



Auditor-General Amendment Act 2011

No. 190, 2011

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

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

[Assented to 7 December 2011]

The Parliament of Australia enacts:

Part 1—Preliminary

1 Short title

This Act may be cited as the *Auditor-General Amendment Act 2011*.

2 Commencement

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

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Each Act that is specified in a Schedule to this Act is amended or repealed as set out in the applicable items in the Schedule concerned, and any other item in a Schedule to this Act has effect according to its terms.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

Auditor-General Act 1997

1 Subsection 5(1)

Insert:

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

2 Subsection 5(1)

Insert:

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

3 Subsection 5(1)

Insert:

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

4 Subsection 5(1) (at the end of the definition of *responsible Minister*)

Add:

; (d) in relation to an audit of a Commonwealth partner—the Minister responsible for achieving the Commonwealth purpose concerned.

5 Subsection 5(1) (definition of *senior manager*)

Repeal the definition, substitute:

senior manager:

(a) 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*; and

(b) in relation to a Commonwealth partner who is an individual—means the individual.

6 Subsection 5(1)

Insert:

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

7 At the end of subsection 15(2)

Add:

; and (d) to the extent that the report relates to the operations of a Commonwealth partner—give a copy of the report to a director or senior manager of the Commonwealth partner.

8 Subsection 16(2)

Omit “the responsible Minister, the Finance Minister or”.

9 Subsection 16(2)

Omit “The Finance Minister is to consult with the responsible Minister before making a request.”.

10 Subsection 16(3)

Omit “a responsible Minister, the Finance Minister or”.

11 At the end of subsection 16(4)

Add:

; and (d) to the extent that the report relates to the operations of a Commonwealth partner—give a copy of the report to a director or senior manager of the Commonwealth partner.

12 Subsection 17(2)

Omit “the responsible Minister, the Finance Minister or”.

13 Subsection 17(2)

Omit “The Finance Minister is to consult with the responsible Minister before making a request.”.

14 Subsection 17(3)

Omit “a responsible Minister, the Finance Minister or”.

15 At the end of subsection 17(4)

Add:

; and (d) to the extent that the report relates to the operations of a Commonwealth partner—give a copy of the report to a director or senior manager of the Commonwealth partner.

16 Subsection 17(5)

Repeal the subsection.

17 Paragraph 18(2)(g)

After “operations of a person”, insert “who is not a Commonwealth partner”.

18 At the end of subsection 18(2)

Add:

; and (h) to the extent that the report relates to the operations of a Commonwealth partner—give a copy of the report to a director or senior manager of the Commonwealth partner.

19 After section 18

Insert:

18A Audit of performance indicators

- (1) The Auditor-General may at any time conduct an audit of:
 - (a) the appropriateness of the performance indicators (however described) of:
 - (i) an Agency; or
 - (ii) a Commonwealth authority (other than a GBE), or of any of its subsidiaries; or
 - (iii) a Commonwealth company (other than a GBE), or of any of its subsidiaries; and
 - (b) reporting by the Agency, authority, company or subsidiary against those indicators.
- (2) If the Joint Committee of Public Accounts and Audit requests it, the Auditor-General may conduct an audit of:

- (a) the appropriateness of the performance indicators (however described) of:
 - (i) a Commonwealth authority that is a GBE, or of any of its subsidiaries; or
 - (ii) a wholly owned Commonwealth company that is a GBE, or of any of its subsidiaries; and
 - (b) reporting by the authority, company or subsidiary against those indicators.
- (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 to:
 - (i) the Chief Executive of the Agency; or
 - (ii) an officer of the Commonwealth authority or the subsidiary of the Commonwealth authority; or
 - (iii) a director or senior manager of the Commonwealth company or the subsidiary of the Commonwealth company.
- (5) Subsection (4) does not apply if the report is, or is to be, included in the annual report of the Agency, Commonwealth authority or Commonwealth company.
- (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 15, 16, 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 director or senior manager 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 15, 16, 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.
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- (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).

20 Subsections 19(1) and (2)

Repeal the subsections, substitute:

- (1) After preparing a proposed report on an audit of an Agency under section 15, the Auditor-General must:
- (a) give a copy of the proposed report to the Chief Executive of the Agency; and
 - (b) to the extent that the proposed report relates to the operations of a Commonwealth partner—give a director or senior manager 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.
- (2) After preparing a proposed report on an audit of a body under section 16 or 17, the Auditor-General must:
- (a) give a copy of the proposed report to:
 - (i) 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
 - (ii) 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; and
 - (b) to the extent that the proposed report relates to the operations of a Commonwealth partner—give a director or senior manager 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.
- (2A) After preparing a proposed report under section 18A on an audit of the performance indicators of a body and the body's reporting against those indicators, the Auditor-General must give a copy of the proposed report to:
- (a) if the body is an Agency—the Chief Executive of the Agency; or
 - (b) if the body is a Commonwealth authority or the subsidiary of a Commonwealth authority—an officer of the Commonwealth authority or the subsidiary of the Commonwealth authority; or
 - (c) 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.
- (2B) 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 director or senior manager of the Commonwealth partner.
- (2C) Subsection (2B) does not apply if:
- (a) the proposed report is included, or is to be included, in the proposed report on an audit under section 15, 16 or 17; or
 - (b) the audit of the Commonwealth partner was conducted as part of an audit under section 18.

21 Subsection 19(3)

Omit “or 18”, substitute “, 18, 18A or 18B”.

22 Subsection 19(4)

Omit “within 28 days after receiving the proposed report, or the extract from the proposed report”, substitute “as follows”.

23 At the end of subsection 19(4)

Add:

- : (a) in the case of a proposed report on an audit under section 18A (audit of performance indicators)—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.

24 After Division 2 of Part 4

Insert:

Division 2A—Assurance reviews

19A Assurance reviews

- (1) The Auditor-General may at any time conduct an assurance review of:
 - (a) an Agency; or
 - (b) a Commonwealth authority (other than a GBE), or of any of its subsidiaries; or
 - (c) a Commonwealth company (other than a GBE), or of any of its subsidiaries.
- (2) If the Joint Committee of Public Accounts and Audit requests it, the Auditor-General may conduct an assurance review of:
 - (a) a Commonwealth authority 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.

25 At the end of section 20

Add:

- (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.

26 Paragraph 21(1)(b)

After “company”, insert “or a subsidiary of a Commonwealth company”.

27 Paragraph 23A(b)

Omit “a performance audit under Division 2”, substitute “an audit under Division 2 or 2A”.

Note: The heading to section 23A is replaced by the heading “**Information sharing**”.

28 Paragraph 24(a)

Omit “referred to in Division 1 or 2”, substitute “or review referred to in Division 1, 2 or 2A”.

29 Section 30

Before “The operation”, insert “(1)”.

30 Paragraph 30(b)

Repeal the paragraph, substitute:

(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.

31 At the end of section 30

Add:

- (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.

32 Before paragraph 31(a)

Insert:

- (aa) an assurance review that is not a priority assurance review; or

33 Paragraph 33(1)(a)

Omit “or a Commonwealth company”, substitute “, a Commonwealth company or a Commonwealth partner”.

34 After section 56

Insert:

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
 - (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.

*[Member's statement on introduction made in—
House of Representatives on 28 February 2011
Senate on 22 September 2011]*

(32/11)

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