



New South Wales

Public Finance and Audit Amendment (Auditor-General) Bill 2001

Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

Overview of Bill

The object of this Bill is to amend the *Public Finance and Audit Act 1983*:

- (a) to extend the Parliamentary reporting powers of the Auditor-General, and
- (b) to make a number of other miscellaneous changes relating to the role of the Auditor-General.

The amendments relate to matters raised by the Auditor-General in correspondence set out in Attachment Five to the Auditor-General's report to Parliament (2001 Vol Three).

Outline of provisions

Clause 1 sets out the name (also called the short title) of the proposed Act.

Clause 2 provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

Clause 3 is a formal provision giving effect to the amendments to the *Public Finance and Audit Act 1983* set out in Schedule 1.

Clause 4 is a formal provision giving effect to the consequential amendments to other Acts set out in Schedule 2.

Schedule 1 Amendments

Schedule 1 [1] inserts proposed section 27B into the Principal Act to make general provisions relating to the office of Auditor-General. The proposed section:

- (a) declares that there is to be an Auditor-General for the State, and
- (b) sets out the functions of the Auditor-General, including:
 - (i) the existing function of auditing the public and other accounts, and
 - (ii) a new function of providing audit or audit-related services to Parliament at the joint request of both Houses of Parliament, and
 - (iii) a new function of providing audit or audit-related services to the Treasurer at the request of the Treasurer, and
 - (iv) the existing function of reporting to Parliament, and
 - (v) a new function of doing anything that is incidental to the exercise of the Auditor-General's functions, and
- (c) requires the Auditor-General to have regard to recognised professional standards and practices (as is currently the case with respect to audits) and to comply with relevant legal requirements, and
- (d) re-states generally the existing restriction relating to reports on performance audits and protected disclosures that precludes the Auditor-General from questioning the merits of Government policy.

Schedule 1 [2] omits section 34 of the Principal Act (which relates to the audit of the public and other accounts) consequent on the transfer of its provisions to proposed section 27B.

Schedule 1 [3] amends section 35 of the Principal Act (which deals with the power of the Auditor-General to inspect, examine, audit and report on the books and accounts of accounting and other officers) to require the employer of any such officer to defray the costs and expenses of any such inspection, examination, audit and report.

Schedule 1 [4] and [5] amend section 38 of the Principal Act to enable the Auditor-General to disclose confidential information for the purposes of any due diligence process relating to the sale of a government undertaking.

Schedule 1 [6] amends Division 2A of Part 3 of the Principal Act to rename a special audit into the activities of an authority under that Division as a performance audit.

Schedule 1 [7] omits section 38B (1A) of the Principal Act (which deals with the investigation by the Auditor-General of certain protected disclosures relating to the alleged waste of public money) consequent on the transfer of its provisions to proposed Division 7 of Part 3 of the Act.

Schedule 1 [8] inserts section 38B (3) into the Principal Act to enable the Auditor-General to undertake a single performance audit of the activities of more than one authority.

Schedule 1 [9] amends section 38C of the Principal Act to require the Auditor-General to provide a draft of a report on a performance audit to the Treasurer as well as the responsible Minister and the head of the relevant authority.

Schedule 1 [10] inserts section 38C (2A) into the Principal Act to enable the Auditor-General to reduce the minimum 28-day period for which a draft report is to be made available if the head of the relevant authority has made any submissions or comments he or she wishes to make.

Schedule 1 [11] inserts section 38C (6) into the Principal Act to enable the Auditor-General to request the Treasurer to determine, in the case of a performance audit into the activities of several authorities, the head of a single authority and a single responsible Minister to whom the Auditor-General is to provide a draft report of a performance audit for comment.

Schedule 1 [12] omits section 38D of the Principal Act (which precludes the Auditor-General from questioning the merits of Government policy in connection with a performance audit) consequent on the transfer of its provisions to proposed section 27B.

Schedule 1 [13] amends section 52 of the Principal Act to replace the power of the Auditor-General to report on any matter “arising from” audit with a wider power to report on any matter “that arises from or relates to” the exercise of the audit or other functions of the Auditor-General.

Schedule 1 [14] inserts Division 7 into Part 3 of the Principal Act to transfer to a separate Division the provisions with respect to protected disclosures about alleged waste of public money. At present the Auditor-General is required to deal with such a protected disclosure under the provisions relating to performance audits. The new provisions specifically authorise the Auditor-General to deal with a complaint about waste of public money by conducting an inspection, examination or audit under the Principal Act or in any other manner the Auditor-General considers appropriate. Detailed provision is also made, along the lines applicable to performance audits, for the preparation of reports by the Auditor-General into such complaints and their presentation to Parliament. Special provision is included to require reports on complaints about the head of an authority to be made to the responsible Minister and on complaints about a Minister to be made to the Premier.

Schedule 1 [15] amends section 63D of the Principal Act to ensure that the protection from personal liability afforded to the Auditor-General by that section extends to omissions as well as acts.

Schedule 1 [16] inserts section 65 into the Principal Act, which is a formal provision giving effect to proposed Schedule 4 (Savings, transitional and other provisions).

Schedule 1 [17] inserts Schedule 4 into the Principal Act to enact savings, transitional and other provisions consequent on the enactment of the proposed Act. In particular, the Schedule:

- (a) authorises the making of savings and transitional regulations, and
- (b) validates anything done by the Auditor-General that would have been valid if the proposed Act had been in force when the thing was done.

Schedule 2 Consequential amendments of other Acts

Schedule 2 makes consequential amendments to the following Acts:

Defamation Act 1974

Legal Profession Act 1987

Rural Lands Protection Act 1998



New South Wales

Public Finance and Audit Amendment (Auditor-General) Bill 2001

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New South Wales

Public Finance and Audit Amendment (Auditor-General) Bill 2001

No , 2001

A Bill for

An Act to amend the *Public Finance and Audit Act 1983* with respect to the Auditor-General, and to make consequential amendments to other Acts.

The Legislature of New South Wales enacts:	1
1 Name of Act	2
This Act is the <i>Public Finance and Audit Amendment (Auditor-General) Act 2001</i> .	3 4
2 Commencement	5
This Act commences on a day or days to be appointed by proclamation.	6 7
3 Amendment of Public Finance and Audit Act 1983 No 152	8
The <i>Public Finance and Audit Act 1983</i> is amended as set out in Schedule 1.	9 10
4 Consequential amendments of other Acts	11
The Acts specified in Schedule 2 are amended as set out in that Schedule.	12 13

Schedule 1 Amendments

1

(Section 3)

2

[1] Section 27B

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Insert before section 28:

4

27B The Auditor-General

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- (1) There is to be an Auditor-General for the State. 6
- (2) The Auditor-General has the functions conferred or imposed on the Auditor-General by law. 7
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- (3) The Auditor-General's functions include the following: 9
 - (a) to audit the Public Accounts, the Total State Sector Accounts and any other accounts that the Auditor-General is required or authorised to audit by law, 10
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 - (b) to provide any particular audit or audit-related service to Parliament at the joint request of both Houses of Parliament, 13
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 - (c) to provide any particular audit or audit-related service to the Treasurer at the request of the Treasurer, 16
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 - (d) to report to Parliament as required or authorised by law, 18
 - (e) to do anything that is incidental to the exercise of the Auditor-General's functions. 19
20
- (4) The Auditor-General may exercise his or her functions in such manner as the Auditor-General thinks fit. However, the Auditor-General is required: 21
22
23
 - (a) to have regard to recognised professional standards and practices, and 24
25
 - (b) to comply with any relevant requirements imposed by law. 26
27
- (5) Nothing in this Act entitles the Auditor-General to question the merits of policy objectives of the Government, including: 28
29
 - (a) any policy objective of the Government contained in a record of a policy decision of Cabinet, and 30
31
 - (b) a policy direction of a Minister, and 32

(c)	a policy statement in any Budget Paper or other document evidencing a policy direction of the Cabinet or a Minister.	1 2 3
(6)	In this section, <i>by law</i> means by or under this or any other Act or law.	4 5
[2]	Section 34 Duty of Auditor-General	6
	Omit the section.	7
[3]	Section 35 Inspection and audit of accounts of accounting officers	8
	Insert after section 35 (4):	9
(5)	Towards defraying the costs and expenses of any inspection, examination or audit and report under this section, the employer of the accounting officer or other person concerned is to pay the Auditor-General (from any funds under the control or administration of the employer) such amounts, at such times, as the Treasurer decides.	10 11 12 13 14 15
[4]	Section 38 Secrecy	16
	Insert “or” at the end of section 38 (2) (a) and (b).	17
[5]	Section 38 (2) (e)	18
	Insert at the end of section 38 (2) (d):	19
	, or	20
(e)	a report or communication that the Treasurer authorises the Auditor-General to make to a person for the purposes of a due diligence or similar process relating to the sale of any government undertaking.	21 22 23 24
[6]	Part 3, Division 2A Performance audits of activities	25
	Omit “special audit” wherever occurring.	26
	Insert instead “performance audit”.	27
[7]	Section 38B Performance audit by Auditor-General	28
	Omit section 38B (1A).	29

[8] Section 38B	1
Insert at the end of the section:	2
(3) A single performance audit may relate to the activities of more than one authority.	3 4
[9] Section 38C Report of performance audit	5
Omit “and the responsible Minister” from section 38C (2).	6
Insert instead “, the responsible Minister and the Treasurer”.	7
[10] Section 38C (2A)	8
Insert after section 38C (2):	9
(2A) The Auditor-General may make a report of a performance audit under this section before the expiration of that 28-day period if the Head of the authority has provided to the Auditor-General any submissions or comments he or she wishes to make.	10 11 12 13
[11] Section 38C (6)	14
Insert after section 38C (5):	15
(6) If a single performance audit relates to the activities of more than one authority, the Treasurer may, at the request of the Auditor-General, determine the Head of an appropriate authority and responsible Minister to whom the Auditor-General is to report under this section. In that case, a reference in this section to the Head of the authority or the responsible Minister is to be construed accordingly.	16 17 18 19 20 21 22
[12] Section 38D Special audit not to question policy	23
Omit the section.	24

[13] Section 52 Auditor-General's reports	1
Omit “, and may generally report on any matter arising from audit which in the opinion of the Auditor-General should be brought to the attention of Parliament” from section 52 (3).	2 3 4
Insert instead “, and may report on any matter that arises from or relates to the exercise of the audit or other functions of the Auditor-General and that in the opinion of the Auditor-General should be brought to the attention of Parliament”.	5 6 7 8
[14] Part 3, Division 7	9
Insert after Division 6 of Part 3:	10
Division 7 Protected disclosures to Auditor-General	11
52C Definitions	12
In this Division:	13
<i>authority</i> means an authority, or other body, whose accounts are subject to audit, examination or inspection by the Auditor-General under this Act or any other Act.	14 15 16
<i>public official</i> means a public official within the meaning of the <i>Protected Disclosures Act 1994</i> .	17 18
<i>responsible Minister</i> has the same meaning as in section 38A.	19
52D Complaints about waste of public money	20
(1) A public official may complain to the Auditor-General that there has been a serious and substantial waste of public money by an authority or an officer of an authority.	21 22 23
(2) A complaint to the Auditor-General may be made orally or in writing.	24 25
(3) The Auditor-General may deal with the complaint:	26
(a) by conducting an inspection, examination or audit under this Act into the matter, or	27 28
(b) in such other manner as the Auditor-General considers appropriate.	29 30

52E Reports by Auditor-General

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| (1) The Auditor-General may, if of the opinion that it is appropriate to do so, make a report on a complaint: | 2 |
| | 3 |
| (a) to the head of the authority, except as provided by paragraphs (b) and (c), or | 4 |
| | 5 |
| (b) if the complaint relates to the conduct of the head of the authority—to the responsible Minister, or | 6 |
| | 7 |
| (c) if the complaint relates to the conduct of a Minister—to the Premier. | 8 |
| | 9 |
| The Auditor-General is to give the responsible Minister and the Treasurer a copy of a report made to the head of the authority. | 10 |
| | 11 |
| (2) The Auditor-General must not make a report under this section unless, at least 28 days before making the report, the Auditor-General has given the person to whom the report is to be made a summary of the proposed report. The Auditor-General may make any such report before the expiration of that 28-day period if that person has provided to the Auditor-General any submissions or comments he or she wishes to make. | 12 |
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| (3) The Auditor-General is to include in a report under this section any submissions or comments made by the person or a summary, in an agreed form, of any such submissions or comments. | 19 |
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| (4) The Auditor-General, in a report under this section: | 23 |
| (a) may include such information as he or she thinks desirable in relation to the activity the subject of the complaint, and | 24 |
| | 25 |
| | 26 |
| (b) is to set out the reasons for opinions expressed in the report, and | 27 |
| | 28 |
| (c) may include such recommendations arising out of the complaint as the Auditor-General thinks fit to make. | 29 |
| | 30 |
| (5) The Auditor-General may include a report under this section in any other report of the Auditor-General. | 31 |
| | 32 |

52F	Presentation of reports to Parliament	1
(1)	The Auditor-General may, if of the opinion that a report on a complaint under this Division should be brought to the attention of Parliament, present the report to the Legislative Assembly, if the Legislative Assembly is then sitting. The Auditor-General may include the report in any other report of the Auditor-General to the Legislative Assembly.	2 3 4 5 6 7
(2)	If the Legislative Assembly is not sitting at the time the Auditor-General seeks to present the report to the Legislative Assembly, the Auditor-General is to present the report to the Clerk of the Legislative Assembly to be dealt with in accordance with section 63C.	8 9 10 11 12
[15]	Section 63D Liability of Auditor-General etc	13
	Insert “or omitted to be done” after “done” wherever occurring.	14
[16]	Section 65	15
	Insert after section 64:	16
65	Savings, transitional and other provisions	17
	Schedule 4 has effect.	18

Part 2	Provisions consequent on enactment of Public Finance and Audit Amendment (Auditor-General) Act 2001	1 2 3
2	Definition of Amending Act	4
	In this Schedule:	5
	<i>Amending Act</i> means the <i>Public Finance and Audit Amendment (Auditor-General) Act 2001</i> .	6 7
3	Validation with respect to exercise of functions of Auditor-General	8 9
	(1) Anything done by or on behalf of the Auditor-General before the commencement of any amendment made by the Amending Act that would have been validly done if the Amending Act had been in force when it was done is, to the extent of any invalidity, validated.	10 11 12 13 14
	(2) In this clause, a reference to anything done includes a reference to anything omitted to be done.	15 16
4	Protection from liability of Auditor-General—application of amendment to section 63D to previous omissions	17 18
	The amendment made to section 63D by the Amending Act extends to anything omitted to be done before the commencement of that amendment.	19 20 21
5	Existing protected disclosures	22
	A complaint made under section 38B (1A) before the repeal of that provision by the Amending Act that has not been finally dealt with on that repeal is taken to be a complaint under Division 7 of Part 3, as inserted by the Amending Act, and may be dealt with accordingly.	23 24 25 26 27

Schedule 2	Consequential amendments of other Acts	1
	(Section 4)	2
2.1	Defamation Act 1974 No 18	3
	Section 17Q Matters arising under the Public Finance and Audit Act 1983	4
		5
	Omit “a complaint under section 38B (1A)”.	6
	Insert instead “a complaint under Division 7 of Part 3”.	7
2.2	Legal Profession Act 1987 No 109	8
	Section 69J Performance audits	9
	Omit “special audit” wherever occurring. Insert instead “performance audit”.	10
2.3	Rural Lands Protection Act 1998 No 143	11
[1]	Section 35 Performance audit of State Council’s activities	12
	Omit “special audit of the State Council’s accounts” wherever occurring.	13
	Insert instead “performance audit of all or any particular activities of the State Council”.	14
		15
[2]	Section 55 Performance audit of board’s activities	16
	Omit “special audit of a board’s accounts” wherever occurring.	17
	Insert instead “performance audit of all or any particular activities of a board”.	18
		19

Public Finance and Audit Amendment (Auditor-General) Bill 2001

Schedule 2 Consequential amendments of other Acts

[3] Sections 35 (3), 55 (4), 55 (6) and 56

1

Omit “special audit” wherever occurring. Insert instead “performance audit”.

2