



New South Wales

# Government Sector Audit and Other Legislation Amendment Bill 2022

## 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 *Government Sector Audit Act 1983* and the *Local Government Act 1993* to extend the performance audit powers of the Auditor-General to include non-government entities that carry out government funded activities for or on behalf of State and local government entities to assess whether the activities are being carried out effectively, economically, efficiently and lawfully.

This Bill also amends the *Government Sector Audit Act 1983* and the *Local Government Act 1993* to implement recommendations of the quadrennial review of the Audit Office

## 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.

## Schedule 1      **Amendment of Government Sector Audit Act 1983 No 152**

**Schedule 1[1]** replaces Part 3, Division 2A to provide that the Auditor-General may conduct an audit of a related relevant entity that receives money or other resources, whether directly or indirectly, from an auditable entity for a State purpose as part of a performance audit of the auditable entity.

Proposed sections 38A–38C define certain terms for proposed Division 2A, including *audit*, *auditable entity*, *governing body*, *performance audit*, *related relevant entity*, *relevant activities*, *relevant entity* and *State purpose*.

Proposed section 38D clarifies that a relevant entity is not an auditable entity merely because the Auditor-General may conduct an audit of the activities of the entity.

Proposed section 38E provides that certain provisions in Part 3, Division 2 of the Act apply to a performance audit of the relevant activities of a relevant entity in the same way the provisions apply to an audit of an auditable entity, subject to certain limitations.

Proposed section 38EA provides that the Auditor-General may conduct a performance audit of an auditable entity and the audit may include a performance audit of the relevant activities of a related relevant entity.

Proposed section 38EB requires the Auditor-General to report the result of a performance audit and certain other matters. The Auditor-General must provide a summary of any findings and proposed recommendations of the performance audit and other matters to the Minister responsible for the auditable entity, the Treasurer and other certain persons and bodies at least 28 days before making a report of the performance audit.

Proposed section 38EC provides that the Auditor-General must present a report made under proposed section 38EB in each House of Parliament as soon as practicable after making the report.

**Schedule 1[2]** inserts a savings and transitional provision to provide that the Auditor-General may conduct an audit of a relevant entity in relation to relevant activities of the relevant entity that occurred before the commencement of the proposed Act.

## **Schedule 2      Amendment of Local Government Act 1993 No 30**

**Schedule 2[1]** provides that the Auditor-General may conduct a performance audit of a relevant entity that receives money or other resources from a council for a local government purpose.

Proposed sections 421A–421BA define certain terms for Chapter 13, Part 3, Division 2A, including *audit*, *governing body*, *local government purpose*, *performance audit*, *related relevant entity*, *relevant activities* and *relevant entity*.

Proposed section 421BB clarifies that a relevant entity is not an auditable entity under the *Government Sector Audit Act 1983* merely because the Auditor-General may conduct an audit of the activities of the relevant entity.

Proposed section 421BC provides that for the purposes of an audit of a relevant entity, the *Local Government Act 1993*, sections 423–425 apply to the audit as if the relevant entity was a local council, to the extent it is necessary for the Auditor-General to assess the operations of the relevant entity in relation to achieving the local government purpose.

Proposed section 421BD provides that the Auditor-General may conduct a performance audit of a local council that may include a performance audit of the relevant activities of a related relevant entity.

Proposed section 421BE requires the Auditor-General to report the result of a performance audit and certain other matters. The Auditor-General must provide a summary of any findings and proposed recommendations of a performance audit and other matters to the Minister, the Department Chief Executive, the local council to whom the audit relates and certain other bodies at least 28 days before making the report of the performance audit.

**Schedule 2[2]** inserts a savings and transitional provision to provide that the Auditor-General may conduct an audit of a relevant entity in relation to relevant activities of the relevant entity that occurred before the commencement of the proposed Act.

### **Schedule 3      Amendment of Government Sector Audit Act 1983 No 152 in relation to the quadrennial review of the Audit Office**

**Schedule 3[1]** establishes the Auditor-General as an independent officer of Parliament. **Schedule 3[2]** makes it clear no implied rights, obligations or immunities arise from the Auditor-General being an independent officer of Parliament.

**Schedule 3[3]** requires the Parliament, Treasurer or other Minister to consult with the Auditor-General about the scope of a particular audit or audit-related service before requesting the Auditor-General to provide an audit or audit-related service.

**Schedule 3[4]–[6]** enable the Auditor-General, an auditor or another person authorised by the Auditor-General (an *authorised person*) to access Cabinet information in the exercise of the person's functions under the *Government Sector Audit Act 1983* or another Act. **Cabinet information** is defined to mean Cabinet information within the meaning of the *Government Information (Public Access) Act 2009* and includes information, a document or a thing relating to confidential proceedings of Cabinet or a committee of Cabinet. A certificate of the Premier that information is Cabinet information is conclusive evidence of the fact.

An authorised person must not publish or otherwise disclose confidential information accessed, must return confidential information to the entity from which it was obtained, must return to the entity or destroy copies of, or extracts from, books, records or other documents that include confidential information and must ensure ongoing access to confidential information ends at the conclusion of the audit. **Confidential information** is defined to mean Cabinet information and information privileged from production in legal proceedings on the ground of legal professional privilege.

Access to confidential information under the provision does not, by itself, prevent a claim of confidentiality or privilege.

**Schedule 3[7]–[10]** require the report of a quadrennial review of the Audit Office to be provided directly to the Public Accounts Committee instead of the Auditor-General. The reviewer must also provide an opportunity for auditable entities to make submissions about the auditing practices and standards of the Auditor-General.

**Schedule 3[11]** makes it clear the functions of the Public Accounts Committee include examining each annual report and other report of the Auditor-General and reporting to the Legislative Assembly about matters appearing in, or arising out of, the report.

### **Schedule 4      Amendment of Local Government Act 1993 No 30 in relation to the quadrennial review of the Audit Office**

**Schedule 4[4]–[6]** enable the Auditor-General or a person authorised by the Auditor-General (an *authorised person*) to access Cabinet information and information privileged from production in legal proceedings on the ground of legal professional privilege in the exercise of the Auditor-General's functions under the *Local Government Act 1993* or another Act. **Cabinet information** is defined to mean Cabinet information within the meaning of the *Government Information (Public Access) Act 2009* and information, a document or a thing relating to confidential proceedings of Cabinet or a committee of Cabinet. A certificate of the Premier that information is Cabinet information is conclusive evidence of the fact.

The Auditor-General or authorised person must not publish or otherwise disclose confidential information accessed, must return confidential information to the council from which it was obtained, must return to the council or destroy copies of, or extracts from, books, records or other documents that include confidential information and must ensure ongoing access to confidential information ends at the conclusion of the audit. **Confidential information** is defined to mean

Cabinet information and information privileged from production in legal proceedings on the ground of legal professional privilege.

Access to confidential information under the provision does not, by itself, prevent a claim of confidentiality or privilege.

**Schedule 4[1]–[3]** insert a definition of *authorised person* and make consequential amendments.