



Auditor-General Act 1997

No. 151, 1997



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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 ***General provisions about definitions and offences:*** This Part contains definitions of terms that are frequently used throughout this Act and general provisions about offences.
- 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.
- 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.

Related legislation

The following Acts are directly relevant to the operation or interpretation of this Act.

The *Commonwealth Authorities and Companies Act 1997* contains reporting, accountability and other rules for Commonwealth authorities and Commonwealth companies.

The *Financial Management and Accountability Act 1997* establishes a framework for the proper management of public money and public property (broadly, money or property that is owned or held by the Commonwealth).

The *Acts Interpretation Act 1901* contains many general rules about the meaning or effect of various terms and provisions that are commonly used in Commonwealth Acts.

This list is not exhaustive. Acts other than those listed above might also affect the operation or interpretation of this Act.

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Auditor-General Act 1997

No. 151, 1997

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

[Assented to 24 October 1997]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

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

Part 1 Preliminary

Section 2

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.

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—General provisions about definitions and offences

5 Definitions

- (1) In this Act, unless the contrary intention appears:

Agency has the same meaning as in the *Financial Management and Accountability Act 1997*.

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 Law of a State or Territory.

Chief Executive has the same meaning as in the *Financial Management and Accountability Act 1997*.

Commonwealth authority has the same meaning as in the *Commonwealth Authorities and Companies Act 1997*.

Note: Subsection (2) is also relevant to determining whether a body is a Commonwealth authority for the purposes of this Act.

Commonwealth company has the same meaning as in the *Commonwealth Authorities and Companies Act 1997*.

Corporations Law has the same meaning as in the *Corporations Act 1989*.

Finance Minister means the Minister who is the Finance Minister within the meaning of the *Financial Management and Accountability Act 1997*.

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FMA official means a person who is an official within the meaning of the *Financial Management and Accountability Act 1997*.

GBE or **government business enterprise** has the same meaning as in the *Commonwealth Authorities and Companies Act 1997*.

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.

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.

responsible Minister means:

- (a) in relation to an Agency—the Minister who is responsible for the Agency;
- (b) in relation to a Commonwealth authority or any of its subsidiaries—the Minister who is responsible for the authority;
- (c) in relation to a Commonwealth company or any of its subsidiaries:
 - (i) the Minister who is prescribed by regulations under the *Commonwealth Authorities and Companies Act 1997* as the Minister responsible for the Commonwealth company; or
 - (ii) if no Minister is prescribed—the Minister who is responsible for the Commonwealth company.

subsidiary, in relation to a Commonwealth authority or Commonwealth company, means an entity that is controlled by the Commonwealth authority or Commonwealth company. For this purpose, *entity* and *control* have the same meanings as in the accounting standard that applies for the purpose of deciding whether a company has to prepare consolidated financial statements under the Corporations Law.

- (2) The issue of whether a body corporate is a Commonwealth authority for the purpose of this Act is to be determined by reference to the definition in section 7 of the *Commonwealth Authorities and Companies Act 1997* and is not affected by any provision in a law that states that the body corporate is not a Commonwealth authority for the purposes of that Act.

6 Offences

- (1) Chapter 2 of the *Criminal Code* applies to all offences against this Act.
- (2) A maximum penalty that is specified:
- (a) at the foot of a section of this Act (other than a section that is divided into subsections); or
 - (b) at the foot of a subsection of this Act;
- indicates that a person who contravenes the section or subsection is guilty of an offence against the section or subsection that is punishable, on conviction, by a penalty up to that maximum.

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

Note 2: If the specified penalty is imprisonment only, section 4B of the *Crimes Act 1914* allows the court to impose a fine instead of imprisonment or in addition to imprisonment.

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
- (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—Statement audits

11 Agencies

The Auditor-General's functions include auditing financial statements of Agencies in accordance with the *Financial Management and Accountability Act 1997*.

12 Commonwealth authorities and subsidiaries

The Auditor-General's functions include auditing financial statements of Commonwealth authorities and their subsidiaries in accordance with the *Commonwealth Authorities and Companies Act 1997*.

13 Commonwealth companies and subsidiaries

The Auditor-General's functions include auditing financial statements of Commonwealth companies and their subsidiaries in accordance with the *Commonwealth Authorities and Companies Act 1997*.

14 Audit fees for statement audits

- (1) A person or body whose financial statements are audited as mentioned in section 12 or 13 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.

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- (3) The Auditor-General, on behalf of the Commonwealth, may recover unpaid fees as a debt in a court of competent jurisdiction.
- (4) In the annual report 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

15 Agencies

- (1) The Auditor-General may at any time conduct a performance audit of an Agency.
- (2) As soon as practicable after completing the report on the audit, the Auditor-General must:
 - (a) cause a copy to be tabled in each House of the Parliament; and
 - (b) give a copy to the responsible Minister.
- (3) For the purposes of this section, an Agency is taken not to include any persons who are employed or engaged under the *Members of Parliament (Staff) Act 1984* and who are allocated to the Agency by regulations for the purposes of the definition of **Agency** in section 5 of the *Financial Management and Accountability Act 1997*.

16 Commonwealth authorities and subsidiaries

- (1) The Auditor-General may at any time conduct a performance audit of a Commonwealth authority (other than a GBE), or of any of its subsidiaries.
 - (2) The Auditor-General may conduct a performance audit of a Commonwealth authority that is a GBE, or of any of its subsidiaries, if the responsible Minister, the Finance Minister or the Joint Committee of Public Accounts and Audit requests the audit. The Finance Minister is to consult with the responsible Minister before making a request.
 - (3) Nothing prevents the Auditor-General from asking a responsible Minister, the Finance Minister or the Joint Committee of Public Accounts and Audit to make a particular request under subsection (2).
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- (4) As soon as practicable after completing the report on an audit under this section, the Auditor-General must:
- (a) cause a copy to be tabled in each House of the Parliament;
and
 - (b) give a copy to the responsible Minister.

17 Commonwealth companies and subsidiaries

- (1) The Auditor-General may at any time conduct a performance audit of a Commonwealth company (other than a GBE), or of any of its subsidiaries.
- (2) The Auditor-General may conduct a performance audit of a wholly owned Commonwealth company that is a GBE, or of any of its subsidiaries, if the responsible Minister, the Finance Minister or the Joint Committee of Public Accounts and Audit requests the audit. The Finance Minister is to consult with the responsible Minister before making a request.
- (3) Nothing prevents the Auditor-General from asking a responsible Minister, the Finance Minister or 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 to be tabled in each House of the Parliament;
and
 - (b) give a copy to the responsible Minister.
- (5) In this section:

wholly-owned Commonwealth company has the same meaning as in the *Commonwealth Authorities and Companies Act 1997*.

Section 18

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 Agency, 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 to be tabled in each House of the Parliament; and
 - (b) give a copy to the Finance Minister.
- (3) The Auditor-General may give a copy of the report to any other Minister who, in the Auditor-General's opinion, has a special interest in the report.
- (4) In this section:

Commonwealth public sector means Agencies, Commonwealth authorities (other than GBEs) and their subsidiaries and Commonwealth companies (other than GBEs) and their subsidiaries.

19 Comments on proposed report

- (1) After preparing a proposed report on an audit of an Agency under section 15, the Auditor-General must give a copy of the proposed report to the Chief Executive of the Agency.
 - (2) After preparing a proposed report on an audit of a body under section 16 or 17, the Auditor-General must give a copy of the proposed report to an officer of the body.
 - (3) After preparing a proposed report on an audit under section 15, 16, 17 or 18, the Auditor-General may give a copy of the proposed report to any person who, in the Auditor-General's opinion, has a special interest in the report.
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- (4) If the recipient of the proposed report gives written comments to the Auditor-General within 28 days after receiving the proposed report, the Auditor-General must consider those comments before preparing a final report.

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.

Division 4—Functions under other Acts

21 Acting as auditor under the Corporations Law

- (1) The Auditor-General may accept appointment under the Corporations Law of a State or Territory as the auditor of:
 - (a) a subsidiary of a Commonwealth authority; or
 - (b) a Commonwealth company; or
 - (c) any other company in which the Commonwealth has a controlling interest.
- (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.

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 referred to in Division 1 or 2;
- (b) an audit under Division 2 of Part 7;
- (c) an audit under section 56 of the *Financial Management and Accountability Act 1997*.

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 Law of a State or Territory.

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

As soon as practicable after 30 June in each year, the Auditor-General must:

- (a) prepare a report on the operations of the Audit Office during that year; and
- (b) cause a copy of the report to be tabled in each House of the Parliament.

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 FMA official.

Part 4 Main functions and powers of the Auditor-General

Division 5 Miscellaneous functions and powers

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- (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

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 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.

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:

- (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;

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- (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.

Maximum 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.
- (5) In this section:

authorised official means an FMA official 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 Commonwealth authority or a Commonwealth company; 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.
- (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.

Maximum 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.

- (4) In this section:

authorised official means an FMA official who is authorised by the Auditor-General, in writing, to exercise powers or perform functions under this section.

premises includes any land or place.

34 False statements etc.

- (1) A person must not make a statement to an audit official that the person knows is false or misleading in a material particular.

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Maximum penalty: Imprisonment for 12 months.

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

- (2) If a person gives an audit official a document that the person knows is false or misleading in a material particular, the person must identify the particular.

Maximum penalty: Imprisonment for 12 months.

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

- (3) In this section:

audit official means a person performing, or assisting in the performance of, an Auditor-General function.

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 or 34).

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.

Maximum 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.

- (3) A person who receives a proposed report under section 19 must not disclose any of the information in the report except with the consent of the Auditor-General.

Maximum penalty: Imprisonment for 2 years.

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

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

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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;
 - (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 decides to omit 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 decides:
- (a) not to prepare a public report; or
 - (b) to omit 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 the responsible Minister or Ministers (if any).

- (6) In this section:

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.

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 appointed or employed under the *Public Service Act 1922*.

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

- (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 49 of the *Financial Management and Accountability Act 1997*, the Auditor-General must give the statements to the Independent Auditor.
- (2) The Independent Auditor must audit the statements in accordance with section 57 of the *Financial Management and Accountability Act 1997*. For this purpose, references in that section to the Auditor-General are to be read as 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.

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.

Maximum 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.

- (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

The Finance Minister must issue drawing rights under section 27 of the *Financial Management and Accountability Act 1997* that cover in full the amounts that the Parliament appropriates for the purposes 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.

52 Agreements for “net appropriations”

- (1) Any net appropriation agreement made by the Finance Minister in relation to the Audit Office must be made with the Auditor-General (whether or not the Finance Minister is responsible for the relevant appropriation items).
- (2) The Finance Minister must not cancel or vary a net appropriation agreement made with the Auditor-General unless the Auditor-General consents.
- (3) In this section:

net appropriation agreement means an agreement made under section 31 of the *Financial Management and Accountability Act 1997*.

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.
- (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 Finance Minister

- (1) This section applies to a requirement under section 50 of the *Financial Management and Accountability Act 1997* for the Auditor-General to give the Finance Minister financial statements or information.
- (2) To be effective, the requirement must be in writing.
- (3) 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 under section 28 for the year in which the requirement was made.

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.
-

Section 56

- (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*.

modifications includes additions, omissions and substitutions.

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 19A 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) Subject to section 87E of the *Public Service Act 1922*, 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*;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) the CSS Board gives a certificate under section 54C of the *Superannuation Act 1976*.
- (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) the PSS Board gives a certificate under section 13 of the *Superannuation Act 1990*.

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.
- (2) Anything done by or in relation to a person purporting to act under this section is not invalid merely because:
 - (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or
 - (d) the occasion to act had not arisen or had ceased.
- (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.

Note: Section 33A of the *Acts Interpretation Act 1901* has rules that apply to acting appointments.

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 19A 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*;

Clause 6

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) the CSS Board gives a certificate under section 54C of the *Superannuation Act 1976*.
- (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) the PSS Board gives a certificate under section 13 of the *Superannuation Act 1990*.

6 Acting appointment

- (1) 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.
- (2) Anything done by or in relation to a person purporting to act under this section is not invalid merely because:
- (a) the occasion for the appointment had not arisen; or
 - (b) there was a defect or irregularity in connection with the appointment; or
 - (c) the appointment had ceased to have effect; or

Clause 6

(d) the occasion to act had not arisen or had ceased.

Note: Section 33A of the *Acts Interpretation Act 1901* has rules that apply to acting appointments. These rules include a power for the Minister to determine remuneration and allowances.

[Minister's second reading speech made in—
House of Representatives on 12 December 1996
Senate on 15 March 1997]

(203/96)