



DISCUSSION PAPER

Public Consultation on the Review of Laws Governing the Auditor-General

24August, 2015

NOTE

This paper is provided for information purposes only and does not necessarily reflect the views of the Auditor-General, the Office of the Auditor-General nor the Minister responsible for the Office of the Auditor-General, the Right Honourable Prime Minister, Peter Charles Paire O'Neil CMG.

The document is available on the official website www.ago.pg. For further assistance please contact Lead Counsel Joan Arni-Posman on 301 2229 (AGO Head Office, Waigani) or anyone of the Audit Law Review Team listed hereunder.

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A

Message by the Prime Minister

The Right Honourable Prime Minister, Peter O'Neil, CMG

Our country's greatest strength is our People. It is important that you contribute in a meaningful way in this process. I would like to hear from you and I encourage each one of you to work towards rebuilding, revitalizing and ensuring that a stronger Office of the Auditor-General is secured in the years to come. Your participation in the nation-wide consultation bespeaks of the desired commitment from you. It has been more than 40 years since the laws governing the Auditor-General has been substantively reviewed.

The issues that will be discussed are global. Each generation of Auditors-General must be vigilant and the constitutional institution they have ultimate charge of, remain relevant within the dynamic auditing and accounting environment with the trust and ability to provide Parliament and its People with the assurance they need. The consultation process ensures that this requirement is in place. Vigilance means that the Office of the Auditor-General must be properly resourced in order to produce current, high quality useful audits.

The Auditor-General is the critical link in the chain of accountability and good governance. In respect to public audit, the Auditor-General is vested with the constitutional mandate to audit public monies and properties of the State. With that constitutional mandate, and as the Supreme Audit Institution (SAI) our sovereign nation is strengthened as the Audit Reports of the Auditor-General enables Parliamentary oversight, accountability and governance and this enhances public trust and confidence in Government.

The Auditor-General has opened the consultation with release of the Discussion Paper on the 24th August, 2015. The nation is invited to an open constructive and inclusive process. Releasing the Paper marks the beginning of the public forums and participations to the issues and challenges confronting public audit and the impact these will have on the quality of audit reports and the broader issue of transparency, accountability of public funds, properties and trust.

As Minister responsible for the PNG Supreme Audit Institution-the Office of the Auditor-General of Papua New Guinea, I ask that you join the discussions and let us know what you think about the best path forward on the issues that will be raised in the forums.



The Right Honourable Prime Minister, Peter O'Neil, CMG

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B Forward by the Auditor-General

I take this opportunity to welcome everyone, within government and external to government, individuals and private commercial bodies nation-wide and all my fellow citizens abroad, my fellow Constitutional Office Holders, professional colleagues that are now on board to take the journey to dialogue with my Office on specific issues highlighted for discussion in this timely review. In the interest of state audit, the Office of the Auditor-General, known within international quarters as the Supreme Audit Institution PNG, will re-examine the laws governing the Auditor-General and introduce reforms which will address and the gaps identified in consultation with you and correct these.

The purpose of the Discussion Paper is to encourage individuals, groups and government offices and those external to government to participate in audit issues identified and highlighted for review and reform. The different mediums of communications available in the Consultation process are intended to be consistent and flexible so as to make sure it is easier for all and different levels of stakeholders to participate. The Paper does not prescribe solutions.

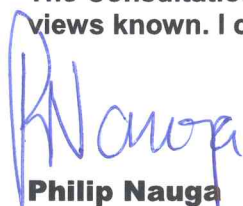
The consultation options I have set in place are full public and targeted stakeholders. Both are considered the appropriate level for consideration of issues that are of national interest. Community engagement is critical for discussion issues and hence, sustainable change. This Paper sets out the audit mandate of the Auditor-General and the challenges that are faced. I urge and encourage you to respond to the issues and set the way forward for a stronger and better Office of the Auditor-General of Papua New Guinea.

I urge everyone to participate. Join the Office of the Auditor-General at any one of the venues running throughout the nation. Your feedback will inform the development of recommended reforms to be presented to the government.

The emphasis is placed on high-quality consultation on issues relating to independence, funding staffing autonomy and administrative measures. Your added contributions and suggested refinements to the laws governing the Auditor-General, will improve decisions that will be needed to be made in the process of creating the legislative statement in the proposed *Organic Law on the Auditor-General* which compounds the amalgamation and consolidation of the current Audit Act, 1989 and Constitutional Laws governing and relative to the Auditor-General.

To facilitate public and stakeholder engagement, I am releasing this Discussion Paper on a range of issues and reform options needed for change.

The Consultation is officially opened and you invited to join the Discussion and make your views known. I commend this Paper to you for your feedback.



Philip Nauga

Auditor-General of Papua New Guinea

C

The Role of the Auditor-General

INTRODUCTION

This Part allows all parties sufficient awareness of the primary functions and roles of the Auditor-General. The central focus of the Paper is the chapters. In order to appreciate and understand the gist of the Chapters, it is essential that you understand the functions and scope of jurisdiction imposed on the Auditor-General by the laws. This part places the ensuing Chapters into sharper focus. It has the added purpose of matching acuity with the issues needing reforms.

The Constitution of Papua New Guinea provides for the establishment of the Office of the Auditor-General, the appointment and scope of jurisdiction of the Auditor-General:-

213. ESTABLISHMENT OF THE OFFICE OF AUDITOR-GENERAL.

- (1) An office of Auditor-General is hereby established.*
- (2) The Auditor-General shall be appointed by the Head of State, acting with, and in accordance with, the advice of the National Executive Council given after receiving reports from the Public Services Commission and the Public Accounts Committee.*
- (3) In the performance of his functions under this Constitution, the Auditor-General is not subject to the control or direction of any person or authority.*

It further provides for the functions of the Auditor-General. There are, in principle, 3 specific functions as stipulated by *Section 214 of the Constitution*.

214. FUNCTIONS OF THE AUDITOR-GENERAL.

- (1) The primary functions of the Auditor-General are to inspect and audit, and to report at least once in every fiscal year (as provided by an Act of the Parliament) to the Parliament on the public accounts of Papua New Guinea, and on the control of and on transactions with or concerning the public moneys and property of Papua New Guinea, and such other functions as are prescribed by or under a Constitutional Law.*
- (2) Unless other provision is made by law in respect of the inspection and audit of them, Subsection (1) extends to the accounts, finances and property of—*
 - (a) all arms, departments, agencies and instrumentalities of the National Government; and*
 - (b) all bodies set up by an Act of the Parliament, or by executive or administrative act of the National Executive, for governmental or official purposes.*

- (3) *Notwithstanding that other provision for inspection or audit is made as provided for by Subsection (2), the Auditor-General may, if he thinks it proper to do so, inspect and audit, and report to the Parliament on, any accounts, finances or property of an institution referred to in that subsection, insofar as they relate to, or consist of or are derived from, public moneys or property of Papua New Guinea.*
- (4) *An Act of the Parliament may expand, and may provide in more detail for, the functions of the Auditor-General under Subsections (1), (2) and (3), and may confer on the Auditor-General additional functions and duties not inconsistent with the performance of the functions and duties conferred and imposed by those subsections.*

In satisfaction and by authority of Section 214(4) of the Constitution, the *Audit Act, 1989* was passed. Under Section 3 of the *Audit Act, 1989*, the functions, duties and powers of the Auditor-General are provided in more detail.

The constitutional mandate of the Auditor-General extends to the following bodies. These are listed under Section 3 of the *Audit Act, 1989*. These bodies are-

- (a) *Departments of the National Public Service and arms, agencies and instrumentalities of the National Government; and*
- (b)¹ *Provincial Governments and arms, agencies and instrumentalities of Provincial Governments; and*
- (c)² *bodies established by—*
- (i) *a Constitutional law; or*
 - (ii) *an Act of the Parliament; or*
 - (iii) *executive or administrative act of the National Executive; or*
 - (iv) *a provincial law; or*
 - (v) *executive or administrative act of a provincial executive,*
- for governmental or official purposes and subsidiary corporations of such bodies except the company referred to as “the company” in the Mineral Resources Development Company Pty Limited (Privatisation) Act 1996 and the subsidiaries of that company; and*
- (d) *Government associations; and*
- (e) *Government-owned companies; and*
- (f)³ *Provincial Government associations; and*
- (g)⁴ *Provincial Government public projects; and*
- (h) *public projects.*

Section 3(2)(b) amended by the *Audit (Amendment No. 2) Act 1995* (No. 12 of 1995), s5.

Section 3(2)(c) amended by the *Mineral Resources Development Company Pty Limited (Privatization) Act 1996*, s13.

Section 3(2)(f) amended by the *Audit (Amendment No. 2) Act 1995* (No. 12 of 1995), s5.

Section 3(2)(g) amended by the *Audit (Amendment No. 2) Act 1995* (No. 12 of 1995), s5.

In addition to functions and responsibilities anchored under the National Constitution and the Audit Act, 1989, the Auditor-General has additional functions that are prescribed by and under the *Organic Law on Provincial Governments and Local Level Governments (OLPGLLG)*. These are-

Subdivision E. – Provincial Audit Service.

113. PROVINCIAL AUDIT SERVICE.

- (1) The Auditor-General, may, in accordance with an Act of the Parliament, establish a Provincial Audit Service in a province.*
- (2) The Head of a Provincial Audit Service shall be the Provincial Auditor who shall be appointed by the Auditor-General.*
- (3) The Auditor-General shall assign additional auditors and other officers and employees as he considers necessary for purposes of adequately carrying out audit functions under this Organic Law and in accordance with an Act of the Parliament.*
- (4) The functions of the Provincial Audit Service are to–*
 - (a) maintain an effective and efficient audit service within a province; and*
 - (b) extend the provisions of Section 214 (functions of the Auditor-General) of the Constitution, and of any Act of the Parliament relating to the inspection and audit of the accounts of governmental bodies including commercial statutory authorities in Papua New Guinea and of transactions referred to in Section 214(1) of the Constitution; and*
 - (c) extend the audits to the accounts, moneys and properties of Provincial Governments and Local-level Governments; and*
 - (d) carry out performance audit of the officers of the Public Service and members of the Teaching Service and other State Services assigned to Provincial Governments and Local-level Governments.*
- (5) The accounts of Provincial Governments and Local-level Governments are to be audited annually and their accounts may be inspected at any time without notice by the Provincial Audit Service.*
- (6) A Provincial Auditor may take such action as he thinks necessary to satisfy himself that all the functions and the operations carried out by the Provincial Governments and the Local-level Governments are being carried out in an efficient and effective manner in accordance with law.*
- (7) An Act of the Parliament may make further provisions in relation to the functions and the duties of the Provincial Audit Service not inconsistent with the functions and duties conferred by the relevant provisions of the Constitution, this Organic Law and any other law.*
- (8) The annual audit report on a Provincial Government and a Local-level Government for a fiscal year shall be prepared by 30 April in the year succeeding and be submitted to–*
 - (a) the Minister responsible for provincial government and local-level government matters who shall table it in Parliament at its meeting immediately following the receipt by him of the report; and*
 - (b) the Minister responsible for finance matters; and*
 - (c) the Provincial Government and Local-level Governments concerned; and*
 - (d) the National Economic and Fiscal Commission.*

- (9) The Provincial Audit Service shall be adequately funded by the National Government.*
- (10) The Auditor-General may prosecute any person or persons for any unlawful acts in connection with the affairs of the Provincial Governments and the Local-level Governments concerned.*

Under the *Organic Law on Provincial Governments and Local Level Governments* the Auditor-General is required to have presence in all 22 provinces of Papua New Guinea. The constitutional and statutory functions of state audit extend to the conduct of audit carried out by the Provincial Audit Service staffed by officers appointed by the Auditor-General.

Parliament supremacy over the management of public finances enables Parliament to review and measure progress being made toward the attainment of national objectives. It is only through the Auditor-General's reports to Parliament that Parliament may be promptly informed and act decisively. Parliament exclusively relies on the Auditor-General to provide reasonable reassurance, reliable, accurate, complete and independent and current audit, that all government activities are carried out and accounted for, consistent with Parliament's intention and in accordance with law. He is the independent and external auditor appointed by the Constitution. It is a mandatory requirement that the Auditor-General be present in the 22 provinces of the country to undertake state audit. In reality, given the funding and staffing constraint, the Auditor-General has been unable to discharge his important audit mandate. And this is recurrent issue. Today, the law must be seriously complied with.

The Auditor-General's mandate to undertake state audit is absolute. The Auditor-General does not share a parallel function, power and duties with any other body. It is a constitutional breach for any person, corporate or otherwise to conduct a state audit on behalf of the Auditor-General, without written approval of the Auditor-General.

In summation, the output of the work of the Auditor-General assists government agencies to improve in their performance, financial operations and report these to Parliament. He is vested with functions, duties, responsibilities, powers directly sourced from the Constitution. He provides assistance to Parliament, through his Reports, in order that Parliament may hold public bodies and authorities to account for the management of monies and resources entrusted to them.

Further to the cycle of implementing accountability measures, the Auditor-General provides the critical supporting role in the work of the Public Accounts Committee, on behalf of the People of Papua New Guinea. The work of the Auditor-General is important to inform Parliament on the state of public administration and management of public resources. The

entire legal framework is designed to guarantee the People of Papua New Guinea that this reassurance is cemented in the audit undertakings of the Auditor-General.

You may click on the link [Role of the Auditor-General](#) to access the document “The Role of the Auditor-General” to better understand the roles of the Auditor-General.

D

Executive Summary

“Auditing for impact” is a compelling statement encompassing the directive goal and vision assurance of the Auditor-General to the People of Papua New Guinea. The output of the audits of Auditor-General is more than a validation of financial statements or the effectiveness of internal controls. It extends beyond that. It is a formidable measure for the People, to ensure that Parliament can hold and call managers of the people’s resources to account for their stewardship and effective, efficient and economic management of these resources. The People of Papua New Guinea deserve the very best.

“Auditing for impact” ensures the constitutional guarantee conferred on the Auditor-General to perform the audit tasks for People is secured and the obligation on the government to be accountable to the People is imposed. *“Auditing for impact”* allows the Auditor-General to contribute to fostering greater public trust and confidence in all levels and institutions of government. The lives of the People will improve for the better and accountability and good governance realistically measured. You are entitled to know that the government can be held to account for the public resources entrusted to them on your behalf. The Auditor-General is that critical link in the chain of accountability. It is a key pillar of a healthy nation. Today, the focus is on achieving beneficial change. That change is now.

That being the vision, the Office of the Auditor-General mission is *“to provide independent and quality assurance over the financial management of government and public entities through our audit activities.”*

A robust, strong and properly resourced Office of the Auditor-General is needed, in order to be credible and independent. Your participation and responses to the Discussion Paper will assist in the process of our legislative review which is aimed at strengthening the audit mandate of the Auditor-General by having in place proper structures and resources necessary to ensure that appropriate and necessary audit toolkit is in place.

E

Ways You Can Participate In Our Discussion Forums

In order to achieve the above objectives, the Office of the Auditor-General intends to consult broadly and widely within and external to the National Government. The nation has been notified through selected national mediums of the Consultation Timelines and forums happening in selected regions.

Given funding constraints, the Auditor-General and the Office of the Auditor-General are unable to cover all Districts and Local Level Governments (Urban and Rural). However, the invitation is open and extended to those of you there to join the discussions at the selected locations.

In responding, you may wish to highlight other potential reforms, not identified in the Paper which could improve public audit by the Auditor-General and enable the Office of the Auditor-General to perform effectively and efficiently in discharging functions, duties and powers conferred on him.

How to Participate and Have Your Say: Comments and Submissions

This Discussion Paper officially commences the Consultation process. The period begins on the 24 August, 2015 and ends on 23 November, 2015.

You are invited to make comments and submissions and provide any other relevant information in response to this Discussion Paper. Where appropriate, please provide evidence to support comments.

The closing date for providing comments on this discussion paper is 24 November, 2015.

All feedback to the issues highlighted for discussion, will form part of the Auditor-General's evaluation in his submission to the relevant authorities.

Responses or feedbacks can be made in one of the following ways:-

- **In writing to –**

Audit Law Review
Office of the Auditor-General
PO Box 1097
WAIGANI, 131
Vision City

- **By the AGO Toll Free Number: 1802400**
- **By Website and Email**

As the audit mandate of the Auditor-General is parallel with the activities of Parliament, in order to ensure that monitoring and careful evaluation and analysis of a voluminous amount of responses expected, is properly conducted, you may wish to use the electronic comment form via our website online submission system, to post your feedback.

- **Email:** auditlawreview@ago.gov.pg
- **Electronic Registration Form**. *Please register on-line by clicking on the link*
- **By Extranet:** Specific key stakeholders will be engaged in an on-going forum with the Auditor-General and the Project team for the duration of the consultation process. Password and login credential will be allocated on acceptance of the Auditor-General's invitation to engage.

Confidentiality Requests

If you want your submission, or any part of it, to be treated as confidential, please specifically request this clearly, by ticking the appropriate checkbox in the website online submission form.

Disclaimer- Data Protection

This Discussion Paper is a working document and for consultation purposes only. It is authorize to be published to synchronize with the Consultation process that is primed to start on the 24 August, 2015 and end in 23 November, 2015. This Paper is necessary to enable you, to understand the issues that require your contribution, as an important stakeholder in constant coalition partnership with the Auditor-General, and the National Parliament. In this partnership, the Auditor-General is the critical link in the circle of accountability and good governance, of which you are an essential part. As the constitutional mandate of the Auditor-General covers you as a valuable individual and the nation as a whole, a nation-wide consultation is now staged. You will be advised through public advertisements on the dates, times and locations of the consultation forums.

You are invited to comment on the issues raised in the Discussion Paper. These circumstances highlighted in this paper are an indication of the approach or options the Auditor-General has developed, in order to engage in discussions with you. It is not a final policy position nor do these circumstances or views constitute a formal proposal for a legislative script by the Auditor-General or a direction of the policy reform. They are aimed at eliciting discussion and gathering you, the stakeholders' views at this important stage of the process.

F

Background

Formal records indicate that the Office of the Auditor-General, commenced operations on 01 December, 1973, when Papua New Guinea attained self-government. It was established as a Constitutional Institution, with the appointment Auditor-General as a Constitutional Officer-Holder on the attainment of its sovereign independence on 16 September, 1975. Prior to full self-government, the audits of the Territory of Papua and New Guinea were charged under the Auditor-General of the Commonwealth Audit Office, Australia. During this time, Duncan Robert Steele Craik was the Auditor-General of the Commonwealth Audit Office. PNGAGO had its first Auditor-General in the appointment of J.F Loughry, (1973).

Records further show that the PNGAGO was under the direct control of the Department of Prime Minister with the Secretary providing services to the Auditor-General's Office. In 1975, the National Parliament passed the *Public Services (Interim Arrangement) (Status of the Auditor-General) Act* and thereunder, the Office of the Auditor-General was set up as an independent Department. The Act conferred Departmental Head status on the Auditor-General. It empowered the Auditor-General to settle audit policies, and perform his statutory roles independently.

Impetus for Change.

On 8th March, 1978, the National Executive Council approved a separate Divisional Vote in the yearly Appropriation Act for the Office of the Auditor-General. The approval of separate Divisional Vote was brought into operation in 1979.

Sir Makena Geno, KBE was the first national Auditor-General of Papua New Guinea. He commenced employment on 09 January, 1970 a period nestled within the post-independence public service era. He commenced his tenure of appointment on 18 January, 1983 as the Auditor-General of Papua New Guinea. He held Office for three (3) consecutive terms totalling (15) years. Sir Makena served as a public office-holder in the state audit services before independence and until the end of his tenure on 18 January 1998. In total, Sir Makena achieved 28 years of dedicated and honourable active service in the audit and accounting fraternities.

Sir Makena Geno's appointment as the first national Auditor-General of Papua New Guinea was the catalyst for change. He was instrumental in the inaugural development and passing of the *Audit Act, 1989*. The Audit Act, 1989 was approved by the the National Parliament on March 1, 1989 and certified by the Speaker of Parliament on March 29, 1989. The Act came into operation in accordance with a notice in the National Gazette by the Head of State, acting with, and in accordance with, the advice of the Minister⁵. The Audit Act, 1989 was passed in satisfaction of Section 214(4) of the Constitution.

The current Auditor-General is Philip Nauga. His predecessors were Sir Makena V Geno, KBE, CBE, Mark Wani and George Wasi Sulliman. Through Mr Philip Nauga, the Office of the Auditor-General has identified major areas needing law reform.

In recent times, several authorities, with which the State has relative interest in, have caused legislative amendments to their laws effectively removing the Auditor-General as the entity's external auditor and the necessary audit oversight. Where shares are held in trust for the State, Parliament has a right to be informed and it is the Auditor-General and not anyone else, that should inform Parliament.

OBJECTIVE OF REVIEW OF CURRENT LEGISLATION

The primary purpose of the need to propose changes to the current law is to consolidate the current existing constitutional laws and statutory powers and duties into one piece of legislation: *The Organic Law on the Auditor-General*. The intention is to clearly enhance and strengthen the independence of the Auditor-General in terms of his financial, functional, operation and staffing autonomy.

There are two main policy objectives of this proposed law. First is to cause amendments to the Constitution, repeal the Audit Act, 1989, and update the law on the scope, jurisdiction and to give to the Auditor-General full financial and operational independence. Second, it consolidates all laws applicable to the Auditor-General into a single piece of constitutional law

Your views will be sought on the following areas identified for change:-

- * provision for the consolidation of all laws governing the Auditor-General to be placed in one piece of constitutional law. The Office of the Auditor-

⁵ http://www.asosai.org/journal1989/audit_profile.htm

General continues as a separate Constitutional institution with the Auditor-General as the constitutional office-holder.

- * provision for the establishment of the Organic law on the Auditor-General (OLAG) and repeal the Audit Act, 1989.
- * provision for the establishment of a separate appropriation for the Auditor-General to enhance the financial independence of the Auditor-General.
- * provision to enhance the operational and functional independence of the Auditor-General by clear declaration of the audit mandate over persons (corporate and natural).
- * provision for the Auditor-General, to have clear staffing autonomy in compliance with constitutional provisions so as to enable the proper discharge of audit mandate.
- * provision for the appointment, removal and dismissal process applicable to the Auditor-General and the Deputy Auditors-General.
- * enhance the reporting function of the Auditor-General to Parliament respecting audit outputs and the annual Auditor-General Report being the accountability mechanism in place and incorporated in the OLAG.
- * provide for the professional and contractual engagement of registered company auditors and holding them accountable and liable in the event of a breach of the contract.
- * provision for accountability measures against Chief Executives of all bodies subject to audit by the Auditor-General, including Secretary for Finance in the submission of Financial Statements, performance and operational reports.
- * provision for the establishment an Investigation Division to undertake investigations and prosecutorial powers.
- * provision for establishing a Court of Audits by proposing amendment to Section 172 (establishment of other courts) of the National Constitution.
- * provision for incorporating the functions of the Auditor-General under Section 51 (withdrawal of powers, functions and finances) of the Organic Law on Provincial Governments and Local Level Governments will be accommodated under the OLAG. -consequential amendment to OLPGLLG
- * provision for conferring legislative responsibility to the Public Accounts Committee for the appointment of financial statement auditor and performance auditor for the Office of the Auditor-General for accountability purposes.

By law, the Auditor-General is required to present to Parliament high quality audit reports in order to enable it to make well informed decisions on the operational and performance milestones of beneficiaries of public funds. Hence, Parliament exclusively relies on the work output of the Auditor-General to provide to it, reasonable reassurance, and reliable, accurate, complete and independent information that all government activities are carried out and accounted for, consistent with its intention and in accordance with laws.

The Auditor-General has three (3) principal constitutional mandates. These are anchored in Section 214 of the Constitution. He is solely vested with the function to firstly audit, inspect and report to Parliament on the public accounts of Papua New Guinea, and on the control of and on transactions with or concerning the public moneys and property of Papua New Guinea, and finally such other functions as are prescribed by or under a Constitutional Law, as those prescribed under the Organic law on Provincial Governments and Local Level Governments.

In order to fully understand the core legal framework within which the Auditor-General carries out his Constitutional mandate, your attention is drawn to the *Constitutional Planning Committee Final Report, 1974*.⁶ The objectives of the Constitutional Planning Committee Report, 1974 (hereinafter referred to as CPC Report), were twofold. To make Government more responsive to the needs of our people and to enable them to participate in the process of Government.⁷

The CPC Report's narrative of the Parliament's supremacy and control and accountability of public finances is provided in the link below.

[Click on the following link to access the extract taken from the Constitutional Planning Committee \(CPC\) Report, in order to understand what the framers of the Constitution recommended for the Auditor-General.](#)

The CPC Recommendation was translated into Section 213 and Section 214 of the National Constitution upon becoming a sovereign independent nation.

The Constitution vests in the Auditor-General, 3 principle mandates that are required to be discharged annually. The Auditor-General is mandated to audit, inspect and annually report to Parliament on the public accounts of Papua New Guinea, and on the control of and on transactions with or concerning the public moneys and properties of Papua New Guinea, and such other functions as are prescribed by or under a Constitutional Law. Through his audit outputs, Parliament is provided with current high quality audit reports, to enable it to make well informed decisions on the operational and performance milestones of all beneficiaries of public funds and their stewardship of these funds.

⁶ [Constitutional Planning Committee Report 1974](#)

⁷ [Supreme Court Reference by the Western Highlands Provincial Executive \[1995\] PGSC 6; SC486 \(20 September 1995\)](#)

It is significant to understand that the Auditor-General does not perform services for, nor report to the different tier levels of the National Government or the specific State Services. He discharges a Constitution role. This role is amplified in detail in the Audit Act, 1989, within which he is solely empowered to exercise specific powers, exclusively for the purpose of enabling supervision by Parliament of the management and expenditure of public monies and performance and operation of government. Parliament supremacy over the management of public finances enables Parliament to review and measure progress being made toward the attainment of national objectives. It is only through the Auditor-General's reports that Parliament may be promptly informed and act decisively.

The Office of the Auditor-General is vested with the sole function and responsibility to conduct state audit, exclusively for purposes of the National Parliament. Parliament exclusively relies on the Auditor-General to provide reasonable reassurance, reliable, accurate, complete and independent and current information that all government activities are carried out and accounted for, consistent with Parliament's intention and in accordance with law.

The approach essential to strengthening the constitutional mandate of the Auditor-General is to consolidate all laws applicable to the Auditor-General into a single piece of constitutional law. The Office of the Auditor-General and the Auditor-General are creatures of the Constitution and not of an Act of Parliament. The Office of the Auditor-General is established under Section 213(1) of the Constitution. The Auditor-General is appointed under Section 213(2) of the Constitution. In the performance of his functions under the Constitution, the Auditor-General is not subject to the control or direction of any person or authority. It exists because of the functions of the National Parliament.

It is the intention of the Constitution that the Auditor-General be at all times, properly financed, have professionally trained staff in order to properly discharge his constitutional audit mandate to Parliament, the People. This is evidenced in the Constitutional Planning Committee Final Report of August 13, 1974. The Discussion Paper revisits the directive recommendations of the framers of the Constitution and reiterates the grounding authoritative rationales anchored therein.

Hence, the necessity to enact appropriate reforms is to provide for a strong and independent Office. The need to review the current regulatory framework in order that the Auditor-General can comprehensively and efficiently provide to Parliament reasonable reassurance, reliable, accurate complete and independent information that all funded activities are carried out and accounted for, consistent with Parliament's intention and in accordance with law is at hand. Through the output of the Auditor-General, public sector institutions are strengthened and greater public trust and confidence in all levels of government is maintained and secured. A further impact is that the lives of the People will be improved for the better with improved accountability and good governance being realistically measured.

The views, conclusions and recommendations set forth in this Discussion Paper and responses received therefrom, are not to be regarded as the final views of the Office of the Auditor-General where law reform might be desirable. The objective of this Paper is to enable you to have your say and place focused submissions in relations to the reform initiatives proposed for state audit by the Auditor-General.

The Office of the Auditor-General is uniquely and matchlessly placed to contribute to building and sustaining stronger and more effective accountability and good governance measures and mechanisms between the National Government and the People. The Office of the Auditor-

General is a critical link in the chain of accountability between the National Parliament and the People. However, since the attainment of independence in 1975, and the creation of the Office in 1973, no formal public review of the functions and responsibilities of the Office of the Auditor-General had been undertaken or subject to challenge. Despite the recognized importance of the Office of the Auditor-General in the Constitution, on the basis of researched data, it has, over the years, diminished to the weakest component of public financial management.

G

Purpose and Structure of the Paper

THE PURPOSE

The purpose of this Paper is to discuss possible options for law reform in relation to laws governing the Auditor-General. The goal is to obtain considered and informed views from all interested stakeholders. It will highlight specific current issues existing and affecting the proper discharge of constitutional and statutory functions, powers and duties of the Auditor-General. The areas of possible reforms fall into four categories:-

1. Appointments issue
2. Jurisdiction and Independence issues
3. Funding/Budget issues
4. Operational issues
5. Staffing and Administrative issues

You may wish to consider issues on whether a proposed reform may have drawbacks or whether a ground-breaking proposal is essential to provide the needed mechanics in order for a particular process to function properly. Does a proposal of possibility have unpredictable or undesirable consequences for other areas of laws. Whether there are other possible options not developed in this Paper that needs to be considered.

The issues raised in this Paper have arisen because, the Office of the Auditor-General, being an important fundamental accountability institution, charged with the constitutional mandate to assist Parliament in dispensing with its supervision and control over public monies and other resources, must be provided with the essentials and these essentials can only be provided through legislative reforms.

The review is open to options and ideas that are not canvassed in the Paper. Discussion questions comprise specific proposals for reform. Stakeholders should not feel confined to responding to only those issues raised in this Paper. Ideas may have been missed in the process of formulating the broad framework for reform options in the Paper.

The Paper now turns to provide a backdrop on its structure. As stated above, there are 5 Parts containing specific issues that the review will address.

STRUCTURE

The Discussion Paper consists of 5 Parts. Discussion points will be positioned at key points throughout the Paper. Your views will be sought for discussion.

PART 1 of the Paper is introductory and puts the Paper in context. It explains that where there are constitutional provisions that will be incorporated into a proposed law, will not be an issue of discussion. This offers an opportunity to think about whether certain provisions of the Constitution may be better placed in a proposed law for consistency and impact. A proposal to establish an Organic Law on the Auditor-General and repeal the Audit Act, 1989 will be a topic for discussion. This topic is necessary. The body of laws governing the Auditor-General are scattered. The proposal to consolidate the laws into a centralized piece of constitutional law will be put forward for your views.

PART II explores the appointment structure and process of the Auditor-General and the Deputy Auditor-Generals. It addresses contractual considerations and the tenures of their appointment. Developing a strong knowledge base of the dynamics of public audit is essential resulting in higher productivity of relevant and useful audit reports to Parliament, hence the People.

PART III highlights the mandates of the Auditor-General and asks whether these are adequate to properly discharge his constitutional and statutory functions. It brings into focus specific proposed areas for discussion

- Scope: who and what the laws should cover. A consideration of the scope, time and subject of audit. In furtherance of his power to conduct discretionary audits, investigative audits or forensic audits will be a highlight of discussions.
- Reporting responsibilities of the Auditor-General to Parliament. Whether transmission to the Speaker of Parliament is deemed tabling in Parliament.
- Control over the finances/budget of the Auditor-General. The scope of entities subject to the audit jurisdiction and oversight of the Auditor-General from national departments, statutory authorities and commercial arms of the state to Provincial Governments and Local Level Governments including their business arms.
- Accountability of the Office of the Auditor-General to the People. This concerns the audit of the Office of the Auditor-General.
- Special procedures of appointment and tenures of the appointment for the Auditor-General and the Deputy Auditors-General.
- What Auditing standards should the Auditor-General apply.
- The organizational status of the Office of the Auditor-General. Personal management of the staff of the Auditor-General to be codified under the proposed law. Currently, the Office of the Auditor-General is constituted with a monocratic status having the Auditor-General as constitutional as well administrative Head of the institutional.
- Powers to Prosecute under the Organic Law on the Provincial Governments and Local Level Governments and that prescribed under the Audit Act, 1989.

- Power to Summons. Whether this compulsory process of law should include enforcement provisions.
- Power to dispense of audit.
- Protection of auditors conducting audit on behalf of the Auditor-General
- Maintenance of confidentiality of information acquired by the Auditor-General.
- Protection of persons supplying information to the Auditor-General.
- The information gathering powers of the Auditor-General. Power to inspect bank accounts of every person and entity that had been, directly or indirectly, involved in transactions involving the expenditure of public funds or resources of the State.
- The engagement of private auditors to conduct public audit on behalf of the Auditor-General.
- The power to levy audit fees.

PART IV focuses Funding and Budget issues. This issue focuses on the impact of inadequate funding and the effect that has on the independence of the Auditor-General. It discusses the constitutional significance and consequences of being under-resourced. It highlights the significance of the Auditor-General's mandate to assist Parliament fulfil its constitutional obligation to the People. That obligation conferred on Parliament relates to ultimate authority over all aspects of public finances.

PART V highlights operational issues affecting the audit and inspection functions of the Auditor-General.

PART VI explores the administration of the staff and officers of the Auditor-General. It investigates the need to create a Service distinct from the public service machineries.

Part 1 INTRODUCTORY

Background to Consider

The laws governing the Auditor-General are scattered. It is proposed that the process of incorporation of these laws be taken with the view to consolidation. This may be necessary to secure independence in order to be credible and effective, clarity and simplicity of interpretation of laws, consistency and impact of application of these laws in relation to the effective discharge of his mandate.

The Independence of the Office of the Auditor-General is a paramount consideration and it is important to secure this in order to enable the Auditor-General to fearlessly discharge his Constitutional functions. Constitutional and statutory provisions need to be centralized in one piece of constitutional law. We ask you to think about the option of consolidating the laws governing the Auditor-General that will assist in strengthening the Office of the Auditor-General by providing him with the necessary breadth and confidence.

Upon the attainment of independence, the Office of the Auditor-General was established. Then in 1989, heralded the passing of the Audit Act, 1989. Today marks 26 years since the passing of the Audit Act, 1989 which took place under the leadership of the first national Auditor-General, Sir Makena Geno, Kt. Rebuilding to strengthen the Office of the Auditor-General and the Auditor-General begins with this process and in this presentation.

Now it is time to start the conversation. Here are some questions to consider as you provide feedback on the development of new initiatives and proposals for change. It is hoped that this Discussion Paper will make a significant contribution to the exchange of views in the areas selected for discussion.

1.1	<i>Should provisions of the Constitution relevant to the Auditor-General be considered for amendment? And what provisions would you suggest?</i>
1.2	<ul style="list-style-type: none"> • <i>Where public audit is concerned, what would you like to see incorporated into the laws governing the Auditor-General?</i> • <i>What specific areas would you like to see incorporated?</i>

Part 2 (A)

APPOINTMENT OF THE AUDITOR-GENERAL

Part 2 is divided into 2 sections. Part 2(A) refers to the Auditor-General. Part 2(B) refers to matters concerning the Deputy Auditors-General.

Background to Consider

The Auditor-General is appointed under Section 231(2) of the Constitution. It provides-

213. ESTABLISHMENT OF THE OFFICE OF AUDITOR-GENERAL.

(1) An office of Auditor-General is hereby established.

(2) The Auditor-General shall be appointed by the Head of State, acting with, and in accordance with, the advice of the National Executive Council given after receiving reports from the Public Services Commission and the Public Accounts Committee.

(3) In the performance of his functions under this Constitution, the Auditor-General is not subject to the control or direction of any person or authority.

The law is silent on the term of appointment for the Auditor-General. Generally, it is for 6 years. It is proposed that the Auditor-General should hold office for a term of 12 years and not be eligible for reappointment. The Constitution provides in very general terms for the conditions and removal of the Auditor-General, as a Constitutional Office –Holder.

The appointing authority is the Head of State. The appointment is made on advice of the National Executive Council who first must consider reports from the Public Services Commission and the Public Accounts Commission. This process is time-consuming and cumbersome. The Office of the Auditor-General has monocratic status. He is the CEO and Administrative Head of this institution. On the expiration of appointment or where there is a vacancy in the Office, there is no acting appointment made. In the meantime, reports to Parliament cannot be remitted to Parliament. The function to report to Parliament is vested in the Auditor-General and no other.

The Auditor-General is one of the Constitutional Office-Holders as listed under Section 221 of the Constitution. The laws prescribes matters respecting tenures, appointment, salary and conditions, the requirement to take the Oath of Allegiance and Office, matters of resignation, retirement, including removal and disqualification of office. These are matters we consider important and need to be placed in one piece of law. In order to vouch the appropriate levels of transparency, it is proposed that the appointing authority, in addition to the PAC and the PSC, include an office of equal ranking and that Office be the Ombudsman Commission.

Where an Auditor-General becomes a member of Parliament, Provincial legislature of Local Level Government, is bankrupt or insolvent, is of unsound mind, under sentence of death or imprisonment, he should be disqualified to hold office. The retirement age of the Auditor-General

is that of the general public service. However, we propose that the retirement age should be 70 years.

Tenure and terms of appointment, salary and conditions, the requirement to take the Oath of Allegiance and Office, matters of resignation, retirement, including removal and disqualification of office perhaps best sits in a act of Parliament. Hence it may be necessary to provide for these all these essentials in an Act of Parliament bearing the name “ **Auditor-General (Administration and Management) Act, 2015**”.

DELEGATION

Currently the law is silent on the power of delegation. Over the years, it has become a serious matter of concern that the increasing activities of parliament has given rise to an insurmountable and overwhelming workload for the Auditor-General. Under the current law, there is no provision for delegation. There is a need for the power of delegation to be in place. This is a vital organization process and can be used within the bounds specified in the terms and condition of the Instrument of Delegation. Only the Auditor-General should be empowered to issue an Instrument of Delegation. It is not envisaged that the Auditor-General should delegate his reporting functions to parliament, his power to execute employment contracts, the power to appoint authorized auditors or agents to conduct audit on his behalf and under his sole directions and the power to issue compulsory process of law as the administrative Summons for purposes of investigations with a view to exercising his prosecutorial powers. These should be the areas of limitation on the powers of delegation, as a necessary administrative tool to assist the Auditor-General achieve his audit functions.

Delegation should be restricted to Deputy Auditor-Generals. This will allow immediate subordinates to have meaningful participation in achieving the Auditor-General's constitutional mandates. With this proposed law, the volume of audit output is managed, hence, reporting functions to Parliament, achieved. Proper assignment and deputized work to Deputy Auditor-Generals when provided by law, enables Deputy Auditors-General to perform assigned tasks in specific and orderly manner. Essentially, in this manner, Deputy Auditor-General are held to account for their performance and compliance with constitutional requirements.

It is probably too simplistic to say that the Auditor-General does not have the time to complete his audit responsibilities in time. However, it needs to be understood, that the Auditor-General has reporting functions of the Auditor-General and this is time-framed to happen “at least, once every fiscal year. It is possible to argue that the Office of the Auditor-General should be able to manage audit programs and be practical about the amount of audit that can be realistically included in that program. However, to be fair, the Office of the Auditor-General exist because of the activities of Parliament. Against the backdrop of the number and size of entities, and you only have to look at the National Budget to appreciate the quantity of entities that need to be audited by the Auditor-General, against those that are actually audited and tabled in Parliament.

The power of delegation is needed. It means that the Auditor-General can concentrate on the finer requirements of his mandate.

PENSION

In relation to pensions, all constitutional office-holders are eligible for pension. Their pension entitlements are guaranteed under Section 223(2)(b) of the Constitution. But pension is determined by the Public Services Commission under the Organic Law on Guarantee of the Rights and Independence of Constitutional Office-Holders. It makes provision for the entitlement regime applicable to Constitutional Office-Holders. The issues are further compounded when an Act of Parliament (It is proposed that the appointing authority be given the responsibility to determine pension entitlements of the Auditor-General. In this regard, transparency and consistency is maintained and secured. It further proposed that the pensions be provided under a proposed law to be called Organic Law on the Auditor-General. He who hires, is he who fires and should be the same person to determine entitlements at the end of tenure of office.

The Constitutional Planning Committee Report in relation to the Auditor-General as a Constitutional Office-Holder.

It would assist you if the Paper directs your focus on what the framers of our Constitution, in the Constitutional Planning Committee Report had provided. They said -

The persons appointed to all of these offices must be of undoubted integrity if they are to fulfil the trust that we believe should be placed in them. They, in turn, should be protected from external pressure, although not in such a way that they become remote from the society in which they work. A balance must be struck between the need for them to be able to perform their duties fearlessly and without hindrance, and the need to ensure that they carry out their work honestly and with due regard for the people of Papua New Guinea. We believe that our recommendation strike such a balance.

Tenure

No person should be allowed to hold high public office indefinitely. All persons who exercise power on behalf of the people should, we believe, have their work periodically evaluated by the body that originally chose them.

We need to place considerable trust in the persons appointed to the constitutional offices listed above. The Committee has, therefore, given very careful consideration to the manner in which they should be appointed, and their qualifications for office. We appreciate that it would not be proper to hold them accountable for particular decisions and actions. But, we do believe that it should be possible, at specified intervals, to consider their continued suitability for office in a rapidly changing society.

We propose that constitutional office-holders (other than judges) should be appointed for terms of six years. At the expiration of each term, holders of such offices should be eligible for reappointment in the same manner as they were first appointed.

However, in order to facilitate localisation, we believe that no person who is not a citizen should be appointed to a constitutional office for a term greater than three years. And, for the

first ten years after the Constitution comes into force, while our country is still short of Papua New Guineans with appropriate training and experience, we recommend that citizens be appointed for an initial term of three years, after which they may be reappointed for terms of six years.

We have outlined above our belief that no person should hold a constitutional office indefinitely. But, we are also concerned to ensure that constitutional office-holders are able to perform their functions independently of outside pressures.

We propose that all constitutional office-holders who are citizens of Papua New Guinea should have their future guaranteed. Those office-holders who are recruited from a position in public employment for an initial term of three years, and who are not then reappointed, should be offered another position in the public employment at a salary and on conditions similar to those they enjoyed prior to their recruitment. A constitutional office-holder who is not reappointed at the expiration of a six year term should be guaranteed a position in public constitutional office. In this way, we believe that the constitutional offices can be filled by people sensitive to the changing needs of our country, yet free from personal and professional pressure.

Oath or Affirmation

It is important, we believe, that all constitutional office-holders should be publicly committed to uphold the Constitution, including the values embodied in the National Goals and Directive Principles in Chapter 2, and the Leadership Code in Chapter 3. They should, we recommend, take an oath or make an affirmation (according to individual conscience) in the form set out in Schedule 3 of this Report before they take up the duties of their offices. It should be impressed upon them that these pledges are no mere formalities: they have been carefully composed by and for those with a genuine personal commitment to the objectives they specify.

Resignation

A constitutional office-holder who feels unable or unwilling to complete the full term for which he was appointed should be permitted to tender his resignation at any time. He should, however, be required to give sufficient notice of his intention to resign to enable the body that appointed him to proceed to find a person to replace him as soon as possible after his resignation takes effect. We recommend that a constitutional office-holder who intends to resign should give three months notice before his resignation comes into effect.

There may, however, be occasions when a constitutional office-holder gives notice of his intention to resign and then reconsiders his position. Perhaps the body that appointed him may persuade him to remain in office until the end of his term. We believe that these possibilities make it desirable for there to be a short "breathing-space" of three weeks after receipt of a constitutional office-holder's resignation by the appointing body before the three months notice begins. During that period, a constitutional office-holder should be able to withdraw his notice of intention to resign, provided that the body that appointed him has not already accepted his notice.

Retirement

Constitutional office-holders who are citizens should, we believe, be required to retire at the age of fifty-five, unless granted an extension till they reach sixty. The retiring age of fifty-five has received widespread approval in Papua New Guinea as being appropriate for those of our citizens employed in the Public Services. However, the government has not accepted this to date. In the case of constitutional office-holders, we

believe that there are additional considerations which make it very desirable that our recommendations in this regard be accepted.

The life expectancy of Papua New Guineans is not as high as that of people in many other countries. The changes that should take place in a society fully committed to the National Goals and Directive Principles set out in Chapter 2 will require freshness of mind. We are, therefore, concerned to ensure that a small minority of high office-holders should not remain in office for too long.

The people in the villages have always respected their elders. We continue to do so. But our leaders must be responsive to the society in which they live, and sensitive to changing circumstances. Our country cannot afford a tired leadership or one committed to outmoded ideas, particularly not in offices subject to no outside direction or control.

An early retirement age should bring our country's constitutional office-holders closer in age and spirit to the majority of our people. The retirement of these office-holders at the age of fifty-five or sixty should ensure that new life is periodically brought to their offices. It should enable our country to avoid the emergence of unnecessary tensions between the young and those of their elders who are resistant to change. We therefore believe that the retirement age for constitutional office-holders should be the same as that for Departmental Heads. The financial costs consequent upon the implementation of this proposal would be negligible when compared with the social and political costs of later retirement ages, which would be less appropriate to Papua New Guinean conditions.

We are aware that many Papua New Guineans are uncertain as to their exact date of birth. Accurate, written records of births are not commonly kept in our villages. The Committee is therefore concerned that disagreements over the precise ages of individual constitutional office-holders should not disrupt the performance of their duties nor cast doubt upon the legality of their decisions and actions. We recommend that nothing done by a constitutional office-holder should be regarded as invalid simply because that office-holder has reached retirement age. Constitutional office-holders should be required to retire, as appropriate, at the age of fifty-five or sixty, but should they for some reason remain in office beyond retirement age, their actions should not be regarded as invalid by virtue only of that fact.

Uncompleted Work

It is desirable that every constitutional office-holder should be fully engaged in his duties from the time when his appointment takes effect until the expiration of his term. His work should not be allowed to "tail off" too sharply towards the end of his term, nor should work begun before then be left unfinished. We therefore recommend that provision should be made for the body that appointed him to give permission to a constitutional office-holder to finish any work in which he is actively engaged at the end of his term. This permission should, we believe, be strictly limited - to work actually in progress that is likely to be completed within a reasonably short period of time.

Salary and other conditions

We have recommended that the constitutional office-holders listed above should be independent of outside direction and control. To ensure their independence, they should not be directly beholden to, or dependent upon, either the executive or the legislature for their salary and conditions.

It is, we believe, desirable that the salary and conditions of all people in public employment in Papua New Guinea, including constitutional office-holders, should be set by the government. Those benefits should be appropriate to the circumstances of Papua New Guinea, and in accordance with the National Goals and Directive Principles. In time of trouble, the government should have the power to reduce all salaries and conditions according to law. Or there may be times when the National Parliament believes that salaries and conditions generally should be held down or even reduced as a matter of principle. But the salary, conditions and other benefits attached to each constitutional office should be reduced during a particular incumbent's tenure of office only if the reduction he suffers is common to all constitutional office-holders.

In principle, we believe that constitutional office-holders should be free, both personally and professionally, from political pressure. We therefore recommend that the salary, allowances and other benefits attached to their offices be paid directly from a consolidated fund. In that way, the professional activities of constitutional office-holders are less-likely to be influenced by pressures brought to bear upon their personal lives.

Disqualifications

Constitutional office-holders should, we believe, be subject to the Leadership Code and the normal provisions of the law. However, the responsibilities and trust placed in them are so great that it is necessary to place additional restrictions upon their personal and professional conduct.

Constitutional office-holders should not only be free from political pressure - they should also not become involved in party politics. They must be independent, and must appear to be so. The freedom that the Constitution guarantees them involves a reciprocal obligation of political neutrality.

The appointment of the Auditor-General, one of the highest constitutional office-holder must be merit-based and that the process has appropriate levels of transparency and accountability. The process of appointment of the Auditor-General need to be open and transparent.

The law provides that it is the duty of the National Government and of all other governmental bodies, and of all public office-holders and institutions, to ensure, as far as is within their respective legal powers, that all arrangements are made, staff and facilities provided and steps taken to enable and facilitate, as far as may reasonably be the convenient performance of the functions of the Auditor-General and the National Audit Office. Unless the Auditor-General is properly resourced with funding under a specific appropriation, he will not be able and has not been able over the years to discharge of his constitutional functions. Given the vast and many entities, including state owned enterprises, the fundamental issue that needs to be determined and considered by you is the need for the Auditor-General to be properly resourced: funded through a specific appropriation and equipped with necessary staff.

Part 2 (B)

APPOINTMENT OF THE DEPUTY AUDITORS-GENERAL

Part 2(A) – This Part relates to matters of appointment etc important the Office of the Deputy Auditors-General

Currently the Office of the Auditor-General has 3 Deputy Auditors-General in charge of operational activities of the Office respecting specific areas or divisions covered by audit. Audit covers commercial and statutory entities, national governments and Provincial Governments and Local Level Governments audits.

The Office of the Auditor-General has a monocratic status which is essential as the law imposes specific audit functions solely on the Auditor-General. However, where the absence of the Auditor-General becomes a matter of concern, it is for legal and administrative reasons that the need to ensure that the Deputy Auditor-General should be properly vested with the power to issue Reports to Parliament and other reports under the *Public Finances (Management) Act, 1995* and the *Organic Law on Provincial Governments and Local Level Governments*, in the absence of the Auditor-General, or where there is a vacancy existing.

Whilst the Auditor-General holds office under the security of provisions of the National Constitution, the Deputy Auditor-General should hold office pursuant to an Instrument of Appointment and under the terms and conditions of an Employment Contract executed with the Auditor-General. Removal, dismissal and disqualification are considered pursuant to the Employment Contract. The duration of contractual employment should be determined by the Auditor-General.

The Deputy Auditor-General may act in capacity of Auditor-General during vacancies and periods of absence of the Auditor-General. In an acting capacity, the Deputy Auditor-General may discharge all functions imposed in the Auditor-General except the reporting functions to Parliament and the power to dispense of audit.

	<u>Part 2(A)</u>
1.3	<ul style="list-style-type: none"> • <i>What should we consider as criteria of appointment for the Auditor-General</i> • <i>Should the Auditor-General be the holder of a CPAPNG certificate? And are there others we should consider?</i> • <i>Should the Auditor-General hold office for fixed a term of 12 years?</i>

	<ul style="list-style-type: none"> • <i>Would you agree that 12 years is appropriate?</i> <ul style="list-style-type: none"> ○ <i>Or would you consider that a lesser term with an option for reappoint appropriate?</i> ○ <i>What justifications would you like us to consider if a longer term of appointment is warranted?</i> • <i>What would you propose are the criteria for removal of the Auditor-General?</i> • <i>What composition should the appointing authority have?</i> • <i>Should we consider another composition of person as appointing authority?</i> • <i>Should the law provide for vacancy of office?</i> • <i>How long should an acting appointment in the office of the Auditor-General be? Would a fixed period of 2 months be appropriate?</i> • <i>How is the initial process of appointment of the Auditor-General to be undertaken ?</i> • <i>who specifically should be responsible for such? e.g when the Office of the Auditor-General becomes vacant who does the ad in the newspapers and who collects and shortlists and forwards onto Public Service Commission , Ombudsman Commission and Public Accounts Commission for their comments before recommending to the NEC for recommending to HoS for appointment. Or you can have your own appointments committee made up of the tribunal members who recommend to the HoS for appointment.</i> • <i>Would you have any reservations if a non-resident person is considered for appointment as Auditor-General? if you were to disagree, please state your reasons.</i> • <i>Or would you desire that the post of Auditor-General be secured by a national citizen. What would be your reaction if a person considered for appointment is the holder of a dual citizenship?</i> • <i>Would you maintain your position, in your responses above, in the case of acting appointment of an Auditor-General?</i>
1.4	<p><u>Disqualification-</u></p> <ul style="list-style-type: none"> • <i>Would the age of 70 years be appropriate for disqualification of the Auditor-General.</i> • <i>Are there any other points of disqualification you would like us to consider</i> <p><u>Ground for removal/suspension/dismissal</u></p> <ul style="list-style-type: none"> • <i>What do you think should specifically constitute the grounds for suspension of the Auditor-General?</i> • <i>What do you consider should be the appropriate period of suspension?</i> • <i>What should the period of investigation/suspension be?</i> • <i>Do you think that the law should provide clear grounds on which the Auditor-General may be dismissed</i> • <i>Would you agree that a transparent process for dismissal suspension and termination of the Auditor-General is mandatory?</i>
1.5	<ul style="list-style-type: none"> • <i>Do you think that having an act of Parliament to take care of matters respecting the appointment and terms and conditions, retirement, resignation, disqualification and</i>

	<p><i>termination of Office is an option we should consider? Are there any other options we should consider?</i></p> <ul style="list-style-type: none"> <i>What strategy or process should the appointment of the Auditor-General take?</i> <i>If the process of appointment must be transparent and open, what is the best practice you would consider us to adopt.</i> <i>Do you consider it important that the Auditor-General have his budget?</i> <i>Should the budget be determined by the Public Accounts Committee and published as a separate specific appropriation?</i> <i>Do you consider that it is mandatory for the Auditor-General to be subject to the Oath of Office and Allegiance and Oath of Secrecy? And when should these be taken?</i> <i>Do you think that the Auditor-General should be able to delegate administrative matters to his subordinates, as in the Deputy Auditors-General?</i> <i>What specific areas or matters (powers and duties) should we consider for delegation?</i> <i>Should the law specifically provide for the security provisions for the Auditor-General?</i> <i>Is it important that the Auditor-General be able to delegate his responsibilities?</i> <i>What specific areas of responsibilities should be the subject of delegation?</i> <i>What limitations should we consider?</i> <i>What standards should we consider when defining when and how the Auditor-General should use his power of delegation?</i>
a.	<u>Part 2(B)</u>
1.6	<ul style="list-style-type: none"> <i>Do you think that the Deputy Auditor-General should be appointed through the same process as the Auditor-General?</i> <i>What do you think about the proposal that the Deputy Auditor-General hold a term of appointment under a contract of employment for a duration of 6 years?</i> <i>Do you think that duration of contractual engagement is appropriate? Or should the term be less than 6 years?</i> <i>What other advantages would you like us to know and consider?</i> <i>What other disadvantages would you like us to know and consider?</i> <i>Do you think that the appointment of the Deputy Auditor-General should be restricted to a citizen who is a resident of the Papua New Guinea?</i> <i>Or do you consider that the appointment should be open to noncitizens?</i> <i>What are the age considerations we should consider appropriate for an appointment consideration for a Deputy Auditor-General?</i> <i>How would we consider grievance procedures of the Deputy Auditor-General?</i> <i>Do you think that the grievance procedure should be contained in an Act of Parliament that makes provision for administrative and management such matters and linked to their contract of Employment?</i> <i>Do have any other options you would like us to consider?</i> <i>Is it important for us to consider imposing restrictions on outside employment?</i>

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| | <ul style="list-style-type: none">• <i>Should the provisions of pension be applicable to Deputy Auditor-General? if they are to be appointed through the same process as the Auditor-General, do you think they should be entitled to pensions eligibility and process?</i> |
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Part 3

JURISDICTION AND INDEPENDENCE

Introduction

This Part address issues affecting the audit jurisdiction and independence of he of the Auditor-General. There are prerequisites for the proper functioning of the Office of the Auditor-General. It must be fully independent if it is to be credible and effective. Independence is a necessary tool in order to hold governments to account for their use of public monies and resources.

In the exercise and performance of his Constitution mandate, the Auditor-General is not subject to the direction and control of any person or authority. This is a mandatory statement and is anchored in Section 213(3) of the Constitution.

It is trite knowledge that state audit is vested exclusively in the Auditor-General of Papua New Guinea and no other. The Auditor-General is the auditor of all the accounts of Papua New Guinea and he conducts audit inspections and inquiries in accordance with the Constitution, the Audit Act, 1989 and had additional functions under the Organic Law on Provincial Governments and Local Level Governments. The output of his audit works are reported to Parliament.

The Auditor-General is the appointed auditor of all government business enterprises, statutory authorities and government-owned companies. He is also the external and independent auditor to Parliament. Where an enabling legislation makes provision for the appointment of an auditor by the Chief Executive or Board of a public or statutory body, and these bodies were established for public purposes there must be accountability to Parliament for the management and stewardship of resources entrusted to them. Where there is state interest, the Auditor-General has jurisdiction to audit.

The provisions of the Constitution, the Audit Act, 1989 and the Organic Law on Provincial Governments and Local Level Governments apply to all persons and bodies (corporate or unincorporated) whose accounts or finances or properties relate to, or are derived from, public money, notwithstanding any provisions to the contrary and notwithstanding and without regard to any exceptions, limitations, conditions, additions and modification contained in any other law. In short, where public monies and public properties and state interest is concerned, the audit jurisdiction of the Auditor-General vests. Who are these bodies. We will list these for you.

The audit mandate of the Auditor-General currently covers-

1. State Services
2. Government Offices
3. Departments of the National Public Service
4. State owned Enterprises and Institutions of the State (Universities)
5. bodies (including subsidiary corporations) established a Constitutional Law or an Act of Parliament or an executive or administrative act of the National Executive Council
6. Provincial Governments, Provincial and Treasuries;
7. subsidiary corporation of a Provincial Government; and
8. Provincial Departments
9. Local Level Governments
10. Local Level Government-owned companies
11. A body set up by a provincial law or an executive or administrative act of the Provincial Executive or A Local Level Government law for public or governmental or official purposes
12. Government Associations
13. Government-owned companies
14. Provincial Government-owned companies
15. Provincial Government Associations
16. Local Level Government Special Purpose Authorities
17. subsidiary corporations of a Provincial Government or Local Level Government including subsidiary of statutory companies and persons or bodies holding state property or managing or controlling any state property on behalf of the State
18. every enterprise, institution, funds or other bodies in the management of which one of the bodies that is already subject to audit, has a share or interest; and
19. companies registered under the Companies Act, 1977 who have been in receipt of funds from Parliament or a body or a group of relevant bodies where the State holds 50% equity in that company
20. public projects or donor funded projects including those substantially funded by a loan or other types of financial assistance by international donor agencies.

The role of the Auditor-General being purely apolitical, is the critical link in the chain of accountability between the People and Parliament is intended to work within a proper legal framework and environment intended by the National Constitution. Most importantly, it will enhance the lives of the People of Papua New Guinea by making all accountable officers subject to more stringent measures of accountability. This is what the People need.

As the Supreme Audit Institution of Papua New Guinea, the Auditor-General has international affiliations with international audit standard setting bodies. Today, the need to elevate auditing standards germane to public sector auditing so as to reflect the current environment by international standards is necessary. This is extremely important.

A position has been taken that regard be had to key principles, auditing frameworks and application guidance formulated and enunciated by INTOSAI, ISSAI and PASAI. For the Office of the Auditor-General, these principles and standards are relevant to financial, compliance and performance auditing currently conducted. This is best expressed in my reporting functions to Parliament with the attestation that the audit was conducted in accordance or consistent with International auditing standards (ISSAI). It is desirable that my audit meet the international auditing standards, as these define a coherent and credible set of international professional standards relevant to my audit mandate. The proposal is to bring these international principles and standard within national context by legislating these into the domestic law. Most importantly, it has become essential that the Office of the Auditor-General have a clear legal basis for government or public sector audits activities consistent with international standards.

- [*Please click on the link to read the ISSAI 10 – Mexican Declaration on SAI Independence*](#)
- [*Please click on the link to read the Lima Declaration on SAI Independence which calls for independent government auditing.*](#)

However, over the years, it has become a concern to the Auditor-General when entities have caused, by consequential amendments to their governing legislation, the removal of the Auditor-General's oversight, mandate.

1.7	<ul style="list-style-type: none"> • <i>Would you agree if the Mexican Declaration and the Lima Declaration is incorporated into our domestic laws?</i> • <i>How should the Budget of the Office of the Auditor-General be determined/ do you think ideally, it should be determined by the Public Accounts Committee?</i> • <i>Would you like us to consider other entities to be added to the audit remit of the Auditor-General?</i> • <i>Would you like to see the Auditor-General audit the expenditure of public monies disbursed, advanced or guaranteed to a private person, organization and body, whether or not the government has a controlling interest?</i>
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| | <ul style="list-style-type: none"> • <i>Should the Auditor-General audit the records and accounts of extractive industries?</i> • <i>Do you think that were shares are held in trust for the State, the Auditor-General should have access to carry out an audit inspection?</i> • <i>Would you support the proposal that all state owned enterprises be gazetted for audit by the Auditor-General?</i> • <i>Would you agree that all state owned and business arms and subsidiaries of state owned companies, including those of Provincial Governments and Local Level Governments be required by law to register with the Auditor-General for accountability purposes?</i> • <i>Should the Auditor-General audit all PNG Foreign Missions established globally.? And how should this responsibility be funded and by whom?</i> • <i>Do you agree that all information data acquired through audit the Auditor-General should be the property of the Auditor-General?</i> • <i>Do you think the Office of the Auditor-General has a transparent and rigorous system for following up past audit findings and reports to Parliament?</i> • <i>If you think that this system is lacking, what ways would you consider would improve the establishment or such a system?</i> • <i>In your view should the Auditor-General form partnerships with key external integrity and accountability stakeholders?</i> • <i>Do you think the Auditor-General should assist with internal audits of government? What arrangements would you like to see in place?</i> • <i>Would you like to see the development of an external communications strategy that would allow the Auditor-General to publish major audit findings? How would you like to kept informed of these major audit findings?</i> • <i>do you think it necessary to incorporate</i> |
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Part 4 FUNDING BUDGET ISSUES

Introduction

In order to accomplish audit tasks, the Auditor-General Office must be properly funded. This is a requirement entrenched in the Constitution. Section 225 of the Constitution provides-

225. PROVISION OF FACILITIES, ETC.

Without limiting the generality of any other provision of this Constitution, it is the duty of the National Government and of all other governmental bodies, and of all public office-holders and institutions, to ensure, as far as is within their respective legal powers, that all arrangements are made, staff and facilities provided and steps taken to enable and facilitate, as far as may reasonably be, the proper and convenient performance of the functions of all constitutional institutions and of the offices of all constitutional office-holders.

In order that the Auditor-General discharges his constitutional mandate stipulated under Section 214 of the Constitution and Section 113 of the Organic Law of Provincial Governments and Local Level Governments and as detailed under the Audit Act, 1989, he cannot be part of government. It is not just an ideal, but more so an important consideration that he remain separate from government. Under funding is an impediment to his independence and his ability to hold the government to be accountable for their use and management of public monies and resources.

Given the funding deficiency imposed the Auditor-General, through the annual budget, the Auditor-General has been unable to properly discharge his audit functions. The audit mandate of the Auditor-General is made subject to the direction and control of a Department of State – Department of Finance. A proposition made suggests that such actions by government is in conflict with the Constitution and thus need to be immediately corrected.

The effect of being subject to the determination of Finance Department as to what is appropriate budget for the Auditor-General simply means that a good portion of state entities are never audited by the Auditor-General, hence there is no Parliament oversight and control over these entities. There is raw data providing evidence that only 3% of funded entities are audited by the Auditor-General. The question begging an answer is what happened to the remaining portion?. The answer for the People is this, given the yearly funding restraint, the Auditor-General, is unable to discharge his functions hence, there is

no Parliamentary supervision and control over the expenditure of public monies and the administration and management of public resources.

1.8	<ul style="list-style-type: none">• <i>Given the enormity of the audit scope of jurisdiction, do you think that the Auditor-General should be accorded a specific appropriation in the national budget?</i>• <i>Are there other arrangements you would consider?</i>• <i>Should the Office of the Auditor-General be accorded the opportunity to manage and its own budget appropriately?</i>• <i>Is appropriate funding an important element underlying the independence of the Auditor-General Office?</i>• <i>Should the Office of the Auditor-General revert to the Courts if funding is insufficient to allow it to fulfil its Constitutional mandate?</i>
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Part 5 **AUDIT AND INSPECTION FUNCTION**

Introduction

The Office of the Auditor-General was established and the Auditor-General appointed to audit and inspect and to report at least once in every fiscal year to the Parliament on the public accounts of Papua New Guinea, and on the control of and on transactions with or concerning the public moneys and property of Papua New Guinea, and such other functions as are prescribed by or under a Constitutional Law. This is the principle why there is an Auditor-General and an Office of the Auditor-General. It exists to assure Parliament that the executive government is spending public monies and managing public resources in the manner in which Parliament intended.

Audit should be the starting point for generating questions rather than supplying answers. And the Auditor-General should be seen as the people's ally. It is through his report to Parliament, that organizations within and external to government, are held accountable.

In order that the Auditor-General performs and discharges his functions properly, the law has provided him with specific powers. One specific power that needs public input is the power to prosecute. This power is given to the Auditor-General in the absence of specific procedures and processes that will guide and contribute to achieving desired outcomes. At present, the law is silent on the mechanics of how this power should be exercised. You are encouraged to contribute in the formulation of specific matrix to ensure that this power is better understood and provide for its functionalities.

He has the power to dispense of audit. This power may be obsolete and unconstitutional because of Section 211 of the Constitution that requires that the National Government, the Parliament and the Judiciary have a constitutional obligation to account for their respective expenditures, in accordance with law. Further, the Auditor-General is required by section 214(1) to report to Parliament on the status of the public accounts and transactions concerning the expenditure of public monies and the integrity of public administration.

Submission of the Public Accounts of Papua New Guinea

An area seriously lacking and needs stringent measure over is the requirement for the Minister of Finance to furnish to me a properly prepared detailed statement of the receipts and expenditure of the Public Account of each fiscal year. It would be lawfully wrong to allow this complacency to be accepted in any quarters of the PNG society, hence unchallenged. The law requires that the Minister for Finance must give to me by 31 December annually, the Public Accounts Statements. The People are bound to demand

conformity with the laws, breach of which is serious indeed. The Auditor-General is the auditor of the public accounts of Papua New Guinea. My Office was not created by an Act of Parliament. It was created by the Constitution; hence it was created by the People and for the People.

1.9	<ul style="list-style-type: none"> • <i>What is the best option for the Auditor-General to consider securing production of the Public Accounts of Papua New Guinea from the Minister for Finance?</i> • <i>Do you think the Office of the Auditor-General should conduct major workshops in the country and how often?</i> • <i>Do you consider that the Office of the Auditor-General should foster good, effective links with other integrity and accountability key stakeholders? And who would you suggest?</i> • <i>Do you think that the Auditor-General should carry pre-audit in addition to post-audits?</i>
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Types of Audit

The Auditor-General undertakes mandatory and discretionary audits. Financial statement audit and performance audits are categorized as mandatory audits. Special investigations may cover financial maladministration, fraud and mismanagement of public funds or allegations of misuse and widespread corruption or abuse power within a Provincial Governments and Local Level Governments.

1.10	<ul style="list-style-type: none"> • <i>Would you like to see forensic audit be established as a programed audit in the audit process of the Auditor-General Office?</i> • <i>Should Forensic Audit be set up a properly funded unit?</i> • <i>What qualification should an auditor have to head this Unit?</i>
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Appointing Audit Firms to Conduct Audits on Behalf of the Auditor-General

It has never been the intention of the framers and fathers of the Constitution to allow the Auditor-General to outsource his audit portfolios to the private audit firms. The Auditor-General is empowered to appoint any person to carry out audits on his behalf. The protection provided by law extends to these auditors. Standard practice over the years has been that the Auditor-General outsources major audits to the private audit firms. There has been occasions where audit reports have not been forthcoming. Other instances relate to delayed audit reports. Even where these firms have been contractually engaged with strict timeframes, many of these firms have been in breach of completing audit within time.

An extension of time meant that my reporting functions to Parliament is delayed. This affects the relevance and currency of information that Parliament requires by law.

An auditor in the private sector, acting under the directions of the Auditor-General, will always become privy to important and confidential government information. Auditor engaged on appointment by the Auditor-General are called "Authorized Auditors". They are engaged under a service agreement with the Auditor-General. The protection accorded by Constitutional guarantee to the Auditor-General extends to the officers of the Office of the Auditor-General and to authorized auditors as well. This guaranteed protection is provided clearly in *Section 13 of the Organic Law on the guaranteed of the Rights and Independence of Constitutional Office-Holders*.

An extract of the Constitutional Planning Committee Report provides –

Auditor-General

24. *Sound and honest financial administration is basic to the development of our country, and to the effectiveness and reputation of its government. Public monies must be raised and spent as the law provides. It is the task of the Auditor-General to investigate whether public monies are properly handled, and to report his findings to the National Parliament at least once a year.*

25. *The office of Auditor-General should, we believe, be established in the Constitution. It must be independent of outside political control.*

26. *The Auditor-General should be as independent as possible of all involvements beyond his official duties. He must be able to pursue his lawful investigations without inhibition, and report the results of his inspections and audits directly to the National Parliament.*

27. *The Auditor-General's main function is to check that the raising and expenditure of government funds takes place in the manner approved by the parliament, and that all transactions involving such funds have been properly accounted for. He should be able to report to the National Parliament when he finds examples of waste and extravagance in the use of public monies. His jurisdiction should extend to all bodies that make use of government funds, including government departments, provincial governments, and all other statutory bodies.*

28. *It is important that the Auditor-General be supplied with adequate facilities and suitably trained staff to perform his duties effectively. Any suggestion that his functions might be performed by auditors in private practice in Papua New Guinea acting as his agents should, we believe, be rejected. We have recommended above that the position of Auditor-General should be independent of outside direction and control. In Chapter 14, "General", and Chapter 3, "Leadership Code", we have made detailed recommendations designed to secure this independence. It would, therefore, run counter to all that we have said on this subject if a person in private practice in Papua New Guinea were to act as an agent of the Auditor-General. An auditor in private employ or in business on his own account in Papua New Guinea*

would not be subject to the restrictions which we have recommended (in Chapters 3 and 14) should be placed upon the Auditor-General. Further, the size of the profession in Papua New Guinea makes it all-too-likely that an auditor acting as an agent of the Auditor-General would become privy to information which might place him in a difficult position in relation to the interests of his private clients. The Auditor-General must, therefore, be given adequate staff of his own, and that staff as well as the office of Auditor-General should be filled as soon as possible by citizens with appropriate qualifications. Meanwhile, shortages of suitable staff in Papua New Guinea should be met by recruitment, and, if necessary, secondment, from overseas.

1.11	<ul style="list-style-type: none"> • Do you think the current arrangement of outsourcing major state audit should remain? • Do you think that the term “authorized auditor” be defined? • Should the Auditor-General notify the public as to who are authorized auditors and what specific audit portfolios they carry.? Would a notice in the national gazette be sufficient notice? • Would you agree that a <u>sunset clause</u> be inserted into all service contracts executed with authorized auditors to ensure that when they do not produce audit reports in accordance with the contractual time, their contract terminates forthwith. • Do you think that the Auditor-General should appoint authorized auditors to carry out audit of the books, accounts and records of Provincial Governments and Local Level Governments?
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Establishment of the Provincial Audit Service

By law, the Auditor-General presence is required to be established in all the 22 provinces of Papua New Guinea. This is a huge problem. Because of budget constraint, the Auditor-General is unable to establish a Provincial Audit Office, staffed by his own officers, to carry out audits under his direction and control. As a result of this, the Auditor-General is restricted and cannot provide oversight to many Provincial Governments and Local Level Governments.

The law also provides that the findings of the Auditor-General of widespread corruption, abuse of power within a provincial government or failure to keep proper accounts and records of transactions and dealings concerning public funds, ineffective control systems and failure to submit reports as required by law, the Auditor-General may influence the process of withdrawal of powers and functions or suspension of finances of the Provincial Governments and Local Level Governments.

1.12	<ul style="list-style-type: none"> • Do you agree that in order to undertake major audits in provinces the Auditor-General must be properly funded? • If so, would a specific appropriation for the services of the Auditor-General be warranted? • Would you like to see the Auditor-General established in all 22 provinces of Papua New Guinea? • What are the advantages for having the Auditor-General afoot in your province? • What are the disadvantages for not having the Auditor-General in your province? • Are there other considerations you would like us to consider as an additional measure to ensure that the Auditor-General's oversight of your financial records are maintained. • Do you think that it would be necessary for the Auditor-General to appoint an auditor of this Office to be permanently attached to or stationed in your office? • Do you consider it important that Auditor-General oversight exists in Provincial Governments and Local Level Governments? • What is your view if the Auditor-General engages private audit firms to conduct major audits of the Provincial Governments and Local Level Governments? • Who in your view should be funding the Provincial Audit Service that the law requires must be established in all 22 provinces of Papua New Guinea? • Do you think that the audit program of the Auditor-General should encompass audit for fraud? • Do you think that the measures under Section 51 of the Organic Law on Provincial Governments and Local Level Governments sufficient? Or should the Auditor-General have a more influential role in ensuring accountability in public administration?
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Failures to respond to Management Letters

Chief Executive Officers having control and direction over Departments of State the Provincial Governments and Local Level Governments and commercial arms and state-owned enterprises existing within all levels of the national government have failed over the years to comply with audit reporting process. On the completion of an audit, the Auditor-General gives the Chief Executive of the entity a Management Letter and formally requires responses to the Management Letter within 14 working days after receipt. This process complies with the principle of natural justice as the Management Letters comprises an analysis of findings which will form the report to Parliament. For the Chief Executive Officer, this is opportunity to be advised of early deficiencies so management may take immediate and corrective actions to address these. These may form the basis for a report to Parliament. The performance operations and financial status of the entity are reported to Parliament. The requirement to respond to Management Letters must be provided for in law.

1.13	<ul style="list-style-type: none"> • Do you think that chief executive officers should be more responsible for the management of financial issues highlighted by the Auditor-General's finding? • How can they be held accountable? • Do you think that non-cooperation with the Auditor-General during the conduct of audit, amount to serious misconduct? • Should a finding by the Auditor-General of non-compliance with audit process amount to misconduct and hence removal from office? • Would it be possible to link misconduct to a CEO's performance based employment contract, in order to ensure accountability?
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Tabling of Auditor-General's Report to Parliament

It has always been standard practice that an Audit Report to Parliament is first tabled in Parliament by the Speaker and once tabled, it becomes a published documents and available at that point in time, to the people, for public consumption. The tabling on the floor of Parliament signifies that the report is a public document. This has been the practice since the official establishment of the Office of the Auditor-General in 1976. Before that, the Report is privileged and remains confidential. It has become a matter of serious concern that the Reports of the Auditor-General do not get to be tabled for currency and relevance to Parliament. The delay is a serious concern to the Auditor-General. Hence, it has been suggested that once the Auditor-General transmits his report to the Office of the Speaker, the Report becomes a public document.

In the past, it has become a matter of serious concern concerning the authenticity of draft audit reports floating through the media. As a result of that, court proceedings were commenced and this raised concern to the Office of the Auditor-General and Public Accounts Committee on protection of Audit Reports. The view is taken that the work of the Auditor-General should be protected from legal proceedings before it is presented to parliament and that protection from liability of the Auditor-General and his staff including agents, should be clearly spelt out in the laws.

1.14	<ul style="list-style-type: none"> • Do you consider it imperative that the Auditor-General's report to Parliament need legal immunity and protection of Parliamentary Privilege against the risk of being sued. • Would it be appropriate to publish a report before it has been brought to the attention of Parliament? • Would you agree that the Auditor-General should publish his Auditor Report as soon as the reports are completed an not wait until these are formally tabled? • Would you agree that the immediacy of audit information to the People is important? • Do you have any concerns if the Auditor-General could publish his Reports without first tabling these on the floor of Parliament?
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	<ul style="list-style-type: none"> • <i>Would it be a good measure if the reports of the Auditor-General are made available to the People through transmission of the reports to the Office of the Speaker can be deemed tabling?</i> • <i>Should all reports of the Auditor-General published for the benefit of Parliament be treated as Parliamentary reports and enjoy privileges accorded to Parliamentary reports?</i> • <i>What is your view if all reports of the Auditor-General published for the benefit of Parliament shall not be subject to civil or criminal proceedings?</i> • <i>Would that protection also extend to quasi-judicial and administrative functions of the Auditor-General as in Summons Proceedings?</i>
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The Power to Dispense of Audit

The law provides that the Auditor-General is empowered to dispense of audit. There is a legal position taken that the power to dispense of audit is out-dated and contradicts the principle of good governance and clear accountability. It may also amount to abuse of process and the rule of law. This law has outlived its time. It was made law to validate the requirements of post-independence. In short, 2 auditors were assigned to undertake audit of the Territory of New Guinea and the Territory of Papua. They were given the power to dispense of audit where necessary. Today, with the stringent requirements of the Constitution specific to accountability, transparency good governance, and the requirement that Parliament has supreme authority over all aspects of public resources, the power to dispense of audit is a power that may be out-dated, if not unconstitutional.

1.15	<ul style="list-style-type: none"> • <i>Do you think that the power allowing the Auditor-General to dispense of audit at will, is constitutional?</i> • <i>Should the power to dispense of audit be retained, but made subject to specific conditions for application?</i> • <i>What conditions should be put in place?</i> • <i>Should your suggested condition be mandatory or discretionary in nature?</i> • <i>What are the advantages of retaining the power to dispense of audit?</i> • <i>What are the disadvantages should we consider when weighing this law?</i>
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The Power to Charge and Levy Audit Fees

The law provides for the legal framework and basis for the Auditor-General to levy and payment of audit fees and charges. The Auditor-General's authority to charge and levy audit fees is Part 4 section 10-11 of the Audit Act, 1989. However, the law does not provide as to how these fees are to be regulated and for what specific purposes are these to be used. Further, if there are to be any restrictions, how are these restrictions, perhaps in terms of exemptions are to apply.

1.16	<ul style="list-style-type: none"> • <i>We would like to hear from you what you think about the power that the Auditor-General has, to charge and levy audit fees? .</i> • <i>how should the audit fees be managed and controlled? And what should the fees be based on?</i> • <i>Should the Auditor-General fix a commercial scale of audit fees</i> • <i>Should a schedule of rates be published in the Gazettal Notice? And how are these amended/varied as the need arises?</i> • <i>Should audit fees be retained in an authorized bank account maintained by the Auditor-General?</i> • <i>Do you think that the reasons listed below would suffice to ensure proper use of the audit fees?</i> <ul style="list-style-type: none"> • development of audit performances and technological audit technologies • developing and maintaining auditing standards • developing and maintaining strategic management plans • providing technical support for auditors • training auditors on specific public sector audit • preparing sector briefs to ensure a consistent approach to annual audits • performance of quality assurance reviews of all work undertaken by Authorized Auditors • development of resources and wellbeing of the Office or matters incidental to the operations and business of the Auditor-General • development of the AGO Staff Accommodation Program. • <i>Would you suggest other reasons that we can consider?</i>
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What are the Powers of the Auditor-General

The Auditor-General has specific powers under the Audit Act, 1989 and under the Organic Law on Provincial Governments and Local Level Governments.

In order to facilitate the proper discharge of his mandate and to enable the Auditor-General to conduct an effective audit law has conferred on the Auditor-General the power to –

1. access information storage devices
2. have full, free and unencumbered access to all records and information and evidence on the efficiency and effectiveness of activities and programs or projects
3. power to prosecute for fraud related offences under the *Audit Act, 1989* or unlawful acts in connections with the affairs of the Provincial Governments and Local Level Governments under the *Organic Law on Provincial Governments and Local Level Governments*.
4. power to dispense of audit
5. power to summons to give testimonial evidence and/or production of documents
6. power to undertake special investigations
7. comply with secrecy provisions

The increasing role of the private sector in the provision of public goods and service delivery requires that the Auditor-General must be able to audit their bank statements, records and other relevant information in order to proffer an audit opinion on the efficiency and effectiveness on the administration of a public program or project.

Public spending and government programs/ activities / projects requires that the Auditor-General be that advance party to “follow the kina” and your right to know how public monies are managed and spent by the government is secured.

1.17	<ul style="list-style-type: none"> • <i>Do you think that the Auditor-General should exercise the power to dispense of audit? And if you say yes, would you like to tell us how and what specific conditions and consideration should apply></i> • <i>Should the Auditor-General be given the power to issue a direction to all persons associated with the expenditure of public monies to account for these?</i> • <i>Should that power of direction extend to all private individuals, companies and contractors?</i> • <i>Should the power of the Auditor-General to access records and information be increased to include –</i> <ul style="list-style-type: none"> ▪ <i>Private contractors and</i> • <i>Private bank accounts</i>
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	<p><i>especially expenditure of public monies were involved?</i></p> <ul style="list-style-type: none"> • <i>What administrative mechanism would you suggest we consider to ensure that the Auditor-General has access to the books and records of private contractors?</i> • <i>Are there other entities or groups of entities you would like us to consider inclusion?</i> • <i>What is your view on the proposition that the Auditor-General should be empowered to access bank accounts where public monies have been traced to be transacted through?</i> • <i>Do you think a framework is required to let Parliament be informed of private and government entities non-compliance with Auditor-General's access requests?</i> • <i>Do you think there is a need to allow the Auditor-General to share information with other integrity or accountability institution? Are there any restrictions on how sharing of information can be conducted?</i> • <i>Should sharing of information in relation to a finding a widespread corruption and activities of a criminal conduct an exception to the secrecy restriction?</i> • <i>We would like to hear from you on whether the Auditor-General should be notified of all major government funded projects before the Project commencement? Should the Auditor-General be responsible to issue a Certificate of Compliance before the Project commences operation/production?</i> • <i>What would your views be if a law should provide for the Auditor-General to issue a pre-certification of a project that exceeds the threshold provided under the Public Finances (Management) Act, 1995?</i>
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The Public Accounts Committee and a host of accountability and integrity bodies have encouraged the Auditor-General to invoke his power to Summons for audit related purposes.

The Auditor-General has recently invoked that power to Summons. There are in place specific protocols and procedures to ensure that the interest of the person summoned is balanced with the compulsory process of law. However, while the law sets out specific offence relating to failures to co-operate on a Summons, the law is silent on enforcement procedures and proceedings.

Commercial banks have been reluctant to furnish information required for audit purposes based on secrecy policy. This is indeed an important policy imperative. But as far as the audit mandate of the Auditor-General is concerned, bank secrecy is a misnomer. There is a constitutional obligation on the part of all persons and entities who have been involved, directly or indirectly with the expenditure of public monies to be investigated by the Auditor-General and be held to account by the People through Parliament. The Auditor-General is the guardian of public monies and properties on behalf of the People and hence ensure that corruption and fraud is revealed and prosecuted by law.

In the past, the Auditor-General use to cause surprise inspections on the accounts of banks in which the state has a controlling interest to ensure that there effective and independent checks of the cash balance in the hands of the bank officer.

The penalties for breach of a matter relating to summon proceedings ranges from a fine of K20,000.00 or imprisonment for 2 years. These penalties have not been updated since 1989.

1.18	<ul style="list-style-type: none"> • <i>Would you like to see enforcement provisions in the law?</i> • <i>Who should be responsible for enforcing non-compliance of a summons?</i> • <i>Should proceeding commence in the National Court or the District Courts?</i> • <i>Do you think that the penalties for the offences provisions need to by increased?</i> • <i>If you think that these should be increased, what type and amount of penalty would you consider appropriate?</i> • <i>Do you think that the Auditor-General should be empowered to issues directions and failure to comply with that direction should be an offence?</i> • <i>If so, what levels of penalties would you suggest we consider?</i> • <i>Do you think that the Auditor-General should be able to direct banks to provide him with any information required for audit purposes?</i>
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The Power to Prosecute

The Auditor-General is perhaps one of the very few Auditors-General in the Commonwealth that is vested with the power to prosecute for fraud or maladministration related findings. The power to prosecute sits under Section 5 of the Audit Act, 1989 and under section 113(10) of the Organic Law on Provincial Governments and Local Level Governments.

Under the Audit Act, 1989, Section 5 provides-

5. POWER TO PROSECUTE.

(1) Where the Auditor-General is satisfied that a person, to whom the provisions relating to audit contained in the Constitutional Laws and this Act apply, is guilty of misappropriation, misuse or fraud of public money, stores or property he shall refer the matter, together with a statement of the reasons for being so satisfied, to the Public Prosecutor.

(2) Where a matter has been referred to the Public Prosecutor under Subsection (1) and the Public Prosecutor has failed to proceed with the matter after 60 days, the Auditor-General may prosecute the person who in his opinion is guilty of misappropriation of public monies.

Under the Organic Law on Provincial Governments and Local Level Governments, Section 113(9) provides-

(10) The Auditor-General may prosecute any person or persons for any unlawful acts in connection with the affairs of the Provincial Governments and the Local-level Governments concerned.

The Public Prosecutor is vested with the power to prosecute criminal matters. But the current scheme indicates that the Auditor-General can prosecute matters of fraud, misuse or misappropriation of public monies, stores or property of the State. However, there are strict constitutional procedures that must be adhered to and complied with and cannot be bypassed. Every person has the right to the full protection of the law. Section 37 of the constitution ensures that that right is fully available to persons charge with offences and the offences of misappropriation, misuse or fraud of public monies are very serious offences under the criminal code. Further, all matters to be prosecuted by the Public Prosecutor commences with an Indictment. Before the matter reaches the Public Prosecutor, the case has a cycle that passes through the Committal Courts (District Courts) and considered there for trial at the National Court.

The Auditor-General investigations containing findings of fraud should be the subject of prosecution. However, the mechanism to enable prosecution are not clearly set out in law. This is a fundamental area of concern for the Auditor-General and we need your input in this matter.

1.19	<ul style="list-style-type: none"> • <i>Do you have any concerns about the Auditor-General's power to prosecute as provided by the law?</i> • <i>Do you think that the Auditor-General should prosecute offenders?</i> • <i>Can you suggest other options to prosecution of criminal matters?</i> • <i>Do you think there are other options available to the Auditor-General to recover monies misappropriated or misused or mismanaged by persons entrusted with these? Please suggest these if you think there are?</i> • <i>What legal framework would you suggest to us in considering the setting up of procedure and protocols of prosecution requirements?</i> • <i>How can we ensure that prosecution power provided by law to the Auditor-General be applied?</i> • <i>Would there be a conflict of interest and duties situation, if the Auditor-General were to audit and simultaneously prosecute on his own findings? If so, what alternative mechanism or arrangement would you suggest?</i> • <i>Do you consider that a separate body or a tribunal audit court be established to adjudicate matters that will be prosecuted by the Auditor-General?</i>
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	<ul style="list-style-type: none"> • <i>And should that body or tribunal be established within the national judicial system, with powers and jurisdictions clearly defined by law?</i> • <i>What would you suggest the composition of that body or tribunal be? What specific qualifications would you like considered?</i>
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Audit of the Office of the Auditor-General

The current practice is that the Auditor-General appoints a private audit firm to carry out the audit of the Office of the Auditor-General. This process has never been challenged and it may not be as independent as it should be.

All Constitutional Office-Holders are bound by the Constitution to furnish a Section 19 Report to Parliament. As a Constitutional Office-Holder, the Auditor-General is required under Section 19 of the *Organic Law on Certain Constitutional Office-Holders* to present to Parliament, a report on the work of his office. The matter of concern is that the appointment of an external auditor is not transparent and impartial if it is to be made by the Auditor-General.

1.20	<ul style="list-style-type: none"> • <i>Should the appointment of an external auditor be selected by a body independent of the Auditor-General? what composition would you recommend?</i> • <i>Would you have any views if the Public Accounts Committee was responsible for the appointment of an auditor to audit the books and records of the Auditor-General?</i> • <i>How frequently should the Auditor-General be subject to audit?</i> • <i>Do you think that the Office of the Auditor-General should be more visibly accountable? How do you propose more visibility can be achieved?</i>
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Part 6

STAFFING AND ADMINISTRATION OF THE OFFICE OF THE AUDITOR- GENERAL

Once again we revert to the views expressed by the framers of our Constitution and the constitutional statement that secures the independence of the Auditor-General. A little history will be provided to demonstrate how over the years, since its inception during the self-governing era to the present day, the Office of the Auditor-General had fared. This information is also provided in *Part F -BACKGROUND*.

The Constitutional Planning Committee Report express the view that-

The Auditor-General must, therefore, be given adequate staff of his own, and that staff as well as the office of Auditor-General should be filled as soon as possible by citizens with appropriate qualifications. Meanwhile, shortages of suitable staff in Papua New Guinea should be met by recruitment, and, if necessary, secondment, from overseas.

Section 213(3) of the Constitution provides-

(3) In the performance of his functions under this Constitution, the Auditor-General is not subject to the control or direction of any person or authority.

Section 20 of the Audit Act, 1989 provides-

20. APPOINTMENT OF OFFICERS.

(1) The Auditor-General may, within the limits of funds lawfully available to him, appoint—

- (a) such officers and employees as, in his opinion, are necessary for the efficient performance of his functions; and*
- (b) a lawyer as counsel; and*
- (c) such temporary and casual employees as he considers necessary.*

(2) The Auditor-General is authorized, in respect of persons appointed under Subsection (1), to exercise the powers and perform the duties and functions of the Department of Personnel Management and of a Departmental Head under the Public Services (Management) Act 1995 that relate to personnel management, including the determination of terms and conditions of employment.

(3) The Auditor-General may set classification standards for persons appointed under Subsection (1) to conform with the classification recognized by the Auditor-General for the purpose of the office.

(4) ...(retention of public service rights)

How the Auditor-General functioned during the transitional period before Independence.

The Office of the Auditor-General, commenced operations on 01 December, 1973, when Papua New Guinea attained self-government and then sovereign independence on 16 September, 1975. Prior to full self-government, the audits of the Territory of Papua and New Guinea were charged under the Auditor-General of the Commonwealth Audit Office, Australia. During this time, Duncan Robert Steele Craik was the Auditor-General of the Commonwealth Audit Office. PNGAGO had its first Auditor-General in the appointment of J.F Loughry, (1973). It was during the tenure of office of the first National Auditor-General of Papua New Guinea, Sir Makena Genok, that the Audit Act, 1989 was passed by Parliament.

Records also show that the PNGAGO was under the direct control of the Department of Prime Minister with the Secretary providing services to the Auditor-General's Office. In 1975, the National Parliament passed the *Public Services (Interim Arrangement) (Status of the Auditor-General) Act* and thereunder, the Office of the Auditor-General was set up as an independent Department. The Act conferred Departmental Head status on the Auditor-General. It empowered the Auditor-General to settle audit policies, and perform his statutory roles independently. This attribute was carried over and featured in the current law.

In order that the Auditor-General conducts his audit functions and responsibilities over the vast and different entities subject to his audit, there is the requirement that he has and retains adequate staff. If the Auditor-General is to have presence in all 22 provinces, conduct audit of all National Departments and state owned enterprises and business arms of provincial governments, hospitals and hospital boards, he definitely would need a skilled and competent workforce effectively discharging audit responsibilities on his behalf.

Against the amount of entities at the National and Provincial levels, the Auditor-General has staff strength of only 180 staff. The immediate and undeniable conclusion that may be drawn from this is that the People of Papua New Guinea through Parliament may never know the true financial positions of the entities that have been funded by Parliament through the annual appropriation laws. What this Paper basically says is that with the staff ceiling imposed by the national government, a huge number of entities will remain unaudited and removed from the audit scrutiny of the Auditor-General. the Auditor-General is the independent and external auditor to Parliament. It is through his annual reporting to Parliament that Parliament may take informed decisions on the operation, performance and financial status of these entities. The question begs an answer- how will the people be informed that persons, companies and government organizations expenditures are within

budget allocations and public funds have been spent within the requirements of laws and for the purposes for which they were granted or appropriated.

Auditors of the Office of the Auditor-General

Auditors are recruited from the Universities of Papua New Guinea, University of Technology and the Pacific Adventist University. In building an innovative, strong Office of the Auditor-General, it is important the Office is staffed by highly skilled professional staff. Becoming a professional member of a governing body does not only required skills, it requires staff to undergoing flagship programs set by accounting and auditing standards professional bodies as Certified Practicing Accountants Papua New Guinea (CPA Papua New Guinea) established under the Accountants Act, 1996.

1.21	<ul style="list-style-type: none"> • <i>Do you think, (given the enormity of the scope of audit coverage, the jurisdictional statement that the Auditor-General is not subject to the control and direction of any person or authority) the Auditor-General should be empowered to recruit, promote and manage his own staff?</i> • <i>Do you think that the Auditor-General should determine his staffing and personnel requirements?</i> • <i>Do you think that the Office of the Auditor-General should establish a service comprising Deputy Auditors-General, lawyers and auditors.</i> • <i>Should auditors in the employ of the Office of the Auditor-General be registered with Accounting Registration Board under the Accountants Act, 1996.</i> • <i>Should a Certificate from CPA PNG be a necessary requirement of recruitment for an auditor?</i> • <i>Should the Auditor-General have the means to reach auditee entities regularly and easily?</i> • <i>Do you think that staff of the Office of the Auditor-General should sign an annual code of conduct and declaration of interest forms?</i> • <i>Do you think the Office of the Auditor-General should have an internally independent audit quality review system? What arrangements would you offer for consideration?</i>
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