

Protecting the integrity of accountability institutions: an independent funding model

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Summary

- Funding of accountability institutions is currently determined by executive government, with no ability for Parliament to amend without blocking the Federal Budget;
- To minimise the risk of politicisation of accountability institutions, the Centre for Public Integrity recommends that funding be determined by an Independent Funding Tribunal;
- The Independent Funding Tribunal could be modelled on the existing Remuneration Tribunal, with powers to inquire into and determine appropriate funding levels.

Background

Budget 2021-22 is a pre-election test of the Morrison Government's commitment to integrity. It presents an opportunity to restore accountability agencies' funding – including the \$6.4m cut since 2013-14 to the ANAO¹ –, thereby enabling them to fulfil their statutory mandates.

The experience of recent years has demonstrated that the current model – via which funding is allocated to accountability institutions by the Executive as part of the annual Budget – renders watchdogs vulnerable to cuts for biting the hand that feeds them. This is one explanation for the cuts to the Australian National Audit Office's budget in the wake of the Sports rorts and Leppington Triangle revelations.² It also poses a temptation for governments, which have an incentive to keep their failings hidden, to cripple institutions whose work may bring such failings to light.

The heads of a number of Australia's key accountability institutions have articulated the consequences of the budgetary cuts they face. In 2020 the Auditor-General appealed to the Prime Minister for the Australian National Audit Office to be funded on a "*more sustainable basis*", warning that "*Without supplementary appropriations, the number of performance audits tabled in the parliament will continue to reduce*".³ National Archives of Australia Director-General David Fricker has described resourcing constraints upon that agency as creating pressures in respect of its cyber-resilience, ability to preserve

¹ The Guardian, Warning Coalition's \$6.4m cuts could mean agencies not audited for 20 years, 19 February 2021, <https://www.theguardian.com/australia-news/2021/feb/19/warning-coalitions-64bn-cuts-could-mean-agencies-not-audited-for-20-years>

² The Canberra Times, *This is revenge for sports rorts*, 7 October 2020, <https://www.canberratimes.com.au/story/6958154/this-is-revenge-for-sports-rorts-audit-office-funding-cut/>

³ Australian National Audit Office, Annual Report 2019-20, p 1.

records at risk and ability to provide access to records. Specifically in relation to the lack of sufficient funds to preserve the agency's collection, Mr Fricker has warned that:

When you lose records of the government, then you of course reduce the transparency and accountability of government, the integrity of government processes and the trust that people are able to place in government. Of course, when records are lost, you also lose resources which are called upon to uphold the rights and entitlements of Australians.⁴

Deficiencies of the current funding model

Under the current model, accountability institutions receive funding via annual appropriation bills dealing with the "ordinary annual services of the government". The Senate is constitutionally prohibited from amending these bills,⁵ and Senators wishing to block bills containing funding cuts to accountability institutions would be required to vote against the entire bill.

This consequence of this is that the Parliament has a limited role to play in respect of the allocation of resources to accountability institutions: effectively, the Executive therefore controls the resourcing of agencies mandated to scrutinise it.⁶

Principle 8 of the Mexico Declaration on Supreme Audit Institutions (**SAIs**) states that "SAIs should have available necessary and reasonable human, material, and monetary resources - the Executive should not control or direct the access to these resources". This principle is equally applicable to any other key accountability institution: indeed, there is a fundamental contradiction underlying the model which has existed to date and seen the funding of these agencies controlled by precisely whom they are meant to scrutinise.

A way forward

The Centre for Public Integrity proposes that key accountability institutions be funded by an Independent Funding Tribunal under a model similar to that created by the *Remuneration Tribunal Act 1973* (Cth). Pursuant to this Act, the Remuneration Tribunal – which is composed of three members appointed by the Governor-General – is responsible for making determinations in respect of the remuneration to be paid to public office holders (other than parliamentarians and candidates in an election).

Under the Centre's proposed model, an appropriately qualified Independent Funding Tribunal would oversee the annual budgets of key accountability institutions including the Australian National Audit Office, the Office of the Australian Information

⁴ Commonwealth Parliament Hansard, Legal and Constitutional Affairs Legislation Committee, 14 April 2021 https://parlinfo.aph.gov.au/parlInfo/search/display/display.w3p;adv=yes;orderBy=customrank;page=0;query=Dataset:comSen.estimate%20Dataset_Phrase:%22estimate%22;rec=3;resCount=Default accessed 2 May 2021.

⁵ The Senate can request that the House of Representatives amend the bill: *Constitution* s 53.

⁶ Amongst the accountability institutions referred to in this paper, the Australian National Audit Office is unique for the parliamentary committee process that is legislated in relation to its funding under the *Public Accounts and Audit Committee Act 1951* (Cth). While modifications may be made to this current Committee system in order to bolster its independence – such as a requirement that Committee recommendations to the Prime Minister in respect of funding be made public – as long as any accountability institution's funding is effectively controlled by the Executive, it is vulnerable to politicization.

Commissioner, the Ombudsman, the Administrative Appeals Tribunal, the National Archives, and, once established, a National Integrity Commission.

Design principles

The following principles should guide the design of an Independent Funding Tribunal:

1. Tribunal members should be nominated by an all-party parliamentary committee, with a requirement for bipartisan support modelled on the nomination process for Queensland's Crime and Corruption Commission. In Queensland, pursuant to s 300 of the *Crime and Corruption Act 2001* (Qld), four members of Parliamentary Crime and Corruption Committee are nominated by the Leader of the House and three members are nominated by the Leader of the Opposition. Section 228(b) of the same Act provides that the Minister may nominate a person for the office of chairperson, deputy chairperson, ordinary commissioner or chief executive officer only where the nomination is made with the bipartisan support of the committee; under Schedule 2, 'bipartisan support' means either support of the members of the parliamentary committee unanimously, or support of a majority of the members other than a majority consisting wholly of members in the political party or parties in government in the Legislative Assembly;
2. The Tribunal must have sufficient powers to inquire into and determine the annual departmental appropriations for each agency in relation to which it has jurisdiction;
3. The Tribunal must consider draft estimates prepared by agencies as part of the inquiry process; should it make a determination that is inconsistent with what is requested in the draft estimates, it must provide written reasons;
4. Funding determinations must include triennial baseline funding that increases annually in line with CPI;
5. Funding determinations must be reviewed annually to determine whether circumstances necessitate supplementation (for example, following expanded jurisdiction); and
6. Tribunal inquiry reports and determinations must be made public in order to enhance transparency.

Conclusion

The contradiction inherent in the Executive controlling the funding of agencies which scrutinise it is self-evident.

Removing Executive control of the funding of key accountability institutions is essential, if these institutions are to be genuinely independent – and critically, to be seen to be independent.

The adoption of a model via which funding is allocated by an appropriately qualified and designed Tribunal would be an important step towards the achievement of this independence.

About The Centre for Public Integrity

The Centre for Public Integrity is an independent think tank dedicated to preventing corruption, protecting the integrity of our accountability institutions, and eliminating undue influence of money in politics in Australia. Board members of the Centre are the Hon Tony Fitzgerald AC QC, the Hon Stephen Charles AO QC, the Hon Anthony Whealy QC, Professor George Williams AO, Professor Joo Cheong Tham and Geoffrey Watson SC. More information at www.publicintegrity.org.au.