

Passed by both Houses



New South Wales

Government Sector Audit and Other Legislation Amendment Bill 2022

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I certify that this public bill, which originated in the Legislative Assembly, has finally passed the Legislative Council and the Legislative Assembly of New South Wales.

*Clerk of the Legislative Assembly.
Legislative Assembly,
Sydney,*

, 2022



New South Wales

Government Sector Audit and Other Legislation Amendment Bill 2022

Act No _____, 2022

An Act to amend the *Government Sector Audit Act 1983* and the *Local Government Act 1993* to enable the Auditor-General to conduct follow the dollar type performance audits of government funded activities of non-government entities carried out for or on behalf of State and local government entities; to amend the *Government Sector Audit Act 1983* and the *Local Government Act 1993* to provide for matters arising from the quadrennial review of the Audit Office; and for related purposes.

I have examined this bill and find it to correspond in all respects with the bill as finally passed by both Houses.

Assistant Speaker of the Legislative Assembly.

The Legislature of New South Wales enacts—

1 Name of Act

This Act is the *Government Sector Audit and Other Legislation Amendment Act 2022*.

2 Commencement

This Act commences on the date of assent to this Act.

Schedule 1 **Amendment of Government Sector Audit Act 1983 No 152 in relation to follow the dollar performance audits**

[1] **Part 3, Division 2A**

Omit the Division. Insert instead—

Division 2A Performance audits of activities

38A Definitions

In this Division—

audit includes examination and inspection.

auditable entity does not include a local council.

governing body—see section 38B.

performance audit—see section 38EA(1).

related relevant entity, for an auditable entity, means an entity that is a relevant entity because it receives money or other resources, whether directly or indirectly, from or on behalf of the auditable entity for a State purpose.

relevant activities, of a relevant entity—

- (a) means the activities of the relevant entity that relate to achieving the State purpose, but
- (b) does not include—
 - (i) the provision of goods and services by the relevant entity to an auditable entity for the direct and exclusive use, or direct and exclusive benefit, of the auditable entity, or
 - (ii) an arrangement of a class prescribed by the regulations.

relevant entity—see section 38C.

State purpose—see section 38C(a).

38B Meaning of “governing body”

- (1) In this Division, a *governing body*, in relation to a relevant entity, means—
 - (a) a board, council or other body comprised of individuals that are collectively responsible for managing the affairs of the entity, or
 - (b) if the entity does not have a body described in paragraph (a)—the person who is the chief executive of the entity (however described) or otherwise responsible for the entity’s day to day management, or
 - (c) another entity declared by the regulations to be the governing body for the entity.
- (2) In this Division, a governing body does not include—
 - (a) a board, council or other body with merely advisory functions, or
 - (b) an entity, or an entity of a kind, prescribed by the regulations not to be a governing body.

38C Meaning of “relevant entity”

In this Division, a *relevant entity* is an entity that—

- (a) receives money or other resources, whether directly or indirectly, from or on behalf of an auditable entity for a particular purpose (a *State purpose*), and

- (b) either—
 - (i) agrees to use the money or other resources in achieving the State purpose, or
 - (ii) has entered into a contract that relates to the State purpose, and
- (c) cannot be the subject of an audit conducted under another Division of this Act.

38D Relationship with definition of “auditable entity”

To avoid doubt, a relevant entity is not to be taken to be an auditable entity under this Act merely because the Auditor-General may conduct an audit of one or more of its activities under this Division.

38E Application of Division 2 to audit of relevant activities of relevant entities

- (1) Division 2, other than sections 34 and 35, applies to the audit of the relevant activities of a relevant entity under this Division in the same way as Division 2 applies to the audit of an auditable entity.
- (2) However, sections 36 and 37 apply only to the extent the Auditor-General considers the exercise of powers under the sections necessary to assess the operations of the relevant entity in relation to achieving the State purpose.

38EA Performance audit by Auditor-General

- (1) The Auditor-General may, when the Auditor-General considers it appropriate, conduct an audit (a *performance audit*) of all or any particular activities of an auditable entity to determine whether the auditable entity is carrying out its activities effectively and doing so economically and efficiently and in compliance with all relevant laws.
- (2) In conducting a performance audit of an auditable entity the Auditor-General may, if the Auditor-General considers it appropriate, include a performance audit of the relevant activities of a related relevant entity for the auditable entity.
Example—In conducting a performance audit of an auditable entity, the Auditor-General may decide to conduct a performance audit of a grant made by the auditable entity to a related relevant entity for the auditable entity.
- (3) An audit under subsection (2) may be conducted only to the extent it assesses the operations of the related relevant entity in relation to achieving the State purpose.
- (4) A performance audit under this Division is separate from, and does not affect, another audit required or authorised by or under—
 - (a) this Act, or
 - (b) another Act.
- (5) A single performance audit may relate to the activities of more than one auditable entity or relevant entity.

38EB Report of performance audit

- (1) The Auditor-General must report the result of the performance audit and other matters that, in the Auditor-General’s judgement, call for special notice to the following (the *report recipients*)—
 - (a) the responsible Minister for the auditable entity, and
 - (b) the Treasurer, and
 - (c) the accountable authority for the auditable entity, and

- (d) if the audit includes an audit of the relevant activities of a related relevant entity for the auditable entity—the governing body of the related relevant entity.
- (2) The Auditor-General must not make a report of a performance audit under this section unless, at least 28 days before making the report, the Auditor-General has given the report recipients a summary of any findings and proposed recommendations in relation to the audit.
- (3) The Auditor-General may make a report of a performance audit under this section before the expiration of the 28-day period if the report recipients mentioned in subsection (1)(c) and (d) have provided to the Auditor-General any submissions or comments the report recipients wish to make.
- (4) The Auditor-General must include in the report of a performance audit under this section—
 - (a) any submissions or comments made by the report recipients referred to in subsection (1)(c) and (d), or
 - (b) a summary, in a form agreed by the report recipients referred to in subsection (1)(c) and (d), of any submissions or comments made by the report recipients.
- (5) The Auditor-General, in a report of a performance audit under this section—
 - (a) may include other information the Auditor-General thinks desirable in relation to the activities the subject of the audit, and
 - (b) must set out the reasons for opinions expressed in the report, and
 - (c) may include recommendations arising out of the audit the Auditor-General thinks fit to make.
- (6) The Auditor-General may include the report in another report of the Auditor-General.
- (7) If a single performance audit relates to the activities of more than one auditable entity, the Treasurer may, if asked by the Auditor-General, decide the accountable authority for an appropriate auditable entity and responsible Minister to whom the Auditor-General must report under this section.
- (8) If the Treasurer makes a decision under subsection (7), a reference in this section to the accountable authority for the auditable entity or the responsible Minister is taken to be a reference to the accountable authority and responsible Minister decided by the Treasurer.

38EC Tabling etc of reports under section 38EB

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

[2] Schedule 4 Savings, transitional and other provisions

Insert after Part 9—

Part 10 Provisions consequent on enactment of Government Sector Audit and Other Legislation Amendment Act 2022

28 Application of Part 3, Division 2A

- (1) The Auditor-General may conduct an audit of the relevant activities of a relevant entity carried out before the commencement.
- (2) Without limiting subclause (1), an audit may be carried out under Part 3, Division 2A of this Act in relation to the relevant activities of a relevant entity carried out before the commencement even if the relevant entity has ceased to operate or no longer exists.

- (3) In this clause—

commencement means the commencement of the *Government Sector Audit and Other Legislation Amendment Act 2022*, Schedule 1[1].

relevant activities has the same meaning as in Part 3, Division 2A of this Act.

relevant entity has the same meaning as in Part 3, Division 2A of this Act.

Schedule 2 Amendment of Local Government Act 1993 No 30 in relation to follow the dollar performance audits

[1] Sections 421A–421BE

Omit sections 421A and 421B. Insert instead—

421A Definitions

In this Division—

audit includes examination and inspection.

governing body—see section 421B.

local government purpose—see section 421BA(a).

performance audit—see section 421BD(1).

related relevant entity, for a council, means an entity that is a relevant entity because it receives money or other resources, whether directly or indirectly, from or on behalf of the council for a local government purpose.

relevant activities, of a relevant entity—

- (a) means the activities of the relevant entity that relate to achieving the local government purpose, but
- (b) does not include—
 - (i) the provision of goods and services by the relevant entity to a council for the direct and exclusive use, or direct and exclusive benefit, of the council, or
 - (ii) an arrangement of a class prescribed by the regulations.

relevant entity—see section 421BA.

421B Meaning of “governing body”

- (1) In this Division, a *governing body*, in relation to a relevant entity, means—
 - (a) a board, council or other body comprised of individuals that are collectively responsible for managing the affairs of the entity, or
 - (b) if the entity does not have a body described in paragraph (a)—the person who is the chief executive of the entity (however described) or otherwise responsible for the entity’s day to day management, or
 - (c) another entity declared by the regulations to be the governing body for the entity.
- (2) In this Division, a governing body does not include—
 - (a) a board, council or other body with merely advisory functions, or
 - (b) an entity, or an entity of a kind, prescribed by the regulations not to be a governing body.

421BA Meaning of “relevant entity”

In this Division, a *relevant entity* is an entity that—

- (a) receives money or other resources, whether directly or indirectly, from or on behalf of a council for a particular purpose (a *local government purpose*), and
- (b) either—
 - (i) agrees to use the money or other resources in achieving the local government purpose, or

- (ii) has entered into a contract that relates to the local government purpose, and
- (c) cannot be the subject of an audit conducted under another provision of this Act.

421BB Relationship with definition of “auditable entity” in Government Sector Audit Act 1983

To avoid doubt, a relevant entity is not to be taken to be an auditable entity under the *Government Sector Audit Act 1983* merely because the Auditor-General may conduct an audit of one or more of its activities under this Division.

421BC Application of sections 423–425 to audit of relevant activities of relevant entities

- (1) Sections 423–425 apply to the audit of the relevant activities of a relevant entity under this Division as if the relevant entity were a council.
- (2) However, sections 423 and 424 apply only to the extent the Auditor-General considers the exercise of powers under the sections necessary to assess the operations of the relevant entity in relation to achieving the local government purpose.

421BD Performance audit by Auditor-General

- (1) The Auditor-General may, when the Auditor-General considers it appropriate, conduct an audit (a *performance audit*) of all or any particular activities of a council to determine whether the council is carrying out the council’s activities effectively and doing so economically and efficiently and in compliance with all relevant laws.
- (2) In conducting a performance audit of a council the Auditor-General may, if the Auditor-General considers it appropriate, include a performance audit of the relevant activities of a related relevant entity for the council.
Example— In conducting a performance audit of a council, the Auditor-General may decide to conduct a performance audit of a grant made by the council to a related relevant entity for the council.
- (3) An audit under subsection (2) may be conducted only to the extent it assesses the operations of the related relevant entity in relation to achieving the local government purpose.
- (4) A performance audit under this Division is separate from, and does not affect, another audit required or authorised by or under—
 - (a) this Act, or
 - (b) another Act.
- (5) A single performance audit may relate to the activities of more than one council or relevant entity.

421BE Report of performance audit

- (1) The Auditor-General must report the result of the performance audit and other matters that, in the Auditor-General’s judgement, call for special notice to the following (the *report recipients*)—
 - (a) the Departmental Chief Executive, and
 - (b) the council to whom the performance audit relates, and
 - (c) the Minister, and

- (d) if the audit includes an audit of the relevant activities of a related relevant entity for the council—the governing body of the related relevant entity.
- (2) The Auditor-General must not make a report of a performance audit under this section unless, at least 28 days before making the report, the Auditor-General has given the report recipients a summary of any findings and proposed recommendations in relation to the audit.
- (3) The Auditor-General may make a report of a performance audit under this section before the expiration of the 28-day period if—
 - (a) the report recipients referred to in subsection (1)(a), (b) and (d) have provided to the Auditor-General any submissions or comments the report recipients wish to make, or
 - (b) the report recipients referred to in subsection (1)(a), (b) and (d) have given the Auditor-General notice that no submissions or comments are to be made by the report recipients.
- (4) The Auditor-General must include in the report of a performance audit under this section—
 - (a) any submissions or comments made by the report recipients referred to in subsection (1)(a), (b) or (d), or
 - (b) a summary, in a form agreed by the report recipients referred to in subsection (1)(a), (b) or (d), of any submissions or comments made by the report recipients.
- (5) The Auditor-General, in a report of a performance audit under this section—
 - (a) may include other information the Auditor-General thinks desirable in relation to the activities the subject of the audit, and
 - (b) must set out the reasons for opinions expressed in the report, and
 - (c) may include recommendations arising out of the audit the Auditor-General thinks fit to make.
- (6) The Auditor-General may include the report in another report of the Auditor-General.

[2] Schedule 8 Savings, transitional and other provisions consequent on the enactment of other Acts

Insert after Part 42—

Part 43 Provisions consequent on enactment of Government Sector Audit and Other Legislation Amendment Act 2022

136 Application of Chapter 13, Part 3, Division 2A

- (1) The Auditor-General may conduct an audit of the relevant activities of a relevant entity carried out before the commencement.
- (2) Without limiting subclause (1), an audit may be carried out under Chapter 13, Part 3, Division 2A of this Act in relation to the relevant activities of a relevant entity carried out before the commencement even if the relevant entity has ceased to operate or no longer exists.
- (3) In this clause—

commencement means the commencement of the *Government Sector Audit and Other Legislation Amendment Act 2022*, Schedule 2[1].

relevant activities has the same meaning as in Chapter 13, Part 3, Division 2A of this Act.

relevant entity has the same meaning as in Chapter 13, Part 3, Division 2A of this Act.

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

[1] Section 27B The Auditor-General

Insert after section 27B(1)—

- (1A) The Auditor-General is an independent officer of Parliament.

[2] Section 27B(2A)

Insert after section 27B(2)—

- (2A) No implied rights, obligations or immunities arise from the Auditor-General being an independent officer of Parliament.

[3] Section 27B(3A)

Insert after section 27B(3)—

- (3A) For subsection (3)(b) or (c), the Parliament or Treasurer or other Minister must consult with the Auditor-General about the scope of a particular audit or audit-related service before requesting the Auditor-General to provide the audit or audit-related service.

[4] Section 36 Access to documents and information

Omit “other than” from section 36(6)(b). Insert instead “including”.

[5] Section 36(6)(b1)

Insert after section 36(6)(b)—

- (b1) any books, records or other documents being accessed, provided or produced being or including Cabinet information, or

[6] Section 36(8)

Omit the subsection.

[7] Section 36A

Insert after section 36—

36A Disclosure of confidential information

- (1) An authorised person must not disclose confidential information unless the Auditor-General has authorised the disclosure.
- (2) The Auditor-General may authorise the disclosure of confidential information only if—
- (a) in the Auditor-General’s opinion, the disclosure of the confidential information is—
- (i) in the public interest, and
- (ii) necessary for the exercise of the Auditor-General’s functions, and
- (b) the Auditor-General has, at least 28 days before authorising the disclosure of the confidential information, notified the Premier that the Auditor-General is proposing to disclose the information, and

- (c) the Premier has not, within 28 days after being notified by the Auditor-General of the proposed disclosure, issued a certificate that the disclosure of the confidential information is, in the Premier's opinion, not in the public interest.
- (3) The Auditor-General or Premier, in forming an opinion under subsection (2) about whether or not it is in the public interest to disclose confidential information, must consider the public interest factors both for and against the disclosure.
- (4) A certificate of the Premier that it is not in the public interest to disclose confidential information is conclusive evidence of that fact.
- (5) If information is confidential information, a claim of confidentiality or privilege is not waived merely because the information is accessed, provided or produced under this Act.
- (6) In this section—
 - confidential information* means—
 - (a) Cabinet information within the meaning of the *Government Information (Public Access) Act 2009*, or
 - (b) information that could be subject to a claim of privilege by the State or a public official in a court of law.
 - disclose* includes publish.

[8] Section 48A(7)

Omit "Auditor-General" from section 48A(7).

Insert instead "Public Accounts Committee".

[9] Section 48A(11)

Omit the subsection.

[10] Section 48A(12)

Omit "of such a report". Insert instead "of a report under this section".

[11] Section 57 Functions of Committee

Omit section 57(1)(c1). Insert instead—

- (c1) to examine each annual report and other report of the Auditor-General and report to the Legislative Assembly about any matter 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

[1] Section 423 Access to and production of documents

Insert “(an *authorised person*)” after “a person authorised by the Auditor-General” in section 423(1).

[2] Section 423(2) and (4)

Omit “a person authorised by the Auditor-General” wherever occurring.

Insert instead “an authorised person”.

[3] Section 423(2)(a), (b) and (e)

Omit “or person” wherever occurring. Insert instead “or authorised person”.

[4] Section 423(4)(b)

Omit “other than”. Insert instead “including”.

[5] Section 423(4)

Insert after section 423(4)(b)—

- (b1) any books, records or other documents being accessed, provided or produced being or including Cabinet information, or

[6] Section 423(5)

Omit the subsection.

[7] Section 423A

Insert after section 423—

423A Disclosure of confidential information

- (1) An authorised person must not disclose confidential information unless the Auditor-General has authorised the disclosure.
- (2) The Auditor-General may authorise the disclosure of confidential information only if—
 - (a) in the Auditor-General’s opinion, the disclosure of the confidential information is—
 - (i) in the public interest, and
 - (ii) necessary for the exercise of the Auditor-General’s functions, and
 - (b) the Auditor-General has, at least 28 days before authorising the disclosure of the confidential information, notified the Premier that the Auditor-General is proposing to disclose the information, and
 - (c) the Premier has not, within 28 days after being notified by the Auditor-General of the proposed disclosure, issued a certificate that the disclosure of the confidential information is, in the Premier’s opinion, not in the public interest.
- (3) The Auditor-General or Premier, in forming an opinion under subsection (2) about whether or not it is in the public interest to disclose confidential

information, must consider the public interest factors both for and against the disclosure.

- (4) A certificate of the Premier that it is not in the public interest to disclose confidential information is conclusive evidence of that fact.
- (5) If information is confidential information, a claim of confidentiality or privilege is not waived merely because the information is accessed, provided or produced under this Act.
- (6) In this section—
 - authorised person** has the same meaning as in section 423.
 - confidential information** means—
 - (a) Cabinet information within the meaning of the *Government Information (Public Access) Act 2009*, or
 - (b) information that could be subject to a claim of privilege by the State or a public official in a court of law.**disclose** includes publish.