



# **Auditor-General Amendment Act 2009**

**No. 8, 2009**

**An Act to amend the *Auditor-General Act 1997*, and  
for related purposes**

Note: An electronic version of this Act is available in ComLaw (<http://www.comlaw.gov.au/>)



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## **An Act to amend the *Auditor-General Act 1997*, and for related purposes**

[Assented to 25 February 2009]

The Parliament of Australia enacts:

### **1 Short title**

This Act may be cited as the *Auditor-General Amendment Act 2009*.

### **2 Commencement**

This Act commences on the day on which it receives the Royal Assent.

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### **3 Schedule(s)**

Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.

## **Schedule 1—Amendments relating to reporting requirements**

### ***Auditor-General Act 1997***

#### **1 Subsection 5(1)**

Insert:

*director*, in relation to a Commonwealth company or a subsidiary of a Commonwealth company, has the same meaning as in the *Commonwealth Authorities and Companies Act 1997*.

#### **2 Subsection 5(1)**

Insert:

*officer*, in relation to a Commonwealth authority or a subsidiary of a Commonwealth authority, has the same meaning as in the *Commonwealth Authorities and Companies Act 1997*.

#### **3 Subsection 5(1)**

Insert:

*senior manager*, in relation to a Commonwealth company or a subsidiary of a Commonwealth company, has the same meaning as in the *Commonwealth Authorities and Companies Act 1997*.

#### **4 Paragraphs 15(2)(a) and (b)**

After “a copy”, insert “of the report”.

#### **5 At the end of subsection 15(2)**

Add:

; and (c) give a copy of the report to the Chief Executive of the Agency.

#### **6 After subsection 15(2)**

Insert:

(2A) 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.

**7 Paragraphs 16(4)(a) and (b)**

After "a copy", insert "of the report".

**8 At the end of subsection 16(4)**

Add:

; and (c) give a copy of the report to an officer of the Commonwealth authority or the subsidiary of the Commonwealth authority in relation to which the audit was conducted.

**9 At the end of section 16**

Add:

(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.

**10 Paragraphs 17(4)(a) and (b)**

After "a copy", insert "of the report".

**11 At the end of subsection 17(4)**

Add:

; and (c) give a copy of the report to a director or senior manager of the Commonwealth company or the subsidiary of the Commonwealth company in relation to which the audit was conducted.

**12 After subsection 17(4)**

Insert:

(4A) 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.

**13 Paragraphs 18(2)(a) and (b)**

After "a copy", insert "of the report".

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**14 At the end of subsection 18(2)**

Add:

- ; and (c) give a copy of the report to each responsible Minister; and
- (d) to the extent that the report relates to the operations of an Agency—give a copy of the report to the Chief Executive of the Agency; and
- (e) to the extent that the report relates to the operations of a body that is a Commonwealth authority or a subsidiary of a Commonwealth authority—give a copy of the report to an officer of the Commonwealth authority or the subsidiary of the Commonwealth authority; and
- (f) to the extent that the report relates to the operations of a body that is a Commonwealth company or a subsidiary of a Commonwealth company—give a copy of the report to a director or senior manager of the Commonwealth company or the subsidiary of the Commonwealth company; and
- (g) to the extent that the report relates to the operations of a person—give a copy of the report to the person.

**15 Subsection 18(3)**

Repeal the subsection, substitute:

- (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.

**16 Subsection 19(2)**

Repeal the subsection, substitute:

- (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:
  - (a) if the body is a Commonwealth authority or a subsidiary of a Commonwealth authority—an officer of the Commonwealth authority or the subsidiary of the Commonwealth authority; or
  - (b) if the body is a Commonwealth company or a subsidiary of a Commonwealth company—a director or senior manager of

the Commonwealth company or the subsidiary of the Commonwealth company.

**17 Subsection 19(3)**

Omit all the words after “the Auditor-General”, substitute “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”.

**18 Subsection 19(4)**

After “If the recipient of the proposed report”, insert “, or the extract from the proposed report,”.

**19 Subsection 19(4)**

After “after receiving the proposed report,”, insert “or the extract from the proposed report,”.

**20 At the end of section 19**

Add:

- (5) The Auditor-General must, in the final report, include all written comments received under subsection (4).

**21 After section 23**

Insert:

**23A Provision of information for performance audits**

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 a performance audit under Division 2, or a performance audit under an arrangement entered into under Division 3.

**22 After subsection 36(2)**

Insert:

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(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*.

### **23 Subsection 36(3)**

After “A person who receives a proposed report”, insert “, or an extract from a proposed report,”.

### **24 Subsection 36(3)**

After “in the report”, insert “, or the extract,”.

### **25 Subsection 37(4)**

Omit “decides to omit”, substitute “omits”.

### **26 Subsection 37(5)**

Repeal the subsection, substitute:

- (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.

## **27 Subsection 37(6)**

Insert:

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

## **28 At the end of section 45**

Add:

- (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.

## **29 Application—general**

The amendments made by this Schedule (other than items 21 and 22) apply to reports and proposed reports completed on or after the commencement of the Schedule, regardless of whether work on the report started before or after that commencement.

## **30 Application—items 21 and 22**

The amendments made by items 21 and 22 of this Schedule apply to the use or disclosure of information on or after the commencement of those items.

## **Schedule 2—Amendments relating to penalties**

### *Auditor-General Act 1997*

#### **1 Readers guide (second paragraph under the heading “Summary of this Act”)**

Repeal the paragraph, substitute:

Part 2 *Interpretation*: This Part contains definitions of terms that are frequently used throughout this Act.

#### **2 Part 2 (heading)**

Repeal the heading, substitute:

### **Part 2—Interpretation**

#### **3 Section 6**

Repeal the section.

#### **4 Subsection 32(3) (penalty)**

Omit “Maximum penalty”, substitute “Penalty”.

#### **5 Subsection 33(3) (penalty)**

Omit “Maximum penalty”, substitute “Penalty”.

#### **6 Subsection 36(1) (penalty)**

Omit “Maximum penalty”, substitute “Penalty”.

#### **7 Subsection 36(3) (penalty)**

Omit “Maximum penalty”, substitute “Penalty for a contravention of this subsection”.

#### **8 Subsection 48(1) (penalty)**

Omit “Maximum penalty”, substitute “Penalty”.

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*[Minister's second reading speech made in—  
Senate on 3 December 2008  
House of Representatives on 12 February 2009]*

(237/08)

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