles.

Yet the parliamentary audit function can be regarded as a unique function, one which is partly quasi-governmental, or even quasi-judicial, in nature.⁴ While many of its individual features may be reflected, at least to some extent, in the work of other committees, its overall mode of operation can be regarded as unique within the Parliament. For example, it operates

- within a more generally non-partisan environment than is the case with almost all other committees,⁵
- through the close working partnership of a parliamentary committee and an external, independent agency—the Auditor General for Scotland (AGS) and Audit Scotland⁶—and,
- within a context of accepted and objective operational norms, unlike the generality of parliamentary scrutiny and oversight which has, broadly speaking, a ‘policy’ focus.⁷

Much of this uniqueness derives from (and, in some cases, goes further explicitly than) the Westminster PAC model, which itself is predicated on the special constitutional role that the UK Parliament has in relation to public money, and the need to provide a system of public audit that is rigorous and can be relied upon. For example, the Audit Committee is the only committee where Standing Orders require that no

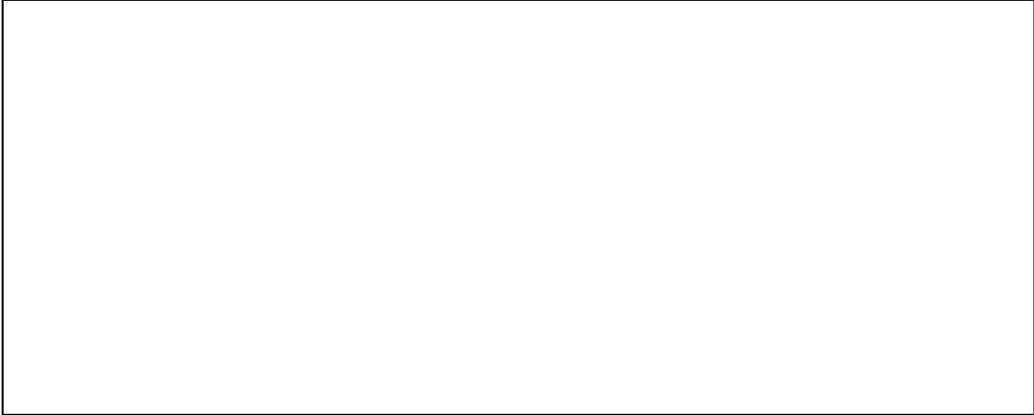
B The impact of this context on our approach

That the provenance of the Parliament and its audit function is essential to an understanding of the role and function of the Audit Committee underpins our approach to this short research project, especially as it is intended to be part of the Committee's 'legacy' to its post-election successor. That successor may well be composed, wholly or in part, of either new members of the Committee or even of new members of the Parliament, and its support staff may also include those new to the Committee. It is also possible that the new Parliament might wish to revisit the remit of the Committee, either itself or as part of a wider possible restructuring of the committee system. The experience of restructuring in the first session demonstrates how such an exercise risks being driven in part by short-term considerations of political or administrative convenience, as much as by adherence to the Parliament's underlying principles.

The Parliament may even wish to replace the Audit Committee with a different sort of Committee or to transfer its au

example, why things are done the way they are; what gave rise to these ways of doing things, and whether they achieved the results that were intended. Answering these questions can provide valuable lessons for the Parliament, even by suggesting what to do, as much as what to do.

(ii) Choosing our core parliamentary comparators



Of necessity, this study has, as part of its methodology, involved a relatively small sample, which limits the potential utility of a comparative approach. A wider study, building on this research, may provide greater insights and outcomes, by being based on a much broader examination of alternatives. Nevertheless, this study can produce useful results, and we believe that it has done so. This was achieved through a careful selection of suitable comparator parliaments for our more detailed examination, within the tight time and resource constraints, and the need to choose parliaments where we could be reasonably certain of obtaining adequate and timely information.

This proved to be the case, generally speaking, and a brief summary of the parliamentary audit arrangements in each of our core comparators is provided in Appendix 1. Nevertheless, we have made extensive use of information obtained from other PACs, where that has been deemed relevant to the research, some of whom even completed our questionnaire. This means, for example, that many of our results are not restricted to our core sample, especially when they may not have responded substantively to a particular question, and useful data could be gained from PACs outwith the core sample, either from them directly or through their published information. In other words, we are not producing a tightly structured comparative analysis of a set number of PACs, but a comparative overview of relevant PACs and their structure and operation.

Not only have we concentrated on ‘Westminster model’ parliaments, plus a Scandinavian parliament as a wider example, we have chosen our ‘Westminster’ parliaments with some care. This has allowed us to compare and contrast how different parliaments, based largely on a common foundation, have developed in different ways that accommodate their ‘Westminster’ heritage within their own particular governance system. In a sense, this is exactly what the Scottish Parliament itself has been doing throughout its short life.

We have also chosen to look at Westminster itself, not just as the 'parent' of most of the systems being examined, including the Parliament's, but to see to what extent it may have been developing what is recognised as the classical PAC model. In other words, it is instructive to see to how far Westminster itself still adheres to the 'Westminster model' upon which the Parliament's audit arrangements were predicated. We also chose Ireland as a close neighbour with a recent and strong Westminster influence. New Zealand also has much in common with Scotland, including scale and a unicameral system, as well as a reputation for innovative approaches to governance issues. Canada and Australia are instructive because they provide a range of sub-national parliaments, which can be compared and contrasted amongst themselves and with their respective national parliament. Denmark appeared to us to be the most convenient and appropriate example of a non-Westminster parliamentary system, not least because of its apparent innovativeness in public audit.

We considered, but decided not to include in our core sample, more examples of sub-national or small national parliaments, in other parts of the Commonwealth, Europe or elsewhere, for the reasons set out above. Inclusion of one or more of these would dilute the utility of the comparator set we had constructed, without necessarily providing us with

reports, annual reports,¹⁴ and its published response to the recent World Bank Institute questionnaire.¹⁵

C The parliamentary audit function

(i) The nature of the function

We have referred already to what we have termed the ‘parliamentary audit function,’ and identified some of its relevant characteristics. What we sought to identify were those segments of the overall audit function that are performed by, or within a parliament, as this is neither a study of the public audit process itself, or of the role and function of Auditors and Audit Services. This function has a dual focus:

- Internally, it is part of the general network of a parliament’s scrutiny of the executive, the holding of it to account for its policies and actions, and
- Externally, it is part of the public audit process, whereby a parliament and independent auditors seek to ensure that public money is spent properly.

Together, the parliamentary audit process is said to close the circle of the parliamentary accountability of public money, which begins with the granting of funds by a parliament to its government. This is neatly summarised in the Audit Committee’s own description, which it has used at the beginning of its last two annual reports:

“The Audit Committee holds to account those who are charged with spending the taxpayers’ money and ensures that public funds are spent wisely.”

Other PACs use variations of this basic approach. The Australian PAC states that its purpose “has remained unchanged since it was first established in 1913: the JCPAA exists to hold Commonwealth agencies to account for the lawfulness, efficiency and effectiveness with which they use public monies.”¹⁶ The general guidelines for Canadian PACs declare that “the role of the Public Accounts Committee is to hold the government accountable for its spending of taxpayers’ money and its stewardship over public assets.”¹⁷

The public audit process need not necessarily require such a central role for a parliament, if its main aim is simply to provide a full and honest audit of the public accounts, or even an

¹⁴ As this study has found, the Committee’s annual reporting, in line with practice across the Parliament’s committees, is not as comprehensive as many of the PACs we have examined which do publish annual reports.

¹⁵ “The World Bank seeks information on the experience of the Scottish Parliament’s Audit Committee”, Committee press release CAUD 04/2002, 10.9.02 (http://www.scottish.parliament.uk/whats_happening/news-02/caud02-004.html), which also contains a link to the Committee’s completed questionnaire.

¹⁶ Joint Committee of Public Accounts and Audit, (<http://www.aph.gov.au/house/committee/jpaa/purpose.htm>)

¹⁷ Canadian Council of Public Accounts Committees (CCPAC), , 1989, reproduced in CCPAC, , March 1991: <http://www.ccpac.ca/jurisdic/> (hereafter ‘CCPAC Guidelines’)

assessment of how efficiently, effectively and economically public money has been spent. Though it could be done within government, it is, in accord with accepted professional principles, undertaken by a person or body independent of the body being audited. However, what is deemed to be required in a democratic society is that this form of accountability should be to the people, through their representatives.

This adds an additional layer of discipline on the government in its use of the public's money, for, after all, the Gladstonian system of public audit devised in the 1860s, comprising the twin pillars of the Comptroller and Auditor General and the Public Accounts Committee, is based on the idea of curbing what Gladstone himself described as 'the spirit of expenditure' by governments (and, at that time by the House of Commons itself). Governments are always keen for there to be, or to be, seen to be external curbs on their own propensity for spending.¹⁸ Parliaments provide a convenient, and politically appropriate, base for such mechanisms, not least in Westminster model systems where majority governments can control them.

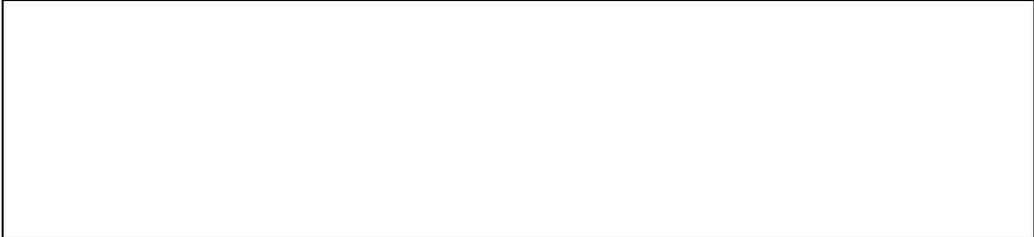
It is no coincidence that the parliamentary inputs and mechanisms at the two 'ends' of the cycle of financial control are separate in the classic UK model, or that there is such a strong emphasis on the eschewing of policy scrutiny in parliamentary audit. The Westminster model of parliamentary financial control tends towards minimal meaningful parliamentary involvement in the budgetary aspects (such as the financial totals, their sources and their allocation), where policy is fundamental, in favour of relatively strong ex post financial scrutiny, where policy can be made secondary to more 'objective' forms of scrutiny and audit.¹⁹ A major rationale for the FIAG scheme for the Parliament was an injection of some meaningful parliamentary input at the budgetary end of the cycle,²⁰ while maintaining the perceived strengths of parliamentary audit at the other end.

It is important to appreciate this aspect of the public audit system upon which devolved Scotland's arrangements are ultimately based. This is not to suggest that parliamentary audit is a compliant tool of executive financial policy. It is a perfectly proper function of the assembly comprising the democratically elected representatives of the people for it to ensure that public money is properly spent, in both the accounting and value-for-money senses. One of the three fundamental principles of public audit, as promulgated by the Public Audit

¹⁸ Prices and incomes policies and independent central banks are just two more modern examples

¹⁹ This is sometimes ascribed to different forms of government, in that parliamentary systems of the Westminster type promote a close and interdependence

Forum,²¹ is “the ability of public auditors to make the results of their audits available to the public, and to democratically elected representatives.”²² The Auditor General expressed this parliamentary role recently:²³



(ii) The variety of PACs

PACs vary greatly, even among the relatively small number we examined in this study.²⁴ Some are, like the Parliament’s Audit Committee, parliamentary committees with a function relating to the audit of public accounts, and, generally but not invariably, some form of ‘value for money’ scrutiny of public bodies. At the other end of the spectrum are those, outwith the ‘Westminster tradition, which, though connected with their parliament in various ways, including their membership, are not parliamentary committees. These can be regarded as independent public audit bodies, more Audit Office than PAC. In between these extremes are parliamentary committees which have a PAC function, but also have more general public finance or budgetary functions.

The scope and nature of the parliamentary audit function varies in the jurisdictions we examined. For example, of the PACs examined only 3—New Zealand, Ontario and British Columbia—said that they had a role in the legislative process, such as ‘audit scrutiny’ of bills generally, or committee scrutiny of ‘audit-related’ bills. This appears to accord with the results of other surveys, such as those of the CPA and World Bank. The CPA study noted that a PAC “does not usually have legislation referred to it but it is conceivable that a major overhaul of public finance legislation, for example, could be referred to a PAC for its

—

- performance or value-for-money assessment of the expenditure, in terms of the ‘three Es’ of economy, efficiency and effectiveness.

D Two criteria: independence and effectiveness

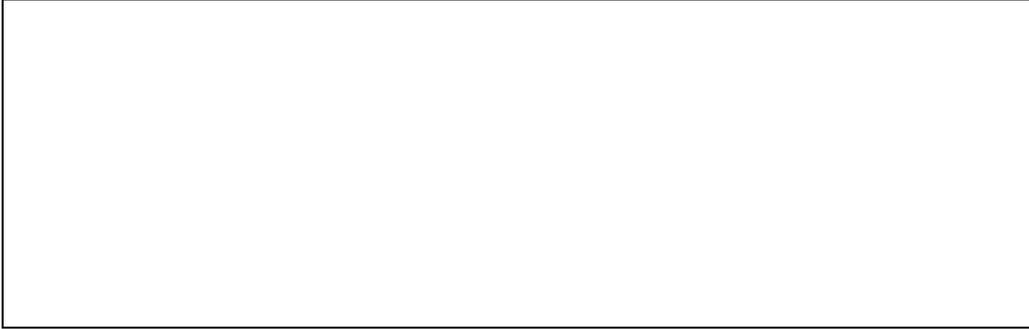
We have approached our comparative research with two key concepts in mind, as they appear, from our preliminary reading and discussions, to encapsulate the main attributes of a parliamentary audit scheme. They are _____ and _____. To these must be applied the additional context, for the Committee, of the Parliament’s own unique culture, which, though relevant to independence, is more related, in practical terms here, to the notion of effectiveness. Some explanation of these concepts is given below.

(i) Independence

‘Independence’ is much-used in the context of public audit, but its meaning is rather complex and multi-layered. It is most often applied to the Auditor and the Audit Service, ensuring, in the words of the Public Audit Forum’s principles, “the independence of public sector auditors from the organisations being audited”. This is, as noted above, an accepted professional requirement for auditing generally, whether in the public or private sector. In practical terms, independence applies to factors such as the appointment, terms and conditions and removal of the Auditor, the financing of the Audit Service, and their working programmes, powers and practices. As the Public Audit Forum puts it:

Public audit must be independent of the organisations being audited so that the auditors cannot be improperly influenced by those whose work they audit and so that they can carry out their role freely.

The PAC should also be independent of government, in the sense used above, for similar reasons. Yet this is not such a clear-cut aspiration, as PACs, at least those in parliamentary systems of the Westminster model, exist within parliaments where the executive has a major, often dominant role. This is one of the cent



In addition, the parliament, and to a greater or lesser extent, its PAC, are the means whereby the independence of the Auditor and Audit Service³¹ are institutionally preserved, especially in terms of their appointment, removal and resourcing.

Thus most jurisdictions proclaim, both in legislation and in parliamentary rules, that the Auditor and Audit Service are independent of both the executive and the parliament, especially in the sense of not being subject to the direction of either. However, PACs we examined have different degrees of power or discretion to influence the Auditor's work programme, from the ability to make suggestions, to the power to require particular inquiries to be undertaken.

(ii) Effectiveness

Effectiveness is another necessary criteria for a parliamentary audit system, yet it too is not a

activities, in terms of helping to ensure that lessons have been learned and mistakes will not be repeated. In other words, there is a public administration goal of improvement, albeit one often expressed mainly in financial terms.

PACs and Auditors will generally claim that they, jointly and severally, have been the catalyst for such gains, as can be seen from some responses from PACs to our questionnaire:

“Recommendations have led to improvements in accountability, transparency of Government operations and in the information provided to the Parliament—ie; changes to the Budget Documents. It has also resulted in improvements to Government Services.” (Victoria)

“The 2002 Spring Report of the Provincial Auditor described PAC's impact in this way: ‘Increasingly the committee's discussions relate to broader issues including strategic plans, key risks to achiev not

public responsible for funding the activities concerned or directly to the public themselves where it is in the public interest to do so. This completes the cycle of accountability.

A parliament is also the forum which picks up and takes forward the products of the audit service. In this sense, it should add value to these products. While the UK Auditor did not think it necessary for the UK PAC to take up every Audit Office report, “the Committee's decision to take an NAO report increases its impact. Senior Departmental officials spend a considerable time focusing on the report and preparing for hearings. The generation of a Committee report requires the Government to respond via a Treasury Minute. And the potential threat of a follow-up by the Committee ensures that Departments respond positively to the recommendations made.”³⁵

(iii) What we are examining

To sum up, what this report seeks to do is assess how the parliamentary audit function operates in comparable jurisdictions, and to assess how far they ‘add value’ to the public audit function, and to parliamentary governance generally. We make this assessment by reference to the two criteria of independence and effectiveness, which must be considered both separately and together, as appropriate.

Overlying this assessment is the unique perspective of the Parliament’s culture and ethos, as symbolised by the CSG principles. In other words, what we are seeking to do—and this distinguishes this report from other recent surveys of parliamentary audit—is to look at these other systems through ‘CSG eyes’, to see how they perform in those terms, and what lessons may be learned which reflect and enhance a system of parliamentary audit grounded in a ‘CSG’ parliament.

³⁵ , Correspondence between the Chairman of the Public Accounts Commission and the Comptroller and Auditor General (<http://www.parliament.the-stationery-office.co.uk/pa/cm200102/cmpacomm/1251/125107.htm>)

PART 2: ORGANISATIONAL AND OPERATIONAL ISSUES

This Part looks at some central operational aspects of PACs, highlighting those areas of direct relevance to the Audit Committee's existing procedures and practices. As such, it does not purport to cover comprehensively all structural and operational aspects of the PAC models examined.

A Structure and Composition

The size and composition of a committee (including its chair and deputy chair) are essential aspects of its operational effectiveness and of its autonomy, both actual and perceived, not least from the Executive. A PAC needs to be of a size which is large enough to operate effectively, even when there may be vacancies from time to time, or when not all members attend its meetings regularly, while it should not be too large so as to be unwieldy. Traditionally, especially in Westminster systems,

examined in this study. Among the larger PACs, Australia can and does appoint one or more 'sectional committees', as can New Brunswick, whereas the UK PAC, unlike all departmental select committees, has no such power. The Audit Committee, with 7 members, can, as can all parliamentary committees, appoint sub-committees.³⁷ A small PAC like Ontario can, as with the generality of committees, establish subcommittees. India's PAC, with 22 members, can divide itself in a number of ways, such as sub-committees, working groups and study groups.

(ii) Composition and party balance

The selection processes for committee members and chairs can, as has been seen in recent years, at Westminster, be a sensitive and controversial matter, where the formal position may not reflect the realities of party nomination. Generally, the membership of a parliament's PAC will be appointed by the same processes that either apply to all committees, or to all committees of the same category. The source of the appointments process may be statutory (as in Australia and Queensland), in Standing Orders (as in Scotland, UK, New Zealand and others), or even in the territory's constitution, as in Trinidad & Tobago.³⁸ In some parliaments, such as the UK and New Brunswick, the government makes the formal nominations, following consultations between the parties, whereas others use a business committee, as in Scotland and New Zealand, or a special selection committee, as in British Columbia.

As with all committees in the Scottish Parliament, the composition of the Audit Committee reflects the balance of the parties (and others) in the Parliament. The Bureau, when nominating, a member to a committee is required to "have regard to the balance of political parties in the Parliament",³⁹ which has been interpreted as meaning that, as far as is practicable, the committees should have the same political balance as the Parliament as a whole. Initially the Audit Committee had 11 members, with 6 from Executive parties and 5 from non-Executive parties—Labour: 5; SNP: 3; Conservative: 2; Liberal Democrat: 1. When the size of the Committee was reduced to 7, as part of the general committee restructuring in January 2001, the balance became 4-3, in favour of the Executive parties—Labour: 3; SNP: 2; Conservative: 1; Liberal Democrat: 1.

The composition of some PACs is explicitly determined, to some extent, by statute. For example, the JCPAA of the Australian Parliament has to consist of 16 members of the Parliament. 6 members must be members of, and be appointed by, the Senate. 10 members

³⁷ Rule 12.5

³⁸ Though the Ugandan PAC is established by Standing Orders, it is explicitly created to fulfil the requirement in art 164(3) of the Constitution that "Parliament shall monitor all expenditure of public funds" (SO 123(2)).

³⁹ Rule 6.3.4. This derives from a Scotland Act requirement that "standing orders shall include

must be members of, and be appointed by, the House of Representatives. Members must be appointed according to the practice of the Parliament for the appointment of members to serve on joint select committees of both Houses of the Parliament”.⁴⁰ The practice is for committees to reflect party balance in the House, or, in the case of a joint committee, such as the JCPAA, in each House. So the composition of the JCPAA is as follows:

- 6 Members of the House of Representatives nominated by the Government Whip or Whips;
- 4 Members of the House of Representatives to be nominated by the opposition Whip or Whips or by an independent Member;
- 3 Senators to be nominated by the Leader of the Government in the Senate;
- 2 Senators to be nominated by the Leader of the Opposition in the Senate; and
- 1 Senator to be nominated by any minority group or groups or independent Senator or independent Senators.

According to the CPA survey, the composition of a majority of Commonwealth PACs reflects the party balance in the parliament as a whole,⁴¹ and there is no reason to believe that this is not replicated in PACs elsewhere. For example, the Irish PAC, and any sub-Committee which it may appoint “shall be constituted so as to be impartially representative of the Dáil.”⁴² The usual justification for a ‘party balance’ practice, whether explicitly set out in a parliament’s Standing Orders or otherwise, is that it protects the interests of the non-governing parties, by guaranteeing them a proportionate share in the composition and activities of parliamentary committees. In relation to committees such as PACs, it is also argued that cross-party participation is of particular relevance, both in terms of the effectiveness of the committee and of its perceived independence and prestige. So, a PAC should not be composed entirely either of government or of opposition members, though examples of each may exist.⁴³

The party balance convention was not always accepted so widely in Australia. During discussion of the Bill which became the Public Accounts and Audit Committee Act 1951, the Labour Opposition proposed equal numbers of Government and Opposition members (as well as the chair being from the Opposition), arguing that, with a Government majority, “nothing will come to light that will be of value to the taxpayers.”⁴⁴

⁴⁰ Public Accounts and Audit Committee Act 1951, s5(2)

⁴¹ McGee, , pp95-6

⁴² SO 156(9)

⁴³ According to McGee, , one PAC in Africa is composed entirely of government members: p96

⁴⁴ Quoted in J Wanna et al, From accounting to accountability: a centenary history of the Australian National Audit Office, Allen & Unwin, 2001, p240

A recent questioning of the normal application of party balance requirements appeared in the (Wicks) Committee on Standards in Public Life's report on standards regulation in the UK House of Commons. It examined the case for the Select Committee on Standards and Privileges not having a majority of Government members:⁴⁵



This discussion was in the context of an extremely sensitive committee, with particular 'quasi-judicial' functions. However, its arguments could, the Audit Committee may feel, equally apply to the Audit Committee, in terms of the role and function of the Committee, especially its non-partisan nature, and the importance of its actual and perceived independence from the Executive. The Procedures Committee has been examining the whole question of party balance on committees as part of its current major inquiry on the application of the CSG principles, and it appears from its deliberations published thus far, that it supports the Parliament's current party balance convention. The Audit Committee may wish to consider that it should be regarded as an exception to the Parliament's practice.



Queensland's PAC is a statutory committee, whose composition is 7 members, 4 nominated by the Government and 3 by the Opposition.⁴⁶

(iii) Some membership issues

While there were some suggestions during the 1980s and early 1990s that Scottish parliamentary committees could include non-MSPs, perhaps by way of co-option, this was not included in the CSG Report or in Standing Orders. This was apparently on the basis that the devolution legislation did not permit it. It appears to be the norm among 'Westminster parliaments' that committees are composed only of Members, and that it is where the PAC is not a parliamentary committee, but a more independent body (as in Denmark and Sweden), that non-Members are formally members of the PAC. The Scottish Parliament may regard co-option of non-MSPs, even if within its current powers to do so, as not an appropriate or effective way of the Audit Committee gaining a wider and deeper perspective when conducting its audit scrutinies.

If it is assumed that the Audit Committee should always be composed solely of MSPs, then the question arises whether there should be any particular qualification or disqualifications. Standing Orders forbids a minister from being a member of the Audit Committee (the only committee with this explicit prohibition).⁴⁷ As FIAG noted, "since it will be for the Audit Committee to scrutinise the Executive, it would not be logical to permit Ministers to sit on the Committee."⁴⁸ The UK PAC has traditionally included a Treasury Minister (the Financial Secretary), but she does not attend meetings,⁴⁹ and Manitoba explicitly excludes all ministers, and party leaders, except the Finance Minister.⁵⁰ Other PACs tend not to have any ministers as members, though this may simply be following the general committee practice in their parliament. Some, such as South Australia,⁵¹ Ireland and India, explicitly exclude any Minister from membership of its PAC.

In so far as the exclusion of ministers should remain the practice in the Scottish Parliament, for the generally accepted reason of independence from the Executive, maintenance of this explicit Standing Orders provision applicable to the Audit Committee would seem to be a small, but useful, symbol of the particular status and function of the Committee.⁵² Ministers can, as can all MSPs who are not members, participate in a committee to the extent permitted

in Standing Orders.⁵³ It would seem that it would be contrary to the ethos of the Audit Committee, as well as to general PAC practice for a minister to participate in this routine or regular way in its proceedings, except when appearing as a witness, participating in the legislative process or the like.

A wider version of such a membership requirement or prohibition, as the case may be, is that an MSP must be, or not be, a member of the PAC by virtue of his or her membership of another committee or other parliamentary office or position. For example, the European Committee is normally to be composed of MSPs who are members of other committees whose remit is relevant to the European Committee.⁵⁴ Such provisions do not seem to be common among PACs we have examined, though Australia’s PAC must include, as an additional member (but not in the chair), the Chair of the Expenditure Committee, if one exists at the time, if that person has not already been appointed a member.

The Scottish Parliament has no such requirements for the Audit Committee, although, in practice, there has tended to be a degree of overlap between, for example, it and the Finance Committee (including substitutes). Such overlap may be as much to do with internal party allocations, as with any desire of the Bureau. However, if the Committee thought that such a relationship with the Finance Committee, or any other committee was desirable as a permanent feature, it may wish to recommend an amendment to Standing Orders.



The converse of this arrangement is where a member of the PAC is a member of another committee or similar parliamentary body (other than a committee of the Conveners Group type). The Convener of the Audit Committee is a member of the statutory Scottish Commission for Public Audit (SCPA), by virtue of his or her office.⁵⁵ The special committee appointed in 1999 by the Legislature of British Columbia to choose an Auditor General comprised PAC members,⁵⁶ and there may be other such membership overlaps in relevant circumstances elsewhere.

The Parliament’s Standing Orders requires the Bureau to take account of the “qualifications and experience” of any Member who has expressed an interest in serving on a committee.⁵⁷

⁵³ The Deputy Minister for Parliament actively participated in Procedures Committee meetings in the early months of the Parliament, apparently as an informal representative of the Executive.

⁵⁴ Rule 6.8.4

⁵⁵ Public Finance & Accountability (Scotland) Act 2000, s12(2)(a)

⁵⁶ See the Report of the Special Committee to appoint an Auditor General, March 2000.

⁵⁷ Rule 6.3.4. The extent to which the Bureau does nominate members on the basis of expressions of interest or on indicated qualifications or experience may be a matter for discussion. Indeed, it is often said, at Westminster and, to some extent, in the Parliament, that the parties (especially on the

This highlights the different ways in which the Westminster convention can be applied. It can be phrased as a prohibition on government members, as in Scotland,⁶² thereby enabling

deputy convenership.⁶⁴ The Committee may wish to consider whether Standing Orders should be amended to provide more explicitly for the party allocation of its convenership and/or deputy convenership.

It may, on the other hand, feel that the Parliament’s multi-member composition, produced by its electoral system, makes a Westminster approach to these matters less relevant, and could seek the removal of the unique Rule 6.7.2 prohibition. Going further, it may wish to require its convenership or deputy convenership to be held by members who are not members of either an Executive party or the largest opposition, perhaps even by a Member not from a party represented on the Bureau. Such an approach could be said to emphasise more transparently the non-partisan nature of the Committee. This would contrast with the traditional Westminster approach, which may be perceived as entrenching the notion of partisanship, sharing the committee spoils among the parties, especially the two main parties.



B Resources

(i) General considerations

A PAC clearly needs adequate resources to enable it to do its job. This is neatly expressed in the Standing Orders of the Manitoba parliament relating to its PAC: “The Committee may endeavour to obtain all necessary

cover necessary expenses other than information and advice services.⁷² In Ireland, the PAC can engage consultants, that is, persons with specialist or technical knowledge, to assist it or any of its sub-Committees in considering particular matters, though, like select committees, this requires the consent of the Minister for Finance.⁷³

New Zealand is an interesting example, given its comparable size of parliament (120 members). The Office of the Clerk of the House holds a budget to be used for paying for specialist advice for committees. The PAC (which has a wide financial remit) has a specialist tax adviser who may be appointed to advise the committee on a bill-by-bill basis; and an adviser on Monetary Statements who holds a permanent contract for this task. Other advisers are brought in on a case-by-case basis. It is staffed by the Office of the Clerk of the House: a Clerk, an assistant to the Clerk and one full-time support staff.

As may be expected, some of the PACs which have a broader financial or budgetary remit may well have a relatively larger support base. For example, the German PAC has a support staff of 14, as well as being the primary customer of the 5 staff of the Budget & Finance Division of the parliament's research service. However, much of this support appears to be directed towards the committee's budgetary rather than audit functions, and the level of support is regarded as small, when compared to what is available to the government.⁷⁴

Some PACs rely on assistance from government sources, such as the relevant finance ministry. This is the case in Germany, though, again, this is generally related to budgetary matters. It is also the case in Australia, where "additional advice relating to particular inquiries is obtained from appropriate officers from the Department of Finance...From time to time officials from Government departments are seconded to the secretariat."⁷⁵

This sort of assistance, while understandable⁷⁶, can create potential conflicts of interests and impinge on the perceived independence of the PAC. However, it is understood that the Procedures Committee is addressing the broad question of operational relations between the Parliament and Executive civil servants. In that context, and taking account of the central

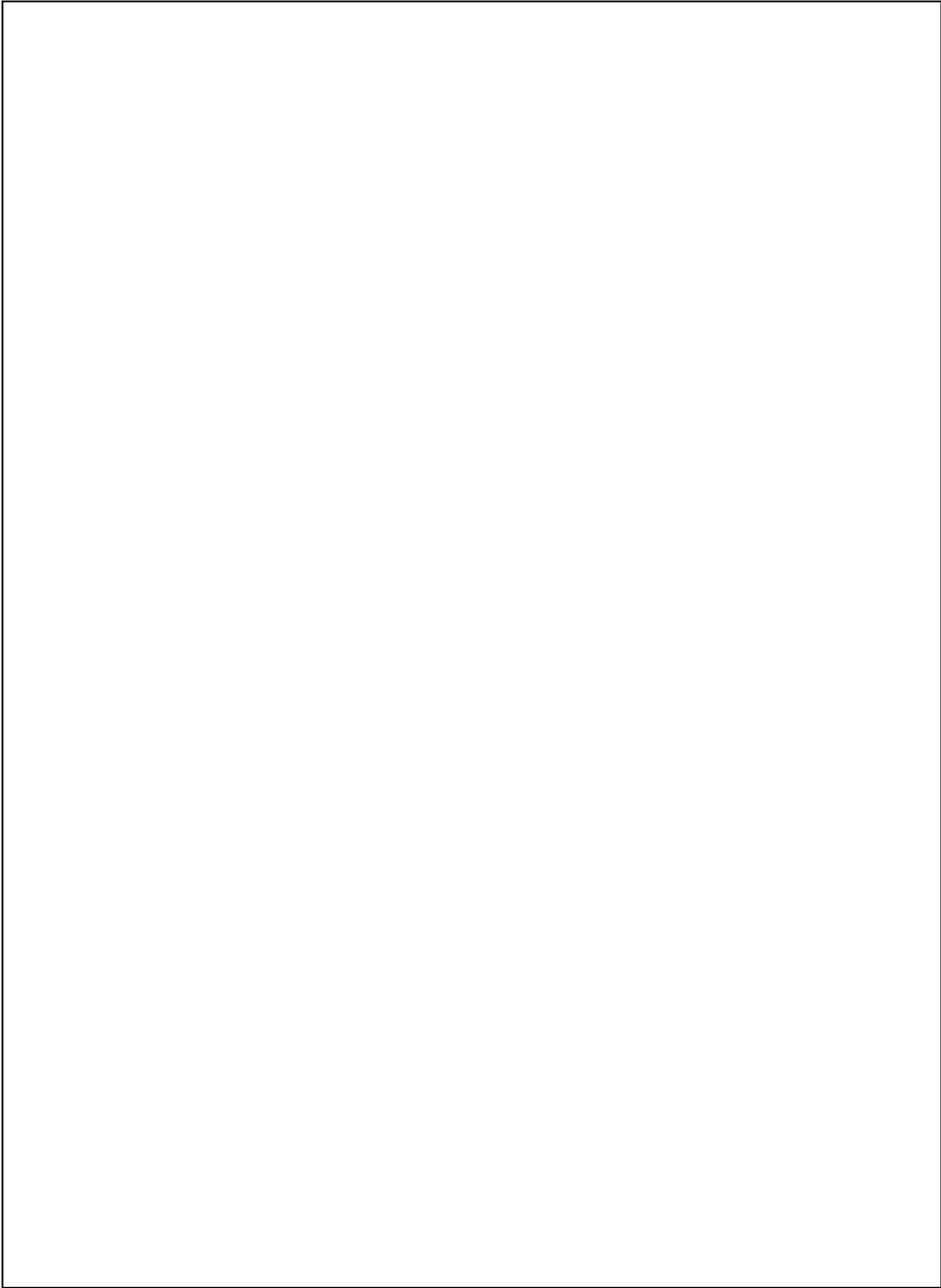
role of the Auditor and Audit Service, considered below, the Committee may wish to consider whether there is scope for more direct use of Executive officials as a resource.

(iii) The role of the Auditor and Audit Service

An obvious and much-used resource across PACs is that of the Auditor, and thereby of the Audit Service. In some jurisdictions, it may be the PAC's primary source of information and advice. The UK PAC's access to the NAO is well-known, and often the cause of much envy among other PACs, and among other UK committees.⁷⁷ The German Audit Service has a parliamentary liaison officer who co-ordinates this interaction, attends committee sessions, and is the person to whom any queries to it are addressed.⁷⁸

The relationship between the PAC and the Auditor and Audit Office is, as is noted throughout this report, central to the operation of the parliamentary audit function. Yet it is one that is fraught with potential ambiguity, which has to be handled with care so as to preserve the necessary independence of the various actors involved in the process. In essence, as a PAC resource, it is a question of the Auditor's position at Committee meetings—is the Auditor a part of the PAC team behind the table; a witness on the other side of the table; a participant like non-member MPs, or someone separate from any of these categories of participant?

be relevant to their work. In this sense, this issue is relevant to any assessment of the effectiveness of the parliamentary audit model.



people and bodies than will be its main categories of formal witnesses. This is considered below.

How widely a PAC casts its net to gather its evidence and information is obviously extremely relevant to the criterion of effectiveness of the parliamentary audit process. In principle, the more information that can be gathered, from the widest range of potential respondents and witnesses, the greater the variety and quality of perspectives that a scrutiny exercise can have at its disposal. Assuming a committee has the resources and expertise to assess and evaluate all this information properly, then that should be the ideal situation for an investigatory and analytical process such as those conducted by parliamentary committees.

However, this general proposition might not apply in its entirety in the context of parliamentary audit scrutiny, which is a rather specialised form of scrutiny, set apart from the generality of parliamentary oversight processes. It is a more assessment-based form of inquiry than the usual policy-focussed inquiries of subject committees. If the conventional criteria of consensus and unanimity are to be upheld, then this implies that a PAC should tend to steer clear of 'policy'.

Virtually all PACs will call accountable officers as witnesses.

The public places high value on participation, and on outcomes of the process. The committee values public input, especially by interest groups and expert organisations.

And

Public/Community Groups provide a valuable source of information and give a different perspective.

On the other hand, the following comment from Ireland may suggest a more ambivalent perception by both the PAC and the public:

The public have no role as such although many people write in with complaints which are then put before the PAC.... The public might not understand the finer points of actual constraints of the PAC in post audit review of expenditure only but consider it a "watchdog " for the taxpayer nonetheless.

Canada was more succinct:

Public is not generally involved other than as observers.

D Operating Procedures and Practices

(i) Generally

There is no standard way in which all PACs go about their business. Much depends on the rules by which they are required to operate, which may be determined by the laws (and even the constitution) of their jurisdiction, as well as the Standing Orders and other rules and practices of their parliament, and, of course, the scope and nature of their remit. These institutional factors may be important for one or more PACs, but not so relevant for the Audit Committee. Examples of this are the issues a PAC may take up, in terms of whether or not an Auditor's report is presented to the parliament in some way, or whether the PAC has to rely on the initiative of its parliament or others for all or some of its work.⁸⁷ The Audit Committee's remit is relatively 'open' in this respect,⁸⁸ which means that it is not as limited as some PACs in what it can do. All the PACs examined can undertake urgent or emergency inquiries, though not all can do so entirely at their own discretion.

The nature of a PAC's formal powers may well be a factor of the powers of all committees, or of all those of the same 'category' of committee, in the parliament. So for example, in relation to a PAC's powers to require the production of information, including documents, what is relevant to this study is that all the PACs we surveyed replied that they have such power, not the exact nature of these powers, or how they can and do use them in practice. Such an analysis is, in any case, beyond the scope of this short study.

⁸⁷ As in Victoria, the PAC may have greater autonomy than any other committee in the parliament in initiating its own work.

⁸⁸ One particular limitation in its remit, in respect of 'laid reports', has been addressed very recently.

A research exercise in relation to the Audit Committee’s powers, for example, would have to take account of not just the formal position as set out in ss23-27 of the Scotland Act 1998, but also the practices which have evolved

- by agreement between the Parliament and the Executive, such as the Parliament’s resolution of 1 November 2000, or the ;
- by Executive practice and internal guidance, as in its Scottish Executive Evidence and Responses to Committees of the Scottish Parliament, and
- by internal Parliament guidance for committees, such as those produced early in its life, like , and

All these factors, among others, mean that it is difficult for a short study of this nature to analyse comprehensively the ways in which PACs actually go about their business, from the perspective of learning lessons for the Parliament. This applies to important areas such as determination of a PAC’s work programme, both in the long-term and short term. While, as we have noted, PACs have relatively little ‘legislative’ work—a common source of external pressure on a parliamentary committee’s ability to determine its own agenda—they are dependent, to a greater or lesser extent on external factors such as references from the parliament or the Auditor. The guidelines for PACs in Canada refer to the desirability of forward planning for a PAC’s work in each parliamentary period. The UK PAC, for example, considers its forward programme in advance of each ‘parliamentary term’. The programme of hearings is agreed before a press notice is issued, giving the subjects of all committee hearings for the forthcoming term.

(ii) Particular techniques

One source we consulted set out some examples of what may be regarded as basic components of the PAC process. These are the supply role of the Auditor, hearings as principle mechanisms of scrutiny in action, the preparation of PAC reports based on evidence given at hearings, and follow-up procedures.⁸⁹ Many of a PAC’s operation aspects are considered elsewhere in this report, in terms of meetings, information-gathering, reporting and so on. Here we are looking at some particular aspects that are not covered elsewhere and are potentially relevant to the Audit Committee.

When asked whether they used techniques such as public or private seminars, informal briefings and ‘awaydays’, 5—Australia, New Brunswick, Denmark, UK and Ireland—replied positively, and 6—Queensland, South Australia, New Zealand, Ontario, Canada and British Columbia—said no. Australia uses inspections⁹⁰ and questionnaires in addition to inviting

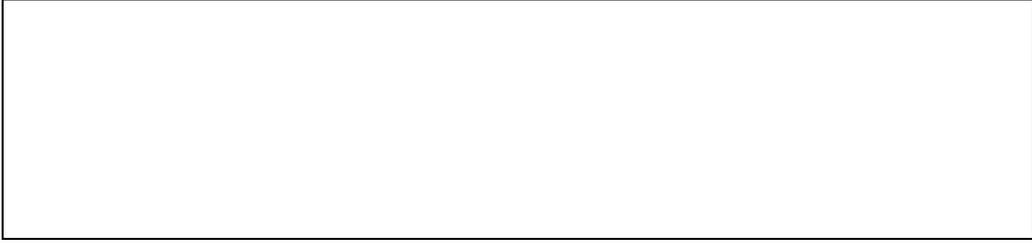
⁸⁹ Joachim Wehner, “Public Accounts Committees in the Commonwealth: Financial Scrutiny in the Aftermath of Gladstone” (unpublished)

⁹⁰ The Audit Committee made a point, in its first annual report, of noting that it used this technique of site visits, where “Members had a chance to see at first hand the experiences of staff in the field, which

evidence and holding public hearings. The Danish PAC makes annual inspections (in Denmark and abroad) of enterprises and establishments, fully or partly financed by public funds. In India:⁹¹

“if it appears to the Committee that it is necessary for the purpose of its examination that an on- the-spot study should be made, the Committee may, either in its entirety or by dividing itself into Study Groups decide to undertake tours to make an on-the-spot study of any project or establishment. All discussions held during tour by the Committee/Study Groups, with the representatives of the establishment, Ministries/Departments, non-official organisations, Labour Unions etc. are treated as confidential and no one having access to the discussion, directly or indirectly is to communicate to the Press or any unauthorised person, any information about matters taken up during the discussions.”

In terms of use of IT, for techniques such as on-line consultations or discussion forums; provision of evidence by e-mail; webcasting of activities; video-conferencing and so on, 6—Australia, Queensland, Denmark, New Zealand, Ireland and UK—said yes, and 4—New Brunswick, South Australia, Ontario, British Columbia—replied in the negative. It is assumed that all will use computers and the like as part of their basic administrative operation, and that the negative responses rela



E. Unanimity and Consensus

(i) Generally

minister there, you will go beyond the administrative and financial questions. So if you want to stay out of politics, don't have the minister appear before the committee.”

Of course, any parliamentary committee, even a PAC, operates in a political environment, and consensus and unanimity may well mean negotiation between members, especially those of different parties. As an Australian delegate to the same Canadian conference noted, “We work very hard to get those reports with everybody in agreement. Sometimes it means taking a softer line which is not always a bad thing.”⁹⁵

(ii) Dissent and minority reports

As consensus in a PAC is regarded as important, it is relevant to note whether minority reports or other forms of dissent are permitted or used in PACs' reports. Most PACs will probably be able to reflect any minority views, even if that is by way of recording such views and any alternative draft text or amendments and divisions in committee transcripts or minutes, which may or may not be attached to reports.

German committee reports must “contain the recommendations of the committee responsible together with the reasons therefor, the opinion of the minority, and the comments of the committees concerned.” Members of Australian committees can add a ‘protest’ or a ‘dissenting report’ to the main report,⁹⁶ and in South Australia, “if requested to do so by a member of the Committee, a Committee must include in a report a minority report on behalf of that member.”

Ontario's Standing Orders prohibit any minority report to be presented to or received by the House, as a report is deemed to be that as determined by the committee as a whole or a majority of it. However “every member of the Committee, other than the Chair, shall be permitted to indicate that he or she dissents from a particular recommendation or comment. The Committee shall permit a member to express the reasons for such dissent in an appendix to the report.” The Chair can “establish a reasonable deadline for filing any dissenting opinion with the Clerk of the Committee.”⁹⁷ New Brunswick has a similar arrangement, though the inclusion of “any dissenting opinions” in its report is at the discretion of the Committee.

Standing orders in New Zealand enable a select committee, such as its PAC, to “indicate the differing views of its members” in its reports. This has been interpreted as follows: “There is no such thing as a minority report, there is only one report presented to the House by a select committee. The minority or differing views of members may be indicated in a report. These

⁹⁵ Tony Fletcher, chair of the Tasmanian PAC.

⁹⁶ These two terms are not defined, but the _____ suggests that ‘protest’ relate to procedural matters, and ‘dissents’ to “opposition to a committee's conclusions or recommendations”: (p666).

⁹⁷ SO 129

differing views, if accepted by the committee for inclusion in its report, become an integral part of the report.”⁹⁸

The standard view of PACs on expressions of dissent is well expressed in the Australian PAC chair’s foreword to its 2001-02 annual report:⁹⁹

The Committee had a very productive year in 2001-2 despite the break between Parliaments. Towards the end of the 39th Parliament the Committee experienced an unprecedented period of disharmony leading to the tabling of three dissenting reports, where there had been a total of only three such dissents in its 89 year history. Happily the 40th Parliament and the 90th year of the Committee has seen a return to a spirit of constructive co-operation with attempts to achieve shared outcomes.

F Dealing with ‘Policy’

“In theory we are not supposed to concern ourselves with policy, but policy and economy merge into each other with such subtle gradations that it is quite impossible to decide a clear-cut line between what is policy and what is not”

The Audit Committee adheres to the ‘Westminster convention’ that it does not deal with matters of policy, and this is apparently reinforced by the statutory injunction that the examiner of a value for money (VFM) audit “is not entitled to question the merits of the policy objectives of the body or office-holder in question.”¹⁰¹ In its first annual report, the Committee said that it “is not concerned with policy matters—that is a matter for subject committees. Instead the Committee has focused on the economy, efficiency and effectiveness of the way these policies have been implemented.” On the other hand, the Executive appears to cover the possibility that the Committee might stray into policy areas:¹⁰²

“Officials should not attempt to justify policy objectives or ministerial decisions. This reflects the principle that the merits of Government programmes and projects are primarily a matter for political debate and ultimately for Ministers rather than civil servants to explain. The Audit Committee should address any such questions directly to the responsible Minister.”

This approach is generally adopted in ‘Westminster model’ PACs, especially those which have a narrow ‘audit’ function. Those bodies with a different structure and wider financial remit, as in Denmark, or part of the general committee system, such as in New Zealand, may not apply such an injunction. The limitation sometimes appears explicitly in Standing

⁹⁸ New Zealand House of Representatives, (2002, p. 11)

⁹⁹ JCPAA annual report 2001-02, October 2002, p v

¹⁰⁰ Evidence to the Procedure Committee, HC 189 of 1945-6 Q4008

¹⁰¹ Public Finance and Accountability (Scotland) Act 2000, s23(9)(a). The examiner “may consider the appropriateness of any criteria used by the body or office-holder to assess use of resources”: s23(9)(b)

¹⁰² Scottish Public Finance Manual, April 2002, para 10

balance in a report between criticism for administrative failings and praise for things done well or properly.¹¹⁰

The policy limitation derives from a view of the audit function itself, and so it may appear in the remit of the Auditor, as in Scotland. Thus the issue is one of the nature and purpose of audit, and the importance given to independence and objectivity, something which is often discussed in terms of the Auditor rather than the PAC.

This raises the question of the position of the PAC in relation to parliament on the one hand and the Auditor on the other. If a PAC is to be regarded as part of the public audit process, as the parliamentary partner of the Auditor, then there is a case for it adhering to the same or similar jurisdictional and operational criteria that are applied to the Auditor. On the other hand, if the PAC is seen essentially as part of the wider parliamentary scrutiny apparatus, then there may be grounds for some distinction between how it and the Auditor apply criteria such as policy scrutiny. In this sense, the PAC and the Auditor have different tasks, as part of the overall audit function, which may enable, or even require, them to use different techniques. The PAC may be protecting the Auditor by undertaking the 'policy' aspects of the audit function itself.¹¹¹

Even where there is a statutory injunction on the Auditor questioning the merits of policy objectives, as in the UK and Scotland, that will not mean that the Auditor will not look at policy documents, as an understanding of the relevant policy is necessary to any performance or VFM audit. Whether Auditors should comment directly on matters of policy has exercised Australian auditors (and PACs¹¹²) for decades, as there is no express statutory injunction on these auditors. While some national Auditors have claimed to steer clear of policy comment in their work, others have seen it as part of their role.

post and their duty to contribute to informed public debate. To do otherwise would, it was argued, marginalize an important public official.¹¹³ Doubtless, there was also a tactical element to the Auditors' views, and a desire to 'keep their powder dry', so that their rare incursions into the public policy debate would have the greater impact. An effective Auditor will also be able to avoid overt comment on the face of any public pronouncement, while getting across his or her perspective on the policy more subtly 'between the lines'.

(i) What is policy?

It is impossible to examine this issue properly without dealing with its fundamental definitional problems. 'What is policy?' remains an unresolved issue, and is generally tackled as a distinction between 'policy' and 'administration'. For example, the Australian Auditors tend to talk of the 'results' or 'effects' of policy. One recently insisted that while it was not appropriate not to comment on "the political good sense or otherwise of policy", he should assess and report upon "the administration of that policy and testing of its effectiveness, efficiency and economy for the stated purposes and for any side effects."¹¹⁴ The CCPAC guidelines are in similar terms, and underline the essential ambiguity of the split between policy and administration.¹¹⁵

The Public Accounts Committee should not concern itself with the policies of government or whether they are good or bad. The Committee should be concerned with ensuring that the policies and government are implemented in an effective, efficient and economical manner, and that the taxpayer is value for monies spent.

As the CPA study notes, a distinction between 'policy' and its 'implementation' is difficult to define, as it can depend on "the level of generality at which the policy is described."¹¹⁶ This can be the case where general, even vague, phrases are used in a public policy context. The Australians debated the application of a concept such as 'the public interest' at their 2001 ACPAC conference and the Western Australia Auditor neatly summed up the problem:

The topic is defining the public interest, and one would think that would be quite a simple task, given that such a concept is critical and core to our system of democracy in pursuit of the common good. But the background to my paper is that I found it is very much a term taken for granted, though it is an oft-used term...It is used but never defined, so when I come at it from the perspective of the role of an Auditor-General, I have decided to approach it as to how as an Auditor-General I operationalise this concept in my office. That is a challenging task, as I have tried to set out in the paper, because of it not being precisely defined. It is a very value- laden term and that is a dangerous area for Auditors who are not entitled to delve into the policy area.

¹¹³ Wanna , , pp281-4

¹¹⁴ Quoted in Wanna , , p281

¹¹⁵ , Guideline 6

¹¹⁶ McGee, , p69

This dilemma can be most pronounced in areas where state activity or intervention is undertaken in different ways, such as nationalisation, privatisation, 'contracting-out', PFI/PPP, public subsidy, service standards and targets and the like.¹¹⁷ At the Australian 2001 conference, the Tasmanian PAC Chair, when asked if he was in favour of PACs' looking at policy in areas such as 'community service obligations', said:¹¹⁸

addressed as and when they are deemed appropriate or necessary for the integrity of any particular scrutiny.

How far a committee of a parliament underpinned by openness and transparency should operate on the basis of what might be seen by some as 'convenient fictions' is a more general matter for the Committee and the Parliament. This is part of a central question of how a PAC operates, a wide issue which is examined further at the end of this Part of the report.

(ii) Public or Private?

Assessing the extent to which PAC meetings are held in public is subject to some definitional problems, such as what constitutes a 'meeting' or 'hearing'. For example, some respondents may say that all its sessions are open to the public and media, but then distinguish these from other gatherings, especially those for deliberative, briefing or housekeeping purposes, which may often be in private. None of the PACs surveyed allowed the public or press to attend when they are deliberating on matters such as its forward work programmes, draft

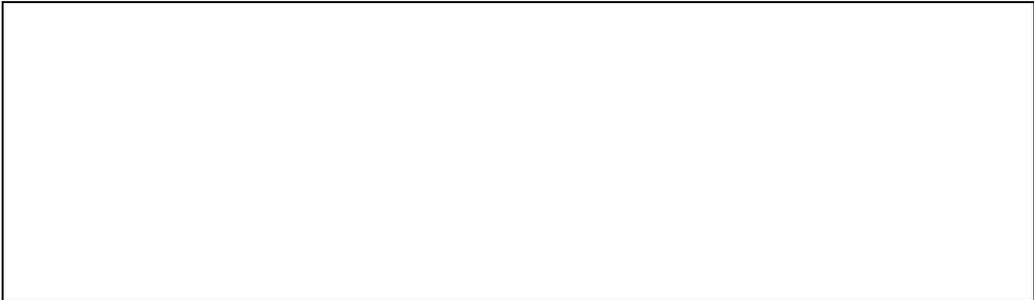
example, Australia replied 'yes', but refined th

In its latest annual report, the South Australian PAC referred to the statutory provision for the taking of evidence in public: “The Committee believes this to be a most important aspect of its role and encourages an open examination of matters of public interest.”¹³³

Guidelines for PACs in Canada are on similar lines to the practice of Australian PACs,¹³⁴ in that

- evidence-taking hearings should be public, subject to in camera provisions at the discretion of the Chair, which should only be held in instances when evidence of a particularly sensitive nature is given, but
- meetings of a PAC’s Steering Committee (whose role is to review sensitive documents and to monitor the progress of Committee work) should be in camera, as should meetings of the full committees when dealing with the following business:
 - brief members on the subjects the Committee will review;
 - draft and approve the Committee's Reports;
 - discuss personnel matters; and
 - plan strategies regarding Committee relationships with other committees and key leaders in the Legislature. (10.2)

The relevant Standing Order in Ireland is rather intriguingly phrased:



The Irish PAC is required to refrain from “enquiring into in public session .. confidential information regarding the activities and plans of a Government Department or office, or of a body which is subject to audit, examination or inspection by the Comptroller and Auditor General, if so requested either by a member of the Government, or the body concerned.”¹³⁵

H The basic approach of parliamentary audit

This Part has examined a number of operational issues which, jointly and severally, help to create and reflect the parliamentary environment and ethos within which a PAC operates. They also go to the heart of the relationship between the PAC and the Auditor and Audit

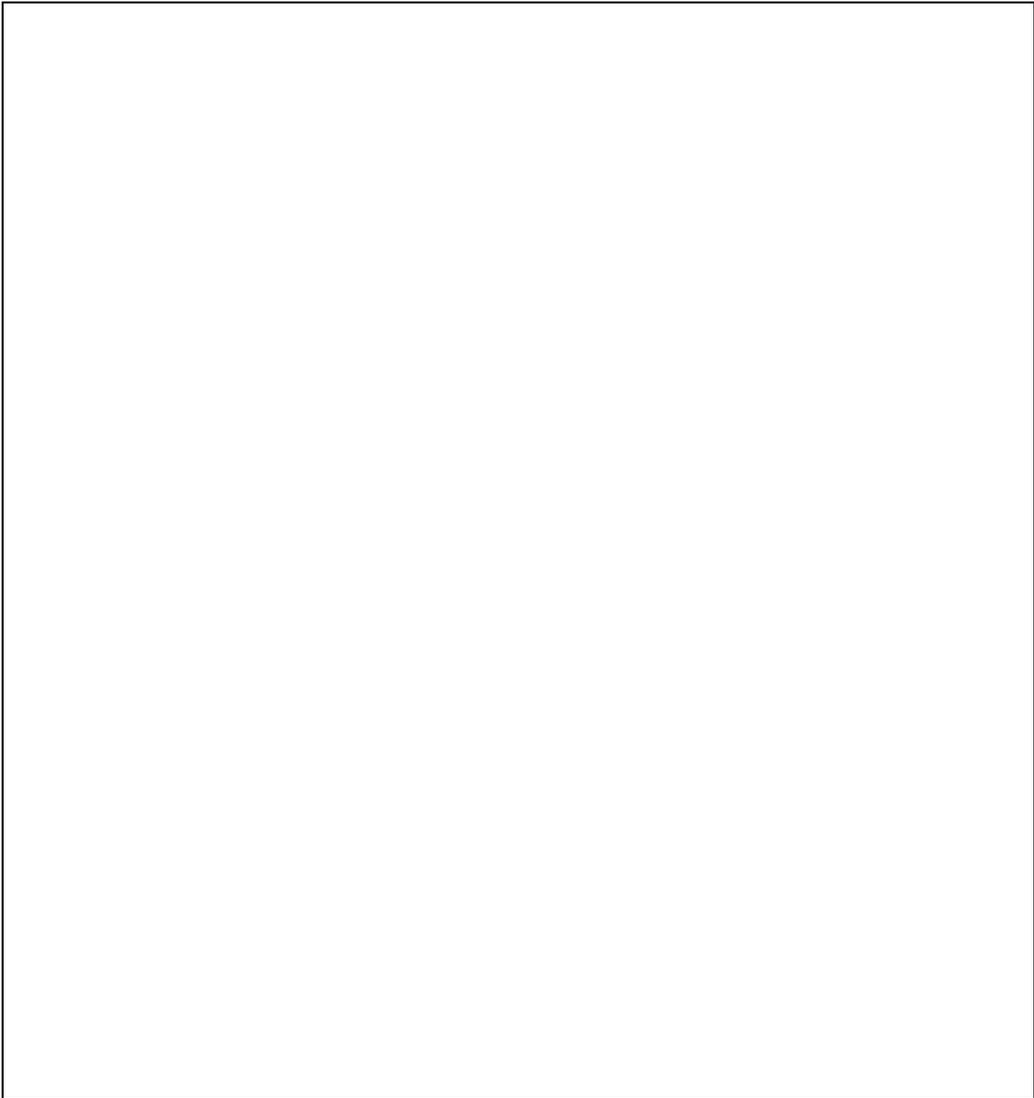
¹³³ Annual report for 2001-02, 40th report, October 2002, preface para (f).

¹³⁴ See, for example, Manitoba SOs 114-115, relating to meetings of its PAC.

¹³⁵ SO 156(7)(a)

Service. As such it is difficult, and probably counter-productive to attempt to treat many of them in isolation. These issues are of particular relevance to a 'CSG Parliament', which seeks to operate in an open, transparent and participative way, and has to consider to what extent it can operate in this way and still be an effective PAC in other respects.

Because of the inter-relationships between many of these operational and conceptual aspects, it is important that for any comments or suggestions not to be presented in a 'tick box' fashion, or in a way that allows them to be 'cherry-picked. Bearing this in mind some issues for the Committee's consideration are listed here.



PART 3: OUTPUTS AND OUTCOMES

A Reporting

that session, along with 4 agreed the previous session. The average across PACs tends to be towards the lower end of this spectrum, which would equate roughly with the Audit Committee's output thus far.¹³⁸ There may even be statutory or Standing Orders requirements on the frequency of publication of reports.¹³⁹

(ii) Preparation and distribution of reports

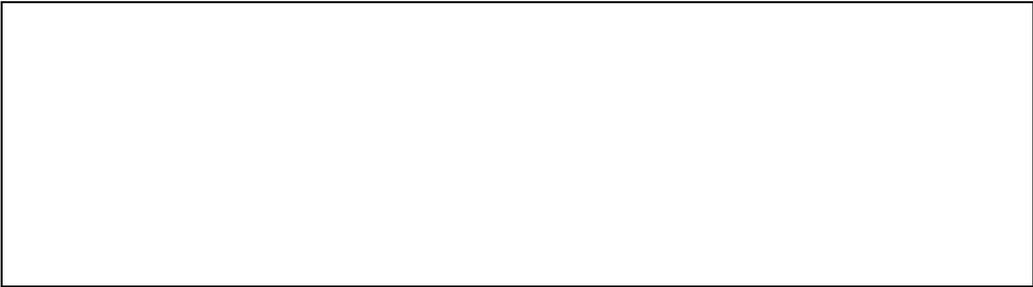
One important practical issue is who takes the initiative and primary role in the drafting of a PAC report. Practice varies in this respect. In the UK, the Audit Service staff will draft the report. In Ontario and in Canada, the committee's research staff drafts the initial report. In Nova Scotia, as in Scotland, it is drafted by the committee's clerk (called the coordinator in that parliament):¹⁴⁰

All reports from the Public Accounts Committee are compiled and written by the Committee's Coordinator. Once the Co-Chairmen and Vice Chairman have approved the initial draft, it is then sent to the individual Committee members for consideration. The draft review complete, the report is tabled with the Clerk of the House.

The chair of Ontario's PAC has provided a revealing account of the report-writing process there:¹⁴¹

So the writing of the report is done at an in camera session and usually what happens is that once the hearings are completed the researcher will draft a report and when we are reviewing that draft, th

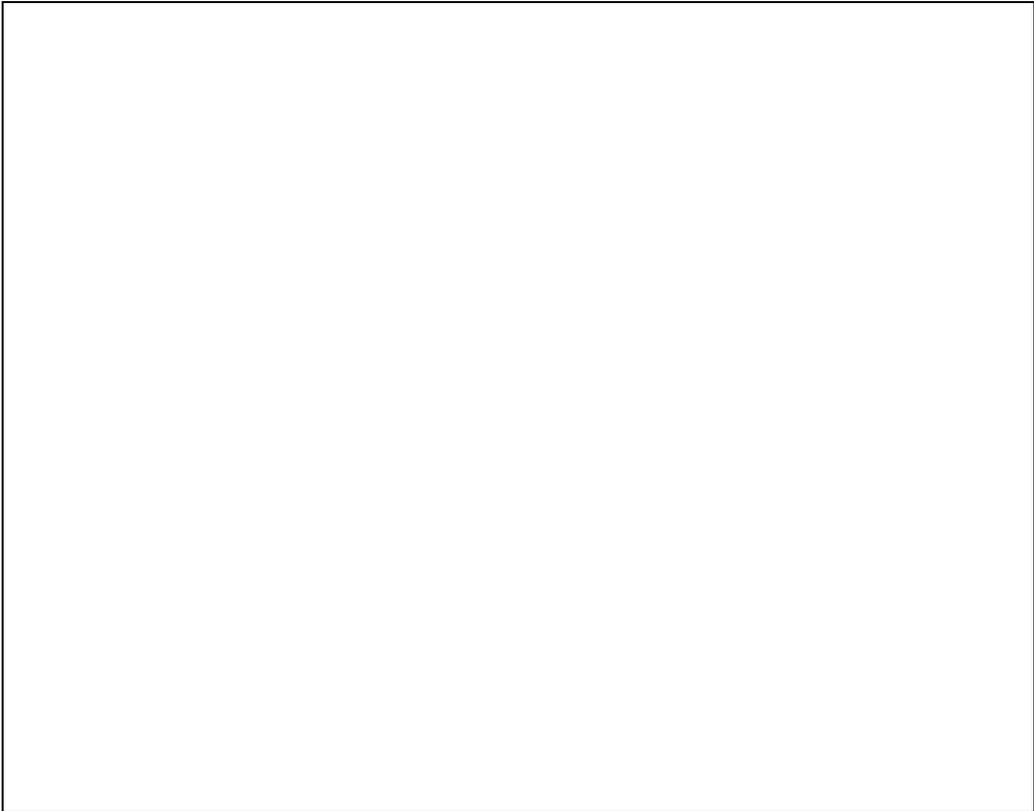
distributed widely, as can be seen from the following extract from a recent Nova Scotia PAC annual report:¹⁴²



were not. Though it, unlike departmental select committees, does not produce an annual report, statistical information on the UK PAC will appear in the House of Commons

. The Australian PAC is required by statute to prepare and table in each House (it being a joint committee) a report for each financial year “on the performance of its duties during the year.”¹⁴⁴ The Irish PAC must “present an annual progress report to Dáil Éireann on its activities and plans.”¹⁴⁵

Those annual reports which we have examined for this study appear to be rather substantial documents, containing a great deal of information on the activity and outputs of the PAC, including statistical information on attendance of members at meetings and some indication of the PAC’s expenditure. Queensland’s PAC must abide by the statutory requirements for all such committees:¹⁴⁶



document of 27 pages (including appendices), covering its activities, inquires and reports, including a financial report covering its expenditure (appendix 1).

¹⁴⁴ Public Accounts and Audit Committee Act 1951, s8B

¹⁴⁵ SO 156(6)

¹⁴⁶ Parliament of Queensland Act 2001, s108

B Outcomes

(i) Responses

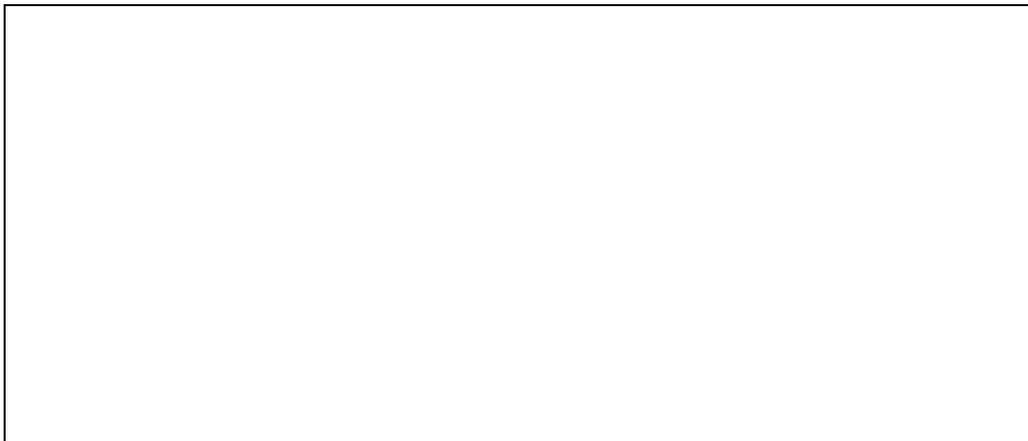
Most, but not all, parliaments require the body which is the subject of a PAC report to respond formally to it. 80% of those responding to the CPA study had such a requirement, though the length of time allowed, where that is specified, may vary, often around 2-4 months.¹⁴⁷

Ministers are required to respond to the parliament in Queensland to a report within 3 months of it being tabled, if the report recommends that the government or a minister should or should not take particular action about an issue. The response must set out

- any recommendations to be adopted, and the way and time within which they will be carried out; and
- any recommendations not to be adopted and the reasons for not adopting them.

If the 3-month deadline cannot be met, the minister must table an interim response, including the reasons for not meeting the deadline. The full response must then be tabled with 6 months of the original report being tabled.¹⁴⁸

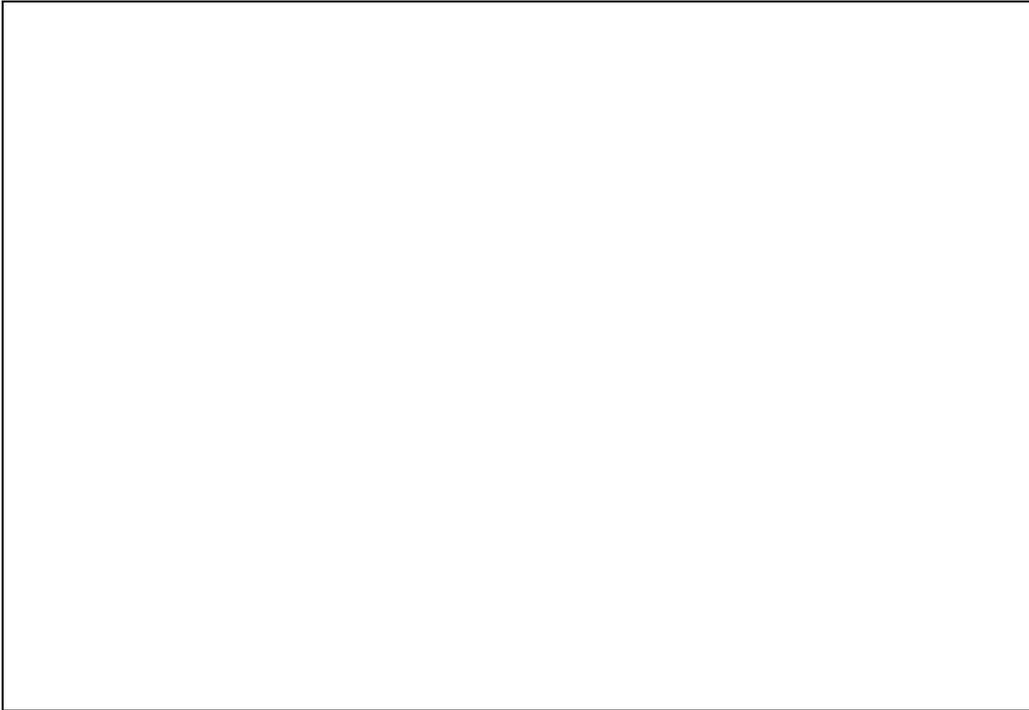
The process for responses to the Australian PAC's reports is described in the PAC's background information:¹⁴⁹



¹⁴⁷ McGee, , pp78-9 and 101

¹⁴⁸ Parliament of Queensland Act 2001, s107

¹⁴⁹ JCPAA, <http://www.aph.gov.au/house/committee/jpaa/backinfo.htm>



We asked the PACs under examination in our study to estimate how many of the recommendations in their reports were accepted by those to whom they were addressed, either entirely or in part. As the CPA study noted, acceptance rates can be very high, and responses to our question ranged from acceptance rates of 45% (Denmark) or 50% (South Australia, New Brunswick) up to 80% (Australia, Queensland) or even 90% (British Columbia, UK). In 2001, the UK PAC reviewed 112 reports from the previous Parliament,

administrative change of the sort recommended by the PAC and/or Auditor. It will also negate any tendency for audited bodies to regard any formal response to a PAC report being made by it as the de facto end of that particular scrutiny. The British Columbia process is presented here in some detail, as an illustration of this approach.

Follow-up, though a necessary part of the parliamentary audit process, is a component particularly dependent on the adequacy of committee time and other resources, as well as other factors such as the desire of members to move on to new, and potentially more 'interesting' topics. The marginal cost, in political terms, of a follow-up of a previous inquiry may not be regarded as worthwhile. In Australia, the PAC's secretariat has an additional appropriation to ensure resources are sufficient to monitor responses.

Procedures at earlier stages of the audit process may well limit or even pre-empt the necessity for follow-up later on. The UK's practice of the Auditor agreeing facts with the audited body in advance before reporting to the PAC, while time-consuming, "is seen as an especially effective means of getting departmental 'buy-in' for implementation of PAC recommendations. Indeed these are effectively implemented as part of the process of inquiry rather than as an outcome of the findings."¹⁵³

This also emphasises that follow-up, as with all other stages of an audit process will impose burdens on the bodies being audited, and these may be more pronounced when PACs and Auditors are returning to issues already covered. This can put additional strain on the relationships between the auditing bodies and those being audited, especially where the audited body has either disagreed with, or not, implemented a recommendation. For example, the Indian PAC, "where the Government have reasons to disagree with a recommendation of the Committee,...may, if it thinks fit, present a further report after considering the view of the Government."¹⁵⁴ The sensitivities are recognised in the guidance for the Saskatchewan PAC that follow-up necessary to complete the accountability cycle, it "should be performed in the spirit of maintaining a constructive relationship with the government."

PACs may try to deal with these potential

- turnover in senior government personnel, which can disrupt the continuity of the process and cause delays
- determining whether follow-up action is necessary, especially when the extent of implementation is not always clear, or where some recommendations are ongoing and may take years to resolve.

The PAC published a leaflet, _____, describing its follow-up process, which is available on its public website.¹⁵⁷ The _____ is included with all follow-up correspondence from the Auditor's office, and is also outlined in the Ministry of Finance's policy manual:

¹⁵⁷ <http://www.legis.gov.bc.ca/cmt/37thparl/session-3/pac/PAC-FollowupProcess.pdf>



The form of written responses to requests from the Auditor under these arrangements is specified in some detail by the PAC in the :

D Conclusions

Many of the issues considered in this Part of the report are largely dependent on factors external to the Audit Committee itself, such as the rules and practices of the Parliament, or the activities of the Auditor. Ther

PART 4: KEY RELATIONSHIPS

A Structural Relations with the Auditor

A PAC may have a role in the appointment of the Auditor; the financing of the Audit Office or of examining the Audit Office and Auditor themselves. In Scotland, the Convener of the Audit Committee will, and other members of the Committee may, be a member of

- the Selection Panel recommending a nominee for Auditor General, and
- the SCPA, which deals with the budget and audit of Audit Scotland.

For example, in Queensland, by statute:¹⁵⁸

- the Premier (as the responsible minister) must consult with the PAC about the appointment selection process and the terms and conditions of employment of the Auditor-General
- The PAC must also agree to any proposed motion to remove the Auditor-General from office
- The Treasurer must consult with the PAC in developing the annual budget of the Queensland Audit Office.¹⁵⁹

Strategic reviews of the audit office must be conducted every five years, and include examining the Auditor-General's functions and the performance of those functions to assess whether they are being performed. economically, effectively and efficiently.¹⁶⁰

The Australian arrangements, under the Auditor-General Act 1997 and the Public Accounts and Audit Committee Act 1951, are similar:

- The Minister cannot recommend an appointment as Auditor-General to the Governor-General unless it has been approved by the PAC
- The Minister cannot recommend an appointment as Independent Auditor (who audits the Audit Office) to the Governor-General unless it has been approved by the PAC, and
- The PAC has responsibilities in relation to the finances of the Audit Office.¹⁶¹

¹⁵⁸ Financial Administration and Audit Act 1977

¹⁵⁹ The method of consultation is not prescribed by statute, but the PAC has agreed a process with the Treasurer, which involves the Treasury department keeping the PAC informed of the Budget timetable in relation to QAO; funding requests made by QAO; results of the budget process and (where applicable) the reasons for funding not being granted.

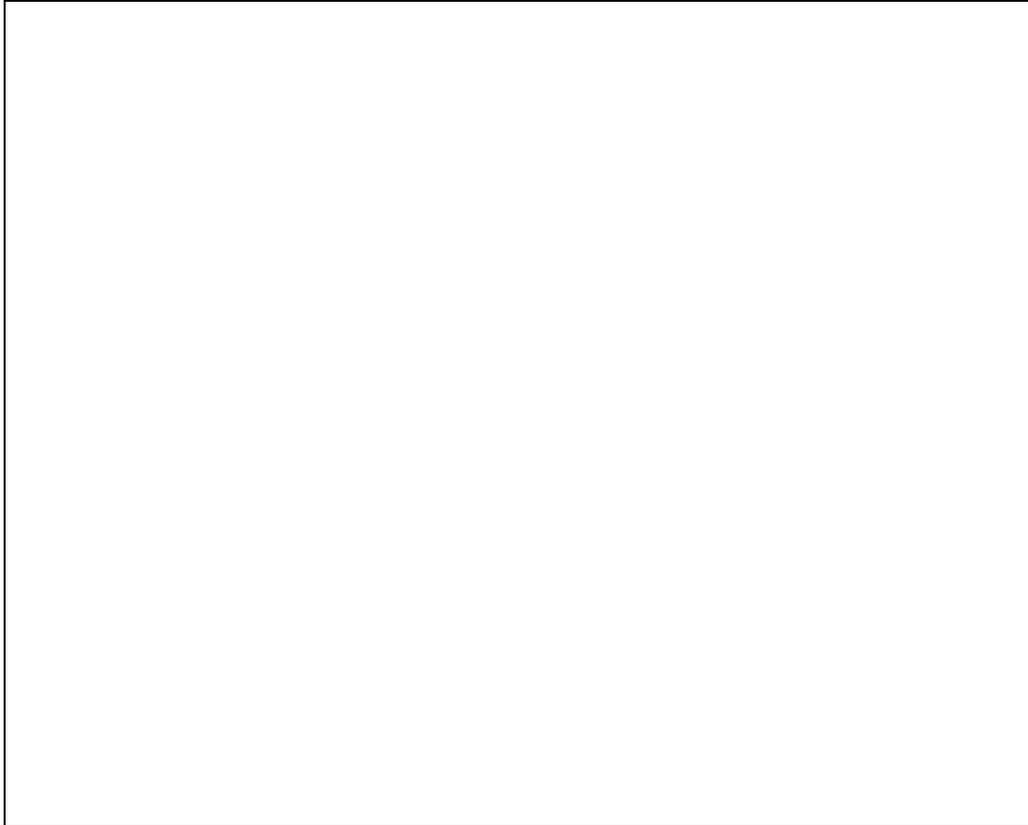
¹⁶⁰ The Premier is required to consult with the PAC about the appointment of a reviewer and the terms of reference for the review, and the review report is deemed referred to the PAC under the Parliament of Queensland Act.

¹⁶¹ JCPAA annual report 2001-02, p3



to carry out his responsibilities effectively, were accepted by the Government in their response tabled on 19 September 2002.”¹⁶⁵

As an Auditor’s main parliamentary link, a PAC may wish to act to defend the Auditor or the Audit Office when they are publicly questioned or impugned, as the need arises. An example of this was described in the Queensland PAC’s annual report for 2001-02:



¹⁶⁵ JCPAA Annual report for 2001-02, foreword, p. v. The report referred to is Report 386, and is summarised in p11-12 of the annual report.

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PART 5: CONCLUSIONS

A Introduction

As discussed in Part 1, this study has approached its comparative examination of the parliamentary audit function with two main concepts in mind, namely and . Regard has been had also to the extent to which the Audit Committee operates as a committee of the Parliament, with all that that implies, especially in terms of its

wholeheartedly into practice. Perhaps taking their cue from their parliament generally, they do not seem to regard public engagement as something to be pro-actively pursued or encouraged.

On the other hand, some PACs provide far more than the Audit Committee does in some respects, such as annual reporting and promulgation of relevant information and guidance material. These are areas where the Committee can most easily take on board these comparative lessons, as they fit in with the Scottish Parliament's own ethos. However, issues of public engagement, as with resort to more 'innovative' forms of information-gathering, must be considered in the context of the nature of the parliamentary audit function as compared with other parliamentary functions.

That there does appear to be something different, perhaps unique, about the parliamentary audit function, as we discussed earlier in this report, explains much about why the Audit Committee may not have appeared to have exhibited all of the characteristics, and some of the procedures and practices, of the Scottish Parliament's unique way of working. Some of these may well be detrimental to the two key criteria for parliamentary audit, namely independence and effectiveness.

This does not prevent the Committee from considering the adoption of procedures and practices which are used elsewhere in the Parliament, or by other PACs. Rather, it is a point about the risk of 'throwing out the baby with the bathwater'. So long as the Parliament's financial scrutiny functions remain based on the 2000 Act scheme, the sensitive and potentially fragile tripartite relationship between the Parliament, the AGS/AS and the Executive, which underpins the effectiveness of the devolved audit system, has to be protected from changes which might undermine it. Some protection is afforded by the 'reserved' nature of the core aspects of the system, as set out in the Scotland Act 1998.

A central plank of parliamentary audit in the Westminster style is the priority given to consensus and unanimity amongst a PAC's members. These attributes are supposed to be important to the Parliament's committee system generally, and they are perhaps more important, and more difficult to achieve, in a system of unitary, multi-purpose committees such as the Parliament has. Most PACs, especially those with a narrow audit remit, aspire to these aims. This accounts for conventions such as the avoidance of policy scrutiny; and for generally restricting the net of potential witnesses to accountable officers and the like, and for the treatment of structural issues like composition.

One final point to be borne in mind, which has been confirmed by our comparative study, is that a parliament's PAC, while prestigious and respected, may not always be regarded as a sought-after committee assignment for elected parliamentarians. The work of a parliamentary committee should not be skewed to make it more 'desirable', if that may affect its effectiveness. There is a danger that that concentration on the more technical aspects of a committee's scrutiny process may actually deter elected members from active or

wholehearted membership.

C Specific aspects

(i) Structure, composition and remit

At the beginning of this report we examined the very different structure and remits of PACs. On the structural axis, the Audit Committee is obviously alongside other parliamentary committees, rather with the independent audit entities common in Europe and elsewhere. On the remit axis, the Committee is at the 'narrow PAC' end rather than the broader financial 'PAC+' end, though by no means at the extreme. Its remit and powers are such to allow it to operate more extensively and pro-actively than some PACs whose remits are narrower in scope and whose activity relies, wholly or in part, on external initiative.

(ii) Operating procedures and practices

The way in which a PAC operates is, as we have seen, dependent on factors such as its remit, its parliament's scrutiny culture generally, and any specific rules or procedures applicable to it. Being a parliamentary committee, albeit one with a unique remit, means that it will inevitably be structured in a particular way and operate as a scrutiny body, generally by way of inquiry and reporting. Not being a wider financial or expenditure committee means that it need not necessarily operate in a politically-charged environment, nor regard the examination of policy as central to its remit.

None of this means that the Committee must or should act in the ways implied above. The key point is positioning the Committee on the spectrum of PACs worldwide, so that meaningful lessons can be learned. A PAC which, for example, is an independent audit body rather than a parliamentary committee, or which examines budgetary and other financial issues as well as audit, will, almost of necessity operate in very different ways from a PAC of the Westminster type. These PACs may well have specific features that are of interest to the Committee, but inevitably, especially in the context of this short, narrow study, there is more potential for fruitful comparison with those PACs than more closely resemble the Audit Committee in these essential respects.

In particular, much depends on the relationship a PAC has with the Auditor and Audit Office. The classical Westminster situation is one where the PAC is, in effect, driven by the Auditor and Audit Office. It may become, or be seen as, little more than the parliamentary arm of the Auditor. This may be a convenient and comfortable model for a PAC, in that much of the burden is shouldered by others, while it receives the benefit of a large and well-resourced bank of expertise, and basks in the reflected prestige of the Auditor. However, it can stifle a PAC's initiative, both in terms of what it does and how it does it. The Audit Committee has already taken one step towards a different relationship by drafting its own reports rather than relying on the Audit Office to do this essential task.

Any move away from the traditional convention of avoiding direct policy scrutiny (that being primarily a matter for subject committees) could affect a PAC's operating procedures and practices. It may lead to

- greater collaborative working with other committees;
- greater overall workload, and
- an alteration of the current balance between time spent on public evidence-taking and information-gathering, and on deliberation and private briefing.

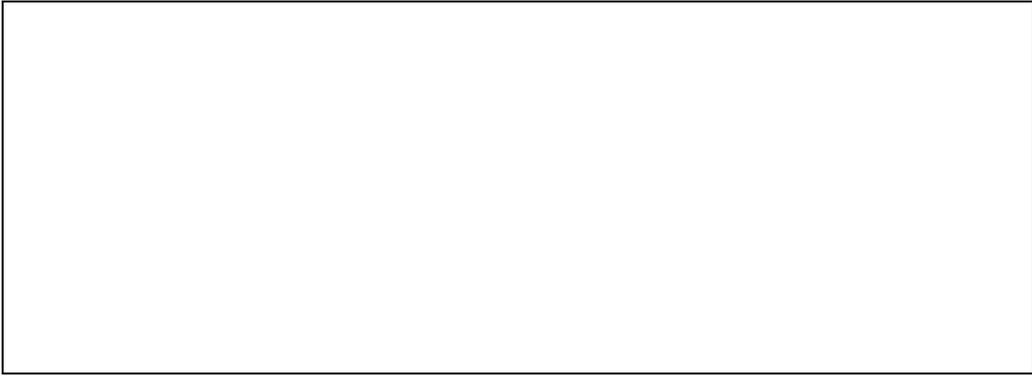
Bringing ministers and 'policy officials' within its usual range of witnesses may lead to the Executive reassessing how it interacts with the Committee, perhaps leading to new formal guidance. Any greater sense of partisanship may bring a dilution, or even breakdown, of the

PAC in particular. Balancing that will be the PAC's own 'jurisprudence', its own conventions and practices, which it has evolved to cater for the particular needs of its parliamentary audit function.¹⁷²

The purpose of this study is to present the Committee with examples of how the parliamentary audit is carried out differently, so that it can decide for itself what may be suitable and appropriate for it to consider when developing how it does its business. As has been noted throughout, there is a high degree of interdependence between the various separate components of a parliament's structure and operation.

This is especially true for a PAC, especially one with a very close relationship with its Auditor. Therefore, this study has examined resourcing and information-gathering issues together. This relationship has classically been discussed in terms of PACs not requiring additional means of information-gathering—through additional staff, use of advisers, wider range of witnesses, more innovative techniques—because of their access to the relatively substantial resources of the Audit Office. Is the relationship too close and limiting, in ways in which it could be affecting the effectiveness of the PAC's function? Or is it a necessary way of maintaining the integrity and effectiveness of the overall audit process, of which the parliamentary phase through the PAC, is just one part?

This may be a more difficult question for the Audit Committee than for any of the PACs examined here, in that it operates within a novel, and relatively well-defined, parliamentary and committee culture. The Parliament's operating environment is a strong influence on the Committee adopting many of the procedures and practices which may be routine in most other committees. The presumption may be that the Committee should act in these ways until it can demonstrate strong reasons to the contrary. Just as the Committee should not copy from other jurisdictions without good reason, neither should it fall into line with its fellow committees in the Parliament simply because of peer pressure, without any justification in terms of its actu



(iv) Structural relationships with the Auditor

Neither did it think that the SPCB would be suitable:¹⁷⁴

The SPCB could discharge these tasks without causing problems of this kind. However, the commissioning and funding of public audit is a somewhat specialised function probably best undertaken by a specialised committee with the advice of special professional advisers. .. A possible compromise would be for the Public Audit Commission to be a subcommittee of the SPCB. This would have the advantage that the Commission and the SPCB would be well placed to judge the allocation of resources between professional services (including value for money studies) provided by the audit bodies and other professional work commissioned by the Parliament's committees.

While the Parliament and the Committee may be content with the present arrangements for Audit Scotland, and also for the appointment of the AGS,¹⁷⁵ it would appear that some other jurisdictions not regard such direct involvement as inappropriate or a threat to the concept of

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Amongst those which can be thought of as PACs in a narrower sense, the range and scope of the remit can vary quite extensively, often related directly to the remit of the Auditor, especially in relation to the bodies covered, the types of audit review covered, and the provenance of subjects of inquiry.

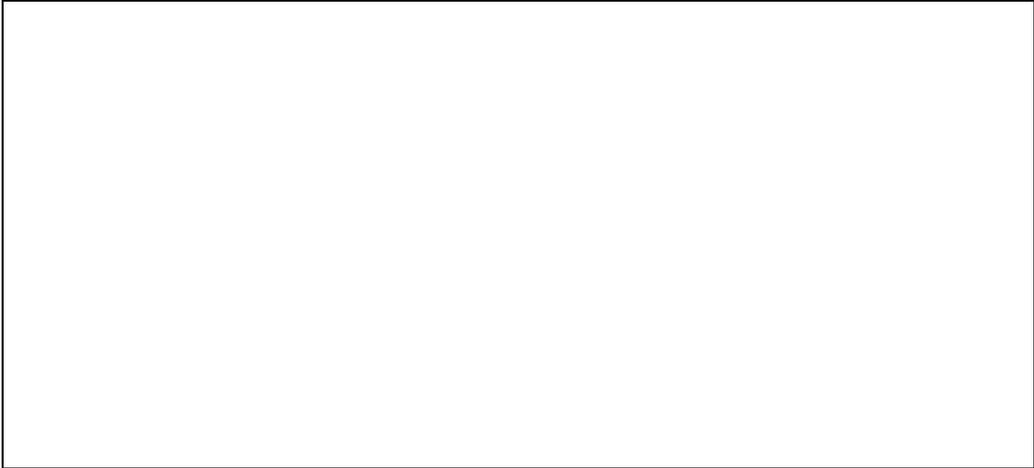
These differences in structure, scope and operation are, or should be, inter-related. As has been emphasised throughout this study, ad hoc adoption of procedures or practices from other jurisdictions, without consideration of both the context within which they apply, and the context of the Scottish Parliament's environment, is not an efficient method of parliamentary reform and development. Therefore, whether or not the four main aspects identified at the beginning of this section are examined independently or together, there will inevitably be some connections between them, so that changes in one aspect may well have consequences in one or more of the others.

Notwithstanding that 'health warning', we believe that some of the practices of PACs we have examined can potentially be of interest to the Committee. Fuller examination and evaluation of these ways of working than has been possible in this narrow and brief study would be required to determine their relevancy and appropriateness as for the Scottish Parliament. These include, in particular, within Parliaments of a 'Westminster model' type

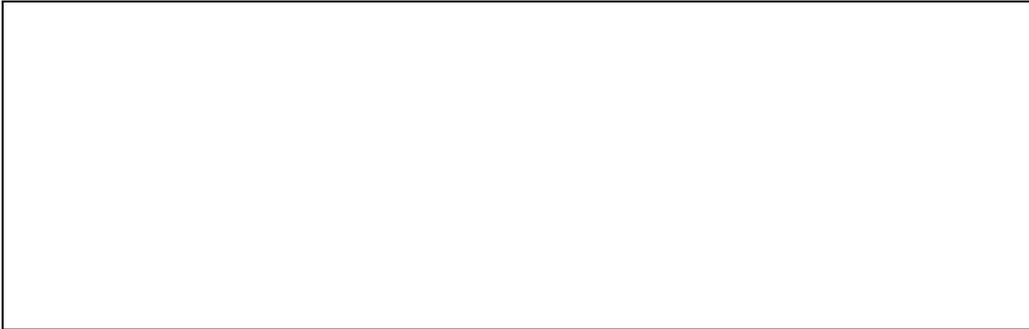
- joint working with other committees, whether or not as part of a broader financial scrutiny coordination role,¹⁷⁹ as in the well-developed Australian case;
- availability of the expertise and resources of the Auditor and Audit Office to parliamentary committees generally, as in New Zealand, where a code of

committees, and hence all MPs, have the scope and resources to ensure proper financial accountability.”¹⁸⁰

In addition to its recommendations for using NAO and C&AG resources more generally amongst committees, for an in-house central financial research resource, and for Westminster making more use of the Audit Commission, discussed elsewhere, it made proposals for each departmental committee to take a more direct role in financial scrutiny:¹⁸¹



This proposal may well not be implemented in the House of Commons in the near future, if at all, but it does indicate the thinking on financial scrutiny reform that is taking place there. It shows that the home of the PAC model can be, in principle, adapted to incorporate a very different approach to parliamentary audit, one which (subject to obvious issues such as

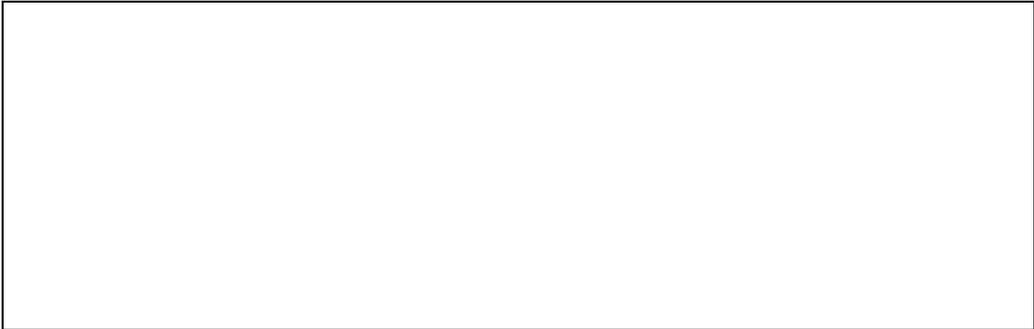


(vii) Relationship with the public and the media

This aspect is a central concern generally for the Parliament, as it one of the main ways in which its declared culture and ethos, within the spirit of the CSG principles, can be given practical expression. However, as already noted, it is also an area which might not be as suitable for parliamentary audit activity as it

an audience for its work¹⁸⁵ and actively involve them, in a substantive way, in its actual scrutiny processes, has been examined in the context of a PAC's information-gathering strategies. This applies to the public in its various guises, as consumers/customers of the bodies being audited, or as employees, contractors, or shareholders of them, for example. The Parliament's usual culture would presume that such categories of people or bodies would be just the ones that should be, and are, those that a parliamentary scrutiny exercise should involve.

These are sensitive issues, requiring the Committee's consideration of how far, if at all, embracing this approach more fully than it does at present would undermine its work and efficacy, by disturbing, in a detrimental way, the delicate equilibrium that exists within the membership of the Committee, and between the Committee and the Auditor and the Executive. This goes to the heart of the nature of the Committee's role in the parliamentary audit function, which has been examined in this study. There is scope for the Committee to be less cautious than it perhaps has been thus far, and only by careful experimentation in those aspects of its operating practices, can it discover just how far it can go.



D Next Steps

(i) A comparative review of the parliamentary audit function

While we have emphasised throughout the limited scope and nature of this short comparative study, we believe that it has demonstrated the value of the Audit Committee in assessing its arrangements and performance on a comparative basis. This can be done in a number of ways, other than simply through commissioned research study. Regular and structured contacts with fellow PACs in a variety of jurisdictions, within the UK, Europe, Commonwealth and worldwide, both national and sub-national, will provide the sharing of experience and discussion of common problems and issues that helps keep the Audit Committee aware of developments.

This can be done on an ad hoc basis, through bilateral contacts, but is perhaps most efficiently and effectively pursued through membership of appropriate organisations of

¹⁸⁵ The Danish PAC is regarded as a media-conscious body, which is responsive to a media agenda in terms of the areas to be audited, and the presentation of its outputs.

fellow PACs. The existence of such bodies in Australasia and Canada, in particular, seem to have been of great value to the many PACs with these regions, and their publications and conferences have, as can be seen, informed many aspects of this study. Both appear not only to cater for the PACs within their own jurisdictions, but also involve those from elsewhere in their activities.

It is very likely that the Auditors and Audit Offices will be participating in parallel international organisations and meetings.¹⁸⁶ PACs may derive some indirect benefit from this Auditor activity, but it would seem a good principle that PACs should also establish and maintain their own independent contacts, so that they are not dependent on their Auditor for the benefits of comparative experience.

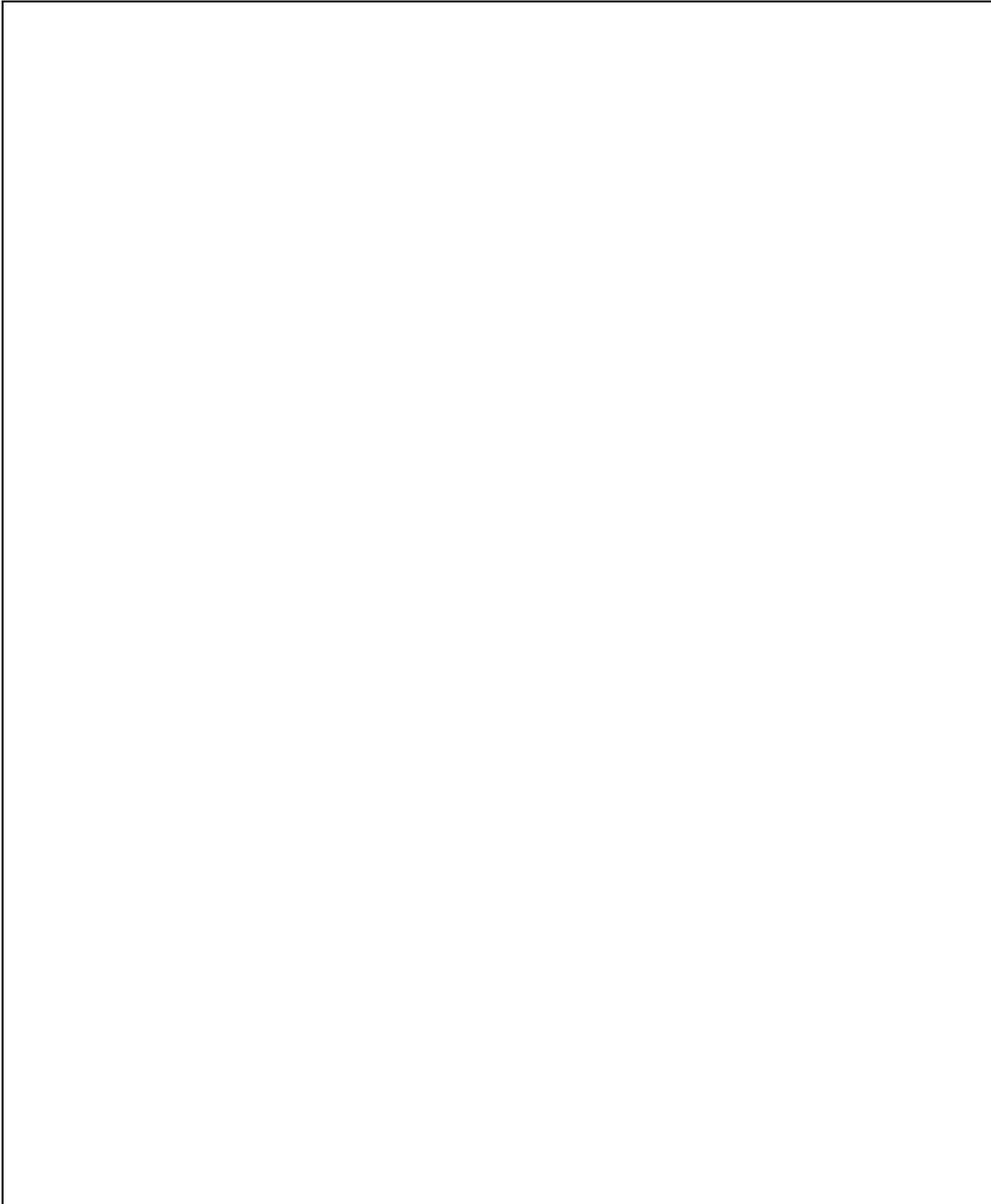
The Sharman report noted that the creation of devolved audit arrangements brought new risks of uncoordinated approaches to audit work, and recommended that the various audit bodies across the UK “should ensure that they have arrangements in place to enable them to draw on each other's methodologies.”¹⁸⁷ The same point could be made with equal force for PACs in the UK, in so far as no such body exists formally at present. Other committees and offices in the Parliament have taken the initiative or a leading role in creating such formal linkages within, and beyond, the UK relevant to their particular areas of interest or

Auditor/Audit Office. This is an important and common scrutiny principle in the Parliament, and should be applied to a comparative audit study.



(ii) The framework and timing of a more general review

Because the Scottish Parliament is, within the scope of its powers, in control of its own procedures and practices, it can seek to develop the way it, or any of its component parts, operate. It is always open to the Audit Committee to decide whether and how to change the way it works, or suggest to the Parliament, through the Procedures Committee, options for change. It has already used the latter route when



The Manitoba PAC's mandate, in this respect, is more limited, but does include scope to review amendments to legislation dealing with the responsibilities of the Auditor General during its parliamentary passage, and, perhaps more importantly for present purposes, "review and make recommendations to the House on the functioning of the Committee and its rules."¹⁸⁹

The advantages of a review of the parliamentary audit function within a more general review of the 2000 Act and the surrounding procedures and practices of parliamentary scrutiny of devolved finance, are that it would, for example, enable a review to

¹⁸⁸ Report 386, Sept 2001

¹⁸⁹ Rule 94(b)-(c)

- examine the parliamentary audit function within the overall context described
- consider the role and function of the Audit Committee within the committee system in general, and the Finance Committee and the subject committees generally, in particular
- examine the totality of the Committee's relationship with the Auditor General and Audit Scotland, and their respective roles in the system of devolved public audit.

If the Committee was minded to consider undertaking, or suggesting to the Parliament, a review of this nature, then a convenient time for such a review may well be during the mid-term of the next parliamentary session, as that would broadly coincide with the fifth year of the 2000 Act scheme. Such a review might be conducted in conjunction with the Finance Committee, for example. This might well complement any more general reviews of Scottish devolution, and of the Parliament, that may be taking place around that time, either internally or at UK level, and could therefore take account of any aspects which are or may be reserved under the Scotland Act 1998.¹⁹⁰

Appendix 1: Key comparators used in this report

These parliaments were our main source of information, although as will be clear from the report, extensive use was made, not only of a number of other reports, websites and informal sources, but of other PACs, some of whom were sent and responded to our questionnaire. Each of these comparators submitted a response to our questionnaire, and some offered follow-up assistance. The bulk of this material is set out in the main report, but some basic facts and figures of the comparators are given below.

1. Public Accounts Committee, House of Commons, United Kingdom

The population of the UK is 59.6 million. The committee has 16 members and reports to the lower house of the Parliament only, where there are 659 MPs.¹⁹¹ The National Audit Office Act 1983 underpins the independence of the Comptroller and Auditor General. The chairman of the PAC must be consulted when the appointment is made.

This committee has a distinguished reputation and long experience in audit work. It is regarded as one of the most important committees in the Commons. The PAC was first formed in 1861, and is an all-party committee whose chairman, by convention, must always come from the Opposition and is often a senior minister. Its focus is on the effectiveness of a policy, rather than the policy itself. It benefits from the expertise of 750 National Audit Office staff and its reports are based on the reports presented to parliament by the Comptroller and Auditor General. Civil servants, rather than ministers, are summoned as witnesses to its hearings. There is an annual parliamentary debate to discuss the 50 or so reports issued each year by the PAC. The Government Resources and Accounts Act 2000 and the February 2001 Sharman report has led to recent extensions in the PAC's remit.¹⁹²

2. Public Accounts Committee, Dáil, Ireland

Ireland has a population of 3.7m and a bi-cameral parliament, with 166 members in the lower house, the Dáil. The Committee reports to the Dáil only and has 12 members. The Chairman is by convention a member of the Opposition. It normally publishes about 5 reports a year. The position of the Comptroller and Auditor General is recognised in the Irish constitution, but a statute in 1993 placed his powers on a modern footing.

The PAC is constituted as to be impartially representative of the Dáil, and places great importance on not addressing policy issues, and therefore preserving a 'non-political approach'. Its approach closely follows the Westminster model, apart from its special reports. This committee has had a major role recently in investigating taxation fraud, and has had its powers supplemented by the Comptroller and Auditor General and Committees of

¹⁹¹ Not counting the Financial Secretary to the Treasury, who is a non-attending ex-officio member

¹⁹² The Review of Audit and Accountability for Central Government, HM Treasury February 2001

the Houses of the Oireachtas (Special Provisions) Act, 1998 to enable it to carry out its investigative functions more effectively. Appendix 3 offers more detail in the form of a case study.

3. Finance and Expenditure Committee, House of Representatives, New Zealand

New Zealand has a population of just over 3m and a 120 member unicameral parliament. Until 1982 it had a Public Accounts Committee, but reforms in the mid 1980s established a committee with a broader remit which extends to reporting on the budget as well as examining expenditure. It now has overall responsibility for the review of financial management in the public sector, and will also scrutinise relevant bills and carry out inquiries. The Committee has 12 members and to date has been chaired by a member of the Government party or parties. It produces around 12 reports a year.

The Public Audit Act 2001 set out a statutory framework for the relationship between the committee, the Controller and Auditor-General and other parliamentary committees. An Officers of Parliament Committee recommends the Auditor-General's budget to the House and has developed a Code of Practice which governs the interaction of the Auditor-General's office with other parliamentary committees.

4. Public Accounts Committee, Folketing, Denmark

Denmark has a population of 5.3m and has a unicameral parliament with 179 members. This committee is an independent agency not subordinate to the parliament or executive. It has 6 paid members who serve for a fixed four year term and need not be members of parliament. Allocation of places is by proportional representation so each major party is represented. Membership is unaffected by the results of intervening general elections. It is chaired by the longest-standing member of the PAC. It produces about 18 reports a year.

The PAC has power to request that the 002 Tc0.002 Tw(t)-5.9[(Allrembo-5.5(hasexestatipene arlhe 1.8743

Australian National Audit Office reports. The annual number of reports is normally 8. In 2000, the Committee carried out a review of the Auditor-General Act 1997, which enabled it to consider the details of its relationship with this independent officer of parliament. Audit Office staff can act as 'observers' a type of special adviser to the Joint Committee.

6. Public Accounts Committee, Queensland, Australia

Queensland has a population of 3 million and 89 members of a unicameral parliament. Following the Parliamentary Committees Act 1995, six statutory committees were established to work alongside 6 estimates committees which scrutinise Executive expenditure. The Public Accounts Committee has a membership of 7 and is generally chaired by a Government member, with a Vice-Chair from the Opposition. It has statutory powers to hold public meetings and take evidence. It can conduct public hearings on the executive's nominee for Auditor-General and can exercise a veto close relationship between the committee and this officer.

7. Standing Committee on Public Accounts, House of Commons, Canada

Canada has a population of just over 31 million, and a bicameral parliament. Its lower house has 301 members and this committee has 17 members. The Committee has a close relationship with the Auditor General of Canada, and produces about 25 reports a year. It can be described broadly as a typical 'Westminster model' PAC, with more flexible procedures than some of its provincial counterparts.

8. Select Standing Committee on Public Accounts, British Columbia, Canada

British Columbia has a population of 3.9 m. Its legislative assembly has 79 members, and this committee has 11 members. It follows a fairly traditional Westminster style of Public Accounts Committee and is currently chaired by one of the only two Opposition members in the legislative assembly. It has an innovative follow-up process described in detail in the main report.

Appendix 2: Description of the role of a parliament in various public audit systems¹⁹³

Different types of supreme audit institutions

Most developing countries use one of three auditing systems: Napoleonic, Westminster, or board.

In the Napoleonic system the supreme audit institution—also called the (court of accounts)—has both judicial and administrative

auditor general, considers testimony by witnesses from government departments and agencies, and sends its reports to the full parliament for comment and action. There are often recommendations or instructions requiring follow-up action by both the auditor general and

Appendix 3: Ireland—the Public Accounts Committee and the DIRT investigation

Committees in the Irish Dáil were traditionally seen as undeveloped and ineffective in the scrutiny of the Executive.¹⁹⁴ However, a series of scandals in the 1990s have led to new legislation clarifying the rights of committee to obtain papers and summon witnesses. The Public Accounts Committee has played a crucial role in investigating a major tax-based fraud by equipping itself with full powers of compellability to conduct what amounted to a full judicial investigation.¹⁹⁵

The Comptroller and Auditor General Act 1993 modernised the remit and powers of the C and AG, following a successful campaign by the chairman of the PAC in the early 1990s.¹⁹⁶ The legislation helped the PAC to fulfil its obligations to scrutinise public expenditure in a much more effective (if traditional) manner. As is usual in Westminster style systems, the PAC had no remit to question government policy. This was seen as an essential factor in allowing the Committee to investigate a major failure of government policy.

When information came to light about failures of officials in the Revenue Commissioners to deal with widespread evasion of the Deposit Interest Retention Tax (DIRT) the matter was referred to the PAC to investigate. There were already a number of Tribunals of Inquiry in existence gathering evidence on other scandals and there was all-party agreement to use the PAC rather than to establish another judicial inquiry, which were both costly and lengthy. Two separate pieces of legislation were passed to facilitate the work of the PAC:

- Committees of the Houses of the Oireachtas (Compellability, Privileges and Immunities) Act 1997 This Act allowed for committees to establish sub-committees with powers to compel (subject to the consent of the Dáil) and set out the rights of witnesses appearing before a committee of the Dáil.
- Comptroller and Auditor General and Committees of the Houses of the Oireachtas (Special Provisions) Act 1998. This Act enabled the C and AG to investigate further the scale of the tax evasion.

A special sub-committee was established to investigate, with powers analogous to those of a Tribunal of Inquiry under the Tribunals of Inquiry Act 1921 (still in force in Ireland, as in the

The sub-committee's work generated major interest in the media and its three reports (1999-2001) have been very influential in establishing a reform agenda for the Dáil and for strengthening parliamentary accountability. For the Clerk of the Dáil the Inquiry provided an opportunity to highlight problems with under-resourcing for parliamentary committees

An immediate result of the first report was a Government commitment to establish an Oireachtas Commission to manage the parliament (akin to the House of Commons Commission in the UK) with a separate Vote for the Committee system, set independently of the Department of Finance. A Bill was introduced into the Oireachtas in June 2002.¹⁹⁷ Other successful recommendations were:

- Recommendation for a new Revenue Act, to provide a clear independent framework for the Revenue Commissioners which was followed up by official action and involvement of the PAC in preparing proposals for legislation.
- An overhaul of the office of the Appeal Commissioners of the Revenue
- Agreement to the establishment of a Parliamentary Inspector, to assist committees in investigations
- Establishment of an Oireachtas Legal Adviser
- Appointment of external consultants to give objective assessment of the funding and staffing needs of both Houses

The Inquiry criticised the lack of accountability of the Executive and its agencies to the Oireachtas, but its attention was focused on officials rather than the successive Ministers of Finance in office during the period of tax evasion. There was criticism that politicians were failing to apportion blame appropriately in order to protect their own. A Tribunal of Inquiry may have offered a more impartial diagnosis of the issues.

The work of the C and AG was crucial to the success of the Inquiry. He spent seven months in work preparing for the Inquiry, enabling it to take evidence over a six week period only. The Inquiry's terms of reference were tightly drawn and the sub-committee was able to benefit from an extended parliamentary recess allowing its members to concentrate solely on the Inquiry. The then chairman of the PAC, Jim Mitchell, took an important leadership role throughout. An important element in its impact was the on-going review of the recommendations, undertaken by the sub-committee in open session:¹⁹⁸

But the sub-committee had to obtain permission from the Department of Finance for extra staff and resources over and above the usual PAC budget. It drew heavily on the central committee budget for preparation, denying other committees resources during the period of

¹⁹⁷ House of the Oireachtas Commission Bill (Bill 18 of 2002), available from <http://www.irlgov.ie/oireachtas/frame.htm>

¹⁹⁸ Committee of Public Accounts Sub-committee on Certain Matters: Final Report 2001 Chapter 1: Introduction

the Inquiry. It may be premature to conclude that the PAC is fully equipped to take on major inquiries as a matter of course.

Appendix 5: Selected bibliography

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