



Tuvalu's Journey to Independence



Tuvalu's new Audit Act leads the way in strengthening SAI independence

PASAI encourages and supports its members to become independent and sustainable institutions that make a difference to the quality of public sector governance and service delivery for the benefit of their people. The SAI of Tuvalu has significantly increased its statutory

independence with the recent passing of its new Audit Act 2016. The new Act meets many of the principles of SAI independence under the Mexico Declaration on SAI Independence (ISSAI 10). In particular, it provides financial independence for the Tuvalu Office of the Auditor-General (TOAG) through a mechanism that places the funding of the SAI under the control of the Parliament – a significant achievement for both Tuvalu and the Pacific SAI community. Additionally to further ensure the independence of the TOAG, there is a requirement that a minimum of 0.6% of the total annual appropriation (Parliament approved expenditure for the year) is to be provided to the TOAG.

The Government of Tuvalu and its Parliament are to be congratulated for recognizing the need for this reform, and for acting to update the legislation in the manner encouraged by the resolutions of the United Nations General Assembly in 2011 and 2014. The resolutions stressed the importance of a strong, properly resourced, and independent SAI in improving transparency, accountability and value for money to ensure that public funds are appropriately spent.

TOAG began its journey towards independence through discussions with other SAIs during PASAI Congresses. "The Office learnt during the implementation of its old Audit Act that it was out of date and lacked appropriate independence mechanisms for the SAI. PASAI's 2015 Accountability and Transparency study included Tuvalu in the in-depth research, and identified the need for the SAI to update its Audit Act" stated Mr Eli Lopati, Auditor-General of Tuvalu.

PASAI's Legal Consultant, Mr Robert Buchanan, was instrumental in helping the TOAG to review the existing Audit Act and propose drafting of the new legislation, with the TOAG also receiving support and assistance from its twinning arrangements with the Victorian Auditor-General's Office (VAGO). The review of the existing Act was undertaken against the Mexico Declaration and best practice clauses from other legislation around the Pacific region. It also used the results of a self- assessment of the SAI's independence under the SAI PMF performance management system¹. The drafting also drew on the legislation of Western Australia, which was assessed as having the best "follow the money" clause from the Survey on Australian Auditors-General².

The revised draft Audit Bill was then prepared based on the recommendations from the review, and was discussed with and reviewed by the Attorney-General on a line by line basis. The Prime Minister was consulted extensively as the sponsor for the Bill, who supported the reasons for the reform (including the benefits of bringing Tuvalu's legislation into line with international good practices). Cabinet approval was then sought for the Bill to be introduced in Parliament.

The Bill went through the normal legislative process. Following the first reading, it was presented for the second reading. The Prime Minister presented some amendments in the "Parliament-in-Committee" stage, and these were adopted. The Bill was then given its third reading and was passed. At the time of writing, it is waiting on Royal Assent from the Governor-General.



Photo above left - Tuvalu Government Building | Photo above right - L to R: Mr Eli Lopati, Auditor-General of Tuvalu, Mr Tony Prceвич, Technical Advisor.

The Challenges

The journey for TOAG in achieving this legislative reform was not straightforward. There were many challenges along the way, which included:

- Limited understanding within the Tuvaluan Government of the role and importance of an independent SAI in the public financial management system, including the significance of the international principles on SAI independence which were influencing the TOAG in its reform proposals.
- Applying the international principles, and precedents from other jurisdictions, in a manner consistent with Tuvalu's national institutional structures and circumstances (including its small size).
- How to increase the independence of TOAG from the executive government (for example in terms of procurement and management of staff) in a manner that did not conflict with other legislation applying to government agencies. This was overcome by establishing the TOAG as a statutory body separate from the Government of Tuvalu, thus providing a basis to be exempted from the Government's procurement and recruitment requirements.



“The time required to perform the legislative change process should not be under-estimated. The review and consultations take up a large amount of time, sometimes with the feeling that you are not getting anywhere,” said Mr Tony Prcevich, Technical Advisor, TOAG.

The best approach to getting legislative support and buy in to strengthening SAI independence

The Tuvalu experience highlights some key lessons for obtaining legislative support and buy in for strengthening SAI independence. A key objective is to ensure that the review of the Act is part of the strategic plans of both the SAI and the Government, and therefore aligned with Government priorities. In Tuvalu, this made it easier to convince stakeholders that a change was required. As a result, the Government had an interest in ensuring that the review was completed in order to demonstrate progress against its strategic plan.

Secondly, without the support of the Attorney-General, it was unlikely the revised legislation would be supported. The Attorney-General in Tuvalu has oversight of the process of drafting government legislation. TOAG spent extensive time with the Attorney-General discussing the draft provisions sentence by sentence in order to gain her support. The meetings commenced with the TOAG saying “we want your support. If there is any reason why the Government will not support this reform, let us know the reason and we will negotiate”, says Mr Prcevich.

Thirdly, working collaboratively is the best approach as it means working as one team rather than against each other. This included having representatives of the Attorney-General meet alongside the TOAG with the Prime Minister (the sponsor of the Bill) to ensure that the Prime Minister could feel comfortable that the Attorney-General had reviewed and endorsed the Bill.

The benefits for the TOAG

The new Audit Act will benefit the TOAG including:

1. being able to independently manage staff including hire, dismissal, rates of pay and staff structure, without influence by the Government;
2. having an independent budget, with the Public Accounts Committee (a parliamentary Standing Committee) reviewing and approving the budget of the TOAG, rather than the Government;
3. having a minimum budget for the TOAG of 0.6% of total Appropriation (Parliament authorised expenditure of the Government) for the year;
4. having enhanced accountability of the performance of the TOAG to Parliament (including reporting annually on the TOAG’s performance);
5. having follow the money powers, allowing the TOAG in relation to an audit or inquiry to have full and free access to information, public money and public assets which are in the control of any person, even if they are not a public sector entity;
6. having the power to report to anyone, increasing our ability to effect change;
7. being able to perform inquiries into any matter concerning the Tuvalu Government or a public sector entity’s use of its resources; and
8. being able to perform procurement activities for the TOAG in an accountable manner independent of Government influence.

Lessons learnt and shared

Key lessons learnt for sharing with our PASAI members and INTOSAI Community by Mr Eli Lopati, Auditor-General of Tuvalu, and Mr Tony Prceвич, Technical Advisor:

1. Know what you want and what is likely to be accepted in your country.
2. Use PASAI and their experience as early as possible in the process.
3. Take best parts of other countries' legislation and use where applicable. *The Independence of Auditors General –Survey of Australian and New Zealand audit legislation* was very useful in highlighting best practice in our region.
4. Be prepared for countless revisions. Make sure that you use version control.
5. Ask reviewers to make suggestions in track changes rather than making comments. This makes it easier to follow.
6. Use the compare function in Word to merge changes people have made into the one document.
7. Understand why someone is objecting to the Bill and ask them what you can do to obtain their support. Don't fight them, work with them.
8. Ensure that the recommendations for changes are appropriate to your country. What may work in a big country may not be appropriate for a small country like Tuvalu.
9. Think of alternative ways to achieve the same outcome. There may be an easier way. This was the case with ensuring our independence from government procurement rules and gaining autonomy in the management of staff. Instead of proposing amending other legislation, which would have not have been agreed to because other ministries would have to agree, we convinced the Government to establish the Office as a separate statutory entity. Having a separate institutional form also makes it considerably easier to align with the Mexico Declaration principles.
10. Understand the Parliamentary process and the way legislation is developed and enacted in your country.
11. It will take longer than you think, so keep on plugging away as it is all worth it.

Principle 2 of the Mexico Declaration was not able to be fully achieved in Tuvalu, as the Constitution of Tuvalu does not define a fixed term for the Auditor-General. The TOAG was unable to suggest legislating a fixed term for the Auditor-General in the revised Audit Bill, as the change would be contrary to the Constitution of Tuvalu. This will potentially be overcome in the next two years as Tuvalu has commenced a Constitutional review and the TOAG will make a submission recommending this change.

If you have any questions or want guidance, please contact us at the PASAI Office, you can also find useful guidance on the PASAI independence resource kit on www.pasai.org

