



OAG Independence and Public Reporting

A Position Paper

16 January 2015

***Our independent work
promotes good governance,
transparency and
accountability in the use of
public funds***

OAG INDEPENDENCE AND PUBLIC REPORTING

INTRODUCTION

1. Since being appointed as the Auditor General of the Cayman Islands in July 2010, I have seen it as my duty to ensure the role is carried out to the highest standards possible and that international good practice is used to ensure the effectiveness of the Office's operations. Through the Constitution and legislation, the governance framework for the Cayman Islands requires that the Office of the Auditor General be an effective means to assist the Legislative Assembly and the people of the Cayman Islands to hold Government to account for its use and management of public funds.
2. Worldwide, it is understood that the fundamental underpinning of democratic society is supported by independent national audit offices that report without fear or favour to national legislative bodies. Over the last number of years, a significant amount of work has been done internationally to ensure that this understanding is embedded in the legislative and governance frameworks of all countries. INTOSAI (the International Organisation of Supreme Audit Institutions) has been working for over 50 years to promote the influence of government auditing bodies. With 192 members and 5 associates, it is the worldwide authority with regard to the operational effectiveness of government auditors.
3. INTOSAI has stated that a fundamental principle in the establishment and operation of a public audit agency (or Supreme Audit Institution (SAI) as they called at a country level) is its independence from government and the entities that it audits. INTOSAI has stated that:
 - SAIs can accomplish their tasks only if they are independent of the audited entity and are protected against outside influence.
 - To achieve this objective, it is indispensable for a healthy democracy that each country have a SAI whose independence is guaranteed by law.
4. At its 9th Congress in Lima (1977), INTOSAI identified the precepts required for independence of public audit agencies. Subsequently at their 19th congress in Mexico (2007) these have been further developed, with a declaration made on the eight core principles recognized by public audit agencies as the essential requirements of proper public sector auditing.

5. INTOSAI has been working to further strengthen independence of public audit agencies by taking forward an initiative to have the principles of independence of the Declarations of Lima and Mexico incorporated into international law. They have been working with UN institutions to take this forward. These efforts concluded with the United Nations General Assembly adopting a resolution on 22 December 2011 based on the work of INTOSAI to strengthen the independence of audit offices, and recognized INTOSAI's Mexico and Lima declarations on this matter. The resolution encouraged member states to:
 - apply, consistent with their national institutional structures, the principles set out in the Mexico and Lima Declarations; and
 - continue and to intensify their cooperation with INTOSAI, including in capacity-building, in order to promote good governance by ensuring efficiency, accountability, effectiveness and transparency through strengthened supreme audit institutions.
6. With this resolution, the work of INTOSAI and its fundamental principles of independence for government auditing was formally recognized by the United Nations. The United Nations General Assembly subsequently on 19 December 2014 adopted a new Resolution, "Promoting and fostering the efficiency, accountability, effectiveness and transparency of public administration by strengthening Supreme Audit Institutions", further endorsing the importance of the independence of public audit offices.
7. The principles of independent public audit offices contained in the INTOSAI paper were supported at the Commonwealth Heads of Government conference in Sri Lanka 2013, and included in the official communique.

THE FREEDOM TO DECIDE THE CONTENT AND TIMING OF AUDIT REPORTS AND TO PUBLISH AND DISSEMINATE THEM

8. One of the eight core principles of independence for public audit agencies is the freedom to decide the content and timing of audit reports and to publish and disseminate them. The key elements of this principle are:
 - SAIs are free to decide the content of their audit reports.
 - SAIs are free to make observations and recommendations in their audit reports, taking into consideration, as appropriate, the views of the audited entity.
 - Legislation specifies minimum audit reporting requirements of SAIs and, where appropriate, specific matters that should be subject to a formal audit opinion or certificate.
 - SAIs are free to decide on the timing of their audit reports except where specific reporting requirements are prescribed by law.
 - SAIs may accommodate specific requests for investigations or audits by the Legislature, as a whole, or one of its commissions, or the government.

- SAIs are free to publish and disseminate their reports, once they have been formally tabled or delivered to the appropriate authority—as required by law.

9. With respect to the last bullet, that public audit agencies are free to publish and disseminate their reports once they have been formally tabled or delivered to the appropriate authority, I draw on the following examples .

Westminster Parliament – Comptroller and Auditor General (NAO) reports are laid as House of Commons papers. When they are submitted to the Journal Office of the House of Commons they are considered laid. They are laid by the Clerk of the House, with no involvement of politicians or the PAC. Once they are laid they can be released as public documents. Papers can only be laid while the House is sitting.

Scottish Parliament – The lodging of reports with the Clerk of the Parliament is treated as the laying of any reports by Audit Scotland before the parliament. This can be done at any time, even when the parliament is in recess. Again, once they are laid they can be released as public documents.

Wider Caribbean – Based on information received from colleagues across the Caribbean the general practice is for the report to be submitted to the Speaker (or other appropriate party) who then tables it. After this it can be made public. Then, if it is active, PAC will consider the report and subsequently issue its own report if it wishes to.

10. International Standards of SAIs (ISSAI) 20 on the principles of transparency and accountability for public audit agencies includes the following:

SAIs report publicly on the results of their audits and on their conclusions regarding overall government activities.

- SAIs make public their conclusions and recommendations resulting from the audits unless they are considered confidential by special laws and regulations.
- SAIs report on the follow up measures taken with respect to their recommendations.
- SAIs constituted as courts report on sanctions and penalties imposed on accounting officers or managers.
- SAIs also report publicly on overall audit outcomes, e.g. the government’s overall budget implementation, financial condition and operations and, overall financial management progress and, if included in their legal framework, on professional capacity.
- SAIs maintain a strong relationship with relevant parliamentary committees to help them better understand the audit reports and conclusions and to take appropriate action.

SAIs communicate timely and widely on their activities and audit results through the media, websites and by other means.

- SAIs communicate openly with the media or other interested parties on their operations and audit results and are visible in the public arena.
- SAIs encourage public and academic interest in their most important conclusions.
- Abstracts of audit reports and court judgements are available in one of the official INTOSAI languages, in addition to the country languages.
- SAIs initiate and conduct audits and issue the relevant reports in a timely manner. Transparency and accountability will be enhanced if the audit work and related information provided are not obsolete.
- SAI reports are available and understandable to the wide public through various means (e.g. summaries, graphics, video presentations, press releases).

REPORTING PROCESS

11. Our performance audit reports are based on a planned and published programme of work, covering efficiency, effectiveness, economy, governance and compliance. This programme of audits is based on a risk assessment and a formal consultation process with relevant stakeholders, and also takes into account requests made by the Legislative Assembly or other stakeholders
12. Public interest reports report on issues that are identified or investigations that are requested during the year, and which in the public interest, should be reported to the Legislative Assembly in a reasonably short time frame. In general these cover single issues at an individual entity, and to an extent draw from significant issues identified through our audit of the financial statements. The overriding criterion is that the public interest report should add value by its presence. These reports may subsequently lead to further work being carried out through our planned programme of performance audits.
13. Performance and public interest reports are objectively prepared based on the evidence that we obtain during the audit which is carried out using international auditing standards. All findings are formally substantiated against the evidence obtained through the quality review processes of the OAG, to ensure that the draft report prepared reflects accurately the evidence obtained.

14. After the draft report is substantiated, it is subject to a formal clearance process with the relevant client or stakeholders. The formal draft of the report is issued to the client to ensure that the report is factually accurate and to provide the audited bodies with the opportunity to comment on the findings and overall content. The clearance process also enables the client to formally respond to any recommendations made and to provide a response for inclusion in the report, in particular on any areas of disagreement. If the client considers there to be factual inaccuracies they are requested to provide appropriate evidence to support their concerns. If there are disagreements with the conclusions reached based on the evidence, the process enables discussion of those so that they can hopefully be resolved. However ultimately the opinions expressed and conclusions reached in the report are that of the Auditor General, based on his professional and objective judgement, and thus if there is any unresolved disagreement the client can reflect this in their formal response included within the report.
15. Our goal is to clear the report with the client within four weeks of submission of the formal draft. In practice this process has taken significantly longer in nearly all cases. For example, our 2012 report on Major Capital Projects took over four months to clear due to the relevant client officials not responding.
16. The objective of the clearance process is to ensure that the report is an authoritative document, which is factually accurate, and therefore credible and reliable.

PUBLICATION OF REPORTS

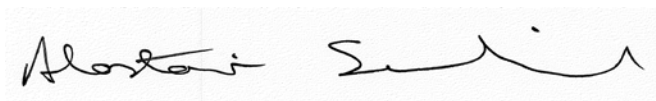
17. In line with principles espoused by INTOSAI as adopted by the UN, it is my view that once my Office delivers a performance audit or public interest report to the Legislative Assembly, it should be made public within a short timeframe.
18. This is very important as it allows the objective findings of the country's independent auditor to be made public without any manipulations, undue political influence or partiality. It also prevents the Government from delaying the publication of reports by subverting the role of the Legislature for example through disrupting the work of PAC. These reports are an independent source of objective information for use by the Legislative Assembly and its Public Accounts Committee (PAC) to hold government accountable for its use of resources, and in line with the principles of good governance. To do this, the process must be carried out in the most open and transparent way possible.
19. The ability to make reports public shortly after they are delivered to the Legislative Assembly is a fundamental element of an effective independent legislative auditor. It is a key element for effective governance and accountability, and delays in the public release of reports undermines their usefulness in holding Government to account for their use of public resources.

20. The process in Westminster style parliaments is generally divided into 2 distinct phases. Firstly the reports of the Auditor General are presented to the Parliament/Legislative Assembly. At this stage they are considered public documents. It is also normal at this stage that they are considered tabled or laid. Secondly they are then passed to the PAC or relevant committee so that they can carry out their traditional role of holding the Government to account on behalf of the Legislature, through gathering further evidence and formal reporting.
21. At present, the current working practice in Cayman is for reports to be delivered to the Legislative Assembly and made public within approximately two weeks. This period between delivery and being made public enables the report to be circulated to all Members of the Legislative Assembly, something that is not necessarily done in other jurisdictions, and provides them with the opportunity to receive a briefing from the Auditor General if they so desire. When they are delivered to the Legislative Assembly they are also formally provided to the PAC for further consideration. This is fairly consistent with Westminster style arrangements.
22. Any change that would increase the length of time that it takes for a report of the Auditor General to be made public would in my opinion be a regressive step, impacting on the independence of my Office to freely disseminate its reports. In light of international development over the last 50 years described above, I could also add that any attempt to delay issuance of my reports could be seen as weakening the fundamental democratic rights of the people of the Cayman Islands.
23. Prior to the current arrangements being put in place in 2006, the Auditor General's reports had to be examined by PAC before being made public. In most instances this led to significant delays in the reports being made public. There are examples where it took over five years before reports presented to the Legislative Assembly were made public. As a result the relevance and usefulness of the reports in holding the government to account was undermined, and the impetus for improvement in government operations was lost.

PROTECTING THE INDEPENDENCE OF THE OFFICE OF THE AUDITOR GENERAL

24. The current process of reporting by the Office of the Auditor General is enshrined in three documents: the Constitution, the Public Management and Finance Law and standing orders of the Legislative Assembly. It is my opinion that the independence of the Office of the Auditor General is not sufficiently protected by these instruments and that action is required to prevent the erosion of the current practice which is in line with international practice.
25. Comments have been made by some commentators over the last four and a half years since I have been Auditor General, that if supported would erode my ability to report to the Legislative Assembly and the people of the Cayman Islands with the independence I need to effectively carry out my duties. I believe these comments clearly show the fragility of the governance framework in place to protect my independence and the lengths that some individuals might consider in the future to erode democracy in the Cayman Islands for their own personal interests.

26. Reporting on issues relating to the management of public funds has been a challenge for me at times. Since becoming Auditor General, I have issued several reports discussing the inappropriate role of politicians in the day to day administration of government. These findings demonstrate a lack of good governance, but more importantly, demonstrate a clear disregard for the principles enshrined in the Constitution and laws of the Cayman Islands. Therefore, it is critical that my reporting timelines to the Legislative Assembly be free of possible influence by those same individuals who may have themselves transgressed good governance practices.
27. The opportunity exists at this time with the Government considering changes to the Public Management and Finance Law to reinforce the reporting process for the Office of the Auditor General in legislation. The legislation could come in the form of a separate Auditor General act that normally exists in other developed countries in the world.
28. I look forward to working with the Legislative Assembly in the coming months in the development of legislation that will support their objective for creating a stronger governance framework and protecting the role of the Auditor General.

A handwritten signature in black ink, appearing to read 'Alastair Swarbrick', written on a light-colored background.

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