

STATEMENT OF PUBLIC INTEREST

Need: Why is the policy needed based on factual evidence and stakeholder input?

The Bill incorporates amendments to the *Government Sector Audit Act 1983* (**Audit Act**) and the *Local Government Act 1993* to implement the Government's response to the Legislative Assembly Public Accounts Committee (**PAC**) Report 10/57 *Quadrennial Review of the Audit Office of New South Wales 2022* (**PAC Report**). The amendments also deliver on the Government's response in June 2022 to the report of the Legislative Council Public Accountability Committee inquiry into Government grant programs - *Integrity, efficacy and value for money of NSW Government grant programs - First report* (**Government Grants Report**).

These Parliamentary reports establish a robust evidence basis for the relevant recommendations and were the result of extensive stakeholder engagement. The Government has considered these reports, as well as relevant legislative schemes in other comparable jurisdictions both in Australia and abroad, in responding to the recommendations and drafting the Bill.

'Follow the Dollar' reform (**FTD**) refers to additional powers given to the Auditor-General so they may carry out performance audits of the use of public resources, including the use of public resources by non-public sector entities to deliver goods and services to the public. The Auditor-General is not currently empowered to request access to information from, or to interrogate officers of, non-public sector entities that have been engaged by State or local government agencies and who receive funds or other resources from those agencies, about the use of those resources.

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The shift over time from wholly direct service delivery by governments, to increasing service delivery by non-public sector entities through modes including outsourcing, partnerships, grants and contractual arrangements, and the consequent inability of the Auditor-General to scrutinise that expenditure, has resulted in a gap in external accountability which this Bill seeks to close.

Reforms to broaden the Auditor-General's mandate have been the subject of recommendations by several Parliamentary committees since 2013. Stakeholder submissions to the recent FTD public consultation paper also noted broad in-principle support for the greater accountability and transparency measures offered by the changes.

Objectives: What is the policy's objective couched in terms of the public interest?

The amendments in the Bill relating to the status of the Auditor-General, the relationship between the PAC and the Auditor-General and the Auditor-General's power to access confidential information all safeguard the important role of the Auditor-General as an independent overseer of the public sector. The reforms emphasise transparency and oversight, and do so in a manner that is balance with fundamental constitutional conventions regarding the role of the legislature and the executive government.

The FTD reforms enhance the accountability and transparency of the resources allocated to fund State and local government operations in New South Wales. There is a strong public interest in ensuring that public resources are used effectively, efficiently, economically and in compliance with the law.

Options: What alternative policies and mechanisms were considered in advance of the bill?

The reforms may only be achieved through legislative amendment. The office of the Auditor-General is established by the Audit Act and their powers and functions are conferred by legislation.

An alternative approach of doing nothing was not acceptable in the context of the Government's response from November 2022 to the PAC Report and from May 2022 to the Government Grants Report.

Analysis: What were the pros/cons and benefits/costs of each option considered?

If the amendments were not made the status quo would prevail.

The Auditor-General would continue to be unable to scrutinise, and to provide an independent assurance to the Parliament about, the use of public resources by non-private sector entities engaged by State and local government agencies.

From the experiences with similar amendments in other Australian jurisdictions, it is anticipated that the accountability benefits to the community will outweigh the particular administration-related costs that will be incurred by individual non-public sector entities in providing information, and allowing access, to Audit Office staff to undertake a performance audit using FTD powers.

The Auditor-General would also continue to have no statutory right to access Cabinet information or material subject to legal professional privilege.

Pathway: What are the timetable and steps for the policy's rollout and who will administer it?

The Bill will commence on assent.

The amendments contained in the Bill primarily relate to the Auditor-General who is an independent statutory officer. The exercise of the Auditor-General's functions is a matter for the Auditor-General.

The Government notes that the Auditor-General has published a forward work program for 2022-25 that contains details of the matters identified for performance audit over that period and the manner of their selection.

Similarly, the implementation of matters that go to the functions of the PAC is a matter for that Committee.

Consultation: Were the views of affected stakeholders sought and considered in making the policy?

The provisions in the Bill are the result of the Government's responses to a number of Parliamentary proceedings in recent times.

The FTD reform has been the subject of recommendations, informed by public inquiries, by NSW Parliamentary committees since 2013. The proposals in the Bill were the subject of initial consultations with NSW Government agencies during 2019/20, and a broader public consultation process, informed by a consultation paper, during August-September 2022. Written responses were received from 28 individuals and organisations in response to the public consultation, all of which were taken into account in finalising the Bill.

In addition, the structure, functions and funding model of NSW integrity agencies been the subject of a number of review processes in recent years, including a request audit conducted by the Auditor-General in 2020 titled *The effectiveness of the financial arrangements and management practices in four integrity agencies*. Whilst that report did not explicitly consider the Audit Office, the Auditor-General and the relationship between that office and the Parliament was considered in the Public Accountability Committee inquiry regarding *Integrity, efficacy and value for money of NSW Government grant programs*. These processes have included public hearings, submissions process and extensive stakeholder engagement.