



New South Wales

# Public Finance and Audit Amendment (Auditor-General) Act 2001 No 90

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New South Wales

## **Public Finance and Audit Amendment (Auditor-General) Act 2001 No 90**

Act No 90, 2001

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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. [Assented to 6 December 2001]

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**The Legislature of New South Wales enacts:**

**1 Name of Act**

This Act is the *Public Finance and Audit Amendment (Auditor-General) Act 2001*.

**2 Commencement**

This Act commences on a day or days to be appointed by proclamation.

**3 Amendment of Public Finance and Audit Act 1983 No 152**

The *Public Finance and Audit Act 1983* is amended as set out in Schedule 1.

**4 Consequential amendments of other Acts**

The Acts specified in Schedule 2 are amended as set out in that Schedule.

## Schedule 1 Amendments

(Section 3)

### [1] Section 27B

Insert before section 28:

#### **27B The Auditor-General**

- (1) There is to be an Auditor-General for the State.
- (2) The Auditor-General has the functions conferred or imposed on the Auditor-General by law.
- (3) The Auditor-General's functions include the following:
  - (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,
  - (b) to provide any particular audit or audit-related service to Parliament at the joint request of both Houses of Parliament,
  - (c) to provide any particular audit or audit-related service to the Treasurer at the request of the Treasurer or to any other Minister at the request of that other Minister,
  - (d) to report to Parliament as required or authorised by law,
  - (e) to do anything that is incidental to the exercise of the Auditor-General's functions.
- (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:
  - (a) to have regard to recognised professional standards and practices, and
  - (b) to comply with any relevant requirements imposed by law.
- (5) The Auditor-General may, in the exercise of his or her functions, have regard to whether there has been:
  - (a) any wastage of public resources, or

- (b) any lack of probity or financial prudence in the management or application of public resources.
- (6) Nothing in this Act entitles the Auditor-General to question the merits of policy objectives of the Government, including:
  - (a) any policy objective of the Government contained in a record of a policy decision of Cabinet, and
  - (b) a policy direction of a Minister, and
  - (c) a policy statement in any Budget Paper or other document evidencing a policy direction of the Cabinet or a Minister.
- (7) In this section, *by law* means by or under this or any other Act or law.

**[2] Section 34 Duty of Auditor-General**

Omit the section.

**[3] Section 35 Inspection and audit of accounts of accounting officers**

Insert after section 35 (4):

- (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.

**[4] Section 38 Secrecy**

Insert "or" at the end of section 38 (2) (a) and (b).

**[5] Section 38 (2) (e)**

Insert at the end of section 38 (2) (d):

- , or
- (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.

**[6] Part 3, Division 2A Performance audits of activities**

Omit “special audit” wherever occurring.

Insert instead “performance audit”.

**[7] Section 38B Performance audit by Auditor-General**

Omit section 38B (1A).

**[8] Section 38B**

Insert at the end of the section:

- (3) A single performance audit may relate to the activities of more than one authority.

**[9] Section 38C Report of performance audit**

Omit “and the responsible Minister” from section 38C (2).

Insert instead “, the responsible Minister and the Treasurer”.

**[10] Section 38C (2A)**

Insert after section 38C (2):

- (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.

**[11] Section 38C (6)**

Insert after section 38C (5):

- (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.

**[12] Section 38D Special audit not to question policy**

Omit the section.

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**[13] Section 38E**

Omit the section. Insert instead:

**38E Tabling etc of reports under sec 38C**

- (1) The Auditor-General is, as soon as practicable after making a report under section 38C, to present the report to each House of Parliament, if that House is then sitting.
- (2) If a House of Parliament is not sitting when the Auditor-General seeks to present a report to it under this section, the Auditor-General is to present the report to the Clerk of the House concerned to be dealt with in accordance with section 63C.
- (3) The Auditor-General may include the report in any other report of the Auditor-General to the House of Parliament concerned.

**[14] Section 52 Auditor-General's reports**

Omit "the Legislative Assembly" from section 52 (1).  
Insert instead "Parliament".

**[15] Section 52 Auditor-General's reports**

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).

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".

**[16] Section 52**

Insert at the end of the section:

- (4) The Auditor-General may give a summary of the proposed report (or of the relevant part) to the Head of each authority to which it relates or which, in the opinion of the Auditor-General, has a special interest in it. The Auditor-General may

include in the report any submissions or comments made by the Head of an authority or a summary, in an agreed form, of any such submissions or comments.

**[17] Sections 52A and 52B**

Omit the sections. Insert instead:

**52A Auditor-General's report to be presented to Parliament**

- (1) The Auditor-General must, not later than 30 November in the year following that to which the report relates, present the report prepared under section 52 (1) to each House of Parliament, if that House is then sitting, accompanied by copies of such opinions, if any, as are directed to be annexed or appended to the Auditor-General's report under section 52 (2).
- (2) If a House of Parliament is not sitting when the Auditor-General seeks to present a report and any copies of such opinions to it under this section, the Auditor-General is to present the report to the Clerk of the House concerned to be dealt with in accordance with section 63C.

**52B Tabling etc of special reports**

- (1) The Auditor-General is, as soon as practicable after making a special report under section 52 (3), to present the report to each House of Parliament, if that House is then sitting.
- (2) If a House of Parliament is not sitting when the Auditor-General seeks to present a report to it under this section, the Auditor-General is to present the report to the Clerk of the House concerned to be dealt with in accordance with section 63C.



**[18] Part 3, Division 7**

Insert after Division 6 of Part 3:

**Division 7 Protected disclosures to Auditor-General**

**52C Definitions**

In this Division:

*authority* 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.

*public official* means a public official within the meaning of the *Protected Disclosures Act 1994*.

*responsible Minister* has the same meaning as in section 38A.

**52D Complaints about waste of public money**

- (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.
- (2) A complaint to the Auditor-General may be made orally or in writing.
- (3) The Auditor-General may deal with the complaint:
  - (a) by conducting an inspection, examination or audit under this Act into the matter, or
  - (b) in such other manner as the Auditor-General considers appropriate.

**52E Reports by Auditor-General**

- (1) The Auditor-General may, if of the opinion that it is appropriate to do so, make a report on a complaint:
  - (a) to the head of the authority, except as provided by paragraphs (b) and (c), or
  - (b) if the complaint relates to the conduct of the head of the authority—to the responsible Minister, or

- (c) if the complaint relates to the conduct of a Minister—to the Premier.

The Auditor-General is to give the responsible Minister and the Treasurer a copy of a report made to the head of the authority.

- (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.
- (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.
- (4) The Auditor-General, in a report under this section:
  - (a) may include such information as he or she thinks desirable in relation to the activity the subject of the complaint, and
  - (b) is to set out the reasons for opinions expressed in the report, and
  - (c) may include such recommendations arising out of the complaint as the Auditor-General thinks fit to make.
- (5) The Auditor-General may include a report under this section in any other report of the Auditor-General.

#### **52F Presentation of reports to Parliament**

- (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 each House of Parliament, if that House is then sitting. The Auditor-General may include the report in any other report of the Auditor-General to the House of Parliament concerned.

- (2) If a House of Parliament is not sitting when the Auditor-General seeks to present a report to it under this section, the Auditor-General is to present the report to the Clerk of the House concerned to be dealt with in accordance with section 63C.

**[19] Section 63C**

Omit the section. Insert instead:

**63C Documents presented to Clerk of House of Parliament**

A document which is presented to the Clerk of a House of Parliament in accordance with a provision of this Act:

- (a) is, on presentation and for all purposes, taken to have been laid before the House, and
- (b) is to be printed by authority of the Clerk of the House, and
- (c) is, for all purposes, taken to be a document published by order or under the authority of the House, and
- (d) is to be recorded:
  - (i) in the case of the Legislative Council, in the Minutes of the Proceedings of the Legislative Council, and
  - (ii) in the case of the Legislative Assembly, in the Votes and Proceedings of the Legislative Assembly,

on the first sitting day of the House after receipt of the report by the Clerk.

**[20] Section 63D Liability of Auditor-General etc**

Insert “or omitted to be done” after “done” wherever occurring.

**[21] Section 65**

Insert after section 64:

**65 Savings, transitional and other provisions**

Schedule 4 has effect.

**[22] Schedule 4**

Insert after Schedule 3:

**Schedule 4 Savings, transitional and other provisions**

(Section 65)

**Part 1 Savings or transitional regulations**

**1 Regulations**

- (1) The regulations may contain provisions of a savings or transitional nature consequent on the enactment of the following Acts:

*Public Finance and Audit Amendment (Auditor-General) Act 2001*

- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as:
- (a) to affect, in a manner prejudicial to any person (other than the State or an authority of the State), the rights of that person existing before the date of its publication, or
  - (b) to impose liabilities on any person (other than the State or an authority of the State) in respect of anything done or omitted to be done before the date of its publication.

## **Part 2 Provisions consequent on enactment of Public Finance and Audit Amendment (Auditor-General) Act 2001**

### **2 Definition of Amending Act**

In this Schedule:

*Amending Act* means the *Public Finance and Audit Amendment (Auditor-General) Act 2001*.

### **3 Validation with respect to exercise of functions of Auditor-General**

- (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.
- (2) In this clause, a reference to anything done includes a reference to anything omitted to be done.

### **4 Protection from liability of Auditor-General—application of amendment to section 63D to previous omissions**

The amendment made to section 63D by the Amending Act extends to anything omitted to be done before the commencement of that amendment.

### **5 Existing protected disclosures**

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.

## **Schedule 2 Consequential amendments of other Acts**

(Section 4)

### **2.1 Defamation Act 1974 No 18**

#### **Section 17Q Matters arising under the Public Finance and Audit Act 1983**

Omit “a complaint under section 38B (1A)”.

Insert instead “a complaint under Division 7 of Part 3”.

### **2.2 Legal Profession Act 1987 No 109**

#### **Section 69J Performance audits**

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

### **2.3 Rural Lands Protection Act 1998 No 143**

#### **[1] Section 35 Performance audit of State Council’s activities**

Omit “special audit of the State Council’s accounts” wherever occurring.

Insert instead “performance audit of all or any particular activities of the State Council”.

#### **[2] Section 55 Performance audit of board’s activities**

Omit “special audit of a board’s accounts” wherever occurring.

Insert instead “performance audit of all or any particular activities of a board”.

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

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

[Minister's second reading speech made in—  
Legislative Assembly on 4 September 2001  
Legislative Council on 16 October 2001]