



Auditor-General Act 1997

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About this compilation

This compilation

This is a compilation of the *Auditor-General Act 1997* that shows the text of the law as amended and in force on 21 February 2018 (the *compilation date*).

The notes at the end of this compilation (the *endnotes*) include information about amending laws and the amendment history of provisions of the compiled law.

Uncommenced amendments

The effect of uncommenced amendments is not shown in the text of the compiled law. Any uncommenced amendments affecting the law are accessible on the Legislation Register (www.legislation.gov.au). The details of amendments made up to, but not commenced at, the compilation date are underlined in the endnotes. For more information on any uncommenced amendments, see the series page on the Legislation Register for the compiled law.

Application, saving and transitional provisions for provisions and amendments

If the operation of a provision or amendment of the compiled law is affected by an application, saving or transitional provision that is not included in this compilation, details are included in the endnotes.

Editorial changes

For more information about any editorial changes made in this compilation, see the endnotes.

Modifications

If the compiled law is modified by another law, the compiled law operates as modified but the modification does not amend the text of the law. Accordingly, this compilation does not show the text of the compiled law as modified. For more information on any modifications, see the series page on the Legislation Register for the compiled law.

Self-repealing provisions

If a provision of the compiled law has been repealed in accordance with a provision of the law, details are included in the endnotes.

An Act to provide for the appointment of an Auditor-General, to set out the functions of the Auditor-General, and for related purposes

Readers Guide

This Guide aims to give you a general overview of the matters covered by this Act. It also gives you some information about the way this Act is organised.

Overview of this Act

This Act establishes an office of Auditor-General for the Commonwealth and sets out the Auditor-General's functions. This Act also establishes the Australian National Audit Office and provides for the appointment of an Independent Auditor to audit the Office.

Summary of this Act

- Part 1 ***Preliminary***: This Part deals with the commencement of this Act, its application to things outside Australia and its application to the Crown.
- Part 2 ***Interpretation***: This Part contains definitions of terms that are frequently used throughout this Act.
- Part 3 ***The Auditor-General***: This Part establishes the office of Auditor-General. Schedule 1 deals with administrative matters relating to the office of Auditor-General, such as the Auditor-General's appointment, conditions, resignation and removal.
- Part 4 ***Main functions and powers of the Auditor-General***: This Part set out the functions and powers of the Auditor-General.

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- Part 5 ***Information-gathering powers and secrecy:*** This Part gives the Auditor-General various powers to gather information. It also places restrictions on the disclosure or publication of information.
- Part 6 ***The Australian National Audit Office:*** This Part establishes the Australian National Audit Office.
- Part 7 ***Audit of the Australian National Audit Office:*** This Part establishes an office of Independent Auditor. The functions of the Independent Auditor are to audit the financial statements of the Australian National Audit Office and to carry out performance audits of the Office. Schedule 2 deals with administrative matters relating to the office of Independent Auditor, such as the Independent Auditor's appointment, conditions, resignation and removal.
- Part 8 ***Miscellaneous:*** This Part deals with miscellaneous matters such as a Commonwealth indemnity for people carrying out Auditor-General functions.

Contents

Part 1—Preliminary	1
1 Short title.....	1
2 Commencement.....	1
3 This Act binds the Crown.....	1
3A Norfolk Island.....	1
4 This Act extends to things outside Australia.....	1
Part 2—Interpretation	2
5 Definitions.....	2
Part 3—The Auditor-General	5
7 Auditor-General.....	5
8 Independence of the Auditor-General.....	5
9 Appointment, conditions etc. for Auditor-General.....	6
10 Auditor-General to have regard to audit priorities of Parliament etc.....	6
Part 4—Main functions and powers of the Auditor-General	7
Division 1—Annual financial statement audits	7
11 Annual financial statements of Commonwealth entities, Commonwealth companies and subsidiaries.....	7
12 Annual consolidated financial statements.....	7
14 Audit fees for annual financial statement audits.....	7
Division 1A—Annual performance statement audits	9
15 Commonwealth entities.....	9
16 Audit fees for annual performance statement audits.....	9
Division 2—Performance audits	10
17 Performance audits of Commonwealth entities, Commonwealth companies and subsidiaries.....	10
18 General performance audit.....	11
18A Audit of performance measures.....	12
18B Commonwealth partners.....	14
19 Comments on proposed report.....	15
Division 2A—Assurance reviews	18
19A Assurance reviews.....	18
Division 3—Audits etc. by arrangement	19
20 Audits etc. by arrangement.....	19

Division 4—Functions under other Acts	20
21 Acting as auditor under the Corporations Act	20
22 Functions under other Acts	20
Division 5—Miscellaneous functions and powers	21
23 Provision of advice or information	21
23A Information sharing	21
24 Auditing standards	21
25 Extra reports to Parliament	22
26 Extra reports to Ministers	22
27 Contracting outsiders to assist with audits	22
28 Annual report for the Australian National Audit Office	22
29 Delegation by Auditor-General	23
Part 5—Information-gathering powers and secrecy	24
Division 1—Information-gathering powers	24
30 Relationship of information-gathering powers with other laws	24
31 Purpose for which information-gathering powers may be used	24
32 Power of Auditor-General to obtain information	25
33 Access to premises etc.	26
35 Self-incrimination no excuse	27
Division 2—Confidentiality of information	28
36 Confidentiality of information	28
37 Sensitive information not to be included in public reports	29
Part 6—The Australian National Audit Office	32
38 Establishment	32
39 Function	32
40 Staff	32
Part 7—Audit of the Australian National Audit Office	34
Division 1—The Independent Auditor	34
41 Independent Auditor	34
42 Appointment, conditions etc. for Independent Auditor	34
43 Independent Auditor to have regard to audit priorities of Parliament etc.	34
Division 2—Audit of the Australian National Audit Office	35
44 Audit of annual financial statements	35

45	Performance audit.....	35
46	Sensitive information not to be included in public reports	36
Division 3—Miscellaneous		37
47	Independent Auditor to have same access powers etc. as Auditor-General.....	37
48	Confidentiality of information	37
49	Indemnity	37
Part 8—Miscellaneous		39
50	Guaranteed availability of parliamentary appropriations.....	39
51	Auditor-General may approve expenditure.....	39
53	Joint Committee of Public Accounts and Audit may request draft estimates for Audit Office	39
54	Provision of information to the Minister or the Finance Minister	40
55	Indemnity	40
56	Modifications of Act for intelligence or security agency etc.	41
56A	Constitutional safety net	41
57	Regulations.....	42
Schedule 1—Appointment, conditions of appointment etc. for Auditor-General		43
1	Appointment of Auditor-General.....	43
2	Minister must refer recommendation for appointment of Auditor-General to the Joint Committee of Public Accounts and Audit.....	43
3	Remuneration of Auditor-General	44
4	Recreation leave etc.....	44
5	Resignation.....	44
6	Removal from office etc.	45
7	Acting appointment	46
Schedule 2—Appointment, conditions of appointment etc. for Independent Auditor		47
1	Appointment of Independent Auditor.....	47
2	Minister must refer recommendation for appointment of Independent Auditor to the Joint Committee of Public Accounts and Audit	47
3	Remuneration of Independent Auditor	48
4	Resignation.....	48

5	Removal from office etc.	48
6	Acting appointment	49
Endnotes		50
Endnote 1—About the endnotes		50
Endnote 2—Abbreviation key		52
Endnote 3—Legislation history		53
Endnote 4—Amendment history		57

Part 1—Preliminary

1 Short title

This Act may be cited as the *Auditor-General Act 1997*.

2 Commencement

This Act commences on the same day as the *Financial Management and Accountability Act 1997*.

3 This Act binds the Crown

This Act binds the Crown in right of the Commonwealth, but does not make the Crown liable to be prosecuted for an offence.

3A Norfolk Island

This Act extends to Norfolk Island.

4 This Act extends to things outside Australia

This Act extends to acts, omissions, matters and things outside Australia (unless the contrary intention appears).

Part 2—Interpretation

5 Definitions

In this Act, unless the contrary intention appears:

accountable authority, of a Commonwealth entity, has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

assurance review means a review conducted in accordance with the standards set by the Auditor-General under section 24 for assurance reviews.

Audit Office means the Australian National Audit Office established by section 38.

Auditor-General function means a function that the Auditor-General has under this Act or any other Act, and includes any function that the Auditor-General has when acting as auditor under the *Corporations Act 2001*.

Australia, when used in a geographical sense, includes Norfolk Island, the Territory of Cocos (Keeling) Islands and the Territory of Christmas Island.

Commonwealth company has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

Commonwealth entity has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

Commonwealth partner has the meaning given by subsection 18B(2).

corporate Commonwealth entity has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

CSC (short for Commonwealth Superannuation Corporation) has the same meaning as in the *Governance of Australian Government Superannuation Schemes Act 2011*.

director, of a Commonwealth company, has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

Finance Minister means the Minister who is the Finance Minister within the meaning of the *Public Governance, Performance and Accountability Act 2013*.

GBE or **government business enterprise** has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

Joint Committee of Public Accounts and Audit means the Joint Committee of Public Accounts and Audit provided for in the *Public Accounts and Audit Committee Act 1951*.

laws of the Commonwealth means:

- (a) the Constitution; and
- (b) Acts; and
- (c) regulations and other instruments made under Acts.

Minister includes the President of the Senate and the Speaker of the House of Representatives.

non-corporate Commonwealth entity has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

official, of a Commonwealth entity, has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

performance audit, in relation to a person or body, means a review or examination of any aspect of the operations of the person or body.

priority assurance review has the meaning given by subsection 19A(5).

Section 5

responsible Minister:

- (a) in relation to a Commonwealth entity or a Commonwealth company—has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*; and
- (b) in relation to a Commonwealth partner—means the Minister responsible for achieving the Commonwealth purpose concerned; and
- (c) in relation to a subsidiary of a corporate Commonwealth entity or a Commonwealth company—the responsible Minister for the entity or company concerned.

subsidiary, of a corporate Commonwealth entity or a Commonwealth company, has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

wholly-owned Commonwealth company has the same meaning as in the *Public Governance, Performance and Accountability Act 2013*.

Part 3—The Auditor-General

7 Auditor-General

- (1) There is to be an Auditor-General for the Commonwealth.
- (2) Whenever a vacancy occurs in the office of Auditor-General, an appointment must be made to the office as soon as practicable.

8 Independence of the Auditor-General

- (1) The Auditor-General is an independent officer of the Parliament.
- (2) The functions, powers, rights, immunities and obligations of the Auditor-General are as specified in this Act and other laws of the Commonwealth. There are no implied functions, powers, rights, immunities or obligations arising from the Auditor-General being an independent officer of the Parliament.
- (3) The powers of the Parliament to act in relation to the Auditor-General are as specified in or applying under this Act and other laws of the Commonwealth. For this purpose, *Parliament* includes:
 - (a) each House of the Parliament; and
 - (b) the members of each House of the Parliament; and
 - (c) the committees of each House of the Parliament and joint committees of both Houses of the Parliament.

There are no implied powers of the Parliament arising from the Auditor-General being an independent officer of the Parliament.

- (4) Subject to this Act and to other laws of the Commonwealth, the Auditor-General has complete discretion in the performance or exercise of his or her functions or powers. In particular, the Auditor-General is not subject to direction from anyone in relation to:
 - (a) whether or not a particular audit is to be conducted; or

Section 9

- (b) the way in which a particular audit is to be conducted; or
- (c) the priority to be given to any particular matter.

9 Appointment, conditions etc. for Auditor-General

Schedule 1 sets out the conditions of appointment and other matters that have effect in relation to the office of Auditor-General.

10 Auditor-General to have regard to audit priorities of Parliament etc.

In performing or exercising his or her functions or powers, the Auditor-General must have regard to:

- (a) the audit priorities of the Parliament determined by the Joint Committee of Public Accounts and Audit under paragraph 8(1)(m) of the *Public Accounts and Audit Committee Act 1951*; and
- (b) any reports made by that Committee under paragraph 8(1)(h) or 8(1)(i) of that Act.

Part 4—Main functions and powers of the Auditor-General

Division 1—Annual financial statement audits

11 Annual financial statements of Commonwealth entities, Commonwealth companies and subsidiaries

The Auditor-General's functions include auditing the:

- (a) annual financial statements of Commonwealth entities in accordance with the *Public Governance, Performance and Accountability Act 2013*; and
- (b) annual financial statements of Commonwealth companies in accordance with that Act; and
- (c) annual financial statements of subsidiaries of corporate Commonwealth entities and Commonwealth companies in accordance with that Act.

12 Annual consolidated financial statements

The Auditor-General's functions include auditing the annual consolidated financial statements in accordance with the *Public Governance, Performance and Accountability Act 2013*.

14 Audit fees for annual financial statement audits

- (1) A person or body (other than a non-corporate Commonwealth entity) whose annual financial statements are audited as mentioned in:
 - (a) section 11 of this Act; or
 - (b) subsection 30(3) of the *Governance of Australian Government Superannuation Schemes Act 2011*;is liable to pay audit fees for the audit, based on a scale of fees determined by the Auditor-General.

Part 4 Main functions and powers of the Auditor-General

Division 1 Annual financial statement audits

Section 14

- (2) Fees are payable within 30 days after issue of a payment claim. Payment claims for instalments may be issued before the audit is completed.
- (3) Unpaid fees:
 - (a) are a debt due to the Commonwealth; and
 - (b) may be recovered by the Auditor-General, on behalf of the Commonwealth, by action in a court of competent jurisdiction.
- (4) In each annual report prepared by the Auditor-General under section 28 of this Act, the Auditor-General must include details of the basis on which the Auditor-General determined the audit fees that applied during the financial year concerned.

Division 1A—Annual performance statement audits

15 Commonwealth entities

The Auditor-General's functions include auditing annual performance statements of Commonwealth entities in accordance with the *Public Governance, Performance and Accountability Act 2013*.

16 Audit fees for annual performance statement audits

- (1) A corporate Commonwealth entity whose annual performance statements are audited as mentioned in section 15 is liable to pay audit fees for the audit, based on a scale of fees determined by the Auditor-General.
- (2) Fees are payable within 30 days after issue of a payment claim. Payment claims for instalments may be issued before the audit is completed.
- (3) Unpaid fees:
 - (a) are a debt due to the Commonwealth; and
 - (b) may be recovered by the Auditor-General, on behalf of the Commonwealth, by action in a court of competent jurisdiction.
- (4) In each annual report prepared by the Auditor-General under section 28, the Auditor-General must include details of the basis on which the Auditor-General determined the audit fees that applied during the financial year concerned.

Division 2—Performance audits

17 Performance audits of Commonwealth entities, Commonwealth companies and subsidiaries

- (1) The Auditor-General may at any time conduct a performance audit of:
 - (a) a Commonwealth entity; or
 - (b) a Commonwealth company; or
 - (c) a subsidiary of a corporate Commonwealth entity or a Commonwealth company.
- (2) However, the Auditor-General may only conduct such an audit on request by the Joint Committee of Public Accounts and Audit if the audit is of:
 - (a) a corporate Commonwealth entity that is a GBE, or of any of its subsidiaries; or
 - (b) a wholly-owned Commonwealth company that is a GBE, or any of its subsidiaries.
- (3) Nothing prevents the Auditor-General from asking the Joint Committee of Public Accounts and Audit to make a particular request under subsection (2).
- (4) As soon as practicable after completing the report on an audit under this section, the Auditor-General must:
 - (a) cause a copy of the report to be tabled in each House of the Parliament; and
 - (b) give a copy of the report to the responsible Minister; and
 - (c) give a copy of the report:
 - (i) if the audit is of a Commonwealth entity—to an official who is, or is a member of, the accountable authority of the entity; or
 - (ii) if the audit is of a Commonwealth company—to a director of the company; or

- (iii) if the audit is of a subsidiary of a corporate Commonwealth entity or Commonwealth company—to a person who is, or is a member of, the governing body of the subsidiary; and
 - (d) to the extent that the report relates to the operations of a Commonwealth partner—give a copy of the report to a person who is, or is a member of, the governing body of the Commonwealth partner.
- (5) The Auditor-General may give a copy of, or an extract from, the report to any person (including a Minister) who, or any body that, in the Auditor-General's opinion, has a special interest in the report or the content of the extract.
- (6) For the purposes of this section, a Commonwealth entity is taken not to include any persons who are:
 - (a) employed or engaged under the *Members of Parliament (Staff) Act 1984*; and
 - (b) prescribed by an Act or rules made for the purposes of the definition of **Department of State** or **Parliamentary Department** in section 8 of the *Public Governance, Performance and Accountability Act 2013* in relation to the entity.

18 General performance audit

- (1) The Auditor-General may at any time conduct a review or examination of a particular aspect of the operations of the whole or part of the Commonwealth public sector, being a review or examination that is not limited to the operations of only one Commonwealth entity, body or person.
- (2) As soon as practicable after completing the report on an audit under this section, the Auditor-General must:
 - (a) cause a copy of the report to be tabled in each House of the Parliament; and
 - (b) give a copy of the report to the Finance Minister; and
 - (c) give a copy of the report to each responsible Minister; and

Section 18A

- (d) to the extent that the report relates to the operations of a Commonwealth entity—give a copy of the report to a person who is, or is a member of, the accountable authority of the entity; and
 - (e) to the extent that the report relates to the operations of a Commonwealth company—give a copy of the report to a director of the company; and
 - (f) to the extent that the report relates to the operations of a subsidiary of a corporate Commonwealth entity or a Commonwealth company—give a copy of the report to a person who is, or is a member of, the governing body of the subsidiary; and
 - (g) to the extent that the report relates to the operations of a person who is not a Commonwealth partner—give a copy of the report to the person; and
 - (h) to the extent that the report relates to the operations of a Commonwealth partner—give a copy of the report to a person who is, or is a member of, the governing body of the Commonwealth partner.
- (3) The Auditor-General may give a copy of, or an extract from, the report to any other person (including a Minister) who, or any body that, in the Auditor-General’s opinion, has a special interest in the report or the content of the extract.
- (4) In this section:

Commonwealth public sector means non-corporate Commonwealth entities, corporate Commonwealth entities (other than GBEs) and their subsidiaries and Commonwealth companies (other than GBEs) and their subsidiaries.

18A Audit of performance measures

- (1) The Auditor-General may at any time conduct an audit of:
- (a) the appropriateness of the performance measures (however described) of:
 - (i) a Commonwealth entity; or

- (ii) a Commonwealth company; or
 - (iii) a subsidiary of a corporate Commonwealth entity or a Commonwealth company; and
 - (b) reporting by the entity, company or subsidiary against those measures.
- (2) However, the Auditor-General may only conduct such an audit on request by the Joint Committee of Public Accounts and Audit if the audit is of:
- (a) a corporate Commonwealth entity that is a GBE, or of any of its subsidiaries; or
 - (b) a wholly-owned Commonwealth company that is a GBE, or of any of its subsidiaries.
- (3) Nothing prevents the Auditor-General from asking the Joint Committee of Public Accounts and Audit to make a particular request under subsection (2).
- (4) As soon as practicable after completing the report on an audit under this section, the Auditor-General must:
- (a) cause a copy of the report to be tabled in each House of the Parliament; and
 - (b) give a copy of the report to the responsible Minister; and
 - (c) give a copy of the report:
 - (i) if the audit is of a Commonwealth entity—to an official who is, or is a member of, the accountable authority of the entity; or
 - (ii) if the audit is of a Commonwealth company—to a director of the company; or
 - (iii) if the audit is of a subsidiary of a corporate Commonwealth entity or Commonwealth company—to a person who is, or is a member of, the governing body of the subsidiary.
- (5) Subsection (4) does not apply if the report is, or is to be, included in the annual report of the Commonwealth entity or Commonwealth company.

Section 18B

- (6) The Auditor-General may give a copy of, or an extract from, the report to any person (including a Minister) who, or any body that, in the Auditor-General's opinion, has a special interest in the report or the content of the extract.

18B Commonwealth partners

- (1) The Auditor-General may conduct a performance audit of a Commonwealth partner:
- (a) if the partner is, is part of, or is controlled by, the Government of a State or Territory—at the request of the responsible Minister or the Joint Committee of Public Accounts and Audit; or
 - (b) otherwise—at any time.
- (2) A person or body is a *Commonwealth partner* if:
- (a) the Commonwealth provides money for a particular purpose (the *Commonwealth purpose*); and
 - (b) the person or body receives some or all of the money, whether directly or indirectly, because the person or body:
 - (i) agrees to use the money in achieving the Commonwealth purpose; or
 - (ii) has entered into a contract that relates to the Commonwealth purpose; and
 - (c) an audit of the person or body could not be conducted under another section of this Division.
- (3) The audit may be conducted only to the extent that it assesses the operations of the Commonwealth partner in relation to achieving the Commonwealth purpose.
- (4) The audit may be conducted as part of an audit under section 17 or 18.
- (5) The report on the audit must include the reasons for conducting the audit.

- (6) As soon as practicable after completing the report on the audit, the Auditor-General must:
 - (a) cause a copy of the report to be tabled in each House of the Parliament; and
 - (b) give a copy of the report to the responsible Minister; and
 - (c) give a copy of the report to a person who is, or is a member of, the governing body of the Commonwealth partner.
- (7) Subsection (6) does not apply if the report is, or is to be, included in the report on an audit under section 17 or 18.
- (8) The Auditor-General may give a copy of, or an extract from, the report to any person (including a Minister) who, or any body that, in the Auditor-General's opinion, has a special interest in the report or the content of the extract.
- (9) Nothing prevents the Auditor-General from asking the responsible Minister or the Joint Committee of Public Accounts and Audit to make a particular request for the purposes of paragraph (1)(a).

19 Comments on proposed report

- (1) After preparing a proposed report on an audit of a Commonwealth entity under paragraph 17(1)(a), the Auditor-General must:
 - (a) give a copy of the proposed report to an official who is, or is a member of, the accountable authority of the entity; and
 - (b) to the extent that the proposed report relates to the operations of a Commonwealth partner—give a person who is, or is a member of, the governing body of the Commonwealth partner:
 - (i) a copy of the proposed report; or
 - (ii) extracts of the parts of the proposed report that deal with the audit of the Commonwealth partner; or
 - (iii) extracts of the proposed report that include the parts of the proposed report that deal with the audit of the Commonwealth partner.

Section 19

- (2) After preparing a proposed report on an audit of a body under paragraph 17(1)(b) or (c), the Auditor-General must:
- (a) give a copy of the proposed report to:
 - (i) if the audit is of a Commonwealth company—to a director of the company; or
 - (ii) if the audit is of a subsidiary of a corporate Commonwealth entity or Commonwealth company—to a person who is, or is a member of, the governing body of the subsidiary; and
 - (b) to the extent that the proposed report relates to the operations of a Commonwealth partner—give a person who is, or is a member of, the governing body of the Commonwealth partner:
 - (i) a copy of the proposed report; or
 - (ii) extracts of the parts of the proposed report that deal with the audit of the Commonwealth partner; or
 - (iii) extracts of the proposed report that include the parts of the proposed report that deal with the audit of the Commonwealth partner.
- (3) After preparing a proposed report under section 18A on an audit of the performance measures of a body and the body's reporting against those measures, the Auditor-General must give a copy of the proposed report to:
- (a) if the audit is of a Commonwealth entity—to an official who is, or is a member of, the accountable authority of the entity; or
 - (b) if the audit is of a Commonwealth company—to a director of the company; or
 - (c) if the audit is of a subsidiary of a corporate Commonwealth entity or Commonwealth company—to a person who is, or is a member of, the governing body of the subsidiary.
- (4) After preparing a proposed report on an audit of a Commonwealth partner under section 18B, the Auditor-General must give a copy of the proposed report to a person who is, or is a member of, the governing body of the Commonwealth partner.

- (5) Subsection (4) does not apply if:
- (a) the proposed report is included, or is to be included, in the proposed report on an audit under section 17; or
 - (b) the audit of the Commonwealth partner was conducted as part of an audit under section 18.
- (6) After preparing a proposed report on an audit under section 17, 18, 18A or 18B, the Auditor-General may give a copy of, or an extract from, the proposed report to any person (including a Minister) who, or any body that, in the Auditor-General's opinion, has a special interest in the report or the content of the extract.
- (7) If the recipient of the proposed report, or the extract from the proposed report, gives written comments to the Auditor-General as follows, the Auditor-General must consider those comments before preparing a final report:
- (a) in the case of a proposed report on an audit under section 18A (audit of performance measures)—within 14 days after receiving the proposed report, or the extract from the proposed report;
 - (b) otherwise—within 28 days after receiving the proposed report, or the extract from the proposed report.
- (8) The Auditor-General must, in the final report, include all written comments received under subsection (7).

Division 2A—Assurance reviews

19A Assurance reviews

- (1) The Auditor-General may at any time conduct an assurance review of:
 - (a) a Commonwealth entity; or
 - (b) a Commonwealth company; or
 - (c) a subsidiary of a corporate Commonwealth entity or a Commonwealth company.
- (2) However, the Auditor-General may only conduct such an assurance review on request by the Joint Committee of Public Accounts and Audit if the review is of:
 - (a) a corporate Commonwealth entity that is a GBE, or of any of its subsidiaries; or
 - (b) a wholly-owned Commonwealth company that is a GBE, or of any of its subsidiaries.
- (3) Nothing prevents the Auditor-General from asking the Joint Committee of Public Accounts and Audit to make a particular request under subsection (2).
- (4) The Auditor-General may determine arrangements for the conduct of an assurance review, including arrangements for reporting to the Parliament.
- (5) The Joint Committee of Public Accounts and Audit may identify an assurance review as a priority. A review so identified is a ***priority assurance review***.
- (6) As soon as practicable after completing the report on a priority assurance review, the Auditor-General must cause a copy of the report to be tabled in each House of the Parliament.

Division 3—Audits etc. by arrangement

20 Audits etc. by arrangement

- (1) The Auditor-General may enter into an arrangement with any person or body:
 - (a) to audit financial statements of the person or body; or
 - (b) to conduct a performance audit of the person or body; or
 - (c) to provide services to the person or body that are of a kind commonly performed by auditors.
- (2) An arrangement may provide for the payment of fees to the Auditor-General. The fees are to be received by the Auditor-General on behalf of the Commonwealth.
- (3) The Auditor-General must not perform functions under this section for a purpose that is outside the Commonwealth's legislative power.
- (4) Divisions 2 and 2A do not limit the power of the Auditor-General under this section to enter into an arrangement with a GBE.

Division 4—Functions under other Acts

21 Acting as auditor under the Corporations Act

- (1) The Auditor-General may accept appointment under the *Corporations Act 2001* as the auditor of:
 - (a) a subsidiary of a corporate Commonwealth entity; or
 - (b) a Commonwealth company or a subsidiary of a Commonwealth company; or
 - (c) any other company that the Commonwealth controls (within the meaning of subsection 89(2) of the *Public Governance, Performance and Accountability Act 2013*).
- (2) This section does not, by implication, limit the Auditor-General's power to enter into arrangements under section 20.

22 Functions under other Acts

The Auditor-General's functions include any functions given to the Auditor-General by any other Act.

Division 5—Miscellaneous functions and powers

23 Provision of advice or information

- (1) The Auditor-General may provide advice or information to a person or body relating to the Auditor-General's responsibilities if, in the Auditor-General's opinion, it is in the Commonwealth's interests to provide the information or advice.
- (2) In this section:

Auditor-General's responsibilities means:

- (a) the Auditor-General's functions and powers; and
- (b) any matter which the Auditor-General could consider when exercising those functions and powers.

23A Information sharing

A person (the *information holder*) may disclose information to another person (the *recipient*) if:

- (a) the information was obtained or generated by the information holder in the course of performing an Auditor-General function; and
- (b) the information is provided to the recipient to assist the information holder in conducting an audit under Division 2 or 2A, or a performance audit under an arrangement entered into under Division 3.

24 Auditing standards

The Auditor-General must, by notice in the *Gazette*, set auditing standards that are to be complied with by persons performing any of the following functions:

- (a) an audit or review referred to in Division 1, 1A, 2 or 2A;
- (b) an audit under Division 2 of Part 7;
- (c) an audit under section 49 of the *Public Governance, Performance and Accountability Act 2013*.

Section 25

25 Extra reports to Parliament

- (1) The Auditor-General may at any time cause a report to be tabled in either House of the Parliament on any matter.
- (2) The Auditor-General must give a copy of the report to the Prime Minister, the Finance Minister and to any other Minister who, in the Auditor-General's opinion, has a special interest in the report.

26 Extra reports to Ministers

- (1) The Auditor-General must bring to the attention of the responsible Minister any important matter that comes to the attention of the Auditor-General while:
 - (a) conducting an audit referred to in Division 1; or
 - (b) performing functions as an auditor under the *Corporations Act 2001*.

For this purpose, **important matter** means any matter that, in the Auditor-General's opinion, is important enough to justify it being brought to the attention of the responsible Minister.

- (2) The Auditor-General may at any time give a report to any Minister on any matter.

27 Contracting outsiders to assist with audits

The Auditor-General, on behalf of the Commonwealth, may engage any person under contract to assist in the performance of any Auditor-General function.

28 Annual report for the Australian National Audit Office

- (1) As soon as practicable after 30 June in each financial year, the Auditor-General must:
 - (a) prepare a report on the activities of the Audit Office during that financial year; and
 - (b) cause a copy of the report to be tabled in each House of the Parliament.

Note: The following provisions set out information that must be included in the Audit Office's annual report:

- (a) subsections 14(4), 16(4) and 54(4) of this Act;
 - (b) paragraph 39(1)(b) and subsection 43(4) of the *Public Governance, Performance and Accountability Act 2013*.
- (2) The annual report must be tabled by:
- (a) the 15th day of October; or
 - (b) the end of any further period granted under subsection 34C(5) of the *Acts Interpretation Act 1901*.
- (3) The annual report must comply with any requirements prescribed by rules made for the purposes of subsection 46(3) of the *Public Governance, Performance and Accountability Act 2013*, in relation to non-corporate Commonwealth entities, as if a reference in those rules to section 46 of that Act were a reference to this section.
- (4) An annual report is taken, for the purposes of any other Act, to be a report under section 46 of the *Public Governance, Performance and Accountability Act 2013*.
- (5) Section 46 of the *Public Governance, Performance and Accountability Act 2013* does not apply in relation to the Auditor-General.

29 Delegation by Auditor-General

- (1) The Auditor-General may, by written instrument, delegate any of the Auditor-General's powers or functions under any Act to an official of a non-corporate Commonwealth entity.
- (2) In exercising powers or functions under the delegation, the official must comply with any directions of the Auditor-General.

Part 5—Information-gathering powers and secrecy

Division 1—Information-gathering powers

30 Relationship of information-gathering powers with other laws

- (1) The operation of sections 32 and 33:
 - (a) is limited by laws of the Commonwealth (whether made before or after the commencement of this Act) relating to the powers, privileges and immunities of:
 - (i) each House of the Parliament; and
 - (ii) the members of each House of the Parliament; and
 - (iii) the committees of each House of the Parliament and joint committees of both Houses of the Parliament; but
 - (b) is not limited by:
 - (i) any other law (whether made before or after the commencement of this Act), except to the extent that the other law expressly excludes the operation of section 32 or 33; or
 - (ii) any rule of law relating to legal professional privilege or any other privilege, or the public interest, in relation to the disclosure of information or the production of documents.
- (2) Disclosure or production of, or access to, information or a document under section 32 or 33 does not otherwise affect the operation of a rule of law relating to privilege or the public interest in relation to disclosure of the information or production of the document.

31 Purpose for which information-gathering powers may be used

- The powers under sections 32 and 33 may be used for the purpose of, or in connection with, any Auditor-General function, except:
- (aa) an assurance review that is not a priority assurance review; or

- (a) an audit or other function under section 20; or
- (b) providing advice or information under section 23; or
- (c) preparing a report under section 25 or 26.

32 Power of Auditor-General to obtain information

- (1) The Auditor-General may, by written notice, direct a person to do all or any of the following:
- (a) to provide the Auditor-General with any information that the Auditor-General requires;
 - (b) to attend and give evidence before the Auditor-General or an authorised official;
 - (c) to produce to the Auditor-General any documents in the custody or under the control of the person.

Note: A proceeding under paragraph (1)(b) is a “judicial proceeding” for the purposes of Part III of the *Crimes Act 1914*. The Crimes Act prohibits certain conduct in relation to judicial proceedings.

- (2) The Auditor-General may direct that:
- (a) the information or answers to questions be given either orally or in writing (as the Auditor-General requires);
 - (b) the information or answers to questions be verified or given on oath or affirmation.

The oath or affirmation is an oath or affirmation that the information or evidence the person will give will be true, and may be administered by the Auditor-General or by an authorised official.

- (3) A person must comply with a direction under this section.

Penalty: 30 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: Section 4AA of the *Crimes Act 1914* sets the current value of a penalty unit.

- (4) The regulations may prescribe scales of expenses to be allowed to persons who are required to attend under this section.

Section 33

(5) In this section:

authorised official means an official of a non-corporate Commonwealth entity who is authorised by the Auditor-General, in writing, to exercise powers or perform functions under this section.

33 Access to premises etc.

(1) The Auditor-General or an authorised official:

- (a) may, at all reasonable times, enter and remain on any premises occupied by the Commonwealth, a corporate Commonwealth entity, a Commonwealth company or a Commonwealth partner; and
- (b) is entitled to full and free access at all reasonable times to any documents or other property; and
- (c) may examine, make copies of or take extracts from any document.

Note: Paragraph (1)(a) does not expressly refer to non-corporate Commonwealth entities because these entities are legally part of the Commonwealth.

(2) An authorised official is not entitled to enter or remain on premises if he or she fails to produce a written authority on being asked by the occupier to produce proof of his or her authority. For this purpose, **written authority** means an authority signed by the Auditor-General that states that the official is authorised to exercise powers under this Division.

(3) If an authorised official enters, or proposes to enter, premises under this section, the occupier must provide the official with all reasonable facilities for the effective exercise of powers under this section.

Penalty: 10 penalty units.

Note 1: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

Note 2: Section 4AA of the *Crimes Act 1914* sets the current value of a penalty unit.

Note 3: Section 149.1 of the *Criminal Code* deals with obstruction of Commonwealth public officials.

(4) In this section:

authorised official means an official of a non-corporate Commonwealth entity who is authorised by the Auditor-General, in writing, to exercise powers or perform functions under this section.

premises includes any land or place.

35 Self-incrimination no excuse

A person is not excused from producing a document or answering a question under section 32 on the ground that the answer, or the production of the document, might tend to incriminate the person or make the person liable to a penalty. However, neither:

- (a) the answer to the question or the production of the document;
nor
- (b) anything obtained as a direct or indirect result of the answer or the production of the document;

is admissible in evidence against the person in any criminal proceedings (other than proceedings for an offence against, or arising out of, section 32 of this Act or proceedings for an offence against section 137.1 or 137.2 of the *Criminal Code* that relates to this Act).

Division 2—Confidentiality of information

36 Confidentiality of information

- (1) If a person has obtained information in the course of performing an Auditor-General function, the person must not disclose the information except in the course of performing an Auditor-General function or for the purpose of any Act that gives functions to the Auditor-General.

Penalty: Imprisonment for 2 years.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (2) Subsection (1) does not prevent the Auditor-General from disclosing particular information to the Commissioner of the Australian Federal Police if the Auditor-General is of the opinion that the disclosure is in the public interest.

- (2A) Subsection (1) does not prevent a person (the **information holder**) from disclosing information to another person under section 23A if the information holder does so in the circumstances permitted by that section.

- (2B) A person commits an offence if:
- (a) information is disclosed to the person; and
 - (b) the information is disclosed in circumstances permitted by section 23A; and
 - (c) the information is not disclosed to the person because the person is performing an Auditor-General function; and
 - (d) the person uses or discloses the information.

Penalty: Imprisonment for 2 years.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (2C) Subsection (2B) does not apply if the Auditor-General has consented to the use or disclosure.

Note: A defendant bears an evidential burden in relation to a matter in subsection (2C): see subsection 13.3(3) of the *Criminal Code*.

- (3) A person commits an offence if:
- (a) the person receives any of the following:
 - (i) a proposed report (including a draft) under section 19;
 - (ii) any other report (including a draft) created for the purposes of preparing a proposed report under section 19;
 - (iii) an extract from a report referred to in this paragraph;
and
 - (b) the person discloses any information in the report or extract.

Penalty: Imprisonment for 2 years.

- (4) Subsection (3) does not apply if the Auditor-General has consented to the disclosure.

Note: A defendant bears an evidential burden in relation to a matter in subsection (4): see subsection 13.3(3) of the *Criminal Code*.

37 Sensitive information not to be included in public reports

- (1) The Auditor-General must not include particular information in a public report if:
- (a) the Auditor-General is of the opinion that disclosure of the information would be contrary to the public interest for any of the reasons set out in subsection (2); or
 - (b) the Attorney-General has issued a certificate to the Auditor-General stating that, in the opinion of the Attorney-General, disclosure of the information would be contrary to the public interest for any of the reasons set out in subsection (2).
- (2) The reasons are:
- (a) it would prejudice the security, defence or international relations of the Commonwealth;
 - (b) it would involve the disclosure of deliberations or decisions of the Cabinet or of a Committee of the Cabinet;

Section 37

- (c) it would prejudice relations between the Commonwealth and a State;
 - (d) it would divulge any information or matter that was communicated in confidence by the Commonwealth to a State, or by a State to the Commonwealth;
 - (e) it would unfairly prejudice the commercial interests of any body or person;
 - (f) any other reason that could form the basis for a claim by the Crown in right of the Commonwealth in a judicial proceeding that the information should not be disclosed.
- (3) The Auditor-General cannot be required, and is not permitted, to disclose to:
- (a) a House of the Parliament; or
 - (b) a member of a House of the Parliament; or
 - (c) a committee of a House of the Parliament or a joint committee of both Houses of the Parliament;
- information that subsection (1) prohibits being included in a public report.
- (4) If the Auditor-General omits particular information from a public report because the Attorney-General has issued a certificate under paragraph (1)(b) in relation to the information, the Auditor-General must state in the report:
- (a) that information (which does not have to be identified) has been omitted from the report; and
 - (b) the reason or reasons (in terms of subsection (2)) why the Attorney-General issued the certificate.
- (5) If, because of subsection (1), the Auditor-General:
- (a) decides not to prepare a public report; or
 - (b) omits particular information from a public report;
- the Auditor-General may prepare a report under this subsection that includes the information concerned. The Auditor-General must give a copy of each report under this subsection to the Prime Minister, the Finance Minister and any responsible Minister.

(6) In this section:

information includes written comments on the proposed report or the extract that are received by the Auditor-General under subsection 19(4).

public report means a report that is to be tabled in either House of the Parliament.

State includes a self-governing Territory.

Part 6—The Australian National Audit Office

38 Establishment

- (1) There is established an Office called the Australian National Audit Office.
- (2) The Audit Office consists of the Auditor-General and the staff referred to in section 40.
- (3) For the purposes of the finance law (within the meaning of the *Public Governance, Performance and Accountability Act 2013*):
 - (a) the Audit Office is a listed entity; and
 - (b) the Auditor-General is the accountable authority of the Audit Office; and
 - (c) the following persons are officials of the Audit Office:
 - (i) the Auditor-General;
 - (ii) the staff referred to in section 40;
 - (iii) persons engaged under contract as referred to in section 27; and
 - (d) the purposes of the Audit Office include:
 - (i) the Auditor-General functions; and
 - (ii) the function of the Audit Office referred to in section 39.

39 Function

The function of the Audit Office is to assist the Auditor-General in performing the Auditor-General's functions.

40 Staff

- (1) The staff of the Audit Office are to be persons engaged under the *Public Service Act 1999*.

Note: Under section 27, the Auditor-General may also engage persons under contract.

- (1A) For the purposes of the *Public Service Act 1999*:
- (a) the Auditor-General and the APS employees assisting the Auditor-General together constitute a Statutory Agency; and
 - (b) the Auditor-General is the Head of that Statutory Agency.
- (2) Directions to staff of the Audit Office relating to the performance of the Auditor-General's functions may only be given by:
- (a) the Auditor-General; or
 - (b) a member of the staff of the Audit Office authorised to give such directions by the Auditor-General.

Part 7—Audit of the Australian National Audit Office

Division 1—The Independent Auditor

41 Independent Auditor

- (1) There is to be an Independent Auditor.
- (2) Whenever a vacancy occurs in the office of Independent Auditor, an appointment must be made to the office as soon as practicable.

42 Appointment, conditions etc. for Independent Auditor

Schedule 2 sets out the conditions of appointment and other matters that have effect in relation to the office of Independent Auditor.

43 Independent Auditor to have regard to audit priorities of Parliament etc.

In performing or exercising his or her functions or powers, the Independent Auditor must have regard to the audit priorities of the Parliament for audits of the Audit Office determined by the Joint Committee of Public Accounts and Audit under paragraph 8(1)(n) of the *Public Accounts and Audit Committee Act 1951*.

Division 2—Audit of the Australian National Audit Office

44 Audit of annual financial statements

- (1) After preparing the annual financial statements for the Audit Office under section 42 of the *Public Governance, Performance and Accountability Act 2013*, the Auditor-General must give the statements to the Independent Auditor.
- (2) The Independent Auditor must audit the statements in accordance with section 43 of that Act.
- (3) For these purposes, references in sections 42 and 43 of that Act to the Auditor-General are taken to be references to the Independent Auditor.

45 Performance audit

- (1) The Independent Auditor may at any time conduct a performance audit of the Audit Office.
- (2) After preparing a proposed report on an audit, the Independent Auditor must give a copy of the proposed report to the Auditor-General. If the Auditor-General gives written comments to the Independent Auditor within 28 days after receiving the proposed report, the Independent Auditor must consider those comments before preparing a final report.
- (3) As soon as practicable after completing the report on the audit, the Independent Auditor must:
 - (a) cause a copy to be tabled in each House of the Parliament;
and
 - (b) give a copy to the responsible Minister.
- (4) The Independent Auditor may give a copy of, or an extract from, the report to any other Minister who, in the Independent Auditor's opinion, has a special interest in the report or the content of the extract.

Section 46

46 Sensitive information not to be included in public reports

Section 37 applies to the Independent Auditor as if references in that section to the Auditor-General were references to the Independent Auditor.

Division 3—Miscellaneous

47 Independent Auditor to have same access powers etc. as Auditor-General

Division 1 of Part 5 applies in relation to the performance of functions under this Part in the same way as it applies in relation to the performance of Auditor-General functions. For that purpose:

- (a) references in that Division to an Auditor-General function are to be read as references to a function of the Independent Auditor under this Part; and
- (b) other references in that Division to the Auditor-General are to be read as references to the Independent Auditor.

48 Confidentiality of information

- (1) If a person has obtained information in the course of performing a function under this Part, the person must not disclose the information except in the course of performing a function under this Part.

Penalty: Imprisonment for 2 years.

Note: Chapter 2 of the *Criminal Code* sets out the general principles of criminal responsibility.

- (2) Subsection (1) does not prevent the Independent Auditor from disclosing particular information to the Commissioner of the Australian Federal Police if the Independent Auditor is of the opinion that the disclosure is in the public interest.

49 Indemnity

- (1) The Commonwealth must indemnify a person for any liability that the person incurs for an act or omission of the person in the course of performing a function under this Part.

Section 49

- (2) The indemnity does not apply if the liability arose from an act or omission in bad faith.

Part 8—Miscellaneous

50 Guaranteed availability of parliamentary appropriations

- (1) There is payable to the Audit Office such money as is appropriated by the Parliament for the purposes of the Audit Office.
- (2) The Finance Minister may give directions about the amounts in which, and the times at which, money payable under subsection (1) is to be paid to the Audit Office.
- (3) If a direction under subsection (2) is given in writing, the direction is not a legislative instrument.
- (4) A provision of an Appropriation Act that authorises the Finance Minister to determine that a departmental item of a Commonwealth entity is to be reduced does not apply in relation to a departmental item of the Audit Office.
- (5) A provision of an Appropriation Act that has the effect of reducing an administered item of a Commonwealth entity does not apply in relation to an administered item of the Audit Office.

51 Auditor-General may approve expenditure

The Auditor-General has authority to approve a proposal to spend money under an appropriation for the Audit Office.

Note: The Auditor-General's power under this section may be delegated under section 29.

53 Joint Committee of Public Accounts and Audit may request draft estimates for Audit Office

- (1) The Joint Committee of Public Accounts and Audit may request the Auditor-General to submit to the Committee draft estimates for the Audit Office for a financial year before the annual Commonwealth budget for that financial year.

Section 54

- (2) The Auditor-General must comply with the request in time to allow the Committee to consider the draft estimates and make recommendations on them before the budget.

Note: For the Committee's powers to consider draft estimates and make recommendations, see paragraphs 8(1)(j) and (l) of the *Public Accounts and Audit Committee Act 1951*.

54 Provision of information to the Minister or the Finance Minister

- (1) This section applies to a requirement under paragraph 19(1)(b) of the *Public Governance, Performance and Accountability Act 2013* for the Auditor-General to give the Minister or the Finance Minister reports, documents or information.

Note: Section 19 of the *Public Governance, Performance and Accountability Act 2013* deals with the duty of the accountable authority of a Commonwealth entity to keep the responsible Minister and Finance Minister informed in relation to the activities of the entity and any of its subsidiaries.

- (2) To be effective, the requirement must be in writing.
- (3) The Minister or the Finance Minister must, as soon as practicable, report to the Joint Committee of Public Accounts and Audit the fact that the requirement has been made and the reasons for making it.
- (4) The requirement must be disclosed in the annual report prepared by the Auditor-General under section 28 of this Act for the financial year.

55 Indemnity

- (1) The Commonwealth must indemnify a person for any liability that the person incurs for an act or omission of the person in the course of performing an Auditor-General function.
- (2) The indemnity does not apply if the liability arose from an act or omission in bad faith.

- (3) The indemnity does not cover a liability of a person to the extent to which the person is entitled to be indemnified for the liability by a person other than the Commonwealth, whether under a contract of insurance or otherwise.

56 Modifications of Act for intelligence or security agency etc.

- (1) The application of this Act to:
- (a) an intelligence or security agency; or
 - (b) a company that is conducted for the purposes of an intelligence or security agency;
- is subject to any modifications that are prescribed by the regulations.
- (2) Modifications prescribed by regulations under subsection (1) may impose additional obligations, and may provide for contravention of such an obligation to be an offence punishable by a fine of up to 10 penalty units.

Note: Section 4AA of the *Crimes Act 1914* sets the current value of a penalty unit.

- (3) In this section:

intelligence or security agency has the meaning given by section 85ZL of the *Crimes Act 1914*.

56A Constitutional safety net

- (1) If a provision of this Act:
- (a) would, apart from this subsection, have an application (an *invalid application*) in relation to:
 - (i) one or more particular persons, things, matters, places, circumstances or cases; or
 - (ii) one or more classes (however defined or determined) of persons, things, matters, places, circumstances or cases; because of which the provision exceeds the Commonwealth's legislative power; and

Section 57

- (b) also has at least one application (a *valid application*) in relation to:
- (i) one or more particular persons, things, matters, places, circumstances or cases; or
 - (ii) one or more classes (however defined or determined) of persons, things, matters, places, circumstances or cases; that, if it were the provision's only application, would be within the Commonwealth's legislative power;
- it is the Parliament's intention that the provision is not to have the invalid application, but is to have every valid application.
- (2) This Act does not enable a power to be exercised to the extent that it would impair the capacity of a State to exercise its constitutional powers.

57 Regulations

The Governor-General may make regulations prescribing matters:

- (a) required or permitted by this Act to be prescribed; or
- (b) necessary or convenient to be prescribed for carrying out or giving effect to this Act.

Schedule 1—Appointment, conditions of appointment etc. for Auditor-General

Note: See section 9.

1 Appointment of Auditor-General

- (1) The Auditor-General is to be appointed by the Governor-General, on the recommendation of the Minister, for a term of 10 years.

Note: The effect of section 19 of the *Acts Interpretation Act 1901* is that “the Minister” refers to the Minister who administers this clause. The administration of Acts or particular provisions of Acts is allocated by Administrative Arrangements Orders made by the Governor-General.

- (2) The Auditor-General holds office on a full-time basis.
- (3) For the purposes of the *Superannuation Act 1976* and the Trust Deed under the *Superannuation Act 1990*, the minimum retiring age for the Auditor-General is 55. However, if the instrument of appointment specifies a younger age, then the younger age applies.
- (4) A person cannot be appointed as Auditor-General if the person has previously been appointed as Auditor-General under this Act or under the *Audit Act 1901*.

2 Minister must refer recommendation for appointment of Auditor-General to the Joint Committee of Public Accounts and Audit

- (1) The Minister must not make a recommendation to the Governor-General under clause 1 unless:
- (a) the Minister has referred the proposed recommendation to the Joint Committee of Public Accounts and Audit for approval; and
 - (b) the Committee has approved the proposal.

Clause 3

- (2) A referral under paragraph (1)(a) must be in writing and may be withdrawn by the Minister at any time.

Note: Section 8A of the *Public Accounts and Audit Committee Act 1951* deals with how the Joint Committee of Public Accounts and Audit approves proposals.

3 Remuneration of Auditor-General

- (1) The Auditor-General is to be paid the remuneration that is determined by the Remuneration Tribunal. However, if no determination of that remuneration by the Tribunal is in operation, the Auditor-General is to be paid the remuneration that is prescribed by the regulations.
- (2) The Auditor-General is to be paid such allowances as are prescribed by the regulations.
- (3) This clause has effect subject to the *Remuneration Tribunal Act 1973*.
- (4) The Consolidated Revenue Fund is appropriated for payments under this clause.

4 Recreation leave etc.

- (1) The Auditor-General has such recreation leave entitlements as are determined by the Remuneration Tribunal.
- (2) The Minister may grant the Auditor-General other leave of absence on such terms and conditions as the Minister determines. The terms and conditions may include terms and conditions relating to remuneration.

5 Resignation

The Auditor-General may resign by giving the Governor-General a signed resignation notice.

6 Removal from office etc.

- (1) The Governor-General may remove the Auditor-General from office if each House of the Parliament, in the same session of the Parliament, presents an address to the Governor-General praying for the removal of the Auditor-General on the ground of misbehaviour or physical or mental incapacity.
- (2) The Governor-General must remove the Auditor-General from office if the Auditor-General does any of the following:
 - (a) becomes bankrupt;
 - (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors;
 - (c) compounds with his or her creditors;
 - (d) assigns his or her remuneration for the benefit of his or her creditors.
- (3) If the Auditor-General is:
 - (a) an eligible employee for the purposes of the *Superannuation Act 1976*; or
 - (b) a member of the superannuation scheme established by the Trust Deed under the *Superannuation Act 1990*; or
 - (c) an ordinary employer-sponsored member of PSSAP, within the meaning of the *Superannuation Act 2005*;the Governor-General may, with the consent of the Auditor-General, retire the Auditor-General from office on the ground of physical or mental incapacity.
- (4) For the purposes of the *Superannuation Act 1976*, the Auditor-General is taken to have been retired from office on the ground of invalidity if:
 - (a) the Auditor-General is removed or retired from office on the ground of physical or mental incapacity; and
 - (b) CSC gives a certificate under section 54C of that Act.
- (5) For the purposes of the *Superannuation Act 1990*, the Auditor-General is taken to have been retired from office on the ground of invalidity if:

Clause 7

- (a) the Auditor-General is removed or retired from office on the ground of physical or mental incapacity; and
 - (b) CSC gives a certificate under section 13 of that Act.
- (6) For the purposes of the *Superannuation Act 2005*, the Auditor-General is taken to have been retired from office on the ground of invalidity if:
- (a) the Auditor-General is removed or retired from office on the ground of physical or mental incapacity; and
 - (b) CSC gives an approval and certificate under section 43 of that Act.
- (7) Section 30 of the *Public Governance, Performance and Accountability Act 2013* (which deals with terminating the appointment of an accountable authority, or a member of an accountable authority, for contravening general duties of officials) does not apply in relation to the Auditor-General.

7 Acting appointment

- (1) The Minister may appoint a person to act as Auditor-General:
- (a) if there is a vacancy in the office of Auditor-General, whether or not an appointment has previously been made to the office; or
 - (b) during any period, or during all periods, when the Auditor-General is absent from duty or from Australia or is, for any reason, unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

- (3) A person acting under this section is entitled to the same remuneration and allowances as apply to the office of Auditor-General. The Consolidated Revenue Fund is appropriated for the payment of the remuneration and allowances.

Schedule 2—Appointment, conditions of appointment etc. for Independent Auditor

Note: See section 42.

1 Appointment of Independent Auditor

- (1) The Independent Auditor is to be appointed by the Governor-General, on the recommendation of the Minister, for a term of at least 3 years and not more than 5 years.
- (2) The Independent Auditor holds office on a part-time basis.

Note: The effect of section 19 of the *Acts Interpretation Act 1901* is that “the Minister” refers to the Minister who administers this clause. The administration of Acts or particular provisions of Acts is allocated by Administrative Arrangements Orders made by the Governor-General.

2 Minister must refer recommendation for appointment of Independent Auditor to the Joint Committee of Public Accounts and Audit

- (1) The Minister must not make a recommendation to the Governor-General under clause 1 unless:
 - (a) the Minister has referred the proposed recommendation to the Joint Committee of Public Accounts and Audit for approval; and
 - (b) the Committee has approved the proposal.
- (2) A referral under paragraph (1)(a) must be in writing and may be withdrawn by the Minister at any time.

Note: Section 8A of the *Public Accounts and Audit Committee Act 1951* deals with how the Joint Committee of Public Accounts and Audit approves proposals.

Clause 3

3 Remuneration of Independent Auditor

- (1) The Independent Auditor is to be paid the fees and allowances that are determined by the Minister.
- (2) The *Remuneration Tribunal Act 1973* does not apply to the office of Independent Auditor.

4 Resignation

The Independent Auditor may resign by giving the Governor-General a signed resignation notice.

5 Removal from office etc.

- (1) The Governor-General may remove the Independent Auditor from office if each House of the Parliament, in the same session of the Parliament, presents an address to the Governor-General praying for the removal of the Independent Auditor on the ground of misbehaviour or physical or mental incapacity.
- (2) The Governor-General must remove the Independent Auditor from office if the Independent Auditor does any of the following:
 - (a) becomes bankrupt;
 - (b) applies to take the benefit of any law for the relief of bankrupt or insolvent debtors;
 - (c) compounds with his or her creditors;
 - (d) assigns his or her remuneration for the benefit of his or her creditors.
- (3) If the Independent Auditor is:
 - (a) an eligible employee for the purposes of the *Superannuation Act 1976*; or
 - (b) a member of the superannuation scheme established by the Trust Deed under the *Superannuation Act 1990*; or
 - (c) an ordinary employer-sponsored member of PSSAP, within the meaning of the *Superannuation Act 2005*;

the Governor-General may, with the consent of the Independent Auditor, retire the Independent Auditor from office on the ground of physical or mental incapacity.

- (4) For the purposes of the *Superannuation Act 1976*, the Independent Auditor is taken to have been retired from office on the ground of invalidity if:
- (a) the Independent Auditor is removed or retired from office on the ground of physical or mental incapacity; and
 - (b) CSC gives a certificate under section 54C of that Act.
- (5) For the purposes of the *Superannuation Act 1990*, the Independent Auditor is taken to have been retired from office on the ground of invalidity if:
- (a) the Independent Auditor is removed or retired from office on the ground of physical or mental incapacity; and
 - (b) CSC gives a certificate under section 13 of that Act.
- (6) For the purposes of the *Superannuation Act 2005*, the Independent Auditor is taken to have been retired from office on the ground of invalidity if:
- (a) the Independent Auditor is removed or retired from office on the ground of physical or mental incapacity; and
 - (b) CSC gives an approval and certificate under section 43 of that Act.

6 Acting appointment

The Minister may appoint a person to act as Independent Auditor:

- (a) if there is a vacancy in the office of Independent Auditor, whether or not an appointment has previously been made to the office; or
- (b) during any period, or during all periods, when the Independent Auditor is unable to perform the duties of the office.

Note: For rules that apply to acting appointments, see section 33A of the *Acts Interpretation Act 1901*.

Endnotes

Endnote 1—About the endnotes

Endnotes

Endnote 1—About the endnotes

The endnotes provide information about this compilation and the compiled law.

The following endnotes are included in every compilation:

Endnote 1—About the endnotes

Endnote 2—Abbreviation key

Endnote 3—Legislation history

Endnote 4—Amendment history

Abbreviation key—Endnote 2

The abbreviation key sets out abbreviations that may be used in the endnotes.

Legislation history and amendment history—Endnotes 3 and 4

Amending laws are annotated in the legislation history and amendment history.

The legislation history in endnote 3 provides information about each law that has amended (or will amend) the compiled law. The information includes commencement details for amending laws and details of any application, saving or transitional provisions that are not included in this compilation.

The amendment history in endnote 4 provides information about amendments at the provision (generally section or equivalent) level. It also includes information about any provision of the compiled law that has been repealed in accordance with a provision of the law.

Editorial changes

The *Legislation Act 2003* authorises First Parliamentary Counsel to make editorial and presentational changes to a compiled law in preparing a compilation of the law for registration. The changes must not change the effect of the law. Editorial changes take effect from the compilation registration date.

If the compilation includes editorial changes, the endnotes include a brief outline of the changes in general terms. Full details of any changes can be obtained from the Office of Parliamentary Counsel.

Misdescribed amendments

A misdescribed amendment is an amendment that does not accurately describe the amendment to be made. If, despite the misdescription, the amendment can

Endnote 1—About the endnotes

be given effect as intended, the amendment is incorporated into the compiled law and the abbreviation “(md)” added to the details of the amendment included in the amendment history.

If a misdescribed amendment cannot be given effect as intended, the abbreviation “(md not incorp)” is added to the details of the amendment included in the amendment history.

Endnotes

Endnote 2—Abbreviation key

Endnote 2—Abbreviation key

ad = added or inserted	o = order(s)
am = amended	Ord = Ordinance
amdt = amendment	orig = original
c = clause(s)	par = paragraph(s)/subparagraph(s) /sub-subparagraph(s)
C[x] = Compilation No. x	pres = present
Ch = Chapter(s)	prev = previous
def = definition(s)	(prev...) = previously
Dict = Dictionary	Pt = Part(s)
disallowed = disallowed by Parliament	r = regulation(s)/rule(s)
Div = Division(s)	reloc = relocated
ed = editorial change	renum = renumbered
exp = expires/expired or ceases/ceased to have effect	rep = repealed
F = Federal Register of Legislation	rs = repealed and substituted
gaz = gazette	s = section(s)/subsection(s)
LA = <i>Legislation Act 2003</i>	Sch = Schedule(s)
LIA = <i>Legislative Instruments Act 2003</i>	Sdiv = Subdivision(s)
(md) = misdescribed amendment can be given effect	SLI = Select Legislative Instrument
(md not incorp) = misdescribed amendment cannot be given effect	SR = Statutory Rules
mod = modified/modification	Sub-Ch = Sub-Chapter(s)
No. = Number(s)	SubPt = Subpart(s)
	<u>underlining</u> = whole or part not commenced or to be commenced

Endnote 3—Legislation history

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Auditor-General Act 1997	151, 1997	24 Oct 1997	1 Jan 1998 (s 2)	
Public Employment (Consequential and Transitional) Amendment Act 1999	146, 1999	11 Nov 1999	Sch 1 (items 104–106): 5 Dec 1999 (s 2(1) and gaz 1999, No S584)	—
Criminal Code Amendment (Theft, Fraud, Bribery and Related Offences) Act 2000	137, 2000	24 Nov 2000	Sch 2 (items 30–32, 418, 419): 24 May 2001 (s 2(3))	Sch 2 (items 418, 419)
Corporations (Repeals, Consequential and Transitionals) Act 2001	55, 2001	28 June 2001	s 4–14 and Sch 3 (items 36–40): 15 July 2001 (s 2(3) and gaz 2001, No S285)	s 4–14
Financial Framework Legislation Amendment Act (No. 1) 2007	166, 2007	25 Sept 2007	Sch 1 (items 1–8, 10, 13–16, 19, 21): 1 Jan 2008(s 2(1) items 2, 4, 6, 8, 10) Remainder: 25 Sept 2007 (s 2(1) items 1, 3, 5, 7, 9, 11)	Sch 1 (item 13(1))
Superannuation Legislation Amendment (Trustee Board and Other Measures) (Consequential Amendments) Act 2008	26, 2008	23 June 2008	Sch 1 (items 9–16): 23 June 2008 (s 2(1) item 2)	—
Auditor-General Amendment Act 2009	8, 2009	25 Feb 2009	25 Feb 2009 (s 2)	Sch 1 (items 29, 30)

Auditor-General Act 1997

53

Compilation No. 17

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Registered: 22/2/18

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Acts Interpretation Amendment Act 2011	46, 2011	27 June 2011	Sch 2 (items 77–83) and Sch 3 (items 10, 11): 27 Dec 2011 (s 2(1) items 3, 12)	Sch 3 (items 10, 11)
Superannuation Legislation (Consequential Amendments and Transitional Provisions) Act 2011	58, 2011	28 June 2011	Sch 1 (items 4–11): 1 July 2011 (s 2(1) item 2)	—
Auditor-General Amendment Act 2011	190, 2011	7 Dec 2011	8 Dec 2011 (s 2)	—
Financial Framework Legislation Amendment Act (No. 1) 2012	25, 2012	4 Apr 2012	Sch 1: 4 Oct 2012 (s 2(1) item 2)	Sch 1 (item 2)
Public Governance, Performance and Accountability (Consequential and Transitional Provisions) Act 2014	62, 2014	30 June 2014	Sch 4 (items 1–53, 57–64), Sch 6 (item 5) and Sch 14: 1 July 2014 (s 2(1) items 2, 6, 14)	Sch 4 (items 57–64) and Sch 14
as amended by Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 2 (items 7–9) and Sch 7: 14 Apr 2015 (s 2)	Sch 7

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
as amended by				
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 486): 5 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 495): 5 Mar 2016 (s 2(1) item 2)	—
Public Governance and Resources Legislation Amendment Act (No. 1) 2015	36, 2015	13 Apr 2015	Sch 6 (items 3, 4) and Sch 7: 14 Apr 2015 (s 2)	Sch 6 (item 4) and Sch 7
Norfolk Island Legislation Amendment Act 2015	59, 2015	26 May 2015	Sch 2 (items 61, 62): 1 July 2016 (s 2(1) item 5) Sch 2 (items 356–396): 18 June 2015 (s 2(1) item 6)	Sch 2 (items 356–396)
as amended by				
Territories Legislation Amendment Act 2016	33, 2016	23 Mar 2016	Sch 2: 24 Mar 2016 (s 2(1) item 2)	—
Acts and Instruments (Framework Reform) (Consequential Provisions) Act 2015	126, 2015	10 Sept 2015	Sch 1 (item 33): 5 Mar 2016 (s 2(1) item 2)	—

Endnotes

Endnote 3—Legislation history

Act	Number and year	Assent	Commencement	Application, saving and transitional provisions
Prime Minister and Cabinet Legislation Amendment (2017 Measures No. 1) Act 2018	2, 2018	20 Feb 2018	Sch 4: 21 Feb 2018 (s 2(1) item 1)	Sch 4 (item 5)

Endnote 4—Amendment history

Provision affected	How affected
Readers Guide.....	am No 8, 2009; No 62, 2014
Part 1	
s 3A.....	ad No 59, 2015
Part 2	
Part 2 heading.....	rs No 8, 2009
s 5.....	am No 55, 2001; No 8, 2009; Nos 58 and 190, 2011; No 62, 2014; No 59, 2015
s 6.....	rep No 8, 2009
Part 4	
Division 1	
Division 1 heading.....	rs No 62, 2014
s 11.....	rs No 62, 2014
s 12.....	rs No 62, 2014
s 13.....	rep No 62, 2014
s 14.....	am No 58, 2011
	rs No 62, 2014
	am No 2, 2018
Division 1A	
Division 1A.....	ad No 62, 2014
s 15.....	am No 8, 2009; No 190, 2011
	rs No 62, 2014
s 16.....	am No 8, 2009; No 190, 2011
	rs No 62, 2014
	am No 2, 2018
Division 2	
s 17.....	am No 8, 2009; No 190, 2011
	rs No 62, 2014
s 18.....	am No 8, 2009; No 190, 2011; No 62, 2014

Endnotes

Endnote 4—Amendment history

Provision affected	How affected
s 18A.....	ad No 190, 2011 rs No 62, 2014
s 18B.....	ad No 190, 2011 am No 62, 2014
s 19	am No 8, 2009; No 190, 2011 rs No 62, 2014
Division 2A	
Division 2A.....	ad No 190, 2011
s 19A.....	ad No 190, 2011 am No 62, 2014
Division 3	
s 20	am No 190, 2011
Division 4	
s 21	am No 55, 2001; No 190, 2011; No 25, 2012; No 62, 2014
Division 5	
s 23A.....	ad No 8, 2009 am No 190, 2011
s 24	am No 190, 2011; No 62, 2014
s 26	am No 55, 2001
s 28	rep No 62, 2014 ad No 2, 2018
s 29	am No 62, 2014
Part 5	
Division 1	
s 30	am No 190, 2011
s 31	am No 190, 2011
s 32	am No 8, 2009; No 62, 2014
s 33	am No 137, 2000; No 8, 2009; No 190, 2011; No 62, 2014;
s 34	rep No 137, 2000
s 35	am No 137, 2000

Endnote 4—Amendment history

Provision affected	How affected
Division 2	
s 36	am No 8, 2009; No 36, 2015
s 37	am No 8, 2009
Part 6	
s 38	am No 62, 2014
s 40	am No 146, 1999
Part 7	
Division 2	
s 44	rs No 62, 2014
s 45	am No 8, 2009
Division 3	
s 48	am No 8, 2009
Part 8	
s 50	rs No 62, 2014
s 52	rep No 166, 2007
s 54	am No 62, 2014; No 2, 2018
s 56	am No 46, 2011
s 56A.....	ad No 190, 2011
Schedule 1	
Schedule 1.....	am No 146, 1999; No 26, 2008; Nos 46 and 58, 2011; No 62, 2014; No 126, 2015
Schedule 2	
Schedule 2.....	am No 26, 2008; Nos 46 and 58, 2011; No 126, 2015